

BILL ANALYSIS

Senate Research Center
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H.B. 3387
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3387 amends current law relating to the regulation of food prepared, stored, distributed, or sold at farmers' markets.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 437.0202, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 437.020, Health and Safety Code, as follows:

Sec. 437.020. New heading: REGULATION OF COOKING DEMONSTRATIONS AND FOOD SAMPLES AT FARMERS' MARKETS. (a) Defines, in this section, "farmers' market," "food," and "produce."

(b) Creates this subsection from existing text. Provides that, except as provided by this section and Sections 437.0201 and 437.0202, rather than except as provided by Subsection (b):

(1) this chapter does not regulate cooking demonstrations, the provision of samples of food, or the sale of food to consumers at a farmers' market, rather than the provision of samples of produce to consumers at a municipally owned farmers' market; and

(2) a rule adopted under state law may not regulate cooking demonstrations, the provision of samples of food, or the sale of food to consumers at a farmer's market, rather than the provision of samples of produce to consumers at a municipally owned farmers' market.

(c) Authorizes a person, subject to Subsections (d) and (e), to process food on-site, including heating food, scooping ice into cups, grilling food, preparing blended beverages, cutting food, and dividing servings for consumption.

(d) Authorizes samples of food to only be distributed at a farmers' market, rather than authorizes produce samples to only be distributed at a municipally owned farmers' market, if the following sanitary conditions exist:

(1) samples must be kept in clean and covered containers, rather than produce samples must be kept in approved, clean, and covered containers;

- (2) samples, rather than produce samples, must be distributed in a sanitary manner;
- (3) a person preparing produce samples on-site must wear clean, disposable plastic gloves when preparing samples, rather than when cutting produce samples; or observe proper hand washing techniques immediately before preparing samples;
- (4) produce intended for sampling must be washed in potable water to remove any soil or other visible material so that it is wholesome and safe for consumption;
- (5) except as provided by Section 437.0202(b), potentially hazardous food, rather than potentially hazardous cut produce, as determined by rule of the Texas Department of Health (TDH), must be maintained at or below 41 degrees Fahrenheit; and
- (6) utensils and cutting surfaces used for cutting produce must be smooth, nonabsorbent, and easily cleaned or disposed of.

Deletes existing text requiring that potable water be available for hand washing and sanitizing as approved by the local or state enforcement agency. Deletes existing text requiring that produce samples be disposed of within two hours after cutting. Deletes existing text requiring that utensil and hand washing water be disposed of in a facility connected to the public sewer system or in a manner approved by the local or state enforcement agency. Makes conforming and nonsubstantive changes.

(e) Authorizes a person to conduct a cooking demonstration at a farmers' market only if:

- (1) regardless of whether the demonstrator provides a sample of food to consumers, the farmers' market that hosts the demonstration:
 - (A) has a valid permit issued under Subchapter D (Food Service Programs), Chapter 438 (Public Health Measures Relating to Food); and
 - (B) complies with the requirements of a temporary food establishment under this chapter and rules adopted under this chapter; and
- (2) if the demonstrator provides a sample of food to consumers:
 - (A) the demonstrator provides a sample only and not a full serving; and
 - (B) samples of food prepared during a demonstration are disposed of not later than four hours after the beginning of the demonstration.

SECTION 2. Amends Chapter 437, Health and Safety Code, by adding Sections 437.0201 and 437.0202, as follows:

Sec. 43.0201. REGULATION OF FOOD SALES AT FARMERS'; MARKETS. (a) Defines, in this section, "farmers' market" and "food."

(b) Authorizes TDH or a local health department to issue a temporary food establishment permit to a person who sells food at a farmers' market held at a

single location without limitation on the number of days for which the permit is effective.

(c) Authorizes a person to whom a permit is issued under Subsection (b), at the farmers' market for which the permit is issued, to engage in the on-site preparation and sale of food, including heating food, scooping ice into cups, grilling food, preparing blended beverages, cutting food, and dividing servings for consumption.

(d) Requires a person to whom a permit is issued under Subsection (b) to comply with the requirements of a temporary food establishment under this chapter and rules adopted under this chapter.

Sec. 437.0202. COMMISSION RULES REGARDING FOOD AT FARMERS' MARKETS. (a) Defines, in this section, "farmers' market" and "food."

(b) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to adopt temperature requirements for food prepared, sold, or distributed on-site at a farmers' market under Section 437.020 or 437.0201. Authorizes food prepared on-site at a farmers' market to be sold or distributed at the farmers' market only if the food is prepared in compliance with the temperature requirements adopted under this section.

(c) Prohibits the executive commissioner or a state or local enforcement agency from mandating a specific method for complying with temperature control requirements for food prepared on-site at a farmers' market or transported to the farmers' market.

(d) Prohibits the executive commissioner or a state or local enforcement agency from adopting a rule requiring a farmers' market to pay a permit fee for conducting a cooking demonstration or providing samples of food if the demonstration or provision of samples is conducted for a bona fide educational purpose.

SECTION 3. Requires the executive commissioner to adopt the rules required by Section 437.0202(b), Health and Safety Code, as added by this Act, not later than September 1, 2012.

SECTION 4. Effective date: September 1, 2011.