



Support SB 617/ HB 1652 Provide Clarity for Farmers' Market Vendors



Last session, the Texas Legislature passed two bills (SB 932 and HB 1694) to support farmers and small-scale food producers who sell their products at farmers' markets. SB 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). HB 1694 allowed farmers' market vendors to provide samples of their food to prospective customers at the market without a permit or extra fees, subject to specific sanitary requirements. The two bills were approved unanimously by the Senate and with only a handful of dissenting votes in the House.

This session's bill makes no changes to the substantive provisions of the law. It just clarifies the language to ensure that the law is properly applied.

Last session's bills referred to any "person" (HB 1694) or "individual" (SB 932) who provides samples or sells food at a farmers' market. Despite the clear intentions of both bills, a few local jurisdictions have limited their applicability only to 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 and imposing a \$330 sampling permit fee.

The noncomplying local departments' claimed justification is that a subject header in the bills referred to "producers," and DSHS's 2013 definition of "producer" is unduly narrow, essentially limiting the term to just farmers. But the subject header and an old agency definition should not trump the language and clear intention of the 2019 bills.

This session's SB 617/ HB 1652 address 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 vendors who are farmers or food producers selling food directly to consumers. Last, the bill would recompense farmers' market vendors for their expense in bringing suit to enforce the law if necessary.

The Committee Substitute removes the waiver of sovereign immunity in the original bill. It also clarifies that "adding value" does not simply include packaging or repackaging an item.

The bill makes no substantive change to the current law, but merely brings clarity to the policies already adopted by the Legislature in 2019.

SB 617/ HB 1652 is supported by the Farm and Ranch Freedom Alliance, Texas Organic Farmers and Gardeners Association, GROW North Texas, Grow Local South Texas, Food Policy Council of San Antonio, New Farm Institute, and the Central Texas Young Farmers Coalition.

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At the House Public Health Committee, a witness for the City of Houston's health department made numerous inaccurate statements about what the bill does. Contrary to his testimony, these are the facts:

- The bill makes **no change** to any substantive food safety regulation.
- The bill makes **no change** to the local health departments' ability to inspect as frequently as they think needed.
 - Note that in conversations with Houston-area farmers' markets, we have been told that the health department inspects the market every few months – not every couple of weeks, as the witness implied.
 - More frequent inspections are not needed. In response to an Open Records Act request, DSHS was able to identify only three instances of suspected (not confirmed) foodborne illnesses from Texas farmers' markets **in the last 20 years**, and all were over 10 years ago. Texas farmers' markets have an excellent track record for food safety.
 - Most jurisdictions in the state have already come into compliance with the 2019 bills, and all of them have been able to continue their inspections of farmers' markets, with vendors of all types.
- The bill **does not** create a conflict with the Agriculture Code. The Health & Safety Code has had a definition for "farmers' market" that differs from the Agriculture Code since 2011, with the passage of SB 81 (82R). The two definitions are used for entirely different purposes and there have been no problems.
- The bill **does not** change the definition of "farmers' market" from that 2011 definition in a way that would allow more entities to qualify. If anything, it tightens up the definition by specifying that a majority of vendors must be farmers or producers (people who make the food they are selling, as opposed to re-sellers). At no time has any event like the Houston Livestock Show sought to be characterized as a "farmers' market."

The bill's sole purpose and effect is to stop a handful of jurisdictions from charging fees in excess of the current state law.

- Last sessions' bills referred to **any** "person" (HB 1694) or "individual" (SB 932) who provides samples or sells food at a farmers' market. Both bills specified that they covered farmers *and* persons/ individuals selling food at farmers' markets, making it clear that the bills were to be applied to all types of food vendors.
- The section header in SB 932 referred to "certain farmers and food producers," and this is what a small number of jurisdictions have used to justify their non-compliance.
- DSHS has an old regulatory definition for producer, as a "A person or entity that produces agricultural products by practice of the agricultural arts upon land that the person or entity controls." In other words, DSHS defines a producer as a farmer.
- Applying that DSHS definition to the 2019 laws makes no sense. Those laws specifically applied to farmers or other individuals/ persons selling food at farmers' markets.
- So HB 1652 / SB 617 provides a definition of "producer" that is consistent with the legislative intent in the 2019 laws.
- By replacing the word "individual" with "producer," and providing a statutory definition for "producer," the bill ensures consistent application of the already agreed-upon state policy to limit permit fees imposed on every person who is selling food that they have made at a farmers' market.