

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 572
By: 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 (DSHS) 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 is needed.

S.B. 572 requires a review and expands access for cottage food producers by amending the current list of allowed cottage foods to include pickled vegetables, fermented products, and canned goods. Additionally, the bill requires that cottage food producers of fermented products and canned goods submit the recipe to DSHS and obtain approval before sale. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 572 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 amending Subdivision (2-b) and adding Subdivision (3-c), as follows:

(2-b) Redefines "cottage food production operation" to include 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 time and temperature control for safety food, rather than potentially hazardous food, as defined by Section 437.0196;

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

(xiii) pickled fruit or vegetables, including pickled beets and carrots, rather than pickles;

(xiv) makes no change to this subparagraph;

(xv) makes a nonsubstantive change to this subparagraph;

(xvi) makes no change to this subparagraph;

(xvii) canned goods that are acidified;

(xviii) fermented products;

(xix) frozen 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 product" for purposes of this section.

SECTION 2. Amends 437.0193, Health and Safety Code, by adding Subsection (d) to require a cottage food production operation that sells frozen 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 the following statement in at least 12-point font: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food refrigerated or frozen."

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

Sec. 437.0194. New heading: CERTAIN SALES BY COTTAGE FOOD PRODUCTION OPERATIONS PROHIBITED OR RESTRICTED. (a) Creates this subsection from existing text. Deletes existing text prohibiting a cottage food production operation from selling any of the foods described in Section 437.001(2-b)(A) through the Internet or by mail order.

(b) Authorizes a cottage food production operation to sell a food described by Section 437.001(2-b)(A) 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.

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

Sec. 437.01951. REQUIREMENTS FOR SALE OF FERMENTED PRODUCTS AND ACIDIFIED CANNED GOODS. (a) Requires a cottage food production operation that sells to consumers fermented products or canned goods that are acidified to use a recipe that is from a source approved by the Department of State Health Services (DSHS) or has been tested by an appropriately certified laboratory and the laboratory confirmed that the finished product or good has a pH value of 4.6 or less or to annually test the first batch of each recipe with a calibrated pH meter to confirm that the finished product or good has a pH value of 4.6 or less.

(b) Requires DSHS to approve sources for recipes that a cottage food production operation is authorized to use to produce fermented products or canned goods that are acidified and semiannually post on DSHS's Internet website a list of the approved sources for recipes.

(c) 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 (b). Requires the process to include:

(1) a method for an individual to submit a request to DSHS;

(2) a time for DSHS to respond to the request; and

(3) clear criteria for DSHS to evaluate whether DSHS should approve a requested source.

(d) Prohibits a cottage food production operation from selling to consumers fermented products or canned goods that are acidified before the operator complies with Subsection (a).

Sec. 437.01952. REQUIREMENTS FOR SALE OF FROZEN FRUIT OR VEGETABLES. Requires a cottage food production operation that sells to consumers frozen fruit or vegetables to store and deliver the frozen fruit or vegetables at an air temperature of not more than 32 degrees Fahrenheit.

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 COTTAGE FOOD PRODUCTION OPERATIONS; EXCEPTION. (a) Changes references from "potentially hazardous food" to "time and temperature control for safety food." Defines "time and temperature control for safety food" for purposes of this section.

(b) Prohibits a cottage food production operation, except as otherwise provided by this chapter (Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors) 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 fermented products and acidified canned goods, post a list of sources on DSHS's Internet website, and develop a process for approving additional sources of recipes as required by Section 437.01951, Health and Safety Code, as added by this Act.

SECTION 7. Effective date: September 1, 2019.