

By: Rodriguez

H.B. No. 1139

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of cottage food products and 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 amending Subdivisions (1) and (3) and adding Subdivisions (1-a), (2-a), (2-b), (3-a), and (5) to read as follows:

(1) "Baked good" includes cookies, cakes, bread, Danish, donuts, pastries, pies, and other similar items prepared by baking the item in an oven.

(1-a) "Board" means the executive commissioner [~~Texas Board of Health~~].

(2-a) "Cottage food product" means a baked good, canned jam or jelly, dried fruit, candy, snack food, cereal, granola, dry mix, vinegar, or a dried herb produced for sale by a cottage food production operation. A cottage food product does not include a potentially hazardous food item as defined by department rule.

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

(A) produces a cottage food product for sale at the individual's home or at:

(i) a farmers' market or farm market or

1 roadside stand;

2 (ii) a county fair or municipal or county
3 celebration, festival, or event; or

4 (iii) an event held or sponsored by a
5 religious or nonprofit organization;

6 (B) does not offer a food item other than a
7 cottage food product for sale at a location listed in Paragraph (A);
8 and

9 (C) has annual gross sales of \$150,000 or less
10 from the sale of cottage food products.

11 (3) "Department" means the [~~Texas~~] Department of State
12 Health Services.

13 (3-a) "Executive commissioner" means the executive
14 commissioner of the Health and Human Services Commission.

15 (5) "Home" means a primary residence that contains a
16 kitchen and appliances designed for common residential use.

17 SECTION 2. Chapter 437, Health and Safety Code, is amended
18 by adding Sections 437.022 through 437.028 to read as follows:

19 Sec. 437.022. EXEMPTION FOR COTTAGE FOOD PRODUCTION
20 OPERATION. (a) A cottage food production operation is not a food
21 service establishment or roadside food vendor for purposes of this
22 chapter.

23 (b) The exemption provided by Subsection (a) does not affect
24 the application of any other state or federal law or an applicable
25 ordinance enacted by a local governmental entity.

26 Sec. 437.023. PERMIT FROM DEPARTMENT REQUIRED FOR COTTAGE
27 FOOD PRODUCTION OPERATION. (a) A person may not operate a cottage

1 food production operation unless the person holds a permit issued
2 by the department.

3 (b) A person required to obtain a permit under Subsection
4 (a) must apply annually for the permit and pay the fees required by
5 the department.

6 Sec. 437.024. COTTAGE FOOD PRODUCT LABELING REQUIREMENTS.

7 (a) A cottage food production operation shall prepackage and
8 properly label each cottage food product the operation offers for
9 sale.

10 (b) The label at a minimum must include:

11 (1) the name and address of the cottage food
12 production operation;

13 (2) the name of the cottage food product;

14 (3) the ingredients in the cottage food product in
15 descending order of predominance by weight;

16 (4) the net weight or net volume of the cottage food
17 product;

18 (5) any labeling information required by federal law;
19 and

20 (6) the following statement in at least the equivalent
21 of 11-point font in a color that provides a clear contrast to the
22 background: "Made in a home kitchen that is not routinely inspected
23 by a state or local health authority."

24 Sec. 437.025. PRODUCTION OF COTTAGE FOOD PRODUCTS. (a) An
25 individual may not directly engage in the processing, preparing,
26 packaging, or handling of cottage food products and may not be
27 present during the production of the products in any area where the

1 products are produced for sale unless the individual is the holder
2 of the cottage food production operation permit or is under the
3 direct supervision of the permit holder.

4 (b) An individual who processes, prepares, packages, or
5 handles cottage food products must have adequate knowledge of safe
6 food handling practices and must have successfully completed a
7 basic food safety education or training program for food handlers
8 accredited under Subchapter D, Chapter 438.

9 Sec. 437.026. LIMITATIONS ON SALE AND STORAGE OF COTTAGE
10 FOOD PRODUCT. (a) A cottage food product may only be sold directly
11 from the cottage food production operation to the consumer and may
12 not be resold.

13 (b) A cottage food product may not be sold:

14 (1) over the Internet;

15 (2) by mail order;

16 (3) by consignment; or

17 (4) at wholesale.

18 (c) A cottage food production operation may not store a
19 cottage food product at a location other than the home at which the
20 product was produced.

21 Sec. 437.027. ESTABLISHMENT OF SALES OF COTTAGE FOOD
22 PRODUCTION OPERATION. The department may require a cottage food
23 production operation to provide the department with a current
24 financial statement or federal income tax return to establish that
25 the annual gross sales of the operation do not exceed \$150,000.

26 Sec. 437.028. INVESTIGATION OR INSPECTION OF COTTAGE FOOD
27 PRODUCTION OPERATION IN CERTAIN CIRCUMSTANCES; ADOPTION OF RULES.

1 (a) The executive commissioner by rule may require an investigation
2 of a cottage food production operation if the department has reason
3 to believe that the cottage food production operation is operating
4 in violation of Section 437.023, 437.024, 437.025, or 437.026 or a
5 rule adopted under those sections.

6 (b) If a person files with the department a complaint
7 alleging that a cottage food production operation is violating an
8 applicable provision of this chapter or a rule adopted under this
9 chapter, an authorized agent or employee of the department may
10 enter the premises of the cottage food production operation to
11 conduct an inspection of the operation to determine compliance with
12 this chapter and department rules. The inspection shall be
13 conducted on the days and at times cottage food products are being
14 processed, prepared, packaged, or handled as provided by department
15 rules.

16 (c) The executive commissioner shall adopt the rules
17 necessary to implement this section and Sections 437.022 through
18 437.027.

19 SECTION 3. Not later than January 1, 2012, the executive
20 commissioner of the Health and Human Services Commission shall
21 adopt the rules necessary to implement Sections 437.022 through
22 437.028, Health and Safety Code, as added by this Act.

23 SECTION 4. (a) Except as provided by Subsection (b) of
24 this section, this Act takes effect September 1, 2011.

25 (b) Sections 437.023 and 437.024, Health and Safety Code, as
26 added by this Act, take effect January 1, 2012.