

AN ACT

relating to the sale of certain food by food service establishments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 437, Health and Safety Code, is amended by adding Section 437.026 to read as follows:

Sec. 437.026. SALE OF CERTAIN FOOD BY FOOD SERVICE ESTABLISHMENT. (a) Except as provided by Subsection (b), a food service establishment that holds a permit under this chapter may sell directly to an individual consumer food, other than prepared food, that:

(1) is labeled, which may include a handwritten label, with any information required by the department's food service establishment rules;

(2) for a meat product or poultry product, is obtained from a source that is appropriately inspected and bears an official mark of inspection from the department or the United States Department of Agriculture; and

(3) for food requiring refrigeration other than whole, uncut produce, is:

(A) maintained at or below 41 degrees Fahrenheit until the establishment sells or donates the food; and

(B) protected from contamination.

(b) A food service establishment described by Subsection

1 (a) may not sell directly to an individual consumer food that is:

2 (1) in a package exhibiting damage; or

3 (2) distressed because the food:

4 (A) has been subjected to fire, flooding,
5 excessive heat, smoke, radiation, or another environmental
6 contamination;

7 (B) is not held at the correct temperature for
8 the food type; or

9 (C) is not in good condition.

10 (c) A municipality or public health district may not require
11 a food service establishment that sells food directly to an
12 individual consumer under this section to obtain a food
13 manufacturer license or permit if the establishment:

14 (1) complies with this section; and

15 (2) is not required to hold a food manufacturer
16 license or permit under other state law.

17 SECTION 2. Section [431.2211\(a\)](#), Health and Safety Code, is
18 amended to read as follows:

19 (a) A person is not required to hold a license under this
20 subchapter if the person is:

21 (1) a person, firm, or corporation that only harvests,
22 packages, or washes raw fruits or vegetables for shipment at the
23 location of harvest;

24 (2) an individual who only sells prepackaged
25 nonperishable foods, including dietary supplements, from a private
26 home as a direct seller;

27 (3) a person who holds a license under Chapter [432](#) and

1 who only engages in conduct within the scope of that license; or

2 (4) a restaurant that:

3 (A) provides food for immediate human
4 consumption to a political subdivision or to a licensed nonprofit
5 organization if the restaurant would not otherwise be required to
6 hold a license under this subchapter; or

7 (B) sells food directly to an individual consumer
8 if:

9 (i) the restaurant holds a permit as a food
10 service establishment under Chapter 437;

11 (ii) the restaurant complies with Section
12 437.026; and

13 (iii) the restaurant is not otherwise
14 required to hold a license under this subchapter.

15 SECTION 3. As soon as practicable after the effective date
16 of this Act, the executive commissioner of the Health and Human
17 Services Commission shall adopt rules to implement the changes in
18 law made by this Act.

19 SECTION 4. The changes in law made by this Act apply only to
20 the sale of food by a food service establishment that occurs on or
21 after the effective date of this Act. The sale of food by a food
22 service establishment that occurs before the effective date of this
23 Act is governed by the law in effect on the date the sale occurred,
24 and the former law is continued in effect for that purpose.

25 SECTION 5. Section 431.2211(a), Health and Safety Code, as
26 amended by this Act, applies only to a license issued or renewed on
27 or after the effective date of this Act.

1 SECTION 6. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 1276 was passed by the House on April 22, 2021, by the following vote: Yeas 145, Nays 2, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1276 was passed by the Senate on May 19, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor