

## **BILL ANALYSIS**

C.S.H.B. 2108  
By: Rodriguez  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been suggested that the regulations governing cottage food production operations do not materially improve food safety and are unnecessarily restrictive. Those concerned with these restrictions point to other states' regulatory efforts that allow such operations to sell more food types and authorize more sales locations. C.S.H.B. 2108 seeks to address these issues by, among other things, expanding the types of foods allowed to be produced by a cottage food production operation and the manner by which an operation may sell its products.

### **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 SECTION 6 of this bill.

### **ANALYSIS**

C.S.H.B. 2108 amends the Health and Safety Code to revise provisions relating to the regulation of cottage food production operations and to include more food items in the definition of "cottage food production operation." The bill defines "acidified canned goods" as food with a finished equilibrium pH value of 4.6 or less that is thermally processed before being placed in an airtight container and defines "fermented vegetable product" as a low-acid vegetable food product subjected to the action of certain microorganisms that produce acid during their growth and reduce the pH value of the food to 4.6 or less.

C.S.H.B. 2108 requires a cottage food production operation that sells frozen fruit or vegetables to include a safe handling instructions statement on the label of the frozen fruit or vegetables or on an invoice or receipt provided with the frozen fruit or vegetables when sold and sets out the form and contents of the statement.

C.S.H.B. 2108 authorizes a cottage food production operation to sell certain foods in Texas through the Internet or by mail order only if 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, before the operator accepts payment for the food, the operator provides all labeling information required by the bill's provisions and Department of State Health Services (DSHS) rules to the consumer by posting a legible statement on the operation's website, publishing the information in a catalog, or otherwise communicating the information to the consumer.

C.S.H.B. 2108 sets out certain requirements for the sale, labeling, and recordkeeping relating to

the sale of pickled fruit or vegetables, fermented vegetable products, and acidified canned goods by a cottage food production operation, including requirements regarding recipes and certain batch testing. The bill prohibits a cottage food production operation from selling such items to consumers before the operator complies with these requirements. The bill requires DSHS to approve sources for recipes that an operation may use to produce such products or goods and to semiannually post a list of the approved sources, appropriately certified laboratories, and qualified process authorities, as defined by the bill, on the DSHS website. The bill requires DSHS to develop and implement a process by which an individual may request that DSHS approve an additional source for such approved recipes and requires the process to allow an individual to submit with the request documentation supporting the request. The bill requires a source for recipes approved by DSHS to be scientifically validated and establishes that the source may be from a governmental entity, academic institution, state extension service, or other qualified source that meets certain conditions. The bill exempts pickled cucumbers from the application of these requirements.

C.S.H.B. 2108 requires a cottage food production operation that sells frozen fruit or vegetables to consumers to store and deliver the frozen fruit or vegetables at an air temperature of not more than 32 degrees Fahrenheit and to label the food in accordance with the bill's provisions for such food. The bill changes the foods that a cottage food production operation is prohibited from selling from "potentially hazardous foods" to "time and temperature control for safety foods." The bill replaces the term "potentially hazardous food" with the term "time and temperature control for safety food" and applies the definition for "potentially hazardous food" to "time and temperature control for safety food."

C.S.H.B. 2108 requires the executive commissioner of the Health and Human Services Commission to adopt rules as necessary to implement the bill's provisions.

#### **EFFECTIVE DATE**

September 1, 2019.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2108 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes an explicit definition of "acidified canned goods" and revises the definition of "cottage food production operation" with respect to pickled fruit or vegetables and with respect to fermented vegetable products, as defined by the substitute. The substitute replaces the definition of "fermented product" with a definition of "fermented vegetable product," which limits the term's applicability to low-acid vegetable food products that are subjected to the action of certain microorganisms that produce acid during their growth and reduce the pH value of the food to 4.6 or less.

The substitute does not include a provision requiring honey, honey spreads, and other foods that include honey in the product name to be labeled in accordance with certain Agriculture Code provisions.

The substitute does not include a provision applicable to the requirements for sale of time and temperature control for food that is a time and temperature control for safety food. The substitute includes a provision applicable instead to requirements for the sale of frozen fruit or vegetables and, in that provision, requires the frozen fruit and vegetables to be both stored and delivered at an air temperature of not more than 32 degrees Fahrenheit. The substitute applicably revises the bill provision requiring an operation that sells such food to include on the applicable label or invoice or receipt a prescribed statement regarding safe handling instructions by specifying that

the applicable food requiring such a statement is frozen fruit or vegetables and by changing that statement to reflect the revised applicability to frozen fruit or vegetables.

The substitute revises the bill provision setting out the circumstances under which certain sales are restricted. The substitute:

- does not include a provision authorizing an individual who operates a cottage food production operation to sell an applicable food through the Internet or by mail order or use a shipping or delivery service for delivery of the food only if:
  - the individual personally sells the food to the consumer and arranges the delivery of the food through a delivery or shipping service; or
  - the consumer purchases the food through the Internet or by mail order from the individual and the individual personally delivers the food to the consumer; and
- includes a provision that authorizes a cottage food production operation to sell the applicable food in Texas through the Internet or by mail order only if:
  - 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
  - before accepting payment for the food, the operator provides to the consumer all required labeling information and applicable DSHS rules.

The substitute revises the bill provision setting out requirements for the sale of certain foods by:

- exempting pickled cucumber from the requirements;
- subjecting pickled fruit or vegetables to the requirements and clarifying that fermented vegetable products and acidified canned goods, as defined by the substitute, are subject to the requirements;
- replacing the requirement for annual testing of the first batch of each recipe for conformation of pH value with a per-batch testing requirement for each batch of a recipe used by an operation that is not a recipe from an approved source that has been applicably tested;
- including provisions authorizing DSHS to develop and implement a process by which an individual may request that DSHS approve an additional source for recipes from applicable qualified process authorities, as defined by the substitute, having certain expert knowledge in the pickling, fermenting, or acidification and processing of pickled, fermented, or acidified foods;
- including a provision requiring a source for approved recipes to be scientifically validated and establishing that such a source may be from a government entity, academic, institution, state extension service, or other qualified source with applicable expert knowledge and adequate facilities for such validation; and
- including a provision setting out certain recordkeeping requirements with respect to each batch of pickled fruit or vegetables, fermented vegetable products, or acidified canned goods.