

- SUBJECT:** Regulating cottage food businesses, changing local governance
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 10 ayes — Kolkhorst, Naishtat, Coleman, Collier, Cortez, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler
- 1 nay — S. Davis
- WITNESSES:** For — Amy Blea; Rebecca Callaway; Judith McGreary, Farm and Ranch Freedom Alliance; Germaine Swenson; Jennifer Webb; (*Registered, but did not testify*: Nikki Delvecchio, Little Snowflakes Bakery Cottage; Loretta Holland and Carriebeth Mandrell, Texas Home Bakers; Lisa Hughes, Texas Academy of Nutrition and Dietetics; Peter McCarthy, Texas Health Freedom Coalition; Marissa Rathbone, Active Life; Alexa Senter, HOPE Farmers Market, Andrew Smiley, Sustainable Food Center; Ty Wolosin, Texas Organic Farmers and Gardeners Association; and 83 individuals)
- Against — Brenda Elrod, Texas Environmental Health Association; (*Registered, but did not testify*: Vincent Delisi, Austin/Travis County Health and Human Services Department; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County, and 4 individuals)
- On — Michael Hill, Texas Association of Local Health Officials; Ronnie Volkening, Texas Retailers Association; (*Registered, but did not testify*: Cheryl Wilson, DSHS)
- BACKGROUND:** Health and Safety Code, ch. 437, regulates food service establishments, retail food stores, mobile food units, and roadside food vendors. It defines “cottage food production operation” as an operation out of the individual’s home that:
- produces a baked good, a canned jam or jelly, or a dried herb or herb mix for sale at the person’s home;
  - has an annual gross income of \$50,000 or less from the sale of those items; and
  - sells those foods only directly to consumers.

These items may not be sold over the Internet. Cottage food production operations are not considered a food service establishment, and local health departments are prohibited from regulating these operations.

DIGEST:

CSHB 970 would change the regulation of cottage food production operations (or cottage food businesses) and prevent local government authorities from regulating cottage food operations.

**Cottage food production operations.** The bill would define “cottage food production” as an operation out of an individual’s home that produced baked goods, canned jams or jellies, candy, nuts, butters, fruit pies, dehydrated fruits or vegetables, and dried herbs or herb mixes, among other things. The individual could only sell these items directly to consumers at home, a farmer’s market, farm stand, fair, festival, or event. The individual could also deliver them to the consumer at the point of sale or another location designated by the consumer, but the items could not be sold by mail order or at wholesale.

An individual who operated a cottage food business would need to complete an accredited basic food safety program for food handlers. No individual could process, prepare, package, or handle cottage food products unless they had completed the safety program, were supervised by someone who had completed a safety program, or were a member of a household that produced cottage food items. An individual operating a cottage food business would not be required to complete a basic food safety program for food handlers before January 1, 2014.

With regard to cottage food businesses, the bill would authorize the Department of State Health Services to impose an emergency or recall order to prevent an immediate and serious threat to human life or health.

**Potentially hazardous foods.** Cottage food businesses could not sell potentially hazardous foods, defined as food that requires time and temperature control to limit pathogen or toxin production. Potentially hazardous foods would include meat, poultry, fish, and baked goods that require refrigeration, among other things.

**Packaging.** Cottage food businesses would need to package food items in a way that prevented contamination, unless the item was too large or bulky

for conventional packaging. If the item was too large or bulky to be packaged, the label required by the Health and Human Services Commission would need to be included on the invoice or receipt.

**Local regulation.** A local government authority, including a local health department, could not regulate the production of food at a cottage business. A municipal or county zoning ordinance could not prohibit the use of a home for a cottage food business, but this would not limit nuisance or other tort causes of action.

This bill would take effect on September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 970 would help small business owners. It would allow cottage food businesses to sell a wider range of items at more locations, enabling them to reach more customers and generate more revenue. During tough economic times, many are looking for ways to earn a living, supplement an income, and expand home businesses.

Consumers are informed that the food is not inspected by a health department and should be allowed to make a decision about whether to purchase the items. Moreover, ill-prepared food would quickly ruin a business, so cottage food vendors are careful to produce food in a sanitary location.

This bill would contain provisions to ensure the public's health. Cottage food businesses would have to package most foods, complete an accredited food handlers program, and be subject to emergency or recall orders from the Department of State Health Services. Because businesses would not be able to sell potentially hazardous food, all items would have a low risk of contamination and spoilage, even during transportation and delivery.

If certain cottage foods were contaminated, it would not be difficult to trace the source because vendors sell directly to consumers and are required to either label the items or provide contact information on an invoice or receipt. These factors make it easier to trace cottage foods than store-bought or restaurant-prepared foods, so state registration would be unnecessary.

**OPPONENTS**

CSHB 970 could be detrimental to public health by expanding a category

SAY: of food operations that already have very little regulation. State and local authorities would be unable to ensure the protection of the public's health without the ability to conduct routine inspections, have adequate enforcement authority, or the ability to apply science-based food safety standards. At minimum, cottage food businesses should be required to register with the state and provide their state registration number to consumers.

Allowing cottage food vendors to sell a variety of home-prepared foods at multiple locations would create the potential for contamination at various stages, particularly with the transportation and delivery of unpackaged items. This is especially concerning because food-borne outbreaks are challenging to investigate and difficult to trace back to the source.