

# SENATE BILL REPORT

## SB 6388

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As Reported by Senate Committee On:  
Commerce & Labor, February 3, 2014  
Ways & Means, February 11, 2014

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

**Brief Description:** Concerning pass-through wholesale food distributors.

**Sponsors:** Senator Padden.

**Brief History:**

**Committee Activity:** Commerce & Labor: 1/31/14, 2/03/14 [DP-WM, DNP].  
Ways & Means: 2/10/14, 2/11/14 [DPS, w/oRec].

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass and be referred to Committee on Ways & Means.  
Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Hewitt and King.

**Minority Report:** Do not pass.  
Signed by Senators Conway, Ranking Member; Hasegawa and Kohl-Welles.

**Staff:** Jessica Stevenson (786-7465)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6388 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Assistant Ranking Member on the Operating Budget; Bailey, Becker, Billig, Braun, Conway, Dammeier, Hatfield, Hewitt, Padden, Parlette, Rivers, Schoesler and Tom.

**Minority Report:** That it be referred without recommendation.  
Signed by Senator Hasegawa.

**Staff:** Steve Jones (786-7440)

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*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.*

**Background:** The Washington State Board of Health (WSBH) must consider the most recent version of the United States Food and Drug Administration's food code for the purpose of adopting rules for food services in Washington State. WSBH must adopt rules controlling public health related to environmental conditions, such as heating, lighting, ventilation, sanitary facilities, and cleanliness, in public facilities, including food service establishments.

Upon the request of a local health officer, the Secretary of Health may take legal action to enforce the public health state laws, rules, and regulations, or the local rules and regulations, and may institute any civil legal proceeding authorized by the laws of the state of Washington.

The Washington State Department of Agriculture (WSDA) regulates food processors and other food-related businesses, and administers a variety of agriculture-related programs.

**Summary of Bill (Recommended Substitute):** Pass-through wholesale food distributor is defined as an entity that receives prepackaged food from a food processor certified by the United States Department of Agriculture (USDA) and delivers, by refrigerated vehicle, the food directly to consumers without opening packaging or dividing the food into smaller packages. Pass-through wholesale food distributor includes entities that temporarily store prepackaged food in a food storage facility prior to the delivery to the consumer.

WSDA must issue a pass-through wholesale food distributor license to an entity that:

- submits a completed application on forms approved by WSDA and the required fee;
- provides WSDA with a list of all registered vehicles owned and used by the applicant's business to deliver food;
- attests that the entity uses only food storage facilities that have been certified by USDA, if applicable; and
- attests that the operator of any rented vehicles maintains a temperature log or uses a device to monitor the temperature of the packages in real time, if applicable.

WSDA must:

- establish procedures to verify the registration of delivery vehicles or certification of food storage facilities by USDA;
- inspect delivery vehicles, including refrigeration equipment, and food storage facilities;
- establish fees to defray the costs of the program;
- investigate any complaints against a licensed pass-through wholesale food distributor for failing to maintain food delivery vehicles in good working condition; and
- adopt rules necessary to administer the program.

Pass-through wholesale food distributors that have a license from WSDA are exempt from WSBH's food service rules and any food service regulations adopted by local health jurisdictions.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute):** WSDA has licensing authority over pass-through wholesale food distributors instead of the Department of Licensing. The \$500 cap on license fees is removed, and

WSDA may establish fees to defray the costs of the program. The requirement of 30-day notice prior to health inspections is also removed.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Commerce & Labor):** PRO: The company is in all 50 states, but Washington has the worst regulatory system for the business. The bill makes the fees reasonable and develops a statewide standard for the fees so the business does not have to pay a fee for each county. The business model works because it provides fresh food at reasonable prices for consumers. All food is inspected by USDA, and the business must purchase permits for each delivery location. The food is preordered so it is fresh and none of it goes to waste. The food is delivered in separate trucks so cross contamination does not occur. Trucks have systems that monitor the truck temperatures. Public health concerns are not an issue because the business can contact consumers quickly about a recall.

CON: The pass-through wholesale food distributor model has the potential to increase risk of food-borne illnesses. Meat and poultry are designated as potentially hazardous foods under federal and Washington rules. The bill overrides public health protections and weakens the safety of our food systems network. A concern is the safety of food from the point of wholesale to delivery. A specific business should not be exempt from rules when others are not. Local health officers have the responsibility to make sure food is safe. A major concern is DOL overseeing the businesses because they do not normally regulate food services. Annual inspections are inadequate because it is a food service. The bill should require the businesses to use a tracking system for the food deliveries.

**Persons Testifying (Commerce & Labor):** PRO: Senator Padden, prime sponsor; Mike Conrad, Zaycon Foods.

CON: Keith Grellner, WSBH; Art Starry, Environmental Health Director for Thurston County Public Health representing WA Environmental Health Directors; Kirk Robinson, WSDA.

**Staff Summary of Public Testimony on Substitute (Ways & Means):** PRO: Zaycon Foods operates in all 50 states, and other states charge as little as \$69 for a statewide license. In Washington, we are regulated differently in all 39 counties. We should not be regulated as a food handler; we simply deliver prepackaged food that is approved by the USDA. WSDA would be a good choice for statewide oversight of our business.

CON: WSDA licenses and regulates more than 3900 food processors, so this program would be a good fit in our department, as 20 other states provide. However, WSDA is concerned

about the fiscal impact. If the license fees are not sufficient to cover the regulatory and licensing costs, the taxpayers of the state will have to make up the difference.

**Persons Testifying (Ways & Means):** PRO: Tom Parker, Mike Conrad, Zaycon Foods.

CON: Kirk Robinson, WSDA.