

By: Rodriguez of Travis

H.B. No. 2600

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of food production and sales operations by a home food processor; requiring an occupational permit; authorizing a fee and an administrative penalty.

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

SECTION 1. Section 437.001, Health and Safety Code, is amended by adding Subdivision (5-a) to read as follows:

(5-a) "Home food processor" means an individual, operating out of the individual's home, who produces at the individual's home:

(A) any food that a cottage food production operation may produce under Subdivision (2-b)(A);

(B) canned goods that are acidified or low-acid;

(C) fermented products;

(D) honey;

(E) perishable baked goods;

(F) tamales; and

(G) any other food not included in this subdivision that is not a potentially hazardous food, as defined by Section 437.0196.

SECTION 2. Section 437.002(a), Health and Safety Code, is amended to read as follows:

(a) A county or public health district may enforce state law and rules adopted under state law concerning food service

establishments, retail food stores, mobile food units, home food processors, and roadside food vendors.

SECTION 3. Section 437.009, Health and Safety Code, is amended to read as follows:

Sec. 437.009. INSPECTIONS. (a) Authorized agents or employees of the department, a county, or a public health district may enter the premises of a food service establishment, retail food store, mobile food unit, roadside food vendor, home food processor, or temporary food service establishment under the department's, county's, or district's jurisdiction during normal operating hours to conduct inspections to determine compliance with:

(1) state law, including a requirement to hold and display written authorization under Section 437.021;

(2) rules adopted under state law; and

(3) orders adopted by the department, county, or district.

(b) An inspection of a home food processor under Subsection (a) is limited to the areas in the individual's home that the individual designates for food production and food storage related to the home food processing.

SECTION 4. Chapter 437, Health and Safety Code, is amended by adding Section 437.01911 to read as follows:

Sec. 437.01911. EXEMPTION FOR HOME FOOD PROCESSOR. (a) A home food processor 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 5. Chapter 437, Health and Safety Code, is amended by adding Sections 437.022, 437.0221, 437.0222, and 437.0223 to read as follows:

Sec. 437.022. HOME FOOD PROCESSOR: PERMIT REQUIRED; FEE; SALES. (a) A person may not operate as a home food processor unless the person holds a permit issued by the department.

(b) The department may charge a fee to issue a permit under Subsection (a). The amount of the fee may not exceed the amount of the fee for obtaining a food manufacturer's license under Subchapter J, Chapter 431.

(c) A home food processor may sell any food described in Section 437.001(5-a):

(1) at any location in this state;
(2) if both the processor and the consumer are located in this state:

(A) through the Internet; or

(B) by mail order; and

(3) at wholesale.

Sec. 437.0221. HOME FOOD PROCESSOR: PACKAGING AND LABELING REQUIREMENTS. (a) Food described by Section 437.001(5-a) that is sold by a home food processor must be packaged in a manner that prevents product contamination.

(b) Food described by Section 437.001(5-a) that is sold by a home food processor must be affixed with a label that includes:

(1) the name and address of the home food processor;

1 (2) a list of the ingredients contained in the food
2 item; and

3 (3) the statement "processed in a home-processing
4 facility."

5 Sec. 437.0222. HOME FOOD PROCESSOR: PRODUCTION
6 REQUIREMENTS. (a) A home food processor, in conducting a
7 processing operation, shall comply with the following:

8 (1) a refrigerator or freezer used for food storage
9 for the operation:

10 (A) may not be the same refrigerator or freezer
11 as used for personal use; and

12 (B) must have an accurate thermometer;

13 (2) a potentially hazardous food allowed under Section
14 437.001(5-a) that is kept after production must be:

15 (A) refrigerated at a temperature at or below 41
16 degrees Fahrenheit; or

17 (B) heated to a temperature at or above 135
18 degrees Fahrenheit; and

19 (3) each ingredient and final product for the
20 operation must be stored in an area that:

21 (A) is separate from an area used for personal
22 use unless the ingredient or final product is in an enclosed
23 container;

24 (B) is kept clean; and

25 (C) protects food from unsanitary conditions and
26 contamination.

27 (b) A home food processor shall ensure the processor's

operation meets the following requirements:

(1) each wall, ceiling, and floor of the operation area must be in good repair, easily cleanable, and kept clean;

(2) each utensil, item of equipment, and supply used in the operation must be kept clean;

(3) each food contact surface must be easy to clean, smooth, and nonabsorbent and may not have cracks or open seams;

(4) plumbing in the operation area must provide hot and cold potable water that is under pressure;

(5) sewage disposal for the operation must be through an adequate sewer system or other adequate means;

(6) toilet facilities:

(A) may not open directly into the food production area; and

(B) may open into a hallway that leads to the food production area only if the toilet facility is equipped with a self-closing door;

(7) water used for food production that is not from a public water system must be annually sampled and tested for coliform and any required records of the water testing must be maintained; and

(8) live animals, including pets, must be kept out of any operation and storage area used during food handling, production, or storage activities.

(c) A home food processor or an individual who processes, prepares, packages, or handles food for a home food processor:

(1) shall successfully complete a basic food safety

education or training program for food handlers accredited under Subchapter D, Chapter 438; and

(2) may not process, prepare, package, or handle home food products unless the home food processor or the individual:

(A) is free from contagious or communicable diseases, sores, or infected wounds; and

(B) wears a hair restraint, a beard restraint, if applicable, and clothing that covers body hair that are designed and worn to effectively keep hair from contacting exposed food.

(d) A home food processor producing a fermented product or a canned good that is acidified or low-acid shall:

(1) before making the product or good available for the first sale, submit to the department the recipe used to produce the product or good;

(2) before making the product or good available for the first sale, submit to a commercial laboratory approved for testing by the department a sample of the product or good produced according to the submitted recipe;

(3) keep a record of the testing results of a product or good submitted under Subdivision (2);

(4) keep a record of the pH balance of each batch of the product or good that is produced; and

(5) have a product code plan that identifies:

(A) the product or good;

(B) the date and year the product or good was packaged; and

(C) the batch number.

1 (e) A recipe submitted to the department under Subsection
2 (d) is a trade secret for purposes of Section 552.110, Government
3 Code, and is exempt from disclosure under Chapter 552, Government
4 Code.

5 Sec. 437.0223. HOME FOOD PROCESSOR: RECORDS. (a) A home
6 food processor shall maintain records that include each food sold
7 by the home food processor and the location where the food was sold.
8 This subsection does not require the processor to include in the
9 records the name of each person who purchased the food.

10 (b) A home food processor who produces a potentially
11 hazardous good must maintain a record of the temperatures and times
12 at which the good was cooked and stored.

13 SECTION 6. (a) Not later than December 1, 2015, the
14 executive commissioner of the Health and Human Services Commission
15 shall adopt rules to implement Sections 437.022 through 437.0223,
16 Health and Safety Code, as added by this Act.

17 (b) The rules adopted under Subsection (a) may not include
18 requirements or restrictions other than those specified in Sections
19 437.022 through 437.0223, Health and Safety Code, as added by this
20 Act.

21 SECTION 7. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2015.