



Support HB 2108/ SB 572 Improve the Cottage Food Law

Until the Legislature adopted the first cottage food law in 2011, it was illegal to sell homemade food in Texas. Since passage of the 2011 and 2013 cottage food laws, over 1,000 small businesses have been established in our state.

But some of the law's current provisions limit farmers and other entrepreneurs from building a viable business, without materially improving food safety. Under the current law, cottage food operators may only sell their food at certain locations like farmers' markets, county fairs, or nonprofit events. Only specifically listed foods may be sold, while other equally low-risk foods cannot. And the only acidified canned food that may be sold is cucumber pickles (excluding all other pickled items).

SB 572 was unanimously approved by the Senate on April 23. HB 2108 was approved by the House Public Health Committee, 9-1. The bills:

- Allow cottage food producers to sell any food that does not require time or temperature controls for safety (non-TTCS foods, also known as "non-potentially hazardous" foods) directly to consumers at any location;
 - This includes internet sales **so long as** delivery is in person, allowing the use of things like PayPal or online shopping carts while keeping the local, direct producer-to-consumer relationship.
- Allow all types of pickles, including acidified canned foods and fermented vegetables.
- Add frozen fruits and vegetables to the list of allowed foods, subject to safe temperature standards.

The Facts about Food Safety

- Non-TTCS foods are those that do not require time or temperature control (refrigeration) to keep them safe for human consumption. These types of food are extremely low risk for food-borne illness.
- No known outbreaks of food-borne illness caused by cottage foods have been reported in Texas since the first cottage food law passed in 2011.

What HB 2108/ SB 572 Do

- Sales will continue to be limited to direct-to-consumer and capped at \$50,000 per year.
- Cottage food producers will still be required to produce their food in the kitchen of their primary residence, with appliances designed for common residential usage.
- HB 2108/ SB 572 removes the arbitrary restrictions on where foods can be sold and the ban on internet sales. These restrictions do not improve public safety – they just hamper small businesses.
- The bill adds acidified canned foods and fermented foods subject to a requirement that the recipe be tested to establish safe pH levels. Multiple other states allow such foods under their cottage food laws, with **no** reported illnesses resulting.
- This increases consumer access to locally produced foods and encourages local business development.

HB 2108 and SB 572 are supported by the Texas Local Food and Farm Coalition, Texas Organic Farmers & Gardeners Association, Farm & Ranch Freedom Alliance, the Sustainable Food Center, Food Policy Council of San Antonio, GROW North Texas, and Waller County Farmers & Ranchers Cooperative

For more information, contact Judith McGeary, Farm and Ranch Freedom Alliance, Judith@FarmAndRanchFreedom.org, 512-484-8821 (c).

Economic & food access benefits of cottage food production

- Cottage food sales promote more spending in the local economy and increase the amount of money circulated within it. Cottage food sales support local farmers, who can generate more revenue by supplementing fresh produce sales with prepared products that they can sell year-round and at a higher profit margin.¹
- Cottage food laws particularly benefit women and low-income households. Cottage food producers are overwhelmingly female and report household incomes considerably lower than the national median. Even a small amount of extra income from a cottage food business can be helpful to a lower-income household.²
- Adding items such as canned or frozen vegetables to the cottage food law means greater accessibility of these healthy, nutritious foods at affordable prices.

Cottage foods, including fermented vegetables, do not pose a public health threat

- Non-TTCS foods are *extremely* low risk. They cannot support the rapid growth of bacteria that would make people sick when held outside of refrigeration temperatures.
- FARFA contacted 24 other states with cottage food laws similar to HB 2108/ SB 572, speaking with both extension agents and health department officials.
 - Only one state (Minnesota) had a single incident of foodborne illness from a cottage food operation, due to a cookie maker who baked while sick with a stomach virus.
 - Five of the states specifically include fermented foods, and others allow ferments as “pickles.” Not even one foodborne illness has been reported from cottage food producers’ ferments.
- USDA microbiologist Fred Breidt says “that fermented vegetables can be safer than raw vegetables, thanks to the ability of lactic acid, which forms during fermentation, to hunt down and kill any harmful bacteria that might be present. ‘It’s almost bulletproof,’ he said ... ‘It’s hard to mess it up. Things can go wrong, but it’s rare.’”³
- A review of the CDC’s reports from 1998 to 2017 shows that there were 1,136 outbreaks due to botulism – and only one of those was linked to any kind of fermented vegetable. And in that case (in Amarillo 2013), the person making it mixed the fermented vegetables with boiled vegetables that had been left in the fridge for a week – making those non-fermented vegetables the most likely source of the illness. This type of recipe would not be allowed under HB 2108.
- The required pH of 4.6 or below prevents botulism. Moreover, a published study showed that fermented pickles at that pH or lower produced a 99.99% reduction (5-log) in *E. coli* O157:H7.⁴

¹ Rice, Christina, and Emily Broad Lieb. *Cottage Food Laws in the United States*. Food Law and Policy Clinic: Harvard Law School, Aug. 2018, www.chlpi.org/wp-content/uploads/2013/12/FLPC_Cottage-Foods-Report_August-2018.pdf.

² McDonald, Jennifer. *Flour Power: How Cottage Food Entrepreneurs Are Using Their Home Kitchens to Become Their Own Bosses*. Institute for Justice, Dec. 2017, ij.org/wp-content/uploads/2017/12/Cottage-Foods-Web.pdf.

³ <https://www.foodsafetynews.com/2014/03/fermenting-veggies-at-home-follow-food-safety-abcs/>. See also <https://www.todaysdietitian.com/newarchives/0418p24.shtml> (“Fermented foods, whether produced in the home or industrially, have a good safety record, and lactic acid bacteria strains in particular have a long history of safety.”)

⁴ Breidt F, Caldwell JM. 2011. Survival of *Escherichia coli* O157:H7 in cucumber fermentation brines. *J Food Sci* 76(3):M198-M203