

BILL ANALYSIS

C.S.H.B. 46
By: Flynn
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that laws regulating the sale of raw milk in Texas are ambiguous, resulting in undue hardships on consumers, who often have to drive to a farm to purchase raw milk. C.S.H.B. 46 seeks to remove what some believe to be unnecessary barriers to the sale of raw milk and raw milk products by expanding the locations at which certain licensed persons are authorized to sell such products while establishing additional regulations relating to such sales.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.H.B. 46 amends the Health and Safety Code to authorize a person who holds a permit that authorizes the person to sell raw milk or raw milk products at retail to make retail sales of raw milk or raw milk products directly to a consumer in Texas at the permit holder's place of business, the consumer's residence, or a farmers' market, except in a municipality that by ordinance regulates the retail sale of raw milk and raw milk products. The bill specifies that this authorization does not authorize the sale of raw milk or raw milk products to or on the premises of a grocery store, supermarket, or similar retail market; the sale of raw milk or raw milk products that are a blend of raw milk purchased from more than one holder of a permit to sell milk; or the sale of raw milk or raw milk products by a person other than the permit holder. The bill requires raw milk and raw milk products to be maintained in compliance with the bill's provisions relating to the storage, handling, and transporting of raw milk and raw products for retail sale.

C.S.H.B. 46 requires a person who sells raw milk or raw milk products under the bill's provisions to affix to individual raw milk or raw milk product containers a label that includes the name of the permit holder, the permit holder's permit number, the calendar date the raw milk or raw milk product was packaged in the container, and a specified statement that includes the contents of the container and a health advisory regarding food-borne illnesses. The bill requires the Department of State Health Services (DSHS), on request, to provide the requestor with a record of test results from an inspection of raw milk or raw milk products conducted by DSHS or another authorized

entity.

C.S.H.B. 46 requires the executive commissioner of the Health and Human Services Commission to adopt rules for the safe storing, handling, and transporting of raw milk and raw milk products produced for sale under the bill's provisions. The bill requires such raw milk and raw milk products to be placed in a sterile or single-use container and sold not later than the fifth day after the date the container was filled. The bill requires raw milk and raw milk products being transported for delivery to be maintained in air temperatures at or below 45 degrees Fahrenheit at all times, except during the transfer from one storage area or transportation vehicle to another, and to be protected from exposure to direct sunlight. The bill prohibits DSHS or a local health authority from mandating the specific method for complying with a temperature requirement. The bill authorizes a producer to contract with another person to transport and deliver raw milk and raw milk products in accordance with the bill's provisions and provides that a producer is jointly and severally liable for transport and delivery of raw milk and raw milk products not conducted in accordance with applicable statutory provisions and rules.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 46 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter A, Chapter 435, Health and Safety Code, is amended by adding Sections 435.0061 and 435.0062 to read as follows:

Sec. 435.0061. RAW MILK AND RAW MILK PRODUCTS FOR RETAIL SALE.

(a) This section does not authorize the sale of:

- (1) raw milk or raw milk products to or on the premises of a grocery store, supermarket, or similar retail market; or
- (2) raw milk or raw milk products that are a blend of raw milk purchased from more than one holder of a permit issued under this chapter.

(b) Except as provided by Section 435.013, a person who holds a permit that authorizes the person to sell raw milk or raw milk products at retail may make retail sales of raw milk or raw milk products directly to a consumer in this state at:

- (1) the permit holder's place of business;
- (2) the consumer's residence; or
- (3) any other location where producers customarily sell their products directly to

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 435, Health and Safety Code, is amended by adding Sections 435.0061, 435.0062, and 435.0063 to read as follows:

Sec. 435.0061. RAW MILK AND RAW MILK PRODUCTS FOR RETAIL SALE.

(a) This section does not authorize the sale of:

- (1) raw milk or raw milk products to or on the premises of a grocery store, supermarket, or similar retail market;
- (2) raw milk or raw milk products that are a blend of raw milk purchased from more than one holder of a permit issued under this chapter; or

(3) raw milk or raw milk products by a person other than the permit holder.

(b) Except as provided by Section 435.013, a person who holds a permit that authorizes the person to sell raw milk or raw milk products at retail may make retail sales of raw milk or raw milk products directly to a consumer in this state at:

- (1) the permit holder's place of business;
- (2) the consumer's residence; or
- (3) a farmers' market as defined by Section 437.0201.

consumers, including a farmers' market, farm stand, flea market, or fair.

(c) The permit holder may deliver the raw milk or raw milk products to the consumer at the point of sale or, except as provided by Subsection (a), any other location in this state the consumer designates.

(d) A person who sells raw milk or raw milk products under this section shall affix to individual raw milk or raw milk product containers a label that includes:

(1) the name of the permit holder; and

(2) the following statement: "This product contains unpasteurized milk. Please consult with your physician to determine if this product presents a health risk."

Sec. 435.0062. AVAILABILITY OF RECORDS ON RAW MILK TESTING.

No equivalent provision.

(c) Raw milk and raw milk products must be maintained in compliance with Section 435.0063.

(d) A person who sells raw milk or raw milk products under this section shall affix to individual raw milk or raw milk product containers a label that includes:

(1) the name of the permit holder;

(2) the permit holder's permit number;

(3) the calendar date the raw milk or raw milk product was packaged in the container; and

(4) the following statement: "This product contains unpasteurized milk. Consuming raw foods, including raw dairy products, may increase your risk of food-borne illness. Persons at higher risk for food-borne illness include pregnant and nursing women, children, the elderly, and people with weakened immune systems."

Same as introduced version.

Sec. 435.0063. STORING, HANDLING, AND TRANSPORTING RAW MILK AND RAW MILK PRODUCTS FOR RETAIL SALE. (a) The department shall adopt rules for the safe storing, handling, and transporting of raw milk and raw milk products produced for sale under Section 435.0061.

(b) Raw milk and raw milk products produced for sale under this chapter must be placed in a sterile or single-use container and sold not later than the fifth day after the date the container was filled.

(c) Raw milk and raw milk products being transported for delivery must be:

(1) maintained in air temperatures at or below 45 degrees Fahrenheit at all times except during transfer from one storage area or transportation vehicle to another; and

(2) protected from exposure to direct sunlight.

(d) The department or a local health authority may not mandate the specific method for complying with a temperature

requirement.

(e) A producer may contract with another person to transport and deliver raw milk and raw milk products in accordance with this section. The producer is jointly and severally liable for transport and delivery of raw milk and raw milk products not conducted in accordance with this chapter and department rules.

SECTION 2. This Act takes effect September 1, 2013.

SECTION 2. Same as introduced version.