

HOUSE BILL REPORT

ESSB 6388

As Reported by House Committee On:

Agriculture & Natural Resources

Appropriations Subcommittee on General Government & Information Technology

Title: An act relating to pass-through food distributors.

Brief Description: Concerning pass-through food distributors.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Padden).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/25/14, 2/26/14 [DPA];

Appropriations Subcommittee on General Government & Information Technology:
2/27/14 [DPA(APPG w/o AGNR)].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Creates a license for a direct retailer who sells prepackaged food directly to the consumer who preordered the food on the direct retailer's website.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 12 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chandler, Haigh, Hurst, Kretz, Orcutt, Pettigrew, Schmick and Warnick.

Minority Report: Do not pass. Signed by 3 members: Representatives Dunshee, Stanford and Van De Wege.

Staff: Megan Mulvihill (786-7291) and Jason Callahan (786-7291).

Background:

The Food Distribution Process.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Food distributors purchase products from a manufacturer or other food processor, and sell and distribute the food products to food service companies and retailers. The process for distributors includes purchasing food products, taking inventory, storing the products until ready for transport, finding a buyer for the products, and transporting the products to the buyer or retailer.

The Washington Food Code and Applicable Definitions.

Every four years, the United States Food and Drug Administration (FDA) publishes the federal Food Code for all levels of government to use as a model. The Washington Department of Health (WDOH) adopted the FDA's Food Code with some modifications to create the Washington Retail Food Code (Food Code). Local boards of health are required to follow the minimum standards outlined in the Food Code, but may adopt more stringent provisions in which those provisions then apply.

The Food Code defines a "food establishment" as: (1) an element of operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location; and (2) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location where consumption is on or off the premises, regardless of whether there is a charge for the food. An entity is not considered a food establishment if the food is not categorized as potentially hazardous. Food is considered potentially hazardous if it requires time and temperature controls for safety and is prepackaged in a licensed food establishment or food processing plant. In addition, the Food Code defines a "mobile food unit" as a food establishment that is readily moveable.

The Washington State Department of Agriculture (WSDA) regulates food processors, other food-related businesses, and administers a variety of agriculture-related programs.

Summary of Amended Bill:

A "direct retailer" is defined as an entity that receives prepackaged food from a food processor which is either licensed or inspected, or both, by a state or federal regulatory agency or department and that delivers the food directly to consumers who only placed and paid for an order on the entity's website, as long as:

- the food is delivered by the entity without opening the packaging and without dividing it into smaller packages;
- there is no interim storage by the entity; and
- the food is delivered by means of vehicles that are equipped with either refrigeration or freezer units, or both, and that meet the requirements of rules authorized by the bill.

In order to receive a direct retailer license from the WSDA, a direct retailer needs to:

- submit a completed application and the appropriate fees;
- submit a list of all vehicles used by the entity to deliver food, except for vehicles rented less than 45 days; and
- maintain a temperature log or use a device to monitor the temperature of the food in real time.

A licensed direct retailer must protect food from contamination, and in the event of a food recall or foodborne illness outbreak, use their customer listserv to notify customers. A licensed direct retailer is exempt from the permitting requirements of food service rules adopted by the State Board of Health and local health jurisdictions.

The WSDA must do the following:

- inspect vehicles, food handling areas, refrigeration equipment, and product packaging used by the entity;
- audit temperature logs and food handling records;
- investigate any complaints against a licensed direct retailer for failing to maintain food safety;
- establish fees to defray the program's costs; and
- adopt rules necessary to administer and enforce the program in conjunction with the WDOH and local health jurisdictions.

The Director of the WSDA has the authority to deny, suspend, or revoke a direct retailer license provided that the direct retailer refuses, neglects, or fails to comply with the requirements, rules, and regulations of the license program. All license and inspection fees must be paid into the Food Processing Inspection Account within the Agricultural Local Fund and must be used only for the purposes of this program.

Amended Bill Compared to Engrossed Substitute Bill:

The name of the licensed entity was changed from "pass-through food distributor" to "direct retailer," and the contradictory language regarding temporary storage of food was removed to clarify that the direct retailer may not store the prepackaged food before delivering it to the consumer. In addition, enforcement language was added to provide the Director of the WSDA with the authority to revoke, deny, or suspend a direct retailer's license if the direct retailer refuses, neglects, or fails to comply with the requirements of the license. Lastly, vehicles rented for less than 45 days are exempted from being included on the list of vehicles used by the direct retailer that is required to be submitted to the WSDA in order to receive a license. The direct retailer must keep records of these rented vehicles for at least 12 months following the termination of the rental period.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill has been a work in progress and input has been taken into consideration from various stakeholders. The bill is now workable, has the right program oversight, and

should help businesses grow in Washington. Originally, there was some opposition, and while there are still some technical changes that need to be made, this is a good proposal.

(Opposed) None.

Persons Testifying: Tom Parker and Mike Conrad, Zaycon Foods; and Kirk Robinson, Washington Department of Agriculture.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: Do pass as amended by Committee on Appropriations Subcommittee on General Government & Information Technology and without amendment by Committee on Agriculture & Natural Resources. Signed by 8 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Christian, S. Hunt, Jinkins, Springer and Taylor.

Minority Report: Do not pass. Signed by 1 member: Representative Dunshee.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government & Information Technology Compared to Recommendation of Committee On Agriculture & Natural Resources:

A null and void clause was added. The bill is null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill allows a business that has been referred to as a pass-through food distributor or direct retailer to survive in a regulatory environment. The business delivers fresh food, such as United States Department of Agriculture-inspected chicken, directly to consumers who order through the Internet and pick the food up in a parking lot. The business is currently being regulated by 39 county public health departments, and this bill puts the business under the standards of one state agency. The public safety concerns have been worked out, and other companies could follow this model.

Zaycon Foods delivers food in 48 states and has 40,000 customers in Washington. This bill and the Department of Agriculture rule-making process provide a fair and equitable regulatory scheme.

(Opposed) None.

Persons Testifying: Senator Padden, prime sponsor; Kirk Robinson, Washington State Department of Agriculture; and Tom Parker, Zaycon Foods.

Persons Signed In To Testify But Not Testifying: None.