

HOUSE BILL REPORT

HB 1827

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to pass-through wholesale food distributors.

Brief Description: Concerning pass-through wholesale food distributors.

Sponsors: Representatives Shea and Crouse.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/17/14, 2/5/14 [DPS].

Brief Summary of Substitute Bill

- Creates a license for pass-through wholesale food distributors that deliver prepackaged food directly to the consumer.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chandler, Haigh, Hurst, Kretz, Orcutt, Pettigrew and Schmick.

Minority Report: Without recommendation. Signed by 4 members: Representatives Dunshee, Stanford, Van De Wege and Warnick.

Staff: Megan Mulvihill (786-7291) and Jason Callahan (786-7117).

Background:

The Food Distribution Process.

Wholesale food distributors purchase products from a manufacturer or other food processor and sell and distribute the food products to food service companies and retailers. The process for distributors includes purchasing food products, taking inventory, storing the products

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until ready for transport, finding a buyer for the products, and transporting the products to the buyer or retailer.

The Washington Food Code and Applicable Definitions.

Every four years, the U.S. Food and Drug Administration (FDA) publishes the Food Code for all levels of government to use as a model. The Washington Department of Health (DOH) adopted the FDA's Food Code with some modifications to create the Washington Retail Food Code (Food Code). Local Boards of Health are required to follow the minimum standards outlined in the Food Code, but may adopt more stringent provisions.

The Food Code defines a "food establishment" as: (1) an element of operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location; and (2) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location where consumption is on or off the premises regardless of whether there is a charge for the food. An entity is not considered a food establishment if the food is not categorized as potentially hazardous. Food is considered potentially hazardous if it requires time and temperature control for safety and is prepackaged in a licensed food establishment or food processing plant. In addition, the Food Code defines a "mobile food unit" as a food establishment that is readily moveable.

Summary of Substitute Bill:

A "pass-through wholesale food distributor" is defined as an entity that receives prepackaged food from a food processor certified by the U.S. Department of Agriculture (USDA) and delivers the food directly to consumers, without opening the packaging and without dividing it into smaller packages, by means of refrigerated vehicles that meet U.S. Department of Transportation standards. A pass-through wholesale food distributor may be exempt from the State Board of Health's food service rules and food service regulations adopted by local health jurisdictions if it has a license from the Washington State Department of Agriculture (WSDA). A pass-through wholesale food distributor may temporarily store the prepackaged food in a food storage facility approved by the USDA.

In order to receive a pass-through wholesale food distributor license from WSDA, an entity needs to submit the following:

- an approved, completed application;
- a list of all registered vehicles owned and used to deliver food; and
- the appropriate fee which shall not exceed \$500 per license.

The wholesale food distributor must attest to: (1) only using food storage facilities that are certified by the USDA; and (2) maintaining a temperature log or using a device to monitor the temperature of the packages in real time. A licensed pass-through wholesale food distributor must protect food from contamination, and in the event of a food recall, use its customer listserv to notify customers.

The WSDA must establish procedures to verify registration of delivery vehicles or the certification of food storage facilities. The WSDA may provide annual inspections, but may

not charge a fee for the inspection. The WSDA must investigate complaints and adopt rules necessary to administer the program in consultation with the DOH and local health jurisdictions.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) changes the regulatory authority from the DOL to the WSDA; (2) removes the 30-day inspection notice and expands the inspection authority to include temperature logs, central vehicle distribution locations, and project packaging; (3) requires the licensed pass-through wholesale food distributor to use its client listserv to notify customers in the event of a food recall; (4) requires the licensed pass-through wholesale food distributor to protect food against contamination; (5) authorizes the WSDA to consult with the DOH and local health jurisdictions in adopting rules; and (6) clarifies that customers are those that place orders on the entity's website in the definition of pass-through wholesale food distributor.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 6, 2014.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill represents a new food industry of ordering food online and having it distributed directly to the consumer. This company sells quality, low-cost food in bulk that comes straight from approved processors directly to the consumer. The food is packaged, inspected, sealed, and delivered to a central distribution point. This food is delivered on one site, like a church parking lot, to people who pre-ordered it online so there is no food waste. It cuts out costs, saves on greenhouse gases, provides low-cost food to the less fortunate, and is a popular model. This is going to be the next Amazon because it is the future of how food will be delivered. This is not a retail service or selling at the door. It is merely a delivery service.

Washington needs a state solution for permitting because each county treats this type of business differently. Regardless of whether the food is delivered in that county, the company has to have a license in that county to pass through. This company works with a lot of states with different models and regulations. In Idaho, the company is charged \$69 for one state license. In Washington, it costs around \$18,000 to \$25,000 because each county requires a different permit. This is an innovative company trying to change things, help people, and create jobs. It is not fair to have that additional expense.

(With concerns) Food safety is a partnership at different levels of government and industry. It is understood that this is a new business model, and new businesses should be encouraged. The concerns are based on taking policies and regulations, and tweaking them for one

company. There is always a balance in ensuring food safety and yet not over-regulating. There are several food safety concerns with this type of food model. One area of concern is that the bill states that storage warehouses should be regulated by the USDA, but in Washington most warehouses are regulated by the WSDA. Another concern is refrigeration requirements and temperature control because this company has been seen using rental trucks and unrefrigerated trucks. The bill does require a temperature control log or device, but it fails to include standard food safety provisions that are in Washington's Food Code. Having inspections only once a year and providing for a 30-day notice is concerning because it is ineffective oversight. Lastly, the bill would have these regulations taken care of by an agency that does not have food safety expertise. The public is better protected by an agency with food safety background. Protecting the public from food contamination is very important, and the county regulations in place adequately address these food safety concerns.

Persons Testifying: (In support) Representative Shea, prime sponsor; and Mike Conrad and Tom Parker, Zaycon Foods.

(With concerns) Kirk Robinson, Washington State Department of Agriculture; Dave Gifford, Washington Department of Health; and Art Starry, Thurston County Public Health.

Persons Signed In To Testify But Not Testifying: None.