

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/SB 1136

INTRODUCER: Agriculture Committee and Senator Lee

SUBJECT: Cottage Food Operations

DATE: March 30, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhvein</u>	<u>Becker</u>	<u>AG</u>	<b>Fav/CS</b>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1136 increases the maximum annual gross sales limit of cottage foods operations from \$15,000 to \$50,000. It allows cottage food operations to sell, offer for sale, and accept payment for cottage food products over the Internet, but requires the cottage food item to be delivered in person directly to the consumer, or to a specific event venue.

**II. Present Situation:**

**Food Safety Laws**

The Department of Agriculture and Consumer Services' (department's) Division of Food Safety 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.<sup>1</sup> Over 45,000 food establishments are currently permitted and regulated by the department.<sup>2</sup> The department works in cooperation with the United States Department of

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<sup>1</sup> Florida Department of Agriculture and Consumer Services, *Division of Food Safety*, <http://www.freshfromflorida.com/Divisions-Offices/Food-Safety> (last visited Mar. 29, 2017). See also ch. 500, F.S., the "Florida Food Safety Act."

<sup>2</sup> Department of Agriculture and Consumer Services, Division of Food Safety, p. 1, *SB 1136 Agency Analysis* (Mar. 8, 2017) (on file with the Agriculture Committee).

Agriculture and Food and Drug Administration to help ensure compliance with both state and federal regulations.<sup>3</sup>

### **Florida Cottage Food Operation Law**

A cottage food operation is a business operated by a person who, under certain conditions and restrictions, produces or packages non-potentially hazardous food in their home kitchen.<sup>4</sup> Though it has not adopted a rule on cottage food operations, the department has published materials defining potentially hazardous foods as those that:

- Require time or temperature control for safety to limit pathogenic micro-organism growth or toxin formation;
- Are an animal food that is raw or heat-treated;
- Are 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 so that they are unable to support pathogenic micro-organism growth or toxin formation.<sup>5</sup>

Foods that could be cottage food products (because they are not potentially hazardous foods) are:

- Loaf breads, rolls, biscuits;
- Cakes, pastries, and cookies;
- 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 and popcorn balls.<sup>6</sup>

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 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 \$15,000. 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.

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<sup>3</sup> Florida Department of Agriculture and Consumer Services, *Food Establishment Inspections*, <http://www.freshfromflorida.com/Divisions-Offices/Food-Safety/Business-Resources/Food-Establishment-Inspections> (last visited Mar. 29, 2017).

<sup>4</sup> Sections 500.03(j), (k), and 500.80, F.S.

<sup>5</sup> See Department of Agriculture and Consumer Services, *Division of Food Safety: Cottage Food Legislation Signed into Law* (Feb. 2014), available at: <https://www.freshfromflorida.com/content/download/10223/137606/CottageFoodAdvisoryWithFormNumber.pdf> (last visited Mar. 29, 2017).

<sup>6</sup> *Id.*

Cottage food operators are 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;<sup>7</sup> 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 that are 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 law<sup>8</sup> or rule adopted under such law. 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.<sup>9</sup>

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.<sup>10</sup>

### **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.<sup>11</sup> While regulation varies

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<sup>7</sup> 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).

<sup>8</sup> Chapter 500, F.S.

<sup>9</sup> 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.

<sup>10</sup> Permits under this section are required for any person who operates a food establishment or retail food store.

<sup>11</sup> PickYourOwn.Org, *Cottage Food Laws by State: Selling Your Homemade and Home-Canned Foods* (Mar. 29, 2017), <http://www.pickyourown.org/CottageFoodLawsByState.htm> (last visited Mar. 29, 2017).

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;<sup>12</sup>
- Texas limits annual gross sales to \$50,000;<sup>13</sup> and
- California limited annual gross sales starting with \$35,000 in 2013, \$45,000 in 2014, and \$50,000 beginning in 2015.<sup>14</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 500.80, F.S., to increase the annual gross sales limit from \$15,000 to \$50,000 for cottage food operations; this will allow larger businesses to qualify and operate as a cottage food operation. The bill also allows a cottage food operation to sell, offer for sale, and receive payments for sale over the Internet, if the purchased cottage food products are delivered in person directly to the consumer or to a specific event.

**Section 2** provides an effective date of 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.

#### B. Private Sector Impact:

People engaged in cottage food operations will be able to expand their volume of sales from \$15,000 to \$50,000 per year. They may also be able to make sales more efficiently over the Internet.

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<sup>12</sup> Alabama Department of Agriculture and Industries, Farmer's Market Authority, Home Processed Products & Cottage Food Law, available at [http://fma.alabama.gov/pdfs/Brochure\\_HomeProcessed-CottageFoodLaw.pdf](http://fma.alabama.gov/pdfs/Brochure_HomeProcessed-CottageFoodLaw.pdf) (last visited Mar. 29, 2017). *See also*, MCLS s. 289.4102.

<sup>13</sup> Tex. Health and Safety Code, s. 437.001.

<sup>14</sup> Cal. Health and Safety Code s. 114365.2.

C. **Government Sector Impact:**

The Division of Food Safety indicates that the increase in gross sales for cottage food operators may result in increased food safety health events and complaints, and therefore cause a rise in investigations and prosecutions of cottage food operators.<sup>15</sup>

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill amends s. 500.80, F.S.

IX. **Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Agriculture on March 21, 2017:**

The committee substitute reinstates an annual sales volume limitation for cottage food operators. The new limit is \$50,000 in annual sales. The CS also allows Internet sales, offers for sale, and payments over the Internet as long as the cottage food products are delivered in person directly to the consumer or to a specific event.

- B. **Amendments:**

None.

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

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<sup>15</sup> Department of Agriculture and Consumer Services, Division of Food Safety, *SB 1136 Agency Analysis* (Mar. 8, 2017) (on file with the Agriculture Committee).