

BILL ANALYSIS

Senate Research Center

S.B. 81
By: Nelson
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently there is a loophole in the Texas Health and Safety Code that exempts fresh produce wholesalers from Department of State Health Services (DSHS) licensing requirements and regulatory authority. Therefore, these entities are not inspected by any state agency.

This exemption was originally included in statute because produce was considered low-risk for contamination. In recent years, however, cross-contamination has resulted in food-borne diseases being found in tomatoes, spinach, and peppers, among other types of produce.

S.B. 81 would close that loophole so that all entities that harvest, package, wash, or ship raw produce, except for small farmers, will be required to be licensed and regulated by DSHS.

S.B. 81 amends current law relating to food safety.

[**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.]

[**Note:** While the statutory reference in this bill is to the Texas Board of Health (TBH), the following amendments affect the executive commissioner of the Health and Human Services Commission, as the successor agency to TBH.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission [TBH] is modified in SECTION 2 (Section 431.226, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 431.227, Health and Safety Code), SECTION 6 (Section 437.0193, Health and Safety Code), and SECTION 7 (Section 437.0202, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 431.2211(a), Health and Safety Code, to provide that a person is not required to hold a license under this subchapter if the person is a certain entity, including a person, firm, or corporation that only harvests, packages, or washes raw fruits or vegetables for shipment at the location of harvest, rather than a person, firm, or corporation that only harvests, packages, washes, or ships raw fruits or vegetables.

SECTION 2. Amends Section 431.226(b), Health and Safety Code, to require the Texas Board of Health, in adopting rules under this section, to ensure that the minimum standards prioritize safe handling of fruits and vegetables based on known safety risks, including any history of outbreaks of food-borne communicable diseases, and consider acceptable produce safety standards developed by a federal agency, state agency, or university.

SECTION 3. Amends Subchapter J, Chapter 431, Health and Safety Code, by adding Section 431.227, as follows:

Sec. 431.227. **FOOD SAFETY BEST PRACTICE EDUCATION PROGRAM.**

(a) Requires the Texas Department of Health (TDH) to approve food safety best practice education programs for places of business licensed under this chapter.

(b) Requires a place of business that completes a food safety best practice education program approved by TDH to receive a certificate valid for five years from the date of completion of the program.

(c) Requires the appropriate inspecting authority, when determining which places of business to inspect under Section 431.042 (Inspection), to consider whether the place of business holds a valid certificate from a food safety best practice education program under this section.

(d) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) to adopt rules to implement this section.

SECTION 4. Amends Section 431.244, Health and Safety Code, by adding Subsection (f) to require the Department of State Health Services, for any federal regulation adopted as a state rule under this chapter, including a regulation considered to be a rule for purposes of this chapter under Subsection (a) (relating to providing that a regulation regarding certain substances is a rule), (b) (relating to providing that a regulation adopted under the Fair Packaging and Labeling Act is a rule), or (c) (relating to providing that a regulation adopted under certain federal Acts is a rule), to provide on its Internet website a link to the text of the federal regulation, a clear explanation of the substance of and purpose for the regulation, and information on providing comments in response to any proposed or pending federal regulation, including an address to which and the manner in which comments may be submitted.

SECTION 5. Amends Section 437.001, Health and Safety Code, by amending Subdivisions (1) and (3) and adding Subdivisions (2-a), (2-b), (3-a), and (5) to define "baked good," "cottage food production operation," "executive commissioner," and "home," and redefine "board" and "department."

SECTION 6. Amends Chapter 437, Health and Safety Code, by adding Sections 437.0191, 437.0192, 437.0193, and 437.0194, as follows:

Sec. 437.0191. **EXEMPTION FOR COTTAGE FOOD PRODUCTION OPERATIONS.** Provides that a cottage food production operation is not a food service establishment for purposes of this chapter.

Sec. 437.0192. **REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS BY LOCAL HEALTH DEPARTMENT PROHIBITED; COMPLAINTS.** (a) Prohibits a local health department from regulating the production of food at a cottage food production operation.

(b) Requires each local health department and the Department of State Health Services (DSHS) to maintain a record of a complaint made by a person against a cottage food production operation.

Sec. 437.0193. **LABELING REQUIREMENTS FOR COTTAGE FOOD PRODUCTION OPERATIONS.** Requires the executive commissioner to adopt rules requiring a cottage food production operation to label all of the foods described in Section 437.001(2-b)(A) that the operation sells to consumers. Requires that the label include the name and address of the cottage food production operation and a statement that the food is not inspected by DSHS or a local health department.

Sec. 437.0194. SALES BY COTTAGE FOOD PRODUCTION OPERATIONS THROUGH THE INTERNET PROHIBITED. Prohibits a cottage food production operation from selling any of the foods described in Section 437.001(2-b)(A) through the Internet.

SECTION 7. Amends Chapter 437, Health and Safety Code, by adding Sections 437.0201 and 437.0202, as follows:

Sec. 437.0201. REGULATION OF FOOD AT FARMERS' MARKETS UNDER TEMPORARY FOOD ESTABLISHMENT PERMITS. (a) Defines, in this section, "farmers' market."

(b) Authorizes DSHS or a local health department to issue a temporary food establishment permit to a person who sells food at a farmers' market without limiting the number of days for which the permit is effective to the number of days during which the farmers' market takes place.

(c) Authorizes a permit issued under Subsection (b) to be valid for up to one year and may be renewed on expiration.

(d) Provides that this section does not apply to a farmers' market in a county that has a population of less than 50,000, and over which no local health department has jurisdiction.

Sec. 437.0202. TEMPERATURE REQUIREMENTS FOR FOOD AT FARMERS' MARKETS. (a) Defines, in this section, "farmers' market."

(b) Authorizes the executive commissioner by rule to adopt temperature requirements for food sold at, prepared on-site at, or transported to or from a farmers' market under Section 437.020 (Produce Samples at Municipally Owned Farmers' Markets) 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, except as provided by Subsection (d), from mandating a specific method for complying with the temperature control requirements adopted under Subsection (b).

(d) Authorizes the municipality in which a municipally owned farmers' market is located to adopt rules specifying the method or methods that must be used to comply with the temperature control requirements adopted under Subsection (b).

(e) Provides that this section does not apply to a farmers' market in a county that has a population of less than 50,000, and over which no local health department has jurisdiction.

SECTION 8. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Section 431.2211(a), Health and Safety Code, as amended by this Act: September 1, 2012.