

By: Rodriguez

H.B. No. 2108

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of cottage food production operations.

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

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

7 (2-b) "Cottage food production operation" means an
8 individual, operating out of the individual's home, who:

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

11 (i) a baked good that is not a time and
12 temperature control for safety [~~potentially hazardous~~] food, as
13 defined by Section 437.0196;

14 (ii) candy;

15 (iii) coated and uncoated nuts;

16 (iv) unroasted nut butters;

17 (v) fruit butters;

18 (vi) a canned jam or jelly;

19 (vii) a fruit pie;

20 (viii) dehydrated fruit or vegetables,
21 including dried beans;

22 (ix) popcorn and popcorn snacks;

23 (x) cereal, including granola;

24 (xi) dry mix;

- 1 (xii) vinegar;
- 2 (xiii) pickled fruit or vegetables,
- 3 including pickled beets and carrots [~~pickles~~];
- 4 (xiv) mustard;
- 5 (xv) roasted coffee or dry tea; [~~or~~]
- 6 (xvi) a dried herb or dried herb mix;
- 7 (xvii) canned goods that are acidified;
- 8 (xviii) fermented products;
- 9 (xix) frozen fruit or vegetables; or
- 10 (xx) any other food that is not a time and
- 11 temperature control for safety food, as defined by Section
- 12 [437.0196](#);

13 (B) has an annual gross income of \$50,000 or less

14 from the sale of food described by Paragraph (A);

15 (C) sells the foods produced under Paragraph (A)

16 only directly to consumers [~~at the individual's home, a farmers'~~

17 ~~market, a farm stand, or a municipal, county, or nonprofit fair,~~

18 ~~festival, or event~~]; and

19 (D) delivers products to the consumer at the

20 point of sale or another location designated by the consumer.

21 (3-c) "Fermented product" means a low-acid food product

22 subjected to the action of certain microorganisms that produce acid

23 during their growth and reduce the pH value of the food to 4.6 or

24 less.

25 SECTION 2. Section [437.0193](#), Health and Safety Code, is

26 amended by adding Subsections (d) and (e) to read as follows:

27 (d) Honey, honey spreads, and other foods that include honey

1 in the product name must be labeled in accordance with Subchapter E,
2 Chapter 131, Agriculture Code.

3 (e) A cottage food production operation that sells a food
4 described by Section 437.001(2-b)(A) that is a time and temperature
5 control for safety food, as defined by Section 437.0196, must
6 include on the label of the finished food product or on an invoice
7 or receipt provided with the product when sold the following
8 statement in at least 12-point font: "SAFE HANDLING INSTRUCTIONS:
9 To prevent illness from bacteria, keep this food refrigerated or
10 frozen."

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

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

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

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

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

20 (b) An individual who operates a cottage food production
21 operation may sell a food described by Section 437.001(2-b)(A)
22 through the Internet or by mail order or use a shipping or delivery
23 service for delivery of the food only if:

24 (1) the individual personally sells the food to the
25 consumer and arranges delivery of the food through a delivery or
26 shipping service; or

27 (2) the consumer purchases the food through the

1 Internet or by mail order from the individual and the individual
2 personally delivers the food to the consumer.

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

5 Sec. 437.01951. REQUIREMENTS FOR SALE OF FERMENTED PRODUCTS
6 AND ACIDIFIED CANNED GOODS. (a) A cottage food production
7 operation that sells to consumers fermented products or canned
8 goods that are acidified shall:

9 (1) use a recipe that:

10 (A) is from a source approved by the department;

11 or

12 (B) has been tested by an appropriately certified
13 laboratory and the laboratory confirmed that the finished product
14 or good has a pH value of 4.6 or less; or

15 (2) annually test the first batch of each recipe with a
16 calibrated pH meter to confirm that the finished product or good has
17 a pH value of 4.6 or less.

18 (b) The department shall:

19 (1) approve sources for recipes that a cottage food
20 production operation may use to produce fermented products or
21 canned goods that are acidified; and

22 (2) semiannually post on the department's Internet
23 website a list of the approved sources for recipes.

24 (c) A cottage food production operation may not sell to
25 consumers fermented products or canned goods that are acidified
26 before the operator complies with Subsection (a).

27 Sec. 437.01952. REQUIREMENTS FOR SALE OF TIME AND

1 TEMPERATURE CONTROL FOR SAFETY FOOD PRODUCTS. A cottage food
2 production operation that sells to consumers a food described by
3 Section 437.001(2-b)(A) that is a time and temperature control for
4 safety food shall:

5 (1) store the finished food product at an air
6 temperature of not more than 40 degrees Fahrenheit; and

7 (2) label the finished food product in accordance with
8 Section 437.0193(e).

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

11 Sec. 437.0196. TIME AND TEMPERATURE CONTROL FOR SAFETY
12 [~~POTENTIALLY HAZARDOUS~~] FOOD; PROHIBITION FOR COTTAGE FOOD
13 PRODUCTION OPERATIONS; EXCEPTION. (a) In this section, "time and
14 temperature control for safety [~~potentially hazardous~~] food"
15 means a food that requires time and temperature control for safety
16 to limit pathogen growth or toxin production. The term includes a
17 food that must be held under proper temperature controls, such as
18 refrigeration, to prevent the growth of bacteria that may cause
19 human illness. A time and temperature control for safety
20 [~~potentially hazardous~~] food may include a food that contains
21 protein and moisture and is neutral or slightly acidic, such as
22 meat, poultry, fish, and shellfish products, pasteurized and
23 unpasteurized milk and dairy products, raw seed sprouts, baked
24 goods that require refrigeration, including cream or custard pies
25 or cakes, and ice products. The term does not include a food that
26 uses time and temperature control for safety [~~potentially~~
27 hazardous] food as ingredients if the final food product does not

1 require time or temperature control for safety to limit pathogen
2 growth or toxin production.

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

7 SECTION 6. As soon as practicable after the effective date
8 of this Act:

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

12 (2) the Department of State Health Services shall
13 approve sources for recipes for fermented products and acidified
14 canned goods and post a list of sources on the department's Internet
15 website as required by Section 437.01951, Health and Safety Code,
16 as added by this Act.

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