



Local Farms & Food Bills for 2019 Texas Legislative Session

The Farm and Ranch Freedom Alliance supports passage of the following bills in order to support local farmers and artisan food producers, improve consumer access to sustainably raised foods, and promote local economic development.

1. **Fair taxes for small farmers: HB 97 by Representative Rodriguez and SB 1963 by Senator Zaffirini** provide fair property tax treatment, addressing current inequities imposed by the counties. When the principal use of a piece of land is agricultural, it is supposed to be taxed based on its agricultural value. The current statute works well for large producers and those who grow common commodity crops, but no county has adopted guidelines as to what is needed for a small farm to qualify, nor for “market farmers” (those growing diversified fruits and vegetables to sell directly to consumers), nor those who raise multiple types of food (such as integrated livestock and vegetable operations). HB 97, which passed the House in the 2015 Legislative session (as HB 1900), directs the Comptroller to establish stakeholder groups to set guidelines for these properties, ensuring fair, statewide application of agricultural valuation provisions.
2. **Cottage foods: HB 2108 by Representative Rodriguez.** The current cottage food law, adopted in 2011 and 2013, allows people to make low-risk foods in their home kitchens and sell them directly to consumers at specific locations (farmers markets, farm stands, and city, county, or nonprofit events). Only foods that are specifically listed in the statute can be made, and annual sales are capped at \$50,000. Texas’ cottage food law has allowed the creation of over 1,000 new businesses, yet it is more limited than similar laws in multiple other states. Producers who don’t fit within the current cottage food law face significant barriers, including the requirement for a commercial kitchen and a food manufacturer’s license.

Expanding the cottage food law to provide greater opportunities for home-based businesses, while still protecting public health, is a top priority for FARFA. We urge a bill to

- Remove current limitations on the locations of sales, allowing any direct-to-consumer sale regardless of location;
 - Allow any non-potentially hazardous food to be sold;
 - Allow all types of pickles, both acidified canned produce and fermented. The producer would be required to use an approved recipe or test the recipe to meet pH safety standards;
 - Allow frozen fruits and vegetables, expanding consumer access to locally raised healthy food year-round.
3. **Local health department better communications: HB 2107 by Representative Capriglione.** One of the greatest problems for small farmers and food businesses is simply knowing what the law requires, particularly since most regulations are designed for large-scale businesses. The local health departments routinely either refuse to answer or give

conflicting answers. Moreover, even after getting an answer, the producers continue to be at risk if the inspector comes up with a new interpretation. In 2013, the Texas Legislature adopted the DSHS Better Communications Act, which requires the state health department to respond to inquiries in a timely manner, and which prevents inspectors from fining the producer if he/she complies with the response. FARFA urges passage of a bill that would apply the exact same provisions to local health departments.

4. **Sampling: HB 1694 by Representative Lambert and SB 789 by Senator Johnson** clarify a 2013 law that was intended to simplify sampling at farmers' markets. In 2013, the Texas Legislature adopted HB 1382, which established reasonable standards for farmers' market vendors to be able to provide samples of the food they have for sale to potential customers at the market. The intention of the bill was that farmers and other food vendors would have to meet the specific standards set out in the bill, and that the local health departments would enforce those standards, but that no separate permit or fee would be required. This was in response to widespread problems with excessively stringent requirements, high fees, and frequent permit renewal requirements. Unfortunately, due to some ambiguity in a separate provision dealing with sampling during cooking demonstrations, some health departments have continued to require high-cost permits for sampling at farmers' markets. HB 1694 and SB 789 restore the original intent of HB 1382, requiring vendors to meet the specific sanitation requirements, but preventing health departments from requiring permits and fees.
5. **Raw milk: HB 503 by Representative Flynn and SB 80 by Senator Hall** remove unnecessary marketing barriers for farmers who wish to sell, and consumers who seek out, unpasteurized milk. Current law limits sales of raw milk from licensed Grade A for Retail farms to "on farm" only. A bill to allow sales at farmers' markets and through delivery passed the House in 2015 and the Senate in 2017, and HB 503 and SB 80 seek to finally pass them into law this session. The bills maintain the current high standards that licensed farmers must meet in order to sell raw milk, while allowing consumers and farmers to more reasonably connect. The bills also include clear labeling requirements and standards for the transportation of the milk.
6. **Reducing barriers for local egg sales: HB 1284 by Representative Lambert and SB 1805 by Senator Rodriguez** address two barriers to local egg sales, both involving "grading." Grading means weighing and measuring each egg, sorting them by size, and obtaining a license from the Texas Department of Agriculture. Grading is entirely a marketing issue (size and weight) and provides no benefits from a health or food safety perspective, and farmers can currently sell ungraded eggs directly to consumers. Yet a health department regulation prohibits restaurants and retailers from buying ungraded eggs. Since eggs have a very small profit margin, the additional expense and hassle makes grading unfeasible for many farmers. HB 1284/ SB 1805 allows farmers to sell the eggs from their own flock both to consumers and to restaurants and retailers, so long as they are clearly labeled as ungraded.

In addition, current law requires that businesses who grade eggs must file a monthly report with TDA with their fees. For small-scale graders, this means monthly paperwork even though the total fee may be less than the cost of the stamp. HB 1284/ SB 1805 provides that those who owe less than \$360 in fees annually may file annually instead of monthly.

7. **Limiting the fees imposed by local health departments: HB 2009 by Representative Wilson and SB 932 by Senator Hughes.** The fees associated with health permits have created a financial burden on many small farmers and local food producers, who are small businesses with low profit margins. The fees discourage farmers from participating in farmers' markets, particularly smaller markets in less affluent areas. The fees also discourage value-added and prepared food producers from participating in the markets, thereby reducing the markets' long-term viability. We urge a bill to cap permit fees for producers selling direct to consumers at farmers' market at \$100 annually per jurisdiction. This is the fee imposed by DSHS for its farmers' market permit, and each jurisdiction would still maintain their own permitting structure – only the fees would change.
8. **Ombudsman: SB 776 by Senator Zaffirini and HB 3115 by Representative Zwiener** addresses one of the most common problems faced by local food producers: figuring out what they need to do to operate legally. Multiple agencies often regulate these small businesses, including the Texas Department of State Health Services (DSHS), local health departments in multiple cities or counties, Texas Department of Agriculture, Texas Animal Health Commission and more. SB 776/ HB 3115 establishes a position within TDA or the Governor's Office of Economic Development and Tourism to help farmers and rural food businesses navigate the regulatory maze.
9. **On-farm poultry processing: SB 1341 by Senator Johnson and HB 3803 by Representative Zwiener.** The current statute that allows small farmers to process poultry on their own farms after registering with DSHS and submitting a sanitary operating procedures (SOP) plan. But DSHS has used the procedural requirement to bootstrap extensive, expensive facility requirements and more, by refusing to approve the SOP plan unless the farmer complies with all of the federal regulations for a full-size inspected commercial plant. In financial terms, it's typically a \$40,000 to \$50,000 investment. This makes on-farm processing too expensive and difficult for most farmers – especially since they are limited to just 10,000 birds per year.

Most other states have much more reasonable requirements, in many cases not requiring any permit at all for smaller-scale producers. Almost every other state also allows up to 20,000 birds/year. The bill would create a two-tier system consistent with the majority of states:

- Producers that process 1,000 birds or less annually would be required to register with DSHS, keep records, and clearly label their products. They would also be limited to selling directly to consumers and to restaurants, not general wholesale sales.
 - Producers that meet DSHS's requirements for facilities would be able to process up to 20,000 birds annually. These producers would be able to sell anywhere in the state (as they can now).
10. **Permit & fees required for cut flower sales:** Cut flowers add a lot of attraction to a farmers' market and can provide a nice secondary revenue stream for produce growers. But currently producers have to get a permit from TDA – and in addition to the annual fee, pay a fee for each “event,” no matter how small. That event-based fee creates significant hassle in terms of paperwork, as well as expense for someone who is growing just a small amount of

cut flowers as a side business. **HB 3280 by Representative Fierro** exempts small-scale flower and plant sellers (under \$25,000 annually) from the permitting requirements.

11. **Reining in TDA's Overreach: SB 1409 by Senator Hall.** Congress adopted the Food Safety Modernization Act (FSMA) in 2010, and the FDA adopted regulations several years later. FDA's preferred method for implementing the new regulations is to fund state agriculture departments to be the primary enforcement agency. Last session, FARFA and other farming organizations supported HB 3227, to provide authority for the Texas Department of Agriculture (TDA) to implement the produce safety rule. This support was predicated on the understanding that TDA would implement the federal rule with no additional requirements.

FSMA contains exemptions for small-scale, direct-marketing farmers. These exemptions are vital to the future of small farms because, by the FDA's own estimates, it would cost a small farm approximately \$25,000 per year to implement the new regulations – a sum that would drive almost every small farm out of business. **Yet, in implementing the FDA's produce safety rule, TDA is proposing provisions that undermine that exemption, as well as creating confusion for all farms.** This bill would limit TDA, as was originally intended, to implementing the Produce Safety Rule **without** additional or differing standards.

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

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