

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 187

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO FOOD SAFETY; AMENDING SECTION 39-1602, IDAHO CODE, TO DEFINE  
2 TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-1603,  
3 IDAHO CODE, TO GRANT RULEMAKING AUTHORITY TO THE BOARD OF HEALTH AND  
4 WELFARE; AMENDING SECTION 39-1604, IDAHO CODE, TO PROVIDE THAT HOME  
5 KITCHEN OPERATIONS ARE EXEMPT FROM LICENSING REQUIREMENTS BUT SHALL  
6 REGISTER AND BE SUBJECT TO CERTAIN RULES AND TO MAKE A TECHNICAL COR-  
7 RECTION; AMENDING CHAPTER 16, TITLE 39, IDAHO CODE, BY THE ADDITION OF  
8 A NEW SECTION 39-1608, IDAHO CODE, TO PROVIDE THAT HOME KITCHEN OPERA-  
9 TIONS MAY SELL COTTAGE FOODS AT CERTAIN VENUES, TO PROVIDE THAT FURTHER  
10 SALE OR DISTRIBUTION OF COTTAGE FOODS AFTER AN INITIAL SALE IS PROHIB-  
11 ITED, TO PROVIDE THAT HOME KITCHEN OPERATIONS MAY SELL COTTAGE FOODS TO  
12 IDAHO RESIDENTS ONLINE OR BY MAIL, TO PROVIDE THAT COTTAGE FOODS SHALL  
13 BE SOLD WITH LABELS THAT INCLUDE CERTAIN INFORMATION, TO PROVIDE THAT  
14 HOME KITCHEN OPERATIONS SHALL NOT HAVE GROSS SALES EXCEEDING A CERTAIN  
15 AMOUNT AND TO PROVIDE THAT VIOLATIONS OF CERTAIN REQUIREMENTS SHALL  
16 BE SUBJECT TO ENFORCEMENT PROCEEDINGS; AND AMENDING CHAPTER 16, TITLE  
17 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1609, IDAHO CODE, TO  
18 PROVIDE THAT OWNERS OF HOME KITCHEN OPERATIONS SHALL REGISTER WITH THE  
19 REGULATORY AUTHORITY AND HOLD A CERTAIN PERMIT AND TO PROVIDE THAT THE  
20 REGULATORY AUTHORITY MAY INVESTIGATE A HOME KITCHEN OPERATION UNDER A  
21 CERTAIN CIRCUMSTANCE.  
22

23 Be It Enacted by the Legislature of the State of Idaho:

24 SECTION 1. That Section 39-1602, Idaho Code, be, and the same is hereby  
25 amended to read as follows:

26 39-1602. DEFINITIONS. As used in this chapter:

27 (1) "Commissary" means a place where food, containers or supplies are  
28 stored, prepared or packaged for transit, sale or service at other loca-  
29 tions.

30 (2) "Cottage foods" means nonpotentially hazardous foods that may be  
31 produced and sold by a home kitchen operation, but does not include low-acid  
32 canned foods or acidified foods as defined by 21 CFR 113-114.

33 (3) "Food establishment" means those operations in the food business  
34 such as, but not limited to, food processing establishments, canning fac-  
35 tories, salvage processing facilities, food service establishments, cold  
36 storage plants, commissaries, warehouses, food vending machine operations  
37 and locations, caterers, mobile food units and retail food stores. Such  
38 operations include all activities under the control of the license holder  
39 including preparation, processing, storage, service, transportation vehi-  
40 cles, satellite locations, divisions and departments, and remote feeding  
41 sites. The term includes operations ~~which~~ that are conducted in permanent,  
42 temporary or mobile facilities or locations. It includes any food operation

1 regardless of whether consumption is on or off the premises and regardless of  
 2 whether there is a charge for the food. Individual divisions and departments  
 3 on one (1) premises and under common ownership shall as a whole be consid-  
 4 ered a single food establishment. The term "food establishment" does not  
 5 include:

6 (a) Private homes where food is prepared or served for individual fam-  
 7 ily consumption;

8 (b) Fraternal, benevolent or nonprofit charitable organizations ~~which~~  
 9 that do not prepare or serve food on a regular basis. Food shall not be  
 10 considered to be served on a regular basis if the food is served for a  
 11 period not to exceed five (5) consecutive days on no more than three (3)  
 12 occasions per year for foods ~~which that~~ are not potentially hazardous,  
 13 or if the food is served no more than one (1) meal a week for all other  
 14 foods;

15 (c) Bed and breakfast establishments with ten (10) or fewer beds;

16 (d) Establishments ~~which that~~ offer only factory-sealed foods that are  
 17 not potentially hazardous;

18 (e) Agricultural markets; ~~and~~

19 (f) Agricultural equipment used for the extraction or harvest of an  
 20 agricultural product including, but not limited to, mint stills; and

21 (g) Home kitchen operations.

22 (4) "Home kitchen operation" means a person who produces or packages  
 23 cottage foods in a kitchen of that person's primary domestic residence or  
 24 a noncommercial kitchen in a building on that person's property for direct  
 25 sale by the person, a family member or an agent of the person or family member  
 26 pursuant to sections 39-1608 and 39-1609, Idaho Code.

27 (35) "Intermittent food establishment" means a food vendor that oper-  
 28 ates for a period of time, not to exceed three (3) days per week, at a sin-  
 29 gle, specified location in conjunction with a recurring event and that of-  
 30 fers potentially hazardous food to the general public. Examples of a recur-  
 31 ring event may be a farmers<sup>l</sup> or community market or a holiday market. "In-  
 32 termittent food establishment" does not include the vendor of farm fresh un-  
 33 graded eggs at a recurring event.

34 (46) "Mobile food establishment" means a food establishment selling  
 35 or serving food for human consumption from any vehicle or other temporary  
 36 or itinerant station and includes any movable food service establishment,  
 37 truck, van, trailer, pushcart, bicycle, watercraft or other movable food  
 38 service with or without wheels, including hand-carried, portable containers  
 39 in or on which food or beverage is transported, stored or prepared for retail  
 40 sale or given away at temporary locations.

41 (57) "Potentially hazardous food" means any food or ingredient, nat-  
 42 ural or synthetic, in a form capable of supporting the rapid and progres-  
 43 sive growth of infectious or toxigenic microorganisms or the slower growth  
 44 of clostridium botulinum. Included is any food of animal origin, either raw  
 45 or heat treated, and any food of plant origin ~~which that~~ has been heat treated  
 46 or ~~which that~~ is raw seed sprouts; cut melons; and garlic and oil mixtures.  
 47 The term "potentially hazardous food" does not include:

48 (a) Air-dried hard-boiled eggs with shells intact;

49 (b) Foods with a water activity (aw) value of eighty-five hundredths  
 50 (0.85) or less;

1 (c) Foods with a pH (hydrogen ion concentration) level of four and  
 2 six-tenths (4.6) or below when measured at seventy-five (75) degrees  
 3 Fahrenheit;

4 (d) Foods in unopened ~~hermetically sealed~~ hermetically sealed con-  
 5 tainers ~~which~~ that have been commercially processed to achieve and  
 6 maintain commercial sterility under conditions of nonrefrigerated  
 7 storage and distribution;

8 (e) Foods for which laboratory evidence, acceptable to the regulatory  
 9 authority, demonstrates that rapid and progressive growth of infec-  
 10 tious and toxigenic microorganisms or the slower growth of clostridium  
 11 botulinum cannot occur;

12 (f) Milk, half-and-half cream, butter products, frozen dairy desserts  
 13 and other fluid milk products, in the original unopened container; and

14 (g) Any other food items determined by the department of health and wel-  
 15 fare not to be potentially hazardous.

16 (68) "Regulatory authority" means the director of the Idaho department  
 17 of health and welfare or the director's designee.

18 (79) "Temporary food establishment" means a food establishment that  
 19 operates for a period of not more than fourteen (14) consecutive days in con-  
 20 junction with a single event or celebration.

21 SECTION 2. That Section 39-1603, Idaho Code, be, and the same is hereby  
 22 amended to read as follows:

23 39-1603. POWERS AND DUTIES OF BOARD. The board of health and welfare  
 24 shall promulgate rules governing:

25 (1) The establishment and control of sanitation standards for food es-  
 26 tablishments;

27 (2) The issuance, suspension and revocation of licenses;

28 (3) The review of plans and specifications prior to construction or al-  
 29 teration of food establishments;

30 (4) The procedure and scope of inspections to determine compliance with  
 31 the standards and rules adopted under this chapter;

32 (5) The criteria for the examination, embargo and destruction of food  
 33 in compliance with section 37-118, Idaho Code; ~~and~~

34 (6) The establishment of a grading system for food establishments to be  
 35 used at local option; and

36 (7) Home kitchen operations and cottage foods, and any fees relating  
 37 thereto.

38 SECTION 3. That Section 39-1604, Idaho Code, be, and the same is hereby  
 39 amended to read as follows:

40 39-1604. LICENSE REQUIREMENTS FOR FOOD ESTABLISHMENTS. (1) No per-  
 41 son, firm or corporation shall operate a food establishment, for which no  
 42 other state or federal food safety inspection or license is required, with-  
 43 out a license approved by the director of the department of health and wel-  
 44 fare or his designee. Food establishment licenses shall not be transfer-  
 45 able and the type of license and any restrictions will be specified on the  
 46 license.

1 Terms and conditions of licensure are to be established by rules in ac-  
 2 cordance with the intent of this chapter. Any applicant or license holder  
 3 aggrieved by an action of the regulatory authority ~~which that~~ results in de-  
 4 nial, suspension, or revocation of a license has the right to a hearing con-  
 5 ducted pursuant to chapter 52, title 67, Idaho Code, and appeal shall be pro-  
 6 vided therein.

7 (2) Home kitchen operations shall be exempt from the licensing require-  
 8 ments of this chapter; provided however, that a home kitchen operation shall  
 9 register and operate according to applicable provisions of this chapter and  
 10 to rules promulgated by the board.

11 SECTION 4. That Chapter 16, Title 39, Idaho Code, be, and the same is  
 12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 13 ignated as Section 39-1608, Idaho Code, and to read as follows:

14 39-1608. HOME KITCHEN OPERATIONS. (1) A home kitchen operation may  
 15 sell cottage foods directly to consumers at the following venues:

- 16 (a) Private homes;
- 17 (b) Community events;
- 18 (c) Community-supported agriculture share programs;
- 19 (d) Farmers markets; and
- 20 (e) Roadside stands.

21 (2) Further distribution or sale of cottage foods beyond the initial  
 22 point of sale is prohibited.

23 (3) A home kitchen operation may sell cottage foods online or by mail  
 24 order, provided that the consumer's shipping address is located within the  
 25 state of Idaho.

26 (4) Cottage foods shall be sold with labels that include the following  
 27 information:

- 28 (a) The product's name;
- 29 (b) The name, location and contact information of the home kitchen op-  
 30 eration that made the product;
- 31 (c) A disclaimer stating that the product may contain allergens; and
- 32 (d) A disclaimer stating: "This product was home-produced and is not  
 33 subject to routine food safety inspections."

34 (5) A home kitchen operation shall not have gross sales that exceed  
 35 thirty thousand dollars (\$30,000) annually.

36 (6) A home kitchen operation that violates this section shall be sub-  
 37 ject to enforcement proceedings pursuant to section 39-1606, Idaho Code.

38 SECTION 5. That Chapter 16, Title 39, Idaho Code, be, and the same is  
 39 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 40 ignated as Section 39-1609, Idaho Code, and to read as follows:

41 39-1609. REGISTRATION AND INVESTIGATION OF HOME KITCHEN OPERA-  
 42 TIONS. (1) The owner of a home kitchen operation shall:

- 43 (a) Register with the regulatory authority prior to producing and sell-  
 44 ing cottage foods; and
- 45 (b) Hold a valid food handler's permit specific to the cottage food in-  
 46 dustry.

1           (2) The regulatory authority may investigate a home kitchen operation  
2    in the event of a food-borne illness.