

1-1 By: VanDeaver, et al. (Senate Sponsor - Kolkhorst) H.B. No. 644  
 1-2 (In the Senate - Received from the House May 6, 2019;  
 1-3 May 7, 2019, read first time and referred to Committee on Health &  
 1-4 Human Services; May 19, 2019, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
 1-6 May 19, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 644 By: Campbell

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the regulation of cottage food production operations.  
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-23 SECTION 1. Section 437.001, Health and Safety Code, is  
 1-24 amended by adding Subdivisions (1) and (3-c) and amending  
 1-25 Subdivision (2-b) to read as follows:  
 1-26 (1) "Acidified canned goods" means food with a  
 1-27 finished equilibrium pH value of 4.6 or less that is thermally  
 1-28 processed before being placed in an airtight container.  
 1-29 (2-b) "Cottage food production operation" means an  
 1-30 individual, operating out of the individual's home, who:  
 1-31 (A) produces at the individual's home, subject to  
 1-32 Section 437.0196:  
 1-33 (i) a baked good that is not a time and  
 1-34 temperature control for safety [~~potentially hazardous~~] food, as  
 1-35 defined by Section 437.0196;  
 1-36 (ii) candy;  
 1-37 (iii) coated and uncoated nuts;  
 1-38 (iv) unroasted nut butters;  
 1-39 (v) fruit butters;  
 1-40 (vi) a canned jam or jelly;  
 1-41 (vii) a fruit pie;  
 1-42 (viii) dehydrated fruit or vegetables,  
 1-43 including dried beans;  
 1-44 (ix) popcorn and popcorn snacks;  
 1-45 (x) cereal, including granola;  
 1-46 (xi) dry mix;  
 1-47 (xii) vinegar;  
 1-48 (xiii) pickled fruit or vegetables,  
 1-49 including beets and carrots, that are preserved in vinegar, brine,  
 1-50 or a similar solution at an equilibrium pH value of 4.6 or less  
 1-51 [pickles];  
 1-52 (xiv) mustard;  
 1-53 (xv) roasted coffee or dry tea; [~~or~~]  
 1-54 (xvi) a dried herb or dried herb mix;  
 1-55 (xvii) plant-based acidified canned goods;  
 1-56 (xviii) fermented vegetable products,  
 1-57 including products that are refrigerated to preserve quality;  
 1-58 (xix) frozen raw and uncut fruit or  
 1-59 vegetables; or  
 1-60 (xx) any other food that is not a time and

2-1 temperature control for safety food, as defined by Section  
 2-2 437.0196;

2-3 (B) has an annual gross income of \$50,000 or less  
 2-4 from the sale of food described by Paragraph (A);

2-5 (C) sells the foods produced under Paragraph (A)  
 2-6 only directly to consumers [~~at the individual's home, a farmers'~~  
 2-7 ~~market, a farm stand, or a municipal, county, or nonprofit fair,~~  
 2-8 ~~festival, or event]; and~~

2-9 (D) delivers products to the consumer at the  
 2-10 point of sale or another location designated by the consumer.

2-11 (3-c) "Fermented vegetable product" means a low-acid  
 2-12 vegetable food product subjected to the action of certain  
 2-13 microorganisms that produce acid during their growth and reduce the  
 2-14 pH value of the food to 4.6 or less.

2-15 SECTION 2. Section 437.0193, Health and Safety Code, is  
 2-16 amended by adding Subsection (d) to read as follows:

2-17 (d) A cottage food production operation that sells frozen  
 2-18 raw and uncut fruit or vegetables must include on the label of the  
 2-19 frozen fruit or vegetables or on an invoice or receipt provided with  
 2-20 the frozen fruit or vegetables when sold the following statement in  
 2-21 at least 12-point font: "SAFE HANDLING INSTRUCTIONS: To prevent  
 2-22 illness from bacteria, keep this food frozen until preparing for  
 2-23 consumption."

2-24 SECTION 3. Section 437.0194, Health and Safety Code, is  
 2-25 amended to read as follows:

2-26 Sec. 437.0194. CERTAIN SALES BY COTTAGE FOOD PRODUCTION  
 2-27 OPERATIONS PROHIBITED OR RESTRICTED. (a) A cottage food  
 2-28 production operation may not sell any of the foods described in  
 2-29 Section 437.001(2-b)(A) [~~+~~

2-30 [~~(1) through the Internet;~~

2-31 [~~(2) by mail order; or~~

2-32 [~~(3)] at wholesale.~~

2-33 (b) A cottage food production operation may sell a food  
 2-34 described by Section 437.001(2-b)(A) in this state through the  
 2-35 Internet or by mail order only if:

2-36 (1) the consumer purchases the food through the  
 2-37 Internet or by mail order from the operation and the operator  
 2-38 personally delivers the food to the consumer; and

2-39 (2) before the operator accepts payment for the food,  
 2-40 the operator provides all labeling information required by Section  
 2-41 437.0193(d) and department rules to the consumer by:

2-42 (A) posting a legible statement on the  
 2-43 operation's Internet website;

2-44 (B) publishing the information in a catalog; or

2-45 (C) otherwise communicating the information to  
 2-46 the consumer.

2-47 SECTION 4. Chapter 437, Health and Safety Code, is amended  
 2-48 by adding Sections 437.01951 and 437.01952 to read as follows:

2-49 Sec. 437.01951. REQUIREMENTS FOR SALE OF CERTAIN COTTAGE  
 2-50 FOODS. (a) A cottage food production operation that sells to  
 2-51 consumers pickled fruit or vegetables, fermented vegetable  
 2-52 products, or plant-based acidified canned goods shall:

2-53 (1) use a recipe that:

2-54 (A) is from a source approved by the department  
 2-55 under Subsection (d);

2-56 (B) has been tested by an appropriately certified  
 2-57 laboratory that confirmed the finished fruit or vegetable, product,  
 2-58 or good has an equilibrium pH value of 4.6 or less; or

2-59 (C) is approved by a qualified process authority;  
 2-60 or

2-61 (2) if the operation does not use a recipe described by  
 2-62 Subdivision (1), test each batch of the recipe with a calibrated pH  
 2-63 meter to confirm the finished fruit or vegetable, product, or good  
 2-64 has an equilibrium pH value of 4.6 or less.

2-65 (b) A cottage food production operation may not sell to  
 2-66 consumers pickled fruit or vegetables, fermented vegetable  
 2-67 products, or plant-based acidified canned goods before the operator  
 2-68 complies with Subsection (a).

2-69 (c) For each batch of pickled fruit or vegetables, fermented

3-1 vegetable products, or plant-based acidified canned goods, a  
3-2 cottage food production operation must:  
3-3 (1) label the batch with a unique number; and  
3-4 (2) for a period of at least 12 months, keep a record  
3-5 that includes:  
3-6 (A) the batch number;  
3-7 (B) the recipe used by the producer;  
3-8 (C) the source of the recipe or testing results,  
3-9 as applicable; and  
3-10 (D) the date the batch was prepared.  
3-11 (d) The department shall:  
3-12 (1) approve sources for recipes that a cottage food  
3-13 production operation may use to produce pickled fruit or  
3-14 vegetables, fermented vegetable products, or plant-based acidified  
3-15 canned goods; and  
3-16 (2) semiannually post on the department's Internet  
3-17 website a list of the approved sources for recipes, appropriately  
3-18 certified laboratories, and qualified process authorities.  
3-19 (e) The department shall develop and implement a process by  
3-20 which an individual may request that the department approve an  
3-21 additional source for recipes under Subsection (d). The process  
3-22 must allow an individual to submit with the individual's request  
3-23 documentation supporting the request.  
3-24 (f) A source for recipes approved by the department under  
3-25 Subsection (d) must be scientifically validated and may be from a  
3-26 government entity, academic institution, state extension service,  
3-27 or other qualified source with:  
3-28 (1) expert knowledge of processing requirements for  
3-29 pickled fruit or vegetables, fermented vegetable products, or  
3-30 acidified canned goods; and  
3-31 (2) adequate facilities for scientifically validating  
3-32 recipes for pickled fruit or vegetables, fermented vegetable  
3-33 products, or acidified canned goods.  
3-34 (g) This section does not apply to pickled cucumbers.  
3-35 (h) For purposes of this section, "process authority" means  
3-36 a person who has expert knowledge acquired through appropriate  
3-37 training and experience in the pickling, fermenting, or  
3-38 acidification and processing of pickled, fermented, or acidified  
3-39 foods.  
3-40 Sec. 437.01952. REQUIREMENTS FOR SALE OF FROZEN FRUIT OR  
3-41 VEGETABLES. A cottage food production operation that sells to  
3-42 consumers frozen raw and uncut fruit or vegetables shall:  
3-43 (1) store and deliver the frozen fruit or vegetables  
3-44 at an air temperature of not more than 32 degrees Fahrenheit; and  
3-45 (2) label the fruit or vegetables in accordance with  
3-46 Section 437.0193(d).  
3-47 SECTION 5. Section 437.0196, Health and Safety Code, is  
3-48 amended to read as follows:  
3-49 Sec. 437.0196. TIME AND TEMPERATURE CONTROL FOR SAFETY  
3-50 [POTENTIALLY HAZARDOUS] FOOD; PROHIBITION FOR COTTAGE FOOD  
3-51 PRODUCTION OPERATIONS; EXCEPTION. (a) In this section, "time and  
3-52 temperature control for safety [potentially hazardous] food"  
3-53 means a food that requires time and temperature control for safety  
3-54 to limit pathogen growth or toxin production. The term includes a  
3-55 food that must be held under proper temperature controls, such as  
3-56 refrigeration, to prevent the growth of bacteria that may cause  
3-57 human illness. A time and temperature control for safety  
3-58 [potentially hazardous] food may include a food that contains  
3-59 protein and moisture and is neutral or slightly acidic, such as  
3-60 meat, poultry, fish, and shellfish products, pasteurized and  
3-61 unpasteurized milk and dairy products, raw seed sprouts, baked  
3-62 goods that require refrigeration, including cream or custard pies  
3-63 or cakes, and ice products. The term does not include a food that  
3-64 uses time and temperature control for safety [potentially  
3-65 hazardous] food as ingredients if the final food product does not  
3-66 require time or temperature control for safety to limit pathogen  
3-67 growth or toxin production.  
3-68 (b) Except as otherwise provided by this chapter, a [A]  
3-69 cottage food production operation may not sell to consumers time

4-1 and temperature control for safety [~~customers potentially~~  
4-2 ~~hazardous~~] foods.

4-3 SECTION 6. As soon as practicable after the effective date  
4-4 of this Act:

4-5 (1) the executive commissioner of the Health and Human  
4-6 Services Commission shall adopt rules as necessary to implement the  
4-7 changes made by this Act; and

4-8 (2) the Department of State Health Services shall  
4-9 approve sources for recipes for pickled fruit or vegetables,  
4-10 plant-based acidified canned goods, and fermented vegetable  
4-11 products and post a list of sources, appropriately certified  
4-12 laboratories, and qualified process authorities on the  
4-13 department's Internet website as required by Section 437.01951,  
4-14 Health and Safety Code, as added by this Act.

4-15 SECTION 7. This Act takes effect September 1, 2019.

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