

- SUBJECT:** Establishing registration of cottage food production operations
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 9 ayes — Kolkhorst, Coleman, J. Davis, Gonzales, Hopson, S. King, Laubenberg, McReynolds, Zerwas
- 0 nays
- 2 absent — Naishtat, Truitt
- WITNESSES:** For — Sallia Bandy; Jennifer Bartos; Kelley Masters; (*Registered, but did not testify*: Randy Bartos; Leslie Byer and 20 other individuals)
- Against — Patrick Buzbee, Montgomery County Health Department; Kelly Fuller, Sweet Austin; David Jefferson, Tarrant County Public Health; Steve Mannion; Hans Nadler, Nadlers Bakery, Greater Southwest Retail Bakers Association, Retail Bakers of America, San Antonio Restaurant Association; (*Registered, but did not testify*: Kathy Barber, Texas Retailers Association; Richard Briley, Steve Killen, City of Garland; Jason Chessher, Cindy Mooney, City of Garland Health Department; Glen Garey, Texas Restaurant Association; Alan Harvey; James Murphy; Terri Pali, Texas Public Health Association; Lisa Powers, City of Arlington; Bronwen Weber; Heather Williams; Stephen Williams, Texas Association of Local Health Officials)
- On — Deborah Marlow, Texas Department of State Health Services
- BACKGROUND:** Health and Safety Code, ch. 437 regulates food service establishments, retail food stores, mobile food units, and roadside food vendors.
- DIGEST:** CSHB 3282 would require individuals who produce certain baked goods out of their home for sale to register with the Texas Department of State Health (DSHS) as a cottage food production operation. Registrants who intended to begin a cottage food production operation would have to pay a registration fee of not more than \$50 and successfully complete a basic food safety education or training course for food handlers. A baked good would include cookies, cakes, breads, Danishes, donuts, pastries, pies and other items that are baked in an oven. It would not

include potentially hazardous food items. Food items sold from a cottage food production operation would have to be labeled “home produced.”

A kitchen in a private home that prepared baked goods for sale at charitable or nonprofit organizations would be exempt from the provisions of CSHB 3282.

The executive commissioner would be required to adopt minimum standards for cottage food production operations to protect the public health to ensure a safe food supply. Rules could require an inspection of a cottage food production operation if the DSHS suspected the operation was in violation of health and safety regulations, standards, or is operating in an unsanitary manner. Minimum standards could not be so onerous as to make the operation impractical.

Local health departments would not be able to regulate a cottage food operation that did not offer products to the public for consumption on the premises of the operation. They would be authorized to investigate a cottage food production operation as part of an investigation of a food-borne illness outbreak.

A food service establishment that was not a cottage food production operation, would not be able to use a product produced by the operation as an ingredient in any food that was prepared by the food service establishment and offered for public consumption.

The bill would take effect on September 1, 2009.

**SUPPORTERS  
SAY:**

Over the years, successful businesses have started out as small businesses in the homes of individuals. CSHB 3282 would allow small entrepreneurs to use their home kitchens to put their expertise to work by registering with the state to sell baked goods, such as pies, cakes, and cookies. During tough economic times, many are looking for ways to earn a living, help make ends meet, and start new businesses. In this time of foreclosures, layoffs, and withering retirement accounts, the bill would give people the opportunity to begin a legal home-based business.

The bill would require a new state registration system for cottage food production operations, which would be individuals who operate out of their homes to produce baked goods for sale. It would allow those who want to start a small enterprise out of their home the ability to do so, while

balancing the need for food safety.

To ensure the public health, these operations would have to register with the state, place a “home produced” label on their products, complete a certified food handlers program, and be subject to inspections if the health department believed they were violating a rule or operating in an unsanitary manner.

Furthermore, the bill would prohibit a cottage food operation from selling their products to any other food establishment like a grocery store or restaurant for use as an ingredient for resale.

All home-based businesses compete on some level with commercial counterparts. The market has the capacity for all of them. Twelve other states have similar cottage food laws.

**OPPONENTS  
SAY:**

This bill would override local health and food safety regulations in place to protect the public and ensure safe food. The state health department would be unable to ensure the protection of the public’s health without the ability to conduct routine inspections, adequate enforcement authority, or the ability to apply current minimum science-based food safety standards. Current law requires all food manufacturers to be licensed and inspected. This bill would create an entirely new category of food production operations that would have very little regulation.

Legitimate food-related businesses are regularly inspected and must be licensed to ensure the health and safety of its customers. Some retail bakers work out of their home but are required to have separate commercial kitchens that are inspected on a regular basis. There is a broad range of enforcement actions that are geared toward licensees for a permitted establishment who violate the health and safety laws of Texas.

This bill would not require any initial inspections of the home kitchens prior to registration. The only inspection would be after a problem occurred. Food borne outbreaks like norovirus, hepatitis A and salmonella would be very difficult to investigate and pinpoint because they would be difficult to trace back to the source. There also could be legal issues surrounding the state entering private property to conduct investigations and take samples from food or family members.

While the bill would require the registrant to complete a food handlers program, it would not address anyone else living or visiting in the home. There would be no way to guarantee the safety of the food products or preparation area in the home environment. Children, other family members, or anyone visiting in the home would not have any knowledge of or be required to protect the safety of the food that would be used in the baked goods.

The bill states that a baked good would not include a potentially hazardous food item. These items can be as innocuous as cream cheese or ingredients for crust making, but not all individuals can be expected to know the difference between potentially hazardous foods and common everyday foods that can become potentially hazardous.

The health department currently registers and licenses about 3,300 registrants a year and fields around 1,000 complaints. The department bases licensing, permitting, and registration fees on the cost to implement and administer the program. A one-time registration fee of \$50 is not enough to investigate complaints. Eventually, as more currently licensed manufacturers and permitted retailers shifted from traditional licensing and permitting to cottage industry registration because of the less stringent regulatory environment, the safety of food preparation for public consumption would decline and also result in lost revenue for the state.

CSHB 3282 would prohibit a local health department from regulating the production of food at a cottage food production operation, which contradicts the home rule authority of local jurisdictions.

OTHER  
OPPONENTS  
SAY:

This bill is too narrow in its definition of food for a cottage food production operation. A wide variety of other food products besides baked good, such as candies and confections, could be safely produced in home kitchens but would be arbitrarily excluded from the definition of cottage food production.

NOTES:

The substitute differs from the filed version by adding an exemption for products produced for certain functions and limiting the bill to production of baked goods. It would remove a requirement that an operation that produces potentially hazardous foods to hold a permit. The substitute would require the commissioner to by rule adopt minimum standards for such operations. The substitute removed the requirement to have inspections prior to registration of the operation and changes the

requirement that registrants must complete a basic food safety program for food handlers, rather than food managers. The substitute would limit the registration fee to \$50. The substitute would add a provision that defines “baked good.”

According to the LBB, the bill would cost \$280,240 in fiscal 2010 and about \$200,000 a year through fiscal 2014, and a loss of \$140,400 each biennium from the lower food and drug fee.