

SENATE BILL REPORT

SB 5605

As of February 10, 2025

Title: An act relating to the operation, authorization, and permitting of microenterprise home kitchens.

Brief Description: Concerning the operation, authorization, and permitting of microenterprise home kitchens.

Sponsors: Senators Frame, Shewmake, Chapman, Hasegawa, Holy, Lovelett, Lovick, Nobles and Valdez.

Brief History:

Committee Activity: Agriculture & Natural Resources: 2/10/25.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes regulations, permitting standards, and enforcement mechanisms for Microenterprise Home Kitchen Operations.
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SENATE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Staff: Elena Becker (786-7493)

Background: Washington State Board of Health. The United States Food and Drug Administration (FDA) provides guidance to state and local agencies regarding safe food service practices (Food Code). The FDA developed the Food Code in cooperation with the Centers for Disease Control and Prevention and the United States Department of Agriculture to provide current enforcement standards for safe food service practices.

The Washington State Board of Health (Board) is authorized to establish minimum standards for prevention and control of foodborne illnesses. Local jurisdictions may adopt more stringent standards. The Board's rules direct food service establishments in the areas of food supplies, food protection, public health labeling, food preparation, temperature

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

control, personal hygiene, garbage and litter, sanitary equipment, and pest control. The Board considers the most recent version of the Food Code when adopting rules for food service.

Cottage Foods Program. The Cottage Foods Program is administered by the Washington State Department of Agriculture (WSDA). A cottage food operation is a person who produces nonpotentially hazardous foods in the home kitchen of that person's primary domestic residence, for sale directly to the consumer. Sales of cottage food products may not exceed \$35,000 annually and permitted areas are subject to inspection by the WSDA.

Examples of the products cottage food operations may produce include cakes; snack mixes; caramels; jams, jellies, and preserves; and certain vinegars.

By rule, cottage food operations may not produce: products made with meat, poultry, fish, or shellfish products; bakery goods which require refrigeration; beverages; cut fresh fruits or vegetables; certain sauces; pickled vegetables; and other such goods.

Summary of Bill: Establishment of Microenterprise Home Kitchen Operations. A microenterprise home kitchen operation (MEHKO) is defined as a food facility operated by a person in the person's primary domestic residence. A MEHKO does not include a cottage food operation.

MEHKOs are authorized to engage in:

- the direct sale to consumers of food products to be consumed at a location other than the premises of the MEHKO, whether delivered directly to the consumer by the MEHKO operator or an intermediary; and
- catering activities in which a specific menu is prepared on the premises of the MEHKO for service at a different location.

The Board is directed to adopt rules for the authorization, operation, and regulation of MEHKOs by July 1, 2027.

MEHKOs are subject to the following restrictions on the preparation of food:

- food preparation may not involve processes that require a hazard analysis critical control point plan from the Department of Health, raw milk or milk products, curing of meats, or the service or sale of raw oysters or other shellfish;
- food may not be held hot for more than two hours before pickup or delivery;
- food must be prepared, cooked, and served on the same day, and may not be held overnight;
- family or household members of the permittee may assist with the MEHKO without being classified as employees; and
- the MEHKO must post any inspection scores, grades, or other evaluation records.

MEHKOs are subject to the following restrictions on the sale of food:

- the operation may sell no more than 30 meals per day and no more than 90 meals per week. The local health jurisdiction (LHJ) may decrease these limits but may not increase the limits;
- products must be sold directly to the consumer. Direct sales at venues such as farmers markets, craft fairs, and charitable organization functions are permitted;
- the operation may not engage in indirect sales, ship food, conduct mail order sales, or sell food by consignment or wholesale;
- food products prepared in a MEHKO may not be delivered by a third-party delivery service or internet food service intermediary or delivered outside of the state unless allowed in the state of delivery; and
- an internet food service intermediary must post its fees and notify MEHKOs in writing 30 days in advance of certain fee changes.

Exemptions from the Food Service Code. MEHKOs are exempted from the following facility-related provisions of the food service code:

- certain requirements related to handwashing and toilet facilities, and ventilation;
- certain requirements pertaining to the characteristics, construction, and multiuse of surfaces;
- requirements pertaining to the installation, construction, and disassembly of certain equipment;
- requirements pertaining to water, plumbing, draining, and waste, provided that MEHKOs with a private water supply have the supply tested at least 60 days before permitting and annually thereafter, and provided that MEHKOs with a private on-site sewage system have had the system inspected within one year prior to permitting; and
- requirements related to lockers, dressing areas, laundry facilities, and light intensity and light sources.

MEHKOs are additionally exempted from the following provisions of the food service code:

- display guard, cover, and container requirements. However, the operator must ensure that no infants, children, pets, or unauthorized individuals are present during preparation, packaging, handling, or processing;
- limitations on outdoor display and sale of foods and certain signage requirements;
- requirements to provide clean tableware and drinking cups;
- requirements that holding equipment have temperature measuring devices; and
- all prohibitions and limitations on the use of a kitchen in a private home as a MEHKO, provided that food is not prepared in designated sleeping quarters.

Permitting of Microenterprise Home Kitchen Operations. The State Department of Health must develop a sample permit and form for permit applications. A MEHKO must obtain a permit from the applicable LHJ. The LHJ may require a MEHKO to renew a permit annually and may charge a fee for issuing or renewing MEHKO permits.

The application for a permit to operate as a MEHKO must include information, such as a

menu, proposed methods of food preparation, and descriptions of surfaces and cleaning schedules. The applicant must also provide documentation that the operator is a certified food protection manager and that all other involved individuals have secured a food and beverage service worker's permit. The application for a permit is not required to include public water supply and sewage descriptions.

The LHJ shall issue a permit after an initial inspection and review determines that the proposed MEHKO is in compliance with the requirements of this act. The LHJ may not require a MEHKO to comply with additional or different food safety requirements. Once issued, a permit is nontransferable and must be displayed when the MEHKO is in operation.

Inspection of Microenterprise Home Kitchen Operations. The permitted area of a MEHKO must be inspected for basic hygiene by the LHJ before initial permitting and may be inspected up to once per year after initial permitting at the discretion of the LHJ. The LHJ may inspect the permitted area of a MEHKO at any time in response to a foodborne outbreak or other public health emergency. Nonemergency inspection may occur only when the permit holder or permit holder's agent is present and with reasonable advance notice, by appointment, or pursuant to a search warrant.

A basic hygiene inspection shall, at a minimum, ensure that:

- no MEHKO food preparation, packaging, or handling is occurring concurrent with any other domestic activities;
- no infants, small children, or pets are in the MEHKO during preparation, packaging, or handling;
- all food-contact services, utensils, and equipment are washed, rinsed, and sanitized before each use; and
- that all persons involved in the preparation and packaging of MEHKO food products have obtained a food and beverage service worker's permit and adhere to certain food-safety standards.

If the LHJ is denied access to the permitted area of a MEHKO, the LHJ may issue a closure notice, require that the production or sale of food products cease, and apply to any court of competent jurisdiction for a search warrant.

Violations and Penalties. When a LHJ determines that any person is engaging in a MEHKO without a valid permit, or an operator of a MEHKO is violating an applicable law or rule, the LHJ may impose penalties.

For the first violation within a two-year period, the LHJ must hold an administrative conference with the MEHKO operator and offer technical assistance as appropriate. For the second or subsequent violation within a two-year period, the LHJ may issue a written warning, place the MEHKO on probation, suspend or revoke the permit, and issue fees.

The LHJ may summarily suspend a MEHKO's permit if the LHJ is denied access to the

permitted areas or the MEHKO is operating under conditions that constitute an immediate danger to public health.

Zoning and Building Codes. A MEHKO shall be a permitted use of residential property in any residential dwelling for zoning purposes subject to certain signage and noise restrictions. The city or county retains investigative and enforcement authority with respect to violations of its nuisance ordinances.

A MEHKO shall be considered a residence for the purposes of the state building code, and local building and fire codes, and does not constitute a change of occupancy. The operation of a MEHKO cannot be used as legal grounds for eviction, unless specifically identified in a lease agreement.

Reporting Requirements. The Department of Health shall compile and maintain, in a manner readily accessible to the public, statistics related to the number and distribution of permitted MEHKOs. This requirement expires June 30, 2027.

By July 1, 2027, the Department of Health must submit a report to the Legislature reviewing the program and providing recommendations for necessary legislation regarding this program.

The act expires December 31, 2029.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Requested on February 3, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The activity this bill seeks to regulate is happening, it's just not regulated, taxed, or permitted. People can't afford to use commercial or commissary kitchens. Most of these business owners are women of color.

CON: Food safety regulations are based in science and are important to protect the public from foodborne illness. Everyone should have access to the same level of safe food, we should not have two tiers of foods safety standards.

The bill doesn't require information about water or wastewater on the permits. LHJ inspectors aren't comfortable entering private homes, especially with increased mistrust of government.

Small food businesses can be supported in other ways, including by using restaurant kitchens during off hours or allowing individual inspectors to determine exemptions on a case-by-case basis.

Persons Testifying: PRO: Senator Noel Frame, Prime Sponsor.

CON: Ash Noble, State Board of Health; Samantha Louderback, Washington Hospitality Association; Katie Beeson, Washington Food Industry Association (WFIA); Jaime Bodden, WSALPHO.

Persons Signed In To Testify But Not Testifying: No one.