

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 Appropriations Subcommittee on General Government

BILL: SB 1228

INTRODUCER: Senator Detert

SUBJECT: Cottage Food Operations

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	Pre-meeting
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1228 increases the maximum annual gross sales of cottage food products from \$15,000 to \$30,000 for a cottage food operation to maintain exempt status from state permitting requirements.

The bill has an indeterminate fiscal impact.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Florida Cottage Food Operation Law

Chapter 2011-205, Laws of Florida, includes provisions regarding cottage food operations in the state.¹ A cottage food operation is a natural person² who produces or packages cottage food products at his or her residence and sells such products in accordance with cottage food operations law. A cottage food product is food that is not potentially hazardous food, as defined by the Department of Agriculture and Consumer Services (DACS) rule, and sold by a cottage food operation.

The DACS 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

¹ See ch. 2011-205, s. 21, L.O.F., and s. 500.80, F.S.

² "Natural person" is undefined for purposes of ch. 500, F.S. *Black's Law Dictionary* (10th ed. 2014), defines natural person as a human being. This definition would exclude artificial or juridical persons.

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.³ 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;
- Candies and confections;
- Honey;
- Jams, jellies, and preserves;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars; and
- Popcorn, popcorn balls.⁴

Current law allows a cottage food operation to be exempt from state permitting requirements⁵ if the operation complies with cottage food law and has annual gross sales of cottage food products that do not exceed \$15,000. The annual gross sales of a cottage food operation include all sales of products from any location, regardless of the types of products sold or number of persons involved in the operation. Any such operation must provide the DACS written documentation to verify annual gross sales.

A cottage food operation is 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;⁶ and
- The statement, “Made in a cottage food operation that is not subject to Florida’s food safety regulations” printed in 10-point type in a color in a clear contrast to the background of the label.

³ 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 January 19, 2016).

⁴ *Id.*

⁵ Section 500.12, F.S.

⁶ 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 January 19, 2016).

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 DACS may investigate complaints that a cottage food operation has violated an applicable provision of state food products law⁷ or rule adopted under such law. Upon receiving a complaint, a DACS authorized officer or employee may enter and inspect the cottage food 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.⁸

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.⁹

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:

SB 1228 increases the maximum annual gross sales of cottage food products from \$15,000 to \$30,000 for a cottage food operation to maintain exempt status from state permitting requirements.

The bill does not remove or change other requirements in current law, for a cottage food operation to be exempt from state permitting requirements.

The bill takes effect July 1, 2016.

⁷ Chapter 500, F.S.

⁸ 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.

⁹ Permits under this section are required for any person who operates a food establishment or retail food store.

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.

B. Private Sector Impact:

The impact of SB 1228 on the private sector is indeterminate.

C. Government Sector Impact:

The fiscal impact on the DACS is indeterminate.

The Division of Food Safety within the DACS 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. Some of these establishments, who would otherwise qualify as a cottage food operation, may 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 DACS reported that a decrease in revenue associated with issued permits could have a negative fiscal impact to the General Inspection Trust Fund of \$398,710, if all “limited sales” establishments opt to become cottage food operators.¹⁰

VI. Technical Deficiencies:

None.

¹⁰ DACS Division of Food Safety, *Senate Bill #1228: Relating to Cottage Food Operations*, January 19, 2016, (on file with the Commerce and Tourism Committee).

VII. Related Issues:

The DACS Division of Food Safety noted that in incidences of food-borne illnesses occurring in cottage food products, the division cannot conduct “trace-back” or “trace-forward” activities since cottage food operations are not registered with the DACS and are not required to maintain a listing of where their food products are sold.¹¹

VIII. Statutes Affected:

This bill substantially 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.

¹¹ *Id.*