



Support HB 1694

Restore the Intent of the Farmers' Market Sampling Law

Prior to 2013, farmers who wished to provide samples at farmers' markets were subjected to extensive requirements that were both impractical and unnecessary for outdoor settings where the farmer is selling face-to-face with consumers for a very short time period once or twice a week.

In 2013, the Texas Legislature passed HB 1382 (House vote 137-0, Senate vote 30-1), establishing common-sense sanitary standards for providing samples at a farmers' market. These standards are printed on page 2 of this fact sheet. **The intent was that producers who met those standards could provide samples at their booths, with no further requirements.**

Unfortunately, while some local health departments have complied with the intention of HB 1382, others have not. These health departments have pointed to a different section of the law (§437.0201(e)), which waives fees for cooking demonstrations and samples from such demonstrations when done for educational purposes. They have used the ambiguity created by that section to claim authority to require permits and fees for sampling when not connected with cooking demonstrations.

This is a statewide problem. Farmers' markets in Frisco, Longview, Austin, Harris County, McKinney, and others have all reported being required to have a separate permit for sampling and, often, having additional regulatory burdens placed on them.

Yet multiple other jurisdictions have functioned without sampling permits and fees, as intended by HB 1382, with no reported problems. This includes Dallas, Williamson, and Bell Counties.

Sampling permits and fees impose a significant burden on farmers' market vendors. Sampling is an important way to draw customers to a farmers' market booth and introduce them to a new type of food, or demonstrate how delicious a piece of fruit is despite outer appearances. But farmers' market vendors' profit margins are very slim, and the fees – some as high as \$80 every two weeks – can effectively prohibit this activity.

HB 1694 reduces the burdens imposed on small farmers and food businesses selling at farmers' markets, without changing any public health standards or protections. The bill clarifies that a farmers' market vendor need only comply with the sanitation standards set out in the Health & Safety Code, and explicitly prevents DSHS or local health departments from requiring a permit or imposing fees or additional requirements on the farmers' market vendor for the simple act of sampling their foods. **HB 1694 was unanimously approved by the House on April 26.**

HB 1694 is supported by the Texas Local Food and Farm Coalition, Texas Organic Farmers & Gardeners Association, Farm & Ranch Freedom Alliance, the Sustainable Food Center, Food Policy Council of San Antonio, GROW North Texas, Grow Local South Texas, and Waller County Farmers & Ranchers Cooperative.

For more information, contact Judith McGeary, Farm and Ranch Freedom Alliance, Judith@FarmAndRanchFreedom.org, 512-484-8821 (c).

Current Law

As amended in 2013, Section 437.020 of the Health and Safety Code states:

- (c) Samples of food may be prepared and distributed at a farm or farmers' market if the following sanitary conditions exist:
 - (1) samples must be distributed in a sanitary manner;
 - (2) a person preparing produce samples on-site must:
 - (A) wear clean, disposable plastic gloves when preparing samples;
 - or
 - (B) observe proper hand washing techniques immediately before preparing samples;
 - (3) produce intended for sampling must be washed in potable water to remove any soil or other visible material;
 - (4) potable water must be available for washing;
 - (5) except as provided by Section 437.0202(b), potentially hazardous food, as determined by rule of the department, must be maintained at or below 41 degrees Fahrenheit or disposed of within two hours after cutting or preparing; and
 - (6) utensils and cutting surfaces used for cutting samples must be smooth, nonabsorbent, and easily cleaned or disposed of.
- (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.

DSHS and local health departments can enforce these standards through citations and fines. Sampling at farmers' markets is regulated, and will continue to be regulated, under HB 1694 – just without the additional permitting and fee requirements.