

By: Kolkhorst, et al.
(Goodwin, Gerdes, González of El Paso)

S.B. No. 829

Substitute the following for S.B. No. 829:

By: Klick

C.S.S.B. No. 829

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, including a baked good that is [not] a time and temperature control for safety food, as defined by Section 437.0196, but that does not contain meat, poultry, shellfish, or fish;

(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 (xiv) mustard;
9 (xv) roasted coffee or dry tea;
10 (xvi) a dried herb or dried herb mix;
11 (xvii) plant-based acidified canned goods;
12 (xviii) fermented vegetable products,
13 including products that are refrigerated to preserve quality;
14 (xix) frozen raw and uncut fruit or
15 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, subject to Subparagraph (i);

19 (B) has an annual gross income of \$100,000
20 [~~\$50,000~~] or less from the sale of food described by Paragraph (A);

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

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

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

27 (A) has a contractual relationship with a cottage

1 food production operation; and

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

5 (5-a) "Nonprofit organization" means an organization
6 exempt from federal income tax under Section 501(a), Internal
7 Revenue Code of 1986, as an organization described by Section
8 501(c)(3) of that code.

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

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

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

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

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

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

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

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

7 (2) the words "prepared on" immediately followed by
8 the date on which the food is prepared; and

9 (3) the following disclosure:

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

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

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

27 SECTION 4. Section 437.0194, Health and Safety Code, is

1 amended by amending Subsection (a) and adding Subsection (a-1) to
2 read as follows:

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

6 (a-1) A cottage food production operation may sell food
7 described by Section 437.001(2-b)(A), except baked goods, to a
8 cottage food vendor at wholesale.

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

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

14 (1) store and deliver the food at the air temperature
15 necessary to prevent the growth of bacteria that may cause human
16 illness; and

17 (2) label the food in accordance with Section
18 437.0193(e).

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

21 (a) In this section, "time and temperature control for
22 safety food" means a food that requires time and temperature
23 control for safety to limit pathogen growth or toxin production.
24 The term includes a food that must be held under proper temperature
25 controls, such as refrigeration, to prevent the growth of bacteria
26 that may cause human illness. A time and temperature control for
27 safety food may include a food that contains protein and moisture

1 and is neutral or slightly acidic, such as meat, poultry, fish, and
2 shellfish products, pasteurized and unpasteurized milk and dairy
3 products, raw seed sprouts, [~~baked goods that require~~
4 ~~refrigeration, including cream or custard pies or cakes,~~] and ice
5 products. The term does not include a food that uses time and
6 temperature control for safety food as ingredients if the final
7 food product does not require time or temperature control for
8 safety to limit pathogen growth or toxin production.

9 SECTION 7. Chapter 437, Health and Safety Code, is amended
10 by adding Section 437.01965 to read as follows:

11 Sec. 437.01965. COTTAGE FOOD VENDOR. (a) A cottage food
12 vendor may sell food described by Section 437.001(2-b)(A), except
13 baked goods, directly to consumers at a farmers' market, farm
14 stand, food service establishment, or any retail store.

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

19 "THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE AND IS NOT
20 SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION."

21 (c) A cottage food vendor that purchases food from a cottage
22 food production operation at wholesale shall register with the
23 department in the form and manner prescribed by the department. The
24 executive commissioner may adopt rules to implement this
25 subsection.

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