

BILL ANALYSIS

C.S.S.B. 572
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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.S.B. 572 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.S.B. 572 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.S.B. 572 requires a cottage food production operation that sells frozen raw and uncut 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.S.B. 572 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.S.B. 572 sets out certain requirements for the sale, labeling, and recordkeeping relating to

the sale of pickled fruit or vegetables, fermented vegetable products, and plant-based 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.S.B. 572 requires a cottage food production operation that sells frozen raw and uncut 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, 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.S.B. 572 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 SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 572 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.

The substitute defines the term "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. The substitute changes the definition of the term "cottage food production operation" by:

- specifying that pickled fruits or vegetables, including beets and carrots, are those preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;
- specifying that the term applies to acidified canned goods that are plant-based;
- specifying that the term applies to fermented products that are fermented vegetable products, including products that are refrigerated to preserve quality; and
- specifying that frozen fruit or vegetables are raw and uncut.

The substitute reattributes the definition for "fermented product" as the definition for "fermented vegetable product."

The substitute specifies that certain requirements for the sale of frozen fruit or vegetables apply to raw and uncut fruit or vegetables. The substitute changes the label required to be included on frozen raw and uncut fruit or vegetable by removing the instruction to keep the food refrigerated and including instruction for the food to be kept frozen until preparing for consumption.

The substitute specifies that the authorization for a cottage food production operation to sell certain foods through the Internet or by email applies to a sale in Texas and includes a condition that the operator, before accepting payment for the food, provide all labeling information required by applicable statute and DSHS rules to the consumer by posting a legible statement on the operator's website, publishing the information in a catalog, or otherwise communicating the information to the consumer.

The substitute specifies that using a recipe approved by a qualified process authority for use by a cottage food production operation that sells certain foods satisfies the requirements for the sale of those foods and includes pickled fruit or vegetables among those foods. The substitute conditions the sale of certain cottage foods by a cottage food operation that does not use such an approved recipe on the testing of each batch of a recipe with a calibrated pH meter to confirm that the finished fruit or vegetable, product, or good meets the equilibrium pH value prescribed by the bill. The substitute prohibits such an operation from selling to consumers products or goods before the operator complies with the bill's requirements relating to the approval of a recipe or testing of the finished food, product, or good.

The substitute includes requirements for a cottage food production operation to label each batch of products or goods with a unique number and to keep a record for a period of at least 12 months that includes the batch number, the recipe used by the producer, the source of the recipe or testing results, and the date the batch was prepared. The substitute includes appropriately certified laboratories and qualified process authorities among the information DSHS is required to semiannually post on the DSHS website.

The substitute does not require the following to be included as part of the process by which an individual may request that DSHS approve an additional source for recipes: a method for an individual to submit a request to DSHS, a time for DSHS to respond to the request, and clear criteria for DSHS to evaluate whether DSHS should approve a requested source. The substitute instead requires the process to allow an individual to submit with the individual's request documentation supporting the request.

The substitute includes a requirement for a source for recipes approved by DSHS to be scientifically validated and establishes that such a source may be from a government entity, academic institution, state extension service, or other qualified source that meets certain conditions.

The substitute exempts pickled cucumbers from the requirements for the sale of certain cottage foods and defines "process authority" as a person who has expert knowledge acquired through appropriate training and experience in the pickling, fermenting, or acidification and processing of pickled, fermented, or acidified foods.