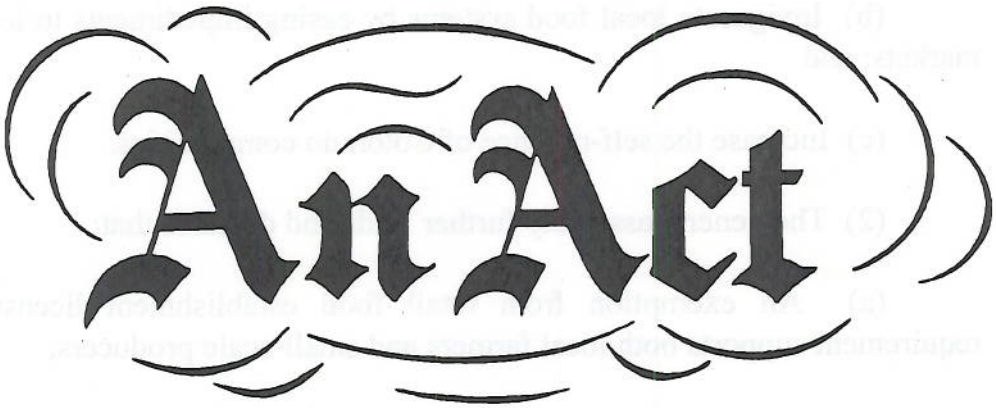
NOTE: The governor signed this measure on 3/15/2012.



SENATE BILL 12-048

BY SENATOR(S) Schwartz, Aguilar, Bacon, Foster, Giron, Grantham, Guzman, Heath, Jahn, Johnston, King S., Newell, Roberts, White, Williams S.;
also REPRESENTATIVE(S) Coram, Brown, Fischer, Hamner, Kerr J., Labuda, Massey, Pabon, Pace, Vigil, Wilson.

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

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

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

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

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

(c) At least eighteen states in which agriculture is important have enacted "cottage food laws" or similar provisions that allow producers to produce nonpotentially hazardous food in their home kitchens and sell that food to consumers; and

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

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

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

13-21-113. Donation of items of food - exemption from civil and criminal liability. (2) Nothing in this section ~~shall relieve~~ RELIEVES any nonprofit organization ~~which~~ THAT serves or provides food to needy

persons for their consumption from any liability for any injury, including, but not limited to, injury resulting from ~~the~~ ingesting ~~of such~~ donated foods, as a result of receiving, accepting, gathering, or removing any foods donated under this section; EXCEPT THAT A NONPROFIT ORGANIZATION IS NOT LIABLE FOR ANY INJURY CAUSED BY DONATED FOOD PRODUCED PURSUANT TO THE "COLORADO COTTAGE FOODS ACT", SECTION 25-4-1614, C.R.S., UNLESS THE NONPROFIT ORGANIZATION ACTED UNREASONABLY.

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

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

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

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

(14) "Retail food establishment" means a retail operation that stores, prepares, or packages food for human consumption or serves or otherwise provides food for human consumption to consumers directly or indirectly through a delivery service, whether such food is consumed on or off the premises or whether there is a charge for such food. "Retail food establishment" does not mean:

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

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

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

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

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

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

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

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

(II) ON THE PRODUCER'S PREMISES, AT THE PRODUCER'S ROADSIDE STAND, OR AT A FARMERS' MARKET, COMMUNITY-SUPPORTED AGRICULTURE ORGANIZATION, OR SIMILAR VENUE WHERE THE PRODUCT IS SOLD DIRECTLY TO CONSUMERS.

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

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

(I) IDENTIFICATION OF THE PRODUCT;

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

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

(IV) A COMPLETE LIST OF INGREDIENTS; AND

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

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

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

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

(6) A PERSON WHO SELLS FOODS PURSUANT TO THIS ACT IS ENCOURAGED TO MAINTAIN HOME BAKERY LIABILITY INSURANCE OR OTHER ADEQUATE LIABILITY INSURANCE.

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

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

(9) AS USED IN THIS SECTION:

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

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

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

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

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

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

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

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

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

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

(b) AFFIX TO THE EGG PACKAGE A LABEL CONTAINING THE ADDRESS AT WHICH THE EGGS ORIGINATED AND THE DATE ON WHICH THE EGGS WERE PACKAGED. ANY EGGS NOT TREATED FOR SALMONELLA MUST ALSO INCLUDE THE FOLLOWING STATEMENT ON THE PACKAGE: "SAFE HANDLING INSTRUCTIONS: TO PREVENT ILLNESS FROM BACTERIA, KEEP EGGS REFRIGERATED, COOK EGGS UNTIL YOLKS ARE FIRM, AND COOK ANY FOODS CONTAINING EGGS THOROUGHLY."

SECTION 8. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO