

# SENATE BILL REPORT

## ESSB 6388

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As Amended by House, March 7, 2014

**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:** Commerce & Labor: 1/31/14, 2/03/14 [DP-WM, DNP].

Ways & Means: 2/10/14, 2/11/14 [DPS, w/oRec].

Passed Senate: 2/18/14, 46-1.

Passed House: 3/07/14, 94-2.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Hewitt and King.

**Minority Report:** Do not pass.

Signed by Senators Conway, Ranking Member; Hasegawa and Kohl-Welles.

**Staff:** Jessica Stevenson (786-7465)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6388 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Assistant Ranking Member on the Operating Budget; Bailey, Becker, Billig, Braun, Conway, Dammeier, Hatfield, Hewitt, Padden, Parlette, Rivers, Schoesler and Tom.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Hasegawa.

**Staff:** Steve Jones (786-7440)

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*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.*

**Background:** The Washington State Board of Health (WSBH) must consider the most recent version of the United States Food and Drug Administration's food code for the purpose of adopting rules for food services in Washington State. WSBH must adopt rules controlling public health related to environmental conditions, such as heating, lighting, ventilation, sanitary facilities, and cleanliness, in public facilities, including food service establishments.

Upon the request of a local health officer, the Secretary of Health may take legal action to enforce the public health state laws, rules, and regulations, or the local rules and regulations, and may institute any civil legal proceeding authorized by the laws of the state of Washington.

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

**Summary of Engrossed Substitute Bill:** Pass-through wholesale food distributor is defined as an entity that receives prepackaged food from a food processor licensed or inspected by a state or federal regulatory agency and delivers, by refrigerated vehicle, the food directly to consumers without opening the packaging or dividing the food into smaller packages. Pass-through wholesale food distributor includes entities that temporarily store prepackaged food in a food storage facility prior to the delivery to the consumer.

WSDA must issue a pass-through wholesale food distributor license to an entity that:

- submits a completed application on forms approved by WSDA and the required fees;
- provides WSDA with a list of all vehicles used by the applicant to deliver food; and
- maintains a temperature log or uses a device to monitor the temperature of the food.

WSDA must:

- inspect delivery vehicles, including refrigeration equipment, and food storage facilities;
- establish fees to defray the costs of the program;
- investigate any complaints against a licensed pass-through wholesale food distributor for failing to maintain food safety; and
- adopt rules necessary to administer the program.

Fees under the program must be paid into the Food Processing Inspection Account within the Agricultural Local Fund and must be used for this program.

Pass-through wholesale food distributors that have a license from WSDA are exempt from WSBH's food service rules and any food service regulations adopted by local health jurisdictions.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Commerce & Labor):** PRO: The company is in all 50 states, but Washington has the worst regulatory system for the business. The bill makes the fees reasonable and develops a statewide standard for the fees so the business does not have to pay a fee for each county. The business model works because it provides fresh food at reasonable prices for consumers. All food is inspected by USDA, and the business must purchase permits for each delivery location. The food is preordered so it is fresh and none of it goes to waste. The food is delivered in separate trucks so cross contamination does not occur. Trucks have systems that monitor the truck temperatures. Public health concerns are not an issue because the business can contact consumers quickly about a recall.

CON: The pass-through wholesale food distributor model has the potential to increase risk of food-borne illnesses. Meat and poultry are designated as potentially hazardous foods under federal and Washington rules. The bill overrides public health protections and weakens the safety of our food systems network. A concern is the safety of food from the point of wholesale to delivery. A specific business should not be exempt from rules when others are not. Local health officers have the responsibility to make sure food is safe. A major concern is DOL overseeing the businesses because they do not normally regulate food services. Annual inspections are inadequate because it is a food service. The bill should require the businesses to use a tracking system for the food deliveries.

**Persons Testifying (Commerce & Labor):** PRO: Senator Padden, prime sponsor; Mike Conrad, Zaycon Foods.

CON: Keith Grellner, WSBH; Art Starry, Environmental Health Director for Thurston County Public Health representing WA Environmental Health Directors; Kirk Robinson, WSDA.

**Staff Summary of Public Testimony on Substitute (Ways & Means):** PRO: Zaycon Foods operates in all 50 states, and other states charge as little as \$69 for a statewide license. In Washington, we are regulated differently in all 39 counties. We should not be regulated as a food handler; we simply deliver prepackaged food that is approved by the USDA. WSDA would be a good choice for statewide oversight of our business.

CON: WSDA licenses and regulates more than 3900 food processors, so this program would be a good fit in our department, as 20 other states provide. However, WSDA is concerned about the fiscal impact. If the license fees are not sufficient to cover the regulatory and licensing costs, the taxpayers of the state will have to make up the difference.

**Persons Testifying (Ways & Means):** PRO: Tom Parker, Mike Conrad, Zaycon Foods.

CON: Kirk Robinson, WSDA.

**House Amendment(s):** The name of the licensed entity was changed from "pass-through food distributor" to "direct seller." Language regarding temporary storage of food was removed to clarify that the direct seller may not store the prepackaged food before delivering it to the

consumer. The director of WSDA may revoke, deny, or suspend a direct seller's license if the direct seller refuses, neglects, or fails to comply with the licensing requirements. The direct seller does not need to include vehicles rented for less than 45 days on the list of delivery vehicles that must be submitted to WSDA. The direct seller must keep records of vehicles rented for less than 45 days for at least 12 months following the termination of the rental period.