

CHAPTER 822

H.B. No. 2125

AN ACT

relating to the authority of counties and public health districts to regulate food service establishments and retail food stores; providing criminal penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act, "food," "food service establishment," "mobile food unit," "retail food store," and "roadside food vendor" have the meanings assigned to those terms by rules adopted by the Texas Board of Health under the Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes).

SECTION 2. ENFORCEMENT OF STATE LAW. (a) A county and a public health district may enforce state law and rules adopted under state law concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

(b) This Act does not authorize a county or public health district to adopt orders establishing standards for operation of food service establishments, retail food stores, mobile food units, or roadside food vendors.

(c) This Act does not limit or restrict the authority of a municipality that is a member of a public health district to adopt ordinances or administer a permit system concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

SECTION 3. AUTHORITY TO REQUIRE PERMITS. (a) In order to enforce state law and rules adopted under state law, the commissioners court of a county may adopt orders requiring food service establishments, retail food stores, mobile food units, and roadside food vendors within unincorporated areas of the county, including unincorporated areas within the extraterritorial jurisdiction of an incorporated city, to obtain a permit from the county in order to operate the food service establishment, retail food store, mobile food unit, or roadside food vendor.

(b) A public health district that is established by at least one county and one or more incorporated cities located in the county may adopt orders requiring food service establishments, retail food stores, mobile food units, and roadside food vendors within the public health district to obtain a permit from the public health district in order to operate the food service establishment, retail food store, mobile food unit, or roadside food vendor. If the public health district has an administrative board, the administrative board shall adopt the orders in accordance with its procedures. If the public health district does not have an administrative board, the governing body of each member of the district shall adopt the orders. The orders are effective throughout the district 30 days after adoption by the last member governing body.

(c) An order may be adopted under this section only after a public hearing on the proposed order has been conducted by the commissioners court, governing bodies, or administrative board, as applicable. At least two weeks' public notice must be given before a public hearing may be held as provided by this section. Notice must be published in a newspaper of general circulation in the county or the district on three consecutive days and be printed in 10 point boldface type.

(d) No food service establishment or retail food store may be required to obtain more than one permit required by this Act for a single location.

SECTION 4. NONPROFIT ORGANIZATIONS EXEMPT. A county or public health district may not adopt orders under this Act to require a nonprofit organization operating a food service establishment, retail food store, mobile food unit, or roadside food vendor to obtain a permit.

SECTION 5. CONFLICTS WITH ALCOHOLIC BEVERAGE CODE. To the extent of any conflict between this Act or any rule or regulation adopted under this Act and the provisions of the Alcoholic Beverage Code, the provisions of the Alcoholic Beverage Code and the rules of the Alcoholic Beverage Commission shall control and prevail. No standard may be adopted under this Act that is more stringent than or that would have the effect of modifying a provision of or a standard imposed under the Alcoholic Beverage Code or a rule of the Alcoholic Beverage Commission, and in the event of such conflict, a decision by any official or court shall be made in favor of the Alcoholic Beverage Code and the rules of the Alcoholic Beverage Commission. No regulation under this Act may impose stricter standards on the premises or businesses having a license or permit under the Alcoholic Beverage Code than are imposed on similar premises or businesses that do not have such a license or permit.

SECTION 6. INSPECTION OF PLANS BEFORE ISSUING PERMIT. (a) Before issuing a permit required by orders adopted under this Act, the county or public health district, as applicable, may require any food service establishment, retail food store, mobile food unit, or roadside food vendor applying for the permit to provide a rendering of the food preparation, storage, and sales areas to determine if it is in compliance with state law and rules adopted under state law governing food service establishments, retail food stores, mobile food units, and roadside food vendors. The county or public health district may deny the permit after initial inspection only if the food service establishment, retail food store, mobile food unit, or roadside food vendor is not in compliance with the plans as approved by the county or public health district.

(b) If it is found after inspection that a food service establishment, retail food store, mobile food unit, or roadside food vendor is not in compliance with state law and rules, the county or public health district, as applicable, may reinspect the establishment or store at a later date to determine if it is in compliance.

SECTION 7. INSPECTION OF EXISTING ESTABLISHMENT ON ADOPTION OF AN ORDER. When a county or public health district adopts an order under this Act requiring a food service establishment, retail food store, mobile food unit, or roadside food vendor to obtain a permit, the county or health district shall make an initial inspection of the facilities of any existing entity making application for the permit. Any existing entity is entitled to continue to operate pending inspection of the entity prior to the issuance of the permit. If on inspection of the entity, the county or health district determines that an entity does not meet the standards established by state law or rules adopted under state law, the county or health district may initiate revocation proceedings as if the entity were permitted.

SECTION 8. RENEWAL PERMIT. A county or public health district may require annual renewal of a permit issued under orders adopted under this Act.

SECTION 9. FEES. (a) The county or public health district may establish and require the payment of fees for issuance of a permit or renewal of a permit.

(b) The fee for issuance or renewal of a permit may not exceed the highest fee charged by any city in the county or the public health district or \$150, whichever is the lesser.

(c) Fees collected by a county under this Act shall be deposited to the credit of a special fund of the county. Fees collected by a public health district under this Act shall be deposited in a special fund created by the cooperative agreement under which the district operates. Fees deposited in a special fund as provided by this section may only be expended for the issuance of permits and inspections required by this Act.

(d) The county or public health district shall file an audited statement detailing the receipts of funds collected under the provisions of this Act and all expenditures of funds and fund balances with the Texas Department of Health on or before the 15th day of January each year.

(e) A county or public health district that fails to timely file with the Texas Department of Health an audited statement required by this section will be prohibited from requiring the payment of a fee for the issuance or renewal of a permit until the statement required by this section is filed.

SECTION 10. INSPECTIONS. Authorized agents or employees of a county or public health district may enter the premises of a food service establishment, retail food store, mobile food unit, or roadside food vendor under the entity's jurisdiction during normal operating hours to conduct inspections to determine compliance with state law, rules adopted under state law, and orders adopted by the county or public health district.

SECTION 11. DENIAL, SUSPENSION, OR REVOCATION OF PERMITS. (a) A county or public health district may refuse to issue a permit or may suspend or revoke a permit if it is found that the food service establishment, retail food store, mobile food unit, or roadside food vendor is not in compliance with state law, rules adopted under state law, or orders adopted by the county or public health district.

(b) A permit may be denied, suspended, or revoked only after notice and an opportunity for a hearing.

(c) A county or public health district that requires a permit to operate a food service establishment, retail food store, mobile food unit, or roadside food vendor shall adopt procedures for denying, suspending, or revoking a permit. The procedures shall afford due process to the applicant or permittee.

SECTION 12. INJUNCTION. A city, county, or district attorney may sue in the district court to enjoin a food service establishment, retail food store, mobile food unit, or roadside food vendor from operating without a permit if one is required.

SECTION 13. PENALTY. (a) A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or roadside food vendor without a permit required by the county or public health district in which the establishment or store is operating.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day on which a violation occurs constitutes a separate offense.

SECTION 14. EFFECTIVE DATE. This Act takes effect September 1, 1987.

SECTION 15. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 20, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2125 on May 30, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 29, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 19, 1987.

Effective Sept. 1, 1987.