

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1233 Cottage Food Operations
SPONSOR(S): White and Ahern
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1136

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	12 Y, 0 N	Wright	Anstead
2) Commerce Committee	29 Y, 0 N	Wright	Hamon

SUMMARY ANALYSIS

Cottage foods are those food products which are sold by people who produce foods at their own residence and that have been determined by the Florida Department of Agriculture and Consumer Services (DACS) to be "non-potentially hazardous." Examples of permissible cottage foods are breads, honey, cakes, and popcorn. Food products containing meats and fresh fruits and vegetables or those that require temperature control are generally prohibited cottage foods.

A cottage food operation may sell cottage foods without conforming to state food and building permitting requirements if the annual gross sales of such products do not exceed \$15,000. Certain operating standards must also be followed, including not selling or accepting payment for cottage foods over the internet.

The bill increases the maximum annual gross sales limit of cottage foods from \$15,000 to \$50,000.

The bill allows cottage food operations to sell, offer to sell, and accept payment for cottage foods over the internet, as long as the cottage foods are delivered in person directly to the consumer or to a specific event venue.

The bill has no fiscal impact on local governments and a minimal indeterminate fiscal impact on state government.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Cottage Foods

States and local governments have primary authority over food production. Therefore, states, and not the federal government, have the ability to decide whether or not in-home food productions are allowed in that state and what foods qualify for such in-home productions.¹ Florida allows such operations under certain circumstances.²

In Florida, such foods, or “cottage food products” (cottage foods), are food products that DACS has determined are “non-potentially hazardous”³ and which are sold in accordance with cottage food operating requirements.⁴

Common examples of permitted and prohibited cottage foods are as follows:⁵

Permitted Cottage Foods	Prohibited Cottage Foods
<ul style="list-style-type: none">• Loaf breads, rolls, and 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 and popcorn balls.	<ul style="list-style-type: none">• Fresh or dried meat or meat products including jerky;• Canned fruits and vegetables, chutneys, vegetable butters and jellies, flavored oils, hummus, garlic dip, salsas, etc.;• Fish or shellfish products;• Canned pickled products such as corn relish, pickles, and sauerkraut;• Raw seed sprouts;• Bakery goods which require any type of refrigeration, such as cream, custard, or meringue pies and cakes or pastries with cream cheese icings or fillings;• Milk and dairy products including hard, soft, and cottage cheeses and yogurt;• Cut fresh fruits and/or vegetables;• Juices made from fresh fruits or vegetables;• Ice and/or ice products;• Barbeque sauces, ketchups, and/or mustards; and• Focaccia-style breads with vegetables and/or cheeses.

¹ Harvard Law School Food Law and Policy Clinic, COTTAGE FOOD LAWS IN THE UNITED STATES 7 (August 2013).

² s. 500.80, F.S.

³ “Potentially hazardous food” means a food that requires time/temperature control (TCS) to limit pathogenic microorganism growth or toxin formation. Department of Agriculture and Consumer Services, *Division of Food Safety: Cottage Food Legislation Signed into Law*, February 2014, available at <https://www.freshfromflorida.com/content/download/10223/137606/CottageFoodAdvisoryWithFormNumber.pdf> (last visited March 15, 2017). The United States Food and Drug Administration developed a model food code, which include a definition for such foods; DACS formed a definition that is similar. FDA Food Code §1-201.10 (2013).

⁴ s. 500.03(1)(k), F.S.

⁵ Florida Department of Agriculture and Consumer Services, *supra* note 2.

Cottage Food Operating Requirements

In Florida, “cottage food operations” are natural persons who produce or package cottage foods at his or her residence and are exempt from food and building permitting requirements⁶ if he or she sells such products in accordance with the cottage food operating requirements.⁷

A cottage food operation complies with the cottage food operating requirements if:

- Annual gross sales of cottage foods do not exceed \$15,000;⁸
- Cottage foods are not sold or offered to be sold over the internet, by mail order, or at wholesale;
- Cottage foods are sold prepackaged with a label affixed containing the following information:
 - Name and address of the cottage food operation;
 - Name of the cottage food;
 - Ingredients of the cottage food, in descending order of predominance by weight;
 - Net weight or net volume of the cottage food;
 - Allergen information as specified by federal labeling requirements;
 - If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements; and
 - A statement printed in at least 10-point font and in a color that provides clear contrast to the background of the label which reads “Made in a cottage food operation that is not subject to Florida’s food safety regulations;”
- Only cottage foods that are stored on the premises of the cottage food operation are sold;
- Any applicable state or federal tax law, rule, regulation, or certificate or any applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage foods by a cottage food operation or from a person’s residence are complied with.⁹

Some local governments throughout the state place additional requirements on cottage food operations. For example, many counties and cities require a cottage food operation, like any other business endeavor, to obtain a business tax receipt¹⁰ prior to commencing his or her production.¹¹

Cottage food operations may advertise their products on their websites, but they may not sell or take orders over the internet. Cottage food operations may sell cottage foods at events, such as weddings, festivals, and parties.¹²

DACS may enter and inspect the premises of a cottage food operation to determine compliance with the cottage food operations requirements only upon receipt of a complaint which alleges that a cottage food operation has violated any of the cottage food operating requirements. If a cottage food operation

⁶ Outlined in s. 500.12, F.S.

⁷ s. 500.03(1)(j), F.S.

⁸ This includes all sales of products from any location, regardless of the types of products sold or number of persons involved in any operation. Documentation of sales must be available to DACS for verification. s. 500.80(1)(b), F.S.

⁹ s. 500.80(1)-(6), F.S.

¹⁰ Chapter 205, F.S., allows counties and cities to impose taxes for the privilege of engaging in or managing any business, occupation, or profession within its jurisdiction. This tax is administered through the issuance of a local business tax receipt. In order to impose this tax, the local government entity must adopt an ordinance, which outlines the amount of the tax, method of computation, and other requirements. Seminole County Tax Collector, *What is a Business Tax Receipt?*, <http://www.seminoletax.org/btr/whatis.shtml> (last visited March 29, 2017).

¹¹ Examples include City of Miramar and St. John’s County. City of Miramar, *Business Tax (Occupational Licenses)*, <http://www.miramarfl.gov/201/Business-Tax-Occupational-Licenses> (last visited March 29, 2017); and County of St. John’s Tax Collector, *Local Business Tax Frequently Asked Questions*, <http://www.sjctax.us/BusinessTaxFAQ.aspx> (last visited March 29, 2017).

¹² Florida Department of Agriculture and Consumer Services, *Cottage Food Operations*, May 2016. Available at http://www.freshfromflorida.com/content/download/70108/1634054/Cottage_Food_Guidance.pdf (last visited March 15, 2017).

refuses to permit DACS to enter the premises or to conduct the inspection, he or she is subject to disciplinary action.¹³

In 2016, DACS had one complaint against a cottage food operation, but there was insufficient evidence to investigate the claim.¹⁴

Cottage Food Operations in Other States

Forty-two states have adopted laws allowing cottage food operations and production. While regulation varies from state to state, many states have adopted limits to annual gross sales or income from cottage food products including:

- Michigan limits annual gross sales to \$25,000;
- Texas limits annual gross sales to \$50,000; and
- California limits annual gross sales to \$50,000.¹⁵

Effect of the Bill

The bill increases the maximum annual gross sales limit of cottage foods from \$15,000 to \$50,000 for a cottage food operation to maintain an exemption from state food and building permitting requirements.

The bill allows cottage food operations to sell, offer to sell, and accept payment for cottage foods over the internet, as long as the cottage foods are delivered in person directly to the consumer or to a specific event venue.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1 Amends s. 500.80, F.S., by increasing the gross sales limitation, and allowing internet sales, offers to sell, and payment, under certain conditions.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fiscal impact on DACS is indeterminate.

2. Expenditures:

The fiscal impact is indeterminate, but it is expected to be minimal. With the increase in allowed gross sales of cottage food operators, DACS may see a rise in complaints, and therefore a rise in investigations of cottage food operators.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

¹³ s. 500.08(7)(a)-(b), F.S.

¹⁴ Email from Grace Lovett, Director of Legislative Affairs, Department of Agriculture and Consumer Services, RE: HB 1233 (March 16, 2017).

¹⁵ Harvard Law School Food Law and Policy Clinic, *supra* note 1, at 6 & 14.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Current cottage food operations may be able to expand their businesses due to the increase of the gross sales limitation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DACS will need to amend rules related to the manner in which cottage food operations may sell cottage foods. Authority to do so is granted in s. 500.09, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES