

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1046
By: Moncrief
Health & Human Services
4/10/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, Chapter 431 of the Health and Safety Code requires the Texas Department of Health (TDH) to regulate all levels of manufacturing and distribution of foods, drugs, devices, and cosmetic products. Subchapter B, Prohibited Acts, sets out enumerated prohibited acts, and although implied, Section 431.021 does not specifically state that failure to obtain a license when required is a prohibited act. Additionally, Section 431.045 allows for an emergency order against a manufacturer who is making an adulterated, misbranded, or dangerous product, however, a similar provision does not exist for a distributor or wholesaler of an adulterated, misbranded, or dangerous product. C.S.S.B. 1046 provides that the failure of a wholesaler or distributor to obtain a valid license is a violation of the prohibited acts section, and it allows TDH "emergency closure" authority for situations where conditions that pose an imminent hazard to public health exist in a regulated establishment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 431.021, Health and Safety Code, to prohibit engaging in the manufacture of food in this state or operating as a food wholesaler in this state without having a license as required by Section 431.222. Deletes language relating to first registering with the Texas Department of Health (department) before engaging in the manufacture of food in this state.

SECTION 2. Amends Section 431.045(a), Health and Safety Code, to authorize the commissioner of health (commissioner) or a person designated by the commissioner to issue an emergency order, either mandatory or prohibitory in nature, in relation to the manufacture or distribution of a food, drug, device, or cosmetic in the department's jurisdiction if the commissioner or the person designated by the commissioner determines certain problems. Makes a conforming change.

SECTION 3. Amends Section 431.2211, Health and Safety Code, as follows:

- (a) Adds language to provide that a person is not required to hold a license under this subchapter if the person is a person, firm, or corporation that only harvests, packages, washes, or ships raw fruits or vegetables; an individual who only sells prepackaged nonperishable foods, including dietary supplements, from a private home as a direct seller; or a person who holds a license under Chapter 432 and who only engages in conduct within the scope of that license.
- (b) Provides that an exemption from the licensing requirements prescribed by this subchapter does not exempt the person from other provisions prescribed by this subchapter or from rules adopted by the board to administer and enforce those provisions.
- (c) Adds language to provide that this subchapter does not apply to the distribution of beverages in sealed containers by holders of licenses or permits issued under Chapter 19, 20,

21, 23, 64, or 65, Alcoholic Beverage Code. Provides that the provisions of the Alcoholic Beverages Code prevail to the extent of any conflict with this chapter.

SECTION 4. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Differs from original by adding a new SECTION 3 which amends Section 431.2211, Health and Safety Code, relating to conditions under which a person is not required to hold a license under this subchapter and exemptions from the licensing requirements of the subchapter.

Redesignated original SECTION 3, the effective date, as SECTION 4.