

House Bill 1382
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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:

(1) "Farmers' market" means a designated location used primarily for the distribution and sale directly to consumers of food 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 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

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SECTION 1. Same as House version.

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:

(1) "Farmers' market" means a designated location used primarily for the distribution and sale directly to consumers of food 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 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

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(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 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

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(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 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

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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 "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

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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.

(e) This section does not authorize the sale of or provision of samples of raw milk or raw milk products at a farmers' market. [FA1]

SECTION 3. Same as House version.

SECTION 4. Same as House version.

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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

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SECTION 5. Same as House version.

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servings; 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. This Act takes effect September 1, 2013.

SECTION 6. Same as House version.