

## **BILL ANALYSIS**

Senate Research Center  
83R22049 JSC-F

H.B. 1382  
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Agriculture, Rural Affairs & Homeland Security  
5/17/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 1382 amends current law relating to the regulation of food prepared, stored, distributed, or sold at farms and farmers' markets, and limits the applicability of a fee.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) is modified in SECTION 4 (Section 437.0202, Health and Safety Code) of this bill.

Rulemaking authority of the executive commissioner or a state or local enforcement agency is restricted in SECTION 2 (Section 437.020, Health and Safety Code), SECTION 3 (Section 437.0201, Health and Safety Code), SECTION 4 (Section 437.0202, Health and Safety Code), and SECTION 5 (Section 437.0203, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 437.001, Health and Safety Code, by adding Subdivision (6), to define "produce."

SECTION 2. Amends Section 437.020, Health and Safety Code, as follows:

Sec. 437.020. New heading: REGULATION OF FOOD SAMPLES AT FARMS AND FARMERS' MARKETS. (a) Defines "farmers' market" and "food" in this section.

(b) Creates this subsection from existing text. Provides that, except as provided by this section and Sections 437.0201 (Regulation of Food at Farmers' Markets Under Temporary Food Establishment Permits), 437.0202 (Temperature Requirements for Food at Farmers' Markets), and 437.0203, rather than by Subsection (b):

(1) this chapter (Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors) does not regulate the provision of samples of food or the sale of food to consumers at a farm or farmers' market, rather than samples of produce to consumers at a municipally owned farmers' market; and

(2) a rule adopted under state law is prohibited from regulating the provision of samples of food or the sale of food to consumers at a farm or farmers' market, rather than samples of produce to consumers at a municipally owned farmers' market.

(c) Redesignates existing Subsection (b) as Subsection (c). Authorizes samples of food to be prepared and distributed at a farm or farmers' market if the following sanitary conditions exist:

(1) samples are required to be distributed in a sanitary manner;

- (2) a person preparing produce samples on-site is required to:
  - (A) wear clean, disposable plastic gloves when preparing samples; or
  - (B) observe proper hand washing techniques immediately before preparing samples;
- (3) produce intended for sampling is required to be washed in potable water to remove any soil or other visible material;
- (4) potable water is required to be available for washing;
- (5) except as provided by Section 437.0202(b), potentially hazardous food, as determined by rule of the Department of State Health Services (DSHS), is required to be maintained at or below 41 degrees Fahrenheit or disposed of within two hours after cutting or preparing; and
- (6) utensils and cutting surfaces used for cutting samples are required to be smooth, nonabsorbent, and easily cleaned or disposed of.

Deletes existing text authorizing produce samples to only be distributed at a municipally owned farmers' market if certain sanitary conditions exist, including produce samples are required to be kept in approved, clean, and covered containers; produce samples are required to be distributed in a sanitary manner; clean, disposable plastic gloves are required to be used when cutting produce samples; produce intended for sampling is required to be washed in potable water to remove any soil or other material so that it is wholesome and safe for consumption; potable water is required to be available for hand washing and sanitizing as approved by the local or state enforcement agency; potentially hazardous cut produce, as determined by rule of DSHS, is required to be maintained at or below 41 degrees Fahrenheit, and produce samples are required to be disposed of within two hours after cutting; utensil and hand washing water is required to be disposed of in a facility connected to the public sewer system or in a manner approved by the local or state enforcement agency; and utensils and cutting surfaces are required to be smooth, nonabsorbent, and easily cleaned or disposed of as approved by the local or state enforcement agency. Makes nonsubstantive changes.

(d) Requires a person who sells or provides a sample of meat or poultry or food containing meat or poultry to comply with Chapter 433 (Texas Meat and Poultry Inspection Act).

SECTION 3. Amends Section 437.0201, Health and Safety Code, by amending Subsection (a) and adding Subsection (e), as follows:

- (a) Redefines "farmers' market" and defines "food" in this section.
- (e) Prohibits the executive commissioner of the Health and Human Services Commission (executive commissioner) or a state or local enforcement agency from adopting a rule requiring a farmers' market to pay a permit fee for conducting a cooking demonstration or providing samples of food if the demonstration or provision of samples is conducted for a bona fide educational purpose.

SECTION 4. Amends Sections 437.0202(a) and (b), Health and Safety Code, as follows:

- (a) Redefines "farmers' market" and defines "food" in this section.

(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, 437.0201, or 437.0203. Makes nonsubstantive changes.

SECTION 5. Amends Chapter 437, Health and Safety Code, by adding Section 437.0203, as follows:

Sec. 437.0203. REGULATION OF COOKING DEMONSTRATIONS AT FARMERS' MARKETS. (a) Redefines "farmers' market" and "food" in this section.

(b) Provides that, except as provided by this section and Sections 437.020, 437.0201, and 437.0202:

(1) this chapter does not regulate cooking demonstrations at a farmers' market; and

(2) a rule adopted under state law is prohibited from regulating cooking demonstrations at a farmers' market.

(c) Authorizes a person to conduct a cooking demonstration at a farmers' market only if:

(1) regardless of whether the demonstrator provides a sample of food to consumers, the farmers' market that hosts the demonstration:

(A) has an establishment operator with a valid certification under Subchapter D, Chapter 438, supervising the demonstration; and

(B) complies with Sections 437.020 and 437.0202, the requirements of a temporary food establishment under this chapter, and rules adopted under this chapter; and

(2) when the demonstrator provides a sample of food to consumers:

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

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

SECTION 6. Effective date: September 1, 2013.