STATE OF NEW YORK

5951

2021-2022 Regular Sessions

IN SENATE

March 23, 2021

Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed 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:

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

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

§ 3. The agriculture and markets law is amended by adding a new article 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.

LBD10458-01-1

267. Sales, delivery, disclosure.
268. Rules and regulations.
269. Inspections.

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

6. The commissioner shall provide the operator the opportunity to update the food types and products handled without requiring the operator to submit a new license application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The regulations promulgated pursuant to subdivision one of this section shall include requirements for sanitation in home kitchen operations that shall:

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

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

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

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

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

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

5. A home kitchen operation shall comply with the rules and regulations adopted by the commissioner under this article.

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

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

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

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

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

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

3. The term "food processing establishment" means any place which receives food or food products for the purpose of processing or otherwise adding to the value of the product for commercial sale. It includes, but is not limited to, bakeries, processing plants, beverage plants and food manufactories. However, the term does not include: those establishments that process and manufacture food or food products that are sold exclusively at retail for consumption on the premises; home kitchen operations licensed by the commissioner under section two

hundred sixty-six of this chapter; those operations which cut meat and sell such meat at retail on the premises; bottled and bulk water facilities; those food processing establishments which are covered by articles four, four-a, five-a, five-b, five-c, five-d, seventeen-b, nineteen, [~~twenty-b,~~] and twenty-one of this chapter; service food establishments, including vending machine commissaries, under permit and inspection by the state department of health or by a local health agency which maintains a program certified and approved by the state commissioner of health; establishments under federal meat, poultry or egg product inspection; or establishments engaged solely in the harvesting, storage, or distribution of one or more raw agricultural commodities which are ordinarily cleaned, prepared, treated or otherwise processed before being marketed to the consuming public.

§ 5. Subdivision 1 of section 500 of the agriculture and markets law, as amended by section 8 of part I1 of chapter 62 of the laws of 2003, is amended to read as follows:

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

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

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

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

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

§ 6. This act shall take effect immediately.