

BILL ANALYSIS

Senate Research Center
78R10403 YDB-D

H.B. 3542
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Administration
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Engrossed

DIGEST AND PURPOSE

Currently, the Texas Department of Health cannot prevent adulterated or misbranded dairy products from reaching consumers without suspending the certificate of a milk and dairy products manufacturer or distributor. Other food and drug safety programs have additional enforcement tools. H.B. 3542 establishes other enforcement tools for manufacturers and distributors of milk and dairy products.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Health in SECTION 5 (Section 435.012, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 431, Health and Safety Code, by adding Section 431.010, as follows:

Sec. 431.010. **APPLICABILITY OF CHAPTER TO MILK AND MILK PRODUCTS.**

(a) Provides that this chapter applies to milk or a milk product subject to Chapter 435 (Dairy Products). Provides that milk or a milk product is a food for purposes of this chapter.

(b) Provides that this chapter applies to the conduct of a person who holds a permit under Chapter 435, except as provided by Subsection (c).

(c) Provides that a person who holds a permit under Chapter 435 related to the processing, producing, bottling, receiving, transferring, or transporting of Grade A milk or milk products and who is engaging in conduct within the scope of that permit is not required to hold a license as a food manufacturer or food wholesaler under Subchapter J.

SECTION 2. Amends Section 431.2211, Health and Safety Code, by adding Subsection (a-2) to provide that a person is not required to hold a license under this subchapter if the person holds a permit under Chapter 435 (Dairy Products) related to the processing, producing, bottling, receiving, transferring, or transporting of Grade A milk or milk products and is engaging in conduct within the scope of that permit.

SECTION 3. Amends Subchapter A, Chapter 435, Health and Safety Code, by adding Section 435.0015, as follows:

Sec. 435.0015. **APPLICABILITY OF OTHER LAW.** Provides that Chapter 431 (Applicability of Chapter to Milk and Milk Products) applies to a person and milk or a milk product regulated under this chapter, except as provided by Section 431.010(c).

SECTION 4. Amends Section 435.011, Health and Safety Code, as follows:

Sec. 435.011. New heading: **HEARING.** Creates this subsection from existing text. Deletes existing text regarding denial of a permit and receiving a hearing on that action.

(b) Provides that the refusal or the suspension or revocation of a permit by the Texas Department of Health (TDH) and the appeal of that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code (Administrative Procedure).

SECTION 5. Amends Section 435.012, Health and Safety Code, as follows:

Sec. 435.012. New heading: REFUSAL TO GRANT PERMIT; SUSPENSION OR REVOCATION OF PERMIT. (a) Authorizes TDH to refuse an application for a permit under this chapter or to suspend or revoke a permit issued under this chapter. Deletes existing text related to payment of the monthly fee.

(c) Requires TDH, by rule, to take certain actions.

SECTION 6. Amends Section 435.014, Health and Safety Code, by adding Subsection (d) to provide that the penalty prescribed by this section is subject to either the sanctions prescribed in the Grade A Pasteurized Milk Ordinance for products covered by the ordinance or any civil or administrative penalty or sanction otherwise imposed by Chapter 431 (Applicability of Chapter to Milk and Milk Products) or other law for products not covered by the ordinance.

SECTION 7. Requires the Texas Board of Health to adopt the rules and establish the procedures required by Section 435.012, Health and Safety Code, as amended by this Act, by December 1, 2003.

SECTION 8. Effective date: September 1, 2003.