

By: Rodriguez of Travis

H.B. No. 1926

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of food production and sales operations
3 by a home food processor; requiring an occupational permit;
4 authorizing a fee and an administrative penalty.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 437.001, Health and Safety Code, is
7 amended by amending Subdivision (5) and adding Subdivision (5-a) to
8 read as follows:

9 (5) "Home" means a primary residence that contains a
10 kitchen [~~and appliances designed for common residential usage~~].

11 (5-a) "Home food processor" means an individual,
12 operating out of the individual's home, who produces at the
13 individual's home:

14 (A) any food that a cottage food production
15 operation may produce under Subdivision (2-b)(A);

16 (B) acidified or low acid canned goods that do
17 not contain meat;

18 (C) fermented products;

19 (D) honey;

20 (E) potentially hazardous baked goods that do not
21 contain meat;

22 (F) tamales that do not contain meat; and

23 (G) any other food not included in this
24 subdivision that is not a potentially hazardous food, as defined by

1 Section 437.0196.

2 SECTION 2. Section 437.002(a), Health and Safety Code, is
3 amended to read as follows:

4 (a) A county or public health district may enforce state law
5 and rules adopted under state law concerning food service
6 establishments, retail food stores, mobile food units, home food
7 processors, and roadside food vendors.

8 SECTION 3. Section 437.009, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 437.009. INSPECTIONS. (a) Authorized agents or
11 employees of the department, a county, or a public health district
12 may enter the premises of a food service establishment, retail food
13 store, mobile food unit, roadside food vendor, home food processor,
14 or temporary food service establishment under the department's,
15 county's, or district's jurisdiction during normal operating hours
16 to conduct inspections to determine compliance with:

17 (1) state law, including a requirement to hold and
18 display written authorization under Section 437.021;

19 (2) rules adopted under state law; and

20 (3) orders adopted by the department, county, or
21 district.

22 (b) An inspection of a home food processor under Subsection
23 (a) is limited to areas in the individual's home that the individual
24 designates for food production and storage related to the home food
25 process or operation.

26 SECTION 4. Chapter 437, Health and Safety Code, is amended
27 by adding Section 437.01911 to read as follows:

1 Sec. 437.01911. EXEMPTION FOR HOME FOOD PROCESSOR. (a) A
2 home food processor is not a food service establishment for
3 purposes of this chapter.

4 (b) The exemption provided by Subsection (a) does not affect
5 the application of Sections 431.045, 431.0495, and 431.247
6 authorizing the department, county, or public health district to
7 act to prevent an immediate and serious threat to human life or
8 health.

9 SECTION 5. Chapter 437, Health and Safety Code, is amended
10 by adding Sections 437.022, 437.0221, 437.0222, and 437.0223 to
11 read as follows:

12 Sec. 437.022. HOME FOOD PROCESSOR: PERMIT REQUIRED; FEE;
13 SALES. (a) A person may not operate as a home food processor unless
14 the person holds a permit issued by:

15 (1) a county or public health district for a home food
16 processor located in an area regulated by the county or district; or

17 (2) the department for a home food processor located
18 in an area not regulated by a county or public health district.

19 (b) A county, a public health district, or the department,
20 as applicable, may charge a fee to issue a permit under Subsection
21 (a). The amount of the fee may not exceed the amount of the fee for
22 obtaining a food manufacturer's license under Subchapter J, Chapter
23 431.

24 (c) A home food processor may sell any food described in
25 Section 437.001(5-a):

26 (1) at any location in this state;

27 (2) for a sale by a processor located in this state to

1 a consumer located in this state:

2 (A) through the Internet; or

3 (B) by mail order; and

4 (3) at wholesale.

5 Sec. 437.0221. HOME FOOD PROCESSOR: PACKAGING AND LABELING
6 REQUIREMENTS. (a) Food described by Section 437.001(5-a) that is
7 sold by a home food processor must be packaged in a manner that
8 prevents product contamination.

9 (b) Food described by Section 437.001(5-a) that is sold by a
10 home food processor must be affixed with a label that includes:

11 (1) the name and address of the home food processor;

12 (2) a list of the ingredients contained in the food
13 item; and

14 (3) the statement "processed in a home-processing
15 facility."

16 Sec. 437.0222. HOME FOOD PROCESSOR: PRODUCTION
17 REQUIREMENTS. (a) A home food processor conducting a processing
18 operation shall comply with the following:

19 (1) in the two years preceding the use of a home for
20 the operation, the home may not have been a place of business for a
21 food manufacturer licensed under Subchapter J, Chapter 431;

22 (2) a refrigerator or freezer used for the operation's
23 food storage:

24 (A) may not be the same refrigerator or freezer
25 used for personal use in the home; and

26 (B) must have an accurate thermometer;

27 (3) a potentially hazardous food allowed under Section

1 437.001(5-a) that is kept after production must be:

2 (A) refrigerated at a temperature of not more
3 than 41 degrees Fahrenheit; or

4 (B) maintained at a heated temperature of not
5 less than 135 degrees Fahrenheit; and

6 (4) each ingredient and final product for the
7 operation must be stored in an area that:

8 (A) is separate from any personal use area unless
9 the ingredient or final product is in an enclosed container;

10 (B) is cleanly maintained; and

11 (C) protects food from unsanitary conditions and
12 contamination.

13 (b) A home food processor shall ensure the processor's
14 operation meets the following requirements:

15 (1) each wall, ceiling, and floor of the operation
16 area must be in good repair, easily cleanable, and cleanly
17 maintained;

18 (2) each utensil, item of equipment, and supply used
19 in the operation must be cleanly maintained;

20 (3) each food contact surface must be easily cleaned,
21 smooth, nonabsorbent, and free from cracks or open seams;

22 (4) plumbing in the operation area must provide
23 pressurized hot and cold potable water;

24 (5) sewage disposal for the operation must be through
25 an adequate sewer system or by other adequate means;

26 (6) toilet facilities:

27 (A) may not open directly into the food

1 production area; and

2 (B) may open into a hallway that leads to the food
3 production area only if the toilet facility is equipped with a
4 self-closing door;

5 (7) water used for food production that is not from a
6 public water system must be annually sampled and tested for
7 coliform, and any required records of the water testing must be
8 maintained; and

9 (8) live animals, including pets, must be prevented
10 from entering any operation and storage area used during food
11 handling, production, or storage activities.

12 (c) A home food processor or an individual who processes,
13 prepares, packages, or handles food for a home food processor:

14 (1) shall successfully complete a basic food safety
15 education or training program for food handlers accredited under
16 Subchapter D, Chapter 438; and

17 (2) may not process, prepare, package, or handle home
18 food products unless the home food processor or the individual:

19 (A) is free from contagious or communicable
20 diseases, sores, or infected wounds; and

21 (B) wears a hair restraint, any necessary beard
22 restraint, and clothing to cover body hair that are designed and
23 worn to effectively prevent hair from contacting exposed food.

24 (d) A home food processor producing a fermented product or a
25 canned good that is acidified or low acid shall:

26 (1) before making the product or good available for
27 sale, submit to the department the recipe and a description of the

1 process used to produce the product or good;

2 (2) before making the product or good available for
3 sale, submit to a commercial laboratory approved for testing by the
4 department a sample of the product or good produced according to the
5 submitted recipe and process;

6 (3) keep a record of the testing results of a product
7 or good submitted under Subdivision (2);

8 (4) keep a record of the pH balance of each batch of
9 the product or good that is produced; and

10 (5) have a product code plan that identifies:

11 (A) the product or good;

12 (B) the date and year the product or good was
13 packaged; and

14 (C) the batch number.

15 (e) A recipe submitted to the department under Subsection
16 (d) is a trade secret for purposes of Section 552.110, Government
17 Code, and is exempt from disclosure under Chapter 552, Government
18 Code.

19 (f) A home food processor who sells a potentially hazardous
20 food at any location other than the processor's home shall maintain
21 the food at an air temperature of not more than 41 degrees
22 Fahrenheit or of not less than 135 degrees Fahrenheit at all times
23 except during transfer of the food from one storage area or
24 transportation vehicle to another.

25 Sec. 437.0223. HOME FOOD PROCESSOR: RECORDS. (a) A home
26 food processor shall maintain records that include each food sold
27 by the processor and the location where the food was sold. For a

1 food sold at wholesale, the records must include the name of the
2 immediate purchaser. For a food sold at retail, the records may
3 include the name of each person who purchased the food.

4 (b) A home food processor who produces a potentially
5 hazardous food must maintain a record of the temperatures and times
6 at which the food was cooked and stored.

7 SECTION 6. Chapter 211, Local Government Code, is amended
8 by adding Subchapter D to read as follows:

9 SUBCHAPTER D. REGULATION OF HOME FOOD PROCESSOR OPERATIONS

10 Sec. 211.041. DEFINITIONS. In this subchapter, "home" and
11 "home food processor" have the meanings assigned by Section
12 437.001, Health and Safety Code.

13 Sec. 211.042. CERTAIN ZONING REGULATIONS PROHIBITED. A
14 municipal zoning ordinance may not prohibit the use of a home for
15 home food processor operations.

16 Sec. 211.043. ACTION FOR NUISANCE OR OTHER TORT. This
17 subchapter does not affect the right of a person to bring a cause of
18 action under other law against an individual for nuisance or
19 another tort arising out of the individual's use of the individual's
20 home for home food processor operations.

21 SECTION 7. Chapter 231, Local Government Code, is amended
22 by adding Subchapter N to read as follows:

23 SUBCHAPTER N. REGULATION OF HOME FOOD PROCESSOR OPERATIONS

24 Sec. 231.301. DEFINITIONS. In this subchapter, "home" and
25 "home food processor" have the meanings assigned by Section
26 437.001, Health and Safety Code.

27 Sec. 231.302. CERTAIN ZONING REGULATIONS PROHIBITED. A

1 county zoning ordinance may not prohibit the use of a home for home
2 food processor operations.

3 Sec. 231.303. ACTION FOR NUISANCE OR OTHER TORT. This
4 subchapter does not affect the right of a person to bring a cause of
5 action under other law against an individual for nuisance or
6 another tort arising out of the individual's use of the individual's
7 home for home food processor operations.

8 SECTION 8. (a) Not later than December 1, 2017, the
9 executive commissioner of the Health and Human Services Commission
10 shall adopt rules to implement Sections 437.022 through 437.0223,
11 Health and Safety Code, as added by this Act.

12 (b) The rules adopted under Subsection (a) may not include
13 requirements or restrictions other than those specified in Sections
14 437.022 through 437.0223, Health and Safety Code, as added by this
15 Act.

16 SECTION 9. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2017.