

May 26, 2022

House Enrolled Act (HEA) 1149 (attached) was passed by the Indiana General Assembly in the 2022 session and takes effect July 1. The new legislation specifies requirements for the preparation and sale of food products by a home based vendor (HBV). It also reorganizes provisions concerning the sale of certain food products by an individual vendor at a farmers' market or roadside stand.

The Indiana Department of Health (IDOH) will provide detailed guidance to all local health departments (LHD) but a summary of the new requirements is outlined below.

Please email questions to the IDOH Food Protection Division at homebasedvendor@health.in.gov.

New Statutory Requirements:

- Every vendor must obtain a food handler certificate from a certificate issuer that is accredited by the American National Standards Institute (ANSI). Upon request, the vendor shall provide a copy of the certificate to the state department or an end consumer (Sec. 7)
- The IDOH must issue guidance to local health departments (Sec. 13)

Changes to Current Statutory Requirements:

- IC 16-42-5-29 was repealed and moved to IC 16-42-5.3; HBV are no longer listed as Section 29.
- Statute definition for "Roadside stand" added [Sec. 1(b)]
- Allows for HBVs to sell products in locations other than a farmers' market or roadside stand* (Sec. 2)
- "Property leased by the individual" statement has been removed from code; therefore, home based products are to be 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 [Sec. 4(1)].
- Allows HBV products to be sold online by shipping or delivery to Indiana addresses* [Sec. 4(5) and 4(6)]
- Requires HBV to maintain a record of the shipping or delivery address of each end consumer the vendor sells a food product to for at least one year after the date of the sale. (Sec. 6(b))
- Poultry, rabbits and eggs are only allowed to be sold at roadside stands and farmers market (Sec. 10 and 11)
 - In-shell chicken eggs can be sold if the HBV is registered under and follow the guidelines of the Indiana State Egg Board.
 - Poultry and Rabbit
 - Must be frozen at point of sale if sold at farmers' markets or roadside stands
 - Must be refrigerated at point of sale and through delivery by the producer to the end consumer
 - Contact Indiana State Board of Animal Health (BOAH) for further specifics.

*Still does NOT allow for wholesale

needy, either free of charge or for a nominal donation.

(4) A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property.

(5) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for an organization:

(A) that is organized for:

(i) religious purposes; or

(ii) educational purposes in a nonpublic educational setting;

(B) that is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) that offers the food for sale to the final consumer at an event held for the benefit of the organization;

unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.

(6) Except for food prepared by a for-profit entity, an Indiana nonprofit organization that:

(A) is organized for civic, fraternal, veterans, or charitable purposes;

(B) is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) offers food for sale to the final consumer at an event held for the benefit of the organization;

if the events conducted by the organization take place for not more than fifteen (15) days in a calendar year.

~~(7) An individual vendor of a farmer's market or roadside stand if the individual meets the requirements of IC 16-42-5-29;~~

~~(8) (7) The holder of a farm winery permit under IC 7.1-3-12-5 or a brewer's permit under IC 7.1-3-2-7(5) if the requirements of IC 16-42-5-30 are met.~~

(8) A home based vendor or an individual vendor who sells a food product under IC 16-42-5.3.

SECTION 2. IC 16-18-2-287.8, AS ADDED BY P.L.86-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 287.8. (a) "Potentially hazardous food product", for purposes of ~~IC 16-42-5-29~~, **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*.

HEA 1149 — Concur



(c) is subject to food sampling and inspection if:

(1) the state department determines that the individual vendor's food product is:

(A) misbranded under IC 16-42-2-3; or

(B) adulterated; or

(2) a consumer complaint has been received by the state department.

(c) If the state department has reason to believe that an imminent health hazard exists with respect to an individual vendor's food product, the state department may order cessation of production and sale of the food product until the state department determines that the hazardous situation has been addressed.

(f) For purposes of this section, the state health commissioner or the commissioner's authorized representatives may take samples for analysis and conduct examinations and investigations through any officers or employees under the state health commissioner's supervision. Those officers and employees may enter, at reasonable times, the facilities of an individual vendor and inspect any food products in those places and all pertinent equipment, materials, containers, and labeling.

(g) The state health commissioner may develop guidelines for an individual vendor who seeks an exemption from regulation as a food establishment as described in subsection (c). The guidelines may include:

(1) standards for best safe food handling practices;

(2) disease control measures; and

(3) standards for potable water sources.

(h) The department shall exclude from the definition of food establishment the sale of products described in subsection (i):

(1) by an individual vendor of a farmers market or roadside stand; and

(2) by a farmer selling directly to the end consumer on the farm where the product is produced and through delivery to the end consumer.

(i) Subsection (h) applies to the distribution of the following products:

(1) Poultry products produced under IC 15-17-5-11. Poultry products sold at a farmers market or roadside stand must be frozen at the point of sale. Poultry products sold on the farm where the product is produced must be refrigerated at the point of sale and through delivery.

(2) Rabbits that are slaughtered and processed on a farm for the



- (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;**
- (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.**

Sec. 5. (a) A home based vendor shall include a label for packaged food or a sign for unpackaged food that contains the following information:

- (1) The name and address of the producer of the food product.**
- (2) The common or usual name of the food product.**
- (3) The ingredients of the food product, in descending order by predominance by weight.**
- (4) The net weight or volume of the food product by standard measure or numerical count.**
- (5) The date on which the food product was processed.**
- (6) The following statement in at least 10 point type: "This product is home produced and processed and the production area has not been inspected by the state department of health. NOT FOR RESALE."**

(b) A home based vendor shall post the label of each food product on the vendor's Internet web site.

Sec. 6. (a) A home based vendor may not ship or deliver a food product to an end consumer who is located outside Indiana.

(b) A home based vendor shall do the following:

- (1) Ship or deliver a food product in a sealed package that allows an end consumer to determine whether the product has been tampered with.**
- (2) Maintain a record of the shipping or delivery address of each end consumer the vendor sells a food product to for at least one (1) year after the date of the sale.**



of this title that apply to food establishments:

(1) Poultry products produced under IC 15-17-5-11. Poultry products sold at a farmers' market or roadside stand must be frozen at the point of sale. Poultry products sold on the farm where the product is produced must be kept refrigerated at the point of sale and through delivery by the producer to the end consumer.

(2) Rabbits that are slaughtered and processed on a farm for the purpose of conducting limited sales on the farm, at a farmers' market, and at a roadside stand. Rabbit meat sold at a farmers' market or roadside stand must be frozen at the point of sale. Rabbit meat sold on the farm where the product is produced must be kept refrigerated at the point of sale and through delivery by the producer to the end consumer. An individual who sells rabbits under this subsection shall comply with the label requirements set forth in this chapter.

(c) This section does not apply to the distribution of meat from a game animal.

Sec. 11. (a) IC 16-42-11 applies to the sale of eggs under this chapter.

(b) An individual vendor of a farmers' market or roadside stand is exempt from the requirements of this title that apply to a food establishment relating to the sale of eggs, whole uncut produce, or food products that are not potentially hazardous.

Sec. 12. Notwithstanding any other law, a local unit of government (as defined in IC 14-22-31.5-1) may not by ordinance or resolution require any licensure, certification, or inspection of foods or food products of a home based vendor or an individual vendor who prepares and sells food products under this chapter.

Sec. 13. (a) For the purpose of enforcing this chapter, the local health officers are food environmental health specialists subordinate to the state department.

(b) To ensure that enforcement of the state laws and rules is uniform throughout the state, the state department shall provide to the local health officers who are food environmental health specialists guidelines concerning the interpretation and of the state department's rules concerning home based vendors. A food environmental health specialist may not enforce the state department's rules concerning home based vendors in a manner that is more strict than the state department's guidelines.

