

# Texas Cottage Food Law

Everything you need to know about starting your home food business in Texas.



*These FAQ were developed with the assistance of the [Farm and Ranch Freedom Alliance](#).*

*See [FARFA's information page on cottage food operations](#) here.*

**The following information is not legal advice.**

- , Unroasted nut butters
- High acid or acidified fruit butters \*see Q10 for more information
- Canned jams and jellies
- Fruit pies (including pecan pie, fruit cobblers, fruit crisps/crumbles, apple brown betty, cooked fruit tarts and tatin, etc)
- 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
- Canned acidified plant-based foods with a pH of 4.6 or less\*
- Fermented vegetables with a pH of 4.6 or less\*
- Pickled fruits or vegetables with a pH of 4.6 or less\*

\* [More information on canning, pickling, and fermenting here.](#)

### Q3. What is a “Not Time or Temperature Controlled for Safety” (NTCS) food?

NTCS foods are foods with a low water activity and low pH level that inhibit the growth of dangerous pathogens or toxins. 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 if they are made in your home kitchen.

### Q4. What kinds of foods are NOT allowed as cottage foods?

No meat products and no foods that require refrigeration. Some specific examples of foods not allowed are: cheesecake, kombucha, kefir, any beverage, hot meals, pizza, casseroles, tacos, beef jerky, tamales, flan, pumpkin pie, cream pies, meringue pies, ice cream, or popsicles.

**Q9. Why can't I sell kombucha or kefir? They're fermented, and ferments are now allowed, right?**

The only fermented products allowed are [fermented vegetables](#). Think sauerkraut and kimchi! Kombucha and kefir are definitely not cottage food products.

**Q10. What kind of fruit butters can I sell?**

**High-acid or acidified** fruit butters like apple, apricot, grape, peach, plum, quince, and prune butters, as long as the pH is 4.6 or below.

**Q11. What kind of fruit butters are not allowed?**

Low acid fruit butters like pumpkin butter, pear butter, or banana butter, are not allowed as a cottage food. These butters carry much higher risk for serious foodborne illness.

**Q12. Can I sell canned fruits and vegetables, or canned baby food?**

Only **acidified canned foods** that are plant-based with a pH of 4.6 or less are allowed. **Low acid** canned foods like canned green beans or canned baby food are not allowed as cottage foods. Special rules apply to acidified canned foods, fermented vegetables, and pickled fruits or vegetables. [Click here for more information](#).

**Q13. Can I sell cheesecake, flan, tres leches cake, pumpkin pie, and lemon meringue pie?**

Not as a cottage (home) food producer. All those items require refrigeration to keep from spoiling. They are "Time and Temperature Control for Safety" (TCS) foods. The State of Texas doesn't have anything against pumpkin pie – you just have to make it in a commercial kitchen if you want to sell it.

**Q14. But I've seen pumpkin pies out on tables at Walmart and HEB!**

They contain chemicals which make them shelf-stable.

Lemonade (and all other beverages) are not cottage foods and may not be sold as such. However, [HB 234 passed in 2019](#) allows minors to sell lemonade and other non-alcoholic beverages on private property or in city parks.

### **Q21. Can I sell eggs from my chickens under the cottage food law?**

Eggs aren't a cottage food, but under Texas Department of Agriculture ([Egg Law](#)) and DSHS regulations, yard egg sales directly to consumers are allowed with a few conditions. [Read more from DSHS here.](#)

### **Q22. Can I make dog treats or pet food under this law?**

No. Animal food is regulated by the [Office of the Texas State Chemists](#), Texas Feed and Fertilizer Control Service. [Here is a link to the rules in PDF format.](#)

### **Q23. Can I sell cottage foods that include hemp or CBD?**

Cottage food producers are not exempt from the rules regulating hemp and CBD products. Please direct all your questions to DSHS. They have a very informative page on this subject here: <https://www.dshs.texas.gov/consumerprotection/hemp-program/default.aspx>.

## **Sales Locations and Delivery Methods**

### **Q24: Where can I sell my cottage food products?**

You can sell your food **directly** to the end consumer anywhere in Texas. This is a significant change from the law as it existed from 2013-2019. You can now sell at any type of event, it doesn't matter if the sponsor is for-profit or non-profit. Be aware that local ordinances apply. If a local ordinance says you can't set up a tent by the side of the road in a particular city, then you must follow that law.

### **Q25. Can I sell my food to a coffee shop, retail bakery, grocery store, or any licensed food establishment or wholesaler for them to resell?**

No. There are two reasons. 1) The law says you must sell your food only directly to the consumer, and that you may not sell wholesale. This means you may not sell it to a reseller. 2) Restaurants and

prevent setting up an unpermitted mobile trailer and selling from it. Cottage food sellers are not exempt from local ordinances.

**Q31. Can a city tell me I need a city permit to sell in a certain location?**

Yes. Although the law precludes local government authorities, including health departments, from regulating the production of food at a cottage food production operation, if a local government has a **general** ordinance — such as you have to get a permit to sell **any** product at some location, that is still valid and applicable. A city cannot make a special ordinance or regulation that only applies to cottage food operations.

**Q32. Can a farmer's market or other private event refuse to allow me to participate, or impose additional rules for participation?**

Yes. These events are privately owned and managed, and they may set whatever rules or quality standards they wish.

**Q33. Can a farmer's market charge me a fee?**

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

**Q34. 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. (See the last section of this document.)

**Q35. Can I deliver?**

Yes.

**Q36. Does the law require the customer to visit my home to pay for or pick up the food?**

No. This was only a part of the cottage food law from 2011-2013. Since 2013, the customer is never required to come to your home. If you do not want the customer coming to your home, you can

contaminated. Large or bulky items like wedding cakes, or

cupcake bouquets, are not required to be packaged.

#### **Q41. Does the label have to be attached to the package?**

Yes, except in the cases of unpackaged large or bulky items.

In those cases, your invoice can contain the required labeling information.

Example of Texas Cottage Food  
Label

#### **Q42: Can I advertise the health benefits of my food, or make a health claim on the label?**

Prior to 2020, the answer was no. As of 1/1/2020, the [rules](#) state "Advertising media of cottage food products for health, disease, or other claims must be consistent with those claims allowed by the [Code of Federal Regulations Title 21, Part 101, Subparts D and E.](#)" These rules are complex. Please consult with an attorney and make sure you understand the rules completely if you wish to advertise a health claim about your cottage food.

## **Sampling**

#### **Q43. Can I give out samples?**

##### **Any location that is NOT a farmers market:**

Yes, as long as your samples are packaged and labeled in your home kitchen. The health department cannot impose any fees, permits, or additional restrictions on you as long as your samples are packaged and labeled.

If you want to do open sampling on-site, such as cutting a cake and serving it on a plate at a bridal fair, this would require a permit from the health department, and they may require you to make these samples in a commercial kitchen. The easiest way for a cottage food producer to avoid permits, fees, and expensive commercial kitchen rental, is simply to package and label the samples in your home kitchen.

It is not required or advised. They have no authority or jurisdiction over you as long as you are following the rules of the cottage food law.

**Q48. 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.

**Q49. Will my kitchen be inspected?**

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

**Q50. What should I do if an inspector from the Health Department knocks on my door and wants to come into my kitchen?**

They must have a warrant from a judge. Ask to see it. If your 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.

**Q51. Can the Health Department shut me down?**

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

**Q52. Can my city tell me I can't operate due to zoning?**

No. 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.

**Q53. Do I have to get a zoning permit or business license from my city in order to have a cottage food business?**

Consult with a tax professional or business attorney to determine the best way to set up your business, whether it be a Sole Proprietorship, LLC, or some other business entity.

**Q60. Do I have to claim my income and pay taxes on it?**

Yes. The \$50,000 income cap is unrelated to federal taxes. Consult with a tax professional.

**Q61. I got a notice from my county that I have to send them a list of my business assets and equipment so that the county can tax me on them. Is this legal?**

Yes, it is called the rendition tax. It is not enforced in every county, and it is not enforced on every business, but it is definitely a real and legal tax. Here is a document for [Harris County](#) that explains what the rendition tax is. Although the document is published by Harris County, the rendition tax applies in all 254 Texas counties. For information about your county, search <county name> and <rendition tax> in your browser.

## Bake Sales and Donations

**Q62. Does the cottage food law cover bake sales for my church/school/non-profit group?**

Not exactly. Non-profit or religious bake sales where only non-TCS foods are sold are exempt from licensing in jurisdictions covered by DSHS. Home-rule cities are allowed to set stricter standards, so if you live in a city or municipality, contact your local health department for their rules.

**Q63. Can I donate my food for a fundraiser? (Bake sale, silent auction, etc.)**

Probably not in your capacity as a cottage food



. in a position to build a separate kitchen, you are better served to contact your local Health Department and find out the requirements to get the kitchen commercially licensed, so that you would be able to operate free of the cottage food restrictions.

**Q68. Can I put commercial appliances in my home?**

No, the law applies only to people cooking in their own homes with appliances meant for common residential usage.

**Q69. I am devastated that I can't have a homemade cheesecake/hot meal/shaved ice/pizza/tamale/cookie-shipping business. What should I do?**

I know it's very disappointing. But there are legitimate food safety concerns (and sometimes federal law implications) with these types of foods. And you CAN have this type of business – you just need to work with your local health department and use a commercial kitchen to produce the food. Many metro areas have commercial kitchens for hourly rent for this express purpose.

## Questions or Problems?

**Q70. What if I am denied my rights under the law?**

[Print the law](#) or send a link to the person you have been communicating with. If necessary, escalate the issue to your City Council and your City Attorney. Be sure to get documentation of all conversations in writing. In extreme cases, you may need to obtain legal representation.

**Q71. Who should I call if I have more questions?**

Hire an attorney or consult with your local health department or DSHS if you have more questions about this law. The information on this page is not legal advice.

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