

[First Reprint]

ASSEMBLY, No. 4580

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED AUGUST 25, 2020

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman EDWARD H. THOMSON

District 30 (Monmouth and Ocean)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

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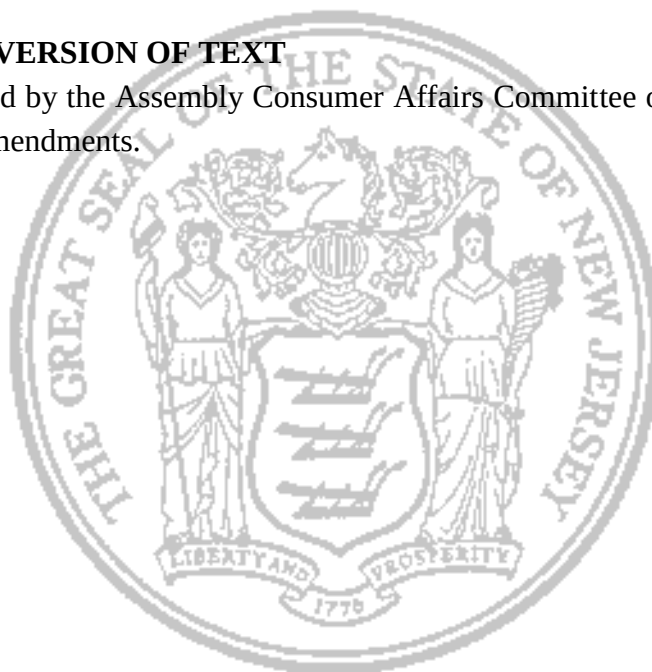
**Assemblyman Webber, Assemblywoman DiMaso, Assemblyman Freiman
and Assemblywoman Downey**

SYNOPSIS

Establishes requirements for sale of cottage food products.

CURRENT VERSION OF TEXT

As reported by the Assembly Consumer Affairs Committee on December 6, 2021, with amendments.



(Sponsorship Updated As Of: 10/29/2020)

1 AN ACT concerning ¹**["home baked goods"]** cottage foods¹ 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 ¹**["Baked goods"** means ready-to-eat baked food listed in
9 subsection a. of section 4 of this act that does not require further
10 cooking or refrigeration for food safety, and which is not a
11 potentially hazardous food. Baked goods may contain ingredients
12 which constitute potentially hazardous food, provided that the
13 baked good as presented for sale is not a potentially hazardous food.
14 "Baked goods" shall not include any food listed in subsection b. of
15 section 4 of this act.**"]**¹

16 "Commissioner" means the Commissioner of Health.

17 ¹"Cottage food product" means non-TCS food that a cottage food
18 operator prepared, which non-TCS foods shall include: baked
19 goods, including bread, rolls, biscuits, cakes, cupcakes, pastries,
20 and cookies; candy, including brittle and toffee; chocolate-covered
21 nuts and dried fruit; dried fruit; dried herbs and seasonings, and
22 mixtures thereof; dried pasta; dry baking mix; fruit jams, fruit
23 jellies, and fruit preserves; fruit pies, fruit empanadas, and fruit
24 tamales, other than pies, empanadas, and tamales made from
25 pumpkin; fudge; granola, cereal, and trail mix; nuts and nut
26 mixtures; nut butters; popcorn and caramel corn; roasted coffee and
27 dried tea; sweet sorghum syrup; vinegar and mustard; waffle cones
28 and pizzelles; and upon written application to the Public Health and
29 Food Protection Program, other non-TCS food.

30 "Cottage food operator" means a person who holds a New Jersey
31 cottage food operator permit.¹

32 "Department" means the Department of Health.

33 ¹**["Home baker"** means a person who prepares baked goods in
34 accordance with the provisions of this act.

35 "Potentially hazardous food" means a food that requires time or
36 temperature control for safety to limit pathogenic microorganism
37 growth or toxin formation**"]**

38 "Major food allergen" means any of the following and any
39 protein derived from the following, but does not include any highly
40 refined oil derived from, or any ingredient derived from a highly
41 refined oil derived from, the following: milk; eggs; fish; crustacean
42 shellfish; tree nuts; wheat; peanuts; and soybeans. "Major food
43 allergen" does not include any ingredient that is exempt under the
44 petition or notification process specified in the "Food Allergen
45 Labeling and Consumer Protection Act of 2004," Pub. L. 108-282.

EXPLANATION – Matter enclosed in bold-faced brackets **["thus"]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACO committee amendments adopted December 6, 2021.

1 “Public Health and Food Protection Program” means the Public
2 Health and Food Protection Program operated by the Department of
3 Health or a successor program.

4 “TCS food” means a food that requires time control, temperature
5 control, or both, for safety to limit pathogenic microorganism
6 growth or toxin formation¹ .

7
8 ¹2. A home baker may sell baked goods prepared by the home
9 baker in a kitchen in a private home, provided the following
10 requirements are met:

11 a. The baked goods shall not be sold or offered for sale except
12 at the home baker’s home, a consumer’s home, a farmer’s market, a
13 farm stand, or a county, municipal, or nonprofit fair, festival, or
14 event. A home baker shall not sell or offer for sale baked goods
15 over the Internet, wholesale, or to a commercial retailer for resale;

16 b. The gross income generated by the home baker from the sale
17 of baked goods shall not exceed \$50,000 per year;

18 c. The home baker, and any person assisting the home baker in
19 the preparation of baked goods, shall possess a current, valid food
20 handler’s certificate issued by the department pursuant to
21 subsection a. of section 3 of this act;

22 d. The home baker shall display the baker’s current, valid food
23 handler certification issued pursuant to subsection a. of section 3 of
24 this act at the point of sale;

25 e. Baked goods shall be packaged in a manner that prevents or
26 reduces the risk of contamination, unless the size, shape, or other
27 characteristics of a baked good makes such packaging impractical
28 or unnecessary; and

29 f. Each baked good sold or offered for sale shall include a label
30 containing the following information:

31 (1) the name of the home baker, the home baker’s food handler
32 certification number, and the address where the baked good was
33 prepared;

34 (2) the name of the baked good, including a description of the
35 type or nature of the baked good if not apparent from the name;

36 (3) any major food allergens used as an ingredient in the baked
37 good, including, but not limited to, eggs, nuts, wheat, soy, dairy,
38 and peanuts; and

39 (4) the following statement: “This food was prepared in a
40 kitchen that may not be subject to regular inspection by health
41 authorities.”¹

42
43 ¹3. a. (1) An application for a food handler certification
44 authorizing the individual to sell baked goods prepared in a kitchen
45 in a private home pursuant to this act shall be submitted to the
46 department for approval. The application shall include:

47 (a) the nature and type of each baked good that the home baker
48 intends to prepare and sell;

1 (b) an acknowledgement that the home baker will only be
2 authorized to prepare and sell those home baked goods expressly
3 included in an approved food handler certification, and that the
4 home baker's food handler certification may be revoked upon a
5 third or subsequent finding that the home baker has sold baked
6 goods not included in the baker's food handler certification;

7 (c) an attestation that the home baker will report income as
8 required under State and federal law; and

9 (d) an attestation that the home baker will comply with all
10 applicable State and federal labor laws.

11 (2) There shall be no limit on the number or types of baked
12 goods that may be authorized under a single food handler
13 certification, provided that the baked goods are limited to those
14 expressly authorized pursuant to subsection a. of section 4 of this
15 act. A home baker seeking to prepare and sell a baked good not
16 authorized under the home baker's current food handler
17 certification may submit an application for an amended food
18 handler certification or include the additional baked goods in an
19 application to renew a food handler certification. The fee to apply
20 for an amended food handler certification shall be \$50 or the actual
21 administrative costs of processing the application, whichever is less.
22 A home baker may apply to amend a food handler certification no
23 more than once per certification period.

24 (3) Upon approval of an application for initial or renewed
25 certification as a food handler, the home baker shall pay a
26 certification fee of \$300 to the department.

27 (4) A food handler certification issued pursuant to this section
28 shall be valid for one year and shall be renewable upon application
29 to the department. The department shall provide the home baker
30 with at least one written notification of the renewal deadline no less
31 than 30 days prior to expiration of the home baker's current food
32 handler certification. The failure to submit a renewal application
33 prior to the expiration date shall result in immediate termination of
34 the food handler certification upon the expiration date, and the
35 home baker shall be prohibited from selling baked goods prepared
36 in a kitchen in a private home unless the home baker applies, and is
37 approved, for a new food handler certification.

38 b. The local board of health having jurisdiction in the
39 municipality in which the home baker resides or in which the home
40 baker prepares, offers for sale, or sells baked goods shall conduct an
41 inspection of the kitchen that will be used by each applicant for a
42 food handler certification prior to issuance of the certification, and
43 shall have the authority to conduct an inspection of baked goods or
44 the place in which the baked goods are prepared as often as the
45 local board of health deems necessary. If the board finds baked
46 goods or the conditions under which they are prepared constitute an
47 immediate and serious threat to human life or health, the board may
48 order any appropriate relief, including, but not limited to:
49 confiscation or destruction of the baked goods; remedial action to

1 correct an unsafe or potentially hazardous condition; or temporarily
2 suspending or permanently revoking a food handler certification
3 issued to the home baker. The department shall develop a
4 procedure for providing notice to local boards of health when a
5 person located within the jurisdiction of the local board of health
6 applies for an initial food handler certification, and for receiving a
7 report concerning the results of the initial inspection of the kitchen
8 or other areas that will be used by the applicant to prepare baked
9 goods. Home bakers applying for or issued a food handler
10 certification under this act shall provide the local board of health
11 with access to any kitchen or other area or location used by the
12 home baker to prepare baked goods for the purposes of conducting
13 inspections pursuant to this subsection.

14 c. The preparation and sale of baked goods by home bakers
15 pursuant to this act shall not be subject to regulation or restriction
16 by municipal ordinance.

17 d. Nothing in this section shall be construed to restrict the
18 ability of a neighbor or other affected person to institute a nuisance
19 action against a home baker.】¹

20

21 ¹【4. a. Subject to any actions taken by the commissioner
22 pursuant to subsection c. of this section, baked goods that may be
23 prepared and sold pursuant to this act shall be limited to: breads,
24 other than fruit breads or vegetable breads; rolls; cinnamon rolls;
25 biscuits; bagels; muffins; doughnuts; cookies; baklava; biscotti that
26 are not topped with chocolate or candy melts; cakes; cake pops that
27 are not topped with chocolate or candy melts; cupcakes; brownies;
28 double-crust fruit pies; scones; fruit jams, jellies, and marmalades
29 made with high acid or low pH fruits; commercially-dried spices or
30 herbs that are repackaged or blended; repackaged dried or
31 dehydrated vegetables; repackaged dried soup mixes; repackaged
32 dried fruit; repackaged dried pasta; repackaged dry baking mixes;
33 seasoning salt; fudge; popcorn; caramel corn; peanut brittle; rice
34 cereal marshmallow bars; granola made using commercially roasted
35 nuts; trail mix made using commercially roasted nuts; granola bars
36 made using commercially roasted nuts; repackaged candy, other
37 than chocolate; waffle cones; pizzelles; toffee or caramel apples
38 that are not prepared using candy melts; confections, including
39 toffees, caramels, and hard candies; vegetable chips, including
40 potato chips; crackers; and pretzels.

41 b. Subject to any actions taken by the commissioner pursuant
42 to subsection c. of this section, in no case may the following foods
43 be sold pursuant to this act: any food requiring refrigeration for
44 preservation; homemade buttercream or cream cheese frosting; fruit
45 breads; vegetable breads; products containing alcohol; “no-bake”
46 products; pickles; relishes; sauerkraut; sauces; salsas; marinades;
47 mustards; ketchups; pepper jellies; wine jellies; vegetable jellies;
48 flower jellies; chutneys; vegetable oils; blended oils; salad
49 dressings; cheesecakes; cream-filled pastries; cream pies; merengue

1 pies; chocolate candies; products dipped in chocolate or a candy
2 melt; products containing raw nuts; cheeses; yogurts; fluid dairy
3 products; butters; meat; fish; or poultry products.

4 c. The commissioner shall periodically review the foods listed
5 in subsections a. and b. of this section, along with the current
6 scientific literature, and shall be authorized to take administrative
7 action to add or remove foods from either list or to otherwise revise
8 the requirements concerning baked goods authorized for sale
9 pursuant to this act.】¹

10
11 ¹2. a. A person or entity that engages in the production or sale
12 of cottage food products to consumers shall hold a current, valid
13 cottage food operator permit.

14 b. A person seeking to obtain a cottage food operator permit
15 shall submit to the Public Health and Food Protection Program:

16 (1) an application, which shall be submitted on a form and in a
17 manner as shall be required by the department;

18 (2) a copy of a certificate issued by an accredited program
19 showing that the applicant is a food protection manager in good
20 standing with the accredited program; and

21 (3) if the cottage food operator's kitchen:

22 (a) uses a private well, a microbiological, total coliform,
23 analysis of the private well water that is conducted using samples
24 collected no earlier than 60 days prior to the filing date of the
25 application; and

26 (b) does not use private well water, a copy of the most recent
27 water bill for the location of the cottage food kitchen.

28 c. At a minimum, an application for a new or renewed cottage
29 food operator permit shall include a description of the nature and
30 type of each cottage food product the cottage food operator will
31 prepare and sell, and an acknowledgement that the cottage food
32 operator will only be authorized to prepare and sell those cottage
33 food products expressly included in an approved permit application,
34 and that the cottage food operator's permit may be revoked upon a
35 third or subsequent finding that the cottage food operator has sold
36 cottage food products not included in the cottage food operator's
37 permit. There shall be no limit on the number or types of cottage
38 food products that may be authorized under a single cottage food
39 product permit. A cottage food operator seeking to prepare and sell
40 a cottage food product not authorized under the operator's current
41 permit may submit an application for an amended cottage food
42 operator permit or include the additional cottage food products in an
43 application to renew a cottage food operator permit. A cottage food
44 operator may apply to amend a cottage food operator permit no
45 more than once per permit period.

46 d. The department shall conduct a completeness review of each
47 application submitted pursuant to subsection b. of this section and
48 shall notify the applicant in writing of any deficiency or
49 incompleteness in the application that the applicant will be required

1 to correct before the department will further process the application.
2 If an applicant fails to complete a deficient or incomplete
3 application within 30 days after the issuance of a notice of
4 deficiency or incompleteness provided pursuant to this subsection,
5 the department shall deem the application to be abandoned.

6 e. The local board of health having jurisdiction in the
7 municipality in which an applicant for a cottage food operator
8 permit resides shall conduct an inspection of the kitchen that will be
9 used by the applicant prior to issuance of an initial permit or a
10 renewal permit, and shall have the authority to conduct an
11 inspection of cottage food products or the place in which the
12 cottage food products are prepared as often as the local board of
13 health deems necessary. If the board finds a cottage food product
14 or the conditions under which a cottage food products is prepared
15 constitutes an immediate and serious threat to human life or health,
16 the board may order any appropriate relief, including, but not
17 limited to: confiscation or destruction of the cottage food product;
18 remedial action to correct an unsafe or potentially hazardous
19 condition; or temporarily suspending or permanently revoking the
20 cottage food operator's cottage food product operator permit. The
21 department shall develop a procedure for providing notice to local
22 boards of health when a person located within the jurisdiction of the
23 local board of health applies for an initial cottage food operator
24 permit or renewal of a cottage food operator permit, and for
25 receiving a report concerning the results of the inspection of the
26 cottage food operator's kitchen. Applicants for an initial cottage
27 food operator permit, applicants for a renewal cottage food operator
28 permit, and cottage food permit operators shall provide the local
29 board of health with access to the cottage food operator's kitchen,
30 which access shall be limited to conducting an inspection pursuant
31 to this subsection.

32 f. Upon determining an application submitted pursuant to
33 subsection b. of this section is complete, and upon satisfactory
34 completion of an inspection conducted pursuant to subsection e. of
35 this section, the department shall issue a cottage food operator
36 permit to the applicant.

37 g. An applicant for a cottage food operator permit shall register
38 as a business entity within the municipality in which the cottage
39 food operator resides, and shall ascertain and comply with all State
40 and local laws applicable to the cottage food operator's operations,
41 including any requirements to maintain liability insurance, file
42 taxes, and comply with labor laws.

43 h. The fee to apply for an initial cottage food operator permit
44 or renewal of a cottage food operator permit shall be \$100. The fee
45 to amend a cottage food operator permit shall be \$50 or the actual
46 administrative costs of processing the application, whichever is less.
47 All fees collected pursuant to this section shall be nonrefundable,
48 and shall be retained by local health authorities for the purposes of

1 implementing the provisions of this act. A cottage food operator
2 permit shall be valid for two years.¹

3
4 ¹3. a. A cottage food operator permit shall authorize the permit
5 holder to produce cottage food products in the private kitchen of the
6 operator's residence on record with the department. A cottage food
7 operator may produce cottage food products at no location other
8 than the cottage food operator's residence of record.

9 b. A cottage food operator shall not deliver or relinquish
10 cottage food products:

11 (1) at any location outside of New Jersey;

12 (2) at a location other than: (a) the home of the cottage food
13 operator, provided the cottage food product is not consumed on site;
14 (b) the home of the consumer; (c) a farmers' market or farm stand;
15 or (d) a temporary retail food establishment;

16 (3) to a wholesaler or retail food establishment, or to any other
17 individual other than the consumer; or

18 (4) by United States postal mail or a common carrier.

19 c. Notwithstanding the provisions of paragraph (4) of
20 subsection b. of this section, a cottage food operator may transact
21 activities that are ancillary to the delivery or relinquishment of
22 cottage food products to a consumer by means of United States
23 postal mail, common carrier, electronic communication, Internet, or
24 telephone, provided the delivery or relinquishment of cottage food
25 products meets the requirements of subsection b. of this section.
26 Ancillary transactions authorized under this subsection shall include
27 accepting the placement of orders, receiving payments, engaging in
28 marketing and advertising activities, and participating in other
29 business activities other than the delivery or relinquishment of
30 cottage food products.

31 d. (1) If the point of sale of a cottage food product is the
32 residence of the operator or the consumer, the cottage food operator
33 shall make the operator's cottage food operator permit available for
34 inspection upon request.

35 (2) If the point of sale of a cottage food product is a location
36 other than the residence of the cottage food operator or the
37 consumer, the cottage food operator shall place the cottage food
38 operator's permit on conspicuous and unobstructed display at the
39 point of sale, along with a placard containing the following
40 statement: "This food was prepared in a home kitchen that may not
41 be subject to regular inspection by health authorities."

42 e. A cottage food operator shall affix one or more labels or tags
43 on each cottage food product, which labels or tags shall collectively
44 include, at a minimum:

45 (1) the common name of the cottage food product;

46 (2) the ingredients of the cottage food product, which shall be
47 listed in descending order of prominence by weight;

1 (3) if the cottage food product contains a major food allergen,
2 the word “Contains,” followed by a list of the major food allergens
3 that the product contains;

4 (4) the cottage food operator’s name, business name, contact
5 information, and cottage food operator permit number;

6 (5) the name of the cottage food operator’s municipality of
7 record with the department, followed by either “New Jersey” or
8 “NJ”; and

9 (6) the statement: “This food was prepared in a home kitchen
10 that may not be subject to regular inspection by health authorities.”

11 f. A cottage food operator shall not exceed \$50,000 in gross
12 annual sales of cottage food products. For the purposes of this
13 section, gross annual sales shall include the amount generated from
14 the sale of cottage food products before the deduction of taxes and
15 operating expenses.¹

16
17 ^{14.} a. The department shall have the authority to assess
18 monetary and other penalties against a person or entity that violates
19 the requirements of P.L. , c. (C.) (pending before the
20 Legislature as this bill), including, but not limited to, denying
21 issuance of, suspending, or revoking a cottage food operator permit.
22 A person or entity found to be in violation of the requirements of
23 P.L. , c. (C.) (pending before the Legislature as this bill)
24 shall be entitled to notice of the violation, and to a hearing to
25 contest the violation and any proposed penalty.

26 b. The department shall periodically review the list of cottage
27 food products set forth in section 1 of P.L. , c. (C.)
28 (pending before the Legislature as this bill), along with the current
29 scientific literature, and shall be authorized to take administrative
30 action to add or remove foods from the list.

31 c. The department shall promulgate rules and regulations,
32 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
33 (C.52:14B-1 et seq.), establishing the scope, nature, and
34 requirements for inspections conducted pursuant to subsection e. of
35 section 2 of P.L. , c. (C.) (pending before the Legislature
36 as this bill).

37 d. Nothing in the provisions of P.L. , c. (C.) (pending
38 before the Legislature as this bill) shall be construed to authorize
39 the department to regulate the production or sale of honey, the
40 regulation of which shall remain exclusively within the jurisdiction
41 of the Department of Agriculture.¹

42
43 5. This act shall take effect the first day of the seventh month
44 next following the date of enactment.