COMMITTEE REPORT

February 7, 2012

**S. 1035**

Introduced by Senators Massey, L. Martin and Verdin

S. Printed 2/7/12--S. [SEC 2/8/12 11:54 AM]

Read the first time January 10, 2012.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (S. 1035) to amend Chapter 1, Title 44 of the 1976 Code, relating to the Department of Health and Environmental Control, by adding Section 44‑1‑143 to provide for, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/SECTION 1. Chapter 1, Title 44 of the 1976 Code is amended by adding:

“Section 44‑1‑143. (A) For the purposes of this section:

(1) ‘Home‑based food production operation’ means an individual, operating out of the individual’s dwelling, who prepares, processes, packages, stores, and distributes non‑potentially hazardous foods for sale directly to a person.

(2) ‘Non‑potentially hazardous foods’ are jams, jellies, candy, and baked goods that are not potentially hazardous foods.

(3) ‘Person’ means an individual consumer.

(4) ‘Potentially hazardous food’ includes:

(a) 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 not modified to prevent microorganism growth or toxin formation; garlic‑in‑oil mixtures not modified to prevent microorganism growth or toxin formation;

(b) certain foods that are designated as Product Assessment Required (PA) because of the interaction of the ph and Aw values in these foods. Below is a table indicating the interaction of pH and Aw for control of spores in food heat‑treated to destroy vegetative cells and subsequently packaged:

Aw values pH values

4.6 or less >4.6 ‑ 5.6 >5.6

(1) <0.92 non‑PHF non‑PHF non‑PHF

(2) >0.92 ‑ .95 non‑PHF non‑PHF PHF

(3) >0.95 non‑PHF PHF PHF

Foods in item (2) with a ph value greater than 5.6 and foods in item (3) with a ph value greater than 4.6 are considered potentially hazardous unless a product assessment is conducted pursuant to the 2009 Federal Drug Administration Food Code.

(B) The operator of the home‑based food production operation must take all reasonable steps to protect food items intended for sale from contamination while preparing, processing, packaging, storing, and distributing the items, including, but not limited to:

(1) maintaining direct supervision of any person, other than the operator, engaged in the processing, preparing, packaging, or handling of food intended for sale;

(2) prohibiting all animals, including pets, from entering the dwelling in which the home‑based food production operation is located;

(3) prohibiting all domestic activities in the kitchen while the home‑based food production operation is processing, preparing, packaging, or handling food intended for sale;

(4) prohibiting any person who is infected with a communicable disease that can be transmitted by food, who is a carrier of organisms that can cause a communicable disease that can be transmitted by food, who has an infected wound, or who has an acute respiratory infection from processing, preparing, packaging, or handling food intended for sale by the home‑based food production operation; and

(6) ensuring that all people engaged in processing, preparing, packaging, or handling food intended for sale by the home‑based food production operation are knowledgeable of and follow safe food handling practices.

(C) Each home‑based food production operation shall maintain a clean and sanitary facility to produce non‑potentially hazardous foods including, but not limited to:

(1) department-approved water supply;

(2) a separate storage place for ingredients used in foods intended for sale;

(3) a properly functioning refrigeration unit;

(4) adequate facilities, including a sink with an adequate hot water supply to meet the demand for the cleaning and sanitization of all utensils and equipment;

(5) adequate facilities for the storage of utensils and equipment;

(6) adequate hand washing facilities separate from the utensil and equipment cleaning facilities;

(7) a properly functioning toilet facility;

(8) no evidence of insect or rodent activity; and

(9) department-approved sewage disposal, either onsite treatment or publicly provided.

(D) All food items packaged at the operation for sale must be properly labeled. The label must comply with federal laws and regulations and must include:

(1) the name and address of the home‑based food production operation;

(2) the name of the product being sold;

(3) the ingredients used to make the product in descending order of predominance by weight; and

(4) a conspicuous statement printed in all capital letters and in a color that provides a clear contrast to the background that reads: ‘NOT FOR RESALE ‑ PROCESSED AND PREPARED BY A HOME‑BASED FOOD PRODUCTION OPERATION THAT IS NOT SUBJECT TO SOUTH CAROLINA’S FOOD SAFETY REGULATIONS.’

(E) Home‑based food operations may only sell, or offer to sell, food items directly to a person for his own use and not for resale. A home‑based food operation may not sell, or offer to sell, food items at wholesale. Food produced from a home-based food production operation must not be considered to be from an approved source, as required of a Retail Food Establishment pursuant to Regulation 61.25.

(F)(1) The department shall investigate a complaint from a consumer that alleges a violation of this section and may enter upon and inspect the premises of the home-based food production operation to investigate the alleged violation.

(2) The department also may enter upon and conduct random inspections of the premises of a home‑based food production operation to determine if the operation is in compliance with this section.

(3) A home‑based food production operation shall make the facility available for inspections by the department during normal working hours Monday through Friday.

(G) A home‑based food production operation is not a retail food establishment and is not subject to regulation by the department pursuant to Regulation 61.25.”

SECTION 2. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**A** **BILL**

TO AMEND CHAPTER 1, TITLE 44 OF THE 1976 CODE, RELATING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, BY ADDING SECTION 44‑1‑143 TO PROVIDE FOR HOME‑BASED FOOD PRODUCTION OPERATIONS, TO PROVIDE FOR THE PROTECTION OF FOOD ITEMS PREPARED BY HOME‑BASED FOOD PRODUCTION OPERATIONS FOR SALE, TO PROVIDE HEALTH AND SANITARY REQUIREMENTS, TO PROVIDE FOR PACKAGING AND LABELS OF FOOD ITEMS, TO PROVIDE THAT HOME‑BASED FOOD PRODUCTION OPERATIONS MAY NOT SELL ITEMS PREPARED BY THE OPERATION AT WHOLESALE, TO PROVIDE THAT HOME‑BASED FOOD PRODUCTION OPERATIONS ARE NOT RETAIL FOOD ESTABLISHMENTS, TO PROVIDE FOR A PROCESS THROUGH WHICH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MAY INVESTIGATE COMPLAINTS, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 44 of the 1976 Code is amended by adding:

“Section 44‑1‑143. (A) For the purposes of this section:

(1) ‘Home‑based food production operation’ means an individual, operating out of the individual’s dwelling, who prepares, processes, packages, stores, and distributes non‑potentially hazardous foods for sale directly to a person.

(2) ‘Non‑potentially hazardous foods’ are jams, jellies, candy, and baked goods that are not potentially hazardous foods.

(3) ‘Person’ means an individual, partnership, association, limited liability company, corporation, and any other legal entity.

(4)(a) ‘Potentially hazardous foods’ are foods that are natural or synthetic and in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of Clostridium botulinum.

(b) Potentially hazardous foods are not foods:

(i) with a water activity (aw) value of 0.85 or less;

(ii) with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 75°F (24°C);

(iii) in an unopened hermetically sealed container that are commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

(iv) for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur and which is granted a variance by the health authority.

(B) The operator of the home‑based food production operation must take all reasonable steps to protect food items intended for sale from contamination while preparing, processing, packaging, storing, and distributing the items, including, but not limited to:

(1) maintaining direct supervision of any person, other than the operator, engaged in the processing, preparing, packaging, or handling of food intended for sale;

(2) prohibiting all animals, including pets, from entering the dwelling in which the home‑based food production operation is located;

(3) prohibiting all domestic activities in the kitchen while the home‑based food production operation is processing, preparing, packaging, or handling of food intended for sale;

(4) prohibiting any person who is infected with a communicable disease that can be transmitted by food, is a carrier or organisms that can cause a communicable disease that can be transmitted by food, who has an infected wound, or who has an acute respiratory infection from processing, preparing, packaging, or handling of food intended for sale by the home‑based food production operation; and

(6) ensuring that all people engaged in processing, preparing, packaging, or handling of food intended for sale by the home‑based food production operation are knowledgeable of and follow safe food handling practices.

(C) Each home‑based food production operation shall maintain a clean and sanitary facility to produce non‑potentially hazardous foods including, but not limited to:

(1) an adequate, safe water supply;

(2) a separate storage place for ingredients used in foods intended for sale;

(3) a properly functioning refrigeration unit;

(4) adequate facilities, including a sink, for the cleaning and sanitization of all utensils and equipment;

(5) adequate facilities for the storage of utensils and equipment;

(6) adequate hand washing facilities separate from the utensil and equipment cleaning facilities;

(7) a properly functioning toilet facility;

(8) no evidence of insect or rodent activity; and

(9) adequate waste disposal.

(D) All food items packaged at the operation for sale must be properly labeled. The label must comply with federal laws and regulations and must include:

(1) the name and address of the home‑based food production operation;

(2) the name of the product being sold;

(3) the ingredients used to make the product in descending order of predominance by weight; and

(4) a conspicuous statement printed in all capital letters and in a color that provides a clear contrast to the background that reads: ‘NOT FOR RESALE ‑ PROCESSED AND PREPARED BY A HOME‑BASED FOOD PRODUCTION OPERATION THAT IS NOT SUBJECT TO SOUTH CAROLINA’S FOOD SAFETY REGULATIONS.’

(E) Home‑based food operations may only sell, or offer to sell, food items directly to a person for his own use and not for resale. A home‑based food operation may not sell, or offer to sell, food items at wholesale.

(F)(1) The department may investigate any complaint from a consumer that alleging a violation of this section.

(2) Only upon receipt of a complaint, the department is authorized to enter upon and inspect the premises of a home‑based food operation to determine compliance with this section. Home‑based food operations must make their facility available to inspections pursuant to a complaint during normal working hours Monday through Saturday.

(G) A home‑based food production operation is not a retail food establishment for the purposes of regulation by the department.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑