

By: Rodriguez, VanDeaver, Kacal, Lambert,
Moody

H.B. No. 2108

Substitute the following for H.B. No. 2108:

By: Thompson of Harris

C.S.H.B. No. 2108

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of cottage food production operations.

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

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

(1) "Acidified canned goods" means food with a finished equilibrium pH value of 4.6 or less that is thermally processed before being placed in an airtight container.

(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 time and temperature control for safety [~~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;

- 1 (ix) popcorn and popcorn snacks;
2 (x) cereal, including granola;
3 (xi) dry mix;
4 (xii) vinegar;
5 (xiii) pickled fruit or vegetables,
6 including beets and carrots, that are preserved in vinegar, brine,
7 or a similar solution at an equilibrium pH value of 4.6 or less
8 [pickles];
9 (xiv) mustard;
10 (xv) roasted coffee or dry tea; ~~[or]~~
11 (xvi) a dried herb or dried herb mix;
12 (xvii) acidified canned goods;
13 (xviii) fermented vegetable products,
14 including products that are refrigerated to preserve quality;
15 (xix) frozen fruit or vegetables; or
16 (xx) any other food that is not a time and
17 temperature control for safety food, as defined by Section
18 [437.0196](#);

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

21 (C) sells the foods produced under Paragraph (A)
22 only directly to consumers ~~[at the individual's home, a farmers'~~
23 ~~market, a farm stand, or a municipal, county, or nonprofit fair,~~
24 ~~festival, or event]~~; and

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

27 (3-c) "Fermented vegetable product" means a low-acid

1 vegetable food product subjected to the action of certain
2 microorganisms that produce acid during their growth and reduce the
3 pH value of the food to 4.6 or less.

4 SECTION 2. Section 437.0193, Health and Safety Code, is
5 amended by adding Subsection (d) to read as follows:

6 (d) A cottage food production operation that sells frozen
7 fruit or vegetables must include on the label of the frozen fruit or
8 vegetables or on an invoice or receipt provided with the frozen
9 fruit or vegetables when sold the following statement in at least
10 12-point font: "SAFE HANDLING INSTRUCTIONS: To prevent illness
11 from bacteria, keep this food frozen until preparing for
12 consumption."

13 SECTION 3. Section 437.0194, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 437.0194. CERTAIN SALES BY COTTAGE FOOD PRODUCTION
16 OPERATIONS PROHIBITED OR RESTRICTED. (a) A cottage food
17 production operation may not sell any of the foods described in
18 Section 437.001(2-b)(A) [+

19 [~~(1) through the Internet,~~

20 [~~(2) by mail order, or~~

21 [~~(3)] at wholesale.~~

22 (b) A cottage food production operation may sell a food
23 described by Section 437.001(2-b)(A) in this state through the
24 Internet or by mail order only if:

25 (1) the consumer purchases the food through the
26 Internet or by mail order from the operation and the operator
27 personally delivers the food to the consumer; and

1 (2) before the operator accepts payment for the food,
2 the operator provides all labeling information required by Section
3 437.0193(d) and department rules to the consumer by:

4 (A) posting a legible statement on the
5 operation's Internet website;

6 (B) publishing the information in a catalog; or

7 (C) otherwise communicating the information to
8 the consumer.

9 SECTION 4. Chapter 437, Health and Safety Code, is amended
10 by adding Sections 437.01951 and 437.01952 to read as follows:

11 Sec. 437.01951. REQUIREMENTS FOR SALE OF CERTAIN COTTAGE
12 FOODS. (a) A cottage food production operation that sells to
13 consumers pickled fruit or vegetables, fermented vegetable
14 products, or acidified canned goods shall:

15 (1) use a recipe that:

16 (A) is from a source approved by the department
17 under Subsection (d);

18 (B) has been tested by an appropriately certified
19 laboratory that confirmed the finished fruit or vegetable, product,
20 or good has an equilibrium pH value of 4.6 or less; or

21 (C) is approved by a qualified process authority;
22 or

23 (2) if the operation does not use a recipe described by
24 Subdivision (1), test each batch of the recipe with a calibrated pH
25 meter to confirm the finished fruit or vegetable, product, or good
26 has an equilibrium pH value of 4.6 or less.

27 (b) A cottage food production operation may not sell to

1 consumers pickled fruit or vegetables, fermented vegetable
2 products, or acidified canned goods before the operator complies
3 with Subsection (a).

4 (c) For each batch of pickled fruit or vegetables, fermented
5 vegetable products, or acidified canned goods, a cottage food
6 production operation must:

7 (1) label the batch with a unique number; and
8 (2) for a period of at least 12 months, keep a record
9 that includes:

10 (A) the batch number;
11 (B) the recipe used by the producer;
12 (C) the source of the recipe or testing results,
13 as applicable; and
14 (D) the date the batch was prepared.

15 (d) The department shall:
16 (1) approve sources for recipes that a cottage food
17 production operation may use to produce pickled fruit or
18 vegetables, fermented vegetable products, or acidified canned
19 goods; and

20 (2) semiannually post on the department's Internet
21 website a list of the approved sources for recipes, appropriately
22 certified laboratories, and qualified process authorities.

23 (e) The department shall develop and implement a process by
24 which an individual may request that the department approve an
25 additional source for recipes under Subsection (d). The process
26 must allow an individual to submit with the individual's request
27 documentation supporting the request.

1 (f) A source for recipes approved by the department under
2 Subsection (d) must be scientifically validated and may be from a
3 government entity, academic institution, state extension service,
4 or other qualified source with:

5 (1) expert knowledge of processing requirements for
6 pickled fruit or vegetables, fermented vegetable products, or
7 acidified canned goods; and

8 (2) adequate facilities for scientifically validating
9 recipes for pickled fruit or vegetables, fermented vegetable
10 products, or acidified canned goods.

11 (g) This section does not apply to pickled cucumbers.

12 (h) For purposes of this section, "process authority" means
13 a person who has expert knowledge acquired through appropriate
14 training and experience in the pickling, fermenting, or
15 acidification and processing of pickled, fermented, or acidified
16 foods.

17 Sec. 437.01952. REQUIREMENTS FOR SALE OF FROZEN FRUIT OR
18 VEGETABLES. A cottage food production operation that sells to
19 consumers frozen fruit or vegetables shall:

20 (1) store and deliver the frozen fruit or vegetables
21 at an air temperature of not more than 32 degrees Fahrenheit; and

22 (2) label the fruit or vegetables in accordance with
23 Section 437.0193(d).

24 SECTION 5. Section 437.0196, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 437.0196. TIME AND TEMPERATURE CONTROL FOR SAFETY
27 [~~POTENTIALLY~~ HAZARDOUS] FOOD; PROHIBITION FOR COTTAGE FOOD

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

18 (b) Except as otherwise provided by this chapter, a [A]
19 cottage food production operation may not sell to consumers time
20 and temperature control for safety [~~customers~~ ~~potentially~~
21 ~~hazardous~~] foods.

22 SECTION 6. As soon as practicable after the effective date
23 of this Act:

24 (1) the executive commissioner of the Health and Human
25 Services Commission shall adopt rules as necessary to implement the
26 changes made by this Act; and

27 (2) the Department of State Health Services shall

1 approve sources for recipes for pickled fruit or vegetables,
2 acidified canned goods, and fermented vegetable products and post a
3 list of sources, appropriately certified laboratories, and
4 qualified process authorities on the department's Internet website
5 as required by Section 437.01951, Health and Safety Code, as added
6 by this Act.

7 SECTION 7. This Act takes effect September 1, 2019.