

# ASSEMBLY, No. 2315

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

**Sponsored by:**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Assemblyman WAYNE P. DEANGELO**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Permits, and establishes requirements for, sale of cottage food products.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 3/5/2020)

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1 AN ACT concerning the sale of cottage food products and  
2 supplementing Title 24 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. As used in this act:

8 “Cottage food employee” means an individual, paid or volunteer,  
9 who is involved in the preparation, packaging, handling, or storage  
10 of a cottage food product, or otherwise works for a cottage food  
11 operation. “Cottage food employee” shall not mean an immediate  
12 family member or household member of the cottage food operator.

13 “Cottage food operation” means an enterprise that is operated by  
14 a licensed cottage food operator, has no more than one full-time  
15 equivalent cottage food employee, and is located within a permitted  
16 area of a private home where the cottage food operator resides, and  
17 at which a cottage food product is prepared or packaged for direct  
18 sale or indirect sale to a consumer pursuant to this act.

19 “Cottage food operator” means an individual who owns and  
20 operates a cottage food operation in the individual’s private home.

21 “Cottage food product” means a non-potentially hazardous food  
22 that is prepared for sale by a cottage food operation.

23 “Department” means the Department of Health.

24 “Direct sale” means a transaction in which a consumer purchases  
25 a cottage food product directly from a cottage food operation. A  
26 “direct sale” includes, but is not limited to, a transaction occurring  
27 in-person at the cottage food operation, a farm stand, a farmers’  
28 market, or a festival.

29 “Indirect sale” means a transaction in which a consumer  
30 purchases a cottage food product made by a cottage food operation  
31 from a third-party retailer. An “indirect sale” includes, but is not  
32 limited to, a sale made to a retail shop or retail food facility where  
33 food may be immediately consumed on the premises.

34 “Non-potentially hazardous food” means any food that is not a  
35 potentially hazardous food, and shall include the foods listed in  
36 section 7 of this act, and any other foods as determined by the  
37 department.

38 “Permitted area” means the portion of a private home that  
39 contains the residential kitchen used for the preparation, packaging,  
40 handling, or storage of a cottage food product and related  
41 ingredients and equipment, and other rooms within the private home  
42 that are used exclusively for storage.

43 “Potentially hazardous food” means food that requires  
44 temperature control because it is in a form capable of supporting the  
45 rapid and progressive growth of infectious or toxigenic  
46 microorganisms, as determined by the department.

47 “Private home” means a dwelling unit, including an apartment or  
48 other leased space, where an individual resides.

1       “Residential kitchen” means a kitchen in a private home.

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3       2. a. Notwithstanding any law, rule, or regulation to the  
4 contrary, an individual may sell cottage food products prepared by  
5 that individual in a residential kitchen, provided the individual  
6 obtains a cottage food operator’s license from the Department of  
7 Health pursuant to section 3 of this act, and meets the requirements  
8 of this act and any rules and regulations adopted pursuant thereto.

9       b. The provisions of this act shall not apply to any individual  
10 who:

11       (1) prepares non-potentially hazardous food in a residential  
12 kitchen for sale or service at a religious or charitable function, such  
13 as a bake sale, provided the consumer is informed by a clearly  
14 visible placard at the sales or service location that the food is  
15 prepared in a kitchen that is not subject to regulation or inspection  
16 by health authorities;

17       (2) prepares food in a residential kitchen in a family child-care  
18 home; or

19       (3) prepares food in a residential kitchen in a bed and breakfast  
20 homestay or a bed and breakfast guesthouse, and offers that food to  
21 guests, provided the home is owner-occupied and breakfast is the  
22 only meal offered.

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24       3. a. The Department of Health shall establish two classes of  
25 cottage food operator’s licenses, as follows:

26       (1) a “Class A” cottage food operator’s license, which shall  
27 entitle the holder to engage in direct sales of cottage food products  
28 from the cottage food operation or other direct sales venue. It shall  
29 not entitle the holder to make indirect sales or sales over the  
30 Internet; and

31       (2) a “Class B” cottage food operator’s license, which shall  
32 entitle the holder to engage in both direct sales and indirect sales of  
33 cottage food products from the cottage food operation, other direct  
34 sales venues, offsite events, or third-party retail food facilities. It  
35 shall also entitle the holder to make sales over the Internet,  
36 provided the end-consumer is located in the State.

37       b. An individual seeking to obtain a “Class A” or “Class B”  
38 cottage food operator’s license shall apply to the department in a  
39 form and manner determined by the department. The application  
40 shall include such information as the department deems relevant.  
41 The department may charge an applicant a reasonable fee to cover  
42 the department’s reasonable costs for administering and enforcing  
43 the provisions of this act.

44       c. The department shall issue a “Class A” cottage food  
45 operator’s license to any applicant who:

46       (1) demonstrates, to the satisfaction of the department, that any  
47 cottage food product prepared and sold by the cottage food  
48 operation is a non-potentially hazardous food;

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1 (2) possesses a valid food handler's certificate, issued by a food  
2 handler certification agency approved by the department pursuant to  
3 section 8 of this act; and

4 (3) submits a self-certification check list, established by the  
5 department, certifying that the cottage food operation meets the  
6 requirements of section 5 of this act.

7 d. The department shall issue a "Class B" cottage food  
8 operator's license to any applicant who meets the requirements of  
9 paragraphs (1) and (2) of subsection c. of this section, and who  
10 passes an initial inspection pursuant to subsection f. of this section.

11 e. A cottage food operator's license issued pursuant to this  
12 section shall be valid for a term of two years from the date of  
13 issuance, unless suspended or revoked for cause, and may be  
14 renewed upon application to the department. The license shall be  
15 nontransferable and valid only for the individual, location, types of  
16 cottage food products, and types of sales approved by the  
17 department and specified in the license. A cottage food operator  
18 shall display the license in a conspicuous location in the permitted  
19 area of the cottage food operator's private home.

20 f. Prior to issuing or renewing a "Class B" cottage food  
21 operator's license, the department, or the local health authority,  
22 shall conduct an initial inspection of the permitted area of the  
23 applicant's private home to ensure compliance with the  
24 requirements of section 5 of this act. An applicant for a "Class A"  
25 cottage food operator's license shall not be subject to an initial  
26 inspection pursuant to this subsection.

27 g. If there is any question as to whether a proposed cottage  
28 food product is a non-potentially hazardous food, the department  
29 may require the applicant to have the cottage food product tested by  
30 an approved commercial laboratory, and to submit in writing the  
31 recipes, formulas, and procedures used in producing the cottage  
32 food product. Any required laboratory testing of a cottage food  
33 product shall be arranged and paid for by the applicant. The  
34 department shall maintain a list of approved commercial  
35 laboratories for cottage food product testing on its Internet website.

36 h. The department may establish a supplemental application to  
37 permit a licensed cottage food operator to seek approval to sell  
38 additional cottage food products which were not submitted or  
39 approved on the initial application.

40 i. The department shall establish the licenses, applications, and  
41 self-certification check list required pursuant to this section within  
42 90 days after the effective date of this act.

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44 4. a. The Department of Health or a local health authority may,  
45 during a cottage food operation's normal business hours, or at other  
46 reasonable times, inspect the permitted area of a private home  
47 where a cottage food operation is located if, on the basis of a  
48 consumer complaint, the department or local health authority

1 reasonably believes that the cottage food operation is preparing or  
2 selling misbranded, adulterated, or otherwise unsafe food, or is  
3 violating any provision of this act, or any rules and regulations  
4 adopted pursuant thereto. Inspection of a cottage food operation  
5 pursuant to this section may include sampling of a cottage food  
6 product to determine if the product is misbranded, adulterated, or  
7 otherwise unsafe.

8 b. If, upon inspection of a cottage food operation pursuant to  
9 subsection a. of this section, the department or local health  
10 authority determines that the cottage food operation is selling  
11 misbranded, adulterated, or otherwise unsafe food, or is violating  
12 any provision of this act or the rules and regulations adopted  
13 pursuant thereto, the department or local health authority shall take  
14 appropriate measures to ensure the public health, as may be  
15 available to them pursuant to P.L.1947, c.177 (C.26:1A-1 et seq.) or  
16 any other law.

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18 5. a. A cottage food operation shall meet the following  
19 requirements:

20 (1) No cottage food preparation, packaging, or handling shall  
21 occur in the residential kitchen concurrent with any other domestic  
22 activities, such as family meal preparation, dishwashing, clothes  
23 washing or ironing, kitchen cleaning, or guest entertainment;

24 (2) No infants, small children, or pets may be in the residential  
25 kitchen during the preparation, packaging, or handling of any  
26 cottage food product;

27 (3) Kitchen equipment and utensils used to produce cottage food  
28 products shall be clean and maintained in a good state of repair;

29 (4) All food contact surfaces, equipment, and utensils used for  
30 the preparation, packaging, or handling of any cottage food product  
31 shall be washed, rinsed, and sanitized before each use;

32 (5) All food preparation and food equipment storage areas shall  
33 be maintained free of rodents and insects;

34 (6) Smoking shall be prohibited in the portion of the permitted  
35 area used for the preparation, packaging, handling, or storage of  
36 cottage food products and related ingredients and equipment, or  
37 both, while cottage food products are being prepared, packaged,  
38 handled, or stored;

39 (7) Any individual with a contagious illness shall not work or  
40 otherwise be present in the permitted area of the cottage food  
41 operation;

42 (8) Any individual involved in the preparation, packaging, or  
43 handling of cottage food products shall keep their hands and the  
44 exposed portion of their arms clean, and shall wash their hands  
45 before any food preparation, packaging, or handling activity in the  
46 cottage food operation;

1 (9) Guests in the licensed cottage food operator's private home  
2 shall not use the residential kitchen during the preparation,  
3 packaging, or handling of cottage food products; and

4 (10) Any ingredients used in the preparation of a cottage food  
5 product shall be kept separate from those for personal use and must  
6 be properly labeled, stored, and protected.

7 b. The department may adopt additional health and safety  
8 requirements for cottage food operations. The department shall,  
9 within 90 days after the effective date of this act, publish the  
10 requirements described in subsection a. of this section and any  
11 additional requirements on its Internet website.

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13 6. a. Except as provided in subsection c. of this section, a  
14 licensed cottage food operator shall sell only cottage food products  
15 which are prepackaged with a label affixed that contains the  
16 following information:

17 (1) the common or descriptive name of the cottage food product;

18 (2) the name and address of the cottage food operation;

19 (3) the ingredients of the cottage food product, listed in  
20 descending order of prominence by weight, if the cottage food  
21 product contains two or more ingredients;

22 (4) the net weight, standard measure, or numeric count of the  
23 cottage food product;

24 (5) allergen information, as specified by federal labeling  
25 requirements;

26 (6) if a nutritional claim is made, nutritional information as  
27 specified by federal labeling requirements; and

28 (7) the words "Made in a Home Kitchen" or "Repackaged in a  
29 Home Kitchen," as applicable, on the cottage food product's  
30 primary display panel.

31 b. A cottage food product shall be packaged in a manner that  
32 prevents or reduces the risk of contamination, unless the size,  
33 shape, or other characteristic of the cottage food product makes  
34 such packaging impractical or unnecessary.

35 c. A cottage food product, such as a bakery item, that is served  
36 by a cottage food operation or other retail food facility without  
37 packaging or labeling described in subsection a. of this section,  
38 shall be identified to the consumer as homemade on the menu,  
39 menu board, or other location that is easily visible to the consumer.

40 d. The department shall, within 90 days after the effective date  
41 of this act, publish on its Internet website, a guidance document to  
42 help cottage food operations develop food labels that comply with  
43 the requirements of this section and any applicable federal labeling  
44 requirements, and shall include sample labels.

45

46 7. a. The department shall, within 90 days after the effective  
47 date of this act, publish a list of cottage food products that are

1 approved for sale by licensed cottage food operators on its Internet  
2 website. The list shall include, but need not be limited to:

- 3 (1) baked goods without cream, custard, or meat fillings, such as  
4 breads, brownies, biscuits, churros, cookies, pastries, and tortillas;
- 5 (2) candy, such as brittle and toffee;
- 6 (3) chocolate-covered nonperishable foods, such as nuts and  
7 dried fruit;
- 8 (4) dried fruits and nuts;
- 9 (5) dried pasta;
- 10 (6) dry baking mixes;
- 11 (7) dry herbs, seasonings, and mixtures;
- 12 (8) fruit pies, fruit empanadas, and fruit tamales;
- 13 (9) fudge;
- 14 (10) granolas, cereals, and trail mixes;
- 15 (11) honey and sweet sorghum syrup;
- 16 (12) jams, jellies, preserves, and fruit butters that comply with  
17 the federal standards for fruit butter;
- 18 (13) nut mixes and nut butters;
- 19 (14) popcorn and caramel corn;
- 20 (15) roasted coffee and dried tea;
- 21 (16) vinegar and mustard; and
- 22 (17) waffle cones and pizzelles.

23 b. The department may adopt a list of additional cottage food  
24 products which are permitted for sale by licensed cottage food  
25 operators, but which require laboratory testing first pursuant to  
26 subsection g. of section 3 of this act to determine whether the  
27 cottage food product is a non-potentially hazardous food. Such  
28 cottage food products may include, but need not be limited to,  
29 barbecue sauce, beverages, hot sauce, pickled beets, pickled  
30 vegetables, and salsa.

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32 8. The Department of Health shall, within 90 days after the  
33 effective date of this act, issue a list of food handler certification  
34 agencies that are approved to issue food handler certificates to  
35 cottage food operators and cottage food employees for the purposes  
36 of this act. The department shall post the list of food handler  
37 certification agencies, and information on the locations, dates, and  
38 times of food handler classes offered on its Internet website.

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40 9. The Department of Health may, within 90 days of the  
41 effective date of this act, and pursuant to the "Administrative  
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules  
43 and regulations necessary to implement the provisions of this act.

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45 10. This act shall take effect immediately.

STATEMENT

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This bill would permit, and establish requirements for, the sale of cottage food products.

A cottage food product is a non-potentially hazardous food that is prepared for sale by an individual in the individual’s residential kitchen. Under the bill, an individual would be permitted to sell cottage food products, provided the person obtains a cottage food operator’s license from the Department of Health (DOH), and complies with the requirements established in the bill and by the DOH. The bill would not apply to individuals who: (1) prepare non-potentially hazardous food in a residential kitchen for sale or service at a religious or charitable function, provided the consumer is informed that the food is not subject to regulation or inspection; (2) prepare food in a residential kitchen in a family child-care home; or (3) prepare food in a residential kitchen in a bed and breakfast homestay or guesthouse, and offers that food to guests, provided the home is owner-occupied and breakfast is the only meal offered. Such preparation and sale are already permitted under existing DOH regulations.

The bill would establish two classes of cottage food operator’s licenses. A “Class A” cottage food operator’s license would entitle the holder to engage in direct sales of cottage food products from the cottage food operation (CFO) or other direct sales venue. A “direct sale” is a transaction where a consumer purchases a cottage food product directly from a CFO. This includes sales made in-person at the CFO, farm stands, farmers’ markets, and festivals. A “Class B” cottage food operator’s license would entitle the holder to engage in direct sales and indirect sales of cottage food products. It would also entitle the holder to engage in Internet sales, provided the end-consumer is located in New Jersey. An “indirect sale” is a transaction in which a consumer purchases a cottage food product made by a cottage food operation from a third-party retailer, such as a restaurant or other retail food facility.

The DOH would issue a “Class A” cottage food operator’s license to any applicant who: (1) demonstrates that the cottage food products prepared and sold by the CFO are non-potentially hazardous foods; (2) possesses a valid food handler’s certificate from a food handler certification agency approved by the DOH; and (3) submits a self-certification check list certifying that the CFO meets the health and safety requirements established in the bill and by the DOH. A person would be issued a “Class B” cottage food operator’s license if the person meets the requirements of (1) and (2) above, and passes an initial inspection by the DOH or the local health authority. A license issued pursuant to this bill would be valid for a term of two years, unless suspended or revoked for cause, and could be renewed. Additionally, if there is any question as to whether a cottage food product is a non-potentially hazardous



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1 food, the DOH could require laboratory testing of the food, to be  
2 arranged and paid for by the applicant.

3 The bill establishes minimum health and safety requirements for  
4 CFOs, and authorizes the DOH to adopt further requirements. It  
5 also establishes packaging and labeling requirements for cottage  
6 food products. The DOH or a local health authority would be  
7 authorized to inspect a CFO if, on the basis of a consumer  
8 complaint, the DOH or local health authority reasonably believes  
9 that the CFO is preparing or selling misbranded, adulterated, or  
10 otherwise unsafe food, or is violating the provisions of the bill or  
11 the DOH's regulations. If the DOH or a local health authority  
12 determines that the CFO is selling misbranded, adulterated, or  
13 otherwise unsafe foods, or is violating the provisions of the bill or  
14 the DOH's regulations, the DOH or local health authority would be  
15 required to take appropriate measures to ensure the public health, as  
16 may be available to them under existing law.

17 The bill would direct the DOH to publish on its Internet website  
18 a list of cottage food products that are approved for sale by licensed  
19 cottage food operators. The list of cottage food products would  
20 include certain baked goods such as breads, brownies, and cookies;  
21 candies such as brittle and toffee; dried fruits and nuts; dried pasta;  
22 dry baking mixes; dry herbs, seasonings, and mixtures; fruit pies,  
23 fruit empanadas, and fruit tamales; fudge; granolas, cereals, and  
24 trail mixes; honey and sweet sorghum syrup; jams, jellies,  
25 preserves, and fruit butters; nut mixes and nut butters; popcorn and  
26 caramel corn; roasted coffee and dried tea; vinegar and mustard;  
27 and waffle cones and pizzelles. Additionally, the DOH could adopt  
28 a list of cottage food products which are permitted for sale, but  
29 which require laboratory testing first to determine whether they are  
30 non-potentially hazardous foods. Such products might include  
31 barbecue sauce, beverages, hot sauce, pickled beets, pickled  
32 vegetables, and salsa.