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**HOUSE BILL 1258**

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**State of Washington****67th Legislature****2021 Regular Session****By** Representatives Frame and Peterson

1       AN ACT Relating to the operation, authorization, and permitting  
2 of microenterprise home kitchens; adding a new section to chapter  
3 69.07 RCW; adding a new section to chapter 70.54 RCW; adding a new  
4 chapter to Title 69 RCW; creating a new section; and providing  
5 expiration dates.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7       NEW SECTION.   **Sec. 1.**   The definitions in this section apply  
8 throughout this chapter unless the context clearly requires  
9 otherwise.

10       (1) "Domestic residence" means a single-family dwelling or an  
11 area within a rental unit where a single person or family actually  
12 resides. "Domestic residence" does not include:

13       (a) A group or communal residential setting within any type of  
14 structure; or

15       (b) An outbuilding, shed, barn, or other similar structure.

16       (2) "Home kitchen" means a kitchen primarily intended for use by  
17 the residents of a home. It may contain one or more stoves or ovens,  
18 which may be a double oven, designed for residential use.

19       (3) "Internet food service intermediary" means an entity that  
20 facilitates the sale of home-cooked meals offered by a

1 microenterprise home kitchen operation through the entity's digital  
2 network.

3 (4) (a) "Microenterprise home kitchen operation" means a food  
4 facility that is operated by a person in the person's primary  
5 domestic residence where food is stored, handled, and prepared for  
6 consumers.

7 (b) "Microenterprise home kitchen operation" does not include a  
8 cottage food operation.

9 (5) "Permitted area" means the portion of a domestic residence  
10 housing a home kitchen where the preparation, packaging, storage, or  
11 handling of cottage food products occurs.

12 (6) "Potentially hazardous food" means foods requiring  
13 temperature control for safety because they are capable of supporting  
14 the rapid growth of pathogenic or toxigenic microorganisms, or the  
15 growth and toxin production of clostridium botulinum.

16 (7) "Regulatory authority" means the local, state, or federal  
17 enforcement body or authorized representative having jurisdiction  
18 over the food establishment. The local health jurisdiction, acting  
19 through the local health officer, is the regulatory authority for the  
20 activity of a food establishment, except as otherwise provided by  
21 law.

22 (8) "State board" means the state board of health.

23 (9) "Third-party delivery service" means an outsourced entity  
24 that provides delivery logistics of purchased meals from vendor to  
25 consumer.

26 NEW SECTION. **Sec. 2.** (1) The state department of health shall  
27 develop and begin a pilot program to allow for microenterprise home  
28 kitchen operations. The state department of health is authorized to  
29 permit up to 100 microenterprise home kitchen operations during the  
30 first year of the program, and up to 200 additional microenterprise  
31 home kitchen operations each year after the first year. The permit  
32 must be issued by the state department of health, in partnership with  
33 the local health jurisdiction.

34 (2) The state board shall adopt rules for the authorization,  
35 operation, and regulation of microenterprise home kitchen operations  
36 by July 1, 2023.

37 (3) Microenterprise home kitchen operations may engage in one or  
38 more of the following activities, subject to rules adopted pursuant  
39 to this section:

1       (a) The direct sale to consumers of food products to be consumed  
2 at a location other than the premises of the microenterprise home  
3 kitchen operation, whether delivered directly to the consumer by the  
4 microenterprise home kitchen operation or by an intermediary; and

5       (b) Catering activities in which a specific menu and amount of  
6 food is prepared on the premises of the microenterprise home kitchen  
7 operation for service to a customer at a different location.

8       (4) Rules adopted pursuant to this section must provide that  
9 microenterprise home kitchen operations are subject to the following  
10 restrictions:

11       (a) Food preparation may not involve processes that require a  
12 hazard analysis critical control point plan from the department of  
13 health, the production, service, or sale of raw milk or raw milk  
14 products, as identified in RCW 15.36.012, or the service or sale of  
15 raw oysters;

16       (b) The operation may sell no more than 30 individual meals or  
17 meal equivalent portions per day and no more than 150 individual  
18 meals or meal equivalent portions per week;

19       (c) The operation may not engage in indirect sales to consumers;

20       (d) Food products prepared in a microenterprise home kitchen  
21 operation may not be delivered outside of the state by the operator  
22 of the microenterprise home kitchen operation unless allowed in the  
23 state of delivery;

24       (e) Food produced in a microenterprise home kitchen operation may  
25 not be delivered by a third-party delivery service;

26       (f) An internet food service intermediary must conspicuously post  
27 any fees associated with their digital network in high school  
28 equivalent English and Spanish, offer or provide liability insurance,  
29 and notify microenterprise home kitchen operations in writing 30 days  
30 in advance of any fee change exceeding a two percent increase;

31       (g) The microenterprise home kitchen operation must be covered by  
32 a liability insurance policy, in an amount not less than \$500,000,  
33 that would cover any incidents arising from the sale or consumption  
34 of food, including protection for consumers for injuries arising from  
35 a foodborne illness; and

36       (h) The microenterprise home kitchen operation must post any  
37 inspection scores, grades, or other evaluation records required by  
38 the local health jurisdiction at the entry of the operation during  
39 business hours and on any internet page or internet food service  
40 intermediary that is offering the operation's food for sale.

1       (5) Rules adopted pursuant to this section may include, but are  
2 not limited to, the following requirements:

3           (a) The restrictions provided in subsection (4) of this section;

4           (b) The application for and renewal of permits as provided in  
5 section 4 of this act;

6           (c) Inspections as provided in section 4 of this act;

7           (d) Sanitary procedures;

8           (e) Facility, equipment, and utensil requirements;

9           (f) Labeling specificity beyond the requirements of this section;

10          (g) Requirements for clean water sources and waste and wastewater  
11 disposal; and

12           (h) Requirements for washing and other hygienic practices.

13          (6) Rules adopted pursuant to this section must specify that  
14 microenterprise home kitchen operations are exempt from the following  
15 provisions of the food service code, chapter 246-215 WAC:

16           (a) Handwashing facilities requirements, provided that a sink  
17 with one or two large tubs placed next to it is used for washing,  
18 rinsing, and sanitizing; and warm water, soap, and disposable paper  
19 towels are available and used in the identified primary toilet room  
20 and microenterprise home kitchen operation area by all persons  
21 working in the microenterprise home kitchen operation;

22           (b) Prohibitions on the presence of persons unnecessary to the  
23 microenterprise home kitchen operation in the food preparation, food  
24 storage, or warewashing areas;

25           (c) Requirements relating to posting of "no smoking or vaping"  
26 signs;

27           (d) Limitations on employee consumption of food, drink, marijuana  
28 or vapor products, or tobacco outside of designated areas when not  
29 preparing food for sale;

30           (e) Limitations on consumer access to the microenterprise home  
31 kitchen operation through food preparation areas when not preparing  
32 food for sale;

33           (f) Display guard, cover, and container requirements. However,  
34 when food is left out uncovered on a kitchen counter or table due to  
35 processing steps, such as cooling, active controls are in place to  
36 prevent inadvertent contamination by children or pets. Active  
37 controls may include presence of the permittee or an employee or use  
38 of child or pet barriers;

39           (g) Limitations on outdoor display and sale of foods;

40           (h) Requirements to provide clean drinking cups and tableware;

1       (i) Requirements pertaining to the characteristics and  
2 certification of utensils and equipment, provided that the utensils  
3 and equipment are designed to retain their characteristic qualities  
4 under normal use conditions;

5       (j) Requirements pertaining to the characteristics, construction,  
6 and multiuse of food-contact and nonfood-contact surfaces, provided  
7 that food-contact surfaces are smooth, easily cleanable, and in good  
8 repair;

9       (k) Requirements pertaining to the characteristics, construction,  
10 and disassembly of clean in place equipment;

11       (l) Limitations on the use of wood as a food-contact surface and  
12 in connection with other equipment;

13       (m) Any requirement relating to ventilation, provided that gases,  
14 odors, steam, heat, grease, vapors, and smoke are able to escape from  
15 the kitchen, unless a serious risk of fire exists;

16       (n) Requirements that cold or hot holding equipment used for  
17 potentially hazardous food be equipped with integral or permanently  
18 affixed temperature measuring devices or product mimicking sensors;

19       (o) Requirements pertaining to the installation of fixed, floor-  
20 mounted, and table-mounted equipment;

21       (p) Dedicated laundry facility requirements, provided that linens  
22 used in connection with the microenterprise home kitchen operation  
23 must be laundered separately from the household and other laundry;

24       (q) Requirements pertaining to water, plumbing, drainage, and  
25 waste, provided that microenterprise home kitchen operations that  
26 have a private water supply have the supply tested at least 60 days  
27 prior to permitting and at least annually thereafter and demonstrate  
28 through a written record of testing that the water supply is potable  
29 and provided that microenterprise home kitchen operations that have a  
30 private on-site sewage system have had the system inspected within  
31 one year prior to permitting;

32       (r) Any requirement that a microenterprise home kitchen operation  
33 have more than one toilet facility or that access to the toilet  
34 facility not require passage through the food preparation, food  
35 storage, or utensil washing areas;

36       (s) Light intensity, light source, and lightbulb requirements,  
37 provided that food preparation areas are well-lighted by natural or  
38 artificial light whenever food is being prepared;

39       (t) Requirements to provide and use lockers, storage facilities,  
40 and designated dressing areas, and that microenterprise home kitchen

1 operation premises be free of litter and items that are unnecessary  
2 to the operation, provided that personal effects and clothing not  
3 ordinarily found in a microenterprise home kitchen operation are  
4 placed or stored away from food preparation areas and dressing takes  
5 place outside of the kitchen;

6 (u) Limitations on the presence and handling of animals, such as  
7 domestic, service, or patrol animals, provided that a pet control  
8 plan that precludes pet entry or access to all areas of the  
9 microenterprise home kitchen operation during food cooking or  
10 preparation is in place;

11 (v) Requirements pertaining to floor, wall, and ceiling surfaces,  
12 provided that the floor, wall, and ceiling surfaces of the kitchen,  
13 storage, and toilet areas are smooth, of durable construction, and  
14 easily cleanable with no limitations on the use of wood, tile, and  
15 other nonfiber floor surfaces ordinarily used in residential  
16 settings; and

17 (w) All prohibitions and limitations on the use of a kitchen in a  
18 private home as a microenterprise home kitchen operation, provided  
19 that food is not prepared in designated sleeping quarters. Open  
20 kitchens adjacent to living and sleeping areas, kitchens in  
21 efficiency, studio, and loft-style residences, and kitchens without  
22 doors at all points of ingress and egress may be used in  
23 microenterprise home kitchen operations.

24 NEW SECTION. **Sec. 3.** (1) A microenterprise home kitchen  
25 operation must obtain a permit from the state department of health,  
26 in partnership with the local health jurisdiction, on forms developed  
27 by the local health jurisdiction. The local health jurisdiction may  
28 require a microenterprise home kitchen operation to renew its permit  
29 annually. All applications for permits and permit renewals must be  
30 made on forms developed by the local health jurisdiction and be  
31 accompanied by an inspection fee as provided in section 4 of this  
32 act.

33 (2) As part of the application for a permit to operate as a  
34 microenterprise home kitchen operation, an applicant shall submit to  
35 the local health jurisdiction written standard operating procedures  
36 that include all of the following information:

37 (a) All food types or products that will be handled;  
38 (b) The proposed procedures and methods of food preparation and  
39 handling;

1       (c) Procedures, methods, and schedules for cleaning utensils,  
2 equipment, and for the disposal of refuse;

3       (d) How food will be maintained at the required holding  
4 temperatures pending pickup by consumer or during delivery if  
5 delivered by the operator; and

6       (e) Days and times that the home kitchen may potentially be  
7 utilized as a microenterprise home kitchen operation. The listed days  
8 and times are provided only for informational purposes and are not  
9 binding on the permit holder's actual operations.

10      (3) Operating plans must be made on forms developed by the local  
11 health jurisdiction and be accompanied by a review fee as provided in  
12 section 4 of this act.

13      (4) A microenterprise home kitchen operation permitted under this  
14 section must include a signed document attesting, by opting to become  
15 permitted, that the permitted microenterprise home kitchen operation  
16 expressly grants to the local health jurisdiction the right to enter  
17 the permitted area of the domestic residence housing the  
18 microenterprise home kitchen operation for the purposes of  
19 inspections pursuant to section 4 of this act. Nonemergency  
20 inspections may occur only during the normal business hours of the  
21 operation and with reasonable advance notice to the operation. Under  
22 ordinary circumstances, advance notice provided at least two business  
23 days prior is considered reasonable advance notice for purposes of  
24 this section.

25      (5) For purposes of permitting, the permitted area includes the  
26 home kitchen, food storage, utensils and equipment, toilet room,  
27 janitorial or cleaning facilities, outdoor cooking facilities, and  
28 refuse storage area. Food operations may not be conducted outside of  
29 the permitted areas.

30      (6) (a) The local enforcement agency shall issue a permit after an  
31 initial inspection and review of the microenterprise home kitchen  
32 operation's standard operating procedure have determined that the  
33 proposed microenterprise home kitchen operation and its method of  
34 operation comply with the requirements of this chapter.

35      (b) The local health jurisdiction may not require a  
36 microenterprise home kitchen operation to comply with food safety  
37 requirements that are different from, or in addition to, the  
38 requirements of this chapter.

39      (7) In addition to the provision of any information required by  
40 the local health jurisdiction on forms developed under subsection (1)

1 of this section and the payment of all fees, an applicant for a  
2 permit or a permit renewal as a microenterprise home kitchen  
3 operation must also provide documentation that all individuals to be  
4 involved in the preparation of microenterprise home kitchen operation  
5 foods have secured a food and beverage service worker's permit under  
6 chapter 69.06 RCW.

7 (8) A permit, once issued, is nontransferable. A permit is valid  
8 only for the person and location specified by that permit and, unless  
9 suspended or revoked for cause, for the time period indicated.

10 (9) The permit, or an accurate copy thereof, must be retained by  
11 the operation on-site and displayed at all times the microenterprise  
12 home kitchen operation is in operation.

13        NEW SECTION.        **Sec. 4.**        (1) The permitted area of a  
14 microenterprise home kitchen operation must be inspected for basic  
15 hygiene by the local health jurisdiction before initial permitting  
16 under section 3 of this act and may, at the discretion of the local  
17 health jurisdiction, be inspected up to once per year after initial  
18 permitting. In addition, the local health jurisdiction may inspect  
19 the permitted area of a microenterprise home kitchen operation at any  
20 time in response to a foodborne outbreak or other public health  
21 emergency. The authority of a local health jurisdiction to inspect a  
22 microenterprise home kitchen operation includes the authority to  
23 inspect any records required to be kept under the provisions of this  
24 chapter. For any inspection, the local health jurisdiction shall  
25 document the reason for the inspection, shall maintain such  
26 documentation on file with the microenterprise home kitchen  
27 operation's permit, and shall provide the reason for the inspection  
28 in writing to the operator of the microenterprise home kitchen  
29 operation.

30        (2) When a local health jurisdiction conducts a basic hygiene  
31 inspection, the local health jurisdiction shall, at a minimum,  
32 inspect for the following:

33            (a) That the permitted microenterprise home kitchen operation  
34 understands that no person other than the permittee, or a person  
35 under the direct supervision of the permittee, may be engaged in the  
36 processing, preparing, packaging, or handling of any microenterprise  
37 home kitchen operation food products or be in the home kitchen during  
38 the preparation, packaging, or handling of any microenterprise home  
39 kitchen operation food products;

1       (b) That no microenterprise home kitchen operation food  
2 preparation, packaging, or handling is occurring in the  
3 microenterprise home kitchen operation concurrent with any other  
4 domestic activities such as family meal preparation, dishwashing,  
5 clothes washing or ironing, kitchen cleaning, or guest entertainment,  
6 except that this subsection (2)(b) may not be construed so as to  
7 prohibit a microenterprise home kitchen operation from offering  
8 cooking classes within the home kitchen;

9       (c) That no infants, small children, or pets are in the  
10 microenterprise home kitchen operation during the preparation,  
11 packaging, or handling of any microenterprise home kitchen operation  
12 food products;

13       (d) That all food-contact surfaces, equipment, and utensils used  
14 for the preparation, packaging, or handling of any microenterprise  
15 home kitchen operation food products are washed, rinsed, and  
16 sanitized before each use;

17       (e) That all food preparation and food and equipment storage  
18 areas are maintained free of rodents and insects; and

19       (f) That all persons involved in the preparation and packaging of  
20 microenterprise home kitchen operation food products:

21           (i) Have obtained a food and beverage service worker's permit  
22 under chapter 69.06 RCW;

23           (ii) Are not preparing meals for sale in the home kitchen when  
24 ill with a communicable disease or condition;

25           (iii) Wash their hands before any food preparation and food  
26 packaging activities; and

27           (iv) Avoid bare hand contact with ready-to-eat foods through the  
28 use of single-service gloves, bakery papers, tongs, or other  
29 utensils.

30       (3) Nonemergency inspections may occur only during the normal  
31 business hours of the microenterprise home kitchen operation and with  
32 reasonable advance notice to the operation. Under ordinary  
33 circumstances, advance notice provided at least two business days  
34 prior is considered reasonable for purposes of this section.

35       (4) Should the local health jurisdiction be denied access to the  
36 permitted area of a domestic residence housing a microenterprise home  
37 kitchen operation where access was sought for the purposes of  
38 enforcing or administering this chapter, the local health  
39 jurisdiction may:

1       (a) Issue a closure notice to be posted on the premises in a  
2 conspicuous location during normal business hours of the operation  
3 for potential patrons and require that either the production or sale,  
4 or both, of food products cease immediately; and

5       (b) Apply to any court of competent jurisdiction for a search  
6 warrant authorizing access to the permitted area of a domestic  
7 residence housing a permitted microenterprise home kitchen operation,  
8 upon which the court may issue a search warrant for the purposes  
9 requested.

10      (5) The local health jurisdiction may charge a fee for issuing or  
11 renewing microenterprise home kitchen operations as authorized by RCW  
12 70.05.060.

13      (6) Access provided under this section is limited to the  
14 permitted area of the microenterprise home kitchen operation, during  
15 the posted operating hours of the microenterprise home kitchen  
16 operation, and solely for the purpose of enforcing or administering  
17 this chapter.

18      NEW SECTION.   **Sec. 5.**   (1) When a local health jurisdictions  
19 determines that any person is engaging in a microenterprise home  
20 kitchen operation without a valid permit issued under section 3 of  
21 this act, or an operator of a microenterprise home kitchen operation  
22 is violating any provision of this chapter or any rule adopted under  
23 this chapter, the local health jurisdiction may impose penalties or  
24 conditions as provided in this section.

25      (2) (a) For the first violation within a two-year period, the  
26 local health jurisdiction must hold an administrative conference with  
27 the operator of the microenterprise home kitchen operation, which may  
28 include, as appropriate, an offer of technical assistance.

29      (b) For the second or subsequent violation within a two-year  
30 period, the local health jurisdiction may initiate one, or a  
31 combination of one or more, of the following compliance methods:

32       (i) A written warning;

33       (ii) Placing the microenterprise home kitchen operation on  
34 probation, which may include setting conditions for continued  
35 operation of the microenterprise home kitchen operation during the  
36 probation period and, if the individual is operating without a valid  
37 permit, an administrative fine;

38       (iii) Suspending the permit of the microenterprise home kitchen  
39 operation;

(iv) Revoking the permit of the microenterprise home kitchen operation; and

(v) Issuing fees to cover the cost of inspections prior to a microenterprise home kitchen operation preparing food after suspension or revocation.

(3) The operation of a microenterprise home kitchen operation cannot be used as legal grounds for eviction, unless specifically identified in a lease agreement.

NEW SECTION. **Sec. 6.** (1) If a local health jurisdiction seeks to deny, suspend, or revoke any permit provided for in this chapter, it may do so if, after conducting a hearing, it is determined that a permittee has committed any of the following acts:

(a) Refused, neglected, or failed to comply with the provision of this chapter, any rule adopted to administer this chapter, or any lawful order of the local health jurisdiction;

(b) Refused, neglected, or failed to keep and maintain records required by this chapter or to make the records available when requested pursuant to the provisions of this chapter;

(c) Consistent with section 4 of this act, refused the local health jurisdiction access to the permitted area of a domestic residence housing a microenterprise home kitchen operation for the purpose of carrying out the provisions of this chapter;

(d) Consistent with section 4 of this act, refused the local health jurisdiction access to any records required to be kept under the provisions of this chapter; or

(e) Exceeded the meal preparation limits provided in section 2 of this act.

(2) The local health jurisdiction may summarily suspend a permit issued under this chapter, whether or not the permittee has been found to have committed a prior violation, if the health officer or designee finds that a microenterprise home kitchen operation is operating under conditions that constitute an immediate danger to public health or if the local health jurisdiction is denied access to the permitted area of a domestic residence housing a microenterprise home kitchen operation and records where the access was sought for the purposes of enforcing or administering this chapter.

NEW SECTION. **Sec. 7.** Except as otherwise provided in this chapter, a microenterprise home kitchen operation with a valid permit

1 under section 3 of this act is not subject to the provisions of  
2 chapter 69.07 RCW or to permitting and inspection by the department  
3 of agriculture.

4       **NEW SECTION.**   **Sec. 8.**   A new section is added to chapter 69.07  
5 RCW to read as follows:

6           (1) This chapter does not apply to a microenterprise home kitchen  
7 operation with a valid permit under section 3 of this act.

8           (2) This section expires June 30, 2024.

9       **NEW SECTION.**   **Sec. 9.**   A new section is added to chapter 70.54  
10 RCW to read as follows:

11           (1) The department of health shall compile and maintain, in a  
12 manner and format readily accessible by the public, statistics  
13 related to the number and distribution of microenterprise home  
14 kitchen operations permitted pursuant to section 3 of this act.

15           (2) This section expires June 30, 2024.

16       **NEW SECTION.**   **Sec. 10.**   In compliance with RCW 43.01.036 and by  
17 December 10, 2022, the state department of health must submit a  
18 report to the legislature reviewing the program adopted in this act  
19 and providing recommendations for necessary legislation regarding the  
20 program adopted in this act.

21       **NEW SECTION.**   **Sec. 11.**   Sections 1 through 7 and 12 of this act  
22 constitute a new chapter in Title 69 RCW.

23       **NEW SECTION.**   **Sec. 12.**   This chapter expires June 30, 2024.

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