

By: Kolkhorst, et al. S.B. No. 572
(Rodriguez, VanDeaver, Kacal, Lambert, Moody, et al.)

Substitute the following for S.B. No. 572:

By: Coleman C.S.S.B. No. 572

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of cottage food production operations.

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

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

(1) "Acidified canned goods" means food with a finished equilibrium pH value of 4.6 or less that is thermally processed before being placed in an airtight container.

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

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

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

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) a canned jam or jelly;

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables, including dried beans;

- (ix) popcorn and popcorn snacks;
- (x) cereal, including granola;
- (xi) dry mix;
- (xii) vinegar;
- (xiii) pickled fruit or vegetables,
including beets and carrots, that are preserved in vinegar, brine,
or a similar solution at an equilibrium pH value of 4.6 or less
[pickles];
- (xiv) mustard;
- (xv) roasted coffee or dry tea; ~~[or]~~
- (xvi) a dried herb or dried herb mix;
- (xvii) plant-based acidified canned goods;
- (xviii) fermented vegetable products,
including products that are refrigerated to preserve quality;
- (xix) frozen raw and uncut fruit or
vegetables; or
- (xx) any other food that is not a time and
temperature control for safety food, as defined by Section
[437.0196](#);

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

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

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

1 (3-c) "Fermented vegetable product" means a low-acid
2 vegetable food product subjected to the action of certain
3 microorganisms that produce acid during their growth and reduce the
4 pH value of the food to 4.6 or less.

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

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

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

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

20 ~~[(1) through the Internet,~~

21 ~~[(2) by mail order, or~~

22 ~~[(3)]~~ at wholesale.

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

26 (1) the consumer purchases the food through the
27 Internet or by mail order from the operation and the operator

1 personally delivers the food to the consumer; and

2 (2) before the operator accepts payment for the food,
3 the operator provides all labeling information required by Section
4 437.0193(d) and department rules to the consumer by:

5 (A) posting a legible statement on the
6 operation's Internet website;

7 (B) publishing the information in a catalog; or

8 (C) otherwise communicating the information to
9 the consumer.

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

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

16 (1) use a recipe that:

17 (A) is from a source approved by the department
18 under Subsection (d);

19 (B) has been tested by an appropriately certified
20 laboratory that confirmed the finished fruit or vegetable, product,
21 or good has an equilibrium pH value of 4.6 or less; or

22 (C) is approved by a qualified process authority;
23 or

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

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

5 (c) For each batch of pickled fruit or vegetables, fermented
6 vegetable products, or plant-based acidified canned goods, a
7 cottage food production operation must:

8 (1) label the batch with a unique number; and
9 (2) for a period of at least 12 months, keep a record
10 that includes:

11 (A) the batch number;
12 (B) the recipe used by the producer;
13 (C) the source of the recipe or testing results,
14 as applicable; and
15 (D) the date the batch was prepared.

16 (d) The department shall:

17 (1) approve sources for recipes that a cottage food
18 production operation may use to produce pickled fruit or
19 vegetables, fermented vegetable products, or plant-based acidified
20 canned goods; and

21 (2) semiannually post on the department's Internet
22 website a list of the approved sources for recipes, appropriately
23 certified laboratories, and qualified process authorities.

24 (e) The department shall develop and implement a process by
25 which an individual may request that the department approve an
26 additional source for recipes under Subsection (d). The process
27 must allow an individual to submit with the individual's request

documentation supporting the request.

(f) A source for recipes approved by the department under Subsection (d) must be scientifically validated and may be from a government entity, academic institution, state extension service, or other qualified source with:

(1) expert knowledge of processing requirements for pickled fruit or vegetables, fermented vegetable products, or acidified canned goods; and

(2) adequate facilities for scientifically validating recipes for pickled fruit or vegetables, fermented vegetable products, or acidified canned goods.

(g) This section does not apply to pickled cucumbers.

(h) For purposes of this section, "process authority" means a person who has expert knowledge acquired through appropriate training and experience in the pickling, fermenting, or acidification and processing of pickled, fermented, or acidified foods.

Sec. 437.01952. REQUIREMENTS FOR SALE OF FROZEN FRUIT OR VEGETABLES. A cottage food production operation that sells to consumers frozen raw and uncut fruit or vegetables shall:

(1) store and deliver the frozen fruit or vegetables at an air temperature of not more than 32 degrees Fahrenheit; and

(2) label the fruit or vegetables in accordance with Section 437.0193(d).

SECTION 5. Section 437.0196, Health and Safety Code, is amended to read as follows:

Sec. 437.0196. TIME AND TEMPERATURE CONTROL FOR SAFETY

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

19 (b) Except as otherwise provided by this chapter, a [A]
20 cottage food production operation may not sell to consumers time
21 and temperature control for safety [~~customers—potentially~~
22 ~~hazardous]~~ foods.

23 SECTION 6. As soon as practicable after the effective date
24 of this Act:

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

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

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