

A BILL TO BE ENTITLED

AN ACT

relating to 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 amending Subdivision (2-b) and adding Subdivisions (3) and (5-a) to read as follows:

(2-b) "Cottage food production operation" means an individual, operating out of the individual's home, who or a nonprofit organization that:

(A) produces at the individual's home or the home of an individual who is a director or officer of the nonprofit organization, as applicable, subject to Section 437.0196:

(i) a baked good [~~that is not a time and temperature control for safety 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;

(ix) popcorn and popcorn snacks;

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

18 (B) has an annual gross income of \$100,000
19 [~~\$50,000~~] or less from the sale of food described by Paragraph (A);

20 (C) sells the foods produced under Paragraph (A)
21 [~~only~~] directly to consumers or to a cottage food vendor; and

22 (D) delivers products to the consumer or cottage
23 food vendor at the point of sale or another location designated by
24 the consumer or cottage food vendor.

25 (3) "Cottage food vendor" means a person who:

26 (A) has a contractual relationship with a cottage
27 food production operation; and

1 (B) sells food described by Subdivision (2-b)(A)
2 on behalf of the cottage food production operation directly to
3 consumers.

4 (5-a) "Nonprofit organization" means an organization
5 exempt from federal income tax under Section 501(a), Internal
6 Revenue Code of 1986, as an organization described by Section
7 501(c)(3) of that code.

8 SECTION 2. Section 437.0192, Health and Safety Code, is
9 amended by amending Subsection (a) and adding Subsection (c) to
10 read as follows:

11 (a) A local government authority, including a local health
12 department, may not:

13 (1) regulate the production of food at a cottage food
14 production operation; or

15 (2) require a cottage food production operation to
16 obtain any type of license or permit or pay any fee to sell food
17 described by Section 437.001(2-b)(A) directly to a consumer or
18 cottage food vendor.

19 (c) A local government authority, including a local health
20 department, may not employ or continue to employ a person who
21 knowingly requires or attempts to require a cottage food production
22 operation to obtain a license or permit in violation of Subsection
23 (a)(2).

24 SECTION 3. Section 437.0193, Health and Safety Code, is
25 amended by amending Subsection (b) and adding Subsections (b-1) and
26 (e) to read as follows:

27 (b) The executive commissioner shall adopt rules requiring

1 a cottage food production operation to label all of the foods
2 described in Section 437.001(2-b)(A) that the operation sells to
3 consumers. The label must include:

4 (1) the name and address of the cottage food
5 production operation; ~~and~~

6 (2) at least one of the following for the cottage food
7 production operation:

8 (A) the phone number;

9 (B) the e-mail address; or

10 (C) the mailing address; and

11 (3) the following disclosure:

12 "THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE AND IS NOT
13 SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION. THIS PRODUCT MAY
14 CONTAIN ALLERGENS." ~~[a statement that the food is not inspected by~~
15 ~~the department or a local health department.]~~

16 (b-1) Notwithstanding Subsection (b)(1), a cottage food
17 production operation is not required to include on a food label the
18 address of the operation if the operation registers with the
19 department in the form and manner prescribed by the department. The
20 executive commissioner may adopt rules to implement this
21 subsection.

22 (e) A cottage food production operation that sells time and
23 temperature control for safety baked goods must include on the
24 label of the food or on an invoice or receipt provided with the food
25 when sold the following statement in at least 12-point font: "SAFE
26 HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this
27 food refrigerated or frozen until the food is prepared for

1 consumption."

2 SECTION 4. Section 437.0194, Health and Safety Code, is
3 amended by amending Subsections (a) and (c) and adding Subsection
4 (a-1) to read as follows:

5 (a) Except as provided by Subsection (a-1), a [A] cottage
6 food production operation may not sell any of the foods described in
7 Section 437.001(2-b)(A) at wholesale.

8 (a-1) A cottage food production operation may sell food
9 described by Section 437.001(2-b)(A) to a cottage food vendor at
10 wholesale.

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 information
15 required under Section 437.0193(b)(2) for [address-of] the
16 operation in the labeling information required under Subsection
17 (b)(2) before the operator accepts payment for the food; and

18 (2) shall provide the information required under
19 Section 437.0193(b)(2) for [address-of] the operation on the label
20 of the food in the manner required by that subdivision [Section
21 437.0193(b)] after the operator accepts payment for the food.

22 SECTION 5. Chapter 437, Health and Safety Code, is amended
23 by adding Section 437.01953 to read as follows:

24 Sec. 437.01953. REQUIREMENTS FOR SALE OF CERTAIN BAKED
25 GOODS. A cottage food production operation that sells to consumers
26 time and temperature control for safety baked goods shall:

27 (1) store and deliver the food at the air temperature

1 necessary to prevent the growth of bacteria that may cause human
2 illness; and

3 (2) label the food in accordance with Section
4 437.0193(e).

5 SECTION 6. Section 437.0196(a), Health and Safety Code, is
6 amended to read as follows:

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

19 (1) a food that uses time and temperature control for
20 safety food as ingredients if the final food product does not
21 require time or temperature control for safety to limit pathogen
22 growth or toxin production; or

23 (2) a baked good, including a baked good that:
24 (A) contains pasteurized and unpasteurized milk
25 and dairy products; or
26 (B) requires refrigeration.

27 SECTION 7. Chapter 437, Health and Safety Code, is amended

1 by adding Section 437.01965 to read as follows:

2 Sec. 437.01965. COTTAGE FOOD VENDOR. (a) A cottage food
3 vendor may sell food described by Section 437.001(2-b)(A) directly
4 to consumers at a farmers' market, farm stand, food service
5 establishment, or retail food store.

6 (b) A cottage food vendor who sells food described by
7 Section 437.001(2-b)(A) must display in a prominent place near the
8 location where the food is offered for sale a sign with the
9 following disclosure:

10 "THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE AND IS NOT
11 SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION. THIS PRODUCT MAY
12 CONTAIN ALLERGENS."

13 (c) A cottage food vendor that purchases food from a cottage
14 food production operation at wholesale shall register with the
15 department in the form and manner prescribed by the department. The
16 executive commissioner may adopt rules to implement this
17 subsection.

18 SECTION 8. This Act takes effect September 1, 2023.