

**SUBJECT:** Exempting heated or served bakery items from state sales tax

**COMMITTEE:** Ways and Means — favorable, without amendment

**VOTE:** 11 ayes — D. Bonnen, Y. Davis, Bohac, Darby, E. Johnson, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

**WITNESSES:** For — Janice Jucker; (*Registered, but did not testify*: Richard Prets, SBDC; Jim Sheer, Texas Retailers Association; Robert Jucker; Kirk Michaelis; Heather O'Connor)

Against — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings)

**BACKGROUND:** Tax Code, sec. 151.314 exempts food products for human consumption from state sales, excise and use taxes. Sec. 151.314(c-2) specifies that this exemption does not apply to food that is heated, served, prepared, or sold ready for immediate consumption.

Sec. 151.314(c-3) specifies that the exemption does apply to bakery items, provided that they are not sold with plates or other eating utensils.

**DIGEST:** HB 4054 would exempt heated bakery items and bakery items served with plates or other utensils from state sales, excise, and use taxes.

The bill would take effect September 1, 2017, and would apply only to tax liability accruing on or after that date.

**SUPPORTERS SAY:** HB 4054 would resolve a confusing disparity for bakeries and their bookkeeping processes. Currently, a bakery cannot heat a pastry for a customer or serve it with utensils without charging sales tax and can be audited for handing a fork to a customer. The bill would simplify the Tax Code and create uniformity among bakeries and their accounting practices.

The bill would enable bakeries to provide superior customer service without worrying that they were violating the law. Customers should be entitled to eat the bakery items they purchase whenever they choose, and bakeries should not be penalized for providing good service or satisfying customer requests.

The bill would not damage the operation of the free market and according to the fiscal note would present no significant cost to the state. Bakeries already receive an exemption in the Tax Code, and the bill simply would provide for fair and uniform enforcement of this exemption.

OPPONENTS  
SAY:

By carving out an exemption in the Tax Code for just one special interest group, HB 4054 could infringe on the free market. Bakeries that serve hot food should not be entitled to an exemption that is not afforded to their competitors that serve hot food. Such exemptions represent a cost to the state budget and should not be further expanded.