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Model Legislation

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1. Definitions

- (1) HOME COOKING OPERATION means an enterprise in a private home that is operated by a resident of the private home that stores, handles, prepares, packages, serves, and sells or otherwise provides food to consumers. A HOME COOKING OPERATION does not include a food processing plant, food service establishment, temporary food service establishment, caterer, cottage food operation¹, educational institution, residential group home facility, assisted living facility, or health care facility. Nothing in this chapter shall prevent the operator of a HOME COOKING OPERATION from separately operating, or applying for a license or permit to operate, another type of food business in accordance with law.²
- (2) ONLINE FOOD MARKETPLACE means an entity that provides a platform on its internet website or mobile application through which a HOME COOKING OPERATION may choose to offer food for sale and from which the ONLINE FOOD MARKETPLACE derives revenues, including, but not limited to, revenues from advertising and fees for services offered to a HOME COOKING OPERATION. Services offered by an ONLINE FOOD MARKETPLACE to a HOME COOKING OPERATION may include, but are not limited to, allowing a HOME COOKING OPERATION to advertise its food for sale and providing a means for potential CONSUMERS to arrange payment for the food, whether the CONSUMER pays directly to the HOME COOKING OPERATION or to the ONLINE FOOD MARKETPLACE. Merely publishing an advertisement for the HOME COOKING OPERATION or food cooked therein does not make the publisher an ONLINE FOOD MARKETPLACE.

¹ The terminology used in this provision to exclude certain types of operations and facilities from the definition of HOME COOKING OPERATION may need to be revised to match the names used in applicable state law for these types of operations/facilities.

² Regulations around cottage food and catering vary from state to state. Some states are choosing to consolidate the number of home-based business under 1 permit. Consider how these three different businesses work together.

- (3) **READY-TO-EAT FOOD** means food that is in a form that is edible and safe to eat without washing, cooking or additional preparation by the consumer and that is reasonably expected to be consumed in the form in which it is provided to the consumer or after reheating by the consumer.
- (4) **REGULATORY AUTHORITY**³ means the state or local jurisdiction, such as the county, having jurisdiction over HOME COOKING OPERATIONS.
- (5) **STATE AGENCY**⁴ means the government agency at the state level with jurisdiction over HOME COOKING OPERATIONS.

³ Replace "regulatory authority" with the term used in relevant state law for the agency(ies) that will be primarily responsible for inspections and permitting, which may be local health departments or a state department of health or agriculture.

2. Home Cooking Operations

- (1) A HOME COOKING OPERATION⁵ may not produce:
- (a) food containing raw shellfish;
 - (b) any food that requires a hazard analysis and critical control point plan (HACCP) under applicable federal, state or local law;
 - (c) raw milk or raw milk products; or
 - (d) any low-acid canned food or acidified food that requires a scheduled process under applicable federal, state or local law.
- (2) A HOME COOKING OPERATION may sell or otherwise provide food directly to consumers only, and not to any food reseller. A HOME COOKING OPERATION may sell food to consumers in person at the operator's home or other location, such as a farmers' market, or remotely by telephone, email or internet website, including through an ONLINE FOOD MARKETPLACE or mobile application.
- (3) All food sold and otherwise provided to consumers by the HOME COOKING OPERATION shall be READY-TO-EAT FOOD.

⁴ Replace "state agency" with the term used to refer to the state-level agency that will have overall responsibility for this program and will promulgate the governing regulations

⁵ A state may choose to limit the activities of the Home Cooking Operation through placing restrictions on the number of meals prepared or customers served per day, the number of meals prepared or customers served per week, or the amount of revenue made in a year. States should ensure that home cooks can make a living wage regardless of the cap put in place. One possible formula is: Livable wage for the state * 2 (because of the 50% margins in food) + \$5,000 for overhead (permits, insurance, etc) = cap. States might also choose to limit the number of employees a Home Cooking Operation can have.

- (4) FOOD shall be prepared, cooked, and served or picked up or delivered within a safe time period based on holding equipment capacity. Food from a HOME COOKING OPERATION may be delivered to consumers by the operator, by an employee or agent of the operator, or by a THIRD-PARTY DELIVERY SERVICE.
- (5) Any person who works with unpackaged food, food equipment or utensils, or food contact surfaces in the HOME COOKING OPERATION, and any person who supervises such persons, shall be a certified food handler or food protection manager who has shown proficiency
- (6) A HOME COOKING OPERATION shall comply with regulations adopted by the STATE AGENCY under this chapter.

3. Permitting

- (1) No person shall maintain or operate a HOME COOKING OPERATION without a valid permit to operate issued by the REGULATORY AUTHORITY.
- (2) A permit, once issued, shall be nontransferable. A permit shall be valid only for the person or legal entity and location specified by such permit and, unless suspended or revoked for cause, for the time period indicated.
- (3) Application for a permit to operate a HOME COOKING OPERATION shall be made upon a form prescribed by the REGULATORY AUTHORITY. The REGULATORY AUTHORITY may require a permit holder to renew the permit periodically, but not more frequently than annually.
- (4) The REGULATORY AUTHORITY may require an applicant for a HOME COOKING OPERATION permit to submit written standard operating procedures that include the following information:
 - (a) A list of all food types or products that will be handled.
 - (b) Proposed procedures and methods of food preparation and handling.

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- (c) Procedures, methods, and schedules for cleaning utensils and equipment and for the disposal of refuse.
 - (d) How food will be maintained at safe holding temperatures pending pickup by consumers or during delivery.
 - (e) Information about the type of service, such as consumer pick up and delivery, in-home dining, instructional courses, or a combination of processes; and
 - (f) A list of the areas within the home and/or outdoor areas, such as a porch or backyard with a barbecue, to be covered by the permit.
- (5) The REGULATORY AUTHORITY shall issue a permit after an initial inspection has determined that the proposed HOME COOKING OPERATION and its method of operation comply with the requirements of this chapter.
- (a) The initial inspection may be conducted remotely via videoconference technology.
 - (b) The initial inspection must be conducted during a mutually agreed upon time within one (1) month of receipt of the application, and limited to the areas listed on the permit application.
- (6) If the REGULATORY AUTHORITY denies the permit application, the REGULATORY AUTHORITY must provide the applicant with notice of the specific reasons and the opportunity to cure the deficiencies, as well as notice of the applicant's right to appeal and an explanation of the process and time frames for appeal that are provided in law.
- (7) The REGULATORY AUTHORITY may charge a permit fee not to exceed **[FEE]**, or an amount that does not exceed the reasonable administrative costs of the REGULATORY AUTHORITY in issuing the permit, whichever is less.
- (8) The REGULATORY AUTHORITY shall provide the permit holder the opportunity to update the food types, products handled, and service or delivery methods without requiring the permit holder to submit a new permit application.

- (9) The permit, or an accurate copy thereof, shall be retained by the permit holder onsite and made available upon request to a representative of the department.
- (10) Within six months after this law takes effect, the STATE AGENCY and local REGULATORY AUTHORITIES shall post on their internet websites the requirements for the permitting of a HOME COOKING OPERATION, pursuant to this chapter, which shall be written at a high school level in English and in any other languages, as appropriate for the jurisdiction.

4. Labeling

- (1) At a minimum, a HOME COOKING OPERATION shall clearly and conspicuously place on the label of any food it produces and sells in a container, on a sign or menu at the point of sale if the food is not sold in a container, and on any webpage or mobile application where the food can be ordered the following information:
 - (a) The permit number and jurisdiction for the HOME COOKING OPERATION.
 - (b) The common or usual name of the HOME COOKING OPERATION product.
 - (c) The ingredients of the HOME COOKING OPERATION product, in descending order of predominance by weight.
 - (d) Disclosure of any “major food allergen,” as defined in the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321 (qq), as amended.
 - (e) To the extent applicable, the following disclosures:
 - (i) Foraged FOODs shall be labeled “wild harvested FOOD, not inspected by [state] department of [agriculture].”
 - (ii) Unpasteurized juices that have been made in and by the HOME COOKING OPERATION must be prominently and conspicuously labeled with the

following: “WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems.”

- (iii) Raw or undercooked FOODS of animal origin shall be labeled with a disclosure that states: “Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.”
- (f) The following statement printed in at least the equivalent of 11-point font size in a color that provides a clear contrast to the background: “Made in a HOME COOKING OPERATION. This product may contain allergens.”
- (2) No labeling, advertising or marketing of a HOME COOKING OPERATION’s food shall include a “nutrient content claim” as defined in 21 CFR 101.13(b), or a “health claim” as defined in 21 CFR 101.14(a)(1).
- (3) All required information appearing in a foreign language on a menu, label, or in advertising or marketing must also be provided in English. Numeric characters that are identical in both languages do not have to be repeated.

5. ONLINE FOOD MARKETPLACE

An ONLINE FOOD MARKETPLACE that lists or promotes a HOME COOKING OPERATION on its internet website or mobile application shall meet all of the following requirements:

- (1) Be registered with the STATE AGENCY.
- (2) Prior to the listing or publication of a HOME COOKING OPERATION’s offer of food for sale, clearly and conspicuously post on its internet website or mobile application the requirements for the permitting of a HOME

COOKING OPERATION specified in this chapter, which shall be written at the high school level and translated into relevant languages.

- (3) Clearly and conspicuously post on its internet website or mobile application the fees associated with using its marketplace or delivery service in a manner that allows both the consumer and the HOME COOKING OPERATION to see and understand the amount being charged for the services provided by the ONLINE FOOD MARKETPLACE.
- (4) Shall notify HOME COOKING OPERATIONS of any changes to these fees exceeding a 2-percent increase in writing and no later than one month before the changes take effect.
- (5) Clearly and conspicuously post on its internet website or mobile application whether or not ONLINE FOOD MARKETPLACE has liability insurance that would cover the HOME COOKING OPERATION'S liability arising from the sale or consumption of food listed or promoted on its internet website or mobile application
- (6) Shall allow operators to deliver FOOD and BEVERAGES to CONSUMERS by themselves, through an employee, family member, a household member of the PERMIT HOLDER or through a THIRD-PARTY DELIVERY SERVICE.
- (7) Shall ensure HOME COOKING OPERATION operators have control over and the right to bulk export their data on ONLINE FOOD MARKETPLACES, including all the pieces of information that are essential to their business, such as customer contact information, sales history, pricing, ratings, and reviews but excluding proprietary information provided by the ONLINE FOOD MARKETPLACE. The ONLINE FOOD MARKETPLACE must obtain the necessary consent from all customers who purchase through the application to provide their contact information to the COOKS.
- (8) Establish an HOME COOKING OPERATION operators advisory board and a formal process to notify and solicit input from all operators on their satisfaction with platform service offerings, fees, reviews, estimated hourly earnings at least once annually. Operators must also be given an opportunity to provide open-ended feedback on their

experience using the platform. All data and responses must be made publicly available in anonymized form within 3 months of collection and presented to the company's Board or executive leadership on no less than an annual basis. This requirement is waived for ONLINE FOOD MARKETPLACES that have at least 20% of their Board of Directors composed of members selected by a democratic or representative process involving all operators using the platform.

- (9) Provide a dedicated field on its marketplace for a HOME COOKING OPERATION to post its permit number and name of the issuing REGULATORY AUTHORITY, and provide notice to the HOME COOKING OPERATION of the requirement that the permit number be updated in timely manner.
- (10) Clearly and conspicuously post on its internet website or mobile application a link explaining how a consumer can contact the ONLINE FOOD MARKETPLACE if the consumer has a food safety or hygiene complaint, and a link to the REGULATORY AUTHORITY's internet website that contains information for how to file a complaint with the REGULATORY AUTHORITY.
- (11) Submit the name and permit number of a HOME COOKING OPERATION to the REGULATORY AUTHORITY that issued the permit if the ONLINE FOOD MARKETPLACE receives two or more credible, unrelated, individual food safety or hygiene complaints in a calendar year from consumers that have purchased food through its internet website or mobile application.
- (12) If an ONLINE FOOD MARKETPLACE is notified by the REGULATORY AUTHORITY of significant food safety related complaints from a verified consumer that has made a purchase through its internet website or mobile application, submit to the REGULATORY AUTHORITY the name and permit number of HOME COOKING OPERATION from which the food was purchased, and a list of consumers who purchased food on the same day from that HOME COOKING OPERATION through its internet website or mobile application.

- (13) Before allowing a HOME COOKING OPERATION to use its services, obtain consent from the HOME COOKING OPERATION to make the disclosures to government entities required under this section.

6. THIRD-PARTY DELIVERY SERVICE

A THIRD-PARTY DELIVERY SERVICE that delivers HOME COOKING OPERATION food must:

- (1) Clearly and conspicuously post on its internet website or mobile application the fees associated with using its delivery service in a manner that allows both the consumer and the HOME COOKING OPERATION to see and understand the amount being charged for the services provided by the THIRD-PARTY DELIVERY SERVICE delivering HOME COOKING OPERATION food.
- (2) Notify HOME COOKING OPERATIONS of any changes to these fees exceeding a 2-percent increase in writing and no later than one month before the changes take effect.
- (3) Shall ensure drivers delivering HOME COOKING OPERATION food shall be certified food handlers who have shown proficiency of required information through passing a test that is part of an ACCREDITED PROGRAM.
- (4) Shall ensure that the MEHKO name, city and permit number is present on delivery packaging, on all electronic communications, and on the ordering page.

7. Enforcement

- (1) After the initial inspection for purposes of determining permit eligibility, a HOME COOKING OPERATION shall be subject to inspections only in the following three circumstances:
 - (a) Not more than once in any twelve-month period, the REGULATORY AUTHORITY may conduct a routine inspection for the purpose of observing the operator

engaged in the usual activities of a HOME COOKING OPERATION, including, but not limited to, active food preparation. The REGULATORY AUTHORITY shall provide notice to the permit holder before a routine inspection and shall conduct the routine inspection at a mutually agreeable date and time. This paragraph shall not be deemed to require the REGULATORY AUTHORITY to conduct a routine inspection.

- (b) A for-cause inspection may be conducted when the REGULATORY AUTHORITY has a valid reason, such as a credible consumer complaint, to suspect that adulterated or otherwise unsafe food has been produced by the HOME COOKING OPERATION or that the HOME COOKING OPERATION has otherwise been in violation of this chapter. The REGULATORY AUTHORITY shall provide notice to an operator before conducting a for-cause inspection and shall conduct the inspection at a mutually agreeable date and time.
 - (c) If the REGULATORY AUTHORITY has just cause to believe that the HOME COOKING OPERATION poses a serious hazard or immediate threat to public health, the REGULATORY AUTHORITY may conduct an emergency inspection that is limited to the facts prompting the inspection. The REGULATORY AUTHORITY shall provide the operator with advance notice of an emergency inspection to the extent that it is reasonable to do so under the circumstances.
- (2) The REGULATORY AUTHORITY may inspect only the permitted area of the HOME COOKING OPERATION for the purpose of enforcing or administering this chapter.
 - (3) The REGULATORY AUTHORITY may decline to grant a new permit, may decline to renew a permit, and may suspend or revoke a permit already granted after due notice and opportunity for hearing whenever it finds that:
 - (a) Any statement contained in an application for a permit is or was false or misleading;

- (b) The HOME COOKING OPERATION does not have facilities or equipment sufficient to maintain adequate sanitation for the activities conducted;
 - (c) The HOME COOKING OPERATION is not maintained in a clean and sanitary condition or is not operated in a sanitary manner;
 - (d) The maintenance and operation of the HOME COOKING OPERATION is such that the food produced therein is or may be adulterated;
 - (e) The HOME COOKING OPERATION has failed or refused to produce any records or provide any information demanded by the REGULATORY AUTHORITY reasonably related to the administration and enforcement of this chapter; or
 - (f) The HOME COOKING OPERATION has failed to comply with any of the provisions of this chapter or rules and regulations promulgated pursuant thereto.
- (4) Notwithstanding any other provision of law to the contrary and except in circumstances posing an imminent, serious risk to public health, the REGULATORY AUTHORITY shall issue a warning letter or notice of violation to any person it finds to be in violation of this chapter or the regulations adopted pursuant to this chapter, and provide the alleged violator a reasonable opportunity to cure the violation, before the REGULATORY AUTHORITY seeks an administrative remedy or penalty. Agency and local authority enforcement powers shall be limited to investigations, inspections, warnings, and restrictions, suspensions or revocations of a permit.⁶

8. Regulations

- (1) By no later than **[DATE]**, the STATE AGENCY shall promulgate rules and regulations to implement this chapter. Such rules and regulations may include provisions relating

⁶ Existing state law provides state and local authorities with enforcement powers, authorizes remedies and penalties for violations of laws within the agencies' jurisdiction (such as administrative orders, court injunctions, and criminal penalties), and sets out the process by which remedies and penalties may be imposed. Those enforcement and penalty provisions likely will apply to Home Cooking Operations unless this statute specifically exempts Home Cooking Operations from the usual enforcement mechanisms.

to permitting of HOME COOKING OPERATIONS, hygiene, sanitation, approved sources of food, training and recordkeeping.⁷

- (2) The regulations promulgated pursuant to subdivision one of this section shall include requirements for sanitation in HOME COOKING OPERATIONS that shall:
- (a) Apply only to the permitted operations and permitted area of the home;
 - (b) Be reasonably necessary to ensure food safety and reasonably feasible for ordinary home kitchen facilities;
 - (c) Not require HOME COOKING OPERATIONS to have or to use facilities or equipment not ordinarily used in private homes; and
 - (d) Not prevent or restrict persons who live in the home and their guests from accessing and being present in the permitted area while food for the HOME COOKING OPERATION is being stored, handled, prepared or packaged, so long as such persons not known to have symptoms of acute gastrointestinal illness or to be infected with a disease that is transmissible through food.
- (3) Regulations adopted by the STATE AGENCY may require that HOME COOKING OPERATIONS comply with sanitation regulations applicable to retail food establishments⁸, provided that HOME COOKING OPERATIONS shall be exempt from any requirements that do not meet the criteria of subdivision two of this section or that otherwise conflict with this chapter.
- (4) The regulations adopted by the STATE AGENCY shall not require that any person working in a HOME COOKING OPERATION obtain food safety training and certification beyond food handler training and certification; provided that, food protection manager training and certification also shall satisfy the food safety training requirements. The STATE AGENCY shall ensure that the required training

⁷ See the Home Cooking Operations Model Code for an example you can adapt for your state.

⁸ Change "retail food establishment" as needed, to whatever term is used in the state's law (or a citation) to refer to the regulations applicable to restaurants or retail food stores. In most states, these regulations are based on or incorporate by reference FDA's model Food Code.

content and any required examination are available in languages other than English that are commonly spoken by state residents as their primary language.

9. Local Law

- (1) A county, city, municipality, or other political subdivision of the state shall not require a HOME COOKING OPERATION to comply with requirements that are different from, or in addition to, the requirements of this chapter and the regulations promulgated pursuant to it.
- (2) A zoning authority of a city, county, municipality, or other political subdivision of the state shall not prohibit the operation of, require a permit to operate other than the permit required by this chapter, require a rezone of the property for, or levy any fees on, or impose any other restriction on, a HOME COOKING OPERATION in any residential dwelling for zoning purposes.
- (3) This subdivision does not supersede or otherwise limit the investigative and enforcement authority of any city, county, municipality, or other political subdivision of the state with respect to violations of its nuisance ordinances.
- (4) The use of a residence for the purposes of a HOME COOKING OPERATION shall not constitute a change of occupancy for purposes of the state housing laws or for purposes of local building and fire codes. A HOME COOKING OPERATION shall be considered a residence for purposes of state and local building and fire codes.
- (5) The lawful operation of a HOME COOKING OPERATION shall not be grounds for eviction of the operator from a leased residence unless such use of the premises violates the lease.

10. Collection and Reporting of Aggregate Data

- (1) To promote regulatory and compliance transparency, the REGULATORY AUTHORITY shall collect and publicly report on an annual basis aggregate data on the number of HOME COOKING OPERATION permit applications received, the number of HOME COOKING OPERATION permits issued, the numbers and types of violations found by the REGULATORY AUTHORITY in enforcing this chapter and the regulations promulgated pursuant to it, and the numbers and types of enforcement actions taken by the REGULATORY AUTHORITY to enforce this chapter and the regulations promulgated pursuant to it.
- (2) The REGULATORY AUTHORITY shall maintain a publicly available electronic list of all registered ONLINE FOOD MARKETPLACES and the business name, permit numbers, and city location of all open and permitted HOME COOKING OPERATIONS

11. Conforming Amendments

[CITATION TO STATUTE DEFINING A TYPE OF FOOD BUSINESS -- E.G., FOOD PROCESSING PLANT, RETAIL FOOD ESTABLISHMENT] is amended to read as follows:

[TEXT OF THE CURRENT DEFINITION.] The term does not include a HOME COOKING OPERATION that has received a permit from the REGULATORY AUTHORITY under [CITATION TO THIS STATUTE].