HOUSE DOCKET, NO. 3178 FILED ON: 1/20/2023

HOUSE . . . . . No. 2153

The Commonwealth of Massachusetts

PRESENTED BY:

William J. Driscoll, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to promote economic opportunity by licensing home kitchens.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
William J. Driscoll, Jr.	*7th Norfolk*	*1/20/2023*
James C. Arena-DeRosa	*8th Middlesex*	*6/27/2023*

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HOUSE . . . . . No. 2153

By Representative Driscoll of Milton, a petition (accompanied by bill, House, No. 2153) of William J. Driscoll, Jr., relative to the licensing of home kitchens. Public Health.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act to promote economic opportunity by licensing home kitchens.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 146 of chapter 94 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting, in line 11, after the word “health.”, the following words:- Neither local boards of health nor zoning boards shall establish rules or regulations for home kitchen operations.

SECTION 2. Section 1 of chapter 94 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 329 the following section:-

Section 330.

(a) For the purposes of this section and Section 146, the following words shall have the meanings:

“Department” means the Massachusetts Department of Public Health.

"Home kitchen operation" means an enterprise in a private home that is controlled and operated by a resident that stores, handles, prepares and packages, and may serve ready-to-eat food for consumers.

"Licensed area" means the kitchen of a private home and any other area of the home used for the preparation, packaging, storage, handling or sanitation of food, equipment, and utensils used in the home kitchen operation.

“Online food marketplace” means a registered entity that provides a platform on its internet website or mobile application through which a home kitchen operation may choose to offer food for sale and from which the online food marketplace derives revenues. An online food marketplace must register with the Department and must clearly and conspicuously post on its internet website or mobile application the fees associated with using its marketplace or delivery service in a manner that allows both the consumer and the home cooking operation to see and understand the amount being charged for the services provided by the online food marketplace. Merely publishing an advertisement for the home kitchen operation or food cooked therein does not make the publisher an online food marketplace.

"Ready-to-eat food" means food that is in a form that is edible and safe to eat without washing, cooking or additional preparation by the consumer and that is reasonably expected to be consumed in the form in which it is provided to the consumer or after reheating by the consumer.

(b) A home kitchen operation must meet the following conditions:

(1) the operation must be licensed and inspected by the department;

(2) only the permittee, and individuals under the supervision of the permittee, may be engaged in the processing, preparing, packaging, or handling of food;

(3) the home kitchen must sell only to consumers and not to any other business for retail or wholesale;

(4) all food sold or otherwise provided to consumers by the home kitchen operation is ready-to-eat food;

(5) any meat products contained in the food are from a facility licensed by the United States Department of Agriculture or, for meat sourced from outside the state, from a state-licensed facility;

(6) the operation does not produce alcoholic beverages;

(7) the operation does not produce milk or milk products, as by a dairy, except the inclusion of milk products from approved sources in ready-to-eat food;

(8) does not produce food items containing raw shellfish;

(9) the operation does not produce any food that requires a hazard analysis and critical control point (HACCP) plan under applicable federal, state or local law, or any low-acid canned food or acidified food that requires a scheduled process under applicable federal, state or local law;

(10) the operation is not a cottage food operation, food service establishment, temporary food service establishment, a bed and breakfast, a caterer, or residential group home facility.

(b) A home kitchen operation must deliver food directly to an informed end consumer. Home kitchens may sell food online or by phone order and may deliver in person or through an agent or third-party delivery service, including through an online food marketplace.

(c) Within 180 days of the effective date of this act, the Department shall establish food safety and labeling requirements for home kitchen operations. Such rules must:

1) be reasonably necessary to ensure food safety and reasonably feasible for ordinary home kitchen facilities;

2) not require home kitchen operations to have or to use facilities or equipment not ordinarily used in private homes; and

3) not prevent or restrict persons who live in the home and their guests from accessing and being present in the licensed area while food for the home kitchen operation is being stored, handled, prepared or packaged, so long as such persons are supervised by the licensed operator and not known to have symptoms of acute gastrointestinal illness or to be infected with a disease that is transmissible through food.

4) If food safety training is required, the commissioner shall ensure that the training content and any required examination are available in languages other than English that are commonly spoken by Massachusetts residents as their primary language.

(d) The Department shall inspect and issue a license to any home food operation that meets the requirements of this Section and the regulations promulgated by the Department. After the initial inspection, the inspecting authority may access, for inspection purposes, the licensed area of a microenterprise home kitchen operation if the inspecting authority has a valid reason,

such as a consumer complaint, to suspect that adulterated or otherwise unsafe food has been produced or served by the microenterprise home kitchen operation, or that the microenterprise home kitchen operation has otherwise been in violation of this section. The Department may charge a license fee not to exceed one hundred dollars.

(e) The Department must maintain a registry of home kitchen operations licensed under its authority, including a registration number for each license, which may be used to identify home kitchen operations. Home kitchen operations may, but are not required, to use this personal identification number in lieu of address on online food marketplaces or on any labels required by the Department.

(f) The Department shall establish a registry for online food marketplaces selling food produced by licensed home kitchen operations. The Department shall establish a registry for online food marketplaces selling food produced by licensed home kitchen operations. Requirements for registration must include:

(1) disclosure to the consumer that the cottage food product is produced at a home kitchen operation and may contain allergens; and

(2) clearly and conspicuously posting on the online food marketplace's internet website or mobile application the fees associated with using its marketplace or delivery service in a manner that allows both the consumer and the home cooking operation to see and understand the amount being charged for the services provided by the online food marketplace.

(g) Zoning regulations shall not prohibit the operation in a residential zone of any cottage food.

(h) Counties and municipalities shall allow commercial delivery services to pick up food from home kitchen operations.

(i) Counties and municipalities may not impose additional or different requirements or restrictions on home kitchen operations than this law and rules of the Department.

SECTION 3. This act shall take effect upon its passage.