

1-1 By: Rodriguez of Travis, et al. H.B. No. 970  
 1-2 (Senate Sponsor - Deuell)  
 1-3 (In the Senate - Received from the House May 6, 2013;  
 1-4 May 7, 2013, read first time and referred to Committee on Health  
 1-5 and Human Services; May 15, 2013, reported favorably by the  
 1-6 following vote: Yeas 8, Nays 0; May 15, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 A BILL TO BE ENTITLED  
 1-19 AN ACT

1-20 relating to regulation of cottage food products and cottage food  
 1-21 production operations.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 437.001, Health and Safety Code, is  
 1-24 amended by amending Subdivisions (2-a) and (2-b) and adding  
 1-25 Subdivision (3-b) to read as follows:

1-26 (2-a) "Baked good" includes cookies, cakes, breads,  
 1-27 Danish, donuts, pastries, pies, and other items that are prepared  
 1-28 by baking the item in an oven. ~~[A baked good does not include a~~  
 1-29 ~~potentially hazardous food item as defined by department rule.]~~

1-30 (2-b) "Cottage food production operation" means an  
 1-31 individual, operating out of the individual's home, who:

1-32 (A) produces at the individual's home, subject to  
 1-33 Section 437.0196:

1-34 (i) a baked good that is not a potentially  
 1-35 hazardous food, as defined by Section 437.0196;

1-36 (ii) candy;

1-37 (iii) coated and uncoated nuts;

1-38 (iv) unroasted nut butters;

1-39 (v) fruit butters;

1-40 (vi) [7] a canned jam or jelly;

1-41 (vii) a fruit pie;

1-42 (viii) dehydrated fruit or vegetables,  
 1-43 including dried beans;

1-44 (ix) popcorn and popcorn snacks;

1-45 (x) cereal, including granola;

1-46 (xi) dry mix;

1-47 (xii) vinegar;

1-48 (xiii) pickles;

1-49 (xiv) mustard;

1-50 (xv) roasted coffee or dry tea; [7] or

1-51 (xvi) a dried herb or dried herb mix [for  
 1-52 sale at the person's home];

1-53 (B) has an annual gross income of \$50,000 or less  
 1-54 from the sale of food described by Paragraph (A); ~~and~~

1-55 (C) sells the foods produced under Paragraph (A)  
 1-56 only directly to consumers at the individual's home, a farmers'  
 1-57 market, a farm stand, or a municipal, county, or nonprofit fair,  
 1-58 festival, or event; and

1-59 (D) delivers products to the consumer at the  
 1-60 point of sale or another location designated by the consumer.

1-61 (3-b) "Farm stand" means a premises owned and operated

2-1 by a producer of agricultural food products at which the producer or  
 2-2 other persons may offer for sale produce or foods described by  
 2-3 Subdivision (2-b)(A).

2-4 SECTION 2. Section 437.0191, Health and Safety Code, is  
 2-5 amended to read as follows:

2-6 Sec. 437.0191. EXEMPTION FOR COTTAGE FOOD PRODUCTION  
 2-7 OPERATIONS. (a) A cottage food production operation is not a food  
 2-8 service establishment for purposes of this chapter.

2-9 (b) The exemption provided by Subsection (a) does not affect  
 2-10 the application of Sections 431.045, 431.0495, and 431.247  
 2-11 authorizing the department or other local health authority to act  
 2-12 to prevent an immediate and serious threat to human life or health.

2-13 SECTION 3. The heading to Section 437.0192, Health and  
 2-14 Safety Code, is amended to read as follows:

2-15 Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION  
 2-16 OPERATIONS BY LOCAL GOVERNMENT AUTHORITIES [~~HEALTH DEPARTMENT~~]  
 2-17 PROHIBITED; COMPLAINTS.

2-18 SECTION 4. Section 437.0192(a), Health and Safety Code, is  
 2-19 amended to read as follows:

2-20 (a) A local government authority, including a local health  
 2-21 department, may not regulate the production of food at a cottage  
 2-22 food production operation.

2-23 SECTION 5. Sections 437.0193 and 437.0194, Health and  
 2-24 Safety Code, are amended to read as follows:

2-25 Sec. 437.0193. PACKAGING AND LABELING REQUIREMENTS FOR  
 2-26 COTTAGE FOOD PRODUCTION OPERATIONS. (a) Food described by  
 2-27 Section 437.001(2-b)(A) sold by a cottage food production operation  
 2-28 must be packaged in a manner that prevents product contamination,  
 2-29 except that a food item is not required to be packaged if it is too  
 2-30 large or bulky for conventional packaging.

2-31 (b) The executive commissioner shall adopt rules requiring a  
 2-32 cottage food production operation to label all of the foods  
 2-33 described in Section 437.001(2-b)(A) that the operation sells to  
 2-34 consumers. The label must include:

2-35 (1) the name and address of the cottage food  
 2-36 production operation; and

2-37 (2) a statement that the food is not inspected by the  
 2-38 department or a local health department.

2-39 (c) For foods not required to be packaged under Subsection  
 2-40 (a), the information required to be included on the label under  
 2-41 Subsection (b) must be provided to the consumer on an invoice or  
 2-42 receipt.

2-43 Sec. 437.0194. CERTAIN SALES BY COTTAGE FOOD PRODUCTION  
 2-44 OPERATIONS [~~THROUGH THE INTERNET~~] PROHIBITED. A cottage food  
 2-45 production operation may not sell any of the foods described in  
 2-46 Section 437.001(2-b)(A):

2-47 (1) through the Internet;

2-48 (2) by mail order; or

2-49 (3) at wholesale.

2-50 SECTION 6. Chapter 437, Health and Safety Code, is amended  
 2-51 by adding Sections 437.0195 and 437.0196 to read as follows:

2-52 Sec. 437.0195. PRODUCTION OF COTTAGE FOOD PRODUCTS. (a) An  
 2-53 individual who operates a cottage food production operation must  
 2-54 have successfully completed a basic food safety education or  
 2-55 training program for food handlers accredited under Subchapter D,  
 2-56 Chapter 438.

2-57 (b) An individual may not process, prepare, package, or  
 2-58 handle cottage food products unless the individual:

2-59 (1) meets the requirements of Subsection (a);

2-60 (2) is directly supervised by an individual described  
 2-61 by Subsection (a); or

2-62 (3) is a member of the household in which the cottage  
 2-63 food products are produced.

2-64 Sec. 437.0196. POTENTIALLY HAZARDOUS FOOD; PROHIBITION FOR  
 2-65 COTTAGE FOOD PRODUCTION OPERATIONS. (a) In this section,  
 2-66 "potentially hazardous food" means a food that requires time and  
 2-67 temperature control for safety to limit pathogen growth or toxin  
 2-68 production. The term includes a food that must be held under proper  
 2-69 temperature controls, such as refrigeration, to prevent the growth

3-1 of bacteria that may cause human illness. A potentially hazardous  
3-2 food may include a food that contains protein and moisture and is  
3-3 neutral or slightly acidic, such as meat, poultry, fish, and  
3-4 shellfish products, pasteurized and unpasteurized milk and dairy  
3-5 products, raw seed sprouts, baked goods that require refrigeration,  
3-6 including cream or custard pies or cakes, and ice products. The  
3-7 term does not include a food that uses potentially hazardous food as  
3-8 ingredients if the final food product does not require time or  
3-9 temperature control for safety to limit pathogen growth or toxin  
3-10 production.

3-11 (b) A cottage food production operation may not sell to  
3-12 customers potentially hazardous foods.

3-13 SECTION 7. Chapter 211, Local Government Code, is amended  
3-14 by adding Subchapter C to read as follows:

3-15 SUBCHAPTER C. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

3-16 Sec. 211.031. DEFINITIONS. In this subchapter, "cottage  
3-17 food production operation" and "home" have the meanings assigned by  
3-18 Section 437.001, Health and Safety Code.

3-19 Sec. 211.032. CERTAIN ZONING REGULATIONS PROHIBITED. A  
3-20 municipal zoning ordinance may not prohibit the use of a home for  
3-21 cottage food production operations.

3-22 Sec. 211.033. ACTION FOR NUISANCE OR OTHER TORT. This  
3-23 subchapter does not affect the right of a person to bring a cause of  
3-24 action under other law against an individual for nuisance or  
3-25 another tort arising out of the individual's use of the individual's  
3-26 home for cottage food production operations.

3-27 SECTION 8. Chapter 231, Local Government Code, is amended  
3-28 by adding Subchapter M to read as follows:

3-29 SUBCHAPTER M. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

3-30 Sec. 231.281. DEFINITIONS. In this subchapter, "cottage  
3-31 food production operation" and "home" have the meanings assigned by  
3-32 Section 437.001, Health and Safety Code.

3-33 Sec. 231.282. CERTAIN ZONING REGULATIONS PROHIBITED. A  
3-34 county zoning ordinance may not prohibit the use of a home for  
3-35 cottage food production operations.

3-36 Sec. 231.283. ACTION FOR NUISANCE OR OTHER TORT. This  
3-37 subchapter does not affect the right of a person to bring a cause of  
3-38 action under other law against an individual for nuisance or  
3-39 another tort arising out of the individual's use of the individual's  
3-40 home for cottage food production operations.

3-41 SECTION 9. Notwithstanding Section 437.0195, Health and  
3-42 Safety Code, as added by this Act, an individual operating a cottage  
3-43 food production operation is not required to complete a basic food  
3-44 safety education or training program for food handlers before  
3-45 January 1, 2014.

3-46 SECTION 10. This Act takes effect September 1, 2013.

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