

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 Regulated Industries

BILL: SB 1294

INTRODUCER: Senator Brodeur

SUBJECT: Cottage Food Operations

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1294 revises the requirements for the sale of cottage foods. A cottage food product is any food that is not a potentially hazardous food as defined by rule of the Department of Agriculture (department). Cottage food sales are exempt from permitting requirements if the cottage food seller (operation) complies with s. 500.80, F.S., and has annual gross sales of less than \$50,000. The bill increases the maximum allowable annual gross sales to less than \$250,000.

The bill allows individual cottage food operations to sell, offer for sale, and accept payment for cottage food products as a business entity. Current law only permits persons to operate a cottage food operation as a natural person. The bill also allows cottage foods to be sold, offered for sale, and payed for by mail order and permits cottage food products to be delivered by mail.

The bill provides this act may be cited as the “Home Sweet Home Act.”

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

The bill is effective 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

Florida Cottage Food Operation Law

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 home kitchen.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 2017 Food Code (Food Code) published by the U.S. Public Health Service of the United States Department of Health and Human Services.⁵

The Food Code defines the term “Time/Temperature Controlled for Safety (TCS) 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.”⁶ “Time/temperature control for safety food” 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 micro-organism growth or toxin formation;
- Garlic-in-oil mixtures that are not modified so that they are unable to support pathogenic micro-organism growth or toxin formation;
- Food for which the interaction of its water content and pH value require the product to be heat treated and subsequently packaged.⁷

Although it has not adopted a rule on cottage food operations, the department has published materials defining “Time/Temperature Controlled for Safety (TCS) Food,” formerly referred to as “potentially hazardous food,” to identify the following foods that could be cottage food products (because they are not potentially hazardous foods):

- Loaf breads, rolls, biscuits;

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

² Florida Department of Agriculture and Consumer Services, *Food Establishments*, <https://www.fdacs.gov/Business-Services/Food/Food-Establishments> (last visited Mar. 1, 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). The 2017 Food Code is available at: <https://www.fda.gov/media/110822/download> (last visited March 2, 2021).

⁶ 2017 Food Code, subpart 1-21.10, defining “Time/Temperature Control for Safety Food (formerly “potentially hazardous food” (PHF))”

⁷ See Department of Agriculture and Consumer Services, *Division of Food Safety: Cottage Food Operations* (August 2020), defining “Cottage Food Product,” available at: <https://www.fdacs.gov/content/download/70108/file/Cottage-Food-Operations.pdf> (last visited Mar. 1, 2021).

- 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;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars;
- Popcorn and popcorn balls; and
- Nut butters, including almond, peanut, cashew, etc.⁸

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 \$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 operators are currently prohibited from selling, or offering to sell, cottage food products by mail order or at wholesale.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 (if any nutritional claim is made) as specified by federal labeling requirements;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

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

⁸ *Id.*

⁹ Section 500.80(2), F.S.

¹⁰ 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 1, 2021).

¹¹ Section 500.80(3), F.S.

- 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.¹²

The department may investigate complaints that a cottage food operation has violated an applicable provision of state food products law¹³ or rule adopted under such law.¹⁴ 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.¹⁵

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.¹⁶

In 2020, the department responded to 233 consumer complaints regarding unpermitted food establishments, including cottage food operations not complying with the existing food laws. In 2021, the department has responded to 57 unpermitted food establishment complaints.¹⁷

Cottage Food Sales in Other States

Many states have adopted laws regarding cottage food operations and sales. Not all states have imposed an annual gross income limit for cottage food sales. For states that have imposed a gross income limit, the average allowable annual gross income ranges from \$15,000 to \$35,000.¹⁸

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the "Home Sweet Home Act."

Section 2 amends s. 500.03(1)(j), F.S., to revise the definition of the term "cottage food operation" to allow cottage food operations to sell, offer for sale, and accept payment for cottage food products as a business entity. It also permits cottage food products to be produced or packaged at the residence of a natural person who has an ownership interest in the entity.

Section 3 amends ss. 500.80(1)(a) and (2), F.S., to increase the maximum annual gross sales limit for cottage foods operations from less than \$50,000 to less than \$250,000.

¹² Sections 500.80(4), (5), and (6), F.S.

¹³ Chapter 500, F.S.

¹⁴ Section 500.80(7)(a), F.S.

¹⁵Section 500.12, 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.

¹⁶ Section 500.12, F.S., requires a permit issued by the department for any person operating a food establishment or retail food store.

¹⁷ Department of Agriculture and Consumer Services, *Agency Analysis for SB 1294*, page 2 (Feb. 23, 2021)(on file with the Senate Committee on Regulated Industries).

¹⁸ Department of Agriculture and Consumer Services, *Agency Analysis for SB 1294*, page 3 (Feb. 23, 2021) (on file with the Committee on Regulated Industries). *See also* Pickyourown.org, *Cottage Food Laws by State: Selling Your Homemade and Home-Canned Foods*, updated Mar. 01, 2021, available at: <https://www.pickyourown.org/CottageFoodLawsByState.htm> (last visited Mar. 1, 2021).

The bill allows cottage food operations to sell, offer for sale, and accept payment for cottage food products by mail order. It also permits cottage food products to be delivered by mail.

The bill also amends s. 500.80(6), F.S., to preempt 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.

Section 2 provides an effective date of 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:

Persons engaged in cottage food operations will be able to expand their allowable total gross income from sales from less than \$50,000 to less than \$250,000 per year. They may also be able to make additional sales by accepting orders and payments by mail order and delivering products by mail.

C. Government Sector Impact:

The department indicates that the increase in gross sales for cottage food operators, and the additional sales and deliveries by mail 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.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Agriculture and Consumer Services, 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. The departments also states that the result of a robust inspection and training program is that these small businesses have a 96 percent compliance rate with respect to meeting inspection requirements, and that studies have shown that food safety inspection programs result in a higher compliance rate than without such programs.²⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 500.03 and 500.80.

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.

¹⁹ Department of Agriculture and Consumer Services, *Agency Analysis for SB 1294*, page 2 (Feb. 23, 2021) (on file with the Committee on Regulated Industries).

²⁰ *Id.*