

HOUSE BILL REPORT

ESSB 5748

As Reported by House Committee On:
Agriculture & Natural Resources
Health & Human Services Appropriations & Oversight

Title: An act relating to cottage food operations.

Brief Description: Regarding cottage food operations.

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

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/11/11, 3/16/11, 3/22/11 [DPA];

Health & Human Services Appropriations & Oversight: 3/28/11, 3/29/11 [DPA(APPH w/ o AGNR)].

**Brief Summary of Engrossed Substitute Bill
(As Amended by House)**

- Requires the Department of Agriculture to license cottage food facilities and allows the holder to prepare and sell certain foods in their home kitchens that are not potentially hazardous.
- Exempts cottage food producers from permitting and regular inspection by local health jurisdictions.
- Mandates labeling requirements for cottage food products.
- Requires cottage food operations to pay the following annual fees to the Department of Agriculture: \$30 for processing; \$75 for public health review; and \$125 for an inspection.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 13 members: Representatives Blake, Chair; Stanford, Vice Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dunshee, Hinkle, Kretz, Lytton, Orcutt, Pettigrew, Rolfes and Van De Wege.

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.

Staff: Jason Callahan (786-7117).

Background:

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 residential kitchen must be accompanied by signage indicating that the food was not inspected.

Summary of Amended Bill:

Cottage food operations that are licensed by the Department of Health (DOH) are made exempt from the prohibitions against the use of a home kitchen in the Code and any other provisions of the Code related to the physical specifications of a kitchen. Cottage food operations are not exempt from provisions of the Code related to basic hygiene, sanitary procedures, food handling, and the operations of the actual people in the home kitchen. In addition, cottage food operations are not subject to any local government permitting or inspection requirements other than as necessary to respond to a foodborne outbreak or other public health emergency or as required as a prerequisite to licensing or license renewal.

All cottage food operators must be licensed annually with the DOH. The fee for the annual registration is \$30, which must be deposited into the Public Health Supplemental Account. All new and renewal license registrations must be accompanied by proof that the applicant has obtained a food worker's card and has had the associated home kitchen inspected by a local health jurisdiction prior to licensing or license renewal. The local health jurisdiction may charge a reasonable fee for the inspection and has the discretion to resolve any ambiguity that exists in regards to their inspection authority in a cottage food operation.

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 baked goods, 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 \$12,000 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 that was not subjected to standard inspection criteria.

Amended Bill Compared to Engrossed Substitute Bill:

The underlying bill: required the cottage food operations to be licensed by the Washington State Department of Agriculture (WSDA) instead of the DOH; capped maximum annual income of a cottage food operation at \$10,000 per year (as opposed to \$12,000); did not require a cottage food operation to be inspected by a local health jurisdiction or submit proof of a food worker's card; exempted cottage food operations from all aspects of the Code; and did not require specificity on the label of a cottage food indicating that the product was not inspected.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 22, 2011.

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

Staff Summary of Public Testimony:

(In support) There should be a cost-effective way for people to supplement their family's income by selling non-hazardous, homemade foods at farmers markets and community events. It should not be difficult to sell basic baked goods or for producers to meet the increasing demand in home baked goods. These sales are happening now; it will be helpful to more easily track these sales in the case of an illness.

Commercial kitchens are out of reach for many people, and many allergen-free items cannot be cooked in a commercial kitchen shared with other producers. Stay-at-home moms often have to find child care providers if they are mandated to produce food in a commercial kitchen. This expense often cancels out the profits made from the foods produced. Being able to use a home kitchen solves this problem.

Enhancing farm products value is a key to reducing the loss of farmland. The \$10,000 annual revenue limit should be raised to \$15,000 like in other states. That will allow people to have a real chance to increase their income and enhance the value of farm products they produce.

(In support with concerns) The WSDA will still work with the industry to ensure that safe products are being produced because foodborne illnesses can originate in a kitchen of any size. People who have made investments in commercial kitchens should not have to compete

with home kitchens, so the gross annual sales limits are important. The WSDA will have to conduct some rulemaking which will be consistent with federal regulations.

(Opposed) None.

Persons Testifying: (In support) Dick Bergeron, Chimacum Grange; Felicia Hill; and Ron Shultz, Washington State Conservation Commission.

(In support with concerns) Kirk Robinson, Department of Agriculture.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS & OVERSIGHT

Majority Report: Do pass as amended by Committee on Health & Human Services Appropriations & Oversight and without amendment by Committee on Agriculture & Natural Resources. Signed by 7 members: Representatives Dickerson, Chair; Appleton, Vice Chair; Cody, Green, Kagi, Pettigrew and Walsh.

Minority Report: Do not pass. Signed by 4 members: Representatives Johnson, Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Harris and Overstreet.

Staff: Amy Skei (786-7109).

Summary of Recommendation of Committee On Health & Human Services Appropriations & Oversight Compared to Recommendation of Committee On Agriculture & Natural Resources:

The amendment recommended by the Health and Human Services Appropriations and Oversight Committee 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; establishes penalties for noncompliance; and specifies that a home kitchen may contain one or more stoves or ovens.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Food offered for sale to the general public must be safe. The Department of Agriculture has years of experience inspecting food processors and food products and registers over 2,000 food-related facilities, working side-by-side with the Department of Health, the Food and Drug Administration, and local health departments on issues of food borne illness. The Agriculture and Natural Resources Committee transferred the cottage food program responsibility to the Department of Health. The Department of Agriculture may be a better fit for this program. The Department of Agriculture has the infrastructure in place to license and inspect these facilities. The Health and Human Services Appropriations and Oversight Committee amendment addresses many of the Department of Agriculture's concerns with previous versions of the bill. To be effective, the program should be funded adequately, require a pre-inspection before a license is issued, not put a burden on local health departments, and enforce minimum food safety standards while still allowing businesses to be successful and profitable.

(Opposed) None.

Persons Testifying: Kirk Robinson, Washington State Department of Agriculture.

Persons Signed In To Testify But Not Testifying: None.