



FARM AND RANCH FREEDOM ALLIANCE

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August 26, 2011

Kay Kelley, RS
Team Lead, Retail Food Program
Williamson County and Cities Health District
303 Main
Georgetown, TX 78626

Re: SB 81, Cottage Foods Provisions

Dear Ms. Kelley:

I am writing to ask you for clarification of Williamson County's position on the cottage foods provisions in SB 81. I was forwarded a copy of an email in which you state that "the owner of the business cannot remove the food from their property. It has to be picked up by the purchaser." This interpretation is not consistent with the language of the bill.

The bill states:

- (2-b) "Cottage food production operation" means an individual, operating out of the individual's home, who:
- (A) Produces a baked good, a canned jam or jelly, or a dried herb or herb mix **for sale at the person's home;**
 - (B) Has an annual gross income of \$50,000 or less from the sale of food described in Paragraph (A); and
 - (C) Sells the foods produced under paragraph (A) only directly to consumers.

See SB 81 at Section 5, amending TX Health & Safety Code §437.001 (2011)

Black's law dictionary defines sale as follows:

Sale, n. 1. The transfer of property or title for a price. 2. The agreement by which such a transfer takes place. • The four elements are (1) parties competent to contract, (2) mutual assent, (3) a thing capable of being transferred, and (4) a price in money paid or promised.

Thus, a sale under SB 81 is complete once the buyer either pays or promises to pay for the baked good, jam, jelly, or herbs. Once the **sale** is completed **at the person's home**, the buyer and

seller are free to make whatever arrangements they choose to. Reading a prohibition on delivery into the statute would be contrary to the language of the bill.

In addition, a prohibition on delivery would make another portion of the bill superfluous, which is inconsistent with accepted canons of statutory construction. The bill specifically prohibits internet sales. *See* SB 81 at Section 6, amending TX Health & Safety Code §437.0194 (2011). If no delivery were allowed, then such a prohibition would have been unnecessary because internet sales always involve delivery. In other words, if all delivery was prohibited, then internet sales by their very nature would have been prohibited. By prohibiting internet sales but **not** delivery in general, the bill clearly allows for deliveries once the sale has occurred at the person's home through means other than the internet.

I am very concerned that Williamson County residents may be deprived of their legal rights under the bill. I ask that you clarify Williamson County's position as soon as possible.

Sincerely,

Judith McGeary

Judith McGeary, Esq.
Executive Director

Cc: Representative Lois Kolkhorst
Senator Jane Nelson