

## **BILL ANALYSIS**

Senate Research Center  
83R21514 JSC-D

H.B. 970  
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Health & Human Services  
5/7/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties assert that foods produced by local farmers and local small businesses are becoming increasingly vital to both urban and rural areas as a source of employment and quality foods and products. As a result of recent legislation, individuals who meet certain criteria can produce specific types of foods in their homes and sell directly to consumers without being regulated by a local health department. Interested parties observe that the laws regulating the cottage food industry have led to the establishment and growth of numerous small businesses in this state, with very few problems reported. Interested parties contend, however, that restricting the sale of these foods to such an individual's home has created unnecessary barriers and has even led to conflict with zoning authorities in some areas. These parties also observe that some other states allow for the production of more types of foods under similar laws.

H.B. 970 expands the types of foods allowed to be produced by a cottage food production operation and the locations at which such an individual can sell the products, establishes additional regulations regarding the sale of cottage food products, and amends current law relating to a local government authority's authority to regulate cottage food production operations.

H.B. 970 amends current law relating to regulation of cottage food products and cottage food production operations.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 437.001, Health and Safety Code, by amending Subdivisions (2-a) and (2-b) to redefine "baked good" and "cottage food production operation" and adding Subdivision (3-b) to define "farm stand."

SECTION 2. Amends Section 437.0191, Health and Safety Code, as follows:

Sec. 437.0191. EXEMPTION FOR COTTAGE FOOD PRODUCTION OPERATIONS.

(a) Creates this subsection from existing text and makes no further change to this subsection.

(b) Provides that the exemption provided by Subsection (a) does not affect the application of Sections 431.045 (Emergency Order), 431.0495 (Recall Orders), and 431.247 (Delegation of Powers or Duties) authorizing the Department of State Health Services (DSHS) or other local health authority to act to prevent an immediate and serious threat to human life or health.

SECTION 3. Amends the heading to Section 437.0192, Health and Safety Code, to read as follows:

Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS BY LOCAL GOVERNMENT AUTHORITIES PROHIBITED; COMPLAINTS.

SECTION 4. Amends Section 437.0192(a), Health and Safety Code, to prohibit a local government authority, including a local health department, from regulating the production of food at a cottage food production operation.

SECTION 5. Amends Sections 437.0193 and 437.0194, Health and Safety Code, as follows:

Sec. 437.0193. New heading: PACKAGING AND LABELING REQUIREMENTS FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) Requires that food described by Section 437.001(2-b)(A) (defining "cottage food production operation" to mean an individual, operating out of the individual's home, who produces certain food products at the individual's home) sold by a cottage food production operation be packaged in a manner that prevents product contamination, except that a food item is not required to be packaged if it is too large or bulky for conventional packaging.

(b) Creates this subsection from existing text. Requires that labels on all foods described in Section 437.001(2-b)(A) include:

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

(2) a statement that the food is not inspected by DSHS or a local health department.

(c) Requires that the information required to be included on the label under Subsection (b), for foods not required to be packaged under Subsection (a), be provided to the consumer on an invoice or receipt.

Sec. 437.0194. New heading: CERTAIN SALES BY COTTAGE FOOD PRODUCTION OPERATIONS PROHIBITED. Prohibits a cottage food production operation from selling any of the foods described in Section 437.001(2-b)(A):

(1) through the Internet;

(2) by mail order; or

(3) at wholesale.

SECTION 6. Amends Chapter 437, Health and Safety Code, by adding Sections 437.0195 and 437.0196, as follows:

Sec. 437.0195. PRODUCTION OF COTTAGE FOOD PRODUCTS. (a) Requires an individual who operates a cottage food production operation to have successfully completed a basic food safety education or training program for food handlers accredited under Subchapter D (Food Service Programs), Chapter 438 (Public Health Measures Relating to Food).

(b) Prohibits an individual from processing, preparing, packaging, or handling cottage food products unless the individual:

(1) meets the requirements of Subsection (a);

(2) is directly supervised by an individual described by Subsection (a); or

(3) is a member of the household in which the cottage food products are produced.

Sec. 437.0196. POTENTIALLY HAZARDOUS FOOD; PROHIBITION FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) Defines "potentially hazardous food" in this section.

(b) Prohibits a cottage food production operation from selling to customers potentially hazardous foods.

SECTION 7. Amends Chapter 211, Local Government Code, by adding Subchapter C, as follows:

#### SUBCHAPTER C. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

Sec. 211.031. DEFINITIONS. Defines "cottage food production operation" and "home" in this subchapter.

Sec. 211.032. CERTAIN ZONING REGULATIONS PROHIBITED. Prohibits a municipal zoning ordinance from prohibiting the use of a home for cottage food production operations.

Sec. 211.033. ACTION FOR NUISANCE OR OTHER TORT. Provides that this subchapter does not affect the right of a person to bring a cause of action under other law against an individual for nuisance or another tort arising out of the individual's use of the individual's home for cottage food production operations.

SECTION 8. Amends Chapter 231, Local Government Code, by adding Subchapter M, as follows:

#### SUBCHAPTER M. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

Sec. 231.281. DEFINITIONS. Defines "cottage food production operation" and "home" in this subchapter.

Sec. 231.282. CERTAIN ZONING REGULATIONS PROHIBITED. Prohibits a county zoning ordinance from prohibiting the use of a home for cottage food production operations.

Sec. 231.283. ACTION FOR NUISANCE OR OTHER TORT. Provides that this subchapter does not affect the right of a person to bring a cause of action under other law against an individual for nuisance or another tort arising out of the individual's use of the individual's home for cottage food production operations.

SECTION 9. Provides that notwithstanding Section 437.0195, Health and Safety Code, as added by this Act, an individual operating a cottage food production operation is not required to complete a basic food safety education or training program for food handlers before January 1, 2014.

SECTION 10. Effective date: September 1, 2013.