
Food & Beverage Law Update

By Jonathan M. Boulahanis / Jun 12, 2014

Illinois Governor Pat Quinn, joined by 12-year old entrepreneur Chloe Stirling, signed a bill on June 10, 2014 passing the Illinois "Cupcake Law." The law stems from an incident in January of this year when Chloe's in-home cupcake business was shut down by the Madison County Health Department for failure to have a certified kitchen, including failure to obtain permits and pass inspections.

Prior to enactment of the "Cupcake Law," Illinois' Food Handling Regulation Enforcement Act prohibited "[a]ny business establishment dealing in the sale of food items which does not comply with existing state laws relating to food handling or does not comply with the health and food handling regulations of any local governmental unit having jurisdiction of such establishment may be enjoined". Because Chloe was selling about \$200 in cupcakes a month, she could be considered a business establishment.

The new law permits home kitchen operations (defined as a person who produces or packages food in a kitchen of that person's primary domestic residence for direct sale by the owner or a family member) with monthly gross sales under \$1,000 to operate without formal licensing and permits for non-hazardous foods. Some notable "hazardous" foods include pumpkin pie, sweet potato pie, cheesecake, and anything with custard.

The law does not permit these small operations to be completely free from regulation, though. Any home kitchen operation must provide notice to the purchaser that the product was purchased in a home kitchen. If there is a complaint or outbreak, the state or local Health Department could come inspect the home.

While the law does seem to be a noble effort to deregulate very small business operations, it may actually have the opposite effect. This law may allow for Illinois government entities to enter a person's home to inspect the premises if there is a complaint, which could give rise to constitutional concerns. Additionally, it is concerning that this law may contradict and cause redrafting of various local ordinances and regulations, including food truck and pushcart ordinances, because it regulates where the products are made, but doesn't regulate where the owner or family members can sell the products. Some critics are trumpeting that this is another example of the State of Illinois meddling in petty affairs where government regulation is unnecessary. It will be interesting to see how this provision will be interpreted and enforced in the coming year.

Please contact [Jonathan Boulahanis](#) at 312.985.5930, or another member of Clark Hill's Food and Beverage Team, if you have any questions.