

## **BILL ANALYSIS**

C.S.S.B. 829  
By: Kolkhorst  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In recent years, the cottage food industry has seen substantial growth, transforming into a vital sector of local economies across the U.S. (Harvard Law School, Food Law and Policy Clinic, 2018). According to the Texas Department of State Health Services, under the Texas Cottage Food Law, home-based food entrepreneurs are allowed to sell certain foods directly to consumers without needing a food establishment license. However, there are limitations to the law which present challenges for some producers. For instance, there has been a cap on the annual gross income, restrictive rules on the type of food that can be sold, and limitations on the venues where these foods can be marketed and sold. C.S.S.B. 829 seeks to amend current law regarding cottage food production to address these challenges and bolster the cottage food industry in Texas. This bill will help many cottage food producers including military veterans and their families who take the Battleground to Breaking Ground Program in the Texas A & M AgriLife Extension Service, which trains them to become cottage food producers (*citation: <https://txagrability.tamu.edu/bgbg/>*).

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 and SECTION 7 of this bill.

### **ANALYSIS**

C.S.S.B. 829 amends the Health and Safety Code to include as a cottage food production operation a 501(c)(3) nonprofit organization that:

- produces at the home of an individual who is a director or officer of the nonprofit organization applicable food, as described by statute and revised by the bill's provisions;
- has an annual gross income of \$100,000 or less from the sale of such described food;
- sells the described foods directly to consumers or to a cottage food vendor, as defined by the bill; and
- delivers products to the consumer or vendor at the point of sale or another location designated by the consumer or vendor.

C.S.S.B. 829 revises the definition of "cottage food production operation" to specify that, as an applicably described food, a baked good includes a baked good that is a time and temperature control for safety food but that does not contain meat, poultry, shellfish, or fish. Furthermore, with respect to the definition in current law of a "time and temperature control for safety food," the bill revises the definition by removing the specification that baked goods that require refrigeration, including cream or custard pies or cakes, are such safety foods.

C.S.S.B. 829 increases from \$50,000 to \$100,000 the annual gross income of an individual operating a cottage food production operation out of the individual's home that qualifies the individual to operate as a cottage food production operation under current law, as revised by the bill.

C.S.S.B. 829 expands the prohibition in current law on a local government authority, including a local health department, from regulating the production of applicable food, as described by statute and revised by the bill's provisions, at a cottage food production operation by:

- prohibiting such an authority or department from requiring that a cottage food production operation obtain any type of license or permit or pay any fee to sell the applicable food directly to a consumer or cottage food vendor; and
- prohibiting such an authority or department from employing or continuing to employ a person who knowingly requires or attempts to require a cottage food production operation to obtain a license or permit in violation of the prohibition.

C.S.S.B. 829 establishes an exception to the prohibition on a cottage food production operation selling at wholesale any of the applicable food, as described by statute and the bill's provisions, to authorize the sale of such applicable food at wholesale to a cottage food vendor, defined by the bill as a person who:

- has a contractual relationship with a cottage food production operation; and
- sells applicable food, except baked goods, on behalf of the cottage food production operation directly to consumers.

A cottage food vendor that purchases food from a cottage food production operation at wholesale must register with the Department of State Health Services (DSHS) in the form and manner prescribed by DSHS. The executive commissioner of the Health and Human Services Commission (HHSC) may adopt rules to implement this registration provision. The bill also authorizes a cottage food vendor to sell such food, except baked goods, directly to consumers at a farmers' market, farm stand, food service establishment, or any retail store and provides that such a vendor must display in a prominent place near the location where the food is offered for sale a sign with a disclosure stating that the product was produced in a private residence and is not subject to governmental licensing or inspection.

C.S.S.B. 829 requires the label, for which the executive commissioner of HHSC under current law adopts rules, for an applicable food, as described by statute and the bill's provisions, to include the words "prepared on" immediately followed by the date on which the food is prepared. The bill replaces the requirement for the label to include a statement that the food is not inspected by DSHS or a local health department with a disclosure that food was produced in a private residence and is not subject to governmental licensing or inspection. The bill establishes that a cottage food production operation is not required to include on a food label the address of the operation if the operation registers, as provided under the bill's provisions, with DSHS in the form and manner prescribed by DSHS. The bill requires a cottage food production operation that sells time and temperature control for safety baked goods to include on the label of the food or on an invoice or receipt provided with the food when sold a specified statement in at least 12-point font as provided by the bill's provisions that provides for safe handling instructions.

C.S.S.B. 829 requires a cottage food production operation that sells to consumers time and temperature control for safety baked goods to store and deliver the food at the air temperature necessary to prevent the growth of bacteria that may cause human illness and to label the food in accordance with the applicable bill provision.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

While C.S.S.B. 829 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Whereas the engrossed removed from the definition of "cottage food production operation" the specification in current law that a baked good is not a time and temperature control for safety food, the substitute, in revising that definition of such an operation, specifies instead that such a baked good, includes a baked good that is a time and temperature control for safety food, as defined in current law and amended by the bill, but that does not contain meat, poultry, shellfish, or fish. Furthermore, with respect to the amended definition of a "time and temperature control for safety food," both the engrossed and substitute revise the definition by removing the specification from current law that baked goods that require refrigeration, including cream or custard pies or cakes, are such safety foods. However, the engrossed, but not the substitute, further specified that the term does not include a baked good, including a baked good that contains pasteurized and unpasteurized milk and dairy products or a baked good that requires refrigeration.

Both the engrossed and the substitute authorize a cottage food production operation to sell the described food to a cottage food vendor at wholesale. However, the substitute, but not the engrossed, excepts baked goods from that authorization for sale at wholesale. The engrossed authorizes a cottage food vendor to sell the described food to consumers at a farmers' market, farm stand, food service establishment, or retail food store but the substitute changes the latter location to specify that the vendor may sell the described food at any retail store and additionally clarifies that the authorization for the vendor to sell described food at those locations is an authorization for selling such foods except baked goods.

The substitute and the engrossed both amend the provisions in current law authorizing the executive commissioner to adopt rules regarding packaging and labeling requirements for cottage food production operations but they differ as follows:

- the substitute, but not the engrossed, requires a label subject to the rulemaking to include the words "prepared on" immediately followed by the date on which the food is prepared;
- the engrossed, but not the substitute, required a label subject to the rulemaking to include either the phone number, email address, or mailing address of the operation and updated current law to reflect that requirement with regard to labeling information required before the operator accepts payment for the food or after the operator accepts such payment;
- while both the engrossed and the substitute require a label subject to the rulemaking to contain an explicit disclosure statement that the applicable product was produced in a private residence and is not subject to governmental licensing or inspection, the engrossed, but not the substitute, required a label subject to the rulemaking to also include an explicit statement that the product may contain allergens; and
- while both the engrossed and the substitute require a cottage food vendor to display a disclosure at an applicable location where the food is offered for sale but the engrossed requires that statement to state that a product may contain allergens whereas the substitute does not require such a statement.