

AN ACT

relating to food safety.

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

SECTION 1. Subsection (a), Section 431.2211, Health and Safety Code, is amended to read as follows:

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

(1) a person, firm, or corporation that only harvests, packages, or washes [~~or ships~~] raw fruits or vegetables for shipment at the location of harvest;

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

(3) a person who holds a license under Chapter 432 and who only engages in conduct within the scope of that license; or

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

SECTION 2. Subsection (b), Section 431.226, Health and Safety Code, is amended to read as follows:

(b) The board by rule shall establish minimum standards for granting and maintaining a license. In adopting rules under this section, the board shall:

1 (1) ensure that the minimum standards prioritize safe
2 handling of fruits and vegetables based on known safety risks,
3 including any history of outbreaks of food-borne communicable
4 diseases; and

5 (2) consider acceptable produce safety standards
6 developed by a federal agency, state agency, or university.

7 SECTION 3. Subchapter J, Chapter 431, Health and Safety
8 Code, is amended by adding Section 431.227 to read as follows:

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

10 (a) The department shall approve food safety best practice
11 education programs for places of business licensed under this
12 chapter.

13 (b) A place of business that completes a food safety best
14 practice education program approved by the department shall receive
15 a certificate valid for five years from the date of completion of
16 the program.

17 (c) When determining which places of business to inspect
18 under Section 431.042, the appropriate inspecting authority shall
19 consider whether the place of business holds a valid certificate
20 from a food safety best practice education program under this
21 section.

22 (d) The executive commissioner of the Health and Human
23 Services Commission shall adopt rules to implement this section.

24 SECTION 4. Section 431.244, Health and Safety Code, is
25 amended by adding Subsection (f) to read as follows:

26 (f) For any federal regulation adopted as a state rule under
27 this chapter, including a regulation considered to be a rule for

1 purposes of this chapter under Subsection (a), (b), or (c), the
2 Department of State Health Services shall provide on its Internet
3 website:

- 4 (1) a link to the text of the federal regulation;
5 (2) a clear explanation of the substance of and
6 purpose for the regulation; and
7 (3) information on providing comments in response to
8 any proposed or pending federal regulation, including an address to
9 which and the manner in which comments may be submitted.

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

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

15 (2-a) "Baked good" includes cookies, cakes, breads,
16 Danish, donuts, pastries, pies, and other items that are prepared
17 by baking the item in an oven. A baked good does not include a
18 potentially hazardous food item as defined by department rule.

19 (2-b) "Cottage food production operation" means an
20 individual, operating out of the individual's home, who:

21 (A) produces a baked good, a canned jam or jelly,
22 or a dried herb or herb mix for sale at the person's home;

23 (B) has an annual gross income of \$50,000 or less
24 from the sale of food described by Paragraph (A); and

25 (C) sells the foods produced under Paragraph (A)
26 only directly to consumers.

27 (3) "Department" means the [~~Texas~~] Department of State

1 Health Services.

2 (3-a) "Executive commissioner" means the executive
3 commissioner of the Health and Human Services Commission.

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

6 SECTION 6. Chapter 437, Health and Safety Code, is amended
7 by adding Sections 437.0191, 437.0192, 437.0193, and 437.0194 to
8 read as follows:

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

12 Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION
13 OPERATIONS BY LOCAL HEALTH DEPARTMENT PROHIBITED; COMPLAINTS.

14 (a) A local health department may not regulate the production of
15 food at a cottage food production operation.

16 (b) Each local health department and the department shall
17 maintain a record of a complaint made by a person against a cottage
18 food production operation.

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

26 Sec. 437.0194. SALES BY COTTAGE FOOD PRODUCTION OPERATIONS
27 THROUGH THE INTERNET PROHIBITED. A cottage food production

1 operation may not sell any of the foods described in Section
2 437.001(2-b)(A) through the Internet.

3 SECTION 7. Chapter 437, Health and Safety Code, is amended
4 by adding Sections 437.0201 and 437.0202 to read as follows:

5 Sec. 437.0201. REGULATION OF FOOD AT FARMERS' MARKETS UNDER
6 TEMPORARY FOOD ESTABLISHMENT PERMITS. (a) In this section,
7 "farmers' market" means a designated location used primarily for
8 the distribution and sale directly to consumers of food products by
9 farmers or other producers.

10 (b) The department or a local health department may issue a
11 temporary food establishment permit to a person who sells food at a
12 farmers' market without limiting the number of days for which the
13 permit is effective to the number of days during which the farmers'
14 market takes place.

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

17 (d) This section does not apply to a farmers' market in a
18 county:

19 (1) that has a population of less than 50,000; and

20 (2) over which no local health department has
21 jurisdiction.

22 Sec. 437.0202. TEMPERATURE REQUIREMENTS FOR FOOD AT
23 FARMERS' MARKETS. (a) In this section, "farmers' market" has the
24 meaning assigned by Section 437.0201.

25 (b) The executive commissioner by rule may adopt
26 temperature requirements for food sold at, prepared on-site at, or
27 transported to or from a farmers' market under Section 437.020 or

1 437.0201. Food prepared on-site at a farmers' market may be sold or
2 distributed at the farmers' market only if the food is prepared in
3 compliance with the temperature requirements adopted under this
4 section.

5 (c) Except as provided by Subsection (d), the executive
6 commissioner or a state or local enforcement agency may not mandate
7 a specific method for complying with the temperature control
8 requirements adopted under Subsection (b).

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

13 (e) This section does not apply to a farmers' market in a
14 county:

- 15 (1) that has a population of less than 50,000; and
16 (2) over which no local health department has
17 jurisdiction.

18 SECTION 8. (a) Except as provided by Subsection (b) of
19 this section, this Act takes effect September 1, 2011.

20 (b) Subsection (a), Section 431.2211, Health and Safety
21 Code, as amended by this Act, takes effect September 1, 2012.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 81 passed the Senate on March 17, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 28, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 81 passed the House, with amendments, on May 25, 2011, by the following vote: Yeas 131, Nays 17, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor