

ESSB 5748 - H COMM AMD

By Committee on Agriculture & Natural Resources

NOT CONSIDERED 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 state board
13 in rule.

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

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

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

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

21 (5) "Home kitchen" means a kitchen primarily intended for use by
22 the residents of a home. It may contain one stove or oven, which may
23 be a double oven, designed for residential use.

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

28 (7) "State board" means the state board of health.

29 (8) "Washington state food service code" means food safety rules

1 adopted by the state board of health under the authority of chapter
2 43.20 RCW.

3 NEW SECTION. **Sec. 2.** (1)(a) A cottage food operation licensed by
4 the department consistent with section 3 of this act is exempt from:

5 (i) Any prohibitions against the use of a home kitchen under
6 provisions of rules adopted by the department or contained in the
7 Washington state food service code; and

8 (ii) Other provisions of the Washington state food service code
9 related to requirements associated with the engineering or physical
10 specifications of a kitchen.

11 (b) Cottage food operations are not exempt from provisions under
12 the Washington state food service code relating to basic hygiene,
13 sanitary procedures, food handling, and the activities of the actual
14 people operating in the home kitchen. This includes requirements about
15 the proximity of animals and the storage of toxic and dangerous
16 substances.

17 (2) A cottage food operation licensed by the department under
18 section 3 of this act is not subject to:

19 (a) Facility permitting by local health jurisdictions under the
20 Washington state food service code; or

21 (b) Inspections by a local health jurisdiction:

22 (i) An initial preinspection or renewal inspection as required
23 under section 3 of this act; and

24 (ii) Inspections in response to a foodborne outbreak or other
25 public health emergency.

26 (3) A cottage food operation must package and properly label for
27 sale to the consumer any food it produces, and the food may not be
28 repackaged or used as an ingredient in other foods by a food processing
29 plant or food service establishment.

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

32 (a) The name and address of the business of the cottage food
33 operation;

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

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

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

1 (e) Allergen labeling as specified by federal labeling
2 requirements;

3 (f) If any nutritional claim is made, appropriate labeling as
4 specified by federal labeling requirements;

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

9 (5) Cottage food products may only be sold directly to the consumer
10 and may not be sold by internet, mail order, or for retail sale outside
11 the state.

12 (6) Cottage food products must be stored only in the primary
13 domestic residence.

14 NEW SECTION. **Sec. 3.** (1) All cottage food operations must be
15 licensed annually by the department on forms developed by the
16 department. All annual registrations must be accompanied by a thirty
17 dollar registration fee which must be deposited into the public health
18 supplemental account created in RCW 43.70.327.

19 (2) In addition to the provision of any information required by the
20 department on forms developed under subsection (1) of this section and
21 the payment of an annual registration fee, an applicant for a license
22 or a license renewal as a cottage food operation must also provide the
23 following:

24 (a) Evidence that all individuals to be involved in the preparation
25 of cottage foods at the cottage food operation have secured a food and
26 beverage service worker's permit under chapter 69.06 RCW; and

27 (b) A signed letter on appropriate letterhead, dated during the
28 current year, from the health department of the county in which the
29 cottage food operation is to be located as to the fulfillment of the
30 provisions of the Washington state food service code applicable to
31 cottage food operations as provided in section 2 of this act and
32 consistent with the applicable definitions provided in section 1 of
33 this act. The local health department generating the letter may charge
34 a reasonable fee for any necessary inspections and the generation of
35 the letter. It is the sole authority of the inspecting local health
36 department to resolve, for any given inspection, any ambiguity as to
37 the inspection authority of the local health department.

1 NEW SECTION. **Sec. 4.** (1) The gross sales of cottage food products
2 may not exceed twelve thousand dollars annually. The determination of
3 the twelve thousand dollar annual gross sales must be computed on the
4 basis of the amount of gross sales within or at a particular domestic
5 residence and may not be computed on a per person basis within or at an
6 individual domestic residence.

7 (2) If the department determines that the gross sales of a cottage
8 food operation exceeds twelve thousand dollars in one year, then the
9 license issued under section 3 of this act must be suspended. Upon
10 suspension, the licensee is not entitled to a full or partial refund of
11 the registration fee paid under section 3 of this act.

12 (3) The department may request in writing documentation to verify
13 the annual gross sales figure.

14 NEW SECTION. **Sec. 5.** A violation of any of the requirements of
15 this section shall be considered a violation of the Washington state
16 food service code.

17 NEW SECTION. **Sec. 6.** Nothing in this chapter affects the
18 application of any other state or federal laws or any applicable
19 ordinances enacted by any local unit of government.

20 **Sec. 7.** RCW 43.20.050 and 2009 c 495 s 1 are each amended to read
21 as follows:

22 (1) The state board of health shall provide a forum for the
23 development of public health policy in Washington state. It is
24 authorized to recommend to the secretary means for obtaining
25 appropriate citizen and professional involvement in all public health
26 policy formulation and other matters related to the powers and duties
27 of the department. It is further empowered to hold hearings and
28 explore ways to improve the health status of the citizenry.

29 (a) At least every five years, the state board shall convene
30 regional forums to gather citizen input on public health issues.

31 (b) Every two years, in coordination with the development of the
32 state biennial budget, the state board shall prepare the state public
33 health report that outlines the health priorities of the ensuing
34 biennium. The report shall:

35 (i) Consider the citizen input gathered at the forums;

1 (ii) Be developed with the assistance of local health departments;
2 (iii) Be based on the best available information collected and
3 reviewed according to RCW 43.70.050;

4 (iv) Be developed with the input of state health care agencies. At
5 least the following directors of state agencies shall provide timely
6 recommendations to the state board on suggested health priorities for
7 the ensuing biennium: The secretary of social and health services, the
8 health care authority administrator, the insurance commissioner, the
9 superintendent of public instruction, the director of labor and
10 industries, the director of ecology, and the director of agriculture;

11 (v) Be used by state health care agency administrators in preparing
12 proposed agency budgets and executive request legislation;

13 (vi) Be submitted by the state board to the governor by January 1st
14 of each even-numbered year for adoption by the governor. The governor,
15 no later than March 1st of that year, shall approve, modify, or
16 disapprove the state public health report.

17 (c) In fulfilling its responsibilities under this subsection, the
18 state board may create ad hoc committees or other such committees of
19 limited duration as necessary.

20 (2) In order to protect public health, the state board of health
21 shall:

22 (a) Adopt rules for group A public water systems, as defined in RCW
23 70.119A.020, necessary to assure safe and reliable public drinking
24 water and to protect the public health. Such rules shall establish
25 requirements regarding:

26 (i) The design and construction of public water system facilities,
27 including proper sizing of pipes and storage for the number and type of
28 customers;

29 (ii) Drinking water quality standards, monitoring requirements, and
30 laboratory certification requirements;

31 (iii) Public water system management and reporting requirements;

32 (iv) Public water system planning and emergency response
33 requirements;

34 (v) Public water system operation and maintenance requirements;

35 (vi) Water quality, reliability, and management of existing but
36 inadequate public water systems; and

37 (vii) Quality standards for the source or supply, or both source
38 and supply, of water for bottled water plants;

1 (b) Adopt rules as necessary for group B public water systems, as
2 defined in RCW 70.119A.020. The rules shall, at a minimum, establish
3 requirements regarding the initial design and construction of a public
4 water system. The state board of health rules may waive some or all
5 requirements for group B public water systems with fewer than five
6 connections;

7 (c) Adopt rules and standards for prevention, control, and
8 abatement of health hazards and nuisances related to the disposal of
9 wastes, solid and liquid, including but not limited to sewage, garbage,
10 refuse, and other environmental contaminants; adopt standards and
11 procedures governing the design, construction, and operation of sewage,
12 garbage, refuse and other solid waste collection, treatment, and
13 disposal facilities;

14 (d) Adopt rules controlling public health related to environmental
15 conditions including but not limited to heating, lighting, ventilation,
16 sanitary facilities, cleanliness and space in all types of public
17 facilities including but not limited to food service establishments,
18 schools, institutions, recreational facilities and transient
19 accommodations and in places of work;

20 (e) Adopt rules for the imposition and use of isolation and
21 quarantine;

22 (f) Consistent with chapter 69.--- RCW (the new chapter created in
23 section 9 of this act), adopt rules for the prevention and control of
24 infectious and noninfectious diseases, including food and vector borne
25 illness, and rules governing the receipt and conveyance of remains of
26 deceased persons, and such other sanitary matters as admit of and may
27 best be controlled by universal rule; and

28 (g) Adopt rules for accessing existing databases for the purposes
29 of performing health related research.

30 (3) The state board shall adopt rules for the design, construction,
31 installation, operation, and maintenance of those on-site sewage
32 systems with design flows of less than three thousand five hundred
33 gallons per day.

34 (4) The state board may delegate any of its rule-adopting authority
35 to the secretary and rescind such delegated authority.

36 (5) All local boards of health, health authorities and officials,
37 officers of state institutions, police officers, sheriffs, constables,
38 and all other officers and employees of the state, or any county, city,

1 or township thereof, shall enforce all rules adopted by the state board
2 of health. In the event of failure or refusal on the part of any
3 member of such boards or any other official or person mentioned in this
4 section to so act, he or she shall be subject to a fine of not less
5 than fifty dollars, upon first conviction, and not less than one
6 hundred dollars upon second conviction.

7 (6) The state board may advise the secretary on health policy
8 issues pertaining to the department of health and the state.

9 **Sec. 8.** RCW 43.70.327 and 2001 c 80 s 3 are each amended to read
10 as follows:

11 (1) The public health supplemental account is created in the state
12 treasury. All receipts from cottage food operations registration fees
13 collected under section 3 of this act and any gifts, bequests, devises,
14 or funds, whose use is determined to further the purpose of maintaining
15 and improving the health of Washington residents through the public
16 health system, must be deposited into the account. Money in the
17 account may be spent only after appropriation. Expenditures from the
18 account may be used only for maintaining and improving the health of
19 Washington residents through the public health system. Except as
20 deemed necessary by the secretary for the implementation of chapter
21 69.--- RCW (the new chapter created in section 9 of this act),
22 expenditures from the account shall not be used to pay for or add
23 permanent full-time equivalent staff positions.

24 (2) The department shall file an annual statement of the financial
25 condition, transactions, and affairs of any program funded under this
26 section in a form and manner prescribed by the office of financial
27 management. A copy of the annual statement shall be filed with the
28 speaker of the house of representatives and the president of the
29 senate.

30 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act constitute
31 a new chapter in Title 69 RCW."

32 Correct the title.

EFFECT: Shifts administration of the cottage foods program to the

department of health instead of the department of agriculture; raises the maximum amount of gross income a cottage food operator can generate from \$10,000 to \$12,000; requires cottage food operator applicants to provide proof of a food worker's card and a letter from a local health department showing an initial preinspection or annual renewal inspection; specifies that certain provisions of the Washington state food service code still applies to cottage food operators; requires the label of cottage foods to indicate that an inspection was not conducted; makes technical changes.

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