

SSB 5748 - S AMD 102

By Senators Rockefeller, Delvin, Hatfield

ADOPTED 03/04/2011

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 69.07 RCW
4 to read as follows:

5 (1) A cottage food operation licensed by the department is exempt
6 from prohibitions against the use of a home kitchen under provisions of
7 rules adopted by the department or the Washington state food service
8 code.

9 (2) A cottage food operation licensed by the department is not
10 subject to permitting and inspection by local health jurisdictions
11 under the Washington state food service code except in response to a
12 foodborne outbreak or other public health emergency.

13 (3) 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 or used as an ingredient in other foods by a food processing
16 plant or food service establishment.

17 (4) 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 federal labeling
26 requirements;

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

29 (g) The following statement printed in at least the equivalent of

1 eleven-point font size in a color that provides a clear contrast to the
2 background: "Made in a home kitchen."

3 (5) Cottage food products may not be sold by internet or mail order
4 or for resale outside the state.

5 (6) The gross sales of cottage food products may not exceed ten
6 thousand dollars annually. The determination of the ten thousand
7 dollar annual gross sales shall be computed on the basis of the amount
8 of gross sales within or at a particular domestic residence and shall
9 not be computed on a per person basis within or at that domestic
10 residence. The department may request in writing documentation to
11 verify the annual gross sales figure.

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

14 (8) This section does not affect the application of any other state
15 or federal laws or any applicable ordinances enacted by any local unit
16 of government.

17 **Sec. 2.** RCW 69.07.010 and 1992 c 34 s 3 are each amended to read
18 as follows:

19 (~~For the purposes of~~) The definitions in this section apply
20 throughout this chapter(~~(+)~~) unless the context clearly requires
21 otherwise.

22 (1) "Department" means the department of agriculture of the state
23 of Washington(~~(+)~~).

24 (2) "Director" means the director of the department(~~(+)~~).

25 (3) "Food" means any substance used for food or drink by any
26 person, including ice, bottled water, and any ingredient used for
27 components of any such substance regardless of the quantity of such
28 component(~~(+)~~).

29 (4) "Sale" means selling, offering for sale, holding for sale,
30 preparing for sale, trading, bartering, offering a gift as an
31 inducement for sale of, and advertising for sale in any media(~~(+)~~).

32 (5) "Food processing" means the handling or processing of any food
33 in any manner in preparation for sale for human consumption: PROVIDED,
34 That it shall not include fresh fruit or vegetables merely washed or
35 trimmed while being prepared or packaged for sale in their natural
36 state(~~(+)~~).

1 (6) "Food processing plant" includes but is not limited to any
2 premises, plant, establishment, building, room, area, facilities and
3 the appurtenances thereto, in whole or in part, where food is prepared,
4 handled or processed in any manner for distribution or sale for resale
5 by retail outlets, restaurants, and any such other facility selling or
6 distributing to the ultimate consumer: PROVIDED, That, as set forth
7 herein, establishments processing foods in any manner for resale shall
8 be considered a food processing plant as to such processing((+)).

9 (7) "Food service establishment" shall mean any fixed or mobile
10 restaurant, coffee shop, cafeteria, short order cafe, luncheonette,
11 grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail
12 lounge, night club, roadside stand, industrial-feeding establishment,
13 retail grocery, retail food market, retail meat market, retail bakery,
14 private, public, or nonprofit organization routinely serving food,
15 catering kitchen, commissary or similar place in which food or drink is
16 prepared for sale or for service on the premises or elsewhere, and any
17 other eating or drinking establishment or operation where food is
18 served or provided for the public with or without charge.

19 For the purpose of this chapter any custom cannery or processing
20 plant where raw food products, food, or food products are processed for
21 the owner thereof, or the food processing facilities are made available
22 to the owners or persons in control of raw food products or food or
23 food products for processing in any manner, shall be considered to be
24 food processing plants((+)).

25 (8) "Person" means an individual, partnership, corporation, or
26 association.

27 (9) "Cottage food operation" means a person who produces cottage
28 food products only in the home kitchen of that person's primary
29 domestic residence in Washington and only for sale directly to the
30 consumer.

31 (10) "Cottage food products" means nonpotentially hazardous baked
32 goods; jams, jellies, preserves, and fruit butters as defined in 21
33 C.F.R. Sec. 150; and other nonpotentially hazardous foods identified by
34 the department in rule.

35 (11) "Domestic residence" means a single-family dwelling or an area
36 within a rental unit where a single person or family actually resides.
37 Domestic residence does not include:

1 (a) A group or communal residential setting within any type of
2 structure; or

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

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

7 (13) "Potentially hazardous food" means foods requiring temperature
8 control for safety because they are capable of supporting the rapid
9 growth of pathogenic or toxigenic microorganisms, or the growth and
10 toxin production of Clostridium botulinum.

11 (14) "Washington state food service code" means food safety rules
12 adopted by the state board of health under the authority of chapter
13 43.20 RCW.

14 **Sec. 3.** RCW 69.07.040 and 1995 c 374 s 21 are each amended to read
15 as follows:

16 It shall be unlawful for any person to operate a food processing
17 plant or process foods in the state without first having obtained an
18 annual license from the department, which shall expire on a date set by
19 rule by the director. License fees shall be prorated where necessary
20 to accommodate staggering of expiration dates. Application for a
21 license shall be on a form prescribed by the director and accompanied
22 by the license fee. The license fee is determined by computing the
23 gross annual sales for the accounting year immediately preceding the
24 license year. If the license is for a new operator, the license fee
25 shall be based on an estimated gross annual sales for the initial
26 license period.

If gross annual sales are:	The license fee is:
<u>\$0 to \$10,000, Cottage food</u>	
<u>operation only</u>	<u>\$30.00</u>
\$0 to \$50,000	\$55.00
\$50,001 to \$500,000	\$110.00
\$500,001 to \$1,000,000	\$220.00
\$1,000,001 to \$5,000,000	\$385.00
\$5,000,001 to \$10,000,000	\$550.00
Greater than \$10,000,000	\$825.00

36 Such application shall include the full name of the applicant for the
37 license and the location of the food processing plant he or she intends

1 to operate. If such applicant is an individual, receiver, trustee,
2 firm, partnership, association or corporation, the full name of each
3 member of the firm or partnership, or names of the officers of the
4 association or corporation shall be given on the application. Such
5 application shall further state the principal business address of the
6 applicant in the state and elsewhere and the name of a person domiciled
7 in this state authorized to receive and accept service of summons of
8 legal notices of all kinds for the applicant. The application shall
9 also specify the type of food to be processed and the method or nature
10 of processing operation or preservation of that food and any other
11 necessary information. Upon the approval of the application by the
12 director and compliance with the provisions of this chapter, including
13 the applicable regulations adopted hereunder by the department, the
14 applicant shall be issued a license or renewal thereof.

15 Licenses shall be issued to cover only those products, processes,
16 and operations specified in the license application and approved for
17 licensing. Wherever a license holder wishes to engage in processing a
18 type of food product that is different than the type specified on the
19 application supporting the licensee's existing license and processing
20 that type of food product would require a major addition to or
21 modification of the licensee's processing facilities or has a high
22 potential for harm, the licensee shall submit an amendment to the
23 current license application. In such a case, the licensee may engage
24 in processing the new type of food product only after the amendment has
25 been approved by the department.

26 If upon investigation by the director, it is determined that a
27 person is processing food for retail sale and is not under permit,
28 license, or inspection by a local health authority, then that person
29 may be considered a food processor and subject to the provisions of
30 this chapter. The director may waive the licensure requirements of
31 this chapter for a person's operations at a facility if the person has
32 obtained a milk processing plant license under chapter 15.36 RCW to
33 conduct the same or a similar operation at the facility.

34 **Sec. 4.** RCW 69.07.080 and 1969 c 68 s 3 are each amended to read
35 as follows:

36 (1) For purpose of determining whether the rules adopted pursuant
37 to RCW 69.07.020, as now or hereafter amended are complied with, the

1 department shall have access for inspection purposes to any part,
2 portion or area of a food processing plant or cottage food operation,
3 and any records required to be kept under the provisions of this
4 chapter or rules (~~and regulations~~) adopted hereunder. Such
5 inspection shall, when possible, be made during regular business hours
6 or during any working shift of said food processing plant or cottage
7 food operation. The department may, however, inspect such food
8 processing plant or cottage food operation at any time when it has
9 received information that an emergency affecting the public health has
10 arisen and such food processing plant or cottage food operation is or
11 may be involved in the matters causing such emergency.

12 (2) The department may apply for an administrative inspection
13 warrant to a court of competent jurisdiction and an administrative
14 inspection warrant may be issued where:

15 (a) The department has attempted an inspection under this chapter
16 and access to all or part of the regulated business or entity has been
17 actually or constructively denied; or

18 (b) There is reasonable cause to believe that a violation of this
19 chapter or of rules adopted under this chapter is occurring or has
20 occurred."

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21 On page 1, line 1 of the title, after "operations;" strike the
22 remainder of the title and insert "amending RCW 69.07.010, 69.07.040,
23 and 69.07.080; and adding a new section to chapter 69.07 RCW."

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