

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 1392  
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Health & Human Services  
5/13/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 1392 is intended to provide regulatory certainty for individuals and small businesses in Texas by ensuring that there is a consistent and reliable way for individuals and small businesses to obtain clear and timely guidance for how to comply with state food and health regulations from the Department of State Health Services (DSHS).

Specifically, the bill requires DSHS to provide a reasonable and substantial response to inquiries about food regulations within 30 days; requires DSHS to provide an official written determination regarding the applicability of a food regulation to a specific circumstance within 30 days; prohibits an inspector from issuing a citation to a person for a violation of a food regulation if the person provides the inspector with an official determination that contradicts the opinion of the inspector; and requires the Health and Human Services Commission to periodically review food rules and regulations to better ensure the rules are consistent and are clearly communicated to the public.

H.B. 1392 amends current law relating to information provided by the Department of State Health Services on food regulation.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Department of State Health Services in SECTION 1 (Section 438.153, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 438.155, Health and Safety Code) and SECTION 2 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 438, Health and Safety Code, by adding Subchapter H, as follows:

#### **SUBCHAPTER H. INFORMATION ON DEPARTMENT FOOD REGULATION**

Sec. 438.151. DEFINITIONS. Defines "department" and "executive commissioner" in this subchapter.

Sec. 438.152. REQUEST FOR INFORMATION. Requires the Department of State Health Services (DSHS), unless otherwise prohibited by state or federal law, on receipt of a written request for information pertaining to the regulation of food under this subtitle (Food and Drug Health Regulations), to provide a reasonable and substantial response to the request not later than the 30th day after the date DSHS receives the request.

Sec. 438.153. REQUEST FOR OFFICIAL DETERMINATION. (a) Requires DSHS, on receipt of a written request regarding the applicability to a specific circumstance of a regulation or the requirements for compliance with the regulation, to provide an official written determination regarding the applicability of the regulation or the requirements for compliance with the regulation to the requestor not later than the 30th day after the date DSHS receives the request.

(b) Provides that an official determination made under this section is valid until the regulation that is the subject of the determination is amended by statute or DSHS rule.

Sec. 438.154. EFFECT OF OFFICIAL DETERMINATION. Prohibits an inspector from issuing to a person a citation for a violation of a food regulation governed by this subtitle if the person provides the inspector with an official determination made under Section 438.153 that contradicts the opinion of the inspector.

Sec. 438.155. RULES. (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules to implement this subchapter.

(b) Requires the executive commissioner periodically to evaluate DSHS's food safety rules and modify the rules as necessary to improve consistency and communication in food regulation in this state.

SECTION 2. (a) Requires the executive commissioner, not later than December 1, 2013, to adopt the rules necessary to implement Subchapter H, Chapter 438, Health and Safety Code, as added by this Act.

(b) Provides that this Act applies only to a request for information or official determination made under Subchapter H, Chapter 438, Health and Safety Code, as added by this Act, to DSHS on or after January 1, 2014. Provides that a request for information or official determination made to DSHS before January 1, 2014, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2013.