



April 10, 2009

**ENGROSSED  
HOUSE BILL No. 1309**

DIGEST OF HB 1309 (Updated April 8, 2009 1:23 pm - DI 104)

**Citations Affected:** IC 16-18; IC 16-42.

**Synopsis:** Farmer markets and roadside stands. Exempts and individual vendor of a farmer's market or roadside stand from the definition of food establishment if the food product: (1) is made by the individual at the individual's primary residence; (2) is not a potentially hazardous food product; (2) includes a label setting forth specified information; (4) is prepared by an individual who practices proper sanitary procedures; and (5) is not resold. Allows the state department of health to inspect an individual vendor under certain conditions. Allows the state health commissioner to develop guidelines for individual vendors.

**Effective:** Upon passage; July 1, 2009.

**Blanton, Brown T, Moseley, Welch**  
(SENATE SPONSORS — STEELE, HUME, YOUNG R)

January 13, 2009, read first time and referred to Committee on Public Health.  
February 10, 2009, reported — Do Pass.  
February 16, 2009, read second time, amended, ordered engrossed.  
February 17, 2009, engrossed. Read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 19, 2009, read first time and referred to Committee on Health and Provider Services.  
March 30, 2009, reassigned to Committee on Health and Provider Services pursuant to Senate Rule 65(b).  
April 9, 2009, amended, reported favorably — Do Pass.

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April 10, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1309

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A BILL FOR AN ACT to amend the Indiana Code concerning health.

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

- 1 SECTION 1. IC 16-18-2-137, AS AMENDED BY P.L.3-2008,  
2 SECTION 105, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE UPON PASSAGE]: Sec. 137. (a) "Food establishment",  
4 for purposes of IC 16-42-5 and IC 16-42-5.2, means any building,  
5 room, basement, vehicle of transportation, cellar, or open or enclosed  
6 area occupied or used for handling food.  
7 (b) The term does not include the following:  
8 (1) A dwelling where food is prepared on the premises by the  
9 occupants, free of charge, for their consumption or for  
10 consumption by their guests.  
11 (2) A gathering of individuals at a venue of an organization that  
12 is organized for educational purposes in a nonpublic educational  
13 setting or for religious purposes, if:  
14 (A) the individuals separately or jointly provide or prepare,  
15 free of charge, and consume their own food or that of others  
16 attending the gathering; and  
17 (B) the gathering is for a purpose of the organization.

EH 1309—LS 7291/DI 77+



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1 Gatherings for the purpose of the organization include funerals,  
2 wedding receptions, christenings, bar or bat mitzvahs, baptisms,  
3 communions, and other events or celebrations sponsored by the  
4 organization.

5 (3) A vehicle used to transport food solely for distribution to the  
6 needy, either free of charge or for a nominal donation.

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

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

- 13 (A) that is organized for:
  - 14 (i) religious purposes; or
  - 15 (ii) educational purposes in a nonpublic educational setting;
- 16 (B) that is exempt from taxation under Section 501 of the  
17 Internal Revenue Code; and
- 18 (C) that offers the food for sale to the final consumer at an  
19 event held for the benefit of the organization;

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

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

- 24 (A) is organized for civic, fraternal, veterans, or charitable  
25 purposes;
- 26 (B) is exempt from taxation under Section 501 of the Internal  
27 Revenue Code; and
- 28 (C) offers food for sale to the final consumer at an event held  
29 for the benefit of the organization;

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

32 **(7) An individual vendor of a farmer's market or roadside  
33 stand if the individual meets the requirements of  
34 IC 16-42-5-29.**

35 SECTION 2. IC 16-18-2-287.8 IS ADDED TO THE INDIANA  
36 CODE AS A NEW SECTION TO READ AS FOLLOWS  
37 [EFFECTIVE JULY 1, 2009]: **Sec. 287.8. "Potentially hazardous  
38 food product", for purposes of IC 16-42-5-29, means a food that is  
39 natural or synthetic and requires temperature control because it  
40 is in a form capable of supporting any of the following:**

- 41 **(1) The rapid and progressive growth of infectious or  
42 toxigenic microorganisms.**

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- 1           (2) The growth and toxin production of *Clostridium*
- 2           *botulinum*.
- 3           (3) In raw shell eggs, the growth of *Salmonella enteritidis*.
- 4       (b) The term includes the following:
- 5           (1) A food of animal origin that is raw or heat treated.
- 6           (2) A food of plant origin that is heat treated or consists of
- 7           raw seed sprouts.
- 8           (3) Cut melons.
- 9           (4) Garlic-in-oil mixtures that are not modified in a way that
- 10          results in mixtures that do not support growth described in
- 11          subsection (a).

12           SECTION 3. IC 16-42-5-29 IS ADDED TO THE INDIANA CODE  
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 14 UPON PASSAGE]: **Sec. 29. (a) This section applies to an individual**  
 15 **vendor of a farmer's market or roadside stand.**

16           **(b) An individual vendor of a farmer's market or roadside stand**  
 17 **is not considered to be a food establishment and is exempt from the**  
 18 **requirements of this title that apply to food establishments if the**  
 19 **individual vendor's food product:**

- 20           (1) is made by an individual in the individual's primary
- 21           residence;
- 22           (2) is not a potentially hazardous food product;
- 23           (3) is prepared by an individual who practices proper sanitary
- 24           procedures, including:
- 25           (A) proper hand washing;
- 26           (B) sanitation of the container or other packaging in which
- 27           the food product is contained; and
- 28           (C) safe storage of the food product;
- 29           (4) is not resold; and
- 30           (5) includes a label that contains the following information:
- 31           (A) The name and address of the producer of the food
- 32           product.
- 33           (B) The common or usual name of the food product.
- 34           (C) The ingredients of the food product, in descending
- 35           order by predominance by weight.
- 36           (D) The net weight and volume of the food product by
- 37           standard measure or numerical count.
- 38           (E) The date on which the food product was processed.
- 39           (F) The following statement in at least 10 point type: "This
- 40           product is home produced and processed and the
- 41           production area has not been inspected by the state
- 42           department of health."

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1           (c) An individual vendor who meets the requirements in  
 2 subsection (b) is subject to food sampling and inspection if:  
 3           (1) the state department determines that the individual  
 4 vendor's food product is:  
 5               (A) misbranded under section 12(b) of this chapter; or  
 6               (B) adulterated; or  
 7           (2) a consumer complaint has been received by the state  
 8 department.  
 9           (d) If the state department has reason to believe that an  
 10 imminent health hazard exists with respect to an individual  
 11 vendor's food product, the state department may order cessation  
 12 of production and sale of the food product until the state  
 13 department determines that the hazardous situation has been  
 14 addressed.  
 15           (e) For purposes of this section, the state health commissioner  
 16 or the commissioner's authorized representatives may take  
 17 samples for analysis and conduct examinations and investigations  
 18 through any officers or employees under the state health  
 19 commissioner's supervision. Those officers and employees may  
 20 enter, at reasonable times, the facilities of an individual vendor and  
 21 inspect any food products in those places and all pertinent  
 22 equipment, materials, containers, and labeling.  
 23           (f) The state health commissioner may develop guidelines for an  
 24 individual vendor who seeks an exemption from regulation as a  
 25 food establishment as described in subsection (b). The guidelines  
 26 may include:  
 27               (1) standards for best safe food handling practices;  
 28               (2) disease control measures; and  
 29               (3) standards for potable water sources.  
 30 SECTION 4. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1309, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BROWN C, Chair

Committee Vote: yeas 7, nays 1.

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1309 be amended to read as follows:

Replace the effective dates in SECTIONS 1 through 12 with "[EFFECTIVE UPON PASSAGE]".

Page 1, delete lines 9 through 16.

Page 2, line 4, delete "IC 16-42-11.4-5." and insert "**IC 16-42-11.4-3.**".

Page 2, line 9, delete "IC 16-42-11.4-6." and insert "**IC 16-42-11.4-4.**".

Page 2, line 14, delete "IC 16-42-11.4-7." and insert "**IC 16-42-11.4-5.**".

Page 2, delete lines 15 through 19.

Page 2, line 24, delete "IC 16-41-11.4-9." and insert "**IC 16-42-11.4-6.**".

Page 2, line 29, delete "IC 16-42-11.4-10." and insert "**IC 16-42-11.4-7.**".

Page 2, line 33, delete "or a home based microprocessor".

Page 2, line 39, delete "and Microprocessors".

Page 3, delete lines 4 through 18.

Page 3, line 19, delete "5." and insert "**3.**".

Page 3, line 21, after "syrup," insert "**maple syrup, honey, shelled nuts, candy, confectionaries, baked goods,**".

Page 3, line 21, delete "or cookies." and insert "**cookies, or other foods that are not potentially hazardous.**".

Page 3, line 22, delete "6." and insert "**4.**".

Page 3, line 27, delete "7." and insert "**5.**".

Page 3, line 28, delete "or a home based" and insert ".".

Page 3, delete lines 29 through 39.

Page 3, line 40, delete "9." and insert "**6.**".

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Page 3, line 41, delete "a farmer" and insert "**an individual**".  
 Page 3, line 41, delete "farmer's" and insert "**individual's**".  
 Page 4, line 1, delete "10." and insert "7."  
 Page 4, line 5, delete "11." and insert "8."  
 Page 4, line 8, delete "12." and insert "9."  
 Page 4, line 18, delete "15(a)" and insert "**12(a)**".  
 Page 4, line 22, delete "15(b)" and insert "**12(b)**".  
 Page 4, line 26, delete "13." and insert "**10**".  
 Page 4, line 33, delete "14." and insert "**11**".  
 Page 4, line 35, delete "low acid canned" and insert "**canned low acid**".  
 Page 4, line 36, delete "15." and insert "**12**".  
 Page 5, line 9, delete "16." and insert "**13**".  
 Page 5, line 11, delete "15(a)" and insert "**12(a)**".  
 Page 5, line 13, delete "on" and insert "**from**".  
 Page 5, line 13, delete "farm" and insert "**home**".  
 Page 5, line 15, delete "17." and insert "**14**".  
 Page 5, line 16, delete "15(a)" and insert "**12(a)**".  
 Page 5, line 19, delete "18." and insert "**15**".  
 Page 5, line 21, delete "19." and insert "**16**".  
 Page 5, line 25, delete "15(b)" and insert "**12(b)**".  
 Page 5, line 28, delete "20." and insert "**17**".  
 Page 5, delete lines 33 through 42.  
 Delete page 6.  
 Page 7, delete lines 1 through 12.  
 Page 7, line 13, delete "28." and insert "**18**".  
 Page 7, line 18, delete ":" and insert "**a home based processor**".  
 Page 7, delete lines 19 through 20.  
 Page 7, run in lines 18 through 21.  
 Page 7, line 23, delete "29. A:" and insert "**19. A home based processor**".  
 Page 7, delete lines 24 through 25.  
 Page 7, run in lines 23 through 26.  
 Page 7, after line 28, begin a new paragraph and insert:  
 "SECTION 10. **An emergency is declared for this act**".  
 Renumber all SECTIONS consecutively.  
 (Reference is to HB 1309 as printed February 10, 2009.)

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BLANTON



Report of the President  
Pro Tempore

Madam President: Pursuant to Senate Rule 65(b), I hereby report that Engrossed House Bill 1309 be reassigned to the Committee on Health and Provider Services for reconsideration.

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred House Bill No. 1309, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 16-18-2-137, AS AMENDED BY P.L.3-2008, SECTION 105, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 137. (a) "Food establishment", for purposes of IC 16-42-5 and IC 16-42-5.2, means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food.

(b) The term does not include the following:

(1) A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption or for consumption by their guests.

(2) A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational setting or for religious purposes, if:

(A) the individuals separately or jointly provide or prepare, free of charge, and consume their own food or that of others attending the gathering; and

(B) the gathering is for a purpose of the organization.

Gatherings for the purpose of the organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.

(3) A vehicle used to transport food solely for distribution to the 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

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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 the** 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.**

SECTION 3. IC 16-18-2-287.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 287.8. "Potentially hazardous food product", for purposes of IC 16-42-5-29, 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.**

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**(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)."**

Delete pages 2 through 3.

Page 4, delete lines 1 through 24.

Page 4, line 25, delete "Sec. 16. A home based processor", begin a new paragraph and insert:

"SECTION 4. IC 16-42-5-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 29. (a) This section applies to an individual vendor of a farmer's market or roadside stand.**

**(b) An individual vendor of a farmer's market or roadside stand is not considered to be a food establishment and is exempt from the requirements of this title that apply to food establishments if the individual vendor's food product:**

**(1) is made by an individual in the individual's primary residence;**

**(2) is not a potentially hazardous food product;**

**(3) is prepared by an individual who practices proper sanitary procedures, including:**

**(A) proper hand washing;**

**(B) sanitation of the container or other packaging in which the food product is contained; and**

**(C) safe storage of the food product;**

**(4) is not resold; and**

**(5) includes a label that contains the following information:**

**(A) The name and address of the producer of the food product.**

**(B) The common or usual name of the food product.**

**(C) The ingredients of the food product, in descending order by predominance by weight.**

**(D) The net weight and volume of the food product by standard measure or numerical count.**

**(E) The date on which the food product was processed.**

**(F) 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."**

**(c) An individual vendor who meets the requirements in subsection (b)".**

Page 4, line 27, delete "home based" and insert "individual vendor's".

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Page 4, line 28, delete "processor's".

Page 4, line 31, delete "." and insert "**by the state department.**".

Page 4, line 32, delete "Sec. 17." and insert "**(d)**".

Page 4, line 33, delete "," and insert "**with respect to an individual vendor's food product,**".

Page 4, line 37, delete "Sec. 18. For purposes of this chapter," and insert "**(e) For purposes of this section,**".

Page 4, line 42, delete "a home based" and insert "**an individual vendor**".

Page 5, line 1, delete "processor".

Page 5, delete lines 3 through 5, begin a new paragraph and insert:

**"(f) 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 (b). The guidelines may include:**

- (1) standards for best safe food handling practices;**
- (2) disease control measures; and**
- (3) standards for potable water sources."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1309 as reprinted February 17, 2009.)

MILLER, Chairperson

Committee Vote: Yeas 6, Nays 1.

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