

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) plant-based acidified canned goods;  
13 (xviii) fermented vegetable products,  
14 including products that are refrigerated to preserve quality;  
15 (xix) frozen raw and uncut fruit or  
16 vegetables; or  
17 (xx) any other food that is not a time and  
18 temperature control for safety food, as defined by Section  
19 [437.0196](#);

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

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

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

1           (3-c) "Fermented vegetable product" means a low-acid  
2 vegetable food product subjected to the action of certain  
3 microorganisms that produce acid during their growth and reduce the  
4 pH value of the food to 4.6 or less.

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

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

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

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

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

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

22           ~~[(3)]~~ at wholesale.

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

26           (1) the consumer purchases the food through the  
27 Internet or by mail order from the operation and the operator

1 personally delivers the food to the consumer; and  
2 (2) subject to Subsection (c), before the operator  
3 accepts payment for the food, the operator provides all labeling  
4 information required by Section 437.0193(d) and department rules to  
5 the consumer by:

6 (A) posting a legible statement on the  
7 operation's Internet website;

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

9 (C) otherwise communicating the information to  
10 the consumer.

11 (c) The operator of a cottage food production operation that  
12 sells a food described by Section 437.001(2-b)(A) in this state in  
13 the manner described by Subsection (b):

14 (1) is not required to include the address of the  
15 operation in the labeling information required under Subsection  
16 (b)(2) before the operator accepts payment for the food; and

17 (2) shall provide the address of the operation on the  
18 label of the food in the manner required by Section 437.0193(b)  
19 after the operator accepts payment for the food.

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

22 Sec. 437.01951. REQUIREMENTS FOR SALE OF CERTAIN COTTAGE  
23 FOODS. (a) A cottage food production operation that sells to  
24 consumers pickled fruit or vegetables, fermented vegetable  
25 products, or plant-based acidified canned goods shall:

26 (1) use a recipe that:

27 (A) is from a source approved by the department

1 under Subsection (d);

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

5 (C) is approved by a qualified process authority;  
6 or

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

11 (b) A cottage food production operation may not sell to  
12 consumers pickled fruit or vegetables, fermented vegetable  
13 products, or plant-based acidified canned goods before the operator  
14 complies with Subsection (a).

15 (c) For each batch of pickled fruit or vegetables, fermented  
16 vegetable products, or plant-based acidified canned goods, a  
17 cottage food production operation must:

18 (1) label the batch with a unique number; and

19 (2) for a period of at least 12 months, keep a record  
20 that includes:

21 (A) the batch number;

22 (B) the recipe used by the producer;

23 (C) the source of the recipe or testing results,

24 as applicable; and

25 (D) the date the batch was prepared.

26 (d) The department shall:

27 (1) approve sources for recipes that a cottage food

1 production operation may use to produce pickled fruit or  
2 vegetables, fermented vegetable products, or plant-based acidified  
3 canned goods; and

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

7 (e) The department shall develop and implement a process by  
8 which an individual may request that the department approve an  
9 additional source for recipes under Subsection (d). The process  
10 must allow an individual to submit with the individual's request  
11 documentation supporting the request.

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

16 (1) expert knowledge of processing requirements for  
17 pickled fruit or vegetables, fermented vegetable products, or  
18 acidified canned goods; and

19 (2) adequate facilities for scientifically validating  
20 recipes for pickled fruit or vegetables, fermented vegetable  
21 products, or acidified canned goods.

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

23 (h) For purposes of this section, "process authority" means  
24 a person who has expert knowledge acquired through appropriate  
25 training and experience in the pickling, fermenting, or  
26 acidification and processing of pickled, fermented, or acidified  
27 foods.

1       Sec. 437.01952. REQUIREMENTS FOR SALE OF FROZEN FRUIT OR  
2 VEGETABLES. A cottage food production operation that sells to  
3 consumers frozen raw and uncut fruit or vegetables shall:

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

6           (2) label the fruit or vegetables in accordance with  
7 Section 437.0193(d).

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

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

1 growth or toxin production.

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

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

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

11 (2) the Department of State Health Services shall  
12 approve sources for recipes for pickled fruit or vegetables,  
13 plant-based acidified canned goods, and fermented vegetable  
14 products and post a list of sources, appropriately certified  
15 laboratories, and qualified process authorities on the  
16 department's Internet website as required by Section 437.01951,  
17 Health and Safety Code, as added by this Act.

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



\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 572 passed the Senate on April 23, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 23, 2019, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 572 passed the House, with amendments, on May 21, 2019, by the following vote: Yeas 141, Nays 1, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor