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Food Truck Freedom Act

HB 11 – SB 21

Bill Text

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of food service establishments, including retail food stores and mobile food vendors; requiring an occupational license; imposing fees; authorizing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 437, Health and Safety Code, is amended by adding Section 437.0063 to read as follows:

Sec. 437.0063. SMALL-SCALE FOOD BUSINESS PERMIT EXEMPTIONS. (a) In this section:

(1) "Food producer" has the meaning assigned by Section 437.020.

(2) "Small-scale food business" means a legal entity established by a farmer or food producer with less than $1.5 million in annual gross revenue. The term includes a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company.

(b) A county, municipality, or public health district may not require a small-scale food business or an employee of a small-scale food business to obtain a permit or pay a permitting fee to operate a food service establishment, temporary food service establishment, retail food establishment, temporary retail food establishment, or retail food store if the business:

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(1) holds a permit issued by the department for that purpose; or

(2) is licensed as a food manufacturer under Subchapter J, Chapter 431.

(c) This section preempts a county's, municipality's, or public health district's authority to regulate a small-scale food business in a manner that conflicts with this section.

SECTION 2. Subtitle A, Title 6, Health and Safety Code, is amended by adding Chapter 437B to read as follows:

CHAPTER 437B. MOBILE FOOD VENDORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 437B.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who applies to the department to receive a license to operate as a mobile food vendor.

(2) "Food vending vehicle" means any vehicle that operates as a food service establishment and is designed to be readily movable.

(3) "License holder" means a person who holds a mobile food vendor license issued under this chapter.

(4) "Local authority" means a municipality, county, public health authority, special purpose district or authority, or any other political subdivision of this state.

(5) "Mobile food vendor" means any person who dispenses food or beverages from a food vending vehicle for immediate service or consumption.

(6) "Prepackaged food" means any commercially labeled and processed food that is prepackaged to prevent direct human contact with the food product on distribution from the manufacturer, food facility,

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or other approved source.

Sec. 437B.002. CONSTRUCTION OF CHAPTER. This chapter may not be construed to require a local authority to enter into a collaborative agreement with the department to conduct health inspections, adopt a program regulating mobile food vendors, or modify a local authority's existing mobile food vendor regulation program, provided the local authority's regulations do not conflict with this chapter.

Sec. 437B.003. LOCAL PREEMPTION. This chapter preempts a local authority's power to prohibit or regulate mobile food vendors in a manner that conflicts with this chapter.

Sec. 437B.004. RULES. The executive commissioner may adopt rules to implement this chapter. The rules must be narrowly tailored to address a demonstrable health or safety risk and may not:

(1) limit the number of mobile food vendor licenses the department may issue;

(2) address the hours of operation for mobile food vendors;

(3) restrict a mobile food vendor's propane capacity below the capacity state law allows for commercial vehicles; or

(4) require a mobile food vendor to:

(A) operate outside a specific perimeter of a commercial establishment or restaurant;

(B) enter into any agreement with a commercial establishment or restaurant, except as necessary to properly dispose of grease and other cooking waste;

(C) have an operational handwashing sink in the vehicle of a vendor who sells only prepackaged food;

(D) associate with a commissary if the vehicle

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carries the equipment necessary to comply with state law and properly disposes of grease and other cooking waste;

(E) provide the vendor's fingerprints as a condition of holding a mobile food vendor license;

(F) install a global positioning system tracking device on the vehicle;

(G) keep the vehicle in constant motion except when serving customers;

(H) submit to an additional fire inspection a vehicle the vendor demonstrates has passed a state or local fire inspection within the preceding 12 months; or

(I) submit to health inspections other than an inspection the department, or a local authority under a collaborative agreement, conducts unless the department is investigating a reported foodborne illness.

SUBCHAPTER B. LICENSE

Sec. 437B.051. LICENSE REQUIRED. (a) A person may not operate as a mobile food vendor in this state unless the person holds a mobile food vendor's license issued by the department. A separate license is required for each food vending vehicle a mobile food vendor operates.

(b) A local authority may not prohibit the operation in its jurisdiction of a mobile food vendor who holds a mobile food vendor license and complies with all other state and local laws not in conflict with this chapter.

Sec. 437B.052. FORM OF APPLICATION. The department shall prescribe a written application for a mobile food vendor license. The department shall make the application available to applicants in person and

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on the department's Internet website.

Sec. 437B.053. APPLICATION REQUIREMENTS. (a) An applicant for a mobile food vendor license must submit an application to the department on the form the department prescribes. The application must contain:

(1) the applicant's name, address, and telephone number;

(2) the name, address, and telephone number of any associated entity or organization the applicant is representing and copies of documents verifying that relationship;

(3) the applicant's primary residences and business addresses during the 12 months preceding the date of the application;

(4) the food or beverages the applicant proposes to sell to enable the department to establish the applicant's food type classification;

(5) a statement of whether the applicant has previously been denied a mobile food vendor license or had a mobile food vendor license suspended or revoked in another state or local jurisdiction and the reasons for any denial, suspension, or revocation; and

(6) for each motorized food vending vehicle the applicant is applying for a license to operate:

(A) the vehicle license number, description, identification number, and registration;

(B) proof of vehicle insurance; and

(C) a copy or proof of any additional commercial vehicle licenses or permits required by this state.

(b) An applicant must attest to the information submitted under Subsection (a).

(c) The department may require an applicant to submit additional

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information.

(d) An applicant may submit one application for all food vending vehicles to be licensed under this subchapter.

(e) An applicant's failure to submit a complete application may result in denial of a license.

(f) A person may not intentionally provide false information or intentionally omit requested information on an application.

Sec. 437B.054. HEALTH INSPECTION. (a) Not later than the 14th day after the date the department receives a complete mobile food vendor license application, the department or a governmental entity acting under a collaborative agreement as provided by Subchapter D shall conduct a health inspection of each of the applicant's food vending vehicles listed on the application. The department may not issue a license to an applicant whose vehicle does not pass a health inspection.

(b) The department shall ensure that:

(1) an applicant's food vending vehicle is safe for preparing, handling, and selling food; and

(2) an applicant is in compliance with all applicable laws and the rules adopted under those laws.

Sec. 437B.055. ISSUANCE OF LICENSE. (a) The department shall issue a mobile food vendor license to an applicant who submits a complete application, pays any required fee, and meets the department's licensing requirements and whose food vending vehicle passes a health inspection.

(b) A license issued under this section expires on the first anniversary of the date of issuance.

Sec. 437B.056. LICENSE RENEWAL. (a) Before expiration of a

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license, the department shall send notice of the expiration to the mobile food vendor. The vendor shall submit a renewal application before the date the license expires.

(b) A mobile food vendor may continue to operate while the vendor's application for renewal is pending with the department.

Sec. 437B.057. LICENSE NOT TRANSFERABLE; SUBSTITUTION OF VEHICLE. (a) A mobile food vendor license issued under this subchapter is not transferable and does not authorize the activities of any person other than the person who holds the license.

(b) The sale of one food vending vehicle identified in a mobile food vendor license application, when replaced by another food vending vehicle, does not invalidate the license or require issuance of a new license.

(c) A license holder who replaces a food vending vehicle with another vehicle must provide to the department for the replacement vehicle the information required by Section 437B.053 and have the replacement vehicle inspected as required by Section 437B.054. The health inspection shall be conducted as soon as practicable but not later than the 14th calendar day after the date the department receives the information required under this section.

(d) The recipient of transferred mobile food vendor business assets must apply for and obtain a new mobile food vendor license before operating as a mobile food vendor.

Sec. 437B.058. FEES. (a) The department may charge a fee for each mobile food vendor license application submitted and each license issued or renewed under this chapter. The department may establish a schedule of fees based on the license classifications described by Section 437B.151. The department may set the fees in amounts necessary to cover

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the costs of administering this chapter.

(b) The department may charge a fee for a health inspection of an applicant's food vending vehicle required under Section 437B.054. The department shall set the fee in an amount that covers the cost of conducting a health inspection under that section.

(c) At the time the department issues or renews a mobile food vendor license, the department shall charge a fee for a health inspection required under Subchapter D. The department shall set the fee in an amount based on the average cost of conducting a health inspection multiplied by the number of annual health inspections required during the next year for the mobile food vendor classification type as described by Section 437B.151.

(d) All fees collected by the department under this chapter shall be deposited in the state treasury to the credit of the food and drug retail fee account.

Sec. 437B.059. MOBILE FOOD VENDOR GUIDE. (a) The department shall develop a guide on the mobile food vendor licensing procedures. The guide must include:

(1) instructions for obtaining, maintaining, and renewing a mobile food vendor license; and

(2) a description of the department's standards for inspecting a food vending vehicle.

(b) The department shall make the guide available at the department's office and on the department's Internet website.

Sec. 437B.060. DEPARTMENT DATABASE. (a) The department shall establish and maintain a statewide database for use by the department and local authorities that includes the:

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(1) names of mobile food vendors licensed under this chapter;

(2) results of health inspections of mobile food vendors' food vending vehicles, including inspection reports;

(3) public complaints made against mobile food vendors resulting in disciplinary or corrective action; and

(4) itineraries of mobile food vendors submitted under Subsection (b).

(b) A mobile food vendor may periodically submit to the department an itinerary of the locations of the mobile food vendor's food vending vehicles.

SUBCHAPTER C. MOBILE FOOD VENDOR OPERATIONS

Sec. 437B.101. COMPLIANCE WITH STATE AND LOCAL LAW. A mobile food vendor shall comply with all state and local laws in the jurisdiction in which the mobile food vendor operates, including all fire codes, location restrictions, and zoning codes.

Sec. 437B.102. FOOD VENDING VEHICLE DRIVER REQUIREMENTS. A person who drives a motorized food vending vehicle must hold a current commercial driver's license if a commercial driver's license is required for the vehicle's class under Chapter 522, Transportation Code.

Sec. 437B.103. OPERATIONAL STANDARDS. A mobile food vendor shall:

(1) submit to and pass any required health inspection conducted under Subchapter D; and

(2) display the mobile food vendor license and health inspection certificate in a conspicuous location for public view.

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Sec. 437B.104. FOOD SAFETY. A mobile food vendor shall comply with all laws and rules regarding food safety, including any food safety and food manager certifications required under Chapter 438.

SUBCHAPTER D. HEALTH INSPECTIONS

Sec. 437B.151. MOBILE FOOD VENDOR CLASSIFICATIONS. (a) The executive commissioner by rule shall establish classifications of mobile food vendors for purposes of conducting health inspections as follows:

(1) mobile food type I vendor for a vendor who dispenses prepackaged foods, does not dispense time or temperature control for safety beverages, or poses a low risk of harm to the public;

(2) mobile food type II vendor for a vendor who dispenses food that requires limited handling and preparation; and

(3) mobile food type III vendor for a vendor who prepares, cooks, holds, and serves food from a food vending vehicle.

(b) The rules adopted under Subsection (a) shall specify the categories of foods or beverages that mobile food vendors in each classification may serve.

Sec. 437B.152. CHANGING CLASSIFICATIONS. A mobile food vendor who seeks to serve food or beverages that may require the vendor's reclassification shall notify the department of the nature of the food or beverages to be sold. The department, or a local authority in a collaborative agreement with the department under Section 437B.153, may conduct a health inspection and reclassify the vendor in accordance with the rules adopted under Section 437B.151.

Sec. 437B.153. INSPECTIONS; COLLABORATIVE AGREEMENT WITH LOCAL AUTHORITY. (a) To protect public

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health and safety, the department shall ensure ongoing, randomized inspections are conducted on each mobile food vendor based on the mobile food vendor's classification and previous health inspection results.

(b) On request by a local authority, the department may enter into a collaborative agreement with the local authority for conducting health inspections. The department shall reimburse the local authority acting under a collaborative agreement for the cost of conducting a health inspection using money collected for health inspection fees under Section 437B.058(c).

Sec. 437B.154. NOTICE OF LOCATION FOR INSPECTIONS. A mobile food vendor shall make available to the department a list of all locations at which the vendor intends to operate, to the best of the vendor's knowledge. A vendor may provide the list of locations through the vendor's social media or on the vendor's Internet website. If the vendor does not provide the list of operating locations on social media or the vendor's Internet website, the vendor shall submit to the department in the form and manner the department prescribes a list of the locations at which the vendor intends to operate, to the best of the vendor's knowledge.

Sec. 437B.155. REIMBURSEMENT OF INSPECTION FEE. On request of a mobile food vendor, the department shall reimburse the vendor the portion of the fee charged for each health inspection required under this subchapter that was not conducted by the department or local authority under a collaborative agreement during the time the vendor's license was valid. The department shall reimburse the vendor not later than the 30th day after the date the department receives the vendor's request.

SUBCHAPTER E. INVESTIGATION; ENFORCEMENT

Sec. 437B.201. INVESTIGATION. (a) The department or a local

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authority may investigate a mobile food vendor on reasonable suspicion the vendor is violating the law or on receipt of a health or safety complaint. The department must record a complaint in the state's mobile food vendor database. The local authority shall report suspected violations of state law to the department and may recommend the department suspend or revoke a mobile food vendor license.

(b) The mobile food vendor shall cooperate with the department or local authority during an investigation. Failure to cooperate with the department or local authority may result in suspension or revocation of a license.

(c) This chapter may not be construed to impede the department or local authority when conducting an investigation of a reported foodborne illness.

Sec. 437B.202. LICENSE DENIAL, SUSPENSION, OR REVOCATION. The department may deny, suspend, or revoke a mobile food vendor license only if:

(1) the applicant or license holder:

(A) violates this chapter, a rule adopted under this chapter, or a department order;

(B) obtains a license by means of fraud, misrepresentation, or concealment of a material fact;

(C) commits fraud or makes a misrepresentation or false statement in connection with the sale of food or beverages while operating as a mobile food vendor; or

(D) is cited three or more times during a 12-month period for a violation of this chapter or rules adopted under this chapter; or

(2) the department determines that material facts or

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conditions related to the applicant or application provide reasonable justification for the denial, suspension, or revocation of the license.

Sec. 437B.203. NOTICE AND HEARING. (a) The department shall provide written notice to an applicant or license holder that the applicant's mobile food vendor application has been denied or that the license may be suspended or revoked. Not later than 14 calendar days after the date an applicant or license holder receives notice from the department of a denial, suspension, or revocation of a license, the applicant or license holder may request a hearing in the form and manner the department prescribes.

(b) If the applicant for or holder of a mobile food vendor license requests a hearing as prescribed by the department, the department shall promptly refer the matter to the State Office of Administrative Hearings for a contested case hearing.

(c) Following a hearing or on conclusion of the involvement of the State Office of Administrative Hearings in the matter under this section, the department shall promptly issue an order that includes findings of fact and conclusions of law.

Sec. 437B.204. EMERGENCY SUSPENSION. (a) The department may issue an emergency order to suspend a mobile food vendor license if the department has reasonable cause to believe a license holder's operations pose an imminent threat to the public's health and safety. An emergency suspension order is effective immediately without a hearing on notice to the license holder and must state the length of the suspension.

(b) Not later than the 14th day after the date a mobile food vendor license holder receives notice from the department of an emergency suspension of a license under this section, the license holder may request a

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preliminary hearing on the emergency order in a form and manner the department prescribes.

(c) On receipt of a license holder's request for hearing under Subsection (b), the department shall promptly refer the matter to the State Office of Administrative Hearings for a preliminary hearing before an administrative law judge.

(d) An administrative law judge for the State Office of Administrative Hearings shall:

(1) conduct a preliminary hearing to affirm, modify, or set aside the emergency suspension order issued by the department under Subsection (b) not later than the 17th day after the date the office receives the hearing request;

(2) make findings of fact and conclusions of law; and

(3) issue a written proposal for decision on the department's reasonable cause to believe a continuing and imminent threat to the public's health and safety exists.

(e) A final hearing on the matter shall be held not later than the 61st day after the date of the emergency suspension.

Sec. 437B.2045. RIGHT TO APPEAL. The department's suspension or revocation of a mobile food vendor license under this chapter and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Sec. 437B.205. ADMINISTRATIVE PENALTY. A license holder who continues to operate after the department suspends or revokes the license holder's mobile food vendor license is subject to an administrative penalty in an amount the department determines.

SECTION 3. Section 437.0055(a), Health and Safety Code, is

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amended to read as follows:

(a) A person may not operate a food service establishment, retail food store, [~~mobile food unit,~~] or temporary food service establishment located in an area in which a county or public health district does not require a permit or conduct inspections under this chapter unless the person has a permit issued by the department.

SECTION 4. Section 437A.003, Health and Safety Code, is repealed.

SECTION 5. (a) Chapter 437B, Health and Safety Code, as added by this Act, applies to an ordinance, rule, regulation, policy, or procedure adopted before, on, or after the effective date of this Act.

(b) Not later than May 1, 2027, the executive commissioner of the Health and Human Services Commission shall adopt the rules required by Chapter 437B, Health and Safety Code, as added by this Act.

(c) A mobile food vendor is not required to hold a license under Chapter 437B, Health and Safety Code, as added by this Act, before July 1, 2027.

SECTION 6. (a) Except as provided by Subsection (b) of this section, this Act takes effect December 31, 2027.

(b) Section 437B.004, Health and Safety Code, as added by this Act, takes effect December 31, 2026.