

By: Harrison

H.B. No. 2683

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of mobile food vendors; requiring an occupational license; imposing fees; authorizing an administrative penalty.

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

SECTION 1. Subtitle A, Title 6, Health & Safety Code, is amended by adding Chapter 437B to read as follows:

CHAPTER 437B. MOBILE FOOD VENDORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 437B.001. This chapter may be cited as the Mobile Food Vendor Freedom Act.

Sec. 437B.002. PURPOSES. The purposes of this chapter are to:

- (1) legalize mobile food vending across the state;
- (2) promote agriculture and expand economic development;
- (3) foster opportunities for small businesses and stimulate innovation;
- (4) increase consumer access to desired local foods;
- (5) simplify and standardize mobile food vending regulations; and
- (6) protect public health and safety by ensuring mobile food vendors follow clear, narrowly tailored regulations that address demonstrable health and safety risks.

Sec. 437B.003. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who applies to the department to receive a license to operate as a mobile food vendor.

(2) "Food vending vehicle" means any motorized vehicle a mobile food vendor uses to sell food and beverages.

(3) "License holder" means a person who holds a mobile food vending license issued under this chapter.

(4) "Local authority" means a municipality, county, public health authority, special purpose district or authority, or any other political subdivision of this state.

(5) "Mobile food vendor" means any person who dispenses food or beverages from a food vending vehicle for immediate service or consumption.

(6) "Prepackaged food" means any commercially labeled and processed food that is prepackaged to prevent direct human contact with the food product on distribution from the manufacturer, food facility, or other approved source.

(7) "Public property" means real property owned by a governmental entity and includes all rights-of-way other than public sidewalks and rights-of-way in public parks.

Sec. 437B.004. CONSTRUCTION. This chapter may not be construed to require a local authority to enter into a collaborative agreement with the department to conduct health inspections, adopt a program regulating mobile food vendors, or modify a local authority's existing program regulating mobile food vendors, provided the local authority's regulations do not conflict with this chapter.

1 Sec. 437B.005. PREEMPTION. This chapter preempts a local
2 authority's power to prohibit or regulate mobile food vending in a
3 manner that conflicts with this chapter.

4 Sec. 437B.006. RULES. The executive commissioner may adopt
5 rules to implement this chapter. The rules must be narrowly
6 tailored to address a demonstrable health or safety risk and may
7 not:

8 (1) limit the number of mobile food vending licenses
9 the department may issue;

10 (2) address the hours of operation for mobile food
11 vendors;

12 (3) restrict a mobile food vendor's propane capacity
13 below the capacity state law allows for commercial vehicles; or

14 (4) require a mobile food vendor to:

15 (A) operate a specific distance from the
16 perimeter of a commercial establishment or restaurant;

17 (B) obtain a license or permit for or perform a
18 background or criminal history record check on the mobile food
19 vendor's employees;

20 (C) enter into any agreement with a commercial
21 establishment or restaurant in order to operate;

22 (D) have a handwashing sink in the vehicle of a
23 mobile food vendor who sells only prepackaged food;

24 (E) associate with a commissary if the mobile
25 food vendor's food vending vehicle carries the equipment necessary
26 to comply with state law;

27 (F) obtain any additional permits from a local

1 authority, unless the mobile food vendor seeks to operate in a
2 public park governed by the local authority;

3 (G) provide the vendor's fingerprints as a
4 condition of holding a mobile food vending license;

5 (H) install a global positioning system tracking
6 device on the mobile food vendor's food vending vehicle;

7 (I) keep the mobile food vendor's food vending
8 vehicle in constant motion except when serving customers;

9 (J) maintain insurance that names a local
10 authority as an additional insured unless the mobile food vendor is
11 attending an event sponsored by the local authority or operating in
12 a local public park;

13 (K) obtain a bond that names a local authority as
14 a beneficiary unless the mobile food vendor is attending an event
15 sponsored by the local authority or operating in a local public
16 park;

17 (L) submit the vendor's food vending vehicle to
18 an additional fire inspection if the vendor demonstrates that the
19 vehicle passed a state or local fire inspection within the
20 preceding 12 months; or

21 (M) submit to health inspections other than an
22 inspection conducted by the department or a local authority under a
23 collaborative agreement unless the department is investigating a
24 reported foodborne illness.

25 SUBCHAPTER B. LICENSE

26 Sec. 437B.051. LICENSE REQUIRED. (a) A person may not
27 operate as a mobile food vendor in this state without obtaining a

1 mobile food vending license from the department. A separate mobile
2 food vending license is required for each food vending vehicle
3 operated by a mobile food vendor.

4 (b) A local authority may not prohibit from operating in its
5 jurisdiction a mobile food vendor that holds a mobile food vending
6 license and complies with all other state and local laws not in
7 conflict with this chapter.

8 Sec. 437B.052. FORM OF APPLICATION. The department shall
9 prescribe a written application for a mobile food vending license.
10 The department shall make the mobile food vending license
11 application available to applicants in person and on the
12 department's Internet website.

13 Sec. 437B.053. APPLICATION REQUIREMENTS. (a) An applicant
14 for a license under this subchapter must submit an application to
15 the department on the form prescribed by the department. The
16 application must contain:

17 (1) the applicant's name, address, and telephone
18 number;

19 (2) the name, address, and telephone number of any
20 associated entity or organization the applicant is representing and
21 copies of documents verifying that relationship;

22 (3) the applicant's primary residences and business
23 addresses during the 12 months preceding the date of the
24 application;

25 (4) the nature of the food or beverages the applicant
26 will sell for the purpose of the department establishing the
27 applicant's food type classification;

1 (5) a statement of whether the applicant has
2 previously been denied a mobile food vending license or has had a
3 mobile food vending license suspended or revoked in another state
4 or local jurisdiction and the reasons for any denial, suspension,
5 or revocation; and

6 (6) for each food vending vehicle the applicant is
7 applying for a license to operate:

8 (A) the vehicle license number, description,
9 identification number, and registration;

10 (B) proof of vehicle insurance; and

11 (C) a copy or proof of any additional licenses or
12 permits required by this state for commercial vehicles.

13 (b) An applicant must attest under oath the information
14 submitted under Subsection (a).

15 (c) The department may require an applicant to submit
16 additional information.

17 (d) An applicant may submit one application for all food
18 vending vehicles that require a license under this subchapter.

19 (e) An applicant's failure to submit a complete application
20 may result in denial of a license.

21 (f) A person may not intentionally provide false
22 information or intentionally omit requested information on an
23 application for a license.

24 Sec. 437B.054. HEALTH INSPECTION. (a) Not later than the
25 14th day after the date the department receives a complete license
26 application, the department or a governmental entity acting under a
27 collaborative agreement as provided by Subchapter D, shall conduct

1 a health inspection of each of the applicant's food vending
2 vehicles listed on the application. The department may not issue a
3 mobile food vending license to an applicant whose food vending
4 vehicle does not pass a health inspection.

5 (b) The department shall ensure that:

6 (1) an applicant's food vending vehicle is safe for
7 preparing, handling, and selling food; and

8 (2) an applicant is in compliance with all applicable
9 laws and the rules adopted under those laws.

10 Sec. 437B.055. ISSUANCE OF LICENSE. (a) The department
11 shall issue a mobile food vending license to an applicant who
12 submits a complete application, pays any required fee, meets the
13 department's licensing requirements, and whose food vending
14 vehicle passes a health inspection.

15 (b) A license issued under this section expires on the first
16 anniversary of the date it was issued.

17 Sec. 437B.056. LICENSE RENEWAL. (a) Before expiration of a
18 license, the department shall send notice of the expiration to the
19 mobile food vendor. The mobile food vendor shall submit a renewal
20 application before the date the license expires.

21 (b) A mobile food vendor may continue to operate while the
22 mobile food vendor's application for renewal is pending with the
23 department.

24 Sec. 437B.057. LICENSE NOT TRANSFERABLE; SUBSTITUTION OF
25 VEHICLE. (a) A license issued under this subchapter is not
26 transferable and does not authorize the activities of any person
27 other than the person who holds the license.

1 (b) The sale of one food vending vehicle identified in a
2 license application, when replaced by another food vending vehicle,
3 does not invalidate the original license or require a new license. A
4 license holder who replaces a food vending vehicle with another
5 vehicle must provide to the department for the food vending vehicle
6 the information required by Section 437B.053 and have the vehicle
7 inspected as required by Section 437B.054. The health inspection
8 shall be conducted as soon as practicable but not later than the
9 14th calendar day after the date the department receives the
10 information required under this section.

11 (c) The recipient of transferred mobile food vending
12 business assets must apply for and obtain a new mobile food vending
13 license before operating as a mobile food vendor.

14 Sec. 437B.058. FEES. (a) The department may charge a fee
15 for each license application submitted and each license issued or
16 renewed under this chapter. The department may establish a schedule
17 of fees based on the license classifications described by Section
18 437B.151. The department shall set the fees in amounts that are
19 reasonable in relation to the costs of administering this section
20 but not more than \$200.

21 (b) The department may charge a fee for a health inspection
22 of an applicant's food vending vehicle required under Section
23 437B.054. The department shall set the fee in an amount that covers
24 the cost of conducting a health inspection under that section.

25 (c) At the time the department issues or renews a mobile
26 food vending license, the department shall charge a fee for a health
27 inspection required under Subchapter D. The department shall set

1 the fee in an amount that is based on the average cost of conducting
2 a health inspection multiplied by the number of annual health
3 inspections required during the next year for the mobile food
4 vendor classification type as described by Section 437B.151.

5 Sec. 437B.059. APPLICATION GUIDE. (a) The department
6 shall develop a guide on the mobile food vending licensing
7 procedures. The guide must include:

8 (1) instructions for obtaining, maintaining, and
9 renewing a mobile food vending license; and

10 (2) a description of the department's standards for
11 inspecting a food vending vehicle.

12 (b) The department shall make the guide available at the
13 department's office and on the department's Internet website.

14 Sec. 437B.060. DEPARTMENT DATABASE. (a) The department
15 shall establish and maintain a statewide database for use by the
16 department and local authorities that includes the:

17 (1) names of mobile food vendors who hold licenses
18 under this chapter;

19 (2) results of health inspections of mobile food
20 vendors' food vending vehicles, including inspection reports;

21 (3) public complaints made against mobile food
22 vendors; and

23 (4) itineraries of mobile food vendors submitted under
24 Subsection (b).

25 (b) A mobile food vendor may periodically submit to the
26 department an itinerary of the locations of the mobile food
27 vendor's food vending vehicles.

1 SUBCHAPTER C. MOBILE FOOD VENDING OPERATIONS

2 Sec. 437B.101. COMPLIANCE WITH STATE AND LOCAL LAW. A
3 mobile food vendor shall comply with all state and local laws in the
4 jurisdiction in which the mobile food vendor operates, including
5 all fire codes and zoning codes, that do not conflict with this
6 chapter.

7 Sec. 437B.102. LOCATION OF OPERATION. (a) A mobile food
8 vendor may operate on public property if the food vending vehicle is
9 parked at least 20 feet away from a street intersection. A mobile
10 food vendor may operate on any legal parking space, including a
11 metered space located on a public right-of-way, if the mobile food
12 vendor pays the required fees for parking in the space. When
13 operating on public property, a mobile food vendor is subject to the
14 same parking rules and restrictions as a commercial vehicle.

15 (b) A mobile food vendor may operate on private property if
16 the property is:

17 (1) located in an area in which food service
18 establishments may operate and the mobile food vendor has
19 permission from the property owner or the property owner's designee
20 to operate on the property; or

21 (2) located in a residential area and the mobile food
22 vendor is invited by a resident to operate on the resident's
23 property for the purpose of serving food to the resident or the
24 resident's guests.

25 (c) A mobile food vendor may not obstruct the passage of
26 pedestrians or vehicles along any street, sidewalk, or parkway.

27 Sec. 437B.103. FOOD VENDING VEHICLE DRIVER REQUIREMENTS. A

person who drives a food vending vehicle must hold a current commercial driver's license issued under Chapter 522, Transportation Code.

Sec. 437B.104. OPERATIONAL STANDARDS. (a) A mobile food vendor shall:

(1) maintain in good operating order each food vending vehicle the mobile food vendor uses;

(2) when operating on public property, position a food vending vehicle in such a manner as to face the service window toward the sidewalk or away from the street;

(3) provide a waste receptacle for customers that is clearly marked and request customers use the waste receptacle;

(4) collect, remove, and dispose of all refuse within 25 feet of the mobile food vendor's operating area at the conclusion of service;

(5) submit to and pass any required health inspection conducted under Subchapter D; and

(6) display the mobile food vendor's mobile food vending license and health inspection certificate in a conspicuous location for public view.

(b) A mobile food vendor operating at a temporary mass gathering that occurs over multiple days may operate in a stationary manner for the duration of the temporary mass gathering, not to exceed three consecutive days, without moving or changing location, if the mobile food vendor maintains sanitary conditions.

Sec. 437B.105. FOOD SAFETY. (a) A mobile food vendor shall comply with all laws and rules regarding food safety.

1 (b) At least one person working in a food vending vehicle
2 must hold a current food safety certification from a food service
3 program accredited as provided by Subchapter D, Chapter 438.

4 SUBCHAPTER D. HEALTH INSPECTIONS

5 Sec. 437B.151. MOBILE FOOD VENDOR CLASSIFICATIONS. (a)
6 The executive commissioner by rule shall establish classifications
7 of mobile food vendors for purposes of conducting health
8 inspections as follows:

9 (1) mobile food type I vendor for a mobile food vendor
10 who dispenses prepackaged foods, does not dispense time or
11 temperature control for safety beverages, or poses a low risk of
12 harm to the public;

13 (2) mobile food type II vendor for a mobile food vendor
14 who dispenses food that requires limited handling and preparation;
15 and

16 (3) mobile food type III vendor for a mobile food
17 vendor who prepares, cooks, holds, and serves food from a food
18 vending vehicle.

19 (b) The rules adopted under Subsection (a) shall specify the
20 categories of foods or beverages that mobile food vendors in each
21 classification may serve.

22 Sec. 437B.152. CHANGING CLASSIFICATIONS. A mobile food
23 vendor who seeks to serve food or beverages that may require the
24 vendor's reclassification shall notify the department of the nature
25 of the food or beverages to be sold. The department, or a local
26 authority in a collaborative agreement with the department under
27 Section 437B.153, may conduct a health inspection and reclassify

1 the mobile food vendor in accordance with the rules adopted under
2 Section 437B.151.

3 Sec. 437B.153. INSPECTIONS; COLLABORATIVE AGREEMENT WITH
4 LOCAL AUTHORITY. (a) To protect public health and safety, the
5 department shall ensure that a mobile food vendor is inspected on an
6 ongoing, randomized basis based on the mobile food vendor's
7 classification and health inspection grade.

8 (b) On request by a local authority, the department may
9 enter into a collaborative agreement with the local authority for
10 conducting health inspections. The department shall reimburse the
11 local authority acting under a collaborative agreement for the cost
12 of conducting a health inspection using money collected for health
13 inspection fees under Section 437B.058(c).

14 Sec. 437B.154. INSPECTION CRITERIA AND GRADING. (a) The
15 executive commissioner by rule shall establish statewide objective
16 criteria and a score-based grading system to be used by the
17 department or a local authority acting under a collaborative
18 agreement for conducting health inspections of mobile food vendors.

19 (b) The health inspection criteria established under
20 Subsection (a) shall provide a letter-grade format for rating a
21 mobile food vendor. The format shall rate a mobile food vendor with
22 a grade of "A," "B," "C," or "F" based on the score received during a
23 health inspection.

24 (c) The department shall provide a certificate of
25 excellence to a mobile food vendor who receives two consecutive
26 grades of "A." The department shall suspend the license of a mobile
27 food vendor who receives a grade of "F" until the vendor:

1 (1) corrects all violations discovered during the
2 health inspection; and

3 (2) is reinspected by the department or local
4 authority and receives a grade of "A," "B," or "C" for the health
5 inspection.

6 Sec. 437B.155. INSPECTION CERTIFICATE. (a) On completion
7 of a health inspection of a mobile food vendor, the department, or
8 local authority operating under a collaborative agreement, shall
9 issue a certificate to the mobile food vendor displaying the
10 vendor's letter grade and any applicable achievement of excellence
11 and record the grade in the department's database.

12 (b) A mobile food vendor shall display the certificate
13 received under Subsection (a) in a conspicuous location within view
14 of customers on the vendor's food vending vehicle.

15 Sec. 437B.156. FREQUENCY OF INSPECTIONS. The department,
16 or local authority operating under a collaborative agreement, shall
17 conduct randomized health inspections of mobile food vendors based
18 on the mobile food vendor's classification as follows:

19 (1) a mobile food type I vendor may be inspected only
20 when the department or a local authority receives a public health or
21 safety complaint regarding the mobile food vendor unless a health
22 inspection reveals a violation, then the mobile food vendor is
23 subject to health inspections at the frequency set for a mobile food
24 type II vendor until the vendor obtains a certificate of
25 excellence;

26 (2) a mobile food type II vendor shall be inspected
27 once each calendar year unless:

1 (A) on a health inspection the mobile food vendor
2 receives a certificate of excellence, then the mobile food vendor
3 shall subsequently be inspected at the frequency set for a mobile
4 food type I vendor; and

5 (B) the mobile food vendor holds a certificate of
6 excellence and receives a score lower than an "A" on a health
7 inspection, then the certificate of excellence is voided and the
8 mobile food vendor shall subsequently be inspected once each
9 calendar year; and

10 (3) a mobile food type III vendor shall be inspected
11 twice each calendar year unless:

12 (A) on a health inspection the mobile food vendor
13 receives a certificate of excellence, then the mobile food vendor
14 shall be inspected at the frequency set for mobile food type II
15 vendors; and

16 (B) the mobile food vendor holds a certificate of
17 excellence and receives a score lower than an "A" on a health
18 inspection, then the certificate of excellence is voided and the
19 mobile food vendor shall subsequently be inspected three times each
20 calendar year.

21 Sec. 437B.157. NOTICE OF LOCATION FOR INSPECTIONS. A
22 mobile food vendor shall make available to the department a list of
23 all locations at which the mobile food vendor operates. A mobile
24 food vendor may provide the list of locations through the mobile
25 food vendor's social media or on the mobile food vendor's Internet
26 website. If the mobile food vendor does not provide the list of
27 operating locations on social media or the mobile food vendor's

1 Internet website, the mobile food vendor shall submit to the
2 department in the form and manner prescribed by the department a
3 list of the locations at which the mobile food vendor operates.

4 Sec. 437B.158. REIMBURSEMENT OF INSPECTION FEE. On request
5 of a mobile food vendor, the department shall reimburse the mobile
6 food vendor the portion of the fee charged for each health
7 inspection required under this subchapter that was not conducted by
8 the department or local authority under a collaborative agreement
9 during the time the mobile food vendor's license was valid. The
10 department shall reimburse the mobile food vendor not later than
11 the 30th day after the date the department receives the mobile food
12 vendor's request.

13 SUBCHAPTER E. REGULATION BY LOCAL AUTHORITY

14 Sec. 437B.201. REGULATION BY LOCAL AUTHORITY. (a) A local
15 authority may regulate a license holder in accordance with this
16 subchapter. A local authority may:

17 (1) restrict the mobile food vendor from using a
18 noisemaking device that produces sound of more than 75 decibels
19 measured 23 feet from the device during specific times of day;

20 (2) restrict a mobile food vendor from operating in a
21 public park or require a special permit and payment of fees to
22 operate in a public park;

23 (3) prohibit a mobile food vendor from restricting or
24 blocking ingress to or egress from private property;

25 (4) develop a mobile food vendor metered parking pass
26 for a fee that authorizes a mobile food vendor to operate from
27 metered parking spaces for longer than otherwise allowed for

1 vehicles parking in the spaces;

2 (5) investigate reports of foodborne illnesses;

3 (6) report a mobile food vendor's suspected violation
4 of this chapter to the department and recommend the department
5 suspend or revoke the vendor's mobile food vending license; and

6 (7) cite mobile food vendors and issue penalties for
7 violations of local law not in conflict with this chapter.

8 (b) A local authority may not:

9 (1) prohibit or restrict a mobile food vendor from
10 operating in a lawful manner;

11 (2) address the hours of operation for a mobile food
12 vendor;

13 (3) unless the mobile food vendor seeks to operate in a
14 local public park, require a mobile food vendor to obtain a special
15 permit from the local authority in addition to a mobile food vending
16 license or a permit to operate as a commercial vehicle;

17 (4) require a mobile food vendor to pay an additional
18 fee to the local authority to operate on private property or require
19 a private property owner to submit a zoning plan to the local
20 authority as a condition of allowing vending on the owner's
21 property;

22 (5) require a mobile food vendor to obtain licenses,
23 permits, or background or criminal history record checks for the
24 mobile food vendor's employees;

25 (6) require a mobile food vendor's food vending
26 vehicle to submit to a fire inspection if the vendor demonstrates
27 that the vehicle passed a state or local fire inspection in the

1 preceding 12 months;

2 (7) restrict the time a mobile food vendor may operate
3 on private property in zoning districts where food service
4 establishments operate;

5 (8) require a mobile food vendor to operate a specific
6 distance from a commercial establishment or restaurant;

7 (9) require a mobile food vendor to enter into any
8 agreement with a commercial establishment or restaurant;

9 (10) regulate the equipment requirements for a food
10 vending vehicle;

11 (11) restrict a mobile food vendor 's propane capacity
12 below the capacity state law allows for commercial vehicles;

13 (12) require a mobile food vendor to associate with a
14 commissary;

15 (13) require a mobile food vendor to provide the
16 vendor's fingerprints;

17 (14) require a mobile food vendor to install a global
18 positioning system tracking device on its vehicle;

19 (15) require a mobile food vendor to stay in constant
20 motion except when serving customers;

21 (16) require a mobile food vendor to maintain an
22 insurance policy that names the local authority as an additional
23 insured unless the mobile food vendor is attending an event
24 sponsored by the local authority or operating in a local public
25 park;

26 (17) require a mobile food vendor to obtain a bond that
27 names the local authority as a beneficiary unless the mobile food

1 vendor is attending an event sponsored by the local authority or
2 operating in a local public park; or

3 (18) require a mobile food vendor to submit to health
4 inspections other than those required by the department unless the
5 local authority is investigating a reported foodborne illness.

6 SUBCHAPTER F. INVESTIGATION; ENFORCEMENT

7 Sec. 437B.251. INVESTIGATION. (a) The department or a
8 local authority may investigate a mobile food vendor on reasonable
9 suspicion the mobile food vendor is violating the law or on receipt
10 of a health or safety complaint. The department must record a
11 complaint in the state's mobile food vending database. The local
12 authority shall report suspected violations of state law to the
13 department and may recommend the department suspend or revoke a
14 mobile food vending license.

15 (b) The mobile food vendor shall cooperate with the
16 department or local authority during an investigation. Failure to
17 cooperate with the department or local authority may result in
18 suspension or revocation of a license.

19 (c) This chapter may not be construed to impede the
20 department or local authority when conducting an investigation of a
21 reported foodborne illness.

22 Sec. 437B.252. LICENSE DENIAL, SUSPENSION, OR REVOCATION.
23 The department may deny, suspend, or revoke a license issued under
24 this chapter only if:

25 (1) the applicant or license holder:
26 (A) violates this chapter, a rule adopted under
27 this chapter, or an order of the department;

1 (B) obtains a license by means of fraud,
2 misrepresentation, or concealment of a material fact;

3 (C) commits fraud or makes a misrepresentation or
4 false statement in connection with the sale of food or beverages
5 while operating as a mobile food vendor;

6 (D) is cited three or more times during a
7 12-month period for a violation of this chapter or rules adopted
8 under this chapter; or

9 (E) receives a grade of "F" during a health
10 inspection or a complaint made against the license holder is
11 sustained; or

12 (2) the department determines that material facts or
13 conditions related to the applicant or application provide
14 reasonable justification for the denial, suspension, or revocation
15 of the license.

16 Sec. 437B.253. NOTICE AND HEARING. (a) The department
17 shall provide written notice to an applicant or license holder that
18 the applicant's mobile food vending application has been denied or
19 that the license may be suspended or revoked. Not later than 14
20 calendar days after the date an applicant or license holder
21 receives notice from the department of a denial, suspension, or
22 revocation of a license, the applicant or license holder may
23 request a hearing in the form and manner prescribed by the
24 department.

25 (b) The department shall hold a hearing not later than 14
26 calendar days after the date the department receives a request for a
27 hearing from a license holder under Subsection (a). Following a

1 hearing under this section, the department shall promptly issue an
2 order that includes findings of fact and conclusions of law.

3 (c) The department may not suspend or revoke a license until
4 the department issues an order under Subsection (b) unless the
5 department determines that the license holder's mobile food vendor
6 operations pose an imminent threat to the public's health and
7 safety.

8 (d) The department shall immediately provide notice to a
9 license holder of a suspension or revocation of a license based on
10 an imminent threat to the public's health and safety. Not later than
11 14 calendar days after the date a license holder receives notice
12 from the department of a license suspension or revocation under
13 Subsection (c), the license holder may request a hearing in the form
14 and manner prescribed by the department.

15 (e) The department shall hold a hearing not later than seven
16 calendar days after the date the department receives a license
17 holder's request for hearing under Subsection (d). The department
18 shall give priority to a hearing under this subsection over all
19 other license denial, suspension, or revocation proceedings.
20 Following a hearing, the department shall promptly issue an order
21 that includes findings of fact and conclusions of law.

22 Sec. 437B.254. RIGHT TO APPEAL. Except as otherwise
23 provided by this section, the suspension or revocation of a license
24 by the department and the appeal from that action are governed by
25 the procedures for a contested case hearing under Chapter 2001,
26 Government Code.

27 Sec. 437B.255. ADMINISTRATIVE PENALTY. A license holder who

1 continues to operate after the department suspends or revokes the
2 license holder's license is subject to an administrative penalty in
3 an amount to be determined by the department.

4 SECTION 2. The heading to Chapter 437, Health and Safety
5 Code, is amended to read as follows:

6 CHAPTER 437. REGULATION OF FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD
7 STORES, [~~MOBILE FOOD UNITS,~~] AND ROADSIDE FOOD VENDORS

8 SECTION 3. Section 437.001(4), Health and Safety Code, is
9 amended to read as follows:

10 (4) "Food," "food service establishment," "retail food
11 store," [~~"mobile food unit,"~~] "roadside food vendor," and
12 "temporary food service establishment" have the meanings assigned
13 to those terms by rules adopted under this chapter.

14 SECTION 4. Section 437.002, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 437.002. ENFORCEMENT OF STATE LAW BY COUNTY OR PUBLIC
17 HEALTH DISTRICT. (a) A county or public health district may enforce
18 state law and rules adopted under state law concerning food service
19 establishments, retail food stores, [~~mobile food units,~~] and
20 roadside food vendors.

21 (b) This chapter does not authorize a county or public
22 health district to adopt orders establishing standards for the
23 operation of food service establishments, retail food stores,
24 [~~mobile food units,~~] or roadside food vendors.

25 SECTION 5. Section 437.003, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 437.003. COUNTY AUTHORITY TO REQUIRE PERMIT. To

1 enforce state law and rules adopted under state law, the
2 commissioners court of a county by order may require food service
3 establishments, retail food stores, [~~mobile food units,~~] and
4 roadside food vendors in unincorporated areas of the county,
5 including areas in the extraterritorial jurisdiction of a
6 municipality, to obtain a permit from the county.

7 SECTION 6. Sections 437.004(a) and (d), Health and Safety
8 Code, are amended to read as follows:

9 (a) A public health district that is established by at least
10 one county and one or more municipalities in the county by order may
11 require food service establishments, retail food stores, [~~mobile~~
12 ~~food units,~~] and roadside food vendors in the district to obtain a
13 permit from the district.

14 (d) This chapter does not restrict the authority of a
15 municipality that is a member of a public health district to adopt
16 ordinances or administer a permit system concerning food service
17 establishments, retail food stores, [~~mobile food units,~~] and
18 roadside food vendors.

19 SECTION 7. Section 437.0055(a), Health and Safety Code, is
20 amended to read as follows:

21 (a) A person may not operate a food service establishment,
22 retail food store, [~~mobile food unit,~~] or temporary food service
23 establishment located in an area in which a county or public health
24 district does not require a permit or conduct inspections under
25 this chapter unless the person has a permit issued by the
26 department.

27 SECTION 8. Section 437.0057(a), Health and Safety Code, is

1 amended to read as follows:

2 (a) A county, a public health district, or the department
3 may require certification under Subchapter D, Chapter 438, for each
4 food handler who is employed by a food service establishment in
5 which food is prepared on-site for sale to the public and which
6 holds a permit issued by the county, the public health district, or
7 the department. This section does not apply ~~[applies without~~
8 ~~regard]~~ to a mobile food vendor who is licensed under Chapter 437B
9 ~~[whether the food service establishment is at a fixed location or is~~
10 ~~a mobile food unit]~~.

11 SECTION 9. Sections 437.0076(a) and (b), Health and Safety
12 Code, are amended to read as follows:

13 (a) A county or public health district may require each
14 fixed ~~[or mobile]~~ location retail establishment in which food is
15 prepared on-site for sale to the public that holds a permit issued
16 by the county or public health district to employ a food manager
17 certified under Subchapter G, Chapter 438.

18 (b) The executive commissioner may require each fixed ~~[or~~
19 ~~mobile]~~ location retail establishment in which food is prepared
20 on-site for sale to the public that is required to be operated under
21 a permit under Section 437.0055 to employ a food manager certified
22 under Subchapter G, Chapter 438.

23 SECTION 10. Section 437.009, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 437.009. INSPECTIONS. Authorized agents or employees
26 of the department, a county, or a public health district may enter
27 the premises of a food service establishment, retail food store,

1 ~~[mobile food unit,~~] roadside food vendor, or temporary food service
2 establishment under the department's, county's, or district's
3 jurisdiction during normal operating hours to conduct inspections
4 to determine compliance with:

5 (1) state law, including a requirement to hold and
6 display written authorization under Section 437.021;

7 (2) rules adopted under state law; and

8 (3) orders adopted by the department, county, or
9 district.

10 SECTION 11. Section 437.0095, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 437.0095. DETENTION. The commissioner or an authorized
13 agent may detain an article of food that is located on the premises
14 of a food service establishment, retail food store, ~~[mobile food~~
15 ~~unit,~~] roadside food vendor, or temporary food service
16 establishment and is adulterated or misbranded under Chapter 431.

17 SECTION 12. Section 437.012(f), Health and Safety Code, is
18 amended to read as follows:

19 (f) A county or public health district may, by rule or
20 order, adopt a variable scale to determine the fee charged for a
21 permit under this section. In adopting a rule or order under this
22 subsection, the county or public health district may consider:

23 (1) the size of the food service establishment, retail
24 food store, ~~[mobile food unit,~~] or roadside food vendor;

25 (2) the number of people employed at the food service
26 establishment, retail food store, ~~[mobile food unit,~~] or roadside
27 food vendor; and

1 (3) the gross sales of the food service establishment,
2 retail food store, [~~mobile food unit,~~] or roadside food vendor.

3 SECTION 13. Sections 437.014(a) and (c), Health and Safety
4 Code, are amended to read as follows:

5 (a) A county or public health district may refuse to issue a
6 permit or may suspend or revoke a permit if the county or district
7 finds that the food service establishment, retail food store,
8 [~~mobile food unit,~~] or roadside food vendor is not in compliance
9 with state law, rules adopted under state law, or orders adopted by
10 the county or district.

11 (c) A county or public health district that requires a
12 permit to operate a food service establishment, retail food store,
13 [~~mobile food unit,~~] or roadside food vendor shall adopt procedures
14 for denying, suspending, or revoking a permit that afford due
15 process to the applicant or permit holder.

16 SECTION 14. Section 437.0145, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 437.0145. EMERGENCY SUSPENSION OR CLOSING ORDER. (a)
19 The department shall suspend the license of a food service
20 establishment, retail food store, [~~mobile food unit,~~] roadside food
21 vendor, or temporary food service establishment or order the
22 immediate closing of the food service establishment, retail food
23 store, [~~mobile food unit,~~] roadside food vendor, or temporary food
24 service establishment if:

25 (1) the department finds the food service
26 establishment, retail food store, [~~mobile food unit,~~] roadside food
27 vendor, or temporary food service establishment is operating in

violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the public.

(b) An order suspending a license or closing a food service establishment, retail food store, ~~[mobile food unit]~~, roadside food vendor, or temporary food service establishment under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(c) An order suspending a license or ordering an immediate closing of a food service establishment, retail food store, ~~[mobile food unit]~~, roadside food vendor, or temporary food service establishment is valid for 10 days after the effective date of the order.

SECTION 15. Section 437.015, Health and Safety Code, is amended to read as follows:

Sec. 437.015. INJUNCTION. A city attorney, county attorney, or district attorney may sue in district court to enjoin a food service establishment, retail food store, ~~[mobile food unit]~~, or roadside food vendor from operating without a permit if a permit is required.

SECTION 16. Section 437.016(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person operates a food service establishment, retail food store, ~~[mobile food unit]~~, or roadside food vendor without a permit required by the county or public health district in which the entity is operating.

SECTION 17. Section 437.0165(a), Health and Safety Code, is

1 amended to read as follows:

2 (a) A person commits an offense if the person operates a
3 food service establishment, retail food store, [~~mobile food unit~~],
4 or temporary food service establishment without a permit that is
5 required by the department under Section 437.0055.

6 SECTION 18. Section 437.0185(e), Health and Safety Code, is
7 amended to read as follows:

8 (e) The justice of the peace for the justice precinct in
9 which the retail food store or food establishment is located or the
10 [~~mobile food establishment or~~] roadside food vendor is based shall
11 hold a hearing requested under Subsection (d).

12 SECTION 19. Section 437.021, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 437.021. AUTHORITY TO OPERATE ON CERTAIN PROPERTY. A
15 person operating a [~~mobile food unit~~] roadside food vendor[7] or
16 temporary food service establishment in a county with a population
17 of more than 3.3 million shall acquire written authorization from
18 the owner of the property on which the [~~unit~~] vendor[7] or
19 establishment is operating. The written authorization must:

20 (1) be notarized;

21 (2) provide that the operator has the property owner's
22 permission to operate the [~~unit~~] vendor[7] or establishment on the
23 property; and

24 (3) be prominently displayed in the [~~unit~~] vendor[7]
25 or establishment in plain view of the public at all times.

26 SECTION 20. Section 121.0035, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 121.0035. REGULATION OF [~~MOBILE FOOD UNITS AND~~
2 ROADSIDE FOOD VENDORS IN CERTAIN POPULOUS AREAS. (a) In this
3 section, [~~"mobile food unit" and~~] "roadside food vendor" has [~~have~~]
4 the meaning [~~meanings~~] assigned under Section 437.001.

5 (b) A municipality with a population of 1.5 million or more
6 and a county with a population of 3.4 million or more shall enforce
7 state law and rules adopted under state law concerning [~~mobile food~~
8 ~~units and~~] roadside food vendors in the same manner that the county
9 or municipality enforces other health and safety regulations
10 relating to food service.

11 SECTION 21. Section 37.01(2), Penal Code, is amended to
12 read as follows:

13 (2) "Governmental record" means:

14 (A) anything belonging to, received by, or kept
15 by government for information, including a court record;

16 (B) anything required by law to be kept by others
17 for information of government;

18 (C) a license, certificate, permit, seal, title,
19 letter of patent, or similar document issued by government, by
20 another state, or by the United States;

21 (D) a standard proof of motor vehicle liability
22 insurance form described by Section 601.081, Transportation Code, a
23 certificate of an insurance company described by Section 601.083 of
24 that code, a document purporting to be such a form or certificate
25 that is not issued by an insurer authorized to write motor vehicle
26 liability insurance in this state, an electronic submission in a
27 form described by Section 502.046(i), Transportation Code, or an

evidence of financial responsibility described by Section 601.053 of that code; or

(E) an official ballot or other election record[~~+~~
~~or~~

~~[(F) the written documentation a mobile food unit is required to obtain under Section 437.0074, Health and Safety Code].~~

SECTION 22. Section 437A.002, Health and Safety Code, is amended to read as follows:

Sec. 437A.002. APPLICABILITY. (a) This chapter applies only to a county:

(1) with a population of more than 2.1 million; and

(2) in which is located partly or wholly:

(A) an airport operating under Subchapter (D, Chapter 22, Transportation Code; and

(B) an airport owned by the principal municipality in the county that does not offer commercial air service.

(b) This chapter does not apply to a mobile food vendor licensed under Chapter 437B. Health and Safety Code.

SECTION 23. Sections 437.0073 and 437.0074, Health and Safety Code, are repealed.

SECTION 24. (a) Chapter 437B, Health and Safety Code, as added by this Act, applies to an ordinance, rule, regulation, policy, or procedure adopted before, on, or after the effective date of this Act.

(b) Not later than May 1, 2026, the executive commissioner of the Health and Human Services Commission shall adopt the rules

1 required by Chapter 437B, Health and Safety Code, as added by this
2 Act.

3 (c) A mobile food vendor is not required to hold a license
4 under Chapter 437B, Health and Safety Code, as added by this Act,
5 before July 1, 2026.

6 SECTION 25. (a) Except as provided by Subsection (b) of this
7 section, this Act takes effect July 1, 2026.

8 (b) Section 437B.006, Health and Safety Code, as added by
9 this Act, takes effect September 1, 2025.