

ESSB 6388 - H COMM AMD

By Committee on Appropriations Subcommittee on General Government
& Information Technology

ADOPTED AS AMENDED 03/07/2014

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the availability
4 of affordable, fresh, and nourishing foods is essential for individuals
5 to maintain a healthy lifestyle. The legislature also finds that new
6 methods of purchasing and delivering fresh, nourishing foods are
7 emerging and lowering the costs of these foods. The legislature
8 further finds that some of the new business models for purchasing and
9 delivering fresh, nourishing foods are being inappropriately classified
10 as food service establishments. Therefore, it is the intent of the
11 legislature to establish a direct retailer license for businesses that
12 sell and collect payment only through a web site for prepackaged foods
13 obtained from a food processor either licensed or inspected, or both,
14 by a state or federal regulatory agency and that deliver the food
15 directly to consumers without any interim storage.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.04 RCW
17 to read as follows:

18 (1) The department shall issue a license to operate as a direct
19 retailer to any entity that:

20 (a) Submits a completed application on forms approved by the
21 department;

22 (b) Provides the department with a list of all leased, rented, or
23 owned vehicles, other than vehicles that are rented for less than
24 forty-five days, used by the applicant's business to deliver food;

25 (c) Maintains all records of vehicles that are rented for less than
26 forty-five days for at least twelve months following the termination of
27 the rental period;

28 (d) Maintains food temperature logs or uses a device to monitor the

1 temperature of the packages in real time for all food while in
2 transport; and

3 (e) Submits all appropriate fees to the department.

4 (2) The department shall develop, by rule, an annual license and
5 renewal fee to defray the costs of administering the licensing and
6 inspection program created by this section. All moneys received by the
7 department under the provisions of this section must be paid into the
8 food processing inspection account created in RCW 69.07.120 and must be
9 used solely to carry out the provisions of this section.

10 (3)(a) A licensed direct retailer is required to protect food from
11 contamination while in transport. Food must be transported under
12 conditions that protect food against physical, chemical, and microbial
13 contamination, as well as against deterioration of the food and its
14 container.

15 (b) Compliance with this subsection (3) requires, but is not
16 limited to, the separation of raw materials in such a fashion that they
17 avoid cross-contamination of other food products, particularly ready-
18 to-eat food. An example of this principle includes ensuring that,
19 during the transport of raw fish and seafood, meat, poultry, or other
20 food which inherently contains pathogenic and spoilage microorganisms,
21 soil, or other foreign material, the raw materials may not come into
22 direct contact with other food in the same container or in any other
23 cross-contaminating circumstance.

24 (4) In the event of a food recall or when required by the
25 department, a federal, state, or local health authority in response to
26 a food borne illness outbreak, a licensed direct retailer shall use its
27 client listserv to notify customers of the recall and any other
28 relevant information.

29 (5) In the implementation of this section, the department shall:

30 (a) Conduct inspections of vehicles, food handling areas,
31 refrigeration equipment, and product packaging used by a licensed
32 direct retailer;

33 (b) Conduct audits of temperature logs and other food handling
34 records as appropriate;

35 (c) Investigate any complaints against a licensed direct retailer
36 for the failure to maintain food safety; and

37 (d) Adopt rules, in consultation with the department of health and

1 local health jurisdictions, necessary to administer and enforce the
2 program consistent with federal regulations.

3 (6) Direct retailers that have a license from the department under
4 this section are exempt from the permitting requirements of food
5 service rules adopted by the state board of health and any local health
6 jurisdiction.

7 (7) The director may deny, suspend, or revoke any license provided
8 under this section if the director determines that an applicant or
9 licensee has committed any of the following:

10 (a) Refused, neglected, or failed to comply with the provisions of
11 this section, the rules and regulations adopted under this section, or
12 any order of the director;

13 (b) Refused, neglected, or failed to keep and maintain records
14 required by this chapter, or refused the department access to such
15 records;

16 (c) Refused the department access to any portion or area of
17 vehicles, food handling areas, or any other areas or facilities housing
18 equipment or product packaging used by the direct retailer in the
19 course of performing business responsibilities; or

20 (d) Failed to submit an application for a license meeting the
21 requirements of this section or failed to pay the appropriate annual
22 license or renewal fee.

23 (8) The definitions in this subsection apply throughout this
24 section unless the context clearly requires otherwise:

25 (a) "Department" means the department of agriculture.

26 (b) "Direct retailer" means an entity that receives prepackaged
27 food from a food processor that is either licensed or inspected, or
28 both, by a state or federal regulatory agency or the department and
29 that delivers the food directly to consumers who only placed and paid
30 for an order on the entity's web site, as long as:

31 (i) The food is delivered by the entity without opening the
32 packaging and without dividing it into smaller packages;

33 (ii) There is no interim storage by the entity; and

34 (iii) The food is delivered by means of vehicles that are equipped
35 with either refrigeration or freezer units, or both, and that meet the
36 requirements of rules authorized by this chapter.

1 **Sec. 3.** RCW 69.07.120 and 2011 c 281 s 12 are each amended to read
2 as follows:

3 All moneys received by the department under the provisions of this
4 chapter, section 2 of this act, and chapter 69.22 RCW shall be paid
5 into the food processing inspection account hereby created within the
6 agricultural local fund established in RCW 43.23.230 and shall be used
7 solely to carry out the provisions of this chapter, section 2 of this
8 act, and chapters 69.22 and 69.04 RCW.

9 NEW SECTION. **Sec. 4.** If specific funding for the purposes of this
10 act, referencing this act by bill or chapter number, is not provided by
11 June 30, 2014, in the omnibus appropriations act, this act is null and
12 void."

13 Correct the title.

EFFECT: Changes the name of the license entity from a pass-through food distributor to a direct retailer.

Removes contradictory language to clarify that a direct retailer may not temporarily store prepackaged food before delivering it to the consumer.

Adds enforcement language stating that the director of the Department of Agriculture may deny, revoke, or suspend a license for a direct retailer if the entity refuses, neglects, or fails to comply with the requirements set forth in the bill.

Exempts vehicles that are rented for less than 45 days from the direct retailer's list of vehicles used that must be provided to the Department of Agriculture in order to receive a license.

Adds a null and void clause. The bill is null and void unless funded in the budget.

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