

SUBJECT: Allowing food establishment to sell certain unprepared food to consumers

COMMITTEE: Public Health — committee substitute recommended

VOTE: 11 ayes — Klick, Guerra, Allison, Campos, Coleman, Collier, Jetton,
Oliverson, Price, Smith, Zwiener

0 nays

WITNESSES: For — Kelsey Streufert, Texas Restaurant Association; Skeeter Miller, The County Line; (*Registered, but did not testify*: Guadalupe Cuellar, City of El Paso; TJ Patterson, City of Fort Worth; Carolina Mueller, Farm and Ranch Freedom Alliance; Jarred Maxwell, Foodshed Investors; John McCord, NFIB; Simone Benz, Sustainable Food Center; Martin Hubert, Sysco Corporation)

Against — (*Registered, but did not testify*: Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner)

On — (*Registered, but did not testify*: Stephen Pahl, Department of State Health Services)

BACKGROUND: 25 TAC sec. 228.2(57) defines "food establishment" as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, including:

- a restaurant, retail food store, satellite or catered feeding location, and food bank; and
- an establishment that relinquishes possession of food to a consumer directly, or indirectly, such as through a home delivery service for groceries or restaurant takeout orders, or common carrier delivery service; among other entities.

"Food establishment" does not include an establishment that offers only prepackaged foods that are not time or temperature controlled for safety, a produce stand that only offers whole, uncut fresh fruits and vegetables, or

a food processing plant, among other specified entities.

Health and Safety Code sec. 431.2211 exempts certain food manufacturers, food wholesalers, and warehouse operators from licensure requirements, including a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant is not otherwise required to hold a license.

DIGEST:

CSHB 1276 would allow a food service establishment to sell unprepared food directly to an individual. A food service establishment that held a permit under current law could sell food that:

- was labeled, which could include a handwritten label, with any information required by the Department of State Health Services' (DSHS) rules;
- for a meat product or poultry product, was obtained from a source that was appropriately inspected and included an official mark from DSHS or the U.S. Department of Agriculture; and
- for food requiring refrigeration other than whole, uncut produce, was protected from contamination and maintained at or below 41 degrees Fahrenheit until the establishment sold or donated the food.

A food service establishment that held a permit could not sell directly to an individual food that was in a package exhibiting damage. It also could not sell food that was distressed because the food:

- was subjected to fire, flooding, excessive heat, smoke, radiation, or another environmental contamination;
- was not held at the correct temperature for the food type; or
- was not in good condition.

The bill would prohibit a municipality or public health district from requiring a food establishment that sold food directly to an individual to obtain a food manufacturer license or permit if the establishment complied with the bill's provisions and was not required to hold that license or permit under other state law.

The bill would exempt from licensure requirements under Health and Safety Code sec. 431.2211 a restaurant that sold food directly to an individual consumer if the restaurant held a permit as a food service establishment under current law, complied with the bill's provisions, and otherwise was not required to hold a license under current law.

As soon as practicable after the bill's effective date, the executive commissioner of the Health and Human Services Commission would have to adopt rules to implement the bill's provisions.

The bill would apply only to the sale of food by a food service establishment and a license issued or renewed on or after the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

**SUPPORTERS
SAY:**

CSHB 1276 would increase Texans' access to food and generate additional revenue for food establishments by codifying Department of State Health Services (DSHS) guidelines allowing these establishments to sell unprepared food directly to consumers.

During the COVID-19 pandemic, stay-at-home orders caused many restaurants to suspend dine-in operations, making it difficult for business owners to make financial ends meet and reducing sources of food for Texans. As grocery stores remained open as the primary source of food, the supply chain struggled to keep up with increased demand. In an effort to provide relief for overburdened grocery stores, to give consumers a convenient place to purchase necessary goods, and to keep restaurants open, the governor directed DSHS to issue temporary guidelines allowing retail food products to be sold directly to individuals.

The bill would allow food service establishments to continue selling retail food products to individuals beyond the pandemic, creating a sustainable

source of food for Texas families and generating another source of revenue for business owners. The bill would provide sufficient food safety regulations by requiring unprepared food to be properly labeled, stored, inspected, and time and temperature controlled.

CRITICS
SAY:

No concerns identified.