

By: Kolkhorst, et al.

S.B. No. 572

A BILL TO BE ENTITLED

# 1 AN ACT

2 relating to the regulation of cottage food production operations.

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

4 SECTION 1. Section 437.001, Health and Safety Code, is  
5 amended by amending Subdivision (2-b) and adding Subdivision (3-c)  
6 to read as follows:

7 (2-b) "Cottage food production operation" means an  
8 individual, operating out of the individual's home, who:

9 (A) produces at the individual's home, subject to  
10 Section 437.0196:

11 (i) a baked good that is not a time and  
12 temperature control for safety [potentially hazardous] food, as  
13 defined by Section 437.0196:

14 (ii) candy;

(iii) coated and uncoated nuts;

16 (iv) unroasted nut butters;

17 (v) fruit butters;

18 (vi) a canned jam c

19 (vii) a fruit pie;

20 (viii) dehydrated

21 including dried beans;

22

23 (x) cereal, including granola;

24 (xi) dry mix;

1 (xii) vinegar;  
2 (xiii) pickled fruit or vegetables,  
3 including pickled beets and carrots [pickles];  
4 (xiv) mustard;  
5 (xv) roasted coffee or dry tea; [~~or~~]  
6 (xvi) a dried herb or dried herb mix;  
7 (xvii) canned goods that are acidified;  
8 (xviii) fermented products;  
9 (xix) frozen fruit or vegetables; or  
10 (xx) any other food that is not a time and  
11 temperature control for safety food, as defined by Section  
12 437.0196;  
13 (B) has an annual gross income of \$50,000 or less  
14 from the sale of food described by Paragraph (A);  
15 (C) sells the foods produced under Paragraph (A)  
16 only directly to consumers [~~at the individual's home, a farmers'~~  
17 ~~market, a farm stand, or a municipal, county, or nonprofit fair,~~  
18 ~~festivals, or events~~]; and  
19 (D) delivers products to the consumer at the  
20 point of sale or another location designated by the consumer.  
21 (3-c) "Fermented product" means a low-acid food product  
22 subjected to the action of certain microorganisms that produce acid  
23 during their growth and reduce the pH value of the food to 4.6 or  
24 less.  
25 SECTION 2. Section 437.0193, Health and Safety Code, is  
26 amended by adding Subsection (d) to read as follows:  
27 (d) A cottage food production operation that sells frozen

1 fruit or vegetables must include on the label of the frozen fruit or  
2 vegetables or on an invoice or receipt provided with the frozen  
3 fruit or vegetables when sold the following statement in at least  
4 12-point font: "SAFE HANDLING INSTRUCTIONS: To prevent illness  
5 from bacteria, keep this food refrigerated or frozen."

6 SECTION 3. Section 437.0194, Health and Safety Code, is  
7 amended to read as follows:

8 Sec. 437.0194. CERTAIN SALES BY COTTAGE FOOD PRODUCTION  
9 OPERATIONS PROHIBITED OR RESTRICTED. (a) A cottage food  
10 production operation may not sell any of the foods described in  
11 Section 437.001(2-b)(A) [+  
12 ~~(1) through the Internet;~~  
13 ~~(2) by mail order; or~~  
14 ~~(3) at wholesale.~~

15 (b) A cottage food production operation may sell a food  
16 described by Section 437.001(2-b)(A) through the Internet or by  
17 mail order only if the consumer purchases the food through the  
18 Internet or by mail order from the operation and the operator  
19 personally delivers the food to the consumer.

20 SECTION 4. Chapter 437, Health and Safety Code, is amended  
21 by adding Sections 437.01951 and 437.01952 to read as follows:

22 Sec. 437.01951. REQUIREMENTS FOR SALE OF FERMENTED PRODUCTS  
23 AND ACIDIFIED CANNED GOODS. (a) A cottage food production  
24 operation that sells to consumers fermented products or canned  
25 goods that are acidified shall:

26 (1) use a recipe that:  
27 (A) is from a source approved by the department;

1    or

2                    (B) has been tested by an appropriately certified  
3 laboratory and the laboratory confirmed that the finished product  
4 or good has a pH value of 4.6 or less; or

5                    (2) annually test the first batch of each recipe with a  
6 calibrated pH meter to confirm that the finished product or good has  
7 a pH value of 4.6 or less.

8                    (b) The department shall:

9                    (1) approve sources for recipes that a cottage food  
10 production operation may use to produce fermented products or  
11 canned goods that are acidified; and

12                   (2) semiannually post on the department's Internet  
13 website a list of the approved sources for recipes.

14                   (c) The department shall develop and implement a process by  
15 which an individual may request that the department approve an  
16 additional source for recipes under Subsection (b). The process  
17 must include:

18                   (1) a method for an individual to submit a request to  
19 the department;

20                   (2) a time for the department to respond to the  
21 request; and

22                   (3) clear criteria for the department to evaluate  
23 whether the department should approve a requested source.

24                   (d) A cottage food production operation may not sell to  
25 consumers fermented products or canned goods that are acidified  
26 before the operator complies with Subsection (a).

27                   Sec. 437.01952. REQUIREMENTS FOR SALE OF FROZEN FRUIT OR

1 VEGETABLES. A cottage food production operation that sells to  
2 consumers frozen fruit or vegetables shall store and deliver the  
3 frozen fruit or vegetables at an air temperature of not more than 32  
4 degrees Fahrenheit.

5 SECTION 5. Section [437.0196](#), Health and Safety Code, is  
6 amended to read as follows:

7 Sec. 437.0196. TIME AND TEMPERATURE CONTROL FOR SAFETY  
8 ~~[POTENTIALLY HAZARDOUS]~~ FOOD; PROHIBITION FOR COTTAGE FOOD  
9 PRODUCTION OPERATIONS; EXCEPTION. (a) In this section, "time and  
10 temperature control for safety ~~["potentially hazardous]~~ food" means a food that requires time and temperature control for safety  
11 to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as  
12 refrigeration, to prevent the growth of bacteria that may cause  
13 human illness. A time and temperature control for safety  
14 ~~[potentially hazardous]~~ food may include a food that contains  
15 protein and moisture and is neutral or slightly acidic, such as  
16 meat, poultry, fish, and shellfish products, pasteurized and  
17 unpasteurized milk and dairy products, raw seed sprouts, baked  
18 goods that require refrigeration, including cream or custard pies  
19 or cakes, and ice products. The term does not include a food that  
20 uses time and temperature control for safety ~~[potentially~~  
21 ~~hazardous]~~ food as ingredients if the final food product does not  
22 require time or temperature control for safety to limit pathogen  
23 growth or toxin production.

24 (b) Except as otherwise provided by this chapter, a ~~[A]~~  
25 cottage food production operation may not sell to consumers time

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

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

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

8 (2) the Department of State Health Services shall  
9 approve sources for recipes for fermented products and acidified  
10 canned goods, post a list of sources on the department's Internet  
11 website, and develop a process for approving additional sources of  
12 recipes as required by Section 437.01951, Health and Safety Code,  
13 as added by this Act.

14 SECTION 7. This Act takes effect September 1, 2019.