

BILL ANALYSIS

C.S.H.B. 970
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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.

C.S.H.B. 970 seeks to address these issues by expanding 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, establishing additional regulations regarding the sale of cottage food products, and amending current law relating to a local government authority's authority to regulate cottage food production operations.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 970 amends the Health and Safety Code to prohibit a cottage food production operation from selling to customers potentially hazardous food, defined by the bill as a food that requires time and temperature control for safety to limit pathogen growth or toxin production. The bill specifies that 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 and that a 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 bill specifies that the term does not include a food that uses 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.

C.S.H.B. 970 includes in the definition of "cottage food production operation" an individual, operating out of the individual's home, who produces a baked good that is not a potentially hazardous food; candy; coated and uncoated nuts; unroasted nut butters; fruit butters; a fruit pie; dehydrated fruit or vegetables, including dried beans; popcorn and popcorn snacks; cereal, including granola; dry mix; vinegar; pickles; mustard; roasted coffee or dry tea; or a dried herb mix and specifies that the term applies to such an individual who produces an applicable food

product at the individual's home. The bill includes in the definition the specification that the individual sells the food products 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 delivers products to the consumer at the point of sale or another location designated by the consumer.

C.S.H.B. 970 specifies that the exemption of a cottage food production operation from designation as a food service establishment does not affect the application of certain statutory provisions authorizing the Department of State Health Services or other local health authority to act to prevent an immediate and serious threat to human life or health. The bill prohibits a local government authority from regulating the production of food at a cottage food production operation.

C.S.H.B. 970 requires food sold by a cottage food production operation to 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. The bill requires the information required to be included on the label of food items produced by a cottage food production operation to be provided to the consumer on an invoice or receipt if the food item is exempt from packaging requirements. The bill prohibits a cottage food production operation from selling any food items by mail order or at wholesale.

C.S.H.B. 970 requires an individual who operates a cottage food production operation to have successfully completed an accredited basic food safety education or training program for food handlers. The bill prohibits an individual from processing, preparing, packaging, or handling cottage food products unless the individual has completed such a program, is directly supervised by an individual who has completed such a program, or is a member of the household in which the cottage food products are produced. The bill specifies that an individual operating a cottage food production operation is not required to complete the required education or training program before January 1, 2014.

C.S.H.B. 970 amends the Local Government Code to prohibit a municipal zoning ordinance and a county zoning ordinance from prohibiting the use of a home for cottage food production operations. The bill specifies that its provisions do 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.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 970 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 437.001(2-b), Health and Safety Code, is amended to read as follows:

HOUSE COMMITTEE SUBSTITUTE

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

(2-a) "Baked good" includes cookies, cakes, breads, Danish, donuts, pastries, pies, and other items that are prepared by baking the item in an oven. ~~[A baked good does not~~

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

(A) produces at the individual's home a baked good, a canned jam or jelly, dried fruit, candy, snack food, cereal, granola, dry mix, vinegar, or a dried herb or herb mix for sale at the individual's [person's] home or at another location;

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

(C) sells the foods produced under Paragraph (A) only directly to consumers.

No equivalent provision.

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 at the individual's home, subject to Section 437.0196:

(i) a baked good that is not a 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) pickles;

(xiv) mustard;

(xv) roasted coffee or dry tea;[;] or

(xvi) a dried herb or dried herb mix [for sale at the person's home];

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

(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.

(3-b) "Farm stand" means a premises owned and operated by a producer of agricultural food products at which the producer or other persons may offer for sale produce or foods described by Subdivision (2-b)(A).

SECTION 2. Section 437.0191, Health and Safety Code, is amended to read as follows:

Sec. 437.0191. EXEMPTION FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) A cottage food production operation is not a food service establishment for purposes of this chapter.

(b) The exemption provided by Subsection (a) does not affect the application of Sections 431.045, 431.0495, and 431.247 authorizing

the department or other local health authority to act to prevent an immediate and serious threat to human life or health.

SECTION 2. The heading to Section 437.0192, Health and Safety Code, is amended to read as follows:

Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS BY LOCAL GOVERNMENT AUTHORITIES [~~HEALTH DEPARTMENT~~] PROHIBITED; COMPLAINTS.

SECTION 3. Same as introduced version.

SECTION 3. Section 437.0192(a), Health and Safety Code, is amended to read as follows:

(a) A local government authority, including a local health department, may not regulate the production of food at a cottage food production operation.

SECTION 4. Same as introduced version.

No equivalent provision.

SECTION 5. Sections 437.0193 and 437.0194, Health and Safety Code, are amended to read as follows:

Sec. 437.0193. PACKAGING AND LABELING REQUIREMENTS FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) Food described by Section 437.001(2-b)(A) sold by a cottage food production operation must 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) The executive commissioner shall adopt rules requiring a cottage food production operation to label all of the foods described in Section 437.001(2-b)(A) that the operation sells to consumers. The label must include:

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

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

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

Sec. 437.0194. CERTAIN SALES BY

COTTAGE FOOD PRODUCTION OPERATIONS ~~[THROUGH THE INTERNET]~~ PROHIBITED. 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
(3) at wholesale.

No equivalent provision.

SECTION 6. Chapter 437, Health and Safety Code, is amended by adding Sections 437.0195 and 437.0196 to read as follows:

Sec. 437.0195. PRODUCTION OF COTTAGE FOOD PRODUCTS. (a) An individual who operates a cottage food production operation must have successfully completed a basic food safety education or training program for food handlers accredited under Subchapter D, Chapter 438.

(b) An individual may not process, prepare, package, or handle 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) In this section,

"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 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 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) A cottage food production operation may not sell to customers potentially

hazardous foods.

SECTION 4. Chapter 211, Local Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

Sec. 211.031. DEFINITIONS. In this subchapter, "cottage food production operation" and "home" have the meanings assigned by Section 437.001, Health and Safety Code.

Sec. 211.032. CERTAIN ZONING REGULATIONS PROHIBITED. A municipal zoning ordinance may not prohibit the use of a home for cottage food production operations.

Sec. 211.033. ACTION FOR NUISANCE OR OTHER TORT. 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 7. Same as introduced version.

SECTION 5. Chapter 231, Local Government Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

Sec. 231.281. DEFINITIONS. In this subchapter, "cottage food production operation" and "home" have the meanings assigned by Section 437.001, Health and Safety Code.

Sec. 231.282. CERTAIN ZONING REGULATIONS PROHIBITED. A county zoning ordinance may not prohibit the use of a home for cottage food production operations.

Sec. 231.283. ACTION FOR NUISANCE OR OTHER TORT. 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. Same as introduced version.

No equivalent provision.

SECTION 9. 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 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 10. This Act takes effect September 1, 2013.