

STATE OF NEW YORK

7787

2021-2022 Regular Sessions

IN ASSEMBLY

May 21, 2021

Introduced by M. of A. CRUZ -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to the licensing of home kitchen operations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "home kitchen enterprise and economic opportunity act".

3 § 2. Legislative intent. Every day, New Yorkers are using their
4 skills, talents and creativity to build home kitchen-based businesses to
5 provide unique, quality food products, increasingly sourced using local
6 ingredients for direct sale to consumers, farmers markets and other
7 retail outlets. By practicing and perfecting their products, many of
8 these craft culinary enterprises have succeeded and grown into thriving
9 and vibrant small businesses, creating jobs and supporting local economies
10 and local farmers. It is the legislature's intent that home kitchen-
11 based food entrepreneurs should be supported and encouraged in their
12 efforts. Homemade food businesses can create significant economic opportunities
13 for New Yorkers that need them most--including women, immigrants,
14 grants, and people of color, who have historically faced barriers to
15 labor force participation and entrepreneurship and many of whom have
16 lost employment in the food industry as a result of the COVID-19 pandemic.
17 The home kitchen enterprise and economic opportunity act modernizes
18 regulations impacting these enterprises and reduces artificial barriers
19 to business growth, while preserving food safety and public health.

20 § 3. The agriculture and markets law is amended by adding a new article
21 22-A to read as follows:

ARTICLE 22-A

HOME KITCHEN OPERATIONS

Section 265. Definitions.

266. Licenses; fees.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD10458-03-1

267. Sales, delivery, disclosure.

268. Rules and regulations.

269. Inspections.

270. Information on tax compliance.

§ 265. Definitions. 1. "Home kitchen operation" means an enterprise in a private home that is controlled and operated by a resident that stores, handles, prepares and packages food for consumers and that meets all of the following conditions:

(a) all food sold or otherwise provided to consumers by the home kitchen operation is ready-to-eat food; and

(b) does not produce: alcoholic beverages; milk or milk products; food items containing raw shellfish; any food that requires a hazard analysis and critical control point plan under applicable federal, state or local law; and any low-acid canned food or acidified food that requires a scheduled process under applicable federal, state or local law.

A home kitchen operation does not include a processor of home-processed food operating under an exemption from licensing pursuant to article twenty-C of this chapter authorized by the commissioner, a food service establishment, temporary food service establishment, caterer, or residential group home facility.

2. "Licensed area" means the kitchen of a private home and any other area of the home used for the preparation, packaging, storage, handling or sanitation of food, equipment, and utensils used in the home kitchen operation, including refuse and toilet areas.

3. "Ready-to-eat food" means food that is in a form that is edible and safe to eat without washing, cooking or additional preparation by the consumer and that is reasonably expected to be consumed in the form in which it is provided to the consumer or after reheating by the consumer.

§ 266. Licenses; fees. 1. No person shall maintain or operate a home kitchen operation unless licensed by the commissioner. Application for a license to operate a home kitchen operation shall be made upon a form prescribed by the commissioner. The commissioner may require a licensee to renew the license annually.

2. A license, once issued, shall be nontransferable. A license shall be valid only for the person and location specified by such license and, unless suspended or revoked for cause, for the time period indicated.

3. The license, or an accurate copy thereof, shall be retained by the operator onsite and made available upon request to a representative of the department.

4. The applicant for a home kitchen operation license shall submit to the commissioner written standard operating procedures that include all of the following information:

(a) a list of all food types or products that will be handled;

(b) proposed procedures and methods of food preparation and handling;

(c) procedures, methods, and schedules for cleaning utensils and equipment and for the disposal of refuse;

(d) how food will be maintained at safe holding temperatures pending pickup by consumers or during delivery;

(e) days and times that the home kitchen may be used as a home kitchen operation. The stated days and times shall be for information purposes and not binding on the licensee.

5. The commissioner shall issue a license after an initial inspection has determined that the proposed home kitchen operation and its method

1 of operation comply with the requirements of this article. The initial
2 inspection may be conducted remotely via videoconference technology.

3 6. The commissioner shall provide the operator the opportunity to
4 update the food types and products handled without requiring the opera-
5 tor to submit a new license application.

6 7. The commissioner may charge a license fee not to exceed one hundred
7 seventy-five dollars.

8 8. The commissioner may decline to grant a new license, may decline to
9 renew a license, and may suspend or revoke a license already granted
10 after due notice and opportunity for hearing whenever he or she finds
11 that:

12 (a) any statement contained in an application for a license is or was
13 false or misleading;

14 (b) the home kitchen operation does not have facilities or equipment
15 sufficient to maintain adequate sanitation for the activities conducted;

16 (c) the home kitchen operation is not maintained in a clean and sani-
17 tary condition or is not operated in a sanitary manner;

18 (d) the maintenance and operation of the home kitchen operation is
19 such that the food produced therein is or may be adulterated;

20 (e) the home kitchen operation has failed or refused to produce any
21 records or provide any information demanded by the commissioner reason-
22 ably related to the administration and enforcement of this article; or

23 (f) the home kitchen operation has failed to comply with any of the
24 provisions of this article or rules and regulations promulgated pursuant
25 thereto.

26 § 267. Sales, delivery, disclosure. 1. Home kitchen operations may
27 sell or otherwise provide food directly to consumers only and not to any
28 food reseller. Home kitchen operations may not sell or deliver their
29 food to consumers outside New York.

30 2. Home kitchen operations may sell food to consumers in person or
31 remotely by telephone, email or internet website, including through a
32 third-party's internet website or mobile application. Food from a home
33 kitchen operation may be delivered to consumers by the operator, by an
34 employee or agent of the operator, or by a third-party delivery service.

35 3. Home kitchen operations shall provide the following information to
36 the consumer in a clear and conspicuous manner on a label affixed to
37 food that is sold in a package or container, on a sign at the point of
38 sale if the food is not sold in a package or container, and on any
39 webpage or mobile application where the food can be ordered:

40 (a) the name, license number, and telephone number of the home kitchen
41 operation that prepared the food;

42 (b) the common or usual name of the food item;

43 (c) if a food item contains more than one ingredient, a list of its
44 ingredients in descending order of predominance by weight; and

45 (d) the following statement: "Made in a home kitchen."

46 § 268. Rules and regulations. 1. By no later than December thirty-
47 first, two thousand twenty-two, the commissioner shall promulgate rules
48 and regulations to implement this article. Such rules and regulations
49 may include provisions relating to licensing of home kitchen operations,
50 hygiene, sanitation, approved sources of food, training and recordkeep-
51 ing.

52 2. The regulations promulgated pursuant to subdivision one of this
53 section shall include requirements for sanitation in home kitchen oper-
54 ations that shall:

55 (a) apply only to the licensed operations and licensed area of the
56 home;

1 (b) be reasonably necessary to ensure food safety and reasonably
2 feasible for ordinary home kitchen facilities;

3 (c) not require home kitchen operations to have or to use facilities
4 or equipment not ordinarily used in private homes; and

5 (d) not prevent or restrict persons who live in the home and their
6 guests from accessing and being present in the licensed area while food
7 for the home kitchen operation is being stored, handled, prepared or
8 packaged, so long as such persons are supervised by the licensed opera-
9 tor and not known to have symptoms of acute gastrointestinal illness or
10 to be infected with a disease that is transmissible through food.

11 3. If food safety training is required, the commissioner shall ensure
12 that the training content and any required examination are available in
13 languages other than English that are commonly spoken by New York resi-
14 dents as their primary language.

15 4. Regulations adopted by the commissioner may require that home
16 kitchen operations comply with retail food store sanitation regulations,
17 provided that home kitchen operations shall be exempt from any require-
18 ments that do not meet the criteria of subdivision two of this section.

19 5. A home kitchen operation shall comply with the rules and regu-
20 lations adopted by the commissioner under this article.

21 6. The regulations promulgated pursuant to subdivision one of this
22 section shall include the requirement that the licensing application,
23 such application's instructions and all guidance shall be available in
24 multiple languages in compliance with the statewide language access
25 policy pursuant to executive order number twenty-six of two thousand
26 eleven.

27 § 269. Inspections. 1. After the initial inspection for purposes of
28 determining license eligibility, a home kitchen operation shall be
29 subject to inspections only in the following three circumstances:

30 (a) Not more than once in any twelve-month period, the department may
31 conduct a routine inspection for the purpose of observing the operator
32 engaged in the usual activities of a home kitchen operation, including,
33 but not limited to, active food preparation. The department shall
34 provide notice to an operator before a routine inspection and shall
35 conduct the routine inspection at a mutually agreeable date and time.
36 This paragraph shall not be deemed to require the department to conduct
37 a routine inspection.

38 (b) A for-cause inspection may be conducted when the department has a
39 valid reason, such as a credible consumer complaint, to suspect that
40 adulterated or otherwise unsafe food has been produced by the home
41 kitchen operation or that the home kitchen operation has otherwise been
42 in violation of this article. The department shall provide notice to an
43 operator before conducting a for-cause inspection and shall conduct the
44 inspection at a mutually agreeable date and time.

45 (c) If the department has just cause to believe that the home kitchen
46 operation poses a serious hazard or immediate threat to public health,
47 the department may conduct an emergency inspection that is limited to
48 the facts prompting the inspection. The department shall provide the
49 operator with advance notice of an emergency inspection to the extent
50 that it is reasonable to do so under the circumstances.

51 2. The department may inspect only the licensed area of the home
52 kitchen operation for the purpose of enforcing or administering this
53 article.

54 § 270. Information on tax compliance. The department shall provide the
55 licensee, upon licensure, information regarding the New York state
56 department of taxation and finance's business tax trainings and dead-

1 lines in multiple languages in compliance with the statewide language
2 access policy pursuant to executive order number twenty-six of two thou-
3 sand eleven.

4 § 4. Subdivision 3 of section 251-z-2 of the agriculture and markets
5 law, as amended by chapter 507 of the laws of 1973, is amended to read
6 as follows:

7 3. The term "food processing establishment" means any place which
8 receives food or food products for the purpose of processing or other-
9 wise adding to the value of the product for commercial sale. It
10 includes, but is not limited to, bakeries, processing plants, beverage
11 plants and food manufactories. However, the term does not include: those
12 establishments that process and manufacture food or food products that
13 are sold exclusively at retail for consumption on the premises; home
14 kitchen operations licensed by the commissioner under section two
15 hundred sixty-six of this chapter; those operations which cut meat and
16 sell such meat at retail on the premises; bottled and bulk water facili-
17 ties; those food processing establishments which are covered by articles
18 four, four-a, five-a, five-b, five-c, five-d, seventeen-b, nineteen,
19 [~~twenty-b,~~] and twenty-one of this chapter; service food establishments,
20 including vending machine commissaries, under permit and inspection by
21 the state department of health or by a local health agency which main-
22 tains a program certified and approved by the state commissioner of
23 health; establishments under federal meat, poultry or egg product
24 inspection; or establishments engaged solely in the harvesting, storage,
25 or distribution of one or more raw agricultural commodities which are
26 ordinarily cleaned, prepared, treated or otherwise processed before
27 being marketed to the consuming public.

28 § 5. Subdivision 1 of section 500 of the agriculture and markets law,
29 as amended by section 8 of part II of chapter 62 of the laws of 2003, is
30 amended to read as follows:

31 1. Definitions. For the purposes of this section, the following terms
32 shall have the following meanings:

33 (a) "Food service establishment" means any place where food is
34 prepared and intended for individual portion service, and includes the
35 site at which individual portions are provided, whether consumption
36 occurs on or off the premises, or whether or not there is a charge for
37 the food. The term does not include a home kitchen operation licensed
38 by the commissioner under section two hundred sixty-six of this chapter.

39 (b) "Retail food store" means any establishment or section of an
40 establishment where food and food products are offered to the consumer
41 and intended for off-premises consumption. The term does not include
42 home kitchen operations licensed by the commissioner under section two
43 hundred sixty-six of this chapter, establishments which handle only
44 pre-packaged, non-potentially hazardous foods, roadside markets that
45 offer only fresh fruits and fresh vegetables for sale, food service
46 establishments, or food and beverage vending machines.

47 (c) "Zone" means an administratively determined geographic portion of
48 the state to which inspectors are assigned by the department.

49 (d) "Food warehouse" shall mean any food establishment in which food
50 is held for commercial distribution.

51 § 6. This act shall take effect immediately.