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H.B. No. 970

A BILL TO BE ENTITLED

1 AN ACT

2 relating to regulation of cottage food products and cottage food
3 production operations.

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

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

8 (2-a) "Baked good" includes cookies, cakes, breads,
9 Danish, donuts, pastries, pies, and other items that are prepared
10 by baking the item in an oven. [~~A baked good does not include a~~
11 ~~potentially hazardous food item as defined by department rule.~~]

12 (2-b) "Cottage food production operation" means an
13 individual, operating out of the individual's home, who:

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

16 (i) a baked good that is not a potentially
17 hazardous food, as defined by Section 437.0196;

18 (ii) candy;

19 (iii) coated and uncoated nuts;

20 (iv) unroasted nut butters;

21 (v) fruit butters;

22 (vi) [~~7~~] a canned jam or jelly;

23 (vii) a fruit pie;

24 (viii) dehydrated fruit or vegetables,

1 including dried beans;
2 (ix) popcorn and popcorn snacks;
3 (x) cereal, including granola;
4 (xi) dry mix;
5 (xii) vinegar;
6 (xiii) pickles;
7 (xiv) mustard;
8 (xv) roasted coffee or dry tea; [r] or
9 (xvi) a dried herb or dried herb mix [~~for~~
10 ~~sale at the person's home];~~

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

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

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

19 (3-b) "Farm stand" means a premises owned and operated
20 by a producer of agricultural food products at which the producer or
21 other persons may offer for sale produce or foods described by
22 Subdivision (2-b)(A).

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

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

1 (b) The exemption provided by Subsection (a) does not affect
2 the application of Sections 431.045, 431.0495, and 431.247
3 authorizing the department or other local health authority to act
4 to prevent an immediate and serious threat to human life or health.

5 SECTION 3. The heading to Section 437.0192, Health and
6 Safety Code, is amended to read as follows:

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

10 SECTION 4. Section 437.0192(a), Health and Safety Code, is
11 amended to read as follows:

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

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

17 Sec. 437.0193. PACKAGING AND LABELING REQUIREMENTS FOR
18 COTTAGE FOOD PRODUCTION OPERATIONS. (a) Food described by
19 Section 437.001(2-b)(A) sold by a cottage food production operation
20 must be packaged in a manner that prevents product contamination,
21 except that a food item is not required to be packaged if it is too
22 large or bulky for conventional packaging.

23 (b) The executive commissioner shall adopt rules requiring a
24 cottage food production operation to label all of the foods
25 described in Section 437.001(2-b)(A) that the operation sells to
26 consumers. The label must include:

27 (1) the name and address of the cottage food

1 production operation; and

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

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

8 Sec. 437.0194. CERTAIN SALES BY COTTAGE FOOD PRODUCTION
9 OPERATIONS [~~THROUGH THE INTERNET~~] PROHIBITED. A cottage food
10 production operation may not sell any of the foods described in
11 Section 437.001(2-b)(A):

12 (1) through the Internet;

13 (2) by mail order; or

14 (3) at wholesale.

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

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

22 (b) An individual may not process, prepare, package, or
23 handle cottage food products unless the individual:

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

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

27 (3) is a member of the household in which the cottage

1 food products are produced.

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

18 (b) A cottage food production operation may not sell to
19 customers potentially hazardous foods.

20 SECTION 7. Chapter 211, Local Government Code, is amended
21 by adding Subchapter C to read as follows:

22 SUBCHAPTER C. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

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

26 Sec. 211.032. CERTAIN ZONING REGULATIONS PROHIBITED. A
27 municipal zoning ordinance may not prohibit the use of a home for

1 cottage food production operations.

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

7 SECTION 8. Chapter 231, Local Government Code, is amended
8 by adding Subchapter M to read as follows:

9 SUBCHAPTER M. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

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

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

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

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

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