

## QUICK LOOKUP

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The Texas Cottage Food Law has continued to evolve and expand since first passed in 2011, with the most sweeping revisions made by the Texas Legislature in 2019.

Prior to 2011, it was illegal to sell any food that a person prepared in a home kitchen. But that year, the Farm and Ranch Freedom Alliance (FARFA) worked to pass the first Texas Cottage Food Law, allowing people to sell a few specific low-risk foods to consumers who could only purchase the foods by traveling to the producers’ homes. The law was expanded in 2013, and now the latest revisions, filed as SB 572, go into effect on September 1, 2019.

The Texas Cottage Food Law allows individuals to sell certain foods made in home kitchens, without having to get a food manufacturers’ license, use a commercial kitchen, or be subject to inspections by the state or local health departments.

## What are the requirements for a cottage food operation?

Under the newly expanded law, cottage food operations must meet the following requirements. Several are covered in more detail within this publication.

- Sell only foods that are **not** “time and temperature controlled for safety” (non-TTCS) foods, previously referred to as “non-potentially hazardous,” or “NPH,” foods.
- Sell directly to consumers.
- Prepare the foods in your home kitchen (i.e. not in a separate building or facility), using appliances meant for residential use.
- Sell no more than \$50,000 of such foods annually.
- Have a current food handler’s card.
- Package the food so as to prevent contamination, unless the item is too large or bulky to fit conventional packaging, such as a wedding cake.
- Label the products with the producers’ information, allergen information, and specific language informing the consumer that the food was prepared in an un-inspected kitchen.

## What foods are allowed under the 2019 law?

In 2019, the Texas Cottage Food Law made a significant shift, from allowing only specifically listed foods to allowing any non-TTCS food to be prepared at home and sold directly to consumers. The foods listed in the bill are now **examples**, rather than an exclusive list.

**Non-TTCS foods** are foods with what’s called “low water activity” (somewhat like “moisture content” but a more scientific calculation of moisture available to support growth of bacteria and mold) and a low pH level,

*The information contained in this fact sheet is not intended as legal advice. Consult an attorney if you have questions about how this law applies to your situation.*

which also inhibits the growth of dangerous micro-organisms. Basically, non-TTCS foods are those that you would not normally keep in the refrigerator. But not **all** shelf-stable foods are non-potentially hazardous, as discussed in the next section (*see page 3*).

### **The new law lists these as allowed foods:**

- Baked goods that do not require refrigeration, such as cakes, cookies, breads, and pastries (*see further explanation in sidebar*).
- Candy (including chocolate, chocolate-dipped pretzels, etc.).
- Coated and uncoated nuts.
- Unroasted nut butters.
- Fruit butters (*see further explanation in sidebar*).
- Canned jams and jellies.
- Fruit pies.
- Dehydrated fruits and vegetables, including dried beans.
- Popcorn and popcorn snacks.
- Cereal, including granola.
- Dry mixes.
- Vinegar.
- Mustard.
- Roasted coffee or dry tea.
- Dried herbs or herb mixes.
- Pickled fruits and vegetables, subject to some additional requirements.
- Acidified, plant-based canned foods, subject to some additional requirements.
- Fermented vegetables, subject to some additional requirements.
- Frozen raw and uncut fruits and vegetables, subject to some additional requirements.
- **Any other non-Time and Temperature Controlled for Safety (non-TTCS) food.**

## **MORE INFORMATION**

**BAKED GOODS:** While many baked goods are clearly non-TTCS, sometimes it depends on the precise recipe used, such as cream cheese frostings. Kelley Masters, a home baker and one of the lead activists who helped pass the cottage food law in Texas, has published a PDF e-book with recipes she has had tested to determine if they are TTCS or not. Visit [TexasCottageFoodLaw.com](http://TexasCottageFoodLaw.com) for more information.

**FRUIT BUTTERS:** You will need to determine if your fruit butter is high-acid, low acid, or acidified:

- High acid fruit butters **may** be sold by cottage food producers without additional requirements. These include apple, apricot, grape, peach, plum, quince, and prune butters.
- Low-acid fruit butters **may not** be sold by cottage food producers. This would include pumpkin, banana, and pear butters.
- Acidified fruit butters **may** be sold by cottage food producers **if** the final equilibrium pH is 4.6 or lower. (*See the section on acidified canned goods for more information, page 3.*)

## **Do cottage foods need to be tested before sold?**

Most cottage food products do **not** need to be tested, nor do the recipes need to be approved by any health authority. Testing is only required if (1) it is unclear if it truly is a non-TTCS food, or (2) for pickled, acidified canned, or fermented foods (discussed in next section). If you are faced with either situation, there are several labs in Texas that can perform the testing. The Texas Department of State Health Services (DSHS) keeps a list online at <https://dshs.texas.gov/foode establishments/cottagefood/default.aspx>.

- A&B Labs, Houston, [ablabs.com](http://ablabs.com)
- Analytical Food Labs, Inc., Grand Prairie, [afltexas.com](http://afltexas.com)

- Food Safety Net Services, San Antonio and Dallas, food-safetynet.com
- I.E.H. - Quanta Labs, Selma, quantalab.com
- Silliker Inc., Grand Prairie, merieuxnutrisciences.com

## What are the new rules for pickles, acidified canned foods, & fermented vegetables?

The Texas Cottage Food Law includes specific requirements for pickles, acidified canned foods, and fermented foods in order to address concerns about food safety risks; in particular, botulism.

### What foods are allowed:

- Pickled fruits or vegetables that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less.
- Plant-based acidified canned foods, i.e. food with a finished equilibrium pH value of 4.6 or less that is thermally (heat) processed before being placed in an airtight container.
- Fermented vegetable products, defined as a low-acid vegetable food product subject to the action of certain microorganisms that produce acid during their growth and reduce the pH value of the final product to 4.6 or less. These products can be refrigerated for quality (i.e. to slow the fermentation process once the necessary pH is achieved).

### The following pickled or fermented foods are NOT allowed under the Cottage Food Law:

- Any type of meat product
- Pickled eggs
- Fermented tofu
- Fermented fruits
- Kombucha
- Kefir or other fermented dairy products

### Use of approved recipes:

For pickled, acidified canned, or fermented foods, a cottage food producer must either use a recipe that (1) is from a source approved by DSHS; (2) has been tested by an appropriately certified lab to confirm the final equilibrium pH; (3) is approved by a qualified process authority, **or** (4) is tested in your own home.

As of July 2019, DSHS has approved the following sources for recipes:

- USDA Complete Guide to Home Canning, 2015 Revision
- University of Georgia Cooperative Extension So Easy to Preserve Book, 6<sup>th</sup> edition
- Ball Blue Book Guide to Preserving, 37<sup>th</sup> Edition
- The All New Ball Book of Canning and Preserving: Over 350 of the Best Canned, Jammed, Pickled, and Preserved Recipes, May 13, 2016
- Ball Canning Back to Basics: A Foolproof Guide to Canning Jams, Jellies, Pickles, and More, July 4, 2017

The agency has the approved recipe sources, process authorities, and accredited laboratories posted at <https://dshs.texas.gov/foode establishments/cottagefood/default.aspx>.

If you use option 4, you must test **each batch** of product with a calibrated pH meter to confirm that the final product has an equilibrium pH of 4.6 or less. You can buy a calibrated pH meter from food manufacturing supply stores, or even on Amazon, relatively inexpensively.

### Labeling and record-keeping for this category of foods:

For each batch of pickles, ferments, or acidified canned foods, you must:

- 1) Label the batch with a unique number; and
- 2) For a period of at least 12 months, keep a record that includes:
  - a. The batch number;
  - b. The recipe used by the producer;
  - c. The source of the recipe or testing results;
  - d. The date the batch was prepared.

Pickled cucumbers are exempted from the requirements set out above. This is due to an odd historical twist, in which pickled cucumbers (but no other pickles) were allowed under the earlier cottage food laws without any additional regulation.

### What about frozen fruits & vegetables?

Frozen fruits or vegetables that are raw and uncut are also allowed under the cottage food law. Two additional requirements apply:

- They must be stored and delivered at an air temperature of not more than 32 degrees Fahrenheit, and
- They must be labeled or accompanied by an invoice that includes the following statement in at least 12-point font: “SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food frozen until preparing for consumption.”

### What are the rules for selling honey and honey mixtures?

The originally filed version of the 2019 cottage foods bill explicitly required cottage food producers selling honey to comply with the labeling requirements in the Texas Agriculture Code, Chapter 131, Subchapter E. While the final bill did not include that provision, it also does not exempt cottage food producers from the Agriculture Code – so it still applies.

In brief, a person cannot sell a product “identified on its label as ‘honey,’ ‘liquid or extracted honey,’ ‘strained honey,’ or ‘pure honey’ unless the product consists exclusively of pure honey.” A person also cannot sell any product that “resembles honey and that has on its label a picture or drawing of a bee, hive, or comb unless the products consists exclusively of pure honey.” And if you sell a product that consists of honey mixed with other ingredients, your ingredient list has to be clear, and “honey” cannot dominate. Read the statute at <https://statutes.capitol.texas.gov/Docs/AG/htm/AG.131.htm#E>.

### Types of foods that CANNOT be sold under the Cottage Food Law

In addition to the foods that cannot be pickled or fermented to be sold under the Cottage Food Law (see p. 3) foods that are **NOT allowed** under the Cottage Food Law include:

- Meat, poultry, or seafood products, including beef jerky. *(Even though jerky is shelf-stable, the fact that it is a meat-based product means that it is subject to USDA regulations and cannot be within the state’s cottage food law.)*
- Dairy products.
- Raw seed sprouts.

- Baked goods that require refrigeration, such as cheesecake, tres leches cake, pumpkin pie, and meringue pies.
- Beverages: juices, coffee, tea, etc. (Note that coffee beans and tea bags are allowed, just not the ready-to-serve beverages.)
- Ice products.
- Any other food that needs time or temperature controls to prevent the growth of bacteria.

**Pet Food:** Although pet food is usually non-TTCS, it is **not** included in the cottage food law. Animal food is regulated by the Office of the Texas State Chemists, Texas Feed and Fertilizer Control Service. You can contact them at (979) 845-1121 or visit their website at <http://otscweb.tamu.edu> for more information.

*Remember, when we discuss what is “not allowed under the cottage food law,” we are referring to things that cottage food producers – people making food in their home kitchens – cannot legally do. These products can still legally be made and sold in commercial kitchens with appropriate health department licensing.*

## What is considered “direct-to-consumer?”

Previously cottage food operations were limited to selling at specific locations. That limitation has been removed by SB 572. Cottage food operators can sell anywhere within the state of Texas **so long as it is direct-to-consumer**. A cottage food operator may also deliver products to its customers.

Note that the ability to sell at any location refers to health department regulations. It does **not** mean that general city ordinances do not apply. For example, if your city doesn’t allow people to set up a tent by the side of the road to sell things in general, you can’t do it just because you are a cottage food operation.

Cottage food operations **cannot** sell wholesale, which means you cannot sell to restaurants, grocery stores, or other businesses.

### Internet & mail order sales:

Previously, internet sales by cottage food producers were banned. Under SB 572, internet sales are allowed under certain conditions, which are easier to understand if you first think about the basic concept of the cottage food law: The direct producer-to-consumer relationship creates transparency and accountability, so that the health departments don’t need to be involved in transactions between small-scale businesses and their customers. Long-distance internet or mail order transactions, where the consumer and producer have never met, don’t fit that model, even if they are technically “direct-to-consumer.”

Under SB 572, cottage food operations can take orders and payment over the internet or by mail order if:

- 1) The cottage food operator personally delivers the food to the consumer (so that there is at least one portion of the interaction that is in person), **and**
- 2) Before accepting payment for the food, the operator provides the required labeling information (discussed next) to the consumer. This can be done by posting it on your website, publishing it in your mail order catalog, or “otherwise communicating” the information to the consumer.

You do **not** have to include your home address on your website or in your mail order catalog. Your address does still need to be on the product’s label, as required for all cottage food transactions (*see next section*).

The statute specifically provides that cottage food operators can deliver to their customers in general. Thus, if the transaction is made in person (rather than through the internet or by mail order), it is reasonable to use

delivery options such as shipping or hiring a driver. But if the transaction is made remotely, the delivery must be in person, as discussed above.

## What are the labeling requirements?

All cottage food products must have a label on their package with the following information:

- Name and physical address of the cottage food production operation;
- The common or usual name of the product;
- If a food is made with a major food allergen – such as eggs, nuts, soy, peanuts, milk, or wheat – that ingredient must be listed on the label; **and**
- The following statement: "This food is made in a home kitchen and is not inspected by the Department of State Health Services or a local health department."

The label must be legible and must be attached to the package. For large or bulky items that are not packaged, you must provide an invoice or receipt that has the same information. For internet or mail order sales, the information (other than the producer's home address) must be provided to the consumer before payment is taken.

If you are selling **frozen fruits and vegetables**, the label or invoice must also include the following statement in at least 12-point font: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food frozen until preparing for consumption."

*(For pickles, ferments, and acidified canned goods, please see special labeling instructions in that section of this document.)*

## What are the rules for a food handler's card and for employees?

A cottage food producer must take and complete an approved food handler's course. This course is offered by many local agencies and can be taken online. The course typically costs \$10 to \$20 for the online version; in-person courses usually cost more. A food handler's card is good for two years, and it must be kept current.

A cottage food producer needs only to take and pass the course. You do **not** need to register your food handler's license with the local health department in order to sell under the Cottage Food Law.

A cottage food production operation may have **employees**. Anyone who is handling or preparing the food must either have a food handler's card of his or her own, or be under the producer's direct supervision. Members of the producer's household are exempt from the requirement for direct supervision.

## What is my local health department's role?

A cottage food operation does **not** need to get a license from the state or local health department or to register with the state or local health department.

The state and local health departments are directed to keep a record of any complaints that are made about cottage food operations. They do not have authority to investigate such complaints or conduct inspections. The only exception is that the state and local health departments retain jurisdiction to close any business – including a cottage food operation – that poses a serious and immediate threat to human life and health.

A cottage food operator is **not** required to allow the health department to come into the home and do an inspection **unless they have a warrant**.

If the state or local health department claims that you cannot sell home-produced goods, the first step is to print out the law and show it to the person with whom you have been communicating. If that does not resolve the issue, the next step is to contact the City Council or County Commissioners. Be sure to get documentation of all conversations in writing. In extreme cases, you may need to obtain legal representation. FARFA provides guidance to its members in navigating this process.

## **Do local zoning laws and HOA rules affect operators?**

The 2013 cottage food law specifically prohibits a county or municipality from banning a cottage food operation on the basis of zoning. A cottage food operation does not need to get a zoning permit or business license from the city.

Neighboring property owners still have the right to take action for nuisances or other legal claims against the cottage food operation.

The law does not address restrictions by private homeowners' associations (HOAs). Usually, HOAs are concerned about the outside appearance of the home, and they are not concerned with activities within the home. For example, there are many people who sell Mary Kay products or other items from their homes. If your HOA has restrictions on home-based businesses, you may be able to avoid a confrontation by keeping the exterior of your home and yard free of any advertising or other obvious signs of your cottage food operation.

## **What other business issues should be considered?**

The following topics are not addressed in the state law but are often asked about by cottage food producers.

### ***Insurance:***

While you do not have to have liability insurance, it is important to protect your assets. Some farmers' markets, and event/wedding venues require proof of liability insurance from all food vendors. There are many companies that offer insurance, and we encourage you to compare options. One company, American National, has an insurance policy specifically designed for cottage food producers. Contact Eileen Coleman, Coleman Agency, at [Eileen.Coleman@american-national.com](mailto:Eileen.Coleman@american-national.com) or (512) 250-2168 for more information.

### ***Advertising:***

There is **no** restriction on your ability to advertise. You can advertise through a website or Facebook, putting business cards or flyers out at local retail outlets (with the retailer's permission), or any other legal means.

### ***Sales tax:***

In Texas, most food items are not subject to sales tax. However, some food items, such as candy, are taxable. If you are unsure if your items are taxable, contact the State Comptroller for more information. You can visit the Comptroller's site at [www.window.state.tx.us/taxinfo/sales](http://www.window.state.tx.us/taxinfo/sales) or call 1-800-531-5441.

### ***Income tax:***

The cottage food law has no effect on federal income tax law. Normal IRS rules apply; consult a tax professional.

### ***Rendition tax:***

Counties can require a rendition tax on your business assets and equipment; application and enforcement vary county to county.

### ***Private entities:***

If you wish to sell at a farmers' market, farm stand, or nonprofit event, you must get permission from the event organizers. The cottage food law governs your rights with respect to the government, but not with respect to private entities. The market, farmer, or nonprofit may impose whatever rules or fees they wish.

## What are the rules on providing samples?

Under HB 1694, any farmer or vendor at a farmers' market can prepare and provide samples on-site so long as they meet some basic sanitation requirements:

- Samples must be distributed in a sanitary manner.
- A person preparing produce samples on-site must either wear clean, disposable plastic gloves while, or wash their hands in soap and water prior to, preparing the samples.
- Potable water must be available for washing.
- Utensils and cutting surfaces used for cutting samples must be smooth, nonabsorbent, and easily cleaned or disposed of.

Note that the sampling law contains two additional requirements that would not be applicable to cottage food producers:

- Produce intended for sampling must be washed in potable water to remove any soil or other visible material; and
- If the samples are potentially hazardous (such as cut produce), they must be either kept at 41 degrees or colder or disposed of within 2 hours of preparation.

Cottage food operations can only provide samples of foods that they can legally sell. In other words, you can provide samples of your baked goods, jams, pickles, etc. But while you can sell coffee beans, you can't sell liquid coffee and therefore you can't provide samples of liquid coffee.

Outside of a farmers' market, the regular health department regulations apply. This poses a problem, since a temporary food establishment (TFE) permit requires that it serve food only from "approved sources," and many jurisdictions do not interpret that to include cottage food operations.

The best way around that problem (if you're not a farmers' market vendor) is to package and label sample-size portions in your home. At your sale location, you can provide these pre-packaged, pre-labeled samples with no further requirements or regulation.

## Looking beyond the Cottage Food Law

The cottage food law is intended to allow small businesses making low-risk foods to start up without facing the burdens of extensive health department regulation.

If you wish to make foods that are not allowed under the cottage food law or are ready to grow beyond the \$50,000 cap, then you need to talk with the health department about the requirements for a commercial kitchen and food manufacturing license.

## Acknowledgements

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**Please consider joining the Farm and Ranch Freedom Alliance, which led the fight for SB 572.**

**We can only do this work with your support!**

<http://farmandranchfreedom.org/farfa-memberships/>

**For more information, visit [www.FarmAndRanchFreedom.org](http://www.FarmAndRanchFreedom.org) or call 254-697-2661**