

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 106

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO FOOD SAFETY; AMENDING SECTION 39-1602, IDAHO CODE, TO DEFINE
2 TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-1604,
3 IDAHO CODE, TO EXEMPT HOME KITCHEN OPERATIONS FROM LICENSING REQUIRE-
4 MENTS; AND AMENDING CHAPTER 16, TITLE 39, IDAHO CODE, BY THE ADDITION
5 OF A NEW SECTION 39-1608, IDAHO CODE, TO PROVIDE THAT HOME KITCHEN OP-
6 ERATIONS MAY SELL COTTAGE FOODS AT CERTAIN VENUES, TO PROVIDE THAT HOME
7 KITCHEN OPERATIONS MAY SELL COTTAGE FOODS TO IDAHO RESIDENTS ONLINE OR
8 BY MAIL, TO PROVIDE THAT COTTAGE FOODS SHALL BE SOLD WITH LABELS THAT
9 INCLUDE CERTAIN INFORMATION AND TO PROVIDE THAT VIOLATIONS OF THIS SEC-
10 TION SHALL BE SUBJECT TO ENFORCEMENT PROCEEDINGS.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 39-1602, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 39-1602. DEFINITIONS. As used in this chapter:

16 (1) "Commissary" means a place where food, containers or supplies are
17 stored, prepared or packaged for transit, sale or service at other loca-
18 tions.

19 (2) "Cottage foods" means nonpotentially hazardous foods that may be
20 produced and sold by a home kitchen operation, but does not include low-acid
21 canned foods or acidified foods as defined by 21 CFR 114.3.

22 (3) "Food establishment" means those operations in the food business
23 such as, but not limited to, food processing establishments, canning fac-
24 tories, salvage processing facilities, food service establishments, cold
25 storage plants, commissaries, warehouses, food vending machine operations
26 and locations, caterers, mobile food units and retail food stores. Such
27 operations include all activities under the control of the license holder
28 including preparation, processing, storage, service, transportation vehi-
29 cles, satellite locations, divisions and departments, and remote feeding
30 sites. The term includes operations ~~which~~ that are conducted in permanent,
31 temporary or mobile facilities or locations. It includes any food operation
32 regardless of whether consumption is on or off the premises and regardless of
33 whether there is a charge for the food. Individual divisions and departments
34 on one (1) premises and under common ownership shall as a whole be consid-
35 ered a single food establishment. The term "food establishment" does not
36 include:

37 (a) Private homes where food is prepared or served for individual fam-
38 ily consumption;

39 (b) Fraternal, benevolent or nonprofit charitable organizations which
40 do not prepare or serve food on a regular basis. Food shall not be con-
41 sidered to be served on a regular basis if the food is served for a period
42 not to exceed five (5) consecutive days on no more than three (3) occa-

1 sions per year for foods which are not potentially hazardous, or if the
2 food is served no more than one (1) meal a week for all other foods;

3 (c) Bed and breakfast establishments with ten (10) or fewer beds;

4 (d) Establishments ~~which that~~ offer only factory-sealed foods that are
5 not potentially hazardous;

6 (e) Agricultural markets; ~~and~~

7 (f) Agricultural equipment used for the extraction or harvest of an
8 agricultural product including, but not limited to, mint stills; and

9 (g) Home kitchen operations.

10 (4) "Home kitchen operation" means a person who produces or packages
11 cottage foods in a kitchen of that person's primary domestic residence for
12 direct sale by the owner, a family member or an agent of the owner or family
13 member pursuant to section 39-1608, Idaho Code.

14 (35) "Intermittent food establishment" means a food vendor that oper-
15 ates for a period of time, not to exceed three (3) days per week, at a sin-
16 gle, specified location in conjunction with a recurring event and that of-
17 fers potentially hazardous food to the general public. Examples of a recur-
18 ring event may be a farmers¹ or community market or a holiday market. "In-
19 termittent food establishment" does not include the vendor of farm fresh un-
20 graded eggs at a recurring event.

21 (46) "Mobile food establishment" means a food establishment selling
22 or serving food for human consumption from any vehicle or other temporary
23 or itinerant station and includes any movable food service establishment,
24 truck, van, trailer, pushcart, bicycle, watercraft or other movable food
25 service with or without wheels, including hand-carried, portable containers
26 in or on which food or beverage is transported, stored or prepared for retail
27 sale or given away at temporary locations.

28 (57) "Potentially hazardous food" means any food or ingredient, nat-
29 ural or synthetic, in a form capable of supporting the rapid and progres-
30 sive growth of infectious or toxigenic microorganisms or the slower growth
31 of clostridium botulinum. Included is any food of animal origin, either raw
32 or heat treated, and any food of plant origin ~~which that~~ has been heat treated
33 or ~~which that~~ is raw seed sprouts; cut melons; and garlic and oil mixtures.
34 The term "potentially hazardous food" does not include:

35 (a) Air-dried hard-boiled eggs with shells intact;

36 (b) Foods with a water activity (aw) value of eighty-five hundredths
37 (0.85) or less;

38 (c) Foods with a pH (hydrogen ion concentration) level of four and
39 six-tenths (4.6) or below when measured at seventy-five (75) degrees
40 Fahrenheit;

41 (d) Foods in unopened ~~hermetically-sealed~~ hermetically sealed con-
42 tainers ~~which that~~ have been commercially processed to achieve and
43 maintain commercial sterility under conditions of nonrefrigerated
44 storage and distribution;

45 (e) Foods for which laboratory evidence, acceptable to the regulatory
46 authority, demonstrates that rapid and progressive growth of infec-
47 tious and toxigenic microorganisms or the slower growth of clostridium
48 botulinum cannot occur;

49 (f) Milk, half-and-half cream, butter products, frozen dairy desserts
50 and other fluid milk products, in the original unopened container; and

1 (g) Any other food items determined by the department of health and wel-
2 fare not to be potentially hazardous.

3 (68) "Regulatory authority" means the director of the Idaho department
4 of health and welfare or the director's designee.

5 (79) "Temporary food establishment" means a food establishment that
6 operates for a period of not more than fourteen (14) consecutive days in con-
7 junction with a single event or celebration.

8 SECTION 2. That Section 39-1604, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 39-1604. LICENSE REQUIREMENTS FOR FOOD ESTABLISHMENTS. (1) No per-
11 son, firm or corporation shall operate a food establishment, for which no
12 other state or federal food safety inspection or license is required, with-
13 out a license approved by the director of the department of health and wel-
14 fare or his designee. Food establishment licenses shall not be transfer-
15 able and the type of license and any restrictions will be specified on the
16 license.

17 Terms and conditions of licensure are to be established by rules in ac-
18 cordance with the intent of this chapter. Any applicant or license holder
19 aggrieved by an action of the regulatory authority which results in denial,
20 suspension, or revocation of a license has the right to a hearing conducted
21 pursuant to chapter 52, title 67, Idaho Code, and appeal shall be provided
22 therein.

23 (2) Home kitchen operations shall be exempt from the licensing require-
24 ments of this chapter.

25 SECTION 3. That Chapter 16, Title 39, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 39-1608, Idaho Code, and to read as follows:

28 39-1608. HOME KITCHEN OPERATIONS. (1) A home kitchen operation may
29 sell cottage foods directly to consumers at the following venues:

- 30 (a) Private homes;
- 31 (b) Community events;
- 32 (c) Community-supported agriculture share programs;
- 33 (d) Farmers markets; and
- 34 (e) Roadside stands.

35 (2) A home kitchen operation may sell cottage foods online or by mail
36 order, provided that the consumer's shipping address is located within the
37 state of Idaho.

38 (3) Cottage foods shall be sold with labels that include the following
39 information:

- 40 (a) The product's name;
- 41 (b) The name, location and contact information of the home kitchen op-
42 eration that made the product; and
- 43 (c) A disclaimer stating: "This product was made by a home kitchen op-
44 eration that is not subject to routine food safety inspections."

45 (4) A home kitchen operation that violates this section shall be sub-
46 ject to enforcement proceedings pursuant to section 39-1606, Idaho Code.

1 (5) The board of health and welfare may promulgate rules governing the
2 classification of cottage foods and the venues in which cottage foods may be
3 sold.