

BILL ANALYSIS

C.S.S.B. 541
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2019, Texas passed the first cottage food laws, granting the freedom for home businesses and entrepreneurs, often women or homebound citizens, to provide food for their neighbors. The bill sponsor has informed the committee that, since the passage of these laws, the COVID-19 public health emergency increased demand for local food systems and increased the need to support the cottage food industry and promote transparency and food security for consumers and small home-run businesses. C.S.S.B. 541 seeks to address this need by expanding the types of products that a cottage food production operation may sell, revising labeling requirements, establishing a registration requirement for the sale of certain foods, and prohibiting a local government authority from requiring an operation to obtain any type of license or permit to produce, sell, or provide samples of applicable food, among other provisions.

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 SECTIONS 5 and 7 of this bill.

ANALYSIS

C.S.S.B. 541 amends the Health and Safety Code to revise the definition of "cottage food production operation" as follows:

- makes a 501(c)(3) nonprofit organization eligible to operate a cottage food production operation, in addition to individuals as provided under current law;
- specifies that, for a nonprofit organization, the food is produced at the home of an individual who is a director or officer of the nonprofit organization;
- expands the products an operation may produce to include any food, including a time and temperature control for safety food, except the following:
 - meat, meat products, poultry, or poultry products;
 - seafood, including seafood products, fish, fish products, shellfish, and shellfish products;
 - ice or ice products, including shaved ice, ice cream, frozen custard, popsicles, and gelato;
 - low-acid canned goods;
 - products containing cannabidiol or tetrahydrocannabinol; or
 - raw milk and raw milk products;
- raises from \$50,000 to \$100,000 the cap on an operation's annual gross income from the sale of applicable food and provides for the Department of State Health Services (DSHS)

to annually adjust the cap for inflation using the Consumer Price Index for All Urban Consumers (CPI-U); and

- provides the option for an operation, in addition to selling and delivering food to consumers as authorized under current law, to sell and deliver food to a cottage food vendor, defined by the bill as a person located in Texas who has a contractual relationship with the operation and sells directly to consumers located in Texas on behalf of the operation a food other than a time and temperature control for safety food.

C.S.S.B. 541 establishes that, notwithstanding any other law, a cottage food production operation that manufactures and distributes at wholesale cottage food for resale by others is exempt from DSHS licensing requirements under the Texas Food, Drug, and Cosmetic Act.

C.S.S.B. 541 prohibits a local government authority, including a local health department, from doing the following:

- requiring a cottage food production operation to obtain any type of license or permit or pay any fee to produce, sell, or provide samples directly to a consumer or cottage food vendor of applicable food; or
- employing or continuing to employ a person who knowingly requires or attempts to require a cottage food production operation to obtain such a license or permit.

C.S.S.B. 541 does the following with respect to the labeling requirements for food sold by a cottage food production operation:

- replaces the requirement for the requisite label on food sold to consumers to include a statement that the food is not inspected by DSHS or a local health department with a requirement for the label to include a specified disclosure that the product was produced in a private residence that is not subject to governmental licensing or inspection;
- establishes that a cottage food production operation is not required to include its address on a food label if the operation registers with DSHS in the form and manner DSHS prescribes and if the operation includes on the label a unique identification number provided by DSHS, and authorizes the executive commissioner of the Health and Human Services Commission (HHSC) to adopt rules to implement this provision;
- repeals the requirement to include a specified statement with safe handling instructions to prevent illness from bacteria on the label of frozen raw and uncut fruit or vegetables or on an invoice or receipt provided with such food when sold but replaces it with a similar requirement applicable to all time and temperature control for safety food; and
- requires a cottage food production operation that sells a time and temperature control for safety food to include on the food label the date the food was made.

C.S.S.B. 541 authorizes a cottage food production operation to sell food to a cottage food vendor at wholesale, except for food described by specified provisions or a time and temperature control for safety food.

C.S.S.B. 541 removes mail order as an authorized method through which a cottage food production operation may sell food in Texas. The bill retains the authorization in current law for a cottage food production operation to make a sale through the Internet and revises the conditions that must be met for such a sale in the following ways:

- provides the option for food purchased from the operation through the Internet to be personally delivered to the consumer by the operator's employee or household member as an alternative to the operator; and
- removes the options to provide the requisite labeling information to the consumer before accepting payment by publishing the information in a catalog or communicating the information in a manner other than posting a legible statement on the operation's website.

The bill provides the option for an operator, as an alternative to providing the operation's address on the label of food sold through the Internet after accepting payment for the food, to provide instead the operation's unique identification number.

C.S.S.B. 541 requires a cottage food production operation that sells to consumers a time and temperature control for safety food to do the following:

- register with DSHS in the form and manner prescribed by DSHS;
- store and deliver the food at the air temperature necessary to prevent the growth of bacteria that may cause human illness; and
- label the food in accordance with applicable requirements.

The bill authorizes the executive commissioner of HHSC to adopt rules to implement these requirements for the sale of a time and temperature control for safety food. The bill accordingly repeals the existing requirements for the sale of frozen raw and uncut fruit or vegetables relating to labeling and safe storage and delivery temperature.

C.S.S.B. 541 authorizes a cottage food production operation to do the following:

- provide samples of its products to consumers at any location in Texas in accordance with the sanitary standards set out in statutory provisions regulating food samples at farms and farmers' markets; and
- donate food other than time and temperature control for safety food for sale or service at an event, including a religious or charitable organization's bake sale, to the same extent an individual is allowed by law to donate food.

C.S.S.B. 541 authorizes a cottage food vendor to sell food produced by a cottage food production operation, other than food such an operation may not sell generally or a time and temperature control for safety food, directly to consumers at a farmers' market, farm stand, food service establishment, or any retail store. The bill sets out the following related requirements:

- a requirement for such a vendor to display in a prominent place near the location where the food is offered for sale a sign with a specified disclosure that the food was produced in a private residence that is not subject to governmental licensing or inspection; and
- a requirement for food produced by a cottage food production operation and sold by a cottage food vendor to include on the label the date the food was made.

The bill requires a cottage food vendor that purchases food from a cottage food production operation at wholesale to register with DSHS in the form and manner DSHS prescribes and authorizes the executive commissioner of HHSC to adopt rules to implement this registration requirement.

C.S.S.B. 541 repeals the following provisions of the Health and Safety Code:

- Section 437.0193(d);
- Section 437.01952;
- the heading to Section 437.0196; and
- Section 437.0196(b).

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 541 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.

While both the engrossed and substitute expand the types of food that a cottage food production operation may produce, they differ in the following ways:

- the engrossed expanded the types of baked goods that an operation may produce to include a baked good that requires time and temperature control for safety to limit pathogen growth or toxin production, but does not contain meat, poultry, shellfish, or

- fish, and otherwise retained current law's restriction on the production of time and temperature control for safety food; and
- the substitute instead expands the type of food an operation may produce to include any food, including a time and temperature control for safety food, other than the following:
 - meat, meat products, poultry, or poultry products;
 - seafood, including seafood products, fish, fish products, shellfish, and shellfish products;
 - ice or ice products, including shaved ice, ice cream, frozen custard, popsicles, and gelato;
 - low-acid canned goods;
 - products containing cannabidiol or tetrahydrocannabinol; and
 - raw milk and raw milk products.

While both the engrossed and substitute raise from \$50,000 to \$100,000 the cap on a cottage food production operation's annual gross income from the sale of food, the substitute provides for DSHS to annually adjust the cap for inflation using the CPI-U, whereas the engrossed did not.

With respect to the definition of "cottage food vendor," the substitute differs from the engrossed in the following ways:

- the substitute specifies that the vendor and the consumers to whom the food is sold are located in Texas, whereas the engrossed did not; and
- whereas the engrossed excludes baked goods from the food that a cottage food vendor may sell on behalf of a cottage food production operation, the substitute excludes time and temperature control for safety food.

The substitute includes provisions absent from the engrossed establishing that a cottage food production operation that manufactures and distributes at wholesale cottage food for resale by others is exempt from DSHS licensing requirements under the Texas Food, Drug, and Cosmetic Act.

The substitute expands the engrossed version's prohibition against a local government authority requiring a cottage food production operation to obtain a license or permit or pay a fee to sell an applicable food directly to a consumer or cottage food vendor by making the prohibition also applicable to an operation's production of food or the provision of samples directly to a consumer or cottage food vendor.

Whereas the engrossed required the label on any food that a cottage food production operation sells to consumers to include the words "prepared on" immediately followed by the date on which the food is prepared, the substitute requires a cottage food production operation that sells a time and temperature control for safety food to include on the food label the date the food was made.

With respect to the provision in both versions excepting a cottage food production operation from the requirement to include its address on a food label if the operation registers with DSHS, the substitute includes as a condition of the exception that the operation include on the label a unique identification number provided by DSHS, whereas the engrossed did not include this condition.

Whereas the engrossed required a cottage food production operation that sells time and temperature control for safety baked goods to include a specified statement with safe handling instructions on the food label or an invoice or receipt provided with the food when sold, the substitute requires such inclusion for any time and temperature control for safety food sold by an operation. The substitute accordingly repeals a similar requirement in existing law that applies to the sale of frozen fruit or vegetables, whereas the engrossed did not.

The substitute includes provisions absent from the engrossed that make the following changes to current law:

- remove mail order as an authorized method through which a cottage food production operation may sell food in Texas; and
- with respect to the retained authorization to make sales through the Internet:
 - provide the option for food purchased from a cottage food production operation through the Internet to be personally delivered to the consumer by the operator's employee or household member as an alternative to the operator;
 - remove the options to provide the requisite labeling information to the consumer before accepting payment by publishing the information in a catalog or communicating the information in a manner other than posting a legible statement on the operation's website; and
 - provide the option for an operator of a cottage food production operation that sells a food through the Internet, as an alternative to providing the operation's address on the food label after accepting payment for the food, to provide instead the operation's unique identification number.

Whereas the engrossed set out requirements for the sale of time and temperature control for safety baked goods, the substitute sets out requirements for the sale of any time and temperature control for safety food. Accordingly, the substitute repeals existing requirements for the sale of frozen fruit or vegetables, whereas the engrossed did not. The substitute includes provisions absent from the engrossed that do the following:

- require a cottage food production operation that sells time and temperature control for safety food to register with DSHS in the form and manner prescribed by DSHS; and
- authorize the executive commissioner of HHSC to adopt rules to implement the requirements for the sale of a time and temperature control for safety food.

The substitute includes provisions absent from the engrossed authorizing a cottage food production operation to provide samples of its products to consumers at any location in Texas in accordance with certain sanitary standards and to donate food other than time and temperature control for safety food for sale or service at an event, including a religious or charitable organization's bake sale, to the same extent an individual is allowed by law to donate food.

The substitute includes a requirement absent from the engrossed for food produced by a cottage food production operation and sold by a cottage food vendor to include on the label the date the food was made.