

[Third Reprint]  
**SENATE, No. 73**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Senator CHRISTOPHER "KIP" BATEMAN**  
**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**  
**Senator PAUL A. SARLO**  
**District 36 (Bergen and Passaic)**  
**Assemblyman ANDREW ZWICKER**  
**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**  
**Assemblyman EDWARD H. THOMSON**  
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**Assemblywoman ANGELA V. MCKNIGHT**  
**District 31 (Hudson)**

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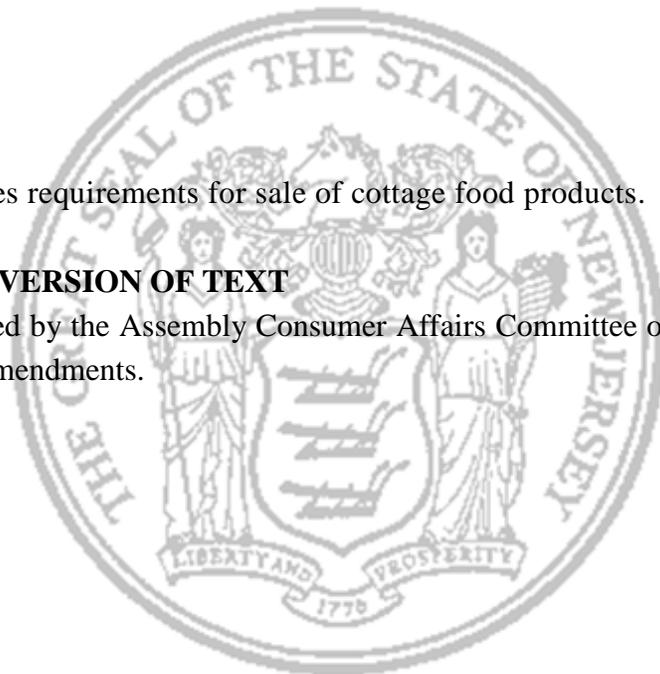
**Senators Doherty, Oroho, Turner, Cardinale, T.Kean, A.M.Bucco,**  
**Assemblyman Webber, Assemblywoman DiMaso, Assemblyman Freiman**  
**and Assemblywoman Downey**

**SYNOPSIS**

Establishes requirements for sale of cottage food products.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Consumer Affairs Committee on December 6, 2021, with amendments.



**(Sponsorship Updated As Of: 1/10/2022)**

1 AN ACT concerning <sup>3</sup>**[home baked goods]** cottage foods<sup>3</sup> and  
2 supplementing Title 24 of the Revised Statutes.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. As used in this act:

8 <sup>3</sup>**[**“Baked goods” means ready-to-eat baked food <sup>1</sup>listed in  
9 subsection a. of section 4 of this act<sup>1</sup> that does not require further  
10 cooking or refrigeration for food safety, and which is not a  
11 potentially hazardous food. Baked goods may contain ingredients  
12 which constitute potentially hazardous food, provided that the  
13 baked good as presented for sale is not a potentially hazardous food.  
14 “Baked goods” <sup>1</sup>shall not<sup>1</sup> include <sup>1</sup>**[**, but are not limited to, bread,  
15 rolls, cakes, pies, pastries, candies, and cookies **]** any food listed in  
16 subsection b. of section 4 of this act.<sup>3</sup>

17 “Commissioner” means the Commissioner of Health.

18 <sup>3</sup>“Cottage food product” means non-TCS food that a cottage food  
19 operator prepared, which non-TCS foods shall include: baked  
20 goods, including bread, rolls, biscuits, cakes, cupcakes, pastries,  
21 and cookies; candy, including brittle and toffee; chocolate-covered  
22 nuts and dried fruit; dried fruit; dried herbs and seasonings, and  
23 mixtures thereof; dried pasta; dry baking mix; fruit jams, fruit  
24 jellies, and fruit preserves; fruit pies, fruit empanadas, and fruit  
25 tamales, other than pies, empanadas, and tamales made from  
26 pumpkin; fudge; granola, cereal, and trail mix; nuts and nut  
27 mixtures; nut butters; popcorn and caramel corn; roasted coffee and  
28 dried tea; sweet sorghum syrup; vinegar and mustard; waffle cones  
29 and pizzelles; and upon written application to the Public Health and  
30 Food Protection Program, other non-TCS food.

31 “Cottage food operator” means a person who holds a New Jersey  
32 cottage food operator permit.<sup>3</sup>

33 “Department” means the Department of Health<sup>1</sup> .

34 <sup>3</sup>**[**“Home baker” means a person who prepares baked goods <sup>2</sup>**[**in  
35 a kitchen in a private home that is not subject to regulation and  
36 inspection by the Department of Health **]** in accordance with the  
37 provisions of this act<sup>2</sup> .

38 “Potentially hazardous food” means a food that requires time or  
39 temperature control for safety to limit pathogenic microorganism  
40 growth or toxin formation **]**

41 “Major food allergen” means any of the following and any  
42 protein derived from the following, but does not include any highly  
43 refined oil derived from, or any ingredient derived from a highly

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SHH committee amendments adopted June 11, 2020.

<sup>2</sup>Senate floor amendments adopted June 29, 2020.

<sup>3</sup>Assembly ACO committee amendments adopted December 6, 2021.

1 refined oil derived from, the following: milk; eggs; fish; crustacean  
2 shellfish; tree nuts; wheat; peanuts; and soybeans. “Major food  
3 allergen” does not include any ingredient that is exempt under the  
4 petition or notification process specified in the “Food Allergen  
5 Labeling and Consumer Protection Act of 2004,” Pub. L. 108-282.

6 “Public Health and Food Protection Program” means the Public  
7 Health and Food Protection Program operated by the Department of  
8 Health or a successor program.

9 “TCS food” means a food that requires time control, temperature  
10 control, or both, for safety to limit pathogenic microorganism  
11 growth or toxin formation<sup>3</sup>.

12  
13 <sup>3</sup>[2. A home baker may sell baked goods prepared by the home  
14 baker in a kitchen in a private home, provided the following  
15 requirements are met:

16 a. The baked goods shall not be sold or offered for sale except  
17 at the home baker’s home, a consumer’s home, a farmer’s market, a  
18 farm stand, or a county, municipal, or nonprofit fair, festival, or  
19 event. A home baker shall not sell or offer for sale baked goods  
20 over the Internet, wholesale, or to a commercial retailer for resale;

21 b. The gross income generated by the home baker from the sale  
22 of baked goods shall not exceed \$50,000 per year;

23 c. The home baker, and any person assisting the home baker in  
24 the preparation of baked goods, shall possess a current, valid food  
25 handler’s certificate issued by <sup>1</sup>[a food handler certification agency  
26 approved by the Commissioner of Health] the department<sup>1</sup> pursuant  
27 to subsection a. of section 3 of this act;

28 d. <sup>1</sup>[A clearly-visible placard shall be placed at the point of  
29 sale, which shall state in clear, legible print that the baked goods  
30 were prepared in a kitchen that is not subject to regulation and  
31 inspection by the Department of Health] The home baker shall  
32 display the baker’s current, valid food handler certification issued  
33 pursuant to subsection a. of section 3 of this act at the point  
34 of sale<sup>1</sup>;

35 e. Baked goods shall be packaged in a manner that prevents or  
36 reduces the risk of contamination, unless the size, shape, or other  
37 characteristics of a baked good makes such packaging impractical  
38 or unnecessary; and

39 f. Each baked good sold or offered for sale shall include a label  
40 containing the following information:

41 (1) the name of the home baker <sup>1</sup>, the home baker’s food handler  
42 certification number,<sup>1</sup> and the address where the baked good was  
43 prepared;

44 (2) the name of the baked good, including a description of the  
45 type or nature of the baked good if not apparent from the name;

1 (3) any major food allergens used as an ingredient in the baked  
2 good, including, but not limited to, eggs, nuts, wheat, soy, dairy,  
3 and peanuts; and

4 (4) the following statement: “This food <sup>1</sup>[is made] was  
5 prepared<sup>1</sup> in a <sup>1</sup>[home]<sup>1</sup> kitchen that <sup>2</sup>[is] may<sup>2</sup> not <sup>2</sup>be<sup>2</sup> subject to  
6 <sup>2</sup>[regulation and] regular<sup>2</sup> inspection by <sup>2</sup>[the Department of  
7 Health] health authorities<sup>2</sup> .”<sup>3</sup>

8  
9 <sup>3</sup>[3. a. <sup>1</sup>[The Commissioner of Health shall promulgate a list  
10 of food handler certification agencies that are approved to issue  
11 food handler certificates to home bakers and other persons for the  
12 purposes of this act. The Department of Health shall have no other  
13 authority to regulate or inspect home bakers or the sale or  
14 production of baked goods prepared by home bakers] (1) An  
15 application for a food handler certification authorizing the  
16 individual to sell baked goods prepared in a kitchen in a private  
17 home pursuant to this act shall be submitted to the department for  
18 approval. The application shall include:

19 (a) the nature and type of each baked good that the home baker  
20 intends to prepare and sell;

21 (b) an acknowledgement that the home baker will only be  
22 authorized to prepare and sell those home baked goods expressly  
23 included in an approved food handler certification, and that the  
24 home baker’s food handler certification may be revoked upon a  
25 third or subsequent finding that the home baker has sold baked  
26 goods not included in the baker’s food handler certification;

27 (c) an attestation that the home baker will report income as  
28 required under State and federal law; and

29 (d) an attestation that the home baker will comply with all  
30 applicable State and federal labor laws.

31 (2) There shall be no limit on the number or types of baked  
32 goods that may be authorized under a single food handler  
33 certification, provided that the baked goods are limited to those  
34 expressly authorized pursuant to subsection a. of section 4 of this  
35 act. A home baker seeking to prepare and sell a baked good not  
36 authorized under the home baker’s current food handler  
37 certification may submit an application for an amended food  
38 handler certification or include the additional baked goods in an  
39 application to renew a food handler certification. The fee to apply  
40 for an amended food handler certification shall be \$50 or the actual  
41 administrative costs of processing the application, whichever is less.  
42 A home baker may apply to amend a food handler certification no  
43 more than once per certification period.

44 (3) Upon approval of an application for initial or renewed  
45 certification as a food handler, the home baker shall pay a  
46 certification fee of \$300 to the department.

1       (4) A food handler certification issued pursuant to this section  
2 shall be valid for one year and shall be renewable upon application  
3 to the department. The department shall provide the home baker  
4 with at least one written notification of the renewal deadline no less  
5 than 30 days prior to expiration of the home baker's current food  
6 handler certification. The failure to submit a renewal application  
7 prior to the expiration date shall result in immediate termination of  
8 the food handler certification upon the expiration date, and the  
9 home baker shall be prohibited from selling baked goods prepared  
10 in a kitchen in a private home unless the home baker applies, and is  
11 approved, for a new food handler certification<sup>1</sup> .

12       b. The local board of health having jurisdiction in the  
13 municipality in which the home baker resides or in which the home  
14 baker prepares, offers for sale, or sells baked goods shall <sup>1</sup>conduct  
15 an inspection of the kitchen that will be used by each applicant for a  
16 food handler certification prior to issuance of the certification, and  
17 shall<sup>1</sup> have the authority to conduct an inspection of <sup>1</sup>**【the】**<sup>1</sup> baked  
18 goods or the place in which the baked goods are prepared <sup>1</sup>**【upon**  
19 **reasonable belief or credible report that the baked goods, or the**  
20 **conditions under which the baked goods are prepared, present an**  
21 **immediate and serious threat to human life or health】** as often as the  
22 local board of health deems necessary<sup>1</sup> . If the board finds <sup>1</sup>**【the】**<sup>1</sup>  
23 baked goods or the conditions under which they are prepared  
24 constitute an immediate and serious threat to human life or health,  
25 the board may order any appropriate relief, including, but not  
26 limited to: confiscation or destruction of the baked goods; remedial  
27 action to correct an unsafe or potentially hazardous condition; or  
28 <sup>1</sup>**【issuance of a temporary or permanent injunction prohibiting the**  
29 **home baker from preparing and selling baked goods】** temporarily  
30 suspending or permanently revoking a food handler certification  
31 issued to the home baker. The department shall develop a  
32 procedure for providing notice to local boards of health when a  
33 person located within the jurisdiction of the local board of health  
34 applies for an initial food handler certification, and for receiving a  
35 report concerning the results of the initial inspection of the kitchen  
36 or other areas that will be used by the applicant to prepare baked  
37 goods. Home bakers applying for or issued a food handler  
38 certification under this act shall provide the local board of health  
39 with access to any kitchen or other area or location used by the  
40 home baker to prepare baked goods for the purposes of conducting  
41 inspections pursuant to this subsection<sup>1</sup> .

42       c. The preparation and sale of baked goods by home bakers  
43 pursuant to this act shall not be subject to regulation or restriction  
44 by municipal ordinance.

45       d. Nothing in this section shall be construed to restrict the  
46 ability of a neighbor or other affected person to institute a nuisance  
47 action against a home baker. **】**<sup>3</sup>

1       <sup>3</sup>[ <sup>1</sup>4. a. Subject to any actions taken by the commissioner  
2 pursuant to subsection c. of this section, baked goods that may be  
3 prepared and sold pursuant to this act shall be limited to: breads,  
4 other than fruit breads or vegetable breads; rolls; cinnamon rolls;  
5 biscuits; bagels; muffins; doughnuts; cookies; baklava; biscotti that  
6 are not topped with chocolate or candy melts; cakes; cake pops that  
7 are not topped with chocolate or candy melts; cupcakes; brownies;  
8 double-crust fruit pies; scones; fruit jams, jellies, and marmalades  
9 made with high acid or low pH fruits; commercially-dried spices or  
10 herbs that are repackaged or blended; repackaged dried or  
11 dehydrated vegetables; repackaged dried soup mixes; repackaged  
12 dried fruit; repackaged dried pasta; repackaged dry baking mixes;  
13 seasoning salt; fudge; popcorn; caramel corn; peanut brittle; rice  
14 cereal marshmallow bars; granola made using commercially roasted  
15 nuts; trail mix made using commercially roasted nuts; granola bars  
16 made using commercially roasted nuts; repackaged candy, other  
17 than chocolate; waffle cones; pizzelles; toffee or caramel apples  
18 that are not prepared using candy melts; confections, including  
19 toffees, caramels, and hard candies; vegetable chips, including  
20 potato chips; crackers; and pretzels.

21       b. Subject to any actions taken by the commissioner pursuant  
22 to subsection c. of this section, in no case may the following foods  
23 be sold pursuant to this act: any food requiring refrigeration for  
24 preservation; homemade buttercream or cream cheese frosting; fruit  
25 breads; vegetable breads; products containing alcohol; “no-bake”  
26 products; pickles; relishes; sauerkraut; sauces; salsas; marinades;  
27 mustards; ketchups; pepper jellies; wine jellies; vegetable jellies;  
28 flower jellies; chutneys; vegetable oils; blended oils; salad  
29 dressings; cheesecakes; cream-filled pastries; cream pies; merengue  
30 pies; chocolate candies; products dipped in chocolate or a candy  
31 melt; products containing raw nuts; cheeses; yogurts; fluid dairy  
32 products; butters; meat; fish; or poultry products.

33       c. The commissioner shall periodically review the foods listed  
34 in subsections a. and b. of this section, along with the current  
35 scientific literature, and shall be authorized to take administrative  
36 action to add or remove foods from either list or to otherwise revise  
37 the requirements concerning baked goods authorized for sale  
38 pursuant to this act. <sup>1</sup>]<sup>3</sup>

39

40       <sup>3</sup>2. a. A person or entity that engages in the production or sale  
41 of cottage food products to consumers shall hold a current, valid  
42 cottage food operator permit.

43       b. A person seeking to obtain a cottage food operator permit  
44 shall submit to the Public Health and Food Protection Program:

45       (1) an application, which shall be submitted on a form and in a  
46 manner as shall be required by the department;

1       (2) a copy of a certificate issued by an accredited program  
2 showing that the applicant is a food protection manager in good  
3 standing with the accredited program; and

4       (3) if the cottage food operator's kitchen:

5       (a) uses a private well, a microbiological, total coliform,  
6 analysis of the private well water that is conducted using samples  
7 collected no earlier than 60 days prior to the filing date of the  
8 application; and

9       (b) does not use private well water, a copy of the most recent  
10 water bill for the location of the cottage food kitchen.

11       c. At a minimum, an application for a new or renewed cottage  
12 food operator permit shall include a description of the nature and  
13 type of each cottage food product the cottage food operator will  
14 prepare and sell, and an acknowledgement that the cottage food  
15 operator will only be authorized to prepare and sell those cottage  
16 food products expressly included in an approved permit application,  
17 and that the cottage food operator's permit may be revoked upon a  
18 third or subsequent finding that the cottage food operator has sold  
19 cottage food products not included in the cottage food operator's  
20 permit. There shall be no limit on the number or types of cottage  
21 food products that may be authorized under a single cottage food  
22 product permit. A cottage food operator seeking to prepare and sell  
23 a cottage food product not authorized under the operator's current  
24 permit may submit an application for an amended cottage food  
25 operator permit or include the additional cottage food products in an  
26 application to renew a cottage food operator permit. A cottage food  
27 operator may apply to amend a cottage food operator permit no  
28 more than once per permit period.

29       d. The department shall conduct a completeness review of each  
30 application submitted pursuant to subsection b. of this section and  
31 shall notify the applicant in writing of any deficiency or  
32 incompleteness in the application that the applicant will be required  
33 to correct before the department will further process the application.  
34 If an applicant fails to complete a deficient or incomplete  
35 application within 30 days after the issuance of a notice of  
36 deficiency or incompleteness provided pursuant to this subsection,  
37 the department shall deem the application to be abandoned.

38       e. The local board of health having jurisdiction in the  
39 municipality in which an applicant for a cottage food operator  
40 permit resides shall conduct an inspection of the kitchen that will be  
41 used by the applicant prior to issuance of an initial permit or a  
42 renewal permit, and shall have the authority to conduct an  
43 inspection of cottage food products or the place in which the  
44 cottage food products are prepared as often as the local board of  
45 health deems necessary. If the board finds a cottage food product  
46 or the conditions under which a cottage food products is prepared  
47 constitutes an immediate and serious threat to human life or health,  
48 the board may order any appropriate relief, including, but not

1 limited to: confiscation or destruction of the cottage food product;  
2 remedial action to correct an unsafe or potentially hazardous  
3 condition; or temporarily suspending or permanently revoking the  
4 cottage food operator's cottage food product operator permit. The  
5 department shall develop a procedure for providing notice to local  
6 boards of health when a person located within the jurisdiction of the  
7 local board of health applies for an initial cottage food operator  
8 permit or renewal of a cottage food operator permit, and for  
9 receiving a report concerning the results of the inspection of the  
10 cottage food operator's kitchen. Applicants for an initial cottage  
11 food operator permit, applicants for a renewal cottage food operator  
12 permit, and cottage food permit operators shall provide the local  
13 board of health with access to the cottage food operator's kitchen,  
14 which access shall be limited to conducting an inspection pursuant  
15 to this subsection.

16 f. Upon determining an application submitted pursuant to  
17 subsection b. of this section is complete, and upon satisfactory  
18 completion of an inspection conducted pursuant to subsection e. of  
19 this section, the department shall issue a cottage food operator  
20 permit to the applicant.

21 g. An applicant for a cottage food operator permit shall register  
22 as a business entity within the municipality in which the cottage  
23 food operator resides, and shall ascertain and comply with all State  
24 and local laws applicable to the cottage food operator's operations,  
25 including any requirements to maintain liability insurance, file  
26 taxes, and comply with labor laws.

27 h. The fee to apply for an initial cottage food operator permit  
28 or renewal of a cottage food operator permit shall be \$100. The fee  
29 to amend a cottage food operator permit shall be \$50 or the actual  
30 administrative costs of processing the application, whichever is less.  
31 All fees collected pursuant to this section shall be nonrefundable,  
32 and shall be retained by local health authorities for the purposes of  
33 implementing the provisions of this act. A cottage food operator  
34 permit shall be valid for two years.<sup>3</sup>

35  
36 <sup>3</sup>3. a. A cottage food operator permit shall authorize the permit  
37 holder to produce cottage food products in the private kitchen of the  
38 operator's residence on record with the department. A cottage food  
39 operator may produce cottage food products at no location other  
40 than the cottage food operator's residence of record.

41 b. A cottage food operator shall not deliver or relinquish  
42 cottage food products:

43 (1) at any location outside of New Jersey;

44 (2) at a location other than: (a) the home of the cottage food  
45 operator, provided the cottage food product is not consumed on site;  
46 (b) the home of the consumer; (c) a farmers' market or farm stand;  
47 or (d) a temporary retail food establishment;

- 1       (3) to a wholesaler or retail food establishment, or to any other  
2 individual other than the consumer; or
- 3       (4) by United States postal mail or a common carrier.
- 4       c. Notwithstanding the provisions of paragraph (4) of  
5 subsection b. of this section, a cottage food operator may transact  
6 activities that are ancillary to the delivery or relinquishment of  
7 cottage food products to a consumer by means of United States  
8 postal mail, common carrier, electronic communication, Internet, or  
9 telephone, provided the delivery or relinquishment of cottage food  
10 products meets the requirements of subsection b. of this section.  
11 Ancillary transactions authorized under this subsection shall include  
12 accepting the placement of orders, receiving payments, engaging in  
13 marketing and advertising activities, and participating in other  
14 business activities other than the delivery or relinquishment of  
15 cottage food products.
- 16       d. (1) If the point of sale of a cottage food product is the  
17 residence of the operator or the consumer, the cottage food operator  
18 shall make the operator's cottage food operator permit available for  
19 inspection upon request.
- 20       (2) If the point of sale of a cottage food product is a location  
21 other than the residence of the cottage food operator or the  
22 consumer, the cottage food operator shall place the cottage food  
23 operator's permit on conspicuous and unobstructed display at the  
24 point of sale, along with a placard containing the following  
25 statement: "This food was prepared in a home kitchen that may not  
26 be subject to regular inspection by health authorities."
- 27       e. A cottage food operator shall affix one or more labels or tags  
28 on each cottage food product, which labels or tags shall collectively  
29 include, at a minimum:
- 30           (1) the common name of the cottage food product;  
31           (2) the ingredients of the cottage food product, which shall be  
32 listed in descending order of prominence by weight;  
33           (3) if the cottage food product contains a major food allergen,  
34 the word "Contains," followed by a list of the major food allergens  
35 that the product contains;  
36           (4) the cottage food operator's name, business name, contact  
37 information, and cottage food operator permit number;  
38           (5) the name of the cottage food operator's municipality of  
39 record with the department, followed by either "New Jersey" or  
40 "NJ"; and  
41           (6) the statement: "This food was prepared in a home kitchen  
42 that may not be subject to regular inspection by health authorities."
- 43       f. A cottage food operator shall not exceed \$50,000 in gross  
44 annual sales of cottage food products. For the purposes of this  
45 section, gross annual sales shall include the amount generated from  
46 the sale of cottage food products before the deduction of taxes and  
47 operating expenses.<sup>3</sup>

- 1       <sup>3</sup>4. a. The department shall have the authority to assess  
2 monetary and other penalties against a person or entity that violates  
3 the requirements of P.L. , c. (C. ) (pending before the  
4 Legislature as this bill), including, but not limited to, denying  
5 issuance of, suspending, or revoking a cottage food operator permit.  
6 A person or entity found to be in violation of the requirements of  
7 P.L. , c. (C. ) (pending before the Legislature as this bill)  
8 shall be entitled to notice of the violation, and to a hearing to  
9 contest the violation and any proposed penalty.
- 10       b. The department shall periodically review the list of cottage  
11 food products set forth in section 1 of P.L. , c. (C. )  
12 (pending before the Legislature as this bill), along with the current  
13 scientific literature, and shall be authorized to take administrative  
14 action to add or remove foods from the list.
- 15       c. The department shall promulgate rules and regulations,  
16 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410  
17 (C.52:14B-1 et seq.), establishing the scope, nature, and  
18 requirements for inspections conducted pursuant to subsection e. of  
19 section 2 of P.L. , c. (C. ) (pending before the Legislature  
20 as this bill).
- 21       d. Nothing in the provisions of P.L. , c. (C. ) (pending  
22 before the Legislature as this bill) shall be construed to authorize  
23 the department to regulate the production or sale of honey, the  
24 regulation of which shall remain exclusively within the jurisdiction  
25 of the Department of Agriculture.<sup>3</sup>
- 26
- 27       <sup>1</sup>[4.] 5.<sup>1</sup> This act shall take effect the first day of the seventh  
28 month next following the date of enactment.