

By: Kolkhorst

H.B. No. 2084

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of small food production and sales operations.

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

SECTION 1. The heading to Section 435.009, Health and Safety Code, is amended to read as follows:

Sec. 435.009. FEES ON MILK AND MILK PRODUCTS.

SECTION 2. (a) Section 435.009(a), Health and Safety Code, is redesignated as Section 435.0091, Health and Safety Code, and amended to read as follows:

Sec. 435.0091. CERTAIN FEES PROHIBITED. [~~(a)~~] A political subdivision or agency of this state, other than the department, may not impose a fee on milk or a milk product, or on a person for the movement, distribution, or sale of milk or a milk product.

(b) Section 435.009, Health and Safety Code, is amended by adding Subsection (a-1) and amending Subsections (d) and (e) to read as follows:

(a-1) This section does not apply to a small dairy production operation as defined by Section 435.0092.

(d) A permit issued under Section 435.006 [~~this chapter~~] is valid for two years and must be renewed not later than September 1 of the year in which the permit expires.

(e) The department shall prorate fees paid for permits issued under Section 435.006 [~~this chapter~~] after the beginning of

1 a permit year.

2 SECTION 3. Subchapter A, Chapter 435, Health and Safety
3 Code, is amended by adding Section 435.0092 to read as follows:

4 Sec. 435.0092. PERMIT AND FEES FOR SMALL DAIRY PRODUCTION
5 OPERATIONS. (a) In this section, "small dairy production
6 operation" means a person who produces less than \$250,000 worth of
7 cheese and other milk products for retail sale, based on gross
8 retail sales.

9 (b) A person may not operate a small dairy production
10 operation unless the person holds a permit issued under this
11 section. The person must apply to the department for a permit.

12 (c) Notwithstanding Section 435.009(b), the department
13 shall impose on a small dairy production operation the following
14 fees:

15 (1) a permit fee of \$50 a year for a dairy farm; and

16 (2) a permit fee of \$100 a year for a dairy plant.

17 (d) A permit issued under this section is valid for one year
18 and must be renewed not later than September 1 of the year in which
19 the permit expires.

20 (e) The department shall prorate fees paid for permits
21 issued under this section after the beginning of a permit year.

22 (f) A small dairy production operation that holds a permit
23 under this section is not required to hold a permit under Section
24 435.006 or pay a fee under Section 435.009.

25 SECTION 4. Section 437.001, Health and Safety Code, is
26 amended by amending Subdivisions (1) and (3) and adding
27 Subdivisions (2-a), (2-b), (3-a), and (5) to read as follows:

1 (1) "Board" means the executive commissioner [~~Texas~~
2 ~~Board of Health~~].

3 (2-a) "Baked good" includes cookies, cakes, breads,
4 Danish, donuts, pastries, pies, and other items that are prepared
5 by baking the item in an oven. A baked good does not include a
6 potentially hazardous food item as defined by department rule.

7 (2-b) "Cottage food production operation" means an
8 individual, operating out of the individual's home, who:

9 (A) produces a baked good, a canned jam or jelly,
10 or a dried herb or herb mix for sale at the person's home or a
11 farmers' market;

12 (B) has an annual gross income of \$250,000 or
13 less from the sale of food described by Paragraph (A); and

14 (C) sells the foods produced under Paragraph (A)
15 only directly to consumers.

16 (3) "Department" means the [~~Texas~~] Department of State
17 Health Services.

18 (3-a) "Executive commissioner" means the executive
19 commissioner of the Health and Human Services Commission.

20 (5) "Home" means a primary residence that contains a
21 kitchen and appliances designed for common residential usage.

22 SECTION 5. Chapter 437, Health and Safety Code, is amended
23 by adding Sections 437.0191 and 437.0192 to read as follows:

24 Sec. 437.0191. EXEMPTION FOR COTTAGE FOOD PRODUCTION
25 OPERATIONS. A cottage food production operation is not a food
26 service establishment for purposes of this chapter.

27 Sec. 437.0192. REGULATION AND INVESTIGATION OF COTTAGE FOOD

1 PRODUCTION OPERATIONS BY LOCAL HEALTH DEPARTMENT. (a) A local
2 health department:

3 (1) may not regulate the production of food at a
4 cottage food production operation; and

5 (2) may investigate a cottage food production
6 operation only if the local health department receives a complaint
7 regarding the operation.

8 (b) If the department receives a complaint about a cottage
9 food production operation, the operation's owner shall provide the
10 department with a current financial statement, federal income tax
11 return, sales receipts, or other documentation to establish that
12 the annual gross sales of the operation do not exceed \$250,000.

13 SECTION 6. Chapter 33, Human Resources Code, is amended by
14 adding Section 33.029 to read as follows:

15 Sec. 33.029. FARMERS' MARKET NUTRITIONAL ASSISTANCE
16 PROGRAM. (a) In this section, "farmers' market" means a location
17 at which a group of two or more farmers that are certified under the
18 Department of Agriculture's farmers' market certification program
19 offer produce for retail sale.

20 (b) The department shall develop and implement a farmers'
21 market nutritional assistance program. The program must:

22 (1) allow a person receiving benefits under a
23 nutritional assistance program under this chapter to purchase at a
24 farmers' market food items eligible under the program;

25 (2) provide an affordable method for enabling
26 individual sellers at a farmers' market to accept and process an
27 electronic benefits transfer as payment for food; and

1 (3) make available to a person receiving benefits
2 under a nutritional assistance program administered under this
3 chapter information regarding the program and a list of
4 participating farmers' markets.

5 (c) The department may not implement a program under this
6 section for the sole purpose of regulating farmers' markets.

7 (d) The department may accept gifts or grants from
8 individuals or private or public organizations and accept federal
9 or local funds to implement and administer the program developed
10 under this section.

11 SECTION 7. (a) The comptroller shall:

12 (1) determine whether land is eligible, under current
13 law, for appraisal under Subchapter C or D, Chapter 23, Tax Code, if
14 the land is used to:

15 (A) cultivate an urban farm;

16 (B) cultivate a community garden;

17 (C) produce specialty crops; or

18 (D) raise livestock or produce crops using
19 organic, sustainable, or other unconventional methods; and

20 (2) study issues regarding the eligibility of land
21 used for the purposes listed in Subdivision (1) for appraisal under
22 Subchapter C or D, Chapter 23, Tax Code.

23 (b) Not later than December 1, 2012, the comptroller shall
24 submit to the appropriate standing committees of the senate and the
25 house of representatives a report on:

26 (1) the comptroller's eligibility determinations
27 under Subsection (a)(1);

1 (2) an analysis of the comptroller's reasons for
2 determining that land used for a purpose listed in Subsection
3 (a)(1) is or is not eligible for appraisal under Subchapter C or D,
4 Chapter 23, Tax Code; and

5 (3) as applicable and based on the determinations made
6 under Subdivision (a)(1), recommendations for legislation to
7 clarify or change the requirements for land to be eligible for
8 appraisal under Subchapter C or D, Chapter 23, Tax Code.

9 (c) This section expires December 31, 2012.

10 SECTION 8. The change in law made by this Act in amending
11 Section 435.009, Health and Safety Code, and adding Section
12 435.0092, Health and Safety Code, applies to a small dairy
13 production operation permit that is issued or renewed under Section
14 435.0092, Health and Safety Code, as added by this Act, on or after
15 the effective date of this Act. A permit issued or renewed under
16 Chapter 435, Health and Safety Code, before the effective date of
17 this Act is governed by the law in effect at the time the permit was
18 issued or renewed, and the former law is continued in effect for
19 that purpose.

20 SECTION 9. If before implementing any provision of this Act
21 a state agency determines that a waiver or authorization from a
22 federal agency is necessary for implementation of that provision,
23 the agency affected by the provision shall request the waiver or
24 authorization and may delay implementing that provision until the
25 waiver or authorization is granted.

26 SECTION 10. The Health and Human Services Commission shall
27 develop and implement the farmers' market nutritional assistance

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1 program as required by Section 33.029, Human Resources Code, as
2 added by this Act, not later than September 1, 2012.

3 SECTION 11. This Act takes effect September 1, 2011.