

By: Kolkhorst

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 [~~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(b), Health and Safety Code, is  
25 amended to read as follows:

26           (b) The executive commissioner shall adopt rules requiring  
27 a cottage food production operation to label all of the foods

1 described in Section 437.001(2-b)(A) that the operation sells to  
2 consumers. The label must include:

3 (1) the name, city, and zip code [~~address~~] of the  
4 cottage food production operation; [~~and~~]

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

7 (A) the phone number;

8 (B) the e-mail address; or

9 (C) the mailing address; and

10 (3) a statement that the food is not inspected by the  
11 department or a local health department.

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

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

18 (a-1) A cottage food production operation may sell food  
19 described by Section 437.001(2-b)(A) to a cottage food vendor at  
20 wholesale.

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

24 (1) is not required to include the information  
25 required under Section 437.0193(b)(2) for [~~address of~~] the  
26 operation in the labeling information required under Subsection  
27 (b)(2) before the operator accepts payment for the food; and

1           (2) shall provide the information required under  
2 Section 437.0193(b)(2) for ~~[address of]~~ the operation on the label  
3 of the food in the manner required by that subdivision ~~[Section~~  
4 ~~437.0193(b)]~~ after the operator accepts payment for the food.

5           SECTION 5. 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 6. 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 SECTION 7. This Act takes effect September 1, 2023.