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**SUBSTITUTE HOUSE BILL 1706**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Local Government (originally sponsored by Representatives Entenman, Chapman, Ramel, Jacobsen, Reed, Doglio, Thai, Ryu, Fitzgibbon, Bateman, Fey, Berry, Orwall, Callan, Robertson, Ormsby, Eslick, Duerr, Slatter, and Macri)

READ FIRST TIME 02/17/23.

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 70 RCW; creating new sections; and providing  
5 expiration dates.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature recognizes the  
8 economic hardship caused by the COVID-19 pandemic.

9 (2) The legislature recognizes there are existing barriers in  
10 access to the food and hospitality industry that disproportionately  
11 impact black, indigenous, and immigrant, low income, and communities  
12 of color.

13 (3) It is the intent of the legislature to establish a pilot  
14 program to determine whether microenterprise home kitchen operations  
15 are a suitable model to reduce inequities in the food and hospitality  
16 industry, maintain public health principles, and vitalize the local  
17 food economy.

18 NEW SECTION. **Sec. 2.** The definitions in this section apply  
19 throughout this chapter unless the context clearly requires  
20 otherwise.

1 (1) "Department" means the state department of health.

2 (2) "Domestic residence" means a single-family dwelling or an  
3 area within a rental unit where a single person or family actually  
4 resides. "Domestic residence" does not include:

5 (a) A group or communal residential setting within any type of  
6 structure; or

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

8 (3) "Home kitchen" means a kitchen primarily intended for use by  
9 the residents of a home.

10 (4) "Internet food service intermediary" means an entity that  
11 facilitates the sale of home-cooked meals offered by a  
12 microenterprise home kitchen operation through the entity's digital  
13 network.

14 (5) (a) "Microenterprise home kitchen operation" means a home  
15 kitchen that is operated by a person in the person's primary domestic  
16 residence where food is stored, handled, and prepared for consumers  
17 and permitted by the regulatory authority as defined in this section.

18 (b) "Microenterprise home kitchen operation" does not include a  
19 cottage food operation as defined in chapter 69.22 RCW.

20 (6) "Operating plan" means the operating plan submitted by the  
21 microenterprise home kitchen operation pursuant to section 4 of this  
22 act.

23 (7) "Permit" means the document issued by the regulatory  
24 authority that authorizes a person to operate a food establishment.

25 (8) "Permit holder" means the entity that:

26 (a) Is legally responsible for the operation of the  
27 microenterprise home kitchen operation such as the owner, the owner's  
28 agent, or other person; and

29 (b) When required, possesses a valid permit to operate a  
30 microenterprise home kitchen operation.

31 (9) "Permitted area" means the portion of a domestic residence  
32 housing a home kitchen where the preparation, packaging, storage, or  
33 handling of food products for the microenterprise home kitchen  
34 operation occurs.

35 (10) "Regulatory authority" means the local, state, or federal  
36 enforcement body or authorized representative having jurisdiction  
37 over the food establishment. The local board of health, acting  
38 through the local health officer, is the regulatory authority for the  
39 activity of a food establishment, except as otherwise provided by  
40 law.

1 (11) "State board" means the state board of health.

2 (12) "Third-party delivery service" means an outsourced entity  
3 that provides delivery logistics of purchased meals from vendor to  
4 consumer.

5 NEW SECTION. **Sec. 3.** (1) The department shall develop and begin  
6 a pilot program to assess the possible adoption of rules for  
7 microenterprise home kitchen operations.

8 (a) Prior to issuing permits in any county administering the  
9 pilot program, the department must enter into a joint plan of  
10 responsibility with a local health jurisdiction.

11 (b) Starting July 1, 2024, the department is authorized to permit  
12 and inspect up to 200 microenterprise home kitchen operations during  
13 the pilot program. The department may issue no more than 75 permits  
14 in a single county.

15 (2) Microenterprise home kitchen operations may engage in the  
16 direct sale of food to consumers for consumption at a location other  
17 than the premises of the microenterprise home kitchen operation.

18 (3) Microenterprise home kitchen operations are subject to  
19 chapter 246-215 WAC, including but not limited to the following  
20 restrictions:

21 (a) Food preparation may not involve processes that require a  
22 hazard analysis critical control point plan from the department, the  
23 production, service, or sale of raw milk or raw milk products, as  
24 identified in RCW 15.36.012, nonpasteurized juice, curing of meats,  
25 or the service or sale of raw oysters or other shellfish;

26 (b) The operation may sell no more than 20 individual meals or  
27 meal equivalent portions per day and no more than 100 individual  
28 meals or meal equivalent portions per week based on the capacity of  
29 the microenterprise home kitchen operation;

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

31 (d) Food products prepared in a microenterprise home kitchen  
32 operation may not be delivered outside of the state by the operator  
33 of the microenterprise home kitchen operation unless allowed in the  
34 state of delivery;

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

37 (f) An internet food service intermediary must conspicuously post  
38 any fees associated with their digital network in high school  
39 equivalent English, offer or provide liability insurance, and notify

1 microenterprise home kitchen operations in writing 30 days in advance  
2 of any fee change exceeding a two percent increase;

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

8 (h) The microenterprise home kitchen operation must post any  
9 inspection scores, grades, or other evaluation records required by  
10 the department at the entry of the operation during business hours  
11 and on any internet page or internet food service intermediary that  
12 is offering the operation's food for sale;

13 (i) Food produced in a microenterprise home kitchen operation may  
14 not be held hot for more than two hours before pickup or delivery;  
15 and

16 (j) Food produced in a microenterprise home kitchen operation may  
17 not be held overnight.

18 (4) Microenterprise home kitchen operations must follow the  
19 requirements of the current food service code in chapter 246-215 WAC,  
20 unless otherwise exempted by the department upon conducting a risk-  
21 based plan review pursuant to section 4 of this act.

22 (5) Upon conclusion of the pilot program, the state board may,  
23 based on the department's recommendation, adopt rules for the  
24 authorization, operation, and regulation of microenterprise home  
25 kitchen operations.

26 NEW SECTION. **Sec. 4.** (1) A microenterprise home kitchen  
27 operation must obtain a permit from the department.

28 (2) The microenterprise home kitchen operation's permit must be  
29 renewed annually. The department must maintain data on existing  
30 commissary, shared, or commercial kitchen facilities available for  
31 rent. Local health jurisdictions will work to inventory, permit, and  
32 inspect commissary, shared, or commercial kitchen facilities.

33 (3) All microenterprise home kitchen operation permits expire  
34 June 30, 2027.

35 (4) As part of the application for a permit to operate as a  
36 microenterprise home kitchen operation, an applicant must submit a  
37 written standard operating plan to the department that includes but  
38 is not limited to the following information:

39 (a) A menu stating the foods to be offered;

- 1 (b) All food types or products that will be handled;
- 2 (c) The proposed procedures and methods of food preparation and  
3 handling;
- 4 (d) A description of all food preparation surfaces, including how  
5 they will be cleaned and how often they will be cleaned;
- 6 (e) Procedures, methods, and schedules for cleaning utensils,  
7 equipment, and for the disposal of refuse;
- 8 (f) How food will be maintained at the required holding  
9 temperatures pending pickup by the consumer or during delivery if  
10 delivered by the operator;
- 11 (g) Procedures for food storage, which must meet the requirement  
12 that all food be stored at least six inches off the floor and include  
13 how prepared food will be stored prior to sale or delivery;
- 14 (h) A description of packaging for food;
- 15 (i) When meat and dairy products will be purchased and stored,  
16 including for how long such products will be stored prior to use;
- 17 (j) Cooking temperatures and how temperatures for cooked foods  
18 will be measured;
- 19 (k) How the microenterprise home kitchen operation will prevent  
20 anyone other than the approved and trained food service handler from  
21 accessing the kitchen while foods are being prepared;
- 22 (l) A description of adequate refrigeration capacity as  
23 appropriate to the menu;
- 24 (m) Days and times that the home kitchen may potentially be  
25 utilized as a microenterprise home kitchen operation. The listed days  
26 and times are provided only for informational purposes and are not  
27 binding on the permit holder's actual operations; and
- 28 (n) If the microenterprise home kitchen operation is in a rental  
29 property, attestation that operating a business does not violate the  
30 rental agreement.
- 31 (5) A permit may, as appropriate, require additional  
32 refrigeration capacity that is available and readily installable for  
33 home consumers.
- 34 (6) A microenterprise home kitchen operation permitted under this  
35 section must include a signed document attesting, by opting to become  
36 permitted, that the operator of the permitted microenterprise home  
37 kitchen operation understands that the department will seek to enter  
38 the permitted area of the domestic residence housing the  
39 microenterprise home kitchen operation for the purposes of  
40 inspections pursuant to section 5 of this act. After the department

1 presents official credentials and provides notice of the purpose of,  
2 and intent to conduct, an inspection, the permit holder shall allow  
3 the department to determine if the microenterprise home kitchen  
4 operation is in compliance with this chapter by allowing access to  
5 the establishment, allowing inspection, and providing information and  
6 records specified in this chapter and to which the department is  
7 entitled according to law, during the microenterprise home kitchen  
8 operation's hours of operation and other reasonable times. Absent a  
9 search warrant, the health inspector may not enter a home when only  
10 minors are present.

11 (7) For purposes of permitting, the permitted area includes the  
12 home kitchen, food storage, utensils and equipment, toilet room,  
13 janitorial or cleaning facilities, outdoor cooking facilities, and  
14 refuse storage area. Food operations may not be conducted outside of  
15 the permitted areas.

16 (8) The department shall issue a permit after an initial  
17 inspection and review and risk-based assessment of the  
18 microenterprise home kitchen operation's operating plan have  
19 determined that the proposed microenterprise home kitchen operation  
20 and its method of operation comply with the requirements of this  
21 chapter.

22 (9) An applicant for a permit or a permit renewal as a  
23 microenterprise home kitchen operation must provide documentation  
24 that all individuals to be involved in the preparation of  
25 microenterprise home kitchen operation foods have secured a food and  
26 beverage service worker's permit under chapter 69.06 RCW.

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

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

33 NEW SECTION. **Sec. 5.** (1) The permitted area of a  
34 microenterprise home kitchen operation must be inspected for basic  
35 hygiene by the department before initial permitting under section 4  
36 of this act and may, at the discretion of the department, be  
37 inspected up to twice per year after initial permitting only when the  
38 permit holder is present. The permit holder shall make themselves  
39 available for routine inspection or in response to a foodborne

1 outbreak or other public health emergency. The authority of the  
2 department to inspect a microenterprise home kitchen operation  
3 includes the authority to inspect any records required to be kept  
4 under the provisions of this chapter. For any inspection, the  
5 department shall document the reason for the inspection, shall  
6 maintain such documentation on file with the microenterprise home  
7 kitchen operation's permit, and shall provide the reason for the  
8 inspection in writing to the permit holder of the microenterprise  
9 home kitchen operation. The inspector's access is limited to the  
10 permitted area.

11 (2) When the department conducts a basic hygiene inspection, the  
12 department shall, at a minimum, inspect for the following:

13 (a) That the permitted microenterprise home kitchen operation  
14 understands that no person other than the permittee, or a person  
15 under the direct supervision of the permittee, may be engaged in the  
16 processing, preparing, packaging, or handling of any microenterprise  
17 home kitchen operation food products or be in the home kitchen during  
18 the preparation, packaging, or handling of any microenterprise home  
19 kitchen operation food products;

20 (b) That no microenterprise home kitchen operation food  
21 preparation, packaging, or handling is occurring in the  
22 microenterprise home kitchen operation concurrent with any other  
23 domestic activities such as family meal preparation, dishwashing,  
24 clothes washing or ironing, kitchen cleaning, or guest entertainment,  
25 except that this subsection (2)(b) may not be construed so as to  
26 prohibit a microenterprise home kitchen operation from offering  
27 cooking classes within the home kitchen;

28 (c) That no infants, small children, or pets are in the  
29 microenterprise home kitchen operation during the preparation,  
30 packaging, or handling of any microenterprise home kitchen operation  
31 food products;

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

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

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

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

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

5 (iii) Wash their hands before any food preparation and food  
6 packaging activities; and

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

10 (3) Nonemergency inspections may occur only during the normal  
11 business hours when the permit holder is present and with reasonable  
12 advance notice, by appointment, or pursuant to a search warrant.  
13 Under ordinary circumstances, advance notice provided at least two  
14 business days prior is considered reasonable for purposes of this  
15 section.

16 (4) If in the event the department is denied access to the  
17 permitted area of a domestic residence housing a microenterprise home  
18 kitchen operation where access was sought for the purposes of  
19 enforcing or administering this chapter, the department may:

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

24 (b) Apply to any court of competent jurisdiction for a search  
25 warrant authorizing access to the permitted area of a domestic  
26 residence housing a permitted microenterprise home kitchen operation,  
27 upon which the court may issue a search warrant for the purposes  
28 requested.

29 (5) Access provided under this section is limited to the  
30 permitted area of the microenterprise home kitchen operation, during  
31 regular business hours, and solely for the purpose of enforcing or  
32 administering this chapter.

33 NEW SECTION. **Sec. 6.** (1) When the department or the local  
34 health jurisdiction determines that any person is engaging in a  
35 microenterprise home kitchen operation without a valid permit issued  
36 under section 4 of this act, the department or local health  
37 jurisdiction may impose penalties consistent with violations of  
38 chapter 246-215 WAC.



1 (2) When the department determines a permit holder of a  
2 microenterprise home kitchen operation is violating any provision of  
3 this chapter or any rule adopted under this chapter, the department  
4 may impose penalties or conditions as provided in this section.

5 (3) (a) For the first violation within a two-year period, the  
6 department must hold an administrative conference with the operator  
7 of the microenterprise home kitchen operation, which may include, as  
8 appropriate, an offer of technical assistance.

9 (b) For the second or subsequent violation within a two-year  
10 period, the department may initiate one, or a combination of one or  
11 more, of the following compliance methods:

12 (i) A written warning;

13 (ii) Placing the microenterprise home kitchen operation on  
14 probation, which may include setting conditions for continued  
15 operation of the microenterprise home kitchen operation during the  
16 probation period and, if the individual is operating without a valid  
17 permit, an administrative fine;

18 (iii) Suspending the permit of the microenterprise home kitchen  
19 operation;

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

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

25 NEW SECTION. **Sec. 7.** (1) If the department seeks to deny,  
26 suspend, or revoke any permit provided for in this chapter, it may do  
27 so if, after conducting a hearing, it is determined that a permittee  
28 has committed any of the following acts:

29 (a) Refused, neglected, or failed to comply with the provisions  
30 of this chapter or any lawful order of the local health jurisdiction;

31 (b) Refused, neglected, or failed to keep and maintain records  
32 required by this chapter, any rule adopted to administer this  
33 chapter, or to make the records available when requested pursuant to  
34 the provisions of this chapter;

35 (c) Consistent with section 5 of this act, refused the department  
36 access to the permitted area of a domestic residence housing a  
37 microenterprise home kitchen operation for the purpose of carrying  
38 out the provisions of this chapter;

1 (d) Consistent with section 5 of this act, refused the department  
2 access to any records required to be kept under the provisions of  
3 this chapter; or

4 (e) Exceeded the meal preparation limits provided in section 3 of  
5 this act.

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

15 NEW SECTION. **Sec. 8.** Except as otherwise provided in this  
16 chapter, a microenterprise home kitchen operation with a valid permit  
17 under section 4 of this act is not subject to the provisions of  
18 chapter 69.07 RCW or to permitting and inspection by the department  
19 of agriculture.

20 NEW SECTION. **Sec. 9.** A new section is added to chapter 69.07  
21 RCW to read as follows:

22 (1) This chapter does not apply to a microenterprise home kitchen  
23 operation with a valid permit under section 4 of this act.

24 (2) This section expires June 30, 2027.

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

27 The department of health shall compile and maintain, in a manner  
28 and format readily accessible by the public, statistics related to  
29 the number and distribution of microenterprise home kitchen  
30 operations permitted pursuant to section 4 of this act.

31 NEW SECTION. **Sec. 11.** Beginning one year after the pilot  
32 program begins, by June 30th of each year, the department must submit  
33 an annual report to the legislature and the governor in compliance  
34 with RCW 43.01.036. Reports should include, but are not limited to,  
35 the following:

36 (1) Reviewing the program adopted in this chapter;

1 (2) Statistics related to the number and distribution of  
2 microenterprise home kitchen operations to be permitted or that are  
3 permitted;

4 (3) Data on existing commissary, shared, or commercial kitchen  
5 facilities available for rent;

6 (4) Any foodborne illness outbreaks associated with any  
7 microenterprise home kitchen operation; and

8 (5) Providing recommendations for necessary legislation regarding  
9 the program adopted in this chapter.

10 NEW SECTION. **Sec. 12.** Sections 2 through 8, 11, and 13 of this  
11 act constitute a new chapter in Title 70 RCW.

12 NEW SECTION. **Sec. 13.** This chapter expires June 30, 2027.

13 NEW SECTION. **Sec. 14.** If specific funding for the purposes of  
14 this act, referencing this act by bill or chapter number, is not  
15 provided by June 30, 2023, in the omnibus appropriations act, this  
16 act is null and void.

17 NEW SECTION. **Sec. 15.** The obligation of local governments to  
18 comply with the requirements established in sections 2 through 8 of  
19 this act is contingent on the provision of state funding to local  
20 governments for the specific purpose of complying with these  
21 requirements.

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