

Amendment No. 87

Senate Amendment to Senate Bill No. 206 (BDR 40-935)

Proposed by: Senate Committee on Health and Human Services**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will ADD a 2/3s majority vote requirement for final passage of S.B. 206 (§ 1).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	☐	Lost	☐	Adopted	☐	Lost	☐
Concurred In	☐	Not	☐	Concurred In	☐	Not	☐
Receded	☐	Not	☐	Receded	☐	Not	☐

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

AAK/RBL



Date: 4/8/2013

S.B. No. 206—Revises provisions relating to food establishments. (BDR 40-935)



SENATE BILL NO. 206—SENATORS FORD, KIHUEN, DENIS, JONES, SMITH; ATKINSON, CEGAVSKE, PARKS, SETTELMAYER, SPEARMAN AND WOODHOUSE

MARCH 1, 2013

JOINT SPONSORS: ASSEMBLYMEN SPIEGEL, FRIERSON,
HEALEY; BUSTAMANTE ADAMS AND DUNCAN

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to food establishments. (BDR 40-935)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to food establishments; revising the definition of “food establishment” for purposes of provisions regulating such establishments; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires a person to obtain a permit to operate a food establishment and to comply with various other requirements in the operation of the food establishment. (NRS 446.870) Existing law defines the term “food establishment” for those purposes and specifically excludes certain entities from the definition, including private homes where the food that is prepared or manufactured in the home is not provided for compensation or other consideration of any kind. (NRS 446.020) This bill adds to the list of entities that are excluded from the definition of “food establishment” a cottage food operation that: (1) manufactures or prepares certain food items for sale; ~~and~~ (2) meets certain requirements relating to the preparation, labeling and sale of those food items ~~it~~; ***and (3) registers with the health authority.*** This bill also prohibits a local government from adopting any ordinance or other regulation that prohibits a person from ~~conducting~~ ***preparing food in*** a cottage food operation within the person’s private home.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 446 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A cottage food operation which manufacturers or prepares a food item by any manner or means whatever for sale, or which offers or displays a food item for sale, is not a “food establishment” pursuant to paragraph (h) of subsection 2 of NRS 446.020 if each such food item is:

(a) Sold ~~not on the private home~~ property of the natural person who manufactures or prepares the food item or at a location where the natural person who manufactures or prepares the food item sells the food item directly to a consumer, including, without limitation, a farmers' market licensed pursuant to chapter 244 or 268 of NRS not a flea market, swap meet, church bazaar, garage sale or craft fair, by means of an in-person transaction that does not involve selling the food item by telephone or via the Internet;

(b) Sold to a natural person for his or her consumption and not for resale;

(c) Affixed with a label which complies with the federal labeling requirements set forth in 21 U.S.C. § 343(w) and 9 C.F.R. Part 317 and 21 C.F.R. Part 101; ~~and which has been approved by the health authority if the food item is sold at a farmers' market;~~

(d) Labeled with "MADE IN A COTTAGE FOOD OPERATION THAT IS NOT SUBJECT TO ~~ROUTINE~~ GOVERNMENT FOOD SAFETY ~~INSPECTIONS~~" INSPECTION" printed prominently on the label for the food item;

(e) Prepackaged in a manner that protects the food item from contamination during transport, display, sale and acquisition by consumers; and

(f) Prepared and processed in the kitchen of the private home of the natural person who manufactures or prepares the food item ~~is~~

~~(1) Without any domestic activities occurring in the kitchen simultaneously;~~

~~(2) Without any children or pets being present in the kitchen;~~

~~(3) Using only noncommercial types of kitchen equipment and utensils;~~
~~and~~

~~(4) In which all food contact surfaces, equipment and utensils used for the preparation and processing of the food item are washed, rinsed and sanitized before each use;~~

~~(g) Prepared and stored only in areas that are maintained free of rodents and insects;~~

~~(h) Prepared and processed only by persons who:~~

~~(1) Are excluded from the preparation and processing of any food item when ill;~~

~~(2) Wash their hands before preparing and processing any food item;~~
~~and~~

~~(3) Use utensils, including, without limitation, single use gloves, bakery papers or tongs to prevent contact between the bare hands of the person and the food item; and~~

~~(i) Prepared and processed without the use of any special process, including, without limitation:~~

~~(1) Preservation by means of smoking, curing, dehydration or the addition of preservatives;~~

~~(2) Reduced oxygen packaging, including, without limitation, the cook-chill or sous vide processes; or~~

~~(3) Pressure canning of food with a pH of less than 4.2; or, if allowed by the health authority, in the kitchen of a fraternal or social clubhouse, a school or a religious, charitable or other nonprofit organization.~~

2. No local zoning board, planning commission or governing body of an unincorporated town, incorporated city or county may adopt any ordinance or other regulation that prohibits a natural person from ~~conducting~~ preparing food in a cottage food operation.

3. Each natural person who wishes to conduct a cottage food operation must, before selling any food item, register the cottage food operation with the

health authority by submitting such information as the health authority deems appropriate, including, without limitation:

(a) The name, address and contact information of the natural person conducting the cottage food operation; and

(b) If the cottage food operation sells food items under a name other than the name of the natural person who conducts the cottage food operation, the name under which the cottage food operation sells food items.

4. The health authority may charge a fee for the registration of a cottage food operation pursuant to subsection 3 in an amount not to exceed the actual cost of the health authority to establish and maintain a registry of cottage food operations.

5. The health authority may inspect a cottage food operation only to investigate a food item that may be deemed to be adulterated pursuant to NRS 585.300 to 585.360, inclusive, or an outbreak or suspected outbreak of illness known or suspected to be caused by a contaminated food item. The cottage food operation shall cooperate with the health authority in any such inspection. If, as a result of such inspection, the health authority determines that the cottage food operation has produced an adulterated food item or was the source of an outbreak of illness caused by a contaminated food item, the health authority may charge and collect from the cottage food operation a fee in an amount that does not exceed the actual cost of the health authority to conduct the investigation.

6. As used in this section:

(a) "Cottage food operation" means a natural person who manufactures or prepares food items in his or her private home or, if allowed by the health authority, in the kitchen of a fraternal or social clubhouse, a school or a religious, charitable or other nonprofit organization, for sale to a natural person for consumption ~~for~~ and whose gross sales of such food items are not more than \$35,000 per calendar year.

(b) "Food item" means:

- (1) Nuts and nut mixes;
- (2) Candies;
- (3) Jams, jellies and preserves;
- (4) Vinegar and flavored vinegar;
- (5) Dry herbs and seasoning mixes;
- (6) Dried fruits;
- (7) Cereals, trail mixes and granola;
- (8) Popcorn and popcorn balls; or
- (9) Baked goods that:

(I) Are not potentially hazardous foods;

(II) Do not contain cream, uncooked egg, custard, meringue or cream cheese frosting or garnishes ~~; fillings or frostings with low sugar content~~ and

(III) Do not require time or temperature controls for food safety.

Sec. 2. NRS 446.020 is hereby amended to read as follows:

446.020 1. Except as otherwise limited by subsection 2, "food establishment" means any place, structure, premises, vehicle or vessel, or any part thereof, in which any food intended for ultimate human consumption is manufactured or prepared by any manner or means whatever, or in which any food is sold, offered or displayed for sale or served.

2. The term does not include:

(a) Private homes, unless the food prepared or manufactured in the home is sold, or offered or displayed for sale or for compensation or contractual consideration of any kind;

1 (b) Fraternal or social clubhouses at which attendance is limited to members of
2 the club;

3 (c) Vehicles operated by common carriers engaged in interstate commerce;

4 (d) Any establishment in which religious, charitable and other nonprofit
5 organizations sell food occasionally to raise money or in which charitable
6 organizations receive salvaged food in bulk quantities for free distribution, unless
7 the establishment is open on a regular basis to sell food to members of the general
8 public;

9 (e) Any establishment where animals are slaughtered which is regulated and
10 inspected by the State Department of Agriculture;

11 (f) Dairy farms and plants which process milk and products of milk or frozen
12 desserts which are regulated under chapter 584 of NRS; ~~to~~

13 (g) The premises of a wholesale dealer of alcoholic beverages licensed under
14 chapter 369 of NRS who handles only alcoholic beverages which are in sealed
15 containers ~~H~~; or

16 *(h) A cottage food operation that meets the requirements of section 1 of this*
17 *act with respect to food items as defined in that section.*

18 **Sec. 3.** This act becomes effective on July 1, 2013.