

SUBJECT: Regulating cottage food production operations

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — S. Thompson, Wray, Allison, Coleman, Frank, Price, Zedler

0 nays

4 absent — Guerra, Lucio, Ortega, Sheffield

SENATE VOTE: On final passage, April 23 — 31-0

WITNESSES: *On House companion bill, HB 2108:*

For — Judith McGeary, Farm and Ranch Freedom Alliance; Kathryn Payne, Texas Farmers' Markets; Peggy Higgins; (*Registered, but did not testify*: Alex Canepa, Sustainable Food Center; Christopher Carson, SnackShare; James Dickey, Republican Party of Texas; Evan Driscoll, GROW North Texas; Sheila Hemphill, Texas Right to Know; Carla Jenkins, Texas Organic Farmers and Gardeners Association; Clay Mosier, Mosier LP; Leslie Provence, Food Policy Council of San Antonio; Julian Rodriguez, Yard to Market Cooperative; and 25 individuals)

Against — Shaun May, Texas Environmental Health Association; (*Registered, but did not testify*: Aimee Bertrand, Harris County Public Health Services; Angela Hale, City of McKinney; Craig Holzheuser, Texas Association of City and County Health Officials; Bill Kelberlau; Gregory Young)

On — (*Registered, but did not testify*: Stephen Pahl, Department of State Health Services)

BACKGROUND: Health and Safety Code sec. 437.001(2-b) defines cottage food production operations as individuals operating out of their homes who:

- produce certain foods at their homes;
- sell the foods directly to consumers at their homes, farmers'

markets, farm stands, or municipal, county, or nonprofit fairs, festivals, or events;

- deliver products to consumers at the points of sale or other locations as designated by consumers; and
- make \$50,000 or less from these sales.

Sec. 437.0196 prohibits cottage food production operations from selling potentially hazardous foods, which are defined as foods that require time and temperature controls for safety to limit pathogen growth or toxin production. The term does not include foods that use potentially hazardous foods as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

**DIGEST:**

CSSB 572 would expand the list of products that cottage food production operations could produce at their homes and would change certain requirements relating to cottage food production and sale.

**Definitions.** The bill would define "fermented vegetable products" as low-acid vegetable food products subjected to the actions of certain microorganisms that produced acid during their growth and reduced the pH values of foods to 4.6 or less.

It would define "acidified canned goods" as foods with finished equilibrium pH values of 4.6 or less that were thermally processed before being placed in airtight containers.

The bill would rename "potentially hazardous" foods as defined in current law as "time and temperature control for safety" foods.

The bill would define "process authorities" as individuals who had expert knowledge acquired through appropriate training and experience in the pickling, fermenting, or acidification and processing of foods.

**Sales by cottage food production operations.** The bill would expand the list of products that cottage food production operations could produce at

their homes to include:

- pickled fruits or vegetables, including beets and carrots, that were preserved in vinegar, brine, or similar solutions at equilibrium pH values of 4.6 or less;
- plant-based acidified canned goods;
- fermented vegetable products, including products that were refrigerated to preserve quality;
- frozen raw and uncut fruits or vegetables; and
- any foods that were not time and temperature control for safety foods.

**Frozen raw and uncut fruits and vegetables.** CSSB 572 would require that cottage food production operations that sold frozen raw and uncut fruits or vegetables include on the labels of their frozen fruits or vegetables or on invoices or receipts provided with the products a statement in at least 12-point font that said, "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food frozen until preparing for consumption."

These operations also would need to store and deliver the products at an air temperature of 32 degrees Fahrenheit or less.

**Pickled, fermented, and canned goods.** Cottage food production operations that sold pickled fruits or vegetables, fermented vegetable products, or plant-based acidified canned goods to consumers would be required to use recipes from sources approved by the Department of State Health Services (DSHS), recipes that had been tested by appropriately certified laboratories that confirmed that finished products or goods had equilibrium pH values of 4.6 or less, or recipes approved by qualified process authorities before they could sell these products to consumers.

If recipes did not qualify under these requirements, operations would have to test their batches of the recipes with calibrated pH meters to confirm that the finished products had equilibrium pH values of 4.6 or less before they could sell these products to consumers.

DSHS would have to post on its website a list of approved sources for recipes, appropriately certified laboratories, and qualified process authorities twice a year. It also would have to implement a process by which individuals could request that DSHS approve additional sources for recipes and allow for individuals to submit supporting documentation.

Sources for recipes approved by DSHS would be required to be scientifically validated and could come from government entities, academic institutions, state extension services, or other qualified sources with expert knowledge of processing these products and adequate facilities for scientifically validating these recipes.

CSSB 572 would require cottage food production operations to label their batches of pickled fruits or vegetables, fermented vegetable products, and plant-based acidified canned goods with unique numbers and keep records for at least 12 months of the batch numbers; recipes used by the producers; recipe sources or testing results, as applicable; and the dates in which the batches were prepared.

These requirements for pickled fruits and vegetables, fermented vegetable products, and plant-based acidified canned goods would not apply to pickled cucumbers.

**Online and mail order sales.** CSSB 572 would establish that cottage food production operations could sell time and temperature control for safety foods in Texas online or by mail order only if:

- consumers purchased the foods online or by mail order from operations, and operators personally delivered the foods to the consumers; and
- before operators accepted payments for foods, they provided consumers with the required bacteria warnings by posting legible statements online, publishing information in catalogs, or otherwise communicating the information to consumers.

**Deadlines.** CSSB 572 would require the executive commissioner of the Health and Human Services Commission to adopt rules to implement this bill as soon as practicable after the effective date. DSHS also would have to approve sources for recipes for pickled fruits and vegetables, plant-based acidified canned goods, and fermented vegetable products and post a list of sources, appropriately certified laboratories, and qualified process authorities on its website as soon as practicable after the effective date.

The bill would take effect September 1, 2019.