~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 21, 2022

**S. 506**

Introduced by Senators Kimbrell, Rice, Garrett, Talley, M. Johnson, Fanning, Corbin, Alexander and Gustafson

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Read the first time March 11, 2021.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (S. 506) to amend Section 44-1-143 of the 1976 Code, relating to requirements for home‑based food production operations, to expand the types of nonpotentially hazardous foods that, 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, SECTION 1, by striking Section 44-1-143(A)(1) and (E) and inserting:

/ (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, including online and by mail order, or to retail stores, including grocery stores. ‘Home-based food production operation’ does not include preparing, processing, packaging, storing, or distributing low-acid canned goods or charcuterie boards.

(E) Home‑based food operations only may sell, or offer to sell, food items directly to a person, including online and by mail order, or to retail stores, including grocery stores ~~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~~ shall be considered to be from an approved source, as required of a retail food establishment pursuant to Regulation 61.25. Any retail stores, including grocery stores, that sell or offer to sell home-based food products must post clearly visible signage indicating that home-based food products are not subject to commercial food regulations. /

Renumber sections to conform.

Amend title to conform.

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill allows home-based food production operations to sell to online and mail order, or to retail stores, including grocery stores and defines non-potentially hazardous food as food that is not potentially hazardous. Additionally, this bill requires DHEC to provide an identification number to home-based food production operators who do not wish to include a personal address on the label. Home-based food production operations making less than $1,500 in net earnings are not subject to these provisions. This bill takes effect upon approval of the governor.

Currently, home-based food production operations may sell non-potentially hazardous food directly to a person. Non-potentially hazardous food is defined as candy and baked goods that are not potentially hazardous foods. Additionally, home-based food products are subject to minimal oversight by DHEC, and home-based food production operations making less than $500 in net earnings are not subject to these provisions. This bill expands the definition of non-potentially hazardous food and to whom home-based food production operations may sell these foods. Additionally, this bill expands DHEC’s supervisory responsibilities over these home-based food production operations.

DHEC anticipates needing 2.5 FTEs to support the additional responsibilities as outlined in the bill. DHEC plans to hire two additional Program Coordinator IIs at $58,000 per employee and 0.5 Program Manager I at approximately $35,000. DHEC anticipates the fringe for these 2.5 FTEs will total $66,000 annually. Therefore, this bill will result in an increase of general fund expenditures by approximately $218,000, annually, beginning in FY 2022-23, for DHEC to hire 2.5 new FTEs. Additionally, DHEC anticipates an additional non-recurring increase of general fund expenditures totaling $98,000 to set up a database to provide unique identifying numbers for home-based food operations and to track complaints, and to provide for the initial set up of the office, equipment, and travel needs for this program. Further, DHEC plans to spend approximately $52,000 annually to support and maintain the database as well as provide office supplies and maintain equipment and other tasks. Therefore, this bill will result in an increase in general fund expenditures totaling $367,000 in FY 2022-23, and $270,000 annually beginning in FY 2023-24.

**State Revenue**

This bill as amended does not alter current fines and fees for DHEC. Therefore, this bill will have no revenue impact.

**Amended by the Senate on March 10, 2021**

**State Expenditure**

This bill allows home-based food production operations to sell to online and mail order, or to retail stores, including grocery stores and defines non-potentially hazardous food as food that is not potentially hazardous. Additionally, this bill requires DHEC to provide an identification number to home-based food production operators who do not wish to include a personal address on the label. Home-based food production operations making less than $1,500 in net earnings are not subject to these provisions. This bill takes effect upon approval of the governor.

Currently, home-based food production operations may sell non-potentially hazardous food directly to a person. Non-potentially hazardous food is defined as candy and baked goods that are not potentially hazardous foods. Additionally, home-based food products are subject to minimal oversight by DHEC, and home-based food production operations making less than $500 in net earnings are not subject to these provisions. This bill expands the definition of non-potentially hazardous food and to whom home-based food production operations may sell these foods. Additionally, this bill expands DHEC’s supervisory responsibilities over these home-based food production operations.

DHEC anticipates needing 4.5 FTEs to support the additional responsibilities as outlined in the bill. DHEC plans to hire four additional Program Manager IIs at $58,000 per employee and 0.5 Program Manager I at approximately $35,000. DHEC anticipates the fringe for these 4.5 FTEs will total $118,000 annually. Therefore, this bill will result in an increase of general fund expenditures by approximately $385,000, annually, beginning in FY 2022-23, for DHEC to hire 4.5 new FTEs. Additionally, DHEC anticipates an additional non-recurring increase of general fund expenditures totaling $130,000 to set up a database to provide unique identifying numbers for home-based food operations and to track complaints, and to provide for the initial set up of the office, equipment, and travel needs for this program. Further, DHEC plans to spend approximately $73,000 annually to support and maintain the database as well as provide office supplies and maintain equipment and other tasks. Therefore, this bill will result in an increase in general fund expenditures totaling $588,000 in FY 2022-23, and $458,000 annually beginning in FY 2023-24.

**State Revenue**

This bill as amended does not alter current fines and fees for DHEC. Therefore, this bill will have no revenue impact.

**Amended by Senate Agriculture and Natural Resources on March 2, 2021**

**State Expenditure**

This bill allows home-based food production operations to sale to online and mail order, or to retail stores, including grocery stores and defines non-potentially hazardous food as food that is not potentially hazardous. Additionally, this bill requires DHEC to provide identification number to home-based food production operators who do not wish to include a personal address on the label. This bill also specifies that DHEC may implement a fine of $100 per violation for repeated non-minor violations. Home-based food production operations making less than $1,500 in net earnings are not subject to these provisions. This bill takes effect upon approval of the governor.

Currently, home-based food production operations may sell non-potentially hazardous food directly to a person. Non-potentially hazardous food is defined as candy and baked goods that are not potentially hazardous foods. Additionally, home-based food products are subject to minimal oversight by DHEC and home-based food production operations making less than $500 in net earnings are not subject to these provisions. This bill expands the definition of non-potentially hazardous food and to whom home-based food production operations may sell these foods. Additionally, this bill expands DHEC’s supervisory responsibilities over these home-based food production operations.

DHEC anticipates needing 4.5 additional FTEs to support the additional responsibilities as outlined in the bill. DHEC plans to hire four additional Program Manager IIs at $58,000 per employee and 0.5 Program Manager I at approximately $35,000. DHEC anticipates the fringe for these 4.5 FTEs will total $118,000 annually. Therefore, this bill will result in an increase of general fund expenditure by approximately $385,000, annually, beginning in FY 2021-22, for DHEC for 4.5 new FTES. Additionally, DHEC anticipates an additional non-recurring increase of general fund expenditures totaling $130,000, to set up a databased to provide unique identifying numbers for home-based food operations and to track complaints, and to provide for the initial set up of the office, equipment, and travel needs for this program. Further, DHEC plans to spend approximately $73,000 annually to support and maintain the database as well as provide office supplies and maintain equipment and other tasks. Therefore, this bill will result in an increase in general fund expenditures totaling $588,000 in FY 2021-22, and $458,000 annually beginning in FY 2022-23.

**State Revenue**

This bill creates a new fine that DHEC may apply for repeat non-minor violations for home-based food product operations. DHEC will need further guidance, either in code or by regulation, to determine what constitutes a non-minor violation. Additionally, the application of the fine is at the discretion of DHEC; and therefore, the potential number of fines is unknown. Additionally, it is unclear, whether the revenue from this newly created fine will go into the general fund or into other funds to support the program. Therefore, this bill will result in an undetermined increase in general fund and/or other funds revenue due to the implantation of this fine.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 44-1-143 OF THE 1976 CODE, RELATING TO REQUIREMENTS FOR HOME‑BASED FOOD PRODUCTION OPERATIONS, TO EXPAND THE TYPES OF NONPOTENTIALLY HAZARDOUS FOODS THAT MAY BE SOLD TO INCLUDE ALL NONPOTENTIALLY HAZARDOUS FOODS, TO ALLOW FOR DIRECT SALES TO RETAIL STORES, TO ALLOW FOR ONLINE AND MAIL ORDER DIRECT‑TO‑CONSUMER SALES, TO ALLOW HOME‑BASED FOOD PRODUCTION OPERATORS TO PROVIDE ON THEIR LABELS AN IDENTIFICATION NUMBER PROVIDED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, AT THE OPERATOR’S REQUEST, IN LIEU OF THEIR ADDRESSES, AND TO PROVIDE PENALTIES FOR VIOLATIONS.

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

SECTION 1. Section 44-1-143 of the 1976 Code is amended to read:

“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, including online and by mail order, or to retail stores, including grocery stores. ‘Home-based food production operation’ does not include preparing, processing, packaging, storing, or distributing aluminum canned goods or charcuterie boards.

(2) ‘Nonpotentially hazardous foods’ are foods ~~candy and baked goods~~ that are not potentially hazardous ~~foods~~.

(3) ‘Person’ means an individual consumer.

(4) ‘Potentially hazardous foods’ 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—0.95 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 area in the dwelling in which the home‑based food production operation is located while food items are being prepared, processed, or packaged and prohibiting these animals from having access to or coming in contact with stored food items and food items being assembled for distribution;

(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

(5) 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 nonpotentially 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. If a home‑based food production operator does not want to include his address on the label, then the department shall provide an identification number to the operator, upon the operator’s request, that can be used on the label instead;

(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 only may sell, or offer to sell, food items directly to a person, including online and by mail order, or to retail stores, including grocery stores ~~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. Any retail stores, including grocery stores, that sell or offer to sell home-based food products must post clearly visible signage indicating that home-based food products are not subject to commercial food regulations.

(F) 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.

(G) The provisions of this section do not apply to an operation with net earnings of less than ~~five~~ fifteen hundred dollars annually but that would otherwise meet the definition of a home‑based food operation provided in subsection (A)(1).

(H) [Deleted]

(I) The provisions of this section apply in the absence of a local ordinance to the contrary.”

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

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