

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 644
By: VanDeaver et al. (Kolkhorst)
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2014, the Department of State Health Services defined in administrative code the definition of "pickle" to only mean a cucumber. This rule was used to interpret the word pickle in Chapter 437, Health and Safety Code. Additionally, since the passage of the cottage food law in 2011, S.B. 81 (Nelson, 82R), additional reforms and updates to the statute are needed.

H.B. 644 expands access for cottage food producers by amending the current list of allowed cottage foods to include pickled and canned goods, and amends current law relating to the regulation of cottage food production operations. (Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 644 amends current law relating to the regulation of cottage food production operations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 6 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 437.001, Health and Safety Code, by adding Subdivisions (1) and (3-c) and amending Subdivision (2-b), as follows:

(1) Defines "acidified canned goods."

(2-b) Redefines "cottage food production operation" to mean an individual, operating out of the individual's home, who:

(A) produces at the individual's home, subject to Section 437.0196 (Potentially Hazardous Food; Prohibited For Cottage Food Production Operations):

(i) a baked good that is not a time and temperature control for safety food, as defined by Section 437.0196, rather than a baked good that is not a potentially hazardous food;

(ii)–(xii) makes no changes to these subparagraphs;

(xiii) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less, rather than pickles;

(xiv) makes no changes to this subparagraph;

(xv) makes a nonsubstantive change to this subparagraph;

(xvi) makes no changes to this subparagraph;

(xvii) plant-based acidified canned goods; or

(xviii) fermented vegetable products, including products that are refrigerated to preserve quality;

(xix) frozen raw and uncut fruit or vegetables; or

(xx) any other food that is not a time and temperature control for safety food, as defined by Section 437.0196;

(B) makes no changes to this paragraph;

(C) sells the foods produced under Paragraph (A) only directly to consumers, rather than sells the foods produced under Paragraph (A) only directly to consumers at the individual's home, a farmers' market, a farm stand, or a municipal, county, or nonprofit fair, festival, or event; and

(D) makes no changes to this paragraph.

(3-c) Defines "fermented vegetable product."

SECTION 2. Amends Section 437.0193, Health and Safety Code, by adding Subsection (d), as follows:

(d) Requires a cottage food production operation that sells frozen and uncut fruit or vegetables to include on the label of the frozen fruit or vegetables or on an invoice or receipt provided with the frozen fruit or vegetables when sold a certain statement in at least 12-point font. Sets forth the required language of the statement.

SECTION 3. Amends Section 437.0194, Health and Safety Code, as follows:

Sec. 437.0194. New heading: CERTAIN SALES OF COTTAGE FOOD PRODUCTION OPERATIONS PROHIBITED OR RESTRICTED. (a) Creates this subsection from existing text and deletes existing Subdivisions (1)–(3). Prohibits a cottage food production operation from selling any of the foods described in Section 437.001(2-b)(A) at wholesale.

(b) Authorizes a cottage food production operation to sell a food described by Section 437.001(2-b)(A) in this state through the Internet or by mail order only if:

(1) the consumer purchases the food through the Internet or by mail order from the operation and the operator personally delivers the food to the consumer; and

(2) before the operator accepts payment for the food, the operator provides all labeling information required by Section 437.0193(d) and the Department of State Health Services (DSHS) rules to the consumer by:

(A) posting a legible statement on the operation's Internet website;

(B) publishing the information in a catalog; or

(C) otherwise communicating the information to the consumer.

SECTION 4. Amends Chapter 437, Health and Safety Code, by adding Section 437.01951 and 437.01952, as follows:

Sec. 437.01951. REQUIREMENTS FOR SALE OF CERTAIN COTTAGE FOODS. (a) Requires a cottage food production operation that sells to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods to:

(1) use a recipe that:

(A) is from a source approved by DSHS under Subsection (d);

(B) has been tested by an appropriately certified laboratory that confirmed the finished fruit or vegetable, product, or good has an equilibrium pH value of 4.6 or less; or

(C) is approved by a qualified process authority; or

(2) if the operation does not use a recipe described by Subdivision (1), test each batch of the recipe with a calibrated pH meter to confirm the finished fruit or vegetable, product, or good has an equilibrium pH value of 4.6 or less.

(b) Prohibits a cottage food production operation from selling to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods before the operator complies with Subsection (a).

(c) Requires a cottage food production operation, for each batch of pickled vegetables, fermented vegetable products, or plant-based acidified canned goods, to:

(1) label the batch with a unique number; and

(2) for a period of at least 12 months, keep a record that includes:

(A) the batch number;

(B) the recipe used by the producer;

(C) the source of the recipe or testing results, as applicable; and

(D) the date the batch was prepared.

(d) Requires DSHS to:

(1) approve sources for recipes that a cottage food production operation is authorized to use to produce pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods; and

(2) semiannually post on the DSHS Internet website a list of the approved sources for recipes, appropriately certified laboratories, and qualified process authorities.

(e) Requires DSHS to develop and implement a process by which an individual is authorized to request that DSHS approve an additional source for recipes under Subsection (d). Requires the process to allow an individual to submit with an individual's request documentation supporting the request.

(f) Requires a source for recipes approved by DSHS under Subsection (d) to be scientifically validated and authorizes it to be from a government entity, academic institution, state extension service, or other qualified source with:

(1) expert knowledge of processing requirements for pickled fruit or vegetables, fermented vegetable products, or acidified canned goods; and

(2) adequate facilities for scientifically validating recipes for pickled fruit or vegetables, fermented vegetable products, or acidified canned goods.

(g) Provides that this section does not apply to pickled cucumbers.

(h) Defines "process authority" for the purposes of this section.

Sec. 437.01952. REQUIREMENTS FOR SALE OF FROZEN FRUIT OR VEGETABLES. Requires a cottage food production operation that sells to consumers frozen raw and uncut fruit or vegetables to:

(1) store and deliver the frozen fruit or vegetables at an air temperature of not more than 32 degrees Fahrenheit; and

(2) label the fruit or vegetables in accordance with Section 437.0193(d).

SECTION 5. Amends Section 437.0196, Health and Safety Code, as follows:

Sec. 437.0196. New heading: TIME AND TEMPERATURE CONTROL FOR SAFETY FOOD; PROHIBITION FOR CERTAIN COTTAGE FOOD PRODUCTIONS OPERATIONS; EXCEPTION. (a) Redefines "time and temperature control for safety food" for purposes of this section.

(b) Creates an exception under this chapter (Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors), prohibiting a cottage food production operation from selling to consumers time and temperature control for safety foods, rather than from selling to customers potentially hazardous foods.

SECTION 6. Provides that, as soon as practicable after the effective date of this Act:

(1) the executive commissioner of the Health and Human Services Commission is required to adopt rules as necessary to implement the changes made by this Act; and

(2) DSHS is required to approve sources for recipes for acidified canned goods and post a list of sources for recipes for pickled fruit or vegetables, plant-based acidified canned goods, and fermented vegetable products and post a list of sources, appropriately certified laboratories, and qualified process authorizes on DSHS's Internet website as required by Section 437.01951, Health and Safety Code, as added by this Act.

SECTION 7. Effective date: September 1, 2019.