

- SUBJECT:** Exempting retail scales for ready-to-eat food from certain regulations
- COMMITTEE:** International Relations and Economic Development — favorable, without amendment
- VOTE:** 7 ayes — Anchia, Frullo, Blanco, Cain, Larson, Raney, Romero
- 0 nays
- 2 absent — Metcalf, Perez
- WITNESSES:** For — Skeeter Miller, Texas Restaurant Association; (*Registered, but did not testify*: Annie Spilman, National Federation of Independent Business; Matt Burgin, Texas Food & Fuel Association; Justin Bragiel, Texas Hotel and Lodging Association; Kenneth Besserman and Rebecca Robinson, Texas Restaurant Association; Jim Sheer, Texas Retailers Association)
- Against — None
- On — Dan Hunter and Philip Wright, Texas Department of Agriculture
- BACKGROUND:** Agriculture Code sec. 13.1011 requires owners and operators of commercial scales to register their devices annually with the Texas Department of Agriculture (TDA). Registration rules require the original certificate of registration to be displayed prominently on-site in plain sight of the customer.
- Agriculture Code sec. 13.101 requires owners and operators of commercial scales to obtain an inspection of their devices by TDA every four years. Under sec. 13.1001, the department has the authority to inspect a scale if it has reason to believe the device is being used for commercial transactions and is not registered. To recover the costs associated with commercial scale regulation, sec. 13.1151 authorizes TDA to charge owners and operators of these devices a fee for registration and inspections.

Tax Code sec. 151.314 exempts certain food and food products from sales and use taxes. Food or food products are not exempt if they are sold ready for immediate consumption by certain commercial establishments or vehicles as defined in statute.

DIGEST: HB 2223 would exempt a commercial scale from TDA inspection and registration requirements if the device was used exclusively to weigh food that was:

- sold ready for immediate consumption, regardless of whether the food was consumed on the premises where the food was weighed and sold; and
- not exempted from sales and use taxes.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY: HB 2223 would reduce excessive regulation by providing clarity about which commercial scales were exempt from inspection and registration requirements. This would allow establishments that sell food ready for immediate consumption by weight to avoid costly, time-consuming compliance efforts and surprise inspections.

Under current law, commercial measuring devices used exclusively to weigh food sold for immediate consumption are exempt from scale registration and inspection requirements. However, under TDA rules, the exemption is interpreted to refer only to devices used to weigh food to be immediately consumed on the premises. A Texas attorney general opinion determined that a court would likely conclude that the rule was invalid to the extent it went beyond what the statute requires. HB 2223 would clarify that the statute exempts scales used to weigh ready-to-eat food from regulation requirements, whether or not the food was consumed on the establishment's premises.

Many restaurants sell food by weight, including barbecue restaurants,

salad bars, and frozen yogurt shops. This bill would give owners and operators of these establishments freedom from burdensome regulations and surprise inspections. Many requirements for commercial scales, such as mandating that registrations be prominently displayed in view of customers, are no longer necessary. Compliance can be costly, such as when it would require a restaurant be remodeled so that scales were more visible. Scales are already inspected by local health inspectors once or twice a year, so additional inspection by TDA is unnecessary. These restaurants are not short-changing customers who buy food by weight, and a restaurant that did would suffer from bad reviews and loss of business. The bill would not apply to certain scales used at grocery stores, where food such as produce, even if it is sold ready to eat, is exempt from sales tax.

**OPPONENTS
SAY:**

HB 2223 would remove a registration and inspection requirement that protects consumers from harmful business practices. The registration and inspection of scales by the TDA ensures that scales are not skewed in a restaurant's favor.