

BILL ANALYSIS

C.S.S.B. 81
By: Nelson
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Certain persons who harvest, package, wash, or ship raw produce are currently exempt from certain Department of State Health Services (DSHS) licensing requirements and regulatory authority and, as a result, are not inspected by any state agency. Observers note that this exemption was originally created because produce was considered at low-risk for contamination. In recent years, however, food-borne diseases have been found in produce such as tomatoes, spinach, and peppers.

C.S.S.B. 81 intends to make the exemption from licensing requirements applicable only to entities, such as small farmers, that harvest, package, or wash raw produce for shipment at the location of harvest and seeks to incorporate certain recommendations of the House Public Health Committee Interim Report on food safety into state law.

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 2 and 3 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.S.B. 81 amends the Health and Safety Code to remove, effective September 1, 2012, a person, firm, or corporation who ships raw fruits or vegetables from the persons exempt from licensure under the Texas Food, Drug, and Cosmetic Act as a food manufacturer, food wholesaler, or warehouse operator and to specify that a person, firm, or corporation that only harvests, packages, or washes raw fruits or vegetables for shipment at the location of harvest is exempt from such licensing requirements.

C.S.S.B. 81 requires the executive commissioner of the Health and Human Services Commission (HHSC), in adopting rules to establish minimum standards for granting and maintaining a license as a food manufacturer, food wholesaler, or warehouse operator, to ensure that the minimum standards prioritize safe handling of fruits and vegetables based on known safety risks, including any history of outbreaks of food-borne communicable diseases, and to consider acceptable produce safety standards developed by a federal agency, state agency, or university.

C.S.S.B. 81 requires the Department of State Health Services (DSHS) to approve food safety best practice education programs for places of business licensed under the Texas Food, Drug, and Cosmetic Act. The bill requires a place of business that completes such an education program approved by DSHS to receive a certificate valid for five years from the date of completion of the program and requires the appropriate inspecting authority, when determining which places of business to inspect for purposes of enforcing the Texas Food, Drug, and Cosmetic Act, to consider whether the place of business holds a valid certificate. The bill requires the executive commissioner of the Health and Human Services Commission to adopt rules to implement the bill's provisions relating to food safety best practice education programs.

C.S.S.B. 81 requires DSHS, for any federal regulation adopted as a state rule under the Texas Food, Drug, and Cosmetic Act, including a regulation considered to be a rule under provisions of law relating to certain federal regulations adopted as state rules, to provide on its Internet website a link to the text of the federal regulation, a clear explanation of the substance of and purpose for the regulation, and information on providing comments in response to any proposed or pending federal regulation, including an address to which and the manner in which comments may be submitted.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 81 contains a provision not included in the original requiring the executive commissioner of the Health and Human Services Commission (HHSC), in adopting rules to establish minimum standards for granting and maintaining a license under the Texas Food, Drug, and Cosmetic Act as a food manufacturer, food wholesaler, or warehouse operator, to ensure that the minimum standards prioritize safe handling of fruits and vegetables based on known safety risks, including any history of outbreaks of food-borne communicable diseases, and to consider acceptable produce safety standards developed by a federal agency, state agency, or university.

C.S.S.B. 81 contains provisions not included in the original requiring the Department of State Health Services (DSHS) to approve food safety best practice education programs for places of business licensed under the Texas Food, Drug, and Cosmetic Act and establishing requirements relating to a valid certificate for completing such a program. The substitute contains a provision not included in the original requiring the executive commissioner to adopt rules to implement the bill's provisions relating to food safety best practice education programs.

C.S.S.B. 81 contains a provision not included in the original requiring DSHS, for any federal regulation adopted as a state rule under the Texas Food, Drug, and Cosmetic Act, to provide certain information relating to the federal regulation on the department's Internet website.

C.S.S.B. 81 contains a provision not included in the original making the substitute's provisions relating to minimum standards for granting and maintaining a license as a food manufacturer, food wholesaler, or warehouse operator required to be adopted by executive commissioner rule, food and safety best practice education programs, and information required to be provided on the DSHS Internet website relating to certain federal regulations effective September 1, 2011.