

## **BILL ANALYSIS**

C.S.H.B. 1382  
By: Simpson  
Agriculture & Livestock  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that current state regulations treat samples provided at farm stands and farmers' markets similarly to those prepared in large brick-and-mortar grocery stores. The parties further contend that such regulations are both impractical and unnecessary for outdoor settings where the farmer is selling directly to consumers for a short period once or twice a week and that there has been confusion over the regulations, as well as barriers created by the permitting process and associated fees. C.S.H.B. 1382 seeks to address these issues in order to provide clear standards regarding food prepared, stored, distributed, or sold at farms and farmers' markets.

### **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 SECTIONS 2 and 4 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. 1382 amends the Health and Safety Code to expand the applicability of statutory provisions governing samples at farmers' markets to include the regulation of all food samples, rather than only produce samples. The bill removes a specification limiting the applicability of such provisions to municipally owned farmers' markets and instead makes those provisions applicable to farms and farmers' markets. The bill expands a provision prohibiting a rule adopted under state law from regulating the provision of samples of food to consumers at a farm or farmers' market to prohibit the regulation by rule of both the provision of such samples and the sale of food to consumers at a farm or farmers' market. The bill removes from a provision establishing the sanitary conditions required for samples of food to be prepared and distributed at a farm or farmers' market the requirements that produce samples be kept in approved, clean, and covered containers and that utensil and hand washing water be disposed of in a facility connected to the public sewer system or in a manner approved by the local or state enforcement agency. The bill removes from those same provisions the requirement that the local or state enforcement agency approve the manner in which potable water is available for washing and sanitizing and in which utensils and cutting surfaces are disposed. The bill requires a person preparing produce samples on-site to observe proper hand washing techniques immediately before preparing samples if the person is not wearing clean, disposable plastic gloves and specifies that potentially hazardous food must be disposed of within two hours after cutting or preparing if not maintained

at or below 41 degrees Fahrenheit. The bill removes from a requirement that produce intended for sampling be washed in potable water the specification that produce be washed so that it is wholesome and safe for consumption and instead specifies that it be washed, in part, to remove visible material. The bill requires a person who sells or provides a sample of meat or poultry or food containing meat or poultry to comply with the Texas Meat and Poultry Inspection Act.

C.S.H.B. 1382 prohibits the executive commissioner of the Health and Human Services Commission 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. The bill 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 for purposes of a cooking demonstration.

C.S.H.B. 1382 establishes that statutory provisions regulating food service establishments, retail food stores, mobile food units, and roadside food vendors do not regulate cooking demonstrations at a farmers' market and prohibits a rule adopted under state law from regulating such cooking demonstrations. The bill authorizes a person to conduct a cooking demonstration at a farmers' market only if, regardless of whether the demonstrator provides a sample of food to customers, the farmers' market that hosts the demonstration has an establishment operator with a valid certification supervising the demonstration and complies with statutory provisions relating to the provision of samples and temperature requirements for food at farmers' markets and with requirements and rules adopted under statutory provisions relating to regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors. The bill requires, when the demonstrator provides a sample of food to consumers, that the demonstrator provide a sample only and not a full serving and that samples of food prepared during the demonstration be disposed of not later than two hours after the beginning of the demonstration.

#### **EFFECTIVE DATE**

September 1, 2013.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1382 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. Section 437.001, Health and Safety Code, is amended by adding Subdivisions (3-b) and (6) to read as follows:

(3-b) "Farmers' market" means a designated location used primarily for the distribution and sale directly to consumers by farmers or other producers.

(6) "Produce" means fresh fruits or vegetables.

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 2. (part) Section 437.020, Health and Safety Code, is amended to read as follows:

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

SECTION 1. Section 437.001, Health and Safety Code, is amended by adding Subdivision (6) to read as follows:

(6) "Produce" means fresh fruits or vegetables.

SECTION 2. Section 437.020, Health and Safety Code, is amended to read as follows:

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

"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 or processed or otherwise has had value added to the product in this state.

The term includes:

- (1) fish or other aquatic species;
- (2) livestock, a livestock product, or a livestock by-product;
- (3) planting seed;
- (4) poultry, a poultry product, or a poultry by-product;
- (5) wildlife processed for food or by-products;
- (6) a product made from a product described by this subsection by a farmer or other producer who grew or processed the product; or
- (7) produce.

(b) Except as provided by this section and Sections 437.0201, 437.0202, and 437.0203 [Subsection (b)]:

- (1) this chapter does not regulate the provision of samples of food or the sale of food [produce] to consumers at a farm or [municipally owned] farmers' market; and
- (2) a rule adopted under state law may not regulate the provision of samples of food or the sale of food [produce] to consumers at a farm or [municipally owned] farmers' market.

(c) Samples of food [(b) Produce samples] may [only] be prepared and distributed at a farm or [municipally owned] farmers' market if the following sanitary conditions exist:

- (1) [produce samples must be kept in approved, clean, and covered containers; (2) produce] samples must be distributed in a sanitary manner;
- (2) a person preparing produce samples on-site must:
  - (A) wear [(3)] clean, disposable plastic gloves [must be used] when preparing [cutting produce] samples; or

SECTION 2. (part) Section 437.020, Health and Safety Code, is amended to read as follows:

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

(1) See text of added subdivision above.

(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 or processed or otherwise has had 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;
- (F) a product made from a product described by this subdivision by a farmer or other producer who grew or processed the product; or
- (G) produce.

(b) Except as provided by this section and Sections 437.0201, 437.0202, and 437.0203 [Subsection (b)]:

- (1) this chapter does not regulate the provision of samples of food or the sale of food [produce] to consumers at a farm or [municipally owned] farmers' market; and
- (2) a rule adopted under state law may not regulate the provision of samples of food or the sale of food [produce] to consumers at a farm or [municipally owned] farmers' market.

(c) Samples of food [(b) Produce samples] may [only] be prepared and distributed at a farm or [municipally owned] farmers' market if the following sanitary conditions exist:

- (1) [produce samples must be kept in approved, clean, and covered containers; (2) produce] samples must be distributed in a sanitary manner;
- (2) a person preparing produce samples on-site must:
  - (A) wear [(3)] clean, disposable plastic gloves [must be used] when preparing [cutting produce] samples; or

(B) observe proper hand washing techniques immediately before preparing samples;  
(3) [(4)] produce intended for sampling must be washed in potable water to remove any soil or other visible material [so that it is wholesome and safe for consumption];  
(4) [(5)] potable water must be available for [hand] washing [and sanitizing as approved by the local or state enforcement agency];  
(5) except as provided by Section 437.0202(b), [(6)] potentially hazardous food [eat produce], as determined by rule of the department, must be maintained at or below 41 degrees Fahrenheit or [,—and produce samples must be] disposed of within four [~~two~~] hours after cutting or preparing; and  
(6) [(7)] utensil and hand washing water must 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  
[(8)] utensils and cutting surfaces used for cutting samples must be smooth, nonabsorbent, and easily cleaned or disposed of [as approved by the local or state enforcement agency].

**No equivalent provision.**

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

(a) In this section, "food" has the meaning assigned by Section 437.020 [~~"farmers' market" means a designated location used primarily for the distribution and sale directly to consumers of food products by farmers or other producers~~].

(e) The executive commissioner or a state or local enforcement agency may not adopt 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. Sections 437.0202(a) and (b), Health and Safety Code, are amended to read as follows:

(a) In this section, "food" [~~"farmers'~~

(B) observe proper hand washing techniques immediately before preparing samples;  
(3) [(4)] produce intended for sampling must be washed in potable water to remove any soil or other visible material [so that it is wholesome and safe for consumption];  
(4) [(5)] potable water must be available for [hand] washing [and sanitizing as approved by the local or state enforcement agency];  
(5) except as provided by Section 437.0202(b), [(6)] potentially hazardous food [eat produce], as determined by rule of the department, must be maintained at or below 41 degrees Fahrenheit or [,—and produce samples must be] disposed of within two hours after cutting or preparing; and  
(6) [(7)] utensil and hand washing water must 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  
[(8)] utensils and cutting surfaces used for cutting samples must be smooth, nonabsorbent, and easily cleaned or disposed of [as approved by the local or state enforcement agency].

(d) A person who sells or provides a sample of meat or poultry or food containing meat or poultry must comply with Chapter 433.

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

(a) In this section, **"farmers' market" and "food"** have the meanings assigned by Section 437.020 [~~means a designated location used primarily for the distribution and sale directly to consumers of food products by farmers or other producers~~].

(e) The executive commissioner or a state or local enforcement agency may not adopt 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. Sections 437.0202(a) and (b), Health and Safety Code, are amended to read as follows:

(a) In this section, **"farmers' market" and**

market"] has the meaning assigned by Section 437.020 [~~437.0201~~].

(b) The executive commissioner by rule may adopt temperature requirements for food sold at, prepared on-site at, or transported to or from a farmers' market under Section 437.020, [~~or~~] 437.0201, or 437.0203. Food prepared on-site at a farmers' market may be sold or distributed at the farmers' market only if the food is prepared in compliance with the temperature requirements adopted under this section.

SECTION 5. Chapter 437, Health and Safety Code, is amended by adding Section 437.0203 to read as follows:

Sec. 437.0203. REGULATION OF COOKING DEMONSTRATIONS AT FARMERS' MARKETS. (a) In this section, "food" has the meaning assigned by Section 437.020.

(b) 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 may not regulate cooking demonstrations at a farmers' market.

(c) A person may 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 ~~four~~ hours after the beginning of the demonstration.

SECTION 6. This Act takes effect September 1, 2013.

"food" have [~~has~~] the meanings [~~meaning~~] assigned by Section 437.020 [~~437.0201~~].

(b) The executive commissioner by rule may adopt temperature requirements for food sold at, prepared on-site at, or transported to or from a farmers' market under Section 437.020, [~~or~~] 437.0201, or 437.0203. Food prepared on-site at a farmers' market may be sold or distributed at the farmers' market only if the food is prepared in compliance with the temperature requirements adopted under this section.

SECTION 5. Chapter 437, Health and Safety Code, is amended by adding Section 437.0203 to read as follows:

Sec. 437.0203. REGULATION OF COOKING DEMONSTRATIONS AT FARMERS' MARKETS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.020.

(b) 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 may not regulate cooking demonstrations at a farmers' market.

(c) A person may 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. Same as introduced version.