

# HOUSE BILL REPORT

## E2SHB 1258

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**As Passed House:**

March 9, 2021

**Title:** An act relating to the operation, authorization, and permitting of microenterprise home kitchens.

**Brief Description:** Concerning the operation, authorization, and permitting of microenterprise home kitchens.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Frame, Peterson, Dolan, Ryu, Leavitt, Simmons, Jacobsen, Lovick, Taylor, Fitzgibbon, Fey, Ramel, Ortiz-Self, Shewmake, Johnson, J., Bateman, Eslick, Ramos, Davis, Thai, Santos, Chambers, Wylie, Callan, Wicks, Rule, Sutherland, Chase, Macri, Gregerson, Slatter, Berg and Riccelli).

**Brief History:**

**Committee Activity:**

Local Government: 1/29/21, 2/2/21, 2/10/21 [DPS];

Appropriations: 2/19/21, 2/22/21 [DP2S(w/o sub LG)].

**Floor Activity:**

Passed House: 3/9/21, 58-38.

**Brief Summary of Engrossed Second Substitute Bill**

- Establishes a microenterprise home kitchen operation pilot program and creates regulations and permitting standards for the program.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Pollet, Chair; Duerr, Vice Chair; Berg and Senn.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Robertson.

**Staff:** Elizabeth Allison (786-7129).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Chandler, Chopp, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Stokesbary, Ranking Minority Member; Caldier and Cody.

**Staff:** Kate Henry (786-7349).

### **Background:**

The Washington State Department of Health (Department) was formed in 1989 to promote and protect public health, monitor health care costs, maintain standards for quality health care delivery and plan activities related to the health of Washington citizens. The Washington State Board of Health (Board) is an independent entity housed within the Department of Health that establishes minimum standards for the prevention and control of foodborne illnesses. Local jurisdictions may adopt more stringent standards. The Board's rules direct food service establishments in the areas of food supplies, food protection, public health labeling, food preparation, temperature control, personal hygiene, garbage and litter, sanitary equipment, and pest control. The Board considers the most recent version of the United States Food and Drug Administration's Food Code when adopting rules for food service.

### **Summary of Engrossed Second Substitute Bill:**

A microenterprise home kitchen operation (MHKO) pilot program is created. Beginning July 1, 2022, the pilot program may permit up to 100 MHKOs in the first year and may permit up to 200 additional MHKOs in each year thereafter. The number of permits that may be issued by counties during the first and second year of the pilot program is specified based on population. The Washington State Board of Health (Board) must complete required rulemaking by July 1, 2024. The Department of Health (Department) must submit a report to the Legislature reviewing the program and provide recommendations for

necessary legislation regarding the program by July 1, 2024.

"Microenterprise home kitchen operation" means a food facility that is operated by a person in the person's primary domestic residence where food is stored, handled, and prepared for consumers. An MHKO may sell food products to be consumed at a location other than the premises of the MHKO, whether delivered directly to the consumer by the MHKO or by an intermediary, and cater a specific menu and amount of food which is prepared on the premises of the MHKO for service to a customer at a different location.

Rules adopted must provide for the following restrictions on MHKOs:

- food preparation may not involve processes that require a hazard analysis critical control point plan, the production, service, or sale of raw milk or raw milk products, curing of meats, or the service or sale of raw oysters or other shellfish;
- the MHKO may sell no more than 20 individual meals per day and no more than 100 individual meals per week;
- the operation may not engage in indirect sales to consumers;
- food products prepared in an MHKO may not be delivered outside of the state by the operator of the MHKO unless allowed in the state of delivery;
- food produced in an MHKO may not be delivered by a third-party delivery service;
- an Internet food service intermediary must conspicuously post any fees associated with their digital network, offer or provide liability insurance, and notify MHKO operators in writing 30 days in advance of any fee change exceeding a 2 percent increase;
- the MHKO is required to be covered by a liability insurance policy in an amount not less than \$500,000 that would cover any incidents arising from the sale or consumption of food, including protection for consumers for injuries arising from a foodborne illness; and
- food produced in an MHKO may not be held hot for more than two hours, and may not be held overnight.

The MHKO must post any inspection scores, grades, or other evaluation records required by the local health jurisdiction at the entry of the operation during business hours and on any Internet page or Internet food service intermediary that is offering the operation's food for sale.

Additional requirements for an MHKO include: the application for and renewal of permits; inspections; sanitary procedures; facility, equipment, and utensil requirements; labeling procedures; requirements for clean water sources and waste and wastewater disposal; and requirements for washing and other hygienic practices. The MHKOs are exempt from a number of provisions in the food services code and modified requirements are provided.

The Department must develop a sample permit and form for permit applications. An MHKO must obtain a permit from the local health jurisdiction and may be required to be renewed annually. The application must include the MHKO's standard operating

procedures such as food types that will be prepared, handling procedures, cleaning plans, refuse disposal processes, food storage, and days and times the MHKO may be operated.

The application must be accompanied by an inspection fee. The MHKO must be inspected before initial permitting and may be inspected up to once per year after the initial permitting, and at any time in response to a foodborne outbreak or other public health emergency when the permit holder or permit holder's agent grants access, by appointment, or pursuant to a search warrant. Nonemergency inspections may occur only when the permit holder or permit holder's agent is present and only during the normal business hours of operation with reasonable advance notice, by appointment, or pursuant to a search warrant. The name and information of the inspector entering the home must be provided. Absent a search warrant, the local health inspector may not enter a home when only minors are present. The inspection must document the findings and those findings must be kept by the local health jurisdiction. The inspection protocol includes basic standards the MHKO must follow while preparing, handling, or storing food in the MHKO.

An MHKO operating without a valid permit and any MHKO operating in violation of any of the requirements may be subject to sanctions. For the first violation within a two-year period, the local health jurisdiction must hold an administrative conference with the operator of the MHKO, which may include an offer of technical assistance. For the second or subsequent violation within a two-year period, the local health jurisdiction may issue a warning, place the MHKO on probation, issue a fine, suspend or revoke the permit, issue fees to cover the cost of inspection prior to the MHKO preparing food after suspension or revocation, or a combination of those sanctions.

A local health jurisdiction may deny, suspend, or revoke a permit after conducting a hearing at which it is determined that the permittee has failed to comply with the rules or refused the local health jurisdiction access to a permitted area or records required to be kept. A local health jurisdiction may also suspend or halt a permit issued if the health officer finds that an MHKO is operating under conditions constituting an immediate danger to public health.

The obligation of local governments to comply with certain requirements of the act is contingent on the provision of state funding for the specific purpose of complying with those requirements.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 10, 2021.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Local Government):**

(In support) Microenterprise home kitchen operations provide opportunities and supplemental income for people who are trying to break into the food business but face barriers to entry. The COVID-19 economic downturn has seen a lot of folks preparing and selling food trying to make ends meet. This is already happening, but it is unregulated. This bill puts a robust pilot program into practice to provide regulation, and after there is a chance to see how the pilot program goes, it can be expanded. The bill provides an opportunity to help people get out of poverty, and can help lesbian, gay, bisexual, transgender, queer, and black, indigenous, people of color who may not have as much access to economic opportunity; this bill provides that opportunity. The goal is to make these operations legal. It would allow an opportunity to save money during the pandemic where people are struggling to feed their families. This would give people time to solidify their products. Food brings the community together and lets them share their identity and culture with customers. Passing this bill would let people feed their families and start businesses, but also foster community interaction and neighborly relations. Renting a commercial kitchen is expensive, and it is not always feasible to build your own commercial kitchen. There is a good economic benefit, but it also allows people the choice to have good home cooking, which is inherently more wholesome for people to eat. Folks such as senior citizens may not have the ability to cook good food, but may still want to be able to eat it. The bill would help establish jobs and start building new businesses. One part of the bill limits third-party delivery which does not take into account COVID-19 and the smaller proprietorships that would take advantage of the program. The bill could also help those incarcerated to have a job when released from prison. Entrepreneurship helps people.

(Opposed) None.

(Other) There is no disagreement that there are barriers to becoming business owners. One challenge is cost and availability of commissary kitchens. An established restaurant with a permitted kitchen could not rent the kitchen during nonworking hours, but is now allowed to do so due to emergency rules. The concern with the bill is that it exempts food services from important food safety regulations for public health that should be implemented equitably across the industry. Instead of creating a new permit with different requirements, barriers to existing programs should be addressed. Some specific recommendations for the bill are the need for an end date and a report on the pilot project. There needs to be some sort of management or food protection manager requirement with changing the food codes.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) Home cooking is a great way to preserve heritage and culture. The bill will help entrepreneurs who are trying to start a food-based business enter the market. Commercial kitchens can be expensive to rent, and many lack access and funding. The current system is restrictive for home-based businesses and the bill would establish standards and requirements regarding health codes and liability. Home-based cooking can provide supplemental income, including for those on a fixed income, formerly incarcerated

individuals on house arrest, and traditionally underrepresented populations. If people want to buy from those choosing to cook out of a home, that should be an available choice.

(Opposed) None.

**Persons Testifying (Local Government):** (In support) Representative Frame, prime sponsor; Laurel Hargis; Luis Diaz, El Jibarito; Will von Geldern and Beto Yarce, Ventures; Prashanthi Reddy, Makeda and Mingus; and Aaron McCloud, Cheeki.

(Opposed) Samantha Louderback, Washington Hospitality Association; and Carolyn Logue, Washington Food Industry Association.

**Persons Testifying (Appropriations):** Representative Frame, prime sponsor; Sarah Schacht; Will Von Geldern, Ventures; Chantel Jackson, Thyme Well Spent Catering; and Laurel Hargis.

**Persons Signed In To Testify But Not Testifying (Local Government):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.