

Amendment No. 455

Senate Amendment to Senate Bill No. 441

(BDR 40-988)

Proposed by: Senate Committee on Health and Human Services

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 441 (§ 12).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of *green bold underlining* is language proposed to be added 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 proposed to be retained in this amendment.

DLJ/MSM



Date: 4/14/2015

S.B. No. 441—Revises provisions relating to cottage food industries.
(BDR 40-988)



SENATE BILL NO. 441—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

MARCH 23, 2015

Referred to Committee on Health and Human Services

SUMMARY—~~[Revises]~~ **Enacts** provisions relating to ~~[cottage]~~ **craft** food ~~[industries]~~ **operations.** (BDR 40-988)FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 ~~[cottage]~~ **craft** food operations; ~~[adding]~~ **exempting a craft food operation from certain inspections and other rules enforced by certain health authorities; providing certain requirements for a craft food operation; providing that** certain pickled foods ~~[to the list of foods which]~~ may be prepared and sold by a ~~[cottage]~~ **craft** food operation; **providing requirements for the training of and registration for a person who produces certain pickled foods for a craft food operation;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a cottage food operation is not a food establishment for the purposes of certain provisions of existing law ~~[§]~~ and ~~[as such]~~ is not subject to certain inspections and the enforcement of certain rules and regulations by certain state and local health authorities. (NRS **446.020**, 446.866) **Section 3 of this bill ~~[adds]~~ provides that a craft food operation is not a food establishment for the same purposes as a cottage food operation and, as such, is also not subject to certain inspections and enforcement by health authorities. Section 10 of this bill specifies the requirements for a craft food operation and authorizes the production of acidified foods ~~[to the list of food items that a cottage] by a craft food operation. ~~[may prepare]~~ "Acidified foods" are defined in section ~~[§]~~ 6 of this bill as ~~[an]~~ "a food item containing either fruits, vegetables or both fruits and vegetables which, when prepared for sale, has a finished equilibrium pH of not more than 4.6." Section ~~[§]~~ 11 of this bill provides various requirements for a person who ~~[prepares]~~ produces such acidified foods, including certain required training, successful completion of an examination, pH testing of the foods, the documentation of certain information about the foods produced and registration with the State Department of Agriculture. ~~[The]~~ Section 12 of this bill provides that the Department is authorized to charge a reasonable fee for such training, examinations and registration. ~~[§]~~ and may inspect the premises of a producer of acidified foods if: (1) it is suspected of being the source of an outbreak of illness known or suspected to be caused by a contaminated food item; or (2) a food item produced there may be deemed adulterated.~~**

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. For the purposes of a cottage food operation, as that term is defined in NRS 446.866, an acidified food must be produced by a person who:~~

~~(a) Meets the requirements of NRS 446.866;~~

~~(b) Has, within 5 years before producing such food, attended a course of training in basic food safety and the preparation and canning of acidified foods which has been approved by the State Department of Agriculture;~~

~~(c) Has passed an examination on the preparation of acidified foods which has been approved by the State Department of Agriculture;~~

~~(d) Has provided proof of completion of the requirements of paragraphs (b) and (c) to the health authority with whom the person is registered pursuant to subsection 3 of NRS 446.866;~~

~~(e) Maintains a log and supporting documentation for not less than 5 years which must include:~~

~~(1) The name of each product produced;~~

~~(2) The recipe for each product produced, including, without limitation, the ingredients and the process used in preparation of the product;~~

~~(3) The canning date of each batch produced; and~~

~~(4) The results of the pH test for each batch produced;~~

~~(f) For the purposes of paragraph (e), uses a pH test meter that meets the requirements of the regulations adopted by the State Department of Agriculture;~~

~~(g) Uses only canning recipes that have been approved by, or included in publications approved by, the State Department of Agriculture;~~

~~(h) Is registered with the State Department of Agriculture to receive updates on, without limitation, the testing and preparation of acidified foods and workshops or other training relating to the safe production of acidified foods;~~

~~(i) Includes on the label of each acidified food:~~

~~(1) In addition to the requirements of paragraph (e) of subsection 1 of NRS 446.866, the date the product was produced; and~~

~~(2) In place of the requirements of paragraph (d) of subsection 1 of NRS 446.866, the words "Made in an Acidified (Cottage) Food Operation That is Not Subject to Government Inspection" printed prominently and in capital letters;~~

~~2. The State Department of Agriculture may charge a reasonable fee for:~~

~~(a) Registration pursuant to paragraph (h) of subsection 1;~~

~~(b) A course of training pursuant to paragraph (b) of subsection 1; and~~

~~(c) An examination pursuant to paragraph (c) of subsection 1.~~

~~3. The State Department of Agriculture shall adopt regulations necessary to carry out the provisions of this section.~~

~~4. As used in this section, "acidified foods" means an item containing either fruits, vegetables or both fruits and vegetables which, when prepared for sale, has a finished equilibrium pH level of not more than 4.6. The term:~~

~~(a) Includes, without limitation, pickles, salsa and hot sauce;~~

~~(b) Does not include any product that includes, without limitation, milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacean ingredients or any other ingredients capable of supporting the rapid growth of infectious or toxigenic microorganisms.~~ (Deleted by amendment.)

1 **Sec. 2.** ~~NRS 446.866 is hereby amended to read as follows:~~

2 ~~446.866 1. A cottage food operation which manufactures or prepares a food~~
3 ~~item by any manner or means whatever for sale, or which offers or displays a food~~
4 ~~item for sale, is not a "food establishment" pursuant to paragraph (h) of subsection~~
5 ~~2 of NRS 446.020 if each such food item is:~~

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

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

14 ~~(c) Affixed with a label which complies with the federal labeling requirements~~
15 ~~set forth in 21 U.S.C. § 342(w) and 9 C.F.R. Part 317 and 21 C.F.R. Part 101;~~

16 ~~(d) [Labeled] Except as otherwise provided in section 1 of this act, labeled~~
17 ~~with "MADE IN A COTTAGE FOOD OPERATION THAT IS NOT SUBJECT~~
18 ~~TO GOVERNMENT FOOD SAFETY INSPECTION" printed prominently on the~~
19 ~~label for the food item;~~

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

22 ~~(f) Prepared and processed in the kitchen of the private home of the natural~~
23 ~~person who manufactures or prepares the food item or, if allowed by the health~~
24 ~~authority, in the kitchen of a fraternal or social clubhouse, a school or a religious,~~
25 ~~charitable or other nonprofit organization.~~

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

30 ~~3. Each natural person who wishes to conduct a cottage food operation must,~~
31 ~~before selling any food item, register the cottage food operation with the health~~
32 ~~authority by submitting such information as the health authority deems appropriate,~~
33 ~~including, without limitation:~~

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

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

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

42 ~~5. The health authority may inspect a cottage food operation only to~~
43 ~~investigate a food item that may be deemed to be adulterated pursuant to NRS~~
44 ~~585.200 to 585.260, inclusive, or an outbreak or suspected outbreak of illness~~
45 ~~known or suspected to be caused by a contaminated food item. The cottage food~~
46 ~~operation shall cooperate with the health authority in any such inspection. If, as a~~
47 ~~result of such inspection, the health authority determines that the cottage food~~
48 ~~operation has produced an adulterated food item or was the source of an outbreak of~~
49 ~~illness caused by a contaminated food item, the health authority may charge and~~
50 ~~collect from the cottage food operation a fee in an amount that does not exceed the~~
51 ~~actual cost of the health authority to conduct the investigation.~~

52 ~~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 and whose gross sales of such food items are not more than \$25,000 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) Acidified foods that meet the requirements of section 1 of this act; or~~

~~(10) Baked goods that:~~

~~(I) Are not potentially hazardous foods;~~

~~(II) Do not contain cream, uncooked egg, custard, meringue or cream cheese frosting or garnishes; and~~

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

(Deleted by amendment.)

Sec. 3. 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;

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

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

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

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

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

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

(h) A cottage food operation that meets the requirements of NRS 446.866 with respect to food items as defined in that section; ~~for~~

(i) A craft food operation that meets the requirements of section 10 of this act with respect to food items as defined in that section; or

(j) A farm for purposes of holding a farm-to-fork event.

Sec. 4. Chapter 583 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 to 14, inclusive, of this act.

1 Sec. 5. As used in sections 5 to 14, inclusive, of this act, unless the context
2 otherwise requires, the words and terms defined in sections 6 to 9, inclusive, of
3 this act have the meanings ascribed to them in those sections.

4 Sec. 6. 1. "Acidified foods" means a food item containing either fruits,
5 vegetables or both fruits and vegetables which, when prepared for sale, has a
6 finished equilibrium pH level of not more than 4.6.

7 2. The term does not include any product that includes, without limitation,
8 milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacean
9 ingredients or any other ingredients capable of supporting the rapid growth of
10 infectious or toxigenic microorganisms.

11 Sec. 7. "Craft food operation" means a natural person who manufactures
12 or prepares acidified foods in his or her private home or, if allowed by the health
13 authority, in the kitchen of a fraternal or social clubhouse, a school or a
14 religious, charitable or other nonprofit organization, for sale to a natural person
15 for consumption, and whose gross sales of such foods are not more than \$35,000
16 per calendar year.

17 Sec. 8. "Department" means the State Department of Agriculture.

18 Sec. 9. "Health authority" means the officers and agents of the Division of
19 Public and Behavioral Health of the Department of Health and Human Services,
20 or the officers and agents of the local boards of health.

21 Sec. 10. 1. A craft food operation which manufactures or prepares a food
22 item by any manner or means whatever for sale, or which offers or displays a
23 food item for sale, is not a "food establishment" pursuant to paragraph (i) of
24 subsection 2 of NRS 446.020 if each such food item is:

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

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

33 (c) Affixed with a label which complies with the federal labeling
34 requirements set forth in 21 U.S.C. § 343(w) and 9 C.F.R. Part 317 and 21 C.F.R.
35 Part 101;

36 (d) Labeled with:

37 (1) The date the food item was produced; and

38 (2) "MADE IN A CRAFT FOOD OPERATION THAT IS NOT
39 SUBJECT TO GOVERNMENT FOOD SAFETY INSPECTION" printed
40 prominently on the label for the food item;

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

43 (f) Prepared and processed in the kitchen of the private home of the natural
44 person who manufactures or prepares the food item or, if allowed by the health
45 authority, in the kitchen of a fraternal or social clubhouse, a school or a
46 religious, charitable or other nonprofit organization.

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

51 3. As used in this section, "food item" means acidified foods produced by a
52 person who meets the requirements of sections 11 to 14, inclusive, of this act.

1 Sec. 11. For the purposes of a craft food operation, an acidified food must
2 be produced by a person who:

3 1. Complies with the requirements of section 10 of this act;

4 2. Is registered pursuant to section 12 of this act;

5 3. Maintains a log and supporting documentation for not less than 5 years
6 which must include:

7 (a) The name of each acidified food produced;

8 (b) The recipe for each acidified food produced, including, without
9 limitation, the ingredients and the process used in preparation of the acidified
10 food;

11 (c) The canning date of each batch produced; and

12 (d) The results of the pH test for each batch produced;

13 4. For the purposes of paragraph (c), uses a pH test meter that meets the
14 requirements of the regulations adopted by the State Department of Agriculture;
15 and

16 5. Uses only canning recipes that have been approved by, or included in
17 publications approved by, the State Department of Agriculture.

18 Sec. 12. 1. The Department shall register a person who produces
19 acidified foods if the person:

20 (a) Completes a course of training in basic food safety and the preparation
21 and canning of acidified foods which has been approved by the Department;

22 (b) Passes an examination on the preparation of acidified foods which has
23 been approved by the Department;

24 (c) Pays the registration fee prescribed by the Department; and

25 (d) Provides the Department with such information as the Department deems
26 appropriate, including, without limitation:

27 (1) The name, address and contact information of the natural person
28 who is producing the acidified foods; and

29 (2) If the acidified foods are sold under a name other than that of the
30 natural person who produces the acidified foods, the name under which the
31 natural person sells the acidified foods.

32 2. A registration that is issued or otherwise recorded pursuant to subsection
33 1 is valid for 3 years after the date of initial registration and may be renewed
34 pursuant to the provisions of subsection 3.

35 3. The Department shall renew a registration that is issued or otherwise
36 recorded pursuant to subsection 1 every 3 years if the person:

37 (a) Provides proof satisfactory to the Department that the person has
38 complied with the requirements of section 11 of this act;

39 (b) Completes a course of training in basic food safety and the preparation
40 and canning of acidified foods which has been approved by the Department;

41 (c) Passes an examination on the preparation of acidified foods which has
42 been approved by the Department;

43 (d) Pays the renewal fee prescribed by the Department; and

44 (e) Provides the Department with any such information as the Department
45 deems appropriate.

46 4. The Department shall provide to each person registered to produce
47 acidified foods pursuant to this section:

48 (a) Periodic updates on, without limitation, the testing and preparation of
49 acidified foods; and

50 (b) Information about workshops or other training opportunities related to
51 the safe production of acidified foods.

52 5. The Department may inspect the premises of a person registered to
53 produce acidified foods pursuant to this section only to investigate a food item

1 that may be deemed to be adulterated pursuant to NRS 585.300 to 585.360,
2 inclusive, or an outbreak or suspected outbreak of illness known or suspected to
3 be caused by a contaminated food item. The producer of acidified foods shall
4 cooperate with the Department in any such inspection. If, as a result of such an
5 inspection, the Department determines that the producer of acidified foods has
6 produced an adulterated food item or was the source of an outbreak of illness
7 caused by a contaminated food item, the Department may charge and collect
8 from the producer of acidified foods a fee in an amount that does not exceed the
9 actual cost to the Department to conduct the investigation.

10 6. The Department may charge a reasonable fee for:

11 (a) Registration pursuant to subsection 1;

12 (b) Renewal of a registration pursuant to subsection 3;

13 (c) A course of training pursuant to subsections 1 and 3;

14 (d) An examination pursuant to subsections 1 and 3; and

15 (e) An investigation conducted pursuant to subsection 5.

16 7. The Department shall adopt regulations necessary to carry out the
17 provisions of sections 5 to 14, inclusive, of this act.

18 Sec. 13. 1. In addition to any other requirements set forth in sections 5 to
19 14, inclusive, of this act, an applicant for registration or renewal of registration
20 as a producer of acidified foods shall:

21 (a) Include the social security number of the applicant in the application
22 submitted to the Department.

23 (b) Submit to the Department the statement prescribed by the Division of
24 Welfare and Supportive Services of the Department of Health and Human
25 Services pursuant to NRS 425.520. The statement must be completed and signed
26 by the applicant.

27 2. The Department shall include the statement required pursuant to
28 subsection 1 in:

29 (a) The application or any other forms that must be submitted for
30 registration or renewal of registration; or

31 (b) A separate form prescribed by the Department.

32 3. An applicant may not be registered or have his or her registration
33 renewed by the Department if the applicant:

34 (a) Fails to submit the statement required pursuant to subsection 1; or

35 (b) Indicates on the statement submitted pursuant to subsection 1 that the
36 applicant is subject to a court order for the support of a child and is not in
37 compliance with the order or a plan approved by the district attorney or other
38 public agency enforcing the order for the repayment of the amount owed
39 pursuant to the order.

40 4. If an applicant indicates on the statement submitted pursuant to
41 subsection 1 that the applicant is subject to a court order for the support of a
42 child and is not in compliance with the order or a plan approved by the district
43 attorney or other public agency enforcing the order for the repayment of the
44 amount owed pursuant to the order, the Department shall advise the applicant to
45 contact the district attorney or other public agency enforcing the order to
46 determine the actions that the applicant may take to satisfy the arrearage.

47 Sec. 14. 1. If the Department receives a copy of a court order issued
48 pursuant to NRS 425.540 that provides for the suspension of all professional,
49 occupational and recreational licenses, certificates and permits issued to a person
50 who is registered as a producer of acidified foods, the Department shall deem the
51 registration of that person to be suspended at the end of the 30th day after the
52 date on which the court order was issued unless the Department receives a letter
53 issued to the registrant by the district attorney or other public agency pursuant to

NRS 425.550 stating that the registrant has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The Department shall reinstate a registration that has been suspended by a district court pursuant to NRS 425.540 if the Department receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose registration was suspended stating that the person whose registration was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

~~Sec. 2~~ Sec. 15. 1. This act becomes effective:

~~1~~ (a) On passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act; and

~~2~~ (b) On January 1, 2016, for all other purposes.

2. Sections 13 and 14 of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,
are repealed by the Congress of the United States.