

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE, No. 73

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 6, 2021

The Assembly Consumer Affairs Committee reports favorably and with amendments Senate Bill No. 73 (2R).

As amended and reported by the committee, the bill establishes requirements for the sale of cottage foods and establishes specific application and operational criteria for cottage food operators. Under the bill, a “cottage food product” means a non-TCS food, which is a food that does not require time control, temperature control, or both, for safety to limit pathogenic microorganism growth or toxin formation. Non-TCS foods include, but are not limited to, certain baked goods, jams and jellies, syrups, dried fruits, spices, nuts, nut butters, cereals, tea, and coffee.

Under the bill, a person or entity that engages in the production or sale of cottage food products to consumers is required to hold a current, valid cottage food operator permit. A person seeking to obtain a cottage food operator permit is required to apply to the Public Health and Food Protection Program operated by the Department of Health (DOH).

The bill provides that the permit application is required to identify the specific cottage food products that the applicant intends to produce, and the applicant will be limited to producing only those identified foods. However, an applicant is permitted to amend a cottage food handler permit once per permit period to include additional cottage food products, and may include additional cottage food products in an application for renewal of a cottage food operator permit. Under the bill, there is no limit on the number of cottage food products that can be prepared under a single cottage food operator permit.

Prior to issuance of an initial permit or a renewal permit, the local board of health having jurisdiction in the municipality in which an applicant for a cottage food operator permit resides is required to conduct an inspection of the kitchen that will be used by the applicant. The local board of health will have the authority to:

- (1) conduct an inspection of cottage food products or the place in which the cottage food products are prepared as often as the local

board of health deems necessary; and (2) order appropriate relief if it finds that a cottage food product or the conditions under which a cottage food product was prepared constitutes an immediate and serious threat to human life or health.

The bill provides that the DOH is required to issue a cottage food operator permit to an applicant upon determining the application is complete, and upon satisfactory completion of an inspection conducted by the local board of health. The bill requires an applicant to register as a business entity within the municipality in which the cottage food operator resides, and ascertain and comply with all State and local laws applicable to the cottage food operator's operations, including any requirements to maintain liability insurance, file taxes, and comply with labor laws.

Under the bill, there is a \$100 fee that applies to an application for an initial cottage food operator permit or a permit renewal. The fee to amend a cottage food operator permit is \$50 or the actual administrative costs of processing the application, whichever is less. All fees collected pursuant to the bill are nonrefundable, and are to be retained by local health authorities for the purposes of implementing the provisions of the bill. A cottage food operator permit is valid for two years.

The bill provides that a cottage food operator permit authorizes the permit holder to produce cottage food products in the private kitchen of the operator's residence. The bill limits a cottage food operator to selling cottage food products: (1) from the operator's residence, provided they are not consumed on site; (2) at the home of the consumer; (3) at a farmers' market or farm stand; or (4) at a temporary retail food establishment. The products only may be sold in New Jersey. A cottage food operator is not permitted to exceed \$50,000 in gross annual sales of cottage food products.

Under the bill, the DOH has the authority to assess monetary and other penalties against a person or entity that violates the requirements of the bill, including, but not limited to, denying issuance of, suspending, or revoking a cottage food operator permit. Additionally, the DOH is required to review periodically the list of cottage food products set forth in the bill, along with the current scientific literature, and is authorized to take administrative action to add or remove foods from the list.

As reported by the committee, Senate Bill No. 73 (2R) is identical to Assembly Bill No. 4580 which also was reported by the committee on this same date.

COMMITTEE AMENDMENTS

The committee amendments:

(1) revise the bill to make it applicable to cottage foods, rather than just home baked goods, and to establish specific application and operational criteria for cottage food operators, which replace the

application and operational criteria for home bakers formerly set forth in the bill.

(2) provide that an applicant for a cottage food operator permit will be required to submit an application to the Department of Health's (DOH) Public Health and Food Protection Program, along with a copy of the applicant's valid food protection manager certification issued by an accredited program and certain information concerning the origin and safety of the applicant's water supply;

(3) provide that the permit application is to identify the specific cottage food products that the applicant intends to produce, and that the applicant will be limited to producing only those identified foods. However, an applicant may amend a cottage food handler permit once per permit period to include additional cottage food products, and may include additional cottage food products in an application for renewal of a cottage food operator permit. Under the amendments, there is no limit on the number of cottage food products that can be prepared under a single cottage food operator permit;

(4) provide that, upon receipt of an application for a cottage food operator permit, the DOH is to perform a completeness review and notify the applicant of any deficiency or incompleteness; the applicant will then have 30 days to correct the application or it will be deemed abandoned. The DOH also will be required to notify the local health authority in the municipality in which the applicant resides of the application, so that the local health authority can conduct an inspection of the applicant's home kitchen. The applicant will be required to provide access to the applicant's home kitchen to the local health authority for the purposes of conducting this inspection. Local health authorities will also have the authority to conduct inspections and take remedial actions to address threats and potential threats to the public health stemming from cottage food products. The DOH will be required to establish regulations concerning the scope, nature, and requirements for the inspections to be conducted under the bill;

(5) require an applicant for a cottage food operator permit to register as a business in the municipality in which the cottage food operator resides, and ascertain and comply with all State and local laws applicable to the cottage food operator's operations, including any requirements to maintain liability insurance, file taxes, and comply with labor laws;

(6) provide that the fee for an initial or renewal cottage food operator permit will be \$100, and the permit will be valid for two years. The fee to amend a permit will be \$50 or the actual administrative costs of processing the application, whichever is less. All fees will be nonrefundable, and will be retained by local health authorities for the purposes of implementing the provisions of the bill;

(7) provide that cottage food operators will be limited to selling cottage food products directly to consumers located in New Jersey. Sales may take place in the cottage food operator's home, the

consumer's home, a farmers' market or food stand, or a temporary retail food establishment. Sales may not be made to a wholesaler or to a retail food establishment, to a consumer located outside New Jersey, or using the U.S. postal mail or a common carrier. However, the amendments allow certain ancillary transactions to be conducted using the U.S. postal mail, a common carrier, electronic communication, the Internet, or telephone, including accepting the placement of orders, accepting payments, and engaging in marketing and advertising;

(8) require each cottage food operator to make the operator's permit available at the point of sale. If the sale takes place in the operator's residence or the consumer's residence, the operator's permit is to be made available upon request. If the sale takes place at another authorized location, the permit is to be displayed at the point of sale along with notice that the cottage food product was prepared in a home kitchen that may not be subject to regular inspection by health authorities;

(9) require cottage food products to include labeling that identifies the product, the ingredients in the product, any major food allergens, the operator's name, business name, contact information, and permit number, the name of the municipality in which the operator prepared the product, and a statement that the cottage food product was prepared in a kitchen that may not be subject to regular inspection by health authorities;

(10) provide that cottage food operators may not exceed \$50,000 in gross annual revenues from the sale of cottage food products;

(11) include language providing that the DOH may assess penalties for violations of the requirements of the bill, and that a person or entity charged with a violation is entitled to notice of the violation and proposed DOH action, as well as a hearing to contest the violation and any proposed penalty;

(12) require the DOH to periodically review the list of cottage foods enumerated in the bill, along with the current scientific literature, and provide the DOH with the authority to revise the list through administrative action. However, the amendments are not to be construed to authorize the DOH to regulate the production or sale of honey, the regulation of which will remain under the exclusive jurisdiction of the Department of Agriculture; and

(13) revise the title and synopsis of the bill to reflect the change in scope from home baked goods to cottage food products.