

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1149

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AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 16-18-2-137, AS AMENDED BY P.L.144-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 137. (a) "Food establishment", for purposes of IC 16-42-5, ~~and IC 16-42-5.2, and IC 16-42-5.3~~, means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food.

(b) The term does not include the following:

(1) A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption or for consumption by their guests.

(2) A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational setting or for religious purposes, if:

(A) the individuals separately or jointly provide or prepare, free of charge, and consume their own food or that of others attending the gathering; and

(B) the gathering is for a purpose of the organization.

Gatherings for the purpose of the organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.

(3) A vehicle used to transport food solely for distribution to the

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needy, either free of charge or for a nominal donation.

(4) A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property.

(5) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for an organization:

(A) that is organized for:

(i) religious purposes; or

(ii) educational purposes in a nonpublic educational setting;

(B) that is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) that offers the food for sale to the final consumer at an event held for the benefit of the organization;

unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.

(6) Except for food prepared by a for-profit entity, an Indiana nonprofit organization that:

(A) is organized for civic, fraternal, veterans, or charitable purposes;

(B) is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) offers food for sale to the final consumer at an event held for the benefit of the organization;

if the events conducted by the organization take place for not more than fifteen (15) days in a calendar year.

~~(7) An individual vendor of a farmer's market or roadside stand if the individual meets the requirements of IC 16-42-5-29.~~

~~(8) (7) The holder of a farm winery permit under IC 7.1-3-12-5 or a brewer's permit under IC 7.1-3-2-7(5) if the requirements of IC 16-42-5-30 are met.~~

**(8) A home based vendor or an individual vendor who sells a food product under IC 16-42-5.3.**

SECTION 2. IC 16-18-2-287.8, AS ADDED BY P.L.86-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 287.8. (a) "Potentially hazardous food product", for purposes of ~~IC 16-42-5-29~~, **IC 16-42-5.3**, means a food that is natural or synthetic and requires temperature control because it is in a form capable of supporting any of the following:

(1) The rapid and progressive growth of infectious or toxigenic microorganisms.

(2) The growth and toxin production of *Clostridium botulinum*.

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- (3) In raw shell eggs, the growth of *Salmonella enteritidis*.
- (b) The term includes the following:
  - (1) A food of animal origin that is raw or heat treated.
  - (2) A food of plant origin that is heat treated or consists of raw seed sprouts.
  - (3) Cut melons.
  - (4) Garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth described in subsection (a).

SECTION 3. IC 16-42-5-29 IS REPEALED [EFFECTIVE JULY 1, 2022]. Sec. 29: (a) Except as provided in subsection (h), this section applies to an individual vendor of a farmers market or roadside stand:

(b) As used in this section, "end consumer" means a person who is the last person to purchase any food product and who does not resell the food product.

(c) An individual vendor of a farmers market or roadside stand is not considered to be a food establishment and is exempt from the requirements of this title that apply to food establishments if the individual vendor's food product:

- (1) is made, grown, or raised by an individual at the individual's primary residence; property owned by the individual; or property leased by the individual;
  - (2) is not a potentially hazardous food product;
  - (3) is prepared by an individual who practices proper sanitary procedures; including:
    - (A) proper hand washing;
    - (B) sanitation of the container or other packaging in which the food product is contained; and
    - (C) safe storage of the food product;
  - (4) is not resold; and
  - (5) includes a label that contains the following information:
    - (A) The name and address of the producer of the food product.
    - (B) The common or usual name of the food product.
    - (C) The ingredients of the food product; in descending order by predominance by weight.
    - (D) The net weight and volume of the food product by standard measure or numerical count.
    - (E) The date on which the food product was processed.
    - (F) The following statement in at least 10 point type: "This product is home produced and processed and the production area has not been inspected by the state department of health."
- (d) An individual vendor who meets the requirements in subsection



- (c) is subject to food sampling and inspection if:
- (1) the state department determines that the individual vendor's food product is:
    - (A) misbranded under IC 16-42-2-3; or
    - (B) adulterated; or
  - (2) a consumer complaint has been received by the state department.
- (c) If the state department has reason to believe that an imminent health hazard exists with respect to an individual vendor's food product, the state department may order cessation of production and sale of the food product until the state department determines that the hazardous situation has been addressed:
- (f) For purposes of this section, the state health commissioner or the commissioner's authorized representatives may take samples for analysis and conduct examinations and investigations through any officers or employees under the state health commissioner's supervision. Those officers and employees may enter, at reasonable times, the facilities of an individual vendor and inspect any food products in those places and all pertinent equipment, materials, containers, and labeling.
- (g) The state health commissioner may develop guidelines for an individual vendor who seeks an exemption from regulation as a food establishment as described in subsection (c). The guidelines may include:
- (1) standards for best safe food handling practices;
  - (2) disease control measures; and
  - (3) standards for potable water sources.
- (h) The department shall exclude from the definition of food establishment the sale of products described in subsection (i):
- (1) by an individual vendor of a farmers market or roadside stand; and
  - (2) by a farmer selling directly to the end consumer on the farm where the product is produced and through delivery to the end consumer.
- (i) Subsection (h) applies to the distribution of the following products:
- (1) Poultry products produced under IC 15-17-5-11. Poultry products sold at a farmers market or roadside stand must be frozen at the point of sale. Poultry products sold on the farm where the product is produced must be refrigerated at the point of sale and through delivery.
  - (2) Rabbits that are slaughtered and processed on a farm for the



purpose of conducting limited sales on the farm; at a farmers market; and at a roadside stand: Rabbit meat sold at a farmers market or roadside stand must be frozen at the point of sale: Rabbit meat sold on the farm where the product is produced must be refrigerated at the point of sale and through delivery:

Subsection (h) does not apply to the distribution of meat from a game animal:

(j) An individual vendor of a farmers market or roadside stand that sells eggs that meet the requirements under IC 16-42-11 is not considered to be a food establishment and is exempt from the requirements of this title that apply to a food establishment relating to the sale of eggs:

(k) Notwithstanding any other law, a local unit of government (as defined in IC 14-22-31.5-1) may not by ordinance or resolution require any licensure, certification, or inspection of foods or food products of an individual vendor who meets the requirements in subsection (c); including an individual vendor who delivers the individual's food or food product directly to an end consumer:

SECTION 4. IC 16-42-5.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

#### **Chapter 5.3. Home Based Food Products**

**Sec. 1. (a) As used in this chapter, "end consumer" means a person who is the last person to purchase any food product and who does not resell the food product.**

**(b) As used in this chapter, "roadside stand" means a structure, including a tent, stand, vehicle, or trailer that is:**

- (1) visible from a road; and**
- (2) located not more than one hundred (100) feet from the edge of the side of the road;**

**where whole uncut produce, food products that are not potentially hazardous, poultry that is exempt under IC 15-17-5-11, rabbits, or eggs permitted for sale by the state egg board are sold to an end consumer.**

**Sec. 2. A person may prepare and sell food products as a home based vendor if the person complies with the requirements of this chapter.**

**Sec. 3. The production and sale of food products by a home based vendor in accordance with this chapter are exempt from the requirements of this title that apply to food establishments.**

**Sec. 4. A home based vendor shall prepare and sell only a food product that is:**



- (1) made, grown, or raised by an individual at the individual's primary residence, including any permanent structure that is on the same property as the residence;
- (2) not a potentially hazardous food product;
- (3) prepared using proper sanitary procedures, including:
  - (A) proper hand washing;
  - (B) sanitizing the container or other packaging in which the food product is contained;
  - (C) storing the food product safely;
  - (D) producing the food product in a food preparation or packaging area in which animals are not present; and
  - (E) cleaning and sanitizing of surfaces that have contact with the food product;
- (4) not resold;
- (5) sold in person, by telephone, or through the Internet; and
- (6) delivered to the end consumer in person, by mail, or by a third party carrier.

**Sec. 5. (a)** A home based vendor shall include a label for packaged food or a sign for unpackaged food that contains the following information:

- (1) The name and address of the producer of the food product.
- (2) The common or usual name of the food product.
- (3) The ingredients of the food product, in descending order by predominance by weight.
- (4) The net weight or volume of the food product by standard measure or numerical count.
- (5) The date on which the food product was processed.
- (6) The following statement in at least 10 point type: "This product is home produced and processed and the production area has not been inspected by the state department of health. NOT FOR RESALE."

**(b)** A home based vendor shall post the label of each food product on the vendor's Internet web site.

**Sec. 6. (a)** A home based vendor may not ship or deliver a food product to an end consumer who is located outside Indiana.

**(b)** A home based vendor shall do the following:

- (1) Ship or deliver a food product in a sealed package that allows an end consumer to determine whether the product has been tampered with.
- (2) Maintain a record of the shipping or delivery address of each end consumer the vendor sells a food product to for at least one (1) year after the date of the sale.



(3) Upon request, provide a record described in subdivision (2) to the state department.

Sec. 7. (a) A home based vendor shall obtain a food handler certificate from a certificate issuer that is accredited by the American National Standards Institute.

(b) Upon request, a home based vendor shall provide a copy of the food handler certificate required by subsection (a) to the state department or an end consumer.

(c) A home based vendor shall provide a copy of the food handler certificate required by subsection (a) to the local health department in the county where the home based vendor's residence is located.

Sec. 8. (a) A home based vendor is subject to food sampling and inspection if:

(1) the state department determines that the home based vendor's food product is:

(A) misbranded under IC 16-42-2-3; or

(B) adulterated; or

(2) a consumer complaint has been received by the state department.

(b) If the state department has reason to believe that an imminent health hazard exists with respect to a home based vendor's food product, the state department may order cessation of production and sale of the food product until the state department determines that the hazardous situation has been addressed.

(c) For purposes of this chapter, the state health commissioner or the commissioner's authorized representatives may take samples for analysis and conduct examinations and investigations through any officers or employees under the state health commissioner's supervision. Those officers and employees may enter, at reasonable times, the facilities of a home based vendor and inspect any food products in those places and all pertinent equipment, materials, containers, and labeling.

Sec. 9. The state health commissioner may develop guidelines for the requirements described in this chapter, including:

(1) standards for best safe food handling practices;

(2) disease control measures; and

(3) standards for potable water sources.

Sec. 10. (a) This section applies to the sale of poultry and rabbits by an individual vendor of a farmers' market or roadside stand.

(b) The following products are exempt from the requirements



of this title that apply to food establishments:

(1) Poultry products produced under IC 15-17-5-11. Poultry products sold at a farmers' market or roadside stand must be frozen at the point of sale. Poultry products sold on the farm where the product is produced must be kept refrigerated at the point of sale and through delivery by the producer to the end consumer.

(2) Rabbits that are slaughtered and processed on a farm for the purpose of conducting limited sales on the farm, at a farmers' market, and at a roadside stand. Rabbit meat sold at a farmers' market or roadside stand must be frozen at the point of sale. Rabbit meat sold on the farm where the product is produced must be kept refrigerated at the point of sale and through delivery by the producer to the end consumer. An individual who sells rabbits under this subsection shall comply with the label requirements set forth in this chapter.

(c) This section does not apply to the distribution of meat from a game animal.

Sec. 11. (a) IC 16-42-11 applies to the sale of eggs under this chapter.

(b) An individual vendor of a farmers' market or roadside stand is exempt from the requirements of this title that apply to a food establishment relating to the sale of eggs, whole uncut produce, or food products that are not potentially hazardous.

Sec. 12. Notwithstanding any other law, a local unit of government (as defined in IC 14-22-31.5-1) may not by ordinance or resolution require any licensure, certification, or inspection of foods or food products of a home based vendor or an individual vendor who prepares and sells food products under this chapter.

Sec. 13. (a) For the purpose of enforcing this chapter, the local health officers are food environmental health specialists subordinate to the state department.

(b) To ensure that enforcement of the state laws and rules is uniform throughout the state, the state department shall provide to the local health officers who are food environmental health specialists guidelines concerning the interpretation and of the state department's rules concerning home based vendors. A food environmental health specialist may not enforce the state department's rules concerning home based vendors in a manner that is more strict than the state department's guidelines.





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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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