

BILL ANALYSIS

Senate Research Center
86R20592 SRA-F

H.B. 1694
By: Lambert et al. (Johnson)
Health & Human Services
5/13/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Prior to 2013, farmers who provided samples at farmers' markets were subjected to the same regulations as samples prepared in large grocery stores. In 2013, the legislature passed H.B. 1382, establishing sanitary standards for providing samples at a farmers' market. The legislation intended for producers who met the standards required under H.B. 1382 to provide samples at their booths without the need to meet any further requirements.

However, this has not been the bill's practical effect. Farmers' markets in Frisco, Longview, Austin, Harris County, McKinney, and others have reported being required to have a separate permit for sampling and some have also had to navigate additional regulatory burdens. Local health departments in these areas have cited a separate section of the law (Health and Safety Code Section 437.0201(e)), which waives fees for cooking demonstrations and samples from those demonstrations when done for educational purposes, to claim authority to require permits and fees for sampling that is not connected with cooking demonstrations.

Sampling permits and fees impose a significant burden on farmers' market vendors. Sampling is a very important aspect of the farmers' market experience. It provides a way to draw customers to different booths and introduce them to a new type of food that may not be aesthetically pleasing. However, the fees associated with these regulatory burdens (which the legislature intended to remove in 2013) render the ability to provide samples economically unfeasible.

H.B. 1694 will reduce the unnecessary and impractical requirements imposed on small farmers and food businesses selling at farmers' markets by clearly stating that a local health department may not impose additional permitting requirements on farmers' market vendors who wish to provide samples. Vendors will still be subject to regulations requiring sanitary handling of samples (Health and Safety Code, Section 437.020), but will be free of additional and unreasonable local regulations of sampling.

H.B. 1694 amends current law relating to limitations on food regulations at farms, farmers' markets, and cottage food production operations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 437.020(a)(2), Health and Safety Code, to redefine "food" to include a product made from a product described by this subdivision by a farmer or other producer, including a cottage food production operation, who grew or processed the product.

SECTION 2. Amends Section 437.020, Health and Safety Code, by adding Subsections (b-1), (b-2), (b-3), (f), and (g), as follows:

(b-1) Prohibits the Department of State Health Services (DSHS) or a local government authority, including a local health department, from requiring a person to obtain a permit under this chapter (Regulation of Food Service Establishments, Retail Food Stores,

Mobile Food Units, and Roadside Food Vendors) to provide samples of food at a farm or farmers' market under this section (Regulation of Food Samples at Farms and Farmers' Markets).

(b-2) Prohibits a local government authority, including a local health department, from regulating the provision of samples of food at a farm or farmers' market except as provided by this chapter.

(b-3) Authorizes DSHS or a local government authority, including a local health department, to:

(1) perform an inspection to enforce the requirements of this section for preparing and distributing samples of food at a farm or farmers' market; and

(2) require a person to obtain a permit under this chapter to offer for sale or distribution to consumers food cooked at a farm or farmers' market.

(f) Authorizes a cottage food production operation to only provide samples of food described by Section 437.001(2-b)(A) (relating to the definition of "cottage food production operation") produced by the operation.

(g) Provides that this section does not apply to a person who:

(1) provides samples of food at a farm or farmers' market; and

(2) does not sell food directly to consumers at the farm or farmers' market.

SECTION 3. Amends Section 437.0201(e), Health and Safety Code, as follows:

(e) Creates Subdivision (1) from existing text. Prohibits the executive commissioner of the Health and Human Services Commission (executive commissioner), a state enforcement agency, or a local government authority, including a local health department, rather than the executive commissioner, or a state or local enforcement agency, from adopting a rule requiring a farmers' market to pay a permit fee for:

(1) conducting a cooking demonstration if the demonstration is conducted for a bona fide educational purpose, rather than conducting a cooking demonstration or providing samples of food if the demonstration or provision of samples is conducted for a bona fide educational purpose; or

(2) providing samples of food.

SECTION 4. Effective date: September 1, 2019.