

BILL ANALYSIS

C.S.H.B. 3282
By: Gattis
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Over the years, many successful companies have started out of a home kitchen. Currently, individuals wanting to sell cakes and cookies find the state's regulations to be cost prohibitive and detrimental to their entrepreneurship. Under current Department of State Health Services rules, private homes are prohibited from being used as food establishment operations.

C.S.H.B. 3282 provides for the registration of home bakery operations so these operations can sell certain baked goods directly to individuals for their personal use. The bill brings many "small cake operations" in Texas into compliance and creates opportunity for prospective cake sellers. The bill includes provisions that ensure the safety of the products being produced with minimal burdens on small, home bakery enterprises.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 3282 amends the Health and Safety Code to create a registration for a cottage food production operation. The bill exempts from the registration requirement a kitchen in a private home that produces baked goods for sale or service at certain religious, charitable, or nonprofit organization functions and establishes that such a kitchen is not a food service establishment or a cottage food production operation for purposes of food service licensing requirements. The bill establishes that a registered cottage food production operation is not a food service establishment for food service licensing purposes.

C.S.H.B. 3282 requires the executive commissioner of the Health and Human Services Commission by rule to adopt minimum standards for a cottage food production operation to protect the public health and ensure a safe food supply. The bill prohibits the minimum standards from being so onerous as to make the establishment of a cottage food production operation impractical. The bill requires the minimum standards to provide for the registration of cottage food production operations and the labeling of products from a cottage food production operation as "Home Produced." The bill authorizes the minimum standards to require a registered cottage food production operation to comply with provisions of law relating to food regulation that the executive commissioner determines are appropriate and consistent with the bill's provisions.

C.S.H.B. 3282 authorizes the executive commissioner by rule to require an inspection of a cottage food production operation if the Department of State Health Services has reason to believe that the operation is operating in violation of registration requirements or operates in an unsanitary manner. The bill prohibits the executive commissioner from requiring as a condition of registration the use of commercial grade surfaces, the use of commercial grade appliances, a separate kitchen for conducting the operation, or the submission of plans and specifications before the construction or remodel of the operation.

C.S.H.B. 3282 requires the operator of a cottage food production operation, before beginning an operation, to register with the department as a cottage food production operation and successfully complete a basic food safety education or training program for food handlers accredited by the department under state law. The bill requires the department to issue a registration to an applicant for an operation if the applicant pays a registration fee in an amount not to exceed \$50, as required by the department, and meets the other requirements of the bill's provisions.

C.S.H.B. 3282 prohibits a local health department from regulating the production of food at a cottage food production operation conducting business in compliance with the bill's provisions that does not offer products to the public for consumption on the premises of the operation and authorizes a local health department to investigate a cottage food production operation as part of an investigation into the source of a food-borne illness outbreak.

C.S.H.B. 3282 prohibits a food establishment, other than a cottage food production operation, from using a product produced in a cottage food production operation as an ingredient in any food that is prepared by the food service establishment and offered by the establishment to the public for consumption. The bill defines "baked good" and specifies that a baked good does not include a potentially hazardous food item as defined by the executive commissioner rule. The bill defines "cottage food production operation" to mean an individual, operating out of the individual's home, who produces a baked good for sale. The bill defines "executive commissioner" and "home."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3282 adds a provision not included in the original creating an exemption from registration requirements for a kitchen in a private home that produces baked goods for certain functions and establishing that such a kitchen is not a food service establishment or a cottage food production operation.

C.S.H.B. 3282 omits a provision included in the original requiring a cottage food production operation that produces potentially hazardous food to hold a permit, omits the provision in the original defining "potentially hazardous food," and makes conforming changes related to those omissions.

C.S.H.B. 3282 differs from the original by requiring the executive commissioner of the Health and Human Services Commission by rule to adopt minimum standards for a cottage food production operation, rather than requiring the executive commissioner to adopt rules for the regulation of such operations as in the original, and making conforming changes. The substitute adds a provision not in the original prohibiting minimum standards adopted from being so onerous as to make the establishment of a cottage food production operation impractical.

C.S.H.B. 3282 omits a provision included in the original authorizing the executive commissioner by rule to require an inspection of a cottage food production operation before issuing a registration for the operation and makes related conforming changes. The substitute differs from the original by requiring the operator of a cottage food production operation, before beginning operations, to successfully complete an accredited basic food safety education or training program for food handlers, rather than an accredited food manager's certification course, as in the original. The substitute differs from the original by limiting the amount of the registration fee to an amount not to exceed \$50, whereas the original had no fee limitation.

C.S.H.B. 3282 adds a provision not in the original defining "baked good" and specifying that a baked good does not include a potentially hazardous food item as defined by department rule.