

AN ACT

relating to regulation of cottage food products and 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 Subdivisions (2-a) and (2-b) and adding Subdivision (3-b) to read as follows:

(2-a) "Baked good" includes cookies, cakes, breads, Danish, donuts, pastries, pies, and other items that are prepared by baking the item in an oven. ~~[A baked good does not include a potentially hazardous food item as defined by department rule.]~~

(2-b) "Cottage food production operation" means an individual, operating out of the individual's home, who:

(A) produces at the individual's home, subject to Section 437.0196:

(i) a baked good that is not a potentially hazardous food, as defined by Section 437.0196;

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) [7] a canned jam or jelly;

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables,

1 including dried beans;  
2 (ix) popcorn and popcorn snacks;  
3 (x) cereal, including granola;  
4 (xi) dry mix;  
5 (xii) vinegar;  
6 (xiii) pickles;  
7 (xiv) mustard;  
8 (xv) roasted coffee or dry tea; [r] or  
9 (xvi) a dried herb or dried herb mix [~~for~~  
10 ~~sale at the person's home];~~

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

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

17 (D) delivers products to the consumer at the  
18 point of sale or another location designated by the consumer.

19 (3-b) "Farm stand" means a premises owned and operated  
20 by a producer of agricultural food products at which the producer or  
21 other persons may offer for sale produce or foods described by  
22 Subdivision (2-b)(A).

23 SECTION 2. Section 437.0191, Health and Safety Code, is  
24 amended to read as follows:

25 Sec. 437.0191. EXEMPTION FOR COTTAGE FOOD PRODUCTION  
26 OPERATIONS. (a) A cottage food production operation is not a food  
27 service establishment for purposes of this chapter.

1        (b) The exemption provided by Subsection (a) does not affect  
2 the application of Sections 431.045, 431.0495, and 431.247  
3 authorizing the department or other local health authority to act  
4 to prevent an immediate and serious threat to human life or health.

5        SECTION 3. The heading to Section 437.0192, Health and  
6 Safety Code, is amended to read as follows:

7        Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION  
8 OPERATIONS BY LOCAL GOVERNMENT AUTHORITIES [~~HEALTH DEPARTMENT~~]  
9 PROHIBITED; COMPLAINTS.

10        SECTION 4. Section 437.0192(a), Health and Safety Code, is  
11 amended to read as follows:

12        (a) A local government authority, including a local health  
13 department, may not regulate the production of food at a cottage  
14 food production operation.

15        SECTION 5. Sections 437.0193 and 437.0194, Health and  
16 Safety Code, are amended to read as follows:

17        Sec. 437.0193. PACKAGING AND LABELING REQUIREMENTS FOR  
18 COTTAGE FOOD PRODUCTION OPERATIONS. (a) Food described by  
19 Section 437.001(2-b)(A) sold by a cottage food production operation  
20 must be packaged in a manner that prevents product contamination,  
21 except that a food item is not required to be packaged if it is too  
22 large or bulky for conventional packaging.

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

27        (1) the name and address of the cottage food

1 production operation; and

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

4 (c) For foods not required to be packaged under Subsection  
5 (a), the information required to be included on the label under  
6 Subsection (b) must be provided to the consumer on an invoice or  
7 receipt.

8 Sec. 437.0194. CERTAIN SALES BY COTTAGE FOOD PRODUCTION  
9 OPERATIONS [~~THROUGH THE INTERNET~~] PROHIBITED. A cottage food  
10 production operation may not sell any of the foods described in  
11 Section 437.001(2-b)(A):

12 (1) through the Internet;

13 (2) by mail order; or

14 (3) at wholesale.

15 SECTION 6. Chapter 437, Health and Safety Code, is amended  
16 by adding Sections 437.0195 and 437.0196 to read as follows:

17 Sec. 437.0195. PRODUCTION OF COTTAGE FOOD PRODUCTS. (a) An  
18 individual who operates a cottage food production operation must  
19 have successfully completed a basic food safety education or  
20 training program for food handlers accredited under Subchapter D,  
21 Chapter 438.

22 (b) An individual may not process, prepare, package, or  
23 handle cottage food products unless the individual:

24 (1) meets the requirements of Subsection (a);

25 (2) is directly supervised by an individual described  
26 by Subsection (a); or

27 (3) is a member of the household in which the cottage

1 food products are produced.

2 Sec. 437.0196. POTENTIALLY HAZARDOUS FOOD; PROHIBITION FOR  
3 COTTAGE FOOD PRODUCTION OPERATIONS. (a) In this section,  
4 "potentially hazardous food" means a food that requires time and  
5 temperature control for safety to limit pathogen growth or toxin  
6 production. The term includes a food that must be held under proper  
7 temperature controls, such as refrigeration, to prevent the growth  
8 of bacteria that may cause human illness. A potentially hazardous  
9 food may include a food that contains protein and moisture and is  
10 neutral or slightly acidic, such as meat, poultry, fish, and  
11 shellfish products, pasteurized and unpasteurized milk and dairy  
12 products, raw seed sprouts, baked goods that require refrigeration,  
13 including cream or custard pies or cakes, and ice products. The  
14 term does not include a food that uses potentially hazardous food as  
15 ingredients if the final food product does not require time or  
16 temperature control for safety to limit pathogen growth or toxin  
17 production.

18 (b) A cottage food production operation may not sell to  
19 customers potentially hazardous foods.

20 SECTION 7. Chapter 211, Local Government Code, is amended  
21 by adding Subchapter C to read as follows:

22 SUBCHAPTER C. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

23 Sec. 211.031. DEFINITIONS. In this subchapter, "cottage  
24 food production operation" and "home" have the meanings assigned by  
25 Section 437.001, Health and Safety Code.

26 Sec. 211.032. CERTAIN ZONING REGULATIONS PROHIBITED. A  
27 municipal zoning ordinance may not prohibit the use of a home for

1 cottage food production operations.

2 Sec. 211.033. ACTION FOR NUISANCE OR OTHER TORT. This  
3 subchapter does not affect the right of a person to bring a cause of  
4 action under other law against an individual for nuisance or  
5 another tort arising out of the individual's use of the individual's  
6 home for cottage food production operations.

7 SECTION 8. Chapter 231, Local Government Code, is amended  
8 by adding Subchapter M to read as follows:

9 SUBCHAPTER M. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

10 Sec. 231.281. DEFINITIONS. In this subchapter, "cottage  
11 food production operation" and "home" have the meanings assigned by  
12 Section 437.001, Health and Safety Code.

13 Sec. 231.282. CERTAIN ZONING REGULATIONS PROHIBITED. A  
14 county zoning ordinance may not prohibit the use of a home for  
15 cottage food production operations.

16 Sec. 231.283. ACTION FOR NUISANCE OR OTHER TORT. This  
17 subchapter does not affect the right of a person to bring a cause of  
18 action under other law against an individual for nuisance or  
19 another tort arising out of the individual's use of the individual's  
20 home for cottage food production operations.

21 SECTION 9. Notwithstanding Section 437.0195, Health and  
22 Safety Code, as added by this Act, an individual operating a cottage  
23 food production operation is not required to complete a basic food  
24 safety education or training program for food handlers before  
25 January 1, 2014.

26 SECTION 10. This Act takes effect September 1, 2013.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 970 was passed by the House on May 6, 2013, by the following vote: Yeas 143, Nays 2, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 970 was passed by the Senate on May 22, 2013, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor