



March 9, 2021

ENGROSSED SENATE BILL No. 185

DIGEST OF SB 185 (Updated March 9, 2021 1:16 pm - DI 77)

Citations Affected: IC 16-18; IC 16-42; noncode.

Synopsis: Home based vendors. Beginning April 1, 2022, allows a home based vendor's food products that are not potentially hazardous to be: (1) sold in person or by telephone or the Internet; and (2) delivered by the vendor or a third party carrier to the end consumer. Requires that the state department of health, state board of animal health, and state department of agriculture shall, in consultation with industry groups and food safety experts, submit recommendations concerning home based vendors to the general assembly.

Effective: July 1, 2021; April 1, 2022.

Walker G, Walker K, Doriot

(HOUSE SPONSORS — DAVISSON, LEHE)

January 5, 2021, read first time and referred to Committee on Agriculture.
February 8, 2021, amended, reported favorably — Do Pass.
February 11, 2021, read second time, ordered engrossed. Engrossed.
February 15, 2021, read third time, passed. Yeas 46, nays 0.

HOUSE ACTION

March 1, 2021, read first time and referred to Committee on Agriculture and Rural Development.
March 9, 2021, amended, reported — Do Pass.

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March 9, 2021

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.

ENGROSSED 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 APRIL 1, 2022]: 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.

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- 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 APRIL 1, 2022]: 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 **complies with the following:**

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

14 (2) Is not a potentially hazardous food product.

15 (3) Is prepared by an individual who practices proper sanitary
 16 procedures, including:

17 (A) proper hand washing;

18 (B) sanitation of the container or other packaging in which the
 19 food product is contained; and

20 (C) safe storage of the food product.

21 (4) Is not resold. ~~and~~

22 (5) Includes a label that contains the following information:

23 (A) The name and address of the ~~producer of the food product.~~
 24 **home based vendor.**

25 (B) The common or usual name of the food product.

26 (C) The ingredients of the food product, in descending order
 27 by predominance by weight.

28 (D) The net weight and volume of the food product by
 29 standard measure or numerical count.

30 (E) The date on which the food product was processed.

31 (F) The following statement in at least 10 point type: "This
 32 product is home produced and processed and the production
 33 area has not been inspected by the state department of health."

34 **(6) Is sold by the home based vendor whether in person or by**
 35 **telephone or Internet.**

36 **(7) Is delivered by:**

37 **(A) the home based vendor; or**

38 **(B) a third party carrier that is not a party to the**
 39 **transaction;**

40 **to the end consumer.**

41 (d) An individual vendor who meets the requirements in subsection
 42 (c) is subject to food sampling and inspection if:



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



1 market, and at a roadside stand. Rabbit meat sold at a farmers
2 market or roadside stand must be frozen at the point of sale.
3 Rabbit meat sold on the farm where the product is produced must
4 be refrigerated at the point of sale and through delivery.

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

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

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

18 **SECTION 3. [EFFECTIVE JULY 1, 2021] (a) Before December**
19 **1, 2021, the state department of health, state board of animal**
20 **health, and state department of agriculture shall, in consultation**
21 **with industry groups and food safety experts, submit**
22 **recommendations concerning home based vendors to the general**
23 **assembly in an electronic format under IC 5-14-6.**

24 **(b) This SECTION expires July 1, 2022.**



COMMITTEE REPORT

Madam President: The Senate Committee on Agriculture, to which was referred Senate Bill No. 185, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning health.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 185 as introduced.)

LEISING, Chairperson

Committee Vote: Yeas 9, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred Senate Bill 185, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

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

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 16-18-2-137, AS AMENDED BY P.L.144-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE APRIL 1, 2022]: Sec. 137. (a) "Food establishment", for purposes of IC 16-42-5 and IC 16-42-5.2, means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food.

(b) The term does not include the following:

- (1) A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption or for consumption by their guests.
- (2) A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational

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setting or for religious purposes, if:

(A) the individuals separately or jointly provide or prepare, free of charge, and consume their own food or that of others attending the gathering; and

(B) the gathering is for a purpose of the organization.

Gatherings for the purpose of the organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.

(3) A vehicle used to transport food solely for distribution to the needy, either free of charge or for a nominal donation.

(4) A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property.

(5) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for an organization:

(A) that is organized for:

(i) religious purposes; or

(ii) educational purposes in a nonpublic educational setting;

(B) that is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) that offers the food for sale to the final consumer at an event held for the benefit of the organization;

unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.

(6) Except for food prepared by a for-profit entity, an Indiana nonprofit organization that:

(A) is organized for civic, fraternal, veterans, or charitable purposes;

(B) is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) offers food for sale to the final consumer at an event held for the benefit of the organization;

if the events conducted by the organization take place for not more than fifteen (15) days in a calendar year.

(7) ~~An individual A home based vendor of a farmer's market or roadside stand if the individual who~~ meets the requirements of IC 16-42-5-29.

(8) The holder of a farm winery permit under IC 7.1-3-12-5 or a brewer's permit under IC 7.1-3-2-7(5) if the requirements of IC 16-42-5-30 are met.



SECTION 2. IC 16-42-5-29, AS AMENDED BY P.L.80-2016, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE APRIL 1, 2022]: Sec. 29. (a) Except as provided in subsection (h), this section applies to ~~an individual~~ **a home based vendor. of a farmers market or roadside stand.**

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

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

- (1) Is made, grown, or raised ~~by an individual at the individual's~~ **on the home based vendor's primary residence, including a farm or ranch where the home based vendor resides and property owned by the individual, or property leased by the individual; home based vendor.**
- (2) Is not a potentially hazardous food product.
- (3) Is prepared by an individual who practices proper sanitary procedures, including:
 - (A) proper hand washing;
 - (B) sanitation of the container or other packaging in which the food product is contained; and
 - (C) safe storage of the food product.
- (4) Is not resold. ~~and~~
- (5) Includes a label that contains the following information:
 - (A) The name and address of the ~~producer of the food product.~~ **home based vendor.**
 - (B) The common or usual name of the food product.
 - (C) The ingredients of the food product, in descending order by predominance by weight.
 - (D) The net weight and volume of the food product by standard measure or numerical count.
 - (E) The date on which the food product was processed.
 - (F) The following statement in at least 10 point type: "This product is home produced and processed and the production area has not been inspected by the state department of health."
- (6) Is sold by the home based vendor whether in person or by telephone or Internet.**
- (7) Is delivered by:**
 - (A) the home based vendor; or**



**(B) a third party carrier that is not a party to the transaction;
to the end consumer.**

(d) An individual vendor who meets the requirements in subsection (c) is subject to food sampling and inspection if:

(1) the state department determines that the individual vendor's food product is:

(A) misbranded under IC 16-42-2-3; or

(B) adulterated; or

(2) a consumer complaint has been received by the state department.

(e) If the state department has reason to believe that an imminent health hazard exists with respect to an individual vendor's food product, the state department may order cessation of production and sale of the food product until the state department determines that the hazardous situation has been addressed.

(f) For purposes of this section, the state health commissioner or the commissioner's authorized representatives may take samples for analysis and conduct examinations and investigations through any officers or employees under the state health commissioner's supervision. Those officers and employees may enter, at reasonable times, the facilities of an individual vendor and inspect any food products in those places and all pertinent equipment, materials, containers, and labeling.

(g) The state health commissioner may develop guidelines for an individual vendor who seeks an exemption from regulation as a food establishment as described in subsection (c). The guidelines may include:

(1) standards for best safe food handling practices;

(2) disease control measures; and

(3) standards for potable water sources.

(h) The department shall exclude from the definition of food establishment the sale of products described in subsection (i):

(1) by an individual vendor of a farmers market or roadside stand; and

(2) by a farmer selling directly to the end consumer on the farm where the product is produced and through delivery to the end consumer.

(i) Subsection (h) applies to the distribution of the following products:

(1) Poultry products produced under IC 15-17-5-11. Poultry products sold at a farmers market or roadside stand must be



frozen at the point of sale. Poultry products sold on the farm where the product is produced must be refrigerated at the point of sale and through delivery.

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

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

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

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

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 185 Digest Correction as printed February 9, 2021.)

LEHE

Committee Vote: yeas 11, nays 0.

