



## Support Small Farms and Consumer Access to Raw Milk *Support HB 91*

Under current law, licensed farmers can legally sell raw milk – a natural, whole food -- in Texas directly to consumers. However, agency regulations limit the sales to on-the-farm, creating unreasonable burdens on both farmers and consumers. **HB 91, by Representative Dan Flynn, addresses this problem by allowing sales at farmers' markets and through delivery.**

The bill would do only one thing: remove the on-farm restriction on the sale of Grade A raw milk. The bill would make **no other change** to the existing regulatory requirements for licensed raw milk producers that have been successful in protecting the public's health in Texas. Sales will continue to be limited to direct-farmer-to-consumer transactions, and the bill will **not** allow sales of raw milk in grocery stores or similar outlets.

### Advantages

The bill allows a farmer to make a single trip from the farm to the urban area, rather than having each individual customer drive out to the farm. This has multiple benefits:

- Economic benefits for rural communities. Direct farm-to-consumer sales of raw milk enable a farmer to make a reasonable living with a smaller herd using sustainable farming methods.
- Improved safety by allowing producers to transport the milk in accordance with safety regulations, rather than relying on consumers to handle the milk properly on long, often very hot trips from the farm.
- Environmental benefits from reducing vehicle miles, thereby benefiting air quality, traffic congestion, and public safety.

### Food Safety

The consumption of any food carries some risk, of course. However, milk, whether pasteurized or raw, is a relatively low risk food.

- Licensed Raw for Retail dairies are subject to regulatory standards that meet or exceed all regulatory standards for pasteurized milk. CDC data from 1998-2008 show that there were **only two** reported illnesses attributed to raw milk in Texas during that time. Since 2008, there have been 4 additional illnesses allegedly linked to raw milk, for a total of 6 illnesses in 15 years.
- Based on CDC estimates, approximately 3% of the population drinks raw milk. In Texas, that would mean that approximately 750,000 people drink raw milk.
- Approximately 12,500 foodborne illnesses were reported in Texas between 1998 and 2010, traced to such foods as mangos, cake, beans, lettuce salads, salsa, pot pie, chicken salad, hot dogs, deli meats, and beef brisket.
- Raw milk has a better safety record in Texas than many foods, including strawberries (29 illnesses), chicken soup (47 illnesses), and turkey (852 illnesses).

The bill would make no changes to the existing regulations that govern the production and handling of raw milk. Farmers will continue to be held to high standards, and inspected and tested regularly.

The data shows that Texas consumers have been buying raw milk with remarkably few problems. **No other legal product is limited to sales at the point of production**, and there is no reasonable basis for singling out this one product in such a way.

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## Provide Fair Representation on the Texas Animal Health Commission *Support HB 809*

The Texas Animal Health Commission (TAHC) currently does not adequately represent the interests of the regulated community or the general public. In order to provide fair representation, the TAHC should add two additional seats to represent the interests of small-scale producers and strengthen the requirements for commissioners to serve as members of the general public.

The TAHC consist of thirteen appointed Commissioners, including (1) a practitioner of veterinary medicine; (2) a dairyman; (3) a cattle raiser; (4) a hog raiser; (5) a sheep or goat raiser; (6) a poultry raiser; (7) an individual involved in the equine industry; (8) an individual involved in the feedlot industry; (9) an individual involved in the livestock marketing industry; (10) an individual involved in the exotic livestock or exotic fowl industry, and (11-13) three members of the general public.

None of the current thirteen seats on the TAHC represent the largest, and one of the only growing, segments of livestock owners: small-scale producers. The vast majority of Texans who own livestock or poultry own just a few animals. For example, according to the USDA 2012 Census of Agriculture, 90% of the farms with sheep have fewer than 100 head; 97% of the farms with poultry have fewer than 100 birds; 97% of the farms with horses own fewer than 25 head; 83% of the farms with hogs own fewer than 25 head; and 56% of the farms with cattle have fewer than 20 head. Moreover, these very small farms are growing in numbers, while other farms are becoming less numerous. *See* 2012 Census of Agriculture, State Data for Texas, Tables 12, 25, 28, 31, and 32.

These census numbers are striking, yet they don't tell the whole story. The census only includes "farms," which are defined as having \$1,000 or more of product to sell the year before the census. The TAHC's jurisdiction extends far beyond the census, to cover every person who owns a few backyard chickens, a pet pony, or a pygmy goat. **The TAHC's regulatory reach is not limited to commercial entities.**

Although theoretically the Commissioners who represent cattle raisers, poultry raisers, or other livestock groups could be small-scale producers, in practice they consistently, if not uniformly, represent large-scale business interests. **The result is regulation without representation.**

In addition, the "general public members" also typically represent large-scale business interests. The current statute only exclude people who own, control, or are employed by a business that is "regulated by or receiving money from" the commission. *See* Tex. Agric. Code § 161(d). But the TAHC regulates animals, not business entities. Thus, people who own large ranches or hunting preserves – where the animals are regulated by the TAHC – still qualify as "general public" members!

**HB 809, by Representative James White, addresses both of these problems.** The bill:

- 1) Provides two seats for small-scale producers, one for small-scale livestock and one for small-scale poultry.
- 2) Clarifies the general public requirements so that individuals who own or are employed by businesses involving animals that are regulated by the agency are excluded from serving as "general public" representatives

These changes will help ensure that the Texas Animal Health Commission hears from a broader range of the stakeholders who are affected by the agency's regulations, and that the public's interests are properly represented.

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## **Support Farmers' and State's Rights** ***HB 1846 provides transparency before Texas agencies implement federal food safety regulations***

The Federal Food Safety Modernization Act (FSMA) is the most sweeping overhaul of federal food safety laws in over 70 years. The U.S. Food and Drug Administration (FDA) is currently in the process of writing implementing regulations and is expected to issue several major regulations in the fall of 2015.

These federal regulations will create unprecedented government involvement on farms that grow fruits, vegetables, mushrooms, or sprouts. Under the proposed regulations, FDA will set standards for personnel qualification and training, health and hygiene, irrigation water, washing water, soil amendment (including manure and compost), domestic livestock, wildlife, harvesting and packing activities, equipment, tools, buildings, and sanitation.

The regulations will also place extensive requirements on any business that holds, stores, processes, or manufactures food (again, with some exemptions for businesses that market directly to consumers). Under the proposed regulations, these businesses will have to develop Hazard Analysis and Risk-Base Preventive Controls (HARPC) plans, conduct environmental and product testing, and verify the safety of the source of their ingredients and products.

**It is widely accepted that FDA will be unable to implement and enforce the new regulations by itself because the agency lacks sufficient funding and personnel.** The FDA will almost certainly seek to enter into cooperative agreements and similar mechanisms with state agencies in order to implement the FSMA regulations. Yet no state elected officials were involved in the adoption of FSMA or the development of the regulations; and while Texas farmers and consumers have spoken up during the process, their influence was necessarily limited by the national scope of the discussions.

**HB 1846, by Representative Susan King, provides a vital opportunity for Texas farmers, consumers, and legislators to be involved before our state agencies use state resources to implement these new federal regulations.** The bill requires the Department of State Health Services (DSHS) and the Texas Department of Agriculture (TDA) to publish notice of any proposed cooperative agreement with FDA to implement federal food safety regulations and allow for public comment. The agencies will also be required to consult with the chairs of the relevant House and Senate standing committees. Before finalizing the agreement with FDA, the state agency will have to publish a summary of the public comments and identify if any changes were made in response to the public or legislators' comments.

The bill does **not** prevent the agencies from taking federal funding or implementing federal law; it merely requires them to follow a procedure that allows Texans to make their voices heard to ensure that any such agreement is in the best interests of Texas farmers and consumers.

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## Ensure Fair Property Taxes for Small Farmers and Community Gardens *Support HB 1900*

Although Texas statutory law provides for “agricultural valuation” of land used primarily for raising food, many farmers across the state have experienced problems in qualifying for such valuation due to bias against sustainable farming methods, urban farms, and produce farmers. **HB 1900, by Representative Eddie Rodriguez**, will provide for fair, consistent application of agricultural valuation for all types of farmers.

### Background

Open-space land provides important social and economic value to our communities. In addition, cities and counties pay very little for services to such land compared to the infrastructure needed for developed lands, such as water, wastewater, electricity, and roads. For these reasons, the Texas Constitution and Tax Code provide that landowners who maintain open spaces may pay property taxes based on a lower, open-space valuation of their property.

Agricultural use is one of the ways to qualify for open-space valuation. The Tax Code provides that land shall be appraised as qualified agricultural land if it is “devoted principally to agricultural use to the degree of intensity generally accepted in the area” for five of the preceding seven years. Tax Code §23.51. “Agricultural use” is defined broadly, yet many county assessors have applied it in a restrictive, narrow manner that is not consistent with the legislative language or intent.

### Provisions

HB 1900 clarifies the Tax code by:

1. Specifying that fruit and vegetable production qualify as “agricultural uses.” There have been multiple cases of county tax assessors asserting that growing vegetables isn’t agriculture, although there is no basis in the statute for such an assertion.
2. Directing tax appraisers to consider the type of production used, including organic and sustainable methods such as rotational grazing, in determining the degree of intensity of use necessary to qualify.
3. Specify that nonprofit community gardens qualify as “agricultural uses.”
4. Directing the Comptroller, in consultation with Texas A&M Agrilife Extension, tax appraisal districts, and representatives of affected farmers, to develop guidelines to address under what conditions community gardens, small tracts, and diversified farms qualify for agricultural valuation. The Comptroller is also directed to provide the necessary educational resources to help county tax appraisers fairly and consistently apply these provisions.

The landowner will still have show that the land is devoted principally to agricultural use to the degree of intensity generally accepted in the area, and has been for at least five of the preceding seven years. The landowner will also remain subject to five years of rollback taxes if the property ceases to be used for agricultural purposes.

This proposal does not seek to increase the number of landowners who are entitled to open-space valuation; rather, it merely ensures that people who should already qualify for agricultural valuation under the Texas Constitution are not inappropriately excluded by local authorities.

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## Support Home-Based Food Businesses

In 2011 and 2013, the Texas Legislature legalized that sale of food prepared in home kitchens within a very specific framework: direct-to-consumer sales only, of specifically listed nonpotentially hazardous foods, at specific locations, and limited to \$50,000 in annual sales. The Texas “cottage food law” has been a very positive development for the local food movement, and a recent articles in *Forbes* estimated that over 1,000 new businesses have been created.

However, the limitations on what can be produced and where the food can be sold limits the cottage food law’s usefulness for many farmers and food producers. A growing number of states have adopted either expanded cottage food laws or separate provisions that allow for more diverse home food production. Iowa, New Hampshire, Ohio, California, and Virginia each have laws that allow home-based food businesses to produce additional foods and/or sell wholesale under certain conditions.

The Texas Home Processors Bill would create a middle tier of regulation that addresses genuine concerns about the risks of the food and expanded distribution, while still providing realistic opportunity for home production. The home processors bill would allow home preparation of more foods, such as canned vegetables, fermented foods, and perishable (potentially hazardous) baked goods. The bill would also allow for the sale of home prepared foods anywhere in the state (i.e. not restricted to specific locations), including through mail order and internet sales, as long as the producer and consumer are both in Texas. Interstate sales would still be prohibited, as they are governed by federal law.

Home processors would not be limited to direct-to-consumer sales, but would be able to do wholesale sales of both cottage food products and the additional food items. The bill would not include the annual gross sale limit; however, space and equipment limitations restrict how much food can be prepared in a home kitchen. In practical terms, once a food producer grows to a certain size, he or she will either have to cap their production or establish a commercial kitchen subject to full regulation.

To ensure that home processors are producing food in a completely safe manner, home processors would be subject to certain regulatory provisions. The focus will be on regulations that address food safety in a scale-sensitive manner, without creating unnecessary expense. Thus, the bill will include requirements for:

- Registration with, and inspection by, state or local state health department.
- Food safety training for personnel.
- Health restrictions on food handlers.
- Sanitation measures, such as keeping the ingredients and food for sale separate from that for personal use; cleaning surfaces, utensils, and equipment; excluding pets; and maintaining foods at safe temperatures.
- Record-keeping of all food sold and locations sold at.
- Labeling of ingredients and a notification that the food was prepared in a home kitchen.
- Additional regulatory provisions for low-acid canned foods, acidified canned foods, and fermented foods, to ensure safe recipes are used.

The proposed bill would address food safety concerns in a scale-sensitive manner, allowing for safe home food production and sales. This benefits not only producers, but also consumers, who receive improved access to healthy, locally produced foods.

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## **Create Agricultural Ombudsman Position to Provide Regulatory Guidance for Farmers and Food Businesses**

Texas farmers and small-scale food producers must navigate a convoluted regulatory landscape in order to legally operate their businesses. Confusion over ambiguous regulations and unintentional violations of regulations impose costs not only on the producer but also on the agencies in lost time and unnecessary expense.

Navigating the regulatory maze is complicated by several factors:

- 1) **Multiple agencies:** the Department of State Health Services (DSHS), Texas Department of Agriculture, and the Texas Animal Health Commission each separately regulate aspects of farming and food businesses.
- 2) **Multiple jurisdictions:** Many farmers sell their food in multiple cities or counties. As a result, they have to comply not only with DSHS regulations, but with the patchwork of requirements from local health departments.
- 3) **One-size-fits-all regulations:** The regulations that have been written for large-scale producers, and it is often far from clear what a small-scale producer must do to comply;
- 4) **Piecemeal regulation:** While many farmers have diversified their farms and are producing multiple products for both environmental and economic reasons, the regulations are designed for single, large-scale product lines. Many farmers are required to get multiple permits from different sections or divisions of various agencies, multiplying both their costs and the potential for confusion.

Farmers and small-scale food producers do not have the legal training to sort through these issues, and their businesses are not large or profitable enough to hire staff or legal counsel to help. According to the last agricultural census, 91.7% of all the farms in Texas grossed less than \$100,000 in sales. Between 2007 and 2012, the number of farms with revenue under \$100,000 saw a net increase of 1,461 farms.<sup>1</sup> In other words, the overwhelming majority of Texas farms are small businesses, and hundreds of these farms begin new operations every year. The profit margins are extraordinarily slim, and many are only able to operate by relying on income from a second job.

Creating an ombudsman position would encourage the establishment and growth of Texas agricultural and food businesses, reduce their expenses, and improve regulatory compliance and consistency. A single ombudsman who is familiar with all regulations and their application will provide a much-needed resource for the businesses that are providing food (and jobs) for Texans.

Providing an ombudsman service for farmers and other food businesses would help numerous farmers and food businesses across the state, benefiting local economies, reducing food deserts, and improving consumer access to locally produced foods.

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<sup>1</sup> 2012 USDA Census of Agriculture.

[http://www.agcensus.usda.gov/Publications/2012/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_State\\_Level/Texas/st48\\_1\\_002\\_002.pdf](http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_State_Level/Texas/st48_1_002_002.pdf).



## Protect Farmers and Farmers' Market Vendors from Excessive Fees

The fees associated with health permits impose a significant financial burden on many small farmers and local food producers, who are small businesses with low profit margins. These fees discourage both farmers and value-added food producers from participating in farmers' markets, particularly smaller markets in less affluent areas. The fees thus reduce farmers' markets' long-term viability and the availability of locally produced quality food products.

In 2013, Representative Lois Kolchorst filed HB 910 to cap the health permit fees imposed on farmers selling directly to consumers and other farmers' market vendors at \$50 annually per jurisdiction. HB 910 was unanimously approved by the Public Health Committee, but was never set for a vote by the Calendars Committee.

### Background

The problems with the fees come from several factors:

- 1) **The size of the fee:** Several jurisdictions have started imposing fees of over a hundred dollars to sell at a farmers' market. This is particularly a problem for producers with low profit margins. A farmer or backyard producer selling eggs, for example, often has a profit margin of only 25 or 50 cents on a dozen eggs.
- 2) **Fees for related activities:** Farmers who provide samples of their food to potential customers are frequently required to have a separate permit, with a separate fee, for such activity. For example, one jurisdiction requires a separate permit for producers of baked goods to use bulk cases rather than individually packaging each item.
- 3) **Fees for permits that must be renewed several times a year:** Some local jurisdictions require the permits to be renewed seasonally, or even each week. Not only does this mean a new fee for each renewal, but the producer generally must drive into town to renew in person, spending additional money and time.
- 4) **Fees for location-based permits:** Some jurisdictions require a separate permit for each location at which a farmer sells, or a separate permit for each location on the same day.

Other states exempt farmers selling farm products directly to consumers from **all** fees, including Arizona (ARS § 3-563), Illinois (505 ILCS 70/1), Louisiana (La. R.S. § 3:3673), Minnesota (Minn. Const. Art. XIII, §7), and Washington State (Rev. Code Wash. (ARCW) §36.71090). At least two additional states cap permit fees charged to farmers selling directly to consumers: Maryland (\$100 cap on a statewide permit) and Iowa (\$100 cap on a countywide basis).

### Proposed Provisions

The bill would cap the health permit fees imposed on farmers selling directly to consumers and other farmers' market vendors at \$50 per year, per jurisdiction. This bill supports small farms and food businesses, and helps make local foods more available at lower cost.

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## Support Labeling of Genetically Engineered Foods *Support Consumer Choice and a Functioning Free Market*

GMOs, or “genetically modified organisms,” are created by transferring genetic material from one organism into another to create specific traits, such as resistance to treatment with herbicides or to make a plant produce its own pesticide to repel insects or greater production of growth hormones. Unlike traditional plant and animal breeding, which tries to develop better varieties by selecting traits from the same species, genetic engineering techniques can insert specific genes from any plant, animal, or microorganism into the DNA of an entirely different species, such as inserting fish genes into a tomato.

GMOs are widespread in our food system; the majority of corn, soybeans, canola, cotton, and sugar beets grown in this country are GMO. One or more of these crops is present in the majority of packaged foods in American grocery stores. But GMOs can be difficult for a consumer to identify. **Thus, labeling is necessary to allow the free market to function properly and allow people to make informed decisions.**

### Economics and the free market

A true free market requires consumers to have truthful information on which to make decisions. Polls have consistently shown that Americans overwhelmingly want labels on GMO foods so that they can make an informed choice about what they eat.

A consumer who is purchasing salmon expects to be buying salmon in the absence of any notice to the contrary. When a company manufactures a salmon spliced with eel, that GMO species can only truthfully be labeled as such. Labeling this product as “salmon,” without more information, is not honest and is **not** the free market at work.

Although opponents claim that requiring labeling will be costly, the facts don’t support this claim. Over 60 countries have either banned GMOs outright or require labeling of GMOs. These countries include not only the European countries, but also China, Russia, Australia, Brazil, Japan, New Zealand, Saudi Arabia, and South Korea. In other words, American food manufacturers are **already** selling their products, either GMO-free or with GMO labels, all over the world. They can easily do the same thing in the United States.

### Safety

Genetically engineered foods have not been tested for long-term impacts on human and environmental health or safety. Almost all of the research is controlled by the same companies that sell the seeds, since they control access to the patented seeds and their non-GMO seed stock. In addition, almost all of the research has been very short term, looking at the effects from eating GMOs for just a few weeks.

Nonetheless, a growing body of research shows that GMO crops can have troubling health implications. Long-term studies on rodents and pigs have shown increased rates of kidney



damage, liver damage, stomach inflammation, uterine weight (potentially linked to reproductive problems), and tumors.<sup>1</sup>

Opponents have claimed that labeling should not be required until there is confirmed, hard evidence that GMOs are unsafe. But without labeling, we can't associate any health problems with people who ate them, because we don't know who ate them. Because GMOs contain novel genetic combinations that do not occur naturally in our food system, proper labeling should be required to alert unsuspecting consumers to their presence in otherwise normal-appearing food.

### Consumer Interest

GMOs provide no benefits for consumers. Virtually all commercial GMOs are engineered to withstand direct application of herbicide (which means more herbicides are sprayed directly onto the food crop) and/or to produce an insecticide within the plant itself. Despite biotech industry promises, none of the GMO traits currently on the market offer increased yield, drought tolerance, enhanced nutrition, or any other consumer or societal benefit.

### Environmental concerns:

Over 80% of all GMOs grown worldwide are engineered for herbicide tolerance. As a result, the use of toxic herbicides like Roundup has skyrocketed since GMOs were introduced. Glyphosate, the active ingredient in Roundup, has been linked to kidney and reproductive difficulties, allergic reactions and blocking mineral nutrients essential to human health. Now, superweeds and pests like the rootworm that have become resistant to GMO-affiliated herbicides like Roundup and pesticides and require many more toxic chemicals to be applied to crops.

### National food security

Although biotech companies convinced the FDA to find that GMOs are “substantially equivalent” to non-GMO crops, they simultaneously convinced the U.S. Patent Office to allow them to patent these “novel life forms.” As a result, a handful of large companies now control access to the majority of the seed supply in this country. Farmers cannot legally save their seeds from GMO crops, and non-GMO farmers are placed at risk of patent infringement suits. GMOs thus pose a serious threat to farmer sovereignty and to the national food security of our country

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<sup>1</sup> Gilles-Eric Seralini et al, Long-term toxicity of a Roundup herbicide and a Roundup-tolerant genetically modified maize, ENVIRONMENTAL SCIENCES EUROPE 26:14(2014); Judy A. Carman et al, *A long-term toxicology study on pigs fed genetically modified (AGAM) soy and GM maize diet*, JOURNAL OF ORGANIC SYSTEMS 8:1, 38-54 (2013).