

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Agriculture

BILL: SB 1136

INTRODUCER: Senator Lee

SUBJECT: Cottage Food Operations

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhvein	Becker	AG	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

SB 1136 removes the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements. It also removes the prohibition for selling or offering for sale cottage food products over the Internet, by mail order, or at wholesale.

II. Present Situation:

A cottage food operation is a business operated by a person who produces or packages non-potentially hazardous food in their home kitchen under certain conditions and restrictions.¹ The Department of Agriculture and Consumer Services (department) defines potentially hazardous foods as a food that requires time/temperature control for safety (TCS) to limit pathogenic micro-organism growth or toxin formation; an animal food that is raw or heat-treated; a plant food that is heat treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic micro-organism growth or toxin formation; or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic micro-organism growth or toxin formation.² Examples of foods that could be cottage food products (and are not, therefore, potentially hazardous foods) are:

- Loaf breads, rolls, biscuits;
- Cakes, pastries, and cookies;
- Honey;
- Jams, jellies, and preserves;
- Fruit pies and dried fruits;

¹ Section 500.80, F.S.

² See DACS, *Division of Food Safety: Cottage Food Legislation Signed into Law*, February 2014. Available at: http://www.freshfromflorida.com/content/download/42358/891067/CottageFoodAdvisoryChanges_Feb_2014_withFormNumber.pdf (last visited March 8, 2017).

- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars; and
- Popcorn and popcorn balls.³

Under current law, cottage food operations do not have to comply with food safety production standards, are not inspected, and are exempt from state permitting requirements.⁴ These operations must comply with the cottage food law and limit annual gross sales of cottage food products to less than \$15,000. Any such operation must provide the department (upon request) with written documentation to verify annual gross sales. If there is a complaint about a cottage food operation, the department has the authority to investigate the operation and to inspect the premises to determine compliance with applicable requirements.

A cottage food operation is currently prohibited from selling, or offering to sell, cottage food products over the Internet, by mail order, or at wholesale.

Cottage food products must be prepackaged with a label that contains:

- The name and address of the cottage food operation;
- The name of the cottage food product;
- The ingredients of the cottage food product, in descending order of predominance by weight;
- The net weight or net volume of the cottage food product;
- Allergen information as specified by federal labeling requirements;
- Appropriate nutritional information (if any nutritional claim is made) as specified by federal labeling requirements;⁵ and
- The statement, “Made in a cottage food operation that is not subject to Florida’s food safety regulation” printed in 10-point type in a color in a clear contrast to the background of the label.

Additionally, current law provides that:

- A cottage food operation may only sell cottage food products stored on the premises of the operation;
- Cottage food operations are not exempt from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations; and
- A cottage food operation must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person’s residence.

The department may investigate complaints that a cottage food operation has violated an applicable provision of state food products law⁶ or rule adopted under such law. Upon receiving a complaint, a department authorized officer or employee may enter and inspect the cottage food

³ *Id.*

⁴ Section 500.12, F.S.

⁵ See C.F.R. Title 21, Part 101. Available at: <http://www.ecfr.gov/cgi-bin/text-idx?SID=b8a6ba2f29a50685c15ebddd8bbd56aa&mc=true&node=pt21.2.101&rgn=div5> (last visited March 8, 2017).

⁶ Chapter 500, F.S.

operation's premises to determine compliance applicable to state law and departmental rule. An operation's refusal to permit an authorized officer or employee to enter and inspect the premises is grounds for disciplinary action under s. 500.121, F.S.⁷

State law regarding cottage food operations does not apply to any person operating under a food permit issued pursuant to s. 500.12, F.S.⁸

Cottage Food Sales in Other States

Many states have adopted laws regarding cottage food operations and production, including Alabama in 2014, Texas and California in 2013, and Michigan in 2010. While regulation varies from state to state, many states have adopted limits to annual gross sales or income from cottage food products including:

- Alabama and Michigan limit annual gross income from sales to \$20,000;
- Texas limits annual gross sales to \$50,000; and
- California limited annual gross sales starting with \$35,000 in 2013, \$45,000 in 2014, and \$50,000 from 2015 and beyond.

III. Effect of Proposed Changes:

Section 1 amends s. 500.80, F.S., to eliminate the cottage food operations annual gross sales limitation of \$15,000. It also removes the prohibition for selling or offering for sale cottage food products over the Internet, by mail order, or at wholesale.

Section 2 provides that this act shall take effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁷ Disciplinary action includes suspension procedures provided for in s. 500.12, F.S., and may include an administrative fine in the Class II category pursuant to s. 570.971, F.S.

⁸ Permits under this section are required for any person who operates a food establishment or retail food store.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The Division of Food Safety within the department permits 3,067 “limited sales” establishments that operate out of a food production facility and may produce potentially hazardous foods. These permits are issued at a cost of \$130 annually. The division estimates that one-third of limited sales food establishment might choose to operate out of their residence so as to no longer require a “limited sales” permit and thus take advantage of the increase in maximum allowable annual gross sales. The establishments would still need permitting if they are not in compliance with all other requirements of s. 500.80, F.S. The department estimates that if one-third of all “limited sales” establishments opt to become cottage food operators, the negative fiscal impact to the General Inspection Trust Fund would be \$132,903.⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill deletes the provision that prohibits a “cottage food operation to sell or offer for sale cottage food products over the Internet, by mail order, or at wholesale.” The Division of Food Safety analysis indicates that this conflicts with the United States Food and Drug Administration Food Code Section 3-201.11 Compliance with Food Law.

VIII. Statutes Affected:

This bill amends section 500.80 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁹ Analysis by the DACS Division of Food Safety for SB 1136, March 8, 2017 (on file with the Agriculture Committee).