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H.B. No. 3387

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of food prepared, stored, distributed,  
or sold at farmers' markets.

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

SECTION 1. Section 437.020, Health and Safety Code, is  
amended to read as follows:

Sec. 437.020. REGULATION OF COOKING DEMONSTRATIONS AND FOOD  
[PRODUCE] SAMPLES AT [MUNICIPALLY OWNED] FARMERS' MARKETS. (a) In  
this section:

(1) "Farmers' market" means a designated location used  
primarily for the distribution and sale directly to consumers of  
raw or custom-shelled food products by farmers or other producers.

(2) "Food" means an agricultural, apicultural,  
horticultural, silvicultural, viticultural, or vegetable product  
for human consumption, in either its natural or processed state,  
that has been produced, processed, or otherwise has value added to  
the product in this state. The term includes:

(A) fish or other aquatic species;

(B) livestock, a livestock product, or a  
livestock by-product;

(C) planting seed;

(D) poultry, a poultry product, or a poultry  
by-product;

(E) wildlife processed for food or by-products;

1            (F) a product made from a product described by  
2 this subdivision by a farmer or other producer who grew or processed  
3 the product; or

4            (G) produce.

5            (3) "Produce" means fresh fruits or vegetables.

6            (b) Except as provided by this section and Sections 437.0201  
7 and 437.0202 [Subsection (b)]:

8            (1) this chapter does not regulate cooking  
9 demonstrations, the provision of samples of food, or the sale of  
10 food [~~produce~~] to consumers at a [~~municipally owned~~] farmers'  
11 market; and

12            (2) a rule adopted under state law may not regulate  
13 cooking demonstrations, the provision of samples of food, or the  
14 sale of food [~~produce~~] to consumers at a [~~municipally owned~~]  
15 farmers' market.

16            (c) Subject to Subsections (d) and (e), a person may process  
17 food on-site, including:

18            (1) heating food;

19            (2) scooping ice into cups;

20            (3) grilling food;

21            (4) preparing blended beverages;

22            (5) cutting food; and

23            (6) dividing servings for consumption.

24            (d) Samples of food [~~(b) Produce samples~~] may only be  
25 distributed at a [~~municipally owned~~] farmers' market if the  
26 following sanitary conditions exist:

27            (1) [~~produce~~] samples must be kept in [~~approved,~~]

1 clean~~[7]~~ and covered containers;

2 (2) ~~[produce]~~ samples must be distributed in a  
3 sanitary manner;

4 (3) a person preparing produce samples on-site must:

5 (A) wear clean, disposable plastic gloves ~~[must~~  
6 ~~be used]~~ when preparing ~~[cutting produce]~~ samples; or

7 (B) observe proper hand washing techniques  
8 immediately before preparing samples;

9 (4) produce intended for sampling must be washed in  
10 potable water to remove any soil or other visible material so that  
11 it is wholesome and safe for consumption;

12 (5) except as provided by Section 437.0202(b),  
13 ~~[potable water must be available for hand washing and sanitizing as~~  
14 ~~approved by the local or state enforcement agency;~~

15 ~~[(6)]~~ potentially hazardous food ~~[cut produce]~~, as  
16 determined by rule of the department, must be maintained at or below  
17 41 degrees Fahrenheit~~[, and produce samples must be disposed of~~  
18 ~~within two hours after cutting]; and~~

19 (6) ~~[(7) utensil and hand washing water must be~~  
20 ~~disposed of in a facility connected to the public sewer system or in~~  
21 ~~a manner approved by the local or state enforcement agency; and~~

22 ~~[(8)]~~ utensils and cutting surfaces used for cutting  
23 produce must be smooth, nonabsorbent, and easily cleaned or  
24 disposed of ~~[as approved by the local or state enforcement agency].~~

25 (e) A person may conduct a cooking demonstration at a  
26 farmers' market only if:

27 (1) regardless of whether the demonstrator provides a

1 sample of food to consumers, the farmers' market that hosts the  
2 demonstration:

3 (A) has a valid permit issued under Subchapter D,  
4 Chapter 438; and

5 (B) complies with the requirements of a temporary  
6 food establishment under this chapter and rules adopted under this  
7 chapter; and

8 (2) if the demonstrator provides a sample of food to  
9 consumers:

10 (A) the demonstrator provides a sample only and  
11 not a full serving; and

12 (B) samples of food prepared during a  
13 demonstration are disposed of not later than four hours after the  
14 beginning of the demonstration.

15 SECTION 2. Chapter 437, Health and Safety Code, is amended  
16 by adding Sections 437.0201 and 437.0202 to read as follows:

17 Sec. 437.0201. REGULATION OF FOOD SALES AT FARMERS'  
18 MARKETS. (a) In this section, "farmers' market" and "food" have the  
19 meanings assigned by Section 437.020.

20 (b) The department or a local health department may issue a  
21 temporary food establishment permit to a person who sells food at a  
22 farmers' market held at a single location without limitation on the  
23 number of days for which the permit is effective.

24 (c) A person to whom a permit is issued under Subsection (b)  
25 may, at the farmers' market for which the permit is issued, engage  
26 in the on-site preparation and sale of food, including:

27 (1) heating food;

- 1           (2) scooping ice into cups;
- 2           (3) grilling food;
- 3           (4) preparing blended beverages;
- 4           (5) cutting food; and
- 5           (6) dividing servings for consumption.

6           (d) A person to whom a permit is issued under Subsection (b)  
7 shall comply with the requirements of a temporary food  
8 establishment under this chapter and rules adopted under this  
9 chapter.

10           Sec. 437.0202. COMMISSION RULES REGARDING FOOD AT FARMERS'  
11 MARKETS. (a) In this section, "farmers' market" and "food" have the  
12 meanings assigned by Section 437.020.

13           (b) The executive commissioner by rule shall adopt  
14 temperature requirements for food prepared, sold, or distributed  
15 on-site at a farmers' market under Section 437.020 or 437.0201.  
16 Food prepared on-site at a farmers' market may be sold or  
17 distributed at the farmers' market only if the food is prepared in  
18 compliance with the temperature requirements adopted under this  
19 section.

20           (c) The executive commissioner or a state or local  
21 enforcement agency may not mandate a specific method for complying  
22 with temperature control requirements for food prepared on-site at  
23 a farmers' market or transported to the farmers' market.

24           (d) The executive commissioner or a state or local  
25 enforcement agency may not adopt a rule requiring a farmers' market  
26 to pay a permit fee for conducting a cooking demonstration or  
27 providing samples of food if the demonstration or provision of

1 samples is conducted for a bona fide educational purpose.

2           SECTION 3. The executive commissioner of the Health and  
3 Human Services Commission shall adopt the rules required by Section  
4 437.0202(b), Health and Safety Code, as added by this Act, not later  
5 than September 1, 2012.

6           SECTION 4. This Act takes effect September 1, 2011.