

BILL ANALYSIS

Senate Research Center
87R6385 EAS-F

S.B. 617
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Health & Human Services
4/9/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last session, S.B. 932 was directed at supporting farmers and small-scale food producers who sell their products at farmers' markets. S.B. 932 capped the amount of fees that local health departments could charge farmers' market vendors at \$100 per year, the same amount as charged by the Texas Department of State Health Services (DSHS). S.B. 932 was unanimously approved by the Senate and by a vote of 140-1 in the House.

S.B. 932 applied to both farmers and "an individual" who prepares food for sale at a farmers' market. Yet despite the clear intentions of the bill, a few local jurisdictions have limited their applicability to only farmers and excluded all other people selling food at farmers' markets. For example, the Harris County Health Department is continuing to charge as much as \$2,080 annually for food producers at farmers' markets in its jurisdiction. The claimed justification is that a subject header in the bill referred to "producers," and DSHS's 2013 definition of "producer" is quite narrow. But the subject header and an old agency definition should not trump the language and clear intention of the 2019 bill.

S.B. 617 addresses the problem by making the terms consistent and providing a legislative definition of "producer," namely a person who grew, raised, processed, prepared, manufactured, or otherwise added value to the food product the person is selling. The bill also clarifies that farmers' markets must have a majority of their vendors who are farmers or food producers selling food directly to consumers. Lastly, the bill would recompense farmers' market vendors for their expense in bringing suit to enforce the law if necessary.

S.B. 617 makes no substantive change to the current law but merely brings clarity to the policies already adopted by the legislature in 2019.

Key Provisions:

Defines "food producer" as a person who grew, raised, processed, prepared, manufactured, or otherwise added value to the food product the person is selling.

Clarifies that food producers are eligible for permits and that the permits must cover sales at all locations the permit holder is authorized to sell food, including farmers' markets, farm stands, and farms.

Clarifies that "farmers' market" refers to a designated location used for a recurring event at which a majority of the vendors are farmers or other food producers who sell food directly to consumers.

Allows a farmer or food producer who is charged an excessive annual fee or whose permit does not otherwise comply with applicable law to bring an action against the governmental entity that charged the fee or issued the permit.

As proposed, S.B. 617 amends current law relating to the regulation of certain direct sales of food to consumers and a limitation on the fee amount for certain permits.

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 437.0065, Health and Safety Code, as follows:

Sec. 437.0065. PERMITS FOR CERTAIN FARMERS AND FOOD PRODUCERS. (a) Defines "farmers' market" and "food producer."

(b) Provides that this section applies only to a permit issued under Chapter 437 (Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors), Health and Safety Code, to certain individuals, including a food producer, other than a farmer, for the sale of food directly to consumers at a farmers' market, rather than an individual who prepares food for sale at a farmers' market.

(c) Provides that a permit issued under Section 437.003 (County Authority to Require Permit), 437.004 (Public Health District Authority to Require Permit), 437.0055 (Permit from Department Required in Areas Not Regulated by County or Public Health District), or 437.0201 (Regulation of Food at Farmers' Markets Under Temporary Food Establishment Permits) to a person described by Subsection (b):

(1) - (2) makes no changes; and

(3) is required to cover sales at all locations the permit holder is authorized to sell food under Subsection (b), including farmers' markets, farm stands, and farms, rather than sales at all locations, within the jurisdiction of the permitting authority.

(d) Authorizes a farmer or food producer who is charged an annual fee in an amount that exceeds the amount authorized by Subsection (c)(2) (relating to authorization of an annual fee not to exceed \$100) or whose permit does not otherwise comply with this section to bring an action against the governmental entity that charged the fee or issued the permit to recover:

(1) the amount the farmer or food producer was charged in excess of the annual fee authorized by Subsection (c)(2); and

(2) reasonable and necessary attorney's fees incurred in bringing the action.

(e) Provides that sovereign and governmental immunity of a governmental entity to suit and from liability is waived to the extent of liability created by this section.

SECTION 2. Amends Section 437.020(a), Health and Safety Code, by amending Subdivision (1) and adding Subdivision (3), as follows:

(1) Redefines "farmers' market" for purposes of Section 437.020 (Regulation of Food Samples at Farms and Farmers' Markets) as a designated location used for a recurring event at which a majority of the vendors are farmers or other food producers who sell food directly to consumers, rather than a designated location used primarily for the distribution and sale directly to consumers of food by farmers or other producers.

(3) Defines "food producer" for purposes of Section 437.020.

SECTION 3. (a) Makes application of this Act prospective.

(b) Makes application of Sections 437.0065(d) (relating to recovering excess permit fees) and (e) (relating to sovereign and governmental immunity of a governmental entity), Health and Safety Code, as added by this Act, prospective.

SECTION 4. Effective date: upon passage or September 1, 2021.