
ENGROSSED SUBSTITUTE SENATE BILL 5748

State of Washington

62nd Legislature

2011 Regular Session

By Senate Agriculture & Rural Economic Development (originally sponsored by Senators Rockefeller, Honeyford, and Chase)

READ FIRST TIME 02/15/11.

1 AN ACT Relating to cottage food operations; amending RCW 69.07.010,
2 69.07.040, and 69.07.080; and adding a new section to chapter 69.07
3 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.07 RCW
6 to read as follows:

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

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

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

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

3 (a) The name and address of the business of the cottage food
4 operation;

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

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

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

9 (e) Allergen labeling as specified by federal labeling
10 requirements;

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

13 (g) The following statement printed in at least the equivalent of
14 eleven-point font size in a color that provides a clear contrast to the
15 background: "Made in a home kitchen."

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

18 (6) The gross sales of cottage food products may not exceed ten
19 thousand dollars annually. The determination of the ten thousand
20 dollar annual gross sales shall be computed on the basis of the amount
21 of gross sales within or at a particular domestic residence and shall
22 not be computed on a per person basis within or at that domestic
23 residence. The department may request in writing documentation to
24 verify the annual gross sales figure.

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

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

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

32 (~~For the purposes of~~) The definitions in this section apply
33 throughout this chapter(~~(+)~~) unless the context clearly requires
34 otherwise.

35 (1) "Department" means the department of agriculture of the state
36 of Washington(~~(+)~~).

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

1 (3) "Food" means any substance used for food or drink by any
2 person, including ice, bottled water, and any ingredient used for
3 components of any such substance regardless of the quantity of such
4 component((+)).

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

8 (5) "Food processing" means the handling or processing of any food
9 in any manner in preparation for sale for human consumption: PROVIDED,
10 That it shall not include fresh fruit or vegetables merely washed or
11 trimmed while being prepared or packaged for sale in their natural
12 state((+)).

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

21 (7) "Food service establishment" shall mean any fixed or mobile
22 restaurant, coffee shop, cafeteria, short order cafe, luncheonette,
23 grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail
24 lounge, night club, roadside stand, industrial-feeding establishment,
25 retail grocery, retail food market, retail meat market, retail bakery,
26 private, public, or nonprofit organization routinely serving food,
27 catering kitchen, commissary or similar place in which food or drink is
28 prepared for sale or for service on the premises or elsewhere, and any
29 other eating or drinking establishment or operation where food is
30 served or provided for the public with or without charge.

31 For the purpose of this chapter any custom cannery or processing
32 plant where raw food products, food, or food products are processed for
33 the owner thereof, or the food processing facilities are made available
34 to the owners or persons in control of raw food products or food or
35 food products for processing in any manner, shall be considered to be
36 food processing plants((+)).

37 (8) "Person" means an individual, partnership, corporation, or
38 association.

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

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

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

12 (a) A group or communal residential setting within any type of
13 structure; or

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

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

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

22 (14) "Washington state food service code" means food safety rules
23 adopted by the state board of health under the authority of chapter
24 43.20 RCW.

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

27 It shall be unlawful for any person to operate a food processing
28 plant or process foods in the state without first having obtained an
29 annual license from the department, which shall expire on a date set by
30 rule by the director. License fees shall be prorated where necessary
31 to accommodate staggering of expiration dates. Application for a
32 license shall be on a form prescribed by the director and accompanied
33 by the license fee. The license fee is determined by computing the
34 gross annual sales for the accounting year immediately preceding the
35 license year. If the license is for a new operator, the license fee
36 shall be based on an estimated gross annual sales for the initial
37 license period.

1	If gross annual sales are:	The license fee is:
2	<u>\$0 to \$10,000, Cottage food</u>	
3	<u>operation only</u>	<u>\$30.00</u>
4	\$0 to \$50,000	\$55.00
5	\$50,001 to \$500,000	\$110.00
6	\$500,001 to \$1,000,000	\$220.00
7	\$1,000,001 to \$5,000,000	\$385.00
8	\$5,000,001 to \$10,000,000	\$550.00
9	Greater than \$10,000,000	\$825.00

10 Such application shall include the full name of the applicant for the
11 license and the location of the food processing plant he or she intends
12 to operate. If such applicant is an individual, receiver, trustee,
13 firm, partnership, association or corporation, the full name of each
14 member of the firm or partnership, or names of the officers of the
15 association or corporation shall be given on the application. Such
16 application shall further state the principal business address of the
17 applicant in the state and elsewhere and the name of a person domiciled
18 in this state authorized to receive and accept service of summons of
19 legal notices of all kinds for the applicant. The application shall
20 also specify the type of food to be processed and the method or nature
21 of processing operation or preservation of that food and any other
22 necessary information. Upon the approval of the application by the
23 director and compliance with the provisions of this chapter, including
24 the applicable regulations adopted hereunder by the department, the
25 applicant shall be issued a license or renewal thereof.

26 Licenses shall be issued to cover only those products, processes,
27 and operations specified in the license application and approved for
28 licensing. Wherever a license holder wishes to engage in processing a
29 type of food product that is different than the type specified on the
30 application supporting the licensee's existing license and processing
31 that type of food product would require a major addition to or
32 modification of the licensee's processing facilities or has a high
33 potential for harm, the licensee shall submit an amendment to the
34 current license application. In such a case, the licensee may engage
35 in processing the new type of food product only after the amendment has
36 been approved by the department.

37 If upon investigation by the director, it is determined that a
38 person is processing food for retail sale and is not under permit,

1 license, or inspection by a local health authority, then that person
2 may be considered a food processor and subject to the provisions of
3 this chapter. The director may waive the licensure requirements of
4 this chapter for a person's operations at a facility if the person has
5 obtained a milk processing plant license under chapter 15.36 RCW to
6 conduct the same or a similar operation at the facility.

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

9 (1) For purpose of determining whether the rules adopted pursuant
10 to RCW 69.07.020, as now or hereafter amended are complied with, the
11 department shall have access for inspection purposes to any part,
12 portion or area of a food processing plant or cottage food operation,
13 and any records required to be kept under the provisions of this
14 chapter or rules ((and—regulations)) adopted hereunder. Such
15 inspection shall, when possible, be made during regular business hours
16 or during any working shift of said food processing plant or cottage
17 food operation. The department may, however, inspect such food
18 processing plant or cottage food operation at any time when it has
19 received information that an emergency affecting the public health has
20 arisen and such food processing plant or cottage food operation is or
21 may be involved in the matters causing such emergency.

22 (2) The department may apply for an administrative inspection
23 warrant to a court of competent jurisdiction and an administrative
24 inspection warrant may be issued where:

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

28 (b) There is reasonable cause to believe that a violation of this
29 chapter or of rules adopted under this chapter is occurring or has
30 occurred.

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