

ESSB 5748 - H COMM AMD

By Committee on Health & Human Services Appropriations & Oversight

ADOPTED AS AMENDED 04/07/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Cottage food operation" means a person who produces cottage
6 food products only in the home kitchen of that person's primary
7 domestic residence in Washington and only for sale directly to the
8 consumer.

9 (2) "Cottage food products" means nonpotentially hazardous baked
10 goods; jams, jellies, preserves, and fruit butters as defined in 21
11 C.F.R. Sec. 150 as it existed on the effective date of this section;
12 and other nonpotentially hazardous foods identified by the director in
13 rule.

14 (3) "Department" means the department of agriculture.

15 (4) "Director" means the director of the department.

16 (5) "Domestic residence" means a single-family dwelling or an area
17 within a rental unit where a single person or family actually resides.
18 Domestic residence does not include:

19 (a) A group or communal residential setting within any type of
20 structure; or

21 (b) An outbuilding, shed, barn, or other similar structure.

22 (6) "Home kitchen" means a kitchen primarily intended for use by
23 the residents of a home. It may contain one or more stoves or ovens,
24 which may be a double oven, designed for residential use.

25 (7) "Potentially hazardous food" means foods requiring temperature
26 control for safety because they are capable of supporting the rapid
27 growth of pathogenic or toxigenic microorganisms, or the growth and
28 toxin production of *Clostridium botulinum*.

1 NEW SECTION. **Sec. 2.** (1) The director may adopt, by rule,
2 requirements for cottage food operations. These requirements may
3 include, but are not limited to:

4 (a) The application and renewal of permits under section 3 of this
5 act;

6 (b) Inspections as provided under section 4 of this act;

7 (c) Sanitary procedures;

8 (d) Facility, equipment, and utensil requirements;

9 (e) Labeling specificity beyond the requirements of this section;

10 (f) Requirements for clean water sources and waste and wastewater
11 disposal; and

12 (g) Requirements for washing and other hygienic practices.

13 (2) A cottage food operation must package and properly label for
14 sale to the consumer any food it produces, and the food may not be
15 repackaged, sold, or used as an ingredient in other foods by a food
16 processing plant, or sold by a food service establishment.

17 (3) A cottage food operation must place on the label of any food it
18 produces or packages, at a minimum, the following information:

19 (a) The name and address of the business of the cottage food
20 operation;

21 (b) The name of the cottage food product;

22 (c) The ingredients of the cottage food product, in descending
23 order of predominance by weight;

24 (d) The net weight or net volume of the cottage food product;

25 (e) Allergen labeling as specified by the director in rule;

26 (f) If any nutritional claim is made, appropriate labeling as
27 specified by the director in rule;

28 (g) The following statement printed in at least the equivalent of
29 eleven-point font size in a color that provides a clear contrast to the
30 background: "Made in a home kitchen that has not been subject to
31 standard inspection criteria."

32 (4) Cottage food products may only be sold directly to the consumer
33 and may not be sold by internet, mail order, or for retail sale outside
34 the state.

35 (5) Cottage food products must be stored only in the primary
36 domestic residence.

1 NEW SECTION. **Sec. 3.** (1) All cottage food operations must be
2 permitted annually by the department on forms developed by the
3 department. All permits and permit renewals must be made on forms
4 developed by the director and be accompanied by an inspection fee as
5 provided in section 4 of this act, a seventy-five dollar public health
6 review fee, and a thirty dollar processing fee. All fees must be
7 deposited into the food processing inspection account created in RCW
8 69.07.120.

9 (2) In addition to the provision of any information required by the
10 director on forms developed under subsection (1) of this section and
11 the payment of all fees, an applicant for a permit or a permit renewal
12 as a cottage food operation must also provide documentation that all
13 individuals to be involved in the preparation of cottage foods have
14 secured a food and beverage service worker's permit under chapter 69.06
15 RCW.

16 (3) All cottage food operations permitted under this section must
17 include a signed document attesting, by opting to become permitted,
18 that the permitted cottage food operation expressly grants to the
19 director the right to enter the domestic residence housing the cottage
20 food operation during normal business hours, or at other reasonable
21 times, for the purposes of inspections under this chapter.

22 NEW SECTION. **Sec. 4.** (1) All cottage food operations must be
23 inspected for basic hygiene by the director both before initial
24 permitting under section 3 of this act and annually after initial
25 permitting. In addition, the director may inspect a cottage food
26 operation at any time in response to a foodborne outbreak or other
27 public health emergency.

28 (2) When conducting an annual basic hygiene inspection, the
29 director shall, at a minimum, inspect for the following:

30 (a) That the permitted cottage food operator understands that no
31 person other than the permittee, or a person under the direct
32 supervision of the permittee, may be engaged in the processing,
33 preparing, packaging, or handling of any cottage food products or be in
34 the home kitchen during the preparation, packaging, or handling of any
35 cottage food products;

36 (b) That no cottage food preparation, packaging, or handling is

1 occurring in the home kitchen concurrent with any other domestic
2 activities such as family meal preparation, dishwashing, clothes
3 washing or ironing, kitchen cleaning, or guest entertainment;

4 (c) That no infants, small children, or pets are in the home
5 kitchen during the preparation, packaging, or handling of any cottage
6 food products;

7 (d) That all food contact surfaces, equipment, and utensils used
8 for the preparation, packaging, or handling of any cottage food
9 products are washed, rinsed, and sanitized before each use;

10 (e) That all food preparation and food and equipment storage areas
11 are maintained free of rodents and insects; and

12 (f) That all persons involved in the preparation and packaging of
13 cottage food products:

14 (i) Have obtained a food and beverage service workers permit under
15 chapter 69.06 RCW;

16 (ii) Are not going to work in the home kitchen when ill;

17 (iii) Wash their hands before any food preparation and food
18 packaging activities; and

19 (iv) Avoid bare hand contact with ready-to-eat foods through the
20 use of single-service gloves, bakery papers, tongs, or other utensils.

21 (3) The department shall charge an inspection fee of one hundred
22 twenty-five dollars for any initial or annual basic hygiene inspection,
23 which must be deposited into the food processing inspection account
24 created in RCW 69.07.120. An additional inspection fee must be
25 collected for each visit to a cottage food operation for the purposes
26 of conducting an inspection for compliance.

27 (4) The director may contract with local health jurisdictions to
28 conduct the inspections required under this section.

29 NEW SECTION. **Sec. 5.** (1) The gross sales of cottage food products
30 may not exceed twelve thousand dollars annually. The determination of
31 the twelve thousand dollar annual gross sales must be computed on the
32 basis of the amount of gross sales within or at a particular domestic
33 residence and may not be computed on a per person basis within or at an
34 individual domestic residence.

35 (2) If gross sales exceed twelve thousand dollars in one year, the
36 cottage food operation must either obtain a food processing plant
37 license under chapter 69.07 RCW or cease operations.

1 (3) A cottage food operation exceeding twelve thousand dollars in
2 gross sales in one year is not entitled to a full or partial refund of
3 any fees paid under section 3 or 4 of this act.

4 (4) The director may request in writing documentation to verify the
5 annual gross sales figure.

6 NEW SECTION. **Sec. 6.** (1) For the purpose of determining
7 compliance with this chapter, the director may access, for inspection
8 purposes, any part, portion, or area of a domestic residence housing a
9 cottage food operation permitted by the director under this chapter.
10 This authority includes the authority to inspect any records required
11 to be kept under the provisions of this chapter.

12 (2) All inspections must be made at reasonable times and, when
13 possible, during regular business hours.

14 (3) Should the director be denied access to any domestic residence
15 housing a cottage food operation where access was sought for the
16 purposes of enforcing or administering this chapter, the director may
17 apply to any court of competent jurisdiction for a search warrant
18 authorizing access any part, portion, or area of a domestic residence
19 housing a permitted cottage food operation, upon which the court may
20 issue a search warrant for the purposes requested.

21 (4) Any access under this section must be limited to the purpose of
22 enforcing or administering this chapter.

23 NEW SECTION. **Sec. 7.** (1) After conducting a hearing, the director
24 may deny, suspend, or revoke any permit provided for in this chapter if
25 it is determined that a permittee has committed any of the following
26 acts:

27 (a) Refused, neglected, or failed to comply with the provisions of
28 this chapter, any rules adopted to administer this chapter, or any
29 lawful order of the director;

30 (b) Refused, neglected, or failed to keep and maintain records
31 required by this chapter, or to make the records available when
32 requested pursuant to the provisions of this chapter;

33 (c) Consistent with section 6 of this act, refused the director
34 access to any portion or area of a domestic resident housing a cottage
35 food operation for the purpose of carrying out the provisions of this
36 chapter;

1 (d) Consistent with section 6 of this act, refused the department
2 access to any records required to be kept under the provisions of this
3 chapter; or

4 (e) Exceeded the annual income limits provided in section 5 of this
5 act.

6 (2) The director may summarily suspend a permit issued under this
7 chapter if the director finds that a cottage food operation is
8 operating under conditions that constitute an immediate danger to
9 public health or if the director is denied access to the part, portion,
10 or area of a domestic residence housing a cottage food operation and
11 records where the access was sought for the purposes of enforcing or
12 administering this chapter.

13 NEW SECTION. **Sec. 8.** The rights, remedies, and procedures
14 respecting the administration of this chapter, including rule making,
15 emergency actions, and permit suspension, revocation, or denial are
16 governed by chapter 34.05 RCW.

17 NEW SECTION. **Sec. 9.** (1)(a) Any person engaging in a cottage food
18 operation without a valid permit issued under section 3 of this act or
19 otherwise violating any provision of this chapter, or any rule adopted
20 under this chapter, is guilty of a misdemeanor.

21 (b) A second or subsequent violation is a gross misdemeanor. Any
22 offense committed more than five years after a previous conviction
23 shall be considered a first offense.

24 (2) Whenever the director finds that a person has committed a
25 violation of any of the provisions of this chapter, and that violation
26 has not been punished pursuant to subsection (1) of this section, the
27 director may impose upon and collect from the violator a civil penalty
28 not exceeding one thousand dollars per violation per day. Each
29 violation shall be a separate and distinct offense.

30 NEW SECTION. **Sec. 10.** Except as otherwise provided in this
31 chapter, cottage food operations with a valid permit under section 3 of
32 this act are not subject to the provisions of chapter 69.07 RCW or to
33 permitting and inspection by a local health jurisdiction.

1 NEW SECTION. **Sec. 11.** Nothing in this chapter affects the
2 application of any other state or federal laws or any applicable
3 ordinances enacted by any local unit of government.

4 **Sec. 12.** RCW 69.07.120 and 1992 c 160 s 5 are each amended to read
5 as follows:

6 All moneys received by the department under the provisions of this
7 chapter and chapter 69.--- RCW (the new chapter created in section 14
8 of this act) shall be paid into the food processing inspection account
9 hereby created within the agricultural local fund established in RCW
10 43.23.230 and shall be used solely to carry out the provisions of this
11 chapter and chapters 69.--- RCW (the new chapter created in section 14
12 of this act) and 69.04 RCW.

13 **Sec. 13.** RCW 69.07.100 and 2002 c 301 s 10 are each amended to
14 read as follows:

15 (1) The provisions of this chapter shall not apply to
16 establishments issued a permit or licensed under the provisions of:

17 ~~((+1))~~ (a) Chapter 69.25 RCW, the Washington wholesome eggs and
18 egg products act;

19 ~~((+2))~~ (b) Chapter 69.28 RCW, the Washington state honey act;

20 ~~((+3))~~ (c) Chapter 16.49 RCW, the Meat inspection act;

21 ~~((+4))~~ (d) Chapter 77.65 RCW, relating to the direct retail
22 endorsement for wild-caught seafood;

23 ~~((+5))~~ (e) Chapter 69.--- RCW (the new chapter created in section
24 14 of this act), relating to cottage food operations;

25 (f) Title 66 RCW, relating to alcoholic beverage control; and

26 ~~((+6))~~ (g) Chapter 69.30 RCW, the sanitary control of shellfish
27 act. ~~((However,))~~

28 (2) If any such establishments process foods not specifically
29 provided for in the above entitled acts, ~~((such))~~ the establishments
30 ~~((shall be))~~ are subject to the provisions of this chapter.

31 (3) The provisions of this chapter ~~((shall))~~ do not apply to
32 restaurants or food service establishments.

33 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act
34 constitute a new chapter in Title 69 RCW."

1 Correct the title.

EFFECT: Creates a new chapter in Title 69 RCW dedicated to cottage foods; requires annual inspections of cottage food operations to be conducted by the Washington State Department of Agriculture (WSDA) or by a local health jurisdiction under contract with the WSDA; sets the maximum annual income of a cottage food operation at \$12,000; sets fees associated with a cottage food permit at: \$125 for inspection, \$30 for processing, and \$75 for public health review; provides specific inspection and warrant authority to the WSDA with acknowledgement by the applicants that they understand that inspections of their home will occur; specifies the items on which the WSDA inspector must focus; and establishes penalties for noncompliance. Specifies that a home kitchen may contain more than one stove or oven.

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