

BILL ANALYSIS

Senate Research Center
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H.B. 91
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas law currently allows for the sale of unpasteurized or raw milk. Sellers are licensed by the Department of State Health Services, routinely inspected, required to test their milk every six weeks, and follow all production and storage regulations as mandated by the state and the United States Food and Drug Administration. Despite the explicit recognition as a legal product for commercial sale, raw milk is only allowed to be sold on the producer's farm. Consumers wanting to purchase raw milk must go to the farms themselves and purchase the milk directly from the producer. H.B. 91 would allow raw milk producers to sell directly to consumers at farmers' markets and at the consumer's residence. Retail sale is and will continue to be prohibited.

H.B. 91 amends current law relating to the regulation of raw milk and raw milk products and adds a provision subject to a criminal penalty.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 435.0063, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 435, Health and Safety Code, by adding Sections 435.0061, 435.0062, and 435.0063, as follows:

Sec. 435.0061. RAW MILK AND RAW MILK PRODUCTS FOR RETAIL SALE. (a) Provides that this section does not authorize the sale of:

- (1) raw milk or raw milk products to or on the premises of a grocery store, supermarket, or similar retail market;
- (2) raw milk or raw milk products that are a blend of raw milk purchased from more than one holder of a permit issued under this chapter; or
- (3) raw milk or raw milk products by a person other than the permit holder.

(b) Authorizes a person who holds a permit that authorizes the person to sell raw milk or raw milk products at retail, except as provided by Section 435.013 (Municipal Regulation Authorized), to make retail sales of raw milk or raw milk products directly to a consumer in this state at:

- (1) the permit holder's place of business;
- (2) the consumer's residence; or

(3) a farmers' market as defined by Section 437.020 (Regulation of Food Samples at Farms and Farmers' Markets).

(c) Requires that raw milk and raw milk products be maintained in compliance with Section 435.0063.

(d) A person who sells raw milk or raw milk products under this section shall affix to individual raw milk or raw milk product containers a label that includes:

(1) the name of the permit holder;

(2) the permit holder's permit number;

(3) the calendar date the raw milk or raw milk product was packaged in the container; and

(4) the following statement: "This product contains unpasteurized milk. Consuming raw foods, including raw dairy products, may increase your risk of food-borne illness. Persons at higher risk for food-borne illness include pregnant and nursing women, children, the elderly, and people with weakened immune systems."

Sec. 435.0062. AVAILABILITY OF RECORDS ON RAW MILK TESTING. Requires the Texas Department of Health (TDH), on request, to provide the requestor with a record of test results from an inspection of raw milk or raw milk products conducted under Section 435.004 or 435.005.

Sec. 435.0063. STORING, HANDLING, AND TRANSPORTING RAW MILK AND RAW MILK PRODUCTS FOR RETAIL SALE. (a) Requires the executive commissioner of the Health and Human Services Commission to adopt rules for the safe storing, handling, and transporting of raw milk and raw milk products produced for sale under Section 435.0061.

(b) Requires that raw milk and raw milk products produced for retail sale under this chapter be placed in a sterile or single-use container and sold not later than the fifth day after the date the container was filled.

(c) Requires that raw milk and raw milk products being transported for delivery be:

(1) maintained in air temperatures at or below 45 degrees Fahrenheit at all times except during transfer from one storage area or transportation vehicle to another; and

(2) protected from exposure to direct sunlight.

(d) Prohibits TDH or a local health authority from mandating the specific method for complying with a temperature requirement.

(e) Authorizes a producer to contract with another person to transport and deliver raw milk and raw milk products in accordance with this section. Provides that the producer is jointly and severally liable for transport and delivery of raw milk and raw milk products not conducted in accordance with this chapter and TDH rules.

SECTION 2. Effective date: September 1, 2015.