

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2844
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Mobile food vendors in Texas face a patchwork of inconsistent permitting requirements and bureaucratic hurdles that vary widely from one jurisdiction to another. Even neighboring cities like Midland and Odessa, just a short drive apart, impose significantly different permitting requirements on mobile vendors. This creates substantial barriers to entry and duplicative costs for entrepreneurs, who are mostly small business owners and working Texans striving to earn a living through their mobile food vendor operations.

H.B. 2844 creates a uniform, statewide licensing system for mobile food vendors to ensure consistency across the state. With this license, a mobile food vendor can operate in any municipality, county, or other political subdivision, so long as they maintain compliance with any applicable state and local time and place regulations. Additionally, the bill's provisions authorize the Department of State Health Services, or a local authority contracted with the department, to conduct standardized health inspections. The bill also assigns food safety risk classifications to distinct types of vendors. Lastly the bill clarifies penalties and emergency suspensions of mobile food vendor operations should a vendor not maintain compliance with the law.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 2844 amends current law relating to the regulation of food service establishments, including retail food stores and mobile food vendors, requires an occupational license, imposes fees, and authorizes an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Sections 437B.004 and 437B.151, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 437, Health and Safety Code, by adding Section 437.0063, as follows:

Sec. 437.0063. SMALL-SCALE FOOD BUSINESS PERMIT EXEMPTIONS. (a) Defines "food producer" and "small-scale food business."

(b) Prohibits a county, municipality, or public health district from requiring a small-scale food business or an employee of a small-school food business to obtain a permit or pay a permitting fee to operate a food service establishment, temporary food service establishment, retail food establishment, temporary retail food establishment, or retail food store at a location for which the business holds a permit issued by the Department of State Health Services (DSHS) for that purpose or is licensed as a food manufacturer under Subchapter J (Food Manufacturers, Food Wholesalers, and Warehouse Operations), Chapter 431 (Texas Food, Drug, and Cosmetic Act).

(c) Provides that this section preempts a county's, municipality's, or public health district's authority to regulate a small-scale food business in a manner that conflicts with this section.

SECTION 2. Amends Subtitle A, Title 6, Health and Safety Code, by adding Chapter 437B, as follows:

CHAPTER 437B. MOBILE FOOD VENDORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 437B.001. DEFINITIONS. Defines "applicant," "food vending vehicle," "license holder," "local authority," "mobile food vendor," and "prepackaged food."

Sec. 437B.002. CONSTRUCTION OF CHAPTER. Prohibits this chapter from being construed to require a local authority to enter into a collaborative agreement with DSHS to conduct health inspections, adopt a program regulating mobile food vendors, or modify a local authority's existing mobile food vendor regulation program, provided the local authority's regulations do not conflict with this chapter.

Sec. 437B.003. LOCAL PREEMPTION. Provides that this chapter preempts a local authority's power to prohibit or regulate mobile food vendors in a manner that conflicts with this chapter.

Sec. 437B.004. RULES. Authorizes the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules to implement this chapter. Provides that the rules are required to be narrowly tailored to address a demonstrable health or safety risk and prohibited from limiting the number of mobile food vendor licenses DSHS is authorized to issue, addressing the hours of operation for mobile food vendors, restricting a mobile food vendor's propane capacity below the capacity state law allows for commercial vehicles, or requiring a mobile food vendor to take certain actions.

SUBCHAPTER B. LICENSE

Sec. 437B.051. LICENSE REQUIRED. (a) Prohibits a person from operating as a mobile food vendor in this state unless the person holds a mobile food vendor's license issued by DSHS. Provides that a separate license is required for each food vending vehicle a mobile food vendor operates.

(b) Prohibits a local authority from prohibiting the operation in its jurisdiction of a mobile food vendor who holds a mobile food vendor license and complies with all other state and local laws not in conflict with this chapter.

Sec. 437B.052. FORM OF APPLICATION. Requires DSHS to prescribe a written application for a mobile food vendor license. Requires DSHS to make the application available to applicants in person and on DSHS's Internet website.

Sec. 437B.053. APPLICATION REQUIREMENTS. (a) Requires an applicant for a mobile food vendor license to submit an application to DSHS on the form DSHS prescribes. Requires that the application contain certain information.

(b) Requires an applicant to attest to the information submitted under Subsection (a).

(c) Authorizes DSHS to require an applicant to submit additional information.

(d) Authorizes an applicant to submit one application for all food vending vehicles to be licensed under this subchapter.

(e) Provides that an applicant's failure to submit a complete application may result in denial of a license.

(f) Prohibits a person from intentionally providing false information or intentionally omitting requested information on an application.

Sec. 437B.054. HEALTH INSPECTION. (a) Requires DSHS or a governmental entity acting under a collaborative agreement under Subchapter D, not later than the 14th day after the date DSHS receives a complete mobile food vendor license application, to conduct a health inspection of each of the applicant's food vending vehicles listed on the application. Prohibits DSHS from issuing a license to an applicant whose vehicle does not pass a health inspection.

(b) Requires DSHS to ensure that an applicant's food vending vehicle is safe for preparing, handling, and selling food and an applicant is in compliance with all applicable laws and the rules adopted under those laws.

Sec. 437B.055. ISSUANCE OF LICENSE. (a) Requires DSHS to issue a mobile food vendor license to an applicant who submits a complete application, pays any required fee, and meets DSHS's licensing requirements and whose food vending vehicle passes a health inspection.

(b) Provides that a license issued under this section expires on the first anniversary of the date of issuance.

Sec. 437B.056. LICENSE RENEWAL. (a) Requires DSHS, before expiration of a license, to send notice of the expiration to the mobile food vendor. Requires the vendor to submit a renewal application before the date the license expires.

(b) Authorizes a mobile food vendor to continue to operate while the vendor's application for renewal is pending with DSHS.

Sec. 437B.057. LICENSE NOT TRANSFERABLE; SUBSTITUTION OF VEHICLE. (a) Provides that a mobile food vendor license issued under this subchapter is not transferable and does not authorize the activities of any person other than the person who holds the license.

(b) Provides that the sale of one food vending vehicle identified in a mobile food vendor license application, when replaced by another food vending vehicle, does not invalidate the license or require issuance of a new license.

(c) Requires a license holder who replaces a food vending vehicle with another vehicle to provide to DSHS for the replacement vehicle the information required by Section 437B.053 and have the replacement vehicle inspected as required by Section 437B.054. Requires that the health inspection be conducted as soon as practicable but not later than the 14th calendar day after the date DSHS receives the information required under this section.

(d) Requires the recipient of transferred mobile food vendor business assets to apply for and obtain a new mobile food vendor license before operating as a mobile food vendor.

Sec. 437B.058. FEES. (a) Authorizes DSHS to charge a fee for each mobile food vendor license application submitted and each license issued or renewed under this chapter. Authorizes DSHS to establish a schedule of fees based on the license classifications described by Section 437B.151. Authorizes DSHS to set the fees in amounts necessary to cover the costs of administering this chapter.

(b) Authorizes DSHS to charge a fee for a health inspection of an applicant's food vending vehicle required under Section 437B.054. Requires DSHS to set the fee

in an amount that covers the cost of conducting a health inspection under that section.

(c) Requires DSHS, at the time DSHS issues or renews a mobile food vendor license, to charge a fee for a health inspection required under Subchapter D. Requires DSHS to set the fee in an amount based on the average cost of conducting a health inspection multiplied by the number of annual health inspections required during the next year for the mobile food vendor classification type as described by Section 437B.151.

Sec. 437B.059. MOBILE FOOD VENDOR GUIDE. (a) Requires DSHS to develop a guide on the mobile food vendor licensing procedures. Requires that the guide include instructions for obtaining, maintaining, and renewing a mobile food vendor license and a description of DSHS's standards for inspecting a food vending vehicle.

(b) Requires DSHS to make the guide available at DSHS's office and on DSHS's Internet website.

Sec. 437B.060. DEPARTMENT DATABASE. (a) Requires DSHS to establish and maintain a statewide database for use by DSHS and local authorities that includes certain information.

(b) Authorizes a mobile food vendor to periodically submit to DSHS an itinerary of the locations of the mobile food vendor's food vending vehicles.

SUBCHAPTER C. MOBILE FOOD VENDOR OPERATIONS

Sec. 437B.101. COMPLIANCE WITH STATE AND LOCAL LAW. Requires a mobile food vendor to comply with all state and local laws in the jurisdiction in which the mobile food vendor operates, including all fire codes, location restrictions, and zoning codes.

Sec. 437B.102. FOOD VENDING VEHICLE DRIVER REQUIREMENTS. Requires a person who drives a motorized food vending vehicle to hold a current commercial driver's license if a commercial driver's license is required for the vehicle's class under Chapter 522 (Commercial Driver's License), Transportation Code.

Sec. 437B.103. OPERATIONAL STANDARDS. Requires a mobile food vendor to submit to and pass any required health inspection conducted under Subchapter D and display the mobile food vendor license and health inspection certificate in a conspicuous location for public view.

Sec. 437B.104. FOOD SAFETY. Requires a mobile food vendor to comply with all laws and rules regarding food safety, including any food safety and food manager certifications required under Chapter 438 (Public Health Measures Related to Food).

SUBCHAPTER D. HEALTH INSPECTIONS

Sec. 437B.151. MOBILE FOOD VENDOR CLASSIFICATIONS. (a) Requires the executive commissioner by rule to establish classifications of mobile food vendors for purposes of conducting health inspections as follows:

- (1) mobile food type I vendor for a vendor who dispenses prepackaged foods, does not dispense time or temperature control for safety beverages, or poses a low risk of harm to the public;
- (2) mobile food type II vendor for a vendor who dispenses food that requires limited handling and preparation; and
- (3) mobile food type III vendor for a vendor who prepares, cooks, holds, and serves food from a food vending vehicle.

(b) Requires that the rules adopted under Subsection (a) specify the categories of foods or beverages that mobile food vendors in each classification are authorized to serve.

Sec. 437B.152. CHANGING CLASSIFICATIONS. Requires a mobile food vendor who seeks to serve food or beverages that may require the vendor's reclassification to notify DSHS of the nature of the food or beverages to be sold. Authorizes DSHS, or a local authority in a collaborative agreement with DSHS under Section 437B.153, to conduct a health inspection and reclassify the vendor in accordance with the rules adopted under Section 437B.151.

Sec. 437B.153. INSPECTIONS; COLLABORATIVE AGREEMENT WITH LOCAL AUTHORITY. (a) Requires DSHS, to protect public health and safety, to ensure ongoing, randomized inspections are conducted on each mobile food vendor based on the mobile food vendor's classification and previous health inspection results.

(b) Authorizes DSHS, on request by a local authority, to enter into a collaborative agreement with the local authority for conducting health inspections. Requires DSHS to reimburse the local authority acting under a collaborative agreement for the cost of conducting a health inspection using money collected for health inspection fees under Section 437B.058(c).

Sec. 437B.154. NOTICE OF LOCATION FOR INSPECTIONS. Requires a mobile food vendor to make available to DSHS a list of all locations at which the vendor intends to operate, to the best of the vendor's knowledge. Authorizes a vendor to provide the list of locations through the vendor's social media or on the vendor's Internet website. Requires the vendor, if the vendor does not provide the list of operating locations on social media or the vendor's Internet website, to submit to DSHS in the form and manner DSHS prescribes a list of the locations at which the vendor intends to operate, to the best of the vendor's knowledge.

Sec. 437B.155. REIMBURSEMENT OF INSPECTION FEE. Requires DSHS, on request of a mobile food vendor, to reimburse the vendor the portion of the fee charged for each health inspection required under this subchapter that was not conducted by DSHS or local authority under a collaborative agreement during the time the vendor's license was valid. Requires DSHS to reimburse the vendor not later than the 30th day after the date DSHS receives the vendor's request.

SUBCHAPTER E. INVESTIGATION; ENFORCEMENT

Sec. 437B.201. INVESTIGATION. (a) Authorizes DSHS or a local authority to investigate a mobile food vendor on reasonable suspicion the vendor is violating the law or on receipt of a health or safety complaint. Requires DSHS to record a complaint in the state's mobile food vendor database. Provides that the local authority is required to report suspected violations of state law to DSHS and authorized to recommend DSHS suspend or revoke a mobile food vendor license.

(b) Requires the mobile food vendor to cooperate with DSHS or the local authority during an investigation. Provides that failure to cooperate with DSHS or the local authority may result in suspension or revocation of a license.

(c) Prohibits this chapter from being construed to impede DSHS or the local authority when conducting an investigation of a reported foodborne illness.

Sec. 437B.202. LICENSE DENIAL, SUSPENSION, OR REVOCATION. Provides that DSHS is authorized to deny, suspend, or revoke a mobile food vendor license only if the license holder or applicant takes certain actions or DSHS determines that material facts or conditions related to the applicant or application provide reasonable justification for the denial, suspension, or revocation of the license.

Sec. 437B.203. NOTICE AND HEARING. (a) Requires DSHS to provide written notice to an applicant or license holder that the applicant's mobile food vendor application has been denied or that the license may be suspended or revoked. Authorizes the applicant or license holder, not later than 14 calendar days after the date an applicant or license holder receives notice from DSHS of a denial, suspension, or revocation of a license, to request a hearing in the form and manner DSHS prescribes.

(b) Requires DSHS, if the applicant for or holder of a mobile food vendor license requests a hearing as prescribed by DSHS, to promptly refer the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

(c) Requires DSHS, following a hearing or on conclusion of the involvement of SOAH in the matter under this section, to promptly issue an order that includes findings of fact and conclusions of law.

Sec. 437B.204. EMERGENCY SUSPENSION. (a) Authorizes DSHS to issue an emergency order to suspend a mobile food vendor license if DSHS has reasonable cause to believe a license holder's operations pose an imminent threat to the public's health and safety. Provides that an emergency suspension order is effective immediately without a hearing on notice to the license holder and is required to state the length of the suspension.

(b) Authorizes a mobile food vendor license holder, not later than the 14th day after the date a license holder receives notice from DSHS of an emergency suspension of a license under this section, to request a preliminary hearing on the emergency order in a form and manner DSHS prescribes.

(c) Requires DSHS, on receipt of a license holder's request for hearing under Subsection (b), to promptly refer the matter to SOAH for a preliminary hearing before an administrative law judge.

(d) Requires an administrative law judge for SOAH to take certain actions.

(e) Requires that a final hearing on the matter be held not later than the 61st day after the date of the emergency suspension.

Sec. 437B.2045. RIGHT TO APPEAL. Provides that DSHS's suspension or revocation of a mobile food vendor license under this chapter and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001 (Administrative Procedure), Government Code.

Sec. 437B.205. ADMINISTRATIVE PENALTY. Provides that a license holder who continues to operate after DSHS suspends or revokes the license holder's mobile food vendor license is subject to an administrative penalty in an amount DSHS determines.

SECTION 3. Amends Section 437.0055(a), Health and Safety Code, to delete existing text prohibiting a person from operating a mobile food unit located in an area in which a county or public health district does not require a permit or conduct inspections under this chapter unless the person has a permit issued by DSHS, and to make a nonsubstantive change.

SECTION 4. Repealer: Section 437A.003 (County Permit Required), Health and Safety Code.

SECTION 5. (a) Provides that Chapter 437B, Health and Safety Code, as added by this Act, applies to an ordinance, rule, regulation, policy, or procedure adopted before, on, or after the effective date of this Act.

(b) Requires the executive commissioner, not later than May 1, 2026, to adopt the rules required by Chapter 437B, Health and Safety Code, as added by this Act.

(c) Provides that a mobile food vendor is not required to hold a license under Chapter 437B, Health and Safety Code, as added by this Act, before July 1, 2026.

SECTION 6. (a) Effective date, except as provided by Subsection (b) of this section: July 1, 2026.

(b) Effective date, Section 437B.004, Health and Safety Code, as added by this Act: September 1, 2025.