
**Agriculture & Natural Resources
Committee**

ESSB 5748

Brief Description: Regarding cottage food operations.

Sponsors: Senate Committee on Agriculture & Rural Economic Development (originally sponsored by Senators Rockefeller, Honeyford and Chase).

Brief Summary of Engrossed Substitute Bill

- Exempts cottage food producers from provisions of the Washington State Food Service Code.
- Exempts cottage food producers from permitting and inspection by local health jurisdictions.
- Creates labeling requirements for cottage food products.
- Requires cottage food operations to pay an annual \$30 registration fee to the Washington State Department of Agriculture.

Hearing Date: 3/11/11

Staff: Jason Callahan (786-7117).

Background:

The Washington Food Processing Act (Act) regulates the processing of food intended for human consumption and is administered by the Washington Department of Agriculture (WSDA). As part of its administration responsibilities, the WSDA must adopt rules regarding matters such as temperature controls in food processing, record keeping requirements, and water purity standards. The WSDA may inspect any food processing plant to gauge compliance with the rules.

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.

Any person interested in processing food or operating a food processing plant must be licensed by the WSDA. The price of a license is tied to the gross annual sales of the processor. The fees range from \$55 for food processors with \$50,000 or less in gross sales to \$852 for food processors with greater than \$10 million in gross sales. In addition, the WSDA may issue sanitary certificates to food processors for \$50 per certificate.

Violations of the Act are subject to prosecution as a misdemeanor. Subsequent violations may be prosecuted as a gross misdemeanor. In lieu of prosecution, the WSDA may levy a civil penalty of up to \$1,000 per day.

The Washington State Food Service Code (Code) is adopted in rule by the State Board of Health to govern the sanitary processing of food. The regulations of the Code primarily affect food establishments. This term does not include residential kitchens in a private home if the only food being prepared is non-hazardous baked goods prepared and wrapped for a non-profit organization. All other home kitchen products are included in the regulations governing food establishments. Baked goods produced in a home kitchen must be accompanied by signage indicating that the food was not inspected.

Summary of Bill:

Cottage food operations that are licensed by the WSDA are made exempt from the prohibitions against the use of a home kitchen in the Code. In addition, cottage food operations are not subject to any local government permitting or inspection requirements other than as necessary to respond to a food borne outbreak or other public health emergency. All cottage food operators must be licensed annually with the WSDA. The fee for the annual registration is \$30.

A cottage food operation is defined as a person who produces, in the kitchen of their domestic residence, a food that is not potentially hazardous. Examples of cottage food are jams, jellies, fruit butters, and preserves. Potentially hazardous foods that are not allowed to be produced by a cottage food operator are those that require temperature control and are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms.

To qualify as a cottage food product, the product must be produced in the kitchen of a single-family dwelling, or an area with a rental unit where a single person or family actually resides, from which no more than a total gross annual sales of \$10,000 is generated. The kitchen may not be located in a group or communal residential setting or be located in an outbuilding, shed, or barn. In addition, a cottage food product must be stored only in its originating domestic kitchen and may only be sold directly to the consumer from the producer. Interstate mail order and internet sales are not allowed for cottage food products.

Cottage foods are still required to be packaged and properly labeled. To be properly labeled, the package must contain certain information. This information includes the name and ingredients of the product, the product's net weight or volume, and any federally required allergen and nutritional information identification. In addition, the label must include a disclosure that the product was made in a home kitchen.

The WSDA is provided with the direct authority to apply for administrative search warrants for all food processors, including cottage food producers. The application must be made to a court

of competent jurisdiction and must allege that the WSDA attempted to inspect a food processor's facilities but was denied access and that there is reasonable cause to believe that a violation of the Act is occurring or has occurred.

Appropriation: None.

Fiscal Note: Requested on March 7, 2011.

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