

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1258

AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 16-18-2-211, AS AMENDED BY P.L.208-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 211. (a) "Local health department", except as provided in ~~subsection (b)~~; **subsections (b) and (c)**, means a department organized by a county or city executive with a board, a health officer, and an operational staff to provide health services to a county, city, or multiple county unit.

(b) "Local health department", for purposes of IC 16-41-7.5, has the meaning set forth in IC 16-41-7.5-1.

(c) "Local health department", for purposes of IC 16-42-5.1, has the meaning set forth in IC 16-42-5.1-1.

SECTION 2. IC 16-18-2-239.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 239.3. "Mobile retail food establishment", for purposes of IC 16-42-5.1, has the meaning set forth in IC 16-42-5.1-2.**

SECTION 3. IC 16-18-2-239.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 239.4. "Mobile retail food establishment permit", for purposes of IC 16-42-5.1, has the meaning set forth in IC 16-42-5.1-3.**

SECTION 4. IC 16-18-2-287.8 IS REPEALED [EFFECTIVE JULY

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1, 2024]. Sec. 287.8: (a) "Potentially hazardous food product"; for purposes of IC 16-42-5.3, means a food that is natural or synthetic and requires temperature control because it is in a form capable of supporting any of the following:

- (1) The rapid and progressive growth of infectious or toxigenic microorganisms.
- (2) The growth and toxin production of *Clostridium botulinum*.
- (3) In raw shell eggs, the growth of *Salmonella enteritidis*.

(b) The term includes the following:

- (1) A food of animal origin that is raw or heat treated.
- (2) A food of plant origin that is heat treated or consists of raw seed sprouts.
- (3) Cut melons.
- (4) Garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth described in subsection (a).

SECTION 5. IC 16-18-2-351.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 351.7. (a) "Time temperature control for safety food", for purposes of IC 16-42-5.3, means a food that requires time or temperature control to safely limit the:

- (1) growth of pathogenic microorganisms; or
- (2) formation of toxins.

(b) The term includes the following:

- (1) A food of animal origin that is raw or heat treated.
- (2) A food of plant origin that is heat treated or consists of any of the following:
 - (A) Raw seed sprouts.
 - (B) Cut melons.
 - (C) Cut leafy greens.
 - (D) Cut tomatoes or mixtures of cut tomatoes that are not modified in a way that results in mixtures that do not support the growth or formation described in subsection (a).
 - (E) Garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support the growth or formation described in subsection (a).
- (3) Except as specified in subsection (c)(4) and (c)(5), a food that involves an interaction of pH and A_w for control of spores in food that is heat treated to destroy vegetative cells and subsequently packaged that results in:
 - (A) an A_w value greater than 0.92 but less than or equal to



- 0.95 and a pH value greater than 5.6; or
 (B) an Aw value greater than 0.95 and a pH value greater than 4.6.
- (4) Except as specified in subsection (c)(4) and (c)(5), a food that involves an interaction of pH and Aw for control of vegetative cells and spores in food that is not heat treated, or is heat treated but not packaged, and that results in:
- (A) an Aw value greater than or equal to 0.88 but less than or equal to 0.90 and a pH value greater than 5.0;
 - (B) an Aw value greater than 0.90 but less than or equal to 0.92 and a pH value greater than 4.6; or
 - (C) an Aw value greater than 0.92 and a pH value greater than or equal to 4.2.
- (c) The term does not include the following:
- (1) An air-cooled hard-boiled egg with shell intact.
 - (2) An egg with shell intact that:
 - (A) is not hard-boiled; and
 - (B) has been pasteurized to destroy all viable salmonellae.
 - (3) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.
 - (4) Except as specified in subsection (b)(1) or (b)(2), a food that does not meet the requirements described in subsection (b)(3) or (b)(4) due to the:
 - (A) pH or Aw value; or
 - (B) interaction of Aw and pH values; of the food.
 - (5) A food that meets the requirements of subsection (b)(3) or (b)(4) and has undergone a product assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in the food is precluded due to:
 - (A) intrinsic factors, including added or natural characteristics of the food (such as preservatives, antimicrobials, humectants, acidulants, or nutrients);
 - (B) extrinsic factors, including environmental or operational factors that affect the food (such as packaging), modified atmosphere (such as reduced oxygen packaging), shelf life and use, or temperature range of storage and use; or
 - (C) any combination of intrinsic and extrinsic factors



described in clause (A) or (B).

(6) A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with subdivisions (1) through (4) even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

SECTION 6. IC 16-18-2-371.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 371.5. "Water activity" or "Aw"** refers to the:

- (1) measure of the free moisture in a food; and
- (2) quotient of the water vapor pressure of a substance divided by the vapor pressure of pure water at the same temperature.

SECTION 7. IC 16-42-5.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:

Chapter 5.1. Mobile Retail Food Establishments

Sec. 1. As used in this chapter, "local health department" refers to:

- (1) a local health department established under IC 16-20; or
- (2) the health and hospital corporation created under IC 16-22-8.

Sec. 2. (a) As used in this chapter, "mobile retail food establishment" means a retail food establishment that is readily moveable.

(b) The term includes a retail food establishment that:

- (1) has wheels;
- (2) is on skids;
- (3) is mounted on a vehicle; or
- (4) is a marine vessel.

Sec. 3. As used in this chapter, "mobile retail food establishment permit" refers to a permit issued by a local health department for the operation of a mobile retail food establishment.

Sec. 4. (a) A local health department shall:

- (1) issue a mobile retail food establishment permit; and
- (2) inspect a mobile retail food establishment;

in accordance with rules adopted by the state department under IC 4-22-2.

(b) A local health department shall establish an annual fee:

- (1) to be paid with each application for the issuance or renewal of a mobile retail food establishment permit; and



(2) that does not exceed two hundred dollars (\$200).

Sec. 5. (a) Not later than January 1, 2025, a local health department shall begin:

- (1) receiving applications for mobile retail food establishment permits;**
- (2) collecting annual permit fees;**
- (3) issuing a mobile retail food establishment permit; and**
- (4) conducting inspections of mobile retail food establishments.**

(b) Beginning January 1, 2025, a person may not operate a mobile retail food establishment within the jurisdiction of a local health department unless the person obtains a mobile retail food establishment permit from the local health department.

Sec. 6. A local health department may conduct more than one (1) inspection of a mobile retail food establishment.

Sec. 7. A local health department may not adopt standards concerning mobile retail food establishments that are more stringent than the rules adopted by the state department under IC 4-22-2.

Sec. 8. A mobile retail food establishment permit issued by a local health department under this chapter:

- (1) is in effect for one (1) year;**
- (2) may be renewed annually by the owner or operator of a mobile retail food establishment that continues to meet the standards established by the local health department under this chapter; and**
- (3) authorizes the owner or operator to operate a mobile retail food establishment within the jurisdiction of the local health department.**

SECTION 8. IC 16-42-5.3-1, AS ADDED BY P.L.49-2022, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 1. (a) As used in this chapter, "end consumer" means a person who is the last person to purchase any food product and who does not resell the food product.

(b) As used in this chapter, "roadside stand" means a structure, including a tent, stand, vehicle, or trailer that is:

- (1) visible from a road; and**
- (2) located not more than one hundred (100) feet from the edge of the side of the road;**

where whole uncut produce, food products that are not ~~potentially hazardous~~, time temperature control for safety food, poultry that is exempt under IC 15-17-5-11, rabbits, or eggs permitted for sale by the



state egg board are sold to an end consumer.

SECTION 9. IC 16-42-5.3-4, AS ADDED BY P.L.49-2022, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 4. A home based vendor shall prepare and sell only a food product that is:

- (1) made, grown, or raised by an individual at the individual's primary residence, including any permanent structure that is on the same property as the residence;
- (2) not a ~~potentially hazardous food product~~; **time temperature control for safety food**;
- (3) prepared using proper sanitary procedures, including:
 - (A) proper hand washing;
 - (B) sanitizing the container or other packaging in which the food product is contained;
 - (C) storing the food product safely;
 - (D) producing the food product in a food preparation or packaging area in which animals are not present; and
 - (E) cleaning and sanitizing of surfaces that have contact with the food product;
- (4) not resold;
- (5) sold in person, by telephone, or through the Internet; and
- (6) delivered to the end consumer in person, by mail, or by a third party carrier.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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