

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5748

62nd Legislature
2011 Regular Session

Passed by the Senate April 21, 2011
YEAS 46 NAYS 1

President of the Senate

Passed by the House April 7, 2011
YEAS 92 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5748** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5748

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

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 69.07.120
2 and 69.07.100; and adding a new chapter to Title 69 RCW.

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

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

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

10 (2) "Cottage food products" means nonpotentially hazardous baked
11 goods; jams, jellies, preserves, and fruit butters as defined in 21
12 C.F.R. Sec. 150 as it existed on the effective date of this section;
13 and other nonpotentially hazardous foods identified by the director in
14 rule.

15 (3) "Department" means the department of agriculture.

16 (4) "Director" means the director of the department.

17 (5) "Domestic residence" means a single-family dwelling or an area
18 within a rental unit where a single person or family actually resides.
19 Domestic residence does not include:

1 (a) A group or communal residential setting within any type of
2 structure; or

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

4 (6) "Home kitchen" means a kitchen primarily intended for use by
5 the residents of a home. It may contain one or more stoves or ovens,
6 which may be a double oven, designed for residential use.

7 (7) "Permitted area" means the portion of a domestic residence
8 housing a home kitchen where the preparation, packaging, storage, or
9 handling of cottage food products occurs.

10 (8) "Potentially hazardous food" means foods requiring temperature
11 control for safety because they are capable of supporting the rapid
12 growth of pathogenic or toxigenic microorganisms, or the growth and
13 toxin production of *Clostridium botulinum*.

14 NEW SECTION. **Sec. 2.** (1) The director may adopt, by rule,
15 requirements for cottage food operations. These requirements may
16 include, but are not limited to:

17 (a) The application and renewal of permits under section 3 of this
18 act;

19 (b) Inspections as provided under section 4 of this act;

20 (c) Sanitary procedures;

21 (d) Facility, equipment, and utensil requirements;

22 (e) Labeling specificity beyond the requirements of this section;

23 (f) Requirements for clean water sources and waste and wastewater
24 disposal; and

25 (g) Requirements for washing and other hygienic practices.

26 (2) A cottage food operation must package and properly label for
27 sale to the consumer any food it produces, and the food may not be
28 repackaged, sold, or used as an ingredient in other foods by a food
29 processing plant, or sold by a food service establishment.

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

32 (a) The name and address of the business of the cottage food
33 operation;

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

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

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

1 (e) Allergen labeling as specified by the director in rule;

2 (f) If any nutritional claim is made, appropriate labeling as
3 specified by the director in rule;

4 (g) The following statement printed in at least the equivalent of
5 eleven-point font size in a color that provides a clear contrast to the
6 background: "Made in a home kitchen that has not been subject to
7 standard inspection criteria."

8 (4) Cottage food products may only be sold directly to the consumer
9 and may not be sold by internet, mail order, or for retail sale outside
10 the state.

11 (5) Cottage food products must be stored only in the primary
12 domestic residence.

13 NEW SECTION. **Sec. 3.** (1) All cottage food operations must be
14 permitted annually by the department on forms developed by the
15 department. All permits and permit renewals must be made on forms
16 developed by the director and be accompanied by an inspection fee as
17 provided in section 4 of this act, a seventy-five dollar public health
18 review fee, and a thirty dollar processing fee. All fees must be
19 deposited into the food processing inspection account created in RCW
20 69.07.120.

21 (2) In addition to the provision of any information required by the
22 director on forms developed under subsection (1) of this section and
23 the payment of all fees, an applicant for a permit or a permit renewal
24 as a cottage food operation must also provide documentation that all
25 individuals to be involved in the preparation of cottage foods have
26 secured a food and beverage service worker's permit under chapter 69.06
27 RCW.

28 (3) All cottage food operations permitted under this section must
29 include a signed document attesting, by opting to become permitted,
30 that the permitted cottage food operation expressly grants to the
31 director the right to enter the domestic residence housing the cottage
32 food operation during normal business hours, or at other reasonable
33 times, for the purposes of inspections under this chapter.

34 NEW SECTION. **Sec. 4.** (1) The permitted area of all cottage food
35 operations must be inspected for basic hygiene by the director both
36 before initial permitting under section 3 of this act and annually

1 after initial permitting. In addition, the director may inspect the
2 permitted area of a cottage food operation at any time in response to
3 a foodborne outbreak or other public health emergency.

4 (2) When conducting an annual basic hygiene inspection, the
5 director shall, at a minimum, inspect for the following:

6 (a) That the permitted cottage food operator understands that no
7 person other than the permittee, or a person under the direct
8 supervision of the permittee, may be engaged in the processing,
9 preparing, packaging, or handling of any cottage food products or be in
10 the home kitchen during the preparation, packaging, or handling of any
11 cottage food products;

12 (b) That no cottage food preparation, packaging, or handling is
13 occurring in the home kitchen concurrent with any other domestic
14 activities such as family meal preparation, dishwashing, clothes
15 washing or ironing, kitchen cleaning, or guest entertainment;

16 (c) That no infants, small children, or pets are in the home
17 kitchen during the preparation, packaging, or handling of any cottage
18 food products;

19 (d) That all food contact surfaces, equipment, and utensils used
20 for the preparation, packaging, or handling of any cottage food
21 products are washed, rinsed, and sanitized before each use;

22 (e) That all food preparation and food and equipment storage areas
23 are maintained free of rodents and insects; and

24 (f) That all persons involved in the preparation and packaging of
25 cottage food products:

26 (i) Have obtained a food and beverage service workers permit under
27 chapter 69.06 RCW;

28 (ii) Are not going to work in the home kitchen when ill;

29 (iii) Wash their hands before any food preparation and food
30 packaging activities; and

31 (iv) Avoid bare hand contact with ready-to-eat foods through the
32 use of single-service gloves, bakery papers, tongs, or other utensils.

33 (3) The department shall charge an inspection fee of one hundred
34 twenty-five dollars for any initial or annual basic hygiene inspection,
35 which must be deposited into the food processing inspection account
36 created in RCW 69.07.120. An additional inspection fee must be
37 collected for each visit to a cottage food operation for the purposes
38 of conducting an inspection for compliance.

1 (4) The director may contract with local health jurisdictions to
2 conduct the inspections required under this section.

3 **NEW SECTION. Sec. 5.** (1) The gross sales of cottage food products
4 may not exceed an annual amount set by the department. The
5 determination of the maximum annual gross sales must be computed on the
6 basis of the amount of gross sales within or at a particular domestic
7 residence and may not be computed on a per person basis within or at an
8 individual domestic residence.

9 (2) If gross sales exceed the maximum annual gross sales amount,
10 the cottage food operation must either obtain a food processing plant
11 license under chapter 69.07 RCW or cease operations.

12 (3) A cottage food operation exceeding the maximum annual gross
13 sales amount is not entitled to a full or partial refund of any fees
14 paid under section 3 or 4 of this act.

15 (4) The maximum annual gross sales amount must be established in
16 rule by the department consistent with this subsection. The amount
17 must be set at fifteen thousand dollars until December 31, 2012.
18 Beginning January 1, 2013, the department must increase the fifteen
19 thousand dollar annual gross sales limit biennially to reflect
20 inflation. The department may determine inflation-based increases in
21 any matter it deems most efficient.

22 (5) The director may request in writing documentation to verify the
23 annual gross sales figure.

24 **NEW SECTION. Sec. 6.** (1) For the purpose of determining
25 compliance with this chapter, the director may access, for inspection
26 purposes, the permitted area of a domestic residence housing a cottage
27 food operation permitted by the director under this chapter. This
28 authority includes the authority to inspect any records required to be
29 kept under the provisions of this chapter.

30 (2) All inspections must be made at reasonable times and, when
31 possible, during regular business hours.

32 (3) Should the director be denied access to the permitted area of
33 a domestic residence housing a cottage food operation where access was
34 sought for the purposes of enforcing or administering this chapter, the
35 director may apply to any court of competent jurisdiction for a search

1 warrant authorizing access to the permitted area of a domestic
2 residence housing a permitted cottage food operation, upon which the
3 court may issue a search warrant for the purposes requested.

4 (4) Any access under this section must be limited to the permitted
5 area and further limited to the purpose of enforcing or administering
6 this chapter.

7 NEW SECTION. **Sec. 7.** (1) After conducting a hearing, the director
8 may deny, suspend, or revoke any permit provided for in this chapter if
9 it is determined that a permittee has committed any of the following
10 acts:

11 (a) Refused, neglected, or failed to comply with the provisions of
12 this chapter, any rules adopted to administer this chapter, or any
13 lawful order of the director;

14 (b) Refused, neglected, or failed to keep and maintain records
15 required by this chapter, or to make the records available when
16 requested pursuant to the provisions of this chapter;

17 (c) Consistent with section 6 of this act, refused the director
18 access to the permitted area of a domestic residence housing a cottage
19 food operation for the purpose of carrying out the provisions of this
20 chapter;

21 (d) Consistent with section 6 of this act, refused the department
22 access to any records required to be kept under the provisions of this
23 chapter; or

24 (e) Exceeded the annual income limits provided in section 5 of this
25 act.

26 (2) The director may summarily suspend a permit issued under this
27 chapter if the director finds that a cottage food operation is
28 operating under conditions that constitute an immediate danger to
29 public health or if the director is denied access to the permitted area
30 of a domestic residence housing a cottage food operation and records
31 where the access was sought for the purposes of enforcing or
32 administering this chapter.

33 NEW SECTION. **Sec. 8.** The rights, remedies, and procedures
34 respecting the administration of this chapter, including rule making,
35 emergency actions, and permit suspension, revocation, or denial are
36 governed by chapter 34.05 RCW.

1 NEW SECTION. **Sec. 9.** (1)(a) Any person engaging in a cottage food
2 operation without a valid permit issued under section 3 of this act or
3 otherwise violating any provision of this chapter, or any rule adopted
4 under this chapter, is guilty of a misdemeanor.

5 (b) A second or subsequent violation is a gross misdemeanor. Any
6 offense committed more than five years after a previous conviction
7 shall be considered a first offense.

8 (2) Whenever the director finds that a person has committed a
9 violation of any of the provisions of this chapter, and that violation
10 has not been punished pursuant to subsection (1) of this section, the
11 director may impose upon and collect from the violator a civil penalty
12 not exceeding one thousand dollars per violation per day. Each
13 violation shall be a separate and distinct offense.

14 NEW SECTION. **Sec. 10.** Except as otherwise provided in this
15 chapter, cottage food operations with a valid permit under section 3 of
16 this act are not subject to the provisions of chapter 69.07 RCW or to
17 permitting and inspection by a local health jurisdiction.

18 NEW SECTION. **Sec. 11.** Nothing in this chapter affects the
19 application of any other state or federal laws or any applicable
20 ordinances enacted by any local unit of government.

21 **Sec. 12.** RCW 69.07.120 and 1992 c 160 s 5 are each amended to read
22 as follows:

23 All moneys received by the department under the provisions of this
24 chapter and chapter 69.--- RCW (the new chapter created in section 14
25 of this act) shall be paid into the food processing inspection account
26 hereby created within the agricultural local fund established in RCW
27 43.23.230 and shall be used solely to carry out the provisions of this
28 chapter and chapters 69.--- RCW (the new chapter created in section 14
29 of this act) and 69.04 RCW.

30 **Sec. 13.** RCW 69.07.100 and 2002 c 301 s 10 are each amended to
31 read as follows:

32 (1) The provisions of this chapter shall not apply to
33 establishments issued a permit or licensed under the provisions of:

1 ~~((1))~~ (a) Chapter 69.25 RCW, the Washington wholesome eggs and
2 egg products act;
3 ~~((2))~~ (b) Chapter 69.28 RCW, the Washington state honey act;
4 ~~((3))~~ (c) Chapter 16.49 RCW, the Meat inspection act;
5 ~~((4))~~ (d) Chapter 77.65 RCW, relating to the direct retail
6 endorsement for wild-caught seafood;
7 ~~((5))~~ (e) Chapter 69.--- RCW (the new chapter created in section
8 14 of this act), relating to cottage food operations;
9 (f) Title 66 RCW, relating to alcoholic beverage control; and
10 ~~((6))~~ (g) Chapter 69.30 RCW, the sanitary control of shellfish
11 act. ~~((However,))~~
12 (2) If any such establishments process foods not specifically
13 provided for in the above entitled acts, ~~((such))~~ the establishments
14 ~~((shall be))~~ are subject to the provisions of this chapter.
15 (3) The provisions of this chapter ~~((shall))~~ do not apply to
16 restaurants or food service establishments.

17 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act
18 constitute a new chapter in Title 69 RCW.

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