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       By:
             Kolkhorst, Schwertner
                                                                         S.B. No. 572
       (In the Senate - Filed February 1, 2019; February 21, 2019, read first time and referred to Committee on Health & Human Services; April 11, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0;
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       April 11, 2019, sent to printer.)
                                       COMMITTEE VOTE
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                                                           Absent
                                        Yea
                                                 Nay
                                         Χ
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              Kolkhorst
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              Perry
              Buckingham
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              Campbell
                                         Χ
              Flores
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                                         Χ
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                                         Χ
              Johnson
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              Miles
              Powell
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              Seliger
                                         Χ
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       COMMITTEE SUBSTITUTE FOR S.B. No. 572
                                                                      By: Kolkhorst
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                                   A BILL TO BE ENTITLED
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                                            AN ACT
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       relating to the regulation of cottage food production operations.
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              BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
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              SECTION 1. Section 437.001, Health and Safety Code,
       amended by amending Subdivision (2-b) and adding Subdivision (3-c)
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       to read as follows:

(2-b) "Cottage food production operation" means an individual, operating out of the individual's home, who:
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                                produces at the individual's home, subject to
                           (A)
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       Section 437.0196:
       (i) a baked good that is not a <u>time and temperature control for safety</u> [potentially hazardous] food, as defined by Section 437.0196;
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                                  (ii)
                                         candy;
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                                  (iii)
                                          coated and uncoated nuts;
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                                  (iv)
                                         unroasted nut butters;
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                                        fruit butters;
                                  (\nabla)
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                                  (vi)
                                        a canned jam or jelly;
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                                         a fruit pie;
                                                          fruit or vegetables,
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                                  (viii) dehydrated
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      including dried beans;
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                                  (ix) popcorn and popcorn snacks;
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                                       cereal, including granola;
                                  (X)
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                                  (xi)
                                        dry mix;
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                                  (xii) vinegar;
                                                         fruit or vegetables,
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                                  (xiii)
                                          pickled
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       including pickled beets and carrots [pickles];
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                                  (xiv)
                                         mustard;
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                                  (xx)
                                        roasted coffee or dry tea; [<del>or</del>]
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                                  (xvi) a dried herb or dried herb mix;
                                  (xvii)
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                                           canned goods that are acidified;
                                  (xviii) fermented products;
(xix) frozen fruit or vegetables; or
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                                  (xx) any other food that is not a time and
                                  for safety food, as defined by Section
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       temperature control
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       437.0196;
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                            (B)
                                  has an annual gross income of $50,000 or less
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       from the sale of food described by Paragraph (A);
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                                  sells the foods produced under Paragraph (A)
                            (C)
       only directly to consumers [at the individual's home, a farmers'
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market, a farm stand, or a municipal, county, or nonprofit fair,

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    festival, or event]; and
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(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

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

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

(d) A cottage food production operation that sells frozen fruit or vegetables must include on the label of the frozen fruit or vegetables or on an invoice or receipt provided with the frozen fruit or vegetables when sold the following statement in at least 12-point font: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food refrigerated or frozen."

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

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

[(1) through the Internet; [(2) by mail order; or

 $\left[\frac{(3)}{3}\right]$ at wholesale.

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

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

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

(1) use a recipe that:

(A) is from a source approved by the department;

or

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

(2) annually test the first batch of each recipe with a calibrated pH meter to confirm that the finished product or good has

a pH value of 4.6 or less.

(b) The department shall:
(1) approve sources for recipes that a cottage food production operation may use to produce fermented products or canned goods that are acidified; and

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

(c) The department shall develop and implement a process by

which an individual may request that the department approve an additional source for recipes under Subsection (b). The process must include:

a method for an individual to submit a request to the department;

a time for the department to respond to the request; and

whether the department should approve a requested source.

(d) A cottage food production operation may not sell to

consumers fermented products or canned goods that are acidified before the operator complies with Subsection (a).

Sec. 437.01952. REQUIREMENTS FOR SALE OF FROZEN FRUIT OR VEGETABLES. A cottage food production operation that sells to consumers frozen fruit or vegetables shall store and deliver the frozen fruit or vegetables at an air temperature of not more than 32 degrees Fahrenheit.

SECTION 5. Section 437.0196, Health and Safety Code, is

3-1 amended to read as follows:

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

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

SECTION 6. As soon as practicable after the effective date of this $\mbox{Act:}$

- (1) the executive commissioner of the Health and Human Services Commission shall adopt rules as necessary to implement the changes made by this ${\sf Act}$; and
- (2) the Department of State Health Services shall approve sources for recipes for fermented products and acidified canned goods, post a list of sources on the department's Internet website, and develop a process for approving additional sources of recipes as required by Section 437.01951, Health and Safety Code, as added by this Act.

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

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