

# SENATE BILL No. 185

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18-2-137; IC 16-42.

**Synopsis:** Home based vendors. Provides that a home based vendor who does not sell potentially hazardous food products and meets certain requirements may sell food made, grown, or raised by the individual to an end consumer directly, remotely, or through an agent or third party vendor of the home based vendor. Allows the state egg board to adopt emergency rules concerning the packaging or labeling of eggs, or in an emergency situation or sudden disruption that affects the supply or distribution of eggs.

**Effective:** July 1, 2021.

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January 5, 2021, read first time and referred to Committee on Agriculture.

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First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## SENATE BILL No. 185

A BILL FOR AN ACT to amend the Indiana Code concerning health.

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

- 1 SECTION 1. IC 16-18-2-137, AS AMENDED BY P.L.144-2015,
- 2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2021]: Sec. 137. (a) "Food establishment", for purposes of
- 4 IC 16-42-5 and IC 16-42-5.2, means any building, room, basement,
- 5 vehicle of transportation, cellar, or open or enclosed area occupied or
- 6 used for handling food.
- 7 (b) The term does not include the following:
- 8 (1) A dwelling where food is prepared on the premises by the
- 9 occupants, free of charge, for their consumption or for
- 10 consumption by their guests.
- 11 (2) A gathering of individuals at a venue of an organization that
- 12 is organized for educational purposes in a nonpublic educational
- 13 setting or for religious purposes, if:
- 14 (A) the individuals separately or jointly provide or prepare,
- 15 free of charge, and consume their own food or that of others
- 16 attending the gathering; and
- 17 (B) the gathering is for a purpose of the organization.



- 1 Gatherings for the purpose of the organization include funerals,  
 2 wedding receptions, christenings, bar or bat mitzvahs, baptisms,  
 3 communions, and other events or celebrations sponsored by the  
 4 organization.
- 5 (3) A vehicle used to transport food solely for distribution to the  
 6 needy, either free of charge or for a nominal donation.
- 7 (4) A private gathering of individuals who separately or jointly  
 8 provide or prepare and consume their own food or that of others  
 9 attending the gathering, regardless of whether the gathering is  
 10 held on public or private property.
- 11 (5) Except for food prepared by a for-profit entity, a venue of the  
 12 sale of food prepared for an organization:
- 13 (A) that is organized for:
- 14 (i) religious purposes; or
- 15 (ii) educational purposes in a nonpublic educational setting;
- 16 (B) that is exempt from taxation under Section 501 of the  
 17 Internal Revenue Code; and
- 18 (C) that offers the food for sale to the final consumer at an  
 19 event held for the benefit of the organization;
- 20 unless the food is being provided in a restaurant or a cafeteria  
 21 with an extensive menu of prepared foods.
- 22 (6) Except for food prepared by a for-profit entity, an Indiana  
 23 nonprofit organization that:
- 24 (A) is organized for civic, fraternal, veterans, or charitable  
 25 purposes;
- 26 (B) is exempt from taxation under Section 501 of the Internal  
 27 Revenue Code; and
- 28 (C) offers food for sale to the final consumer at an event held  
 29 for the benefit of the organization;
- 30 if the events conducted by the organization take place for not  
 31 more than fifteen (15) days in a calendar year.
- 32 (7) ~~An individual~~ **A home based** vendor of a ~~farmer's market or~~  
 33 ~~roadside stand if the individual who~~ meets the requirements of  
 34 IC 16-42-5-29.
- 35 (8) The holder of a farm winery permit under IC 7.1-3-12-5 or a  
 36 brewer's permit under IC 7.1-3-2-7(5) if the requirements of  
 37 IC 16-42-5-30 are met.
- 38 SECTION 2. IC 16-42-5-29, AS AMENDED BY P.L.80-2016,  
 39 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2021]: Sec. 29. (a) Except as provided in subsection (h), this  
 41 section applies to ~~an individual~~ **a home based** vendor. ~~of a farmers~~  
 42 ~~market or roadside stand.~~



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

4 (c) ~~An individual~~ **A home based** vendor of a ~~farmers market or~~  
 5 ~~roadside stand~~ is not considered to be a food establishment and is  
 6 exempt from the requirements of this title that apply to food  
 7 establishments if the ~~individual~~ **home based** vendor's food product:

8 (1) is made, grown, or raised by ~~an individual~~ **a home based**  
 9 **vendor** at the ~~individual's~~ **home based vendor's** primary  
 10 residence, ~~property owned by the individual, or property leased by~~  
 11 ~~the individual,~~ **including a farm or ranch where the home**  
 12 **based vendor resides;**

13 (2) is:

14 (A) **a product that is** not a potentially hazardous food  
 15 product;

16 (B) **a meat, meat byproduct, or meat food product that:**

17 (i) **uses only federally or state inspected and passed meat**  
 18 **product as provided in 9 CFR 303.1(d);**

19 (ii) **if uncooked, has not been modified by the home based**  
 20 **vendor from whole muscle form by a process of grinding,**  
 21 **mincing, or tenderizing;**

22 (iii) **if uncooked, has been stored frozen, kept frozen, and**  
 23 **delivered frozen at the point of sale;**

24 (iv) **if cooked, has been consistently maintained at a**  
 25 **minimum storage temperature of one hundred**  
 26 **thirty-five (135) degrees Fahrenheit; and**

27 (v) **has been prepared by a home based vendor who**  
 28 **satisfies the requirements for an exemption under 9 CFR**  
 29 **303.1(d);**

30 (C) **poultry, a poultry byproduct, or a poultry food product**  
 31 **that is produced, sold, and delivered according to the one**  
 32 **thousand (1,000) poultry exemption as provided in 9 CFR**  
 33 **381.10(c);**

34 (D) **poultry, a poultry byproduct, or a poultry food product**  
 35 **that:**

36 (i) **uses only federally or state inspected and passed**  
 37 **poultry product or poultry product exempted under 9**  
 38 **CFR 381.10(c) and in accordance with 9 CFR 381.10(d);**

39 (ii) **if uncooked, has not been modified by the home based**  
 40 **vendor from whole muscle form by process of grinding,**  
 41 **mincing, or tenderizing;**

42 (iii) **if uncooked, has been stored frozen, kept frozen, and**



- 1           **delivered frozen at the point of sale;**  
 2           **(iv) if cooked, has been consistently maintained at a**  
 3           **minimum storage temperature of one hundred**  
 4           **thirty-five (135) degrees Fahrenheit; and**  
 5           **(v) has been prepared by a home based vendor who**  
 6           **satisfies the requirements for an exemption under 9 CFR**  
 7           **381.10(d); or**  
 8           **(E) any other potentially hazardous food, except:**  
 9           **(i) low acid or acidified canned foods;**  
 10           **(ii) raw, unpasteurized fluid dairy products; and**  
 11           **(iii) meat, meat byproducts, meat food products, poultry,**  
 12           **poultry byproducts, and poultry food products not**  
 13           **expressly permitted in this subsection;**  
 14           **(3) is prepared by an individual a home based vendor who**  
 15           **practices proper sanitary procedures, including:**  
 16           **(A) proper hand washing;**  
 17           **(B) sanitation of the container or other packaging in which the**  
 18           **food product is contained; and**  
 19           **(C) safe storage of the food product;**  
 20           ~~(4) is not resold; and~~  
 21           ~~(5) (4) includes a label that contains: the following information:~~  
 22           **(A) the home based vendor's name and home address; of the**  
 23           **producer of the food product.**  
 24           **(B) the common or usual name of the food product;**  
 25           **(C) the ingredients of the food product, in descending order by**  
 26           **predominance by weight;**  
 27           **(D) the net weight and volume of the food product by standard**  
 28           **measure or numerical count;**  
 29           **(E) the date on which the food product was processed; and**  
 30           **(F) the following statement in at least 10 point type: "This**  
 31           **product is home produced and processed and the production**  
 32           **area has not been inspected by the state department of health.";**  
 33           **(5) is sold:**  
 34           **(A) by the home based vendor to the end consumer**  
 35           **whether in person or remotely, including via telephone,**  
 36           **Internet, or mail delivery; or**  
 37           **(B) by an agent of the home based vendor or a third party**  
 38           **vendor, including a retail shop or grocery store, to the end**  
 39           **consumer; and**  
 40           **(6) is delivered:**  
 41           **(A) by the home based vendor to the end consumer; or**  
 42           **(B) by an agent of the home based vendor, a third party**



- 1                    **vendor, or a third party carrier to the end consumer.**
- 2            (d) ~~An individual~~ **A home based** vendor who meets the
- 3 requirements in subsection (c) is subject to food sampling and
- 4 inspection if:
- 5            (1) the state department determines that the ~~individual home~~
- 6            **based** vendor's food product is:
- 7                    (A) misbranded under IC 16-42-2-3; or
- 8                    (B) adulterated; or
- 9            (2) a consumer complaint has been received by the state
- 10 department.
- 11            (e) If the state department has reason to believe that an imminent
- 12 health hazard exists with respect to ~~an individual~~ **a home based**
- 13 vendor's food product, the state department may order cessation of
- 14 production and sale of the food product until the state department
- 15 determines that the hazardous situation has been addressed.
- 16            (f) For purposes of this section, the state health commissioner or the
- 17 commissioner's authorized representatives may take samples for
- 18 analysis and conduct examinations and investigations through any
- 19 officers or employees under the state health commissioner's
- 20 supervision. Those officers and employees may enter, at reasonable
- 21 times, the facilities of ~~an individual~~ **a home based** vendor and inspect
- 22 any food products in those places and all pertinent equipment,
- 23 materials, containers, and labeling.
- 24            (g) The state health commissioner may develop guidelines for ~~an~~
- 25 **individual a home based** vendor who ~~seeks an exemption is exempt~~
- 26 from regulation as a food establishment as described in subsection (c).
- 27 The guidelines may include:
- 28            (1) standards for best safe food handling practices;
- 29            (2) disease control measures; and
- 30            (3) standards for potable water sources.
- 31            (h) The department shall exclude from the definition of food
- 32 establishment the sale of products described in subsection (i):
- 33            (1) by an individual vendor of a farmers market or roadside stand;
- 34            and
- 35            (2) by a farmer selling directly to the end consumer on the farm
- 36 where the product is produced and through delivery to the end
- 37 consumer.
- 38            (i) Subsection (h) applies to the distribution of the following
- 39 products:
- 40            (1) Poultry products produced under IC 15-17-5-11. Poultry
- 41 products sold at a farmers market or roadside stand must be
- 42 frozen at the point of sale. Poultry products sold on the farm



1 where the product is produced must be refrigerated at the point of  
2 sale and through delivery.

3 (2) Rabbits that are slaughtered and processed on a farm for the  
4 purpose of conducting limited sales on the farm at a farmers  
5 market, and at a roadside stand. Rabbit meat sold at a farmers  
6 market or roadside stand must be frozen at the point of sale.  
7 Rabbit meat sold on the farm where the product is produced must  
8 be refrigerated at the point of sale and through delivery.

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

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

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

23 SECTION 3. IC 16-42-11-5.5 IS ADDED TO THE INDIANA  
24 CODE AS A NEW SECTION TO READ AS FOLLOWS  
25 [EFFECTIVE JULY 1, 2021]: **Sec. 5.5. The board may adopt**  
26 **emergency rules under IC 4-22-2-37.1 concerning any of the**  
27 **following:**

28 (1) **Packaging of eggs.**

29 (2) **Labeling of eggs.**

30 (3) **An emergency situation or sudden disruption that affects**  
31 **the supply or distribution of eggs.**

