

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 Rules

BILL: SB 1294

INTRODUCER: Senator Brodeur

SUBJECT: Cottage Food Operations

DATE: April 19, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Reeve</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 1294 revises the regulations on cottage food operations and cottage food sales. A cottage food operation is a natural person who produces or packages cottage food products, defined by the Department of Agriculture as any food that is not a potentially hazardous food, at his or her residence.

The bill allows individual cottage food operations to sell, offer for sale, and accept payment for cottage food products as a business entity. The bill also allows cottage food products to be sold, offered for sale, and paid for by mail order, and permits cottage food products to be delivered by mail.

Cottage food operations are exempt from food permitting requirements if the cottage food seller complies with s. 500.80, F.S., and has annual gross sales of up to \$50,000. The bill increases the maximum allowable gross sales to \$250,000.

The bill preempts the regulation of cottage food operations to the state.

The bill provides that this act may be cited as the "Home Sweet Home Act."

The bill takes effect July 1, 2021.

II. Present Situation:

Food Safety Laws

The Division of Food Safety within the Department of Agriculture and Consumer Services (department) ensures that safe, wholesome, and properly labeled food is available to the public through the permitting and inspection of food establishments, and inspection of food products

that are sold or produced in Florida.¹ The department works in cooperation with the United States Department of Agriculture and the Food and Drug Administration to help ensure compliance with both state and federal regulations.²

Cottage Food Operations

A cottage food operation is an unincorporated business operated by a natural person who, under certain conditions and restrictions, produces or packages food that is not potentially hazardous in their residence.³

A cottage food product is any food that is not a potentially hazardous food as defined by department rule which is sold by a cottage food operation in accordance with s. 500.80, F.S.⁴ The department has not adopted a rule defining the term “potentially hazardous food,” but it has adopted the U.S. Food and Drug Administration’s 2017 Food Code (Food Code).⁵

The Food Code defines the term “time/temperature controlled for safety food,” formerly referred to as “potentially hazardous food,” as a “food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.” The term includes:

- Animal food that is raw or heat-treated;
- 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 microorganism growth or toxin formation; and
- Garlic-in-oil mixtures that are not modified so that they are unable to support pathogenic micro-organism growth or toxin formation.⁶

The department has identified the following foods as not potentially hazardous and therefore permitted to be produced by a cottage food operation:

- Loaf breads, rolls, biscuits;
- Cakes, pastries, and cookies;
- Honey;
- Jams, jellies, and preserves made from high acid-fruits only;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;

¹ Florida Department of Agriculture and Consumer Services, *Division of Food Safety*, available at <http://www.freshfromflorida.com/Divisions-Offices/Food-Safety> (last visited Mar. 19, 2021). See also ch. 500, F.S., the Florida Food Safety Act.

² Florida Department of Agriculture and Consumer Services, *Food Establishments*, available at <https://www.fdacs.gov/Business-Services/Food/Food-Establishments> (last visited Mar. 19, 2021).

³ Sections 500.03(j), (k), and 500.80, F.S.

⁴ Section 500.03(k), F.S.

⁵ Fla. Admin. Code R. 5K-4.002(4)(a).

⁶ U.S. Food and Drug Administration, 2017 Food Code, subpart 1-201.10, defining “Time/Temperature Control for Safety Food (formerly “potentially hazardous food” (PHF))” Certain foods may be designated as “product assessment required” due to the interaction of their water content and pH values after heat treatment or packaging to control vegetative cells and spores. Such foods are considered TCS food until further study proves otherwise.

- Coated or uncoated nuts;
- Vinegar and flavored vinegars;
- Popcorn and popcorn balls; and
- Nut butters, including almond, peanut, cashew, etc.⁷

Under s. 500.80, F.S., cottage food operations are exempt from food safety production standards, are not subject to inspection by a governmental entity, and are not required to meet state food permitting requirements under s. 500.12, F.S. However, cottage food operations must comply with the cottage food law and limit annual gross sales of cottage food products to less than \$50,000. A cottage food operation must provide the department with written documentation to verify its annual gross sales upon the department's request to do so.

Cottage food operations may sell and accept payments for cottage food products over the Internet, but such products must be delivered in person. Cottage food operations are currently prohibited from selling or delivering cottage food products by mail order or at wholesale.⁸ A cottage food operation may only sell cottage food products that are stored on the premises of the operation.⁹

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 as specified by federal labeling requirements, if any nutritional claim is made;¹⁰ 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 that provides a clear contrast to the background of the label.¹¹

Cottage food operations are not exempt from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations,¹² and must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products.¹³

⁷ See Department of Agriculture and Consumer Services, *Division of Food Safety: Cottage Food Operations (August 2020)*, available at <https://www.fdacs.gov/content/download/70108/file/Cottage-Food-Operations.pdf> (last visited Mar. 19, 2021).

⁸ Section 500.80(2), F.S.

⁹ Section 500.80(4), F.S.

¹⁰ See Food Labeling, 21 C.F.R. § 101.

¹¹ Section 500.80(3), F.S.

¹² Section 500.80(5), F.S.

¹³ Sections 500.80(6), F.S.

Cottage Food Operations Investigations and Complaints

The department may investigate complaints that a cottage food operation has violated an applicable provision of state food products law¹⁴ or rule adopted under such law.¹⁵ Upon receiving a complaint, an officer or employee of the department may inspect the cottage food operation's premises to determine compliance with applicable to state law and departmental rules. An operation's refusal to permit an authorized officer or employee to enter and inspect the premises is grounds for administrative disciplinary action under s. 500.121, F.S.¹⁶

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.¹⁷

In 2020, the department responded to 233 consumer complaints regarding unpermitted food establishments, many of which were cottage food operations not complying with the existing food laws.¹⁸

Cottage Food Sales in Other States

Nationwide, 49 states and the District of Columbia have cottage food programs; many states have comparable regulations to the existing cottage food laws in Florida. While not all states have imposed a gross income limit, the average allowable gross income in states with limits ranges from \$15,000 to \$35,000 annually. States without income limits have various prohibitions against mail deliveries and out-of-state sales of cottage food products.¹⁹

III. Effect of Proposed Changes:

The bill expands the definition of "cottage food operation" in s. 500.03(1)(j), F.S., to include entities that produce or package cottage food products at the residence of a natural person with an ownership interest in the entity.

The bill increases the maximum annual gross sales limit for cottage foods operations from \$50,000 to \$250,000.

The bill permits cottage food operations to sell and accept payment for cottage food products by mail order and to deliver cottage food products by mail.

¹⁴ Chapter 500, F.S.

¹⁵ Section 500.80(7)(a), F.S.

¹⁶ Section 500.121, F.S., provides disciplinary procedures for violations of ch. 500, F.S., and applicable rules, including the imposition of Class II administrative fines against a cottage food operation that violates ch. 500, F.S. A violation in the Class II category carries a fine not to exceed \$5,000 for each violation. *See* s. 570.971(1)(b), F.S.

¹⁷ Section 500.12, F.S., requires a permit issued by the department for any person operating a food establishment or retail food store.

¹⁸ Department of Agriculture and Consumer Services, *Agency Analysis for SB 1294*, (Feb. 23, 2021) (on file with the Senate Committee on Regulated Industries).

¹⁹ *Id.* *See also* Harvard Food Law and Policy Clinic, *Cottage Food Laws in the United States (August 2018)*, available at https://www.chlpi.org/wp-content/uploads/2013/12/FLPC_Cottage-Foods-Report_August-2018.pdf (last visited Mar. 19, 2021).

The bill also preempts the regulation of cottage food operations to the state. Under the bill, a local law, ordinance, or regulation may not prohibit a cottage food operation or regulate the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person's residence.

This act may be cited as the "Home Sweet Home Act."

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services indicates that the increase in gross sales limits for cottage food operators may result in increased food safety health events and complaints, and therefore increase the department's workload. The department cannot recover these enforcement expenses because cottage food operations do not pay a permit fee. An increase in the annual gross sales limit will also result in fewer food

establishments permitted and inspected by the department, which may have a negative fiscal impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Increasing the allowable gross sales for cottage food operations would remove larger operations from permitting requirements and inspections for sanitation and compliance with food safety regulations. The department states that, without proper training and oversight, small businesses may expose themselves to greater liability resulting from harming persons through foodborne illnesses.²⁰

VIII. Statutes Affected:

This bill substantially amends sections 500.03 and 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.

²⁰ *Supra* note 18.