

HOUSE BILL REPORT

ESSB 5748

As Passed House - Amended:
April 7, 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 & 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)].

Floor Activity:

Passed House - Amended: 4/7/11, 92-0.

**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

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.

Ranking Minority Member; Buys, Dunshee, Hinkle, Kretz, Lytton, Orcutt, Pettigrew, Rolfes and Van De Wege.

Staff: Jason Callahan (786-7117).

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).

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.

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 Amended Bill:

The WSDA is directed to adopt rules that allow for cottage food operations. Permitted cottage food operations are exempt from the Code and from licensing by public health jurisdictions. 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 \$15,000 is generated. The WSDA must increase the \$15,000 annual gross sales limit biennially to adjust for inflation. 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.

Cottage food operations must pay annually to the WSDA a \$30 application processing fee and a \$75 public health review fee. In addition, all cottage food operations must be inspected annually for basic hygiene. The WSDA must charge a \$125 inspection fee. The WSDA may contract with local health jurisdictions to conduct the inspections.

The WSDA is provided with the direct authority to apply for administrative search warrants for the areas of cottage food operations where food is processed, handled, stored, or packaged.

The application must be made to a court of competent jurisdiction and must allege that the WSDA attempted to inspect a cottage food operation but was denied access.

A new misdemeanor is created for a person who operates a cottage food operation without being permitted by the WSDA or who violates a rule of the WSDA regarding cottage food operations. Multiple violations may be prosecuted as a gross misdemeanor. Violators may also be subject to a civil penalty of up to \$1,000 for each day's violation.

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 (Agriculture & Natural Resources):

(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.

Staff Summary of Public Testimony (Health & Human Services Appropriations & Oversight):

(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 (Agriculture & Natural Resources): (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 Testifying (Health & Human Services Appropriations & Oversight): Kirk Robinson, Washington State Department of Agriculture.

Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources): None.

Persons Signed In To Testify But Not Testifying (Health & Human Services Appropriations & Oversight): None.