

What kinds of homemade food can I sell?

- Baked goods that do not require refrigeration, such as cakes, cookies, breads, and pastries. (No custards or cream fillings, etc.)
- Candy (including chocolate, chocolate-dipped pretzels, chocolate-dipped Oreos, etc.)
- Coated and uncoated nuts
- Unroasted nut butters
- Fruit butters
- Canned jams and jellies
- Fruit pies (including pecan pie)
- Dehydrated fruits and vegetables including dried beans
- Popcorn and popcorn snacks
- Cereal, including granola
- Dry mixes
- Vinegar
- Pickles
- Mustard
- Roasted coffee or dry tea
- Dried herbs or herb mixes

What is a non-potentially hazardous baked item?

Non-potentially hazardous foods are foods with a low water activity and low pH level that inhibit the growth of dangerous microorganisms. Basically it means non-perishable foods; foods that you would not normally keep in the refrigerator. Foods that are perishable, such as cheesecakes, or custard fillings, or meringue pies, are not covered in the law. To sell foods that require refrigeration, you must contact your local Health Department and find out how to comply with their requirements. You would not be able to sell those foods from home.

What kinds of foods are NOT allowed?

Fresh fruit dipped in candy or chocolate (for example, chocolate covered strawberries or caramel apples), cheesecake, salsa (or other canned tomato products), kombucha, beef jerky, tamales, homemade vanilla extract, flan, pumpkin pie, cream pies, meringue pies. The list in **FAQ #2** is very specific as to what foods are allowed. To be able to sell a food it must 1) be on this list, and 2) be non-potentially hazardous - in other words, not requiring refrigeration to keep from spoiling.

Can I sell anything that's pickled, not just cucumber pickles?

No, the law intends for only the sale of traditional cucumber pickles. See DSHS's item at the bottom of this page called "What is a pickle?"

What kind of fruit butters can I sell?

While the law does say you can sell fruit butter, it also says you may not sell a potentially hazardous food. Some fruit butters are potentially hazardous. SAFE homemade fruit butters listed are: **apple, apricot, grape, peach, plum, quince, and prune.**

What kinds of fruit butters are not safe?

NOT SAFE: **pumpkin, banana, and pear.** If you would like to make a fruit butter out of a fruit not listed, it is very strongly recommended that you contact Food Safety Net Services, and have a sample of your fruit butter tested for pH and aW. No cottage food operator wants to make someone sick, and botulism can be fatal. Food safety should always be your primary concern.

Can I sell cheesecake, flan, tres leches cake, pumpkin pie, and lemon meringue pie?

No, all those items require refrigeration.

But I've seen pumpkin pies out on tables at Walmart and HEB!

They contain chemicals which make them shelf-stable. They also don't taste very good.

Can I sell cake balls? Yes.

Where can I sell my cottage food products?

You can sell foods on the allowed list at your home, a farmer's market, a farm stand, or a municipal, county, or nonprofit fair, festival, or event. To rephrase, the fair, festival, or event must be sponsored by a municipality (city), county, or a non-profit organization. The law does not allow for sales at privately sponsored public events such as craft fairs or flea markets.

What makes a fair, festival, or event "non-profit"?

A non-profit event is an event sponsored by a legally formed non-profit entity. A few examples of such entities would be: a church, PTA, The American Cancer Society, The Boy Scouts of America, etc. You can participate in a non-profit event and still make a profit yourself. It is important to note that just because an event may be labeled as a "fundraiser", this does not necessarily qualify it as a non-profit event. The entity sponsoring the event must be a legally registered non-profit entity with the State of Texas for their event to qualify as a legal sales location for cottage food operators.

Can a farmer's market or farm stand refuse to allow me to participate, or impose additional rules for participation in their market?

Yes. Farmers markets are privately owned and managed, and they may set whatever quality standards they wish.

Can a farmer's market charge me a fee?

Yes, booth fees are a normal cost of doing business at a farmer's market.

Can a city or county refuse to allow me to sell at a city festival?

They can't disallow your participation simply because you are a cottage food producer. If you are not allowed to participate in such an event, make sure to get the reason in writing.

Can I deliver?

Answer: Yes.

Do I have to get a license from the Health Department?

No. The law specifically prohibits the local Health Department from regulating Cottage Food Operations.

Do I have to register with the local Health Department? No

Can someone call the Health Department and complain about me?

Yes, the Health Department is required to maintain a list of complaints. Customers have the option of calling their local Health Department to check your past complaints, or file a complaint themselves.

Will my kitchen be inspected?

No. The law specifically prohibits the local Health Department from regulating Cottage Food Operations.

What should I do if an inspector from the Health Department knocks on my door and wants to come into my kitchen?

Ask to see their warrant. If you're Health Department or DSHS has reason to believe that your cottage food operation poses a serious and immediate threat to human life and health, they may get a warrant from a judge and enter your home.

Can the Health Department shut me down?

Yes, if your operation poses a serious and immediate threat to human life and health.

Do I have to take food handler's training if I operate under the new cottage food law?

Yes. Your food handler's card is good for two years, and must be kept current as long as you are selling cottage foods.

The food handler's course I took told me I had to take my card to my local health department for validation, and pay another fee. Do I have to do that?

No. The law only says you must successfully complete the course in order to operate as a cottage food producer. However, if you wanted to get a job in the foodservice industry, you would be required to register the card with the health department.

Can I give out samples?

Sampling is allowed at farmers markets under a new law passed in 2013. Ask the organizer of your farmers market for details.

Sampling at other allowed sales locations, like county, municipal, or non-profit fairs, festivals, or events, is allowed as long as your samples are packaged and labeled with the required labeling information.

Sampling of any kind is not allowed at events or locations where sales are not allowed, for instance, a bridal fair.

Samples given to private parties, like your neighbors, or private offices, are ok.

Do I have to get a sales & use permit and charge sales tax?

In Texas, bakery items sold without utensils are typically not subject to sales tax. Some food items, such as candy, are taxable. The best thing to do is contact the Comptroller directly to ask if you need a permit, and whether your product is taxable.

State Regulation: HB 970, the cottage food law passed in 2013 specifically prohibits a county or municipality from regulating a cottage food operation, or banning a cottage food operation on the basis of zoning. However, your neighbor still has the right to take action against you if your business becomes a nuisance. In this, and all other things, it is best not to irritate your neighbors.

Does this new law cover bake sales for my church/school/non-profit group?

Yes, if the bake sale is sponsored by a non-profit entity. Some examples are: church, PTA, Boy Scouts of America, the American Cancer Society, the Humane Society, or another legal non-profit entity.

Can I donate my food to for a fundraiser? (Bake sale, silent auction, etc.)

If the fundraiser is sponsored by a city, municipality, or non-profit organization, then the answer is clearly yes. If it is not sponsored by a city, municipality, or non-profit organization, this falls within a gray area of the law. The easiest thing to do to support the cause would be to donate a gift certificate for your business, redeemable for a certain item, or a certain dollar amount. If you only want to donate a food item, call your local health department and ask their regulations.

Can I hold a bake sale at my home? Yes.

Can I sell my items on the internet?

No.

No internet sales? Does this mean I can't have a web site?

Answer: You CAN have a web site, Facebook page, Twitter, etc. You can use whatever method of promoting your business that you want to. You simply can't allow the purchase to take place over the internet, such as setting up a shopping cart and letting customers "click and buy" on your web site, or a shop on Etsy or eBay. *This ensures that the spirit of the bill is upheld: local, face-to-face sales, where the customer knows the person who made their food.*

Can I ship my products?

No. Mail order sales are prohibited.