

SENATE BILL REPORT

ESSB 5748

As Passed Senate, March 4, 2011

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 & Rural Economic Development: 2/14/11 [DPS].
Passed Senate: 3/04/11, 47-2.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5748 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Delvin, Ranking Minority Member; Becker, Haugen, Honeyford and Schoesler.

Staff: Bob Lee (786-7404)

Background: In 2010 Michigan enacted a law allowing residents to make certain food products at home and to sell them. Previously, residents were required to make their foods in a commercial kitchen certified by the Michigan Department of Agriculture and to pay license fees. The Michigan law covers businesses that gross less than \$15,000 annually. The foods that can be sold must be classified as non-potentially hazardous foods and the legislation contains a list of items that qualify and that do not qualify.

Washington State has similar requirements to those that existed in Michigan prior to the passage of the 2010 Michigan legislation. There is interest in Washington State to allow a similar program to allow cottage food operations to sell breads, baked goods, and other food directly to the ultimate consumer.

Summary of Engrossed Substitute Bill: A new category of food processing license is created for cottage food operations that have gross sales of under \$10,000 per year. The license fee for this new category is set at \$30 per year, as compared to a minimum of \$55 per year under current law. License fees are paid to the Department of Agriculture (Department).

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.

Cottage food products include non-potentially hazardous baked goods, jams, jellies, preserves, and fruit butters, and other non-hazardous foods as identified in rule by the Department. Cottage food operations are persons who produce cottage food products in the home kitchen of their primary domestic residence only for sale directly to the consumer. Domestic residence does not include a group or communal residential setting or an outbuilding, shed, barn, or similar structure. A home kitchen is one that is primarily used for the residents of a home and may contain one stove or oven, which may be a double oven designed for residential use.

Licensed cottage food operations are exempt from prohibitions against the use of a home kitchen under provisions of rules adopted by the department or the Washington State food service code. Cottage food operations licensed by the Department are not subject to permitting and inspection by local health jurisdictions except in response to a food-borne outbreak or other public health emergency.

Cottage food operations must package and properly label for sale to the consumer. The label must include at least the following information:

- the name and address of the business;
- the name of the cottage food product;
- the ingredients in descending order of predominance by weight;
- the net weight or net volume;
- allergen labeling as specified by federal labeling requirements;
- if any nutritional claim is made, appropriate labeling as specified by federal labeling requirements; and
- the statement that the product was "made in a home kitchen."

Cottage food products may not be sold by Internet or mail order or for resale outside of the state.

Authority is provided to the Department to apply to the court for an administrative inspection warrant. Such warrant may be issued where the Department has attempted inspection but access was actually or constructively denied, or where there is reasonable cause to believe that a violation is occurring or has occurred.

Appropriation: None.

Fiscal Note: Available.

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

Committee/Commission/Task Force Created: None.

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

Staff Summary of Public Testimony as Heard in Committee: PRO: When doorbelling, people often offer food and I always accept it and haven't gotten sick. In terms of what is regulated, there needs to be a rule of reason as to how far the regulations go. Food is sold at fairs, and farmers markets, and made in home kitchens. Right now, it is illegal to bake or

decorate cakes at home and sell them. Seventeen states allow certain foods made in a home kitchen to be sold. Most of those states do not have a dollar limit on annual sales. What I have to do now is go to a certified community kitchen at the local grange and find a babysitter for my children to operate my cake decorating business. It is ok if they want to inspect my home.

CON: The bill allows foods that takes a lot of hand contact to be sold, that may spread disease. Many home kitchens have children and pets and there is concern about selling food prepared in home kitchens. The agencies are happy to assist small businesses with complying – as commercial kitchens are available in most communities. The current bill is opposed as written. When people get sick from a food borne illness, it can be devastating to both the consumer and to the producer who sold the food.

OTHER: There are technical issues in the bill. Local public health districts may inspect home kitchens under their authority.

Persons Testifying: PRO: Senator Rockefeller, prime sponsor; Felicia Hill, citizen.

CON: Kirk Robinson, Department of Agriculture; Craig McLaughlin, State Board of Health.

OTHER: Dave Gifford, Washington State Department of Health; Ron Shultz, State Conservation Commission.