RECALLED

March 28, 2012

**H. 4689**

Introduced by Reps. Hiott, Skelton, Owens, Hixon, Loftis, Hodges, Knight, Dillard, Erickson, Crawford, Clyburn and Anderson

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Read the first time March 6, 2012.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑1‑143 SO AS TO PROVIDE HEALTH AND SANITARY REQUIREMENTS FOR HOME BASED FOOD PRODUCTION OPERATIONS, INCLUDING PROCEDURES FOR PROTECTING FOOD ITEMS PREPARED FOR SALE BY THESE OPERATIONS, AND FOOD ITEM PACKAGING AND LABELING REQUIREMENTS; TO PROVIDE THAT THESE OPERATIONS MAY NOT SELL FOOD ITEMS AT WHOLESALE; TO PROVIDE THAT THESE OPERATIONS ARE NOT RETAIL FOOD ESTABLISHMENTS; AND TO PROVIDE A PROCESS WHEREBY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MAY INVESTIGATE COMPLAINTS.

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 nonpotentially hazardous foods for sale directly to a person.

(2) ‘Nonpotentially hazardous foods’ are candy and noncreme filled 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 unopened hermetically sealed containers 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 that are 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 a 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 a person from processing, preparing, packaging, or handling food intended for sale by the home based food production operation if the person:

(a) is infected with a communicable disease that can be transmitted by food;

(b) is a carrier of organisms that can cause a communicable disease that can be transmitted by food;

(c) has an infected wound; or

(d) has an acute respiratory infection; and

(5) ensuring that a person engaged in processing, preparing, packaging, or handling of food intended for sale by the home based food production operation is knowledgeable of and follows safe food handling practices.

(C) A home based food production operation shall maintain a clean and sanitary facility to produce nonpotentially 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, including Fair Packaging requirements and food Allergen Labeling, 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) A home based food production operation only may sell, or offer to sell, food items directly to a person for his or her 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 a complaint from a consumer alleging a violation of this section.

(2) Only upon receipt of a complaint, is the department authorized to enter upon and inspect the premises of a home based food operation to determine compliance with this section.

(3) A home based food production operation must make their facility available during normal working hours Monday through Saturday for inspections arising pursuant to a complaint.

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

(H) A home based food production operation may apply for an exemption from inspection and label review by the South Carolina Department of Agriculture under Section 39‑25‑10, et seq., if its annual sales are less than fifteen thousand dollars. Exemption forms must be provided by the South Carolina Department of Agriculture. This exemption does not limit the South Carolina Department of Agriculture’s authority to investigate a complaint or food borne illness outbreak.”

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

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