

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0090.01 Chuck Brackney x2295

SENATE BILL 12-048

SENATE SPONSORSHIP

Schwartz,

HOUSE SPONSORSHIP

Coram,

Senate Committees

Agriculture, Natural Resources, and Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF THE "COLORADO COTTAGE FOODS
102 ACT" FOR LOCALLY PRODUCED HOME FOODS SOLD DIRECTLY
103 TO CONSUMERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates the "Colorado Cottage Foods Act", exempting small producers from the licensing requirements placed on retail food establishments and requiring producers to be certified in safe food handling and processing.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill limits the liability of food banks that distribute food produced pursuant to the "Colorado Cottage Foods Act". The bill also limits the liability of schools and nonprofit organizations when their kitchens are used by producers to prepare goods for sale directly to consumers.

The bill also exempts a person who produces and sells less than 250 dozen eggs per month on the premises at which the eggs are produced or at a farmer's market or similar venue from the licensing requirements for sellers of eggs.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that facilitating greater access to markets and
4 consumers for small, local producers of fresh and value-added foods will
5 foster direct connections between people and local producers, which
6 connections will:

7 (a) Support economic development and agritourism in Colorado
8 communities by generating entrepreneurial opportunities, encouraging
9 direct-to-consumer sales of locally grown and prepared foods, and
10 creating new jobs;

11 (b) Invigorate local food systems by easing impediments to local
12 markets; and

13 (c) Increase the self-reliance of Colorado communities.

14 (2) The general assembly further finds and declares that:

15 (a) An exemption from retail food establishment licensure
16 requirement supports both local farmers and small-scale producers;

17 (b) Producers selling products locally from home kitchens will
18 have sufficient incentives to be accountable to consumers and provide
19 safe, locally-sourced foods;

20 (c) At least eighteen states in which agriculture is important have

1 enacted "cottage food laws" or similar provisions that allow producers to
2 produce nonpotentially hazardous food in their home kitchens and sell
3 that food to consumers; and

4 (d) Making fresh, locally-sourced foods more easily available to
5 all consumers will improve the healthy eating habits of all Coloradans.

6 (3) The general assembly also encourages entities that regulate,
7 affect, or are interested in local food production and related matters to
8 examine ways in which to revise zoning ordinances, building and health
9 codes, and other legal barriers to accommodate and encourage the
10 growing and use of local produce and the production of value-added
11 foods that use local produce. Such entities are also urged to initiate,
12 support, and set goals for farm-to-school program efforts, including
13 programs in which schools and other public entities generate and make
14 use of on-site produce and that incorporate into a farm-to-school
15 curriculum knowledge and consumption of locally sourced and
16 distributed foods, including those grown in geothermally heated and other
17 greenhouses.

18 **SECTION 2.** In Colorado Revised Statutes, 13-21-113, **amend**
19 (2) as follows:

20 **13-21-113. Donation of items of food - exemption from civil**
21 **and criminal liability.** (2) Nothing in this section ~~shall relieve~~ RELIEVES
22 any nonprofit organization ~~which~~ THAT serves or provides food to needy
23 persons for their consumption from any liability for any injury, including,
24 but not limited to, injury resulting from ~~the ingesting of such~~ donated
25 foods, as a result of receiving, accepting, gathering, or removing any
26 foods donated under this section; EXCEPT THAT A NONPROFIT
27 ORGANIZATION IS NOT LIABLE FOR ANY INJURY CAUSED BY DONATED FOOD

1 PRODUCED PURSUANT TO THE "COLORADO COTTAGE FOODS ACT",
2 SECTION 25-4-1614, C.R.S.

3 **SECTION 3.** In Colorado Revised Statutes, **add** 13-21-113.5 as
4 follows:

5 **13-21-113.5. Use of school or nonprofit organization kitchen**
6 **- exemption from civil and criminal liability.** A SCHOOL OR NONPROFIT
7 ORGANIZATION THAT PROVIDES ONE OR MORE COMMUNITY KITCHENS USED
8 BY PRODUCERS TO BAKE OR PROCESS GOODS FOR SALE PURSUANT TO THE
9 "COLORADO COTTAGE FOODS ACT", SECTION 25-4-1614, C.R.S., IS NOT
10 LIABLE FOR DAMAGES IN ANY CIVIL ACTION OR SUBJECT TO PROSECUTION
11 IN ANY CRIMINAL PROCEEDING RESULTING FROM THE USE OF ITS KITCHENS
12 BY PRODUCERS PREPARING GOODS FOR DIRECT SALE TO CONSUMERS. A
13 SCHOOL OR NONPROFIT ORGANIZATION MAY REQUIRE ANYONE USING ITS
14 KITCHENS FOR THIS PURPOSE TO SHOW PROOF OF LIABILITY INSURANCE
15 BEFORE USING THE KITCHEN. THIS SECTION DOES NOT APPLY TO AN INJURY
16 OR DEATH OF THE ULTIMATE USER OF THE PRODUCT THAT RESULTS FROM
17 AN ACT OR OMISSION OF THE SCHOOL OR NONPROFIT ORGANIZATION
18 CONSTITUTING GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

19 **SECTION 4.** In Colorado Revised Statutes, 25-4-1602, **add** (14)
20 (m) as follows:

21 **25-4-1602. Definitions.** As used in this part 16, unless the context
22 otherwise requires:

23 (14) "Retail food establishment" means a retail operation that
24 stores, prepares, or packages food for human consumption or serves or
25 otherwise provides food for human consumption to consumers directly or
26 indirectly through a delivery service, whether such food is consumed on
27 or off the premises or whether there is a charge for such food. "Retail

1 food establishment" does not mean:

2 (m) A HOME KITCHEN IN WHICH A PERSON PRODUCES FOOD
3 PRODUCTS SOLD DIRECTLY TO CONSUMERS PURSUANT TO THE "COLORADO
4 COTTAGE FOODS ACT", SECTION 25-4-1614.

5 **SECTION 5.** In Colorado Revised Statutes, **add** 25-4-1614 as
6 follows:

7 **25-4-1614. Home kitchens - exemption - food inspection - short**
8 **title - definitions.** (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED
9 AS THE "COLORADO COTTAGE FOODS ACT".

10 (2) (a) A PRODUCER MAY USE HIS OR HER HOME KITCHEN OR A
11 COMMERCIAL, PRIVATE, OR PUBLIC KITCHEN TO PRODUCE FOODS FOR SALE
12 ONLY IF THE PRODUCER SELLS THE FOODS DIRECTLY TO ULTIMATE
13 CONSUMERS.

14 (b) A PRODUCER IS PERMITTED UNDER THIS SECTION TO SELL ONLY
15 A LIMITED RANGE OF FOODS THAT ARE NONPOTENTIALLY HAZARDOUS AND
16 THAT DO NOT REQUIRE REFRIGERATION. THESE FOODS ARE LIMITED TO
17 SPICES, TEAS, DEHYDRATED PRODUCE, NUTS, SEEDS, HONEY, JAMS, JELLIES,
18 PRESERVES, FRUIT BUTTER, AND BAKED GOODS, INCLUDING CANDIES.

19 (c) A PRODUCER MUST BE CERTIFIED IN SAFE FOOD HANDLING AND
20 PROCESSING BY A THIRD-PARTY CERTIFYING ENTITY, COMPARABLE TO
21 AND INCLUDING THE UNITED STATES DEPARTMENT OF AGRICULTURE OR
22 THE COLORADO STATE UNIVERSITY COOPERATIVE EXTENSION SERVICE,
23 AND MUST MAINTAIN A STATUS OF GOOD STANDING IN ACCORDANCE WITH
24 THE CERTIFYING ENTITY'S PRACTICES AND PROCEDURES, INCLUDING
25 ATTENDING ANY CLASSES REQUIRED FOR CERTIFICATION.

26 (d) THE FOODS PRODUCED UNDER THIS SECTION MUST BE SOLD
27 ONLY:

1 (I) DIRECTLY TO ULTIMATE CONSUMERS AND NOT TO GROCERY
2 STORES OR RESTAURANTS; AND

3 (II) ON THE PRODUCER'S PREMISES, AT THE PRODUCER'S ROADSIDE
4 STAND, OR AT A FARMERS' MARKET, COMMUNITY-SUPPORTED
5 AGRICULTURE ORGANIZATION, OR SIMILAR VENUE.

6 (e) THIS SECTION APPLIES ONLY TO PRODUCERS WHO EARN NET
7 REVENUES OF TWO THOUSAND FIVE HUNDRED DOLLARS OR LESS PER
8 CALENDAR YEAR FROM THE SALE OF EACH ELIGIBLE FOOD PRODUCT
9 PRODUCED IN THE PRODUCER'S HOME KITCHEN OR A COMMERCIAL,
10 PRIVATE, OR PUBLIC KITCHEN.

11 (3) (a) A FOOD PRODUCT SOLD UNDER THIS SECTION MUST HAVE
12 AN AFFIXED LABEL THAT INCLUDES AT LEAST:

13 (I) IDENTIFICATION OF THE PRODUCT;

14 (II) THE PRODUCER'S NAME, THE ADDRESS AT WHICH THE FOOD
15 WAS PREPARED, AND THE PRODUCER'S CURRENT TELEPHONE NUMBER AND
16 ELECTRONIC MAIL ADDRESS;

17 (III) THE DATE ON WHICH THE FOOD WAS PRODUCED;

18 (IV) A COMPLETE LIST OF INGREDIENTS; AND

19 (V) THE FOLLOWING DISCLAIMER: "THIS PRODUCT WAS PRODUCED
20 IN A HOME KITCHEN THAT IS NOT SUBJECT TO STATE LICENSURE OR
21 INSPECTION AND THAT MAY ALSO PROCESS COMMON FOOD ALLERGENS
22 SUCH AS TREE NUTS, PEANUTS, EGGS, SOY, WHEAT, MILK, FISH, AND
23 CRUSTACEAN SHELLFISH. THIS PRODUCT IS NOT INTENDED FOR RESALE."

24 (b) A FOOD PRODUCT SOLD UNDER THIS SECTION AND NOT
25 LABELED IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (3)
26 IS MISBRANDED AND IS SUBJECT TO FOOD SAMPLING AND INSPECTION
27 PURSUANT TO SUBSECTION (4) OF THIS SECTION.

1 (4) A FOOD PRODUCT PRODUCED PURSUANT TO THIS SECTION IS
2 SUBJECT TO FOOD SAMPLING AND INSPECTION BY THE DEPARTMENT OR A
3 COUNTY, DISTRICT, OR REGIONAL HEALTH AGENCY PURSUANT TO SECTION
4 25-5-406 IF IT IS DETERMINED THAT THE FOOD PRODUCT IS MISBRANDED
5 PURSUANT TO SUBSECTION (3) OF THIS SECTION OR IF A CONSUMER
6 COMPLAINT HAS BEEN RECEIVED.

7 (5) A PERSON WHO PURCHASES A PRODUCT MADE BY A PRODUCER
8 SHALL NOT RESELL THE PRODUCT.

9 (6) A PERSON WHO SELLS FOODS PURSUANT TO THIS ACT MUST
10 MAINTAIN HOME BAKERY LIABILITY INSURANCE OR OTHER ADEQUATE
11 LIABILITY INSURANCE.

12 (7) SECTIONS 25-4-1604 TO 25-4-1613 DO NOT APPLY TO THIS
13 SECTION.

14 (8) THE DEPARTMENT OR A COUNTY, DISTRICT, OR REGIONAL
15 HEALTH AGENCY MAY CREATE A VOLUNTARY ELECTRONIC REGISTRY OF
16 PRODUCERS IF IT DETERMINES THAT A REGISTRY WOULD BE OF VALUE TO
17 PRODUCERS AND CONSUMERS.

18 (9) AS USED IN THIS SECTION:

19 (a) "HOME" MEANS A PRIMARY RESIDENCE OCCUPIED BY THE
20 PRODUCER PRODUCING THE FOOD UNDER THIS SECTION.

21 (b) "NONPOTENTIALLY HAZARDOUS" HAS THE MEANING SET FORTH
22 IN SECTION 25-4-1602 (12) AND DOES NOT INCLUDE LOW-ACID OR
23 ACIDIFIED FOODS.

24 (c) "PRODUCER" MEANS A NATURAL PERSON WHO IS A RESIDENT OF
25 COLORADO AND WHO PREPARES NONPOTENTIALLY HAZARDOUS FOODS IN
26 A HOME KITCHEN OR SIMILAR VENUE FOR SALE DIRECTLY TO CONSUMERS
27 PURSUANT TO THIS SECTION.

1 **SECTION 6.** In Colorado Revised Statutes, 35-1-104, **add** (1)
2 (h.5) as follows:

3 **35-1-104. Functions, powers, and duties.** (1) The department
4 has and shall exercise the following functions, powers, and duties:

5 (h.5) TO PROMOTE, WITHIN EXISTING APPROPRIATIONS, FARMERS'
6 MARKETS LOCATED WITHIN THE STATE, INCLUDING SUPPORT OR
7 DEVELOPMENT OF FARMERS' MARKET ORGANIZATIONS AND WORKING
8 GROUPS AND THE PROVISION OF EDUCATION, OUTREACH, AND OTHER
9 ASSISTANCE;

10 **SECTION 7.** In Colorado Revised Statutes, **amend** 35-21-105 as
11 follows:

12 **35-21-105. Exemption.** (1) ~~Any~~ EXCEPT AS PROVIDED IN
13 SUBSECTION (2) OF THIS SECTION, A person who produces and sells, only
14 ~~at retail~~ ON THE PREMISES AT WHICH THE EGGS WERE PRODUCED, AT A
15 FARMERS' MARKET, OR THROUGH A COMMUNITY-SUPPORTED
16 AGRICULTURAL ORGANIZATION, less than two hundred fifty dozen eggs
17 per month ~~shall be exempted~~ IS EXEMPT from all provisions of this article;
18 except that such a producer may apply for a dealer's license and, upon
19 compliance with this article, be issued a dealer's license.

20 (2) A PERSON TRANSPORTING EGGS FOR SALE AT A FARMERS'
21 MARKET OR SIMILAR VENUE UNDER SUBSECTION (1) OF THIS SECTION
22 SHALL:

23 (a) COMPLY WITH THE TRANSPORT REQUIREMENTS OF SECTION
24 35-21-103 (3) AND ANY RULES, INCLUDING RULES REQUIRING
25 REFRIGERATION, PROMULGATED UNDER THIS ARTICLE REGARDING THE
26 SAFE TRANSPORT AND WASHING OF EGGS; AND

27 (b) AFFIX TO THE EGG PACKAGE A LABEL CONTAINING THE

1 ADDRESS AT WHICH THE EGGS ORIGINATED AND THE DATE ON WHICH THE
2 EGGS WERE PACKAGED. ANY EGGS NOT TREATED FOR SALMONELLA MUST
3 ALSO INCLUDE THE FOLLOWING STATEMENT ON THE PACKAGE: "SAFE
4 HANDLING INSTRUCTIONS: TO PREVENT ILLNESS FROM BACTERIA, KEEP
5 EGGS REFRIGERATED, COOK EGGS UNTIL YOLKS ARE FIRM, AND COOK ANY
6 FOODS CONTAINING EGGS THOROUGHLY."

7 **SECTION 8. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.