

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 812
By: Zaffirini
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Food allergies are a growing health concern in the United States, with the number of Americans living with food allergies having increased by approximately 50 percent during the last two decades. Currently, food service establishments are not required to train or remind employees about food allergies. When employees are misinformed or lack understanding about food allergies, however, the consequences can be serious and life-threatening. In 2014, for example, Sergio Alexander Lopez of McAllen, Texas, died after unknowingly ingesting peanut butter at a restaurant despite checking with employees whether it was safe to eat. This bill is a Senate companion to H.B. 1445 (2023), the Sergio Lopez Food Allergy Awareness Act, which was filed in his honor.

S.B. 812 would increase allergen awareness by requiring food service establishments to display a standardized poster developed from guidelines set by the Department of State Health Services. The poster would contain information about food allergies and responses to allergic reactions. What's more, it would require food training programs and the food manager certification exam to include food allergies as the subject. Accordingly, food service employees would better understand how to serve persons with food allergies safely. This would not only reduce the risk of persons experiencing costly allergic reactions, but also help prevent avoidable deaths.

C.S.S.B. 812 amends current law relating to food allergen awareness in food service establishments, food handler and food manager certifications, and food service training or education programs.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 437.027, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Sergio Lopez Food Allergy Awareness Act.

SECTION 2. Amends Chapter 437, Health and Safety Code, by adding Section 437.027, as follows:

Sec. 437.027. FOOD ALLERGEN AWARENESS POSTER. (a) Requires a food service establishment to display a poster relating to food allergen awareness in an area of the establishment regularly accessible to the establishment's food service employees. Requires the Department of State Health Services (DSHS) to:

- (1) collaborate with individuals with expertise and knowledge regarding food allergies to determine the form and content of the poster;
- (2) post a sample poster on DSHS's Internet website; and

(3) update the poster as necessary to ensure the poster contains current information about food allergens and remains consistent with standards promulgated by the United States Food and Drug Administration.

(b) Requires that the poster include information regarding:

(1) the risk of an allergic reaction to a food allergen;

(2) symptoms of an allergic reaction;

(3) the major food allergens, as determined by federal law and regulations of the United States Food and Drug Administration;

(4) the procedures for preventing an allergic reaction; and

(5) appropriate responses for assisting an individual who is having an allergic reaction.

(c) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules necessary to implement this section.

(d) Provides that this section does not create a private cause of action or change any common law or statutory duty.

(e) Prohibits a county, municipality, or public health district, notwithstanding any other law, from adopting or enforcing an order, ordinance, rule, or other measure related to food allergens that is inconsistent with or exceeds the requirements of this section or Chapter 438 (Public Health Measures Relating to Food).

SECTION 3. Amends Section 438.043(a), Health and Safety Code, as follows:

(a) Prohibits DSHS from accrediting an education or training program unless the program includes certain content, including four hours of training on the subject of food, including the food allergen awareness information described by Section 437.027(b). Makes nonsubstantive changes.

SECTION 4. Amends Section 438.0431(b), Health and Safety Code, to require that the basic food safety course curriculum include the food allergen awareness information described by Section 437.027(b).

SECTION 5. Amends Section 438.103, Health and Safety Code, as follows:

Sec. 438.103. CERTIFICATION AND RENEWAL OF CERTIFICATION; EXAMINATION REQUIRED. (a) Creates this subsection from existing text.

(b) Requires that a state-approved examination for issuance or renewal of a food manager certificate test an applicant on the food allergen awareness information described by Section 437.027(b).

SECTION 6. Amends Chapter 438, Health and Safety Code, by adding Subchapter I, as follows:

SUBCHAPTER I. MISCELLANEOUS PROVISIONS

Sec. 438.201. NO PRIVATE CAUSE OF ACTION. Provides that the provisions of this chapter related to food allergens do not create a private cause of action or change any common law or statutory duty.

Sec. 438.202. CERTAIN REGULATIONS PROHIBITED. Prohibits a county, municipality, or public health district, notwithstanding any other law, from adopting or

enforcing an order, ordinance, rule, or other measure related to food allergens that is inconsistent with or exceeds the requirements of this chapter or Section 437.027.

SECTION 7. Requires, not later than December 1, 2023:

- (1) DSHS to determine the form and content of the poster and post the sample poster on DSHS's Internet website as required by Section 437.027, Health and Safety Code, as added by this Act;
- (2) DSHS to update the education or training program accreditation requirements as required by Sections 438.043 (Requirements for Accreditation) and 438.0431 (Basic Food Safety Accreditation), Health and Safety Code, as amended by this Act; and
- (3) the executive commissioner to adopt any rules necessary to implement the changes in law made by this Act.

SECTION 8. Makes application of this Act prospective to September 1, 2024.

SECTION 9. Provides that a food service establishment, notwithstanding Section 437.027, Health and Safety Code, as added by this Act, is not required to comply with that section before September 1, 2024.

SECTION 10. Effective date: September 1, 2023.