
HOUSE BILL 2502

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By Representatives R. Johnson, Chandler, McLean, Rayburn, Miller, Paris, Lisk, Spanel, Rasmussen and P. Johnson; by request of Department of Agriculture

Read first time 01/20/92. Referred to Committee on Agriculture & Rural Development.

1 AN ACT Relating to organic products; amending RCW 15.86.010,
2 15.86.020, 15.86.030, 15.86.031, 15.86.050, 15.86.060, and 15.86.070;
3 reenacting and amending RCW 42.17.310; and adding new sections to
4 chapter 15.86 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 15.86.010 and 1985 c 247 s 1 are each amended to read
7 as follows:

8 The legislature recognizes a public benefit in establishing
9 standards for (~~food~~) agricultural products marketed and labeled using
10 the term "organic" or a derivative of the term "organic." Such
11 standards shall also facilitate the development of out-of-state markets
12 for Washington food grown by organic methods.

1 **Sec. 2.** RCW 15.86.020 and 1989 c 354 s 32 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Director" means the director of the department of agriculture
6 or the director's designee.

7 (2) "Organic food" means any (~~food~~) agricultural product,
8 including meat, dairy, and beverage, that is marketed using the term
9 organic or any derivative of organic, other than the phrase "transition
10 to organic food," in its labeling or advertising.

11 (3) "Producer" means any person or organization who or which
12 (~~(a)~~) grows, raises, or produces (~~(a food)~~) an agricultural
13 product (~~(; and (b) sells the food product as, or offers it for sale as,~~
14 ~~an organic food)~~).

15 (4) "Vendor" means anyone who sells organic food to the consumer or
16 another vendor.

17 (5) "Transition to organic food" means any food product that
18 satisfies all of the requirements of organic food except the time
19 requirements and satisfied all of the requirements of RCW 15.86.031.

20 (6) "Organic certifying agent" means any third-party certification
21 organization that is recognized by the director.

22 (7) "Handler" means any person engaged in the business of selling,
23 shipping, packaging, or arranging the sale or shipping of agricultural
24 products.

25 (8) "Person" means any natural person, firm, partnership, exchange,
26 association, trustee, receiver, corporation, and any member, officer,
27 or employee thereof or assignee for the benefit of creditors.

28 (9) "Department" means the state department of agriculture.

29 (10) "Represent" means to hold out as or to advertise.

1 (11) "Sale" means any and every sale and includes: (a)
2 Manufacture, processing, packing, canning, bottling, or any other
3 production, preparation, or putting up; (b) exposure, offer, or any
4 other proffer; (c) holding, storing, or any other possessing; (d)
5 dispensing, giving, delivering, serving, or any other supplying; and
6 (e) applying, administering, or any other using.

7 **Sec. 3.** RCW 15.86.030 and 1989 c 354 s 30 are each amended to read
8 as follows:

9 To be labeled, sold, or represented as an organic food, a product
10 shall be produced with only those materials and practices approved
11 under RCW 15.86.060. A producer or a vendor shall not represent, sell,
12 or offer for sale any food product with the representation that the
13 product is an organic food if the producer or vendor knows, or has
14 reason to know, that the food has been grown, raised, or produced with
15 the use of any ((of the following substances:—(1) Fertilizers but
16 excluding manures and other natural fertilizers; (2) any of the
17 following when manufactured by man: Pesticides, hormones, antibiotics,
18 or growth stimulants but excluding Bacillus thuringensis and other
19 natural pesticides; (3) arsenicals; or (4) similar substances))
20 prohibited materials listed by the director under RCW 15.86.060. ((A))
21 Organic animal products shall be considered as "grown, raised, or
22 produced" with a substance listed by the director under RCW 15.86.060
23 if the substance has been applied to the plants, soil, water, or
24 animal, on or in which the organic animal product is being produced
25 during such time frame as specified by the director by rule. Other
26 food products shall be considered as "grown, raised, or produced" with
27 a substance ((specified in this section or)) listed by the director
28 under RCW 15.86.060 if the substance is applied to the plants, soil, or
29 water, on or in which the food product is being produced at any time

1 ((before)) from three years before harvest to the final sale to retail
2 purchasers.

3 **Sec. 4.** RCW 15.86.031 and 1989 c 354 s 31 are each amended to read
4 as follows:

5 (1) ~~((Beginning January 1, 1991, it shall be unlawful to sell or~~
6 ~~offer for sale as organic food, products that have been grown, raised,~~
7 ~~or produced if harvest of the food product occurs within two years of~~
8 ~~the most recent use of any prohibited pesticide, herbicide, or~~
9 ~~fungicide and two years after the most recent use of a prohibited~~
10 ~~fertilizer.~~

11 ~~((2) Beginning January 1, 1992,))~~ Except as provided in section 9 of
12 this act, it shall be unlawful to represent, sell, or offer for sale as
13 organic food, products that have been grown, raised, or produced if
14 harvest of the food product occurs within three years of the most
15 recent use of any prohibited ~~((pesticide, herbicide, or fungicide and~~
16 ~~two years after the most recent use of a prohibited fertilizer))~~
17 substance as listed by the director under RCW 15.86.060.

18 ~~((3) Beginning January 1, 1990,))~~ (2) Food products may be sold as
19 "transition to organic food" if they have had no applications of
20 prohibited substances within one year before harvest of the food crop.
21 ~~((The products must specify first or second year transition on their~~
22 ~~labels.~~

23 ~~(4))~~ (3) No out-of-state products shall be labeled or sold as
24 organic without having first received an organic certification ~~((in the~~
25 ~~state of origin))~~ from an organic certifying agent meeting all
26 requirements established under this chapter.

27 **Sec. 5.** RCW 15.86.050 and 1985 c 247 s 5 are each amended to read
28 as follows:

1 (1) A producer shall not sell to a vendor any food product which
2 the producer represents as an organic food unless before the sale the
3 producer provides the vendor with a sworn statement that the producer
4 has grown, raised, or produced the product in conformance with ((RCW
5 15.86.030)) this chapter.

6 (2) A handler shall not sell, or arrange a sale, to another handler
7 any food product that the handler represents as an organic food unless,
8 before the sale, the handler provides an organic food certificate to
9 the other handler.

10 NEW SECTION. Sec. 6. LABELING OF ORGANIC FOOD PRODUCTS. Organic
11 food products handled, processed, sold, offered for sale, advertised,
12 or represented shall be labeled as organic on all invoices, boxes,
13 bins, and other packaging and documentation associated with the
14 product. All organic food products handled in the state shall have
15 recordkeeping sufficient to track the product to the farm where the
16 food was grown, raised, or produced.

17 **Sec. 7.** RCW 15.86.060 and 1985 c 247 s 6 are each amended to read
18 as follows:

19 (1) The director shall adopt such rules and regulations, in
20 conformity with chapter 34.05 RCW, as the director believes are
21 appropriate for the proper administration of this chapter.

22 (2) (~~Whenever the director believes it appropriate to protect the~~
23 ~~interest of consumers of organic foods, the director shall add to the~~
24 ~~list of substances that may not be included in organic foods under this~~
25 ~~chapter.)) The director shall establish a list of approved substances
26 that may be used in the production, processing, and handling of organic
27 food. This list shall:~~

1 (a) Approve the use of natural substances except for specific
2 natural substances that may not be used in the production and handling
3 of agricultural products labeled as organic because these substances
4 would be harmful to human health or the environment and are
5 inconsistent with organic farming principles;

6 (b) Prohibit the use of synthetic substances except for specific
7 synthetic substances that may be used in the production and handling of
8 agricultural products labeled as organic because these substances:

9 (i) Would not be harmful to human health or the environment;

10 (ii) Are necessary to the production or handling of the
11 agricultural products;

12 (iii) Are consistent with organic farming principles; and

13 (iv) Are used in the production of agricultural products and
14 contain active synthetic ingredients in the following categories:
15 Copper and sulfur compounds; toxins derived from bacteria; pheromones;
16 soaps; horticultural oils; vitamins and minerals; livestock
17 parasiticides and medicines; and production aids including netting,
18 tree wraps and seals, insect traps, sticky barriers, row covers, and
19 equipment cleansers; or

20 (v) Are used in production and contain synthetic inerts.

21 (3) The director shall issue orders to producers or vendors whom
22 (~~it~~) he or she finds are violating any provision of this chapter, or
23 rules or regulations adopted under this chapter, to cease their
24 violations and desist from future violations. Whenever the director
25 finds that a producer, handler, or vendor has committed a violation,
26 the director shall impose on and collect from the violator a civil fine
27 not exceeding the total of the following amounts: (a) The state's
28 estimated costs of investigating and taking appropriate administrative
29 and enforcement actions in respect to the violation; and (b) one
30 thousand dollars.

1 (4) The director may deny, suspend, or revoke a certification
2 provided for in this chapter if he or she determines that an applicant
3 or certified person has violated this chapter or rules adopted under
4 it.

5 NEW SECTION. Sec. 8. MANDATORY CERTIFICATION AND REGISTRATION.

6 (1) It is unlawful for any person to sell, offer for sale, or handle
7 any agricultural product within this state with an organic label unless
8 that person is certified by the department or an official organic
9 certifying agent.

10 (2) Subsection (1) of this section shall not apply to (a) final
11 retailers of organic food that do not process organic food products and
12 (b) individuals who sell no more than five thousand dollars annually in
13 value of agricultural products.

14 NEW SECTION. Sec. 9. TOLERANCE LEVELS FOR ORGANIC FOOD. An
15 agricultural product that is being grown, raised, or produced under the
16 provisions of this chapter may not be labeled, sold, or represented as
17 organic if during the course of the crop year it is subjected to drift
18 of materials not on the approved substances list as established by the
19 director under RCW 15.86.060.

20 An agricultural product that is being grown, raised, or produced
21 under the provisions of this chapter and is subjected to drift of
22 prohibited materials may be labeled or sold as organic in the
23 subsequent crop year as long as the tolerance levels of prohibited
24 materials do not exceed the levels stated in subsection (2) of this
25 section.

26 (2) An agricultural product that is being grown, raised, or
27 produced under the provisions of this chapter and contains residues of
28 materials not on the approved substances list established by the

1 director under RCW 15.86.060 in excess of five percent of the
2 environmental protection agency tolerance level or, where there is no
3 tolerance level, five percent of the food and drug administration
4 action level may not be labeled, sold, or represented as organic.

5 **Sec. 10.** RCW 15.86.070 and 1989 c 354 s 34 are each amended to
6 read as follows:

7 The director may adopt rules establishing a certification program
8 for producers ~~((and))~~, processors, and handlers of organic or
9 transition to organic food. The rules may govern, but are not limited
10 to governing: The number and scheduling of on-site visits, both
11 announced and unannounced, by certification personnel; recordkeeping
12 requirements; and the submission of product samples for chemical
13 analysis. The rules shall include a fee schedule that will provide for
14 the recovery of the full cost of the inspection program. Fees
15 collected under this section shall be deposited in an account within
16 the agricultural local fund and the revenue from such fees shall be
17 used solely for carrying out the provisions of this section, and no
18 appropriation is required for disbursement from the fund. The director
19 may employ such personnel as are necessary to carry out the provisions
20 of this section.

21 NEW SECTION. **Sec. 11.** The department shall keep confidential
22 all financial and valuable trade information provided under this
23 chapter and such information shall be exempt from public inspection and
24 copying under chapter 42.17 RCW.

25 **Sec. 12.** RCW 42.17.310 and 1991 c 301 s 13, 1991 c 87 s 13, 1991
26 c 23 s 10, and 1991 c 1 s 1 are each reenacted and amended to read as
27 follows:

1 (1) The following are exempt from public inspection and copying:

2 (a) Personal information in any files maintained for students in
3 public schools, patients or clients of public institutions or public
4 health agencies, or welfare recipients.

5 (b) Personal information in files maintained for employees,
6 appointees, or elected officials of any public agency to the extent
7 that disclosure would violate their right to privacy.

8 (c) Information required of any taxpayer in connection with the
9 assessment or collection of any tax if the disclosure of the
10 information to other persons would (i) be prohibited to such persons by
11 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result
12 in unfair competitive disadvantage to the taxpayer.

13 (d) Specific intelligence information and specific investigative
14 records compiled by investigative, law enforcement, and penology
15 agencies, and state agencies vested with the responsibility to
16 discipline members of any profession, the nondisclosure of which is
17 essential to effective law enforcement or for the protection of any
18 person's right to privacy.

19 (e) Information revealing the identity of persons who file
20 complaints with investigative, law enforcement, or penology agencies,
21 other than the public disclosure commission, if disclosure would
22 endanger any person's life, physical safety, or property. If at the
23 time the complaint is filed the complainant indicates a desire for
24 disclosure or nondisclosure, such desire shall govern. However, all
25 complaints filed with the public disclosure commission about any
26 elected official or candidate for public office must be made in writing
27 and signed by the complainant under oath.

28 (f) Test questions, scoring keys, and other examination data used
29 to administer a license, employment, or academic examination.

1 (g) Except as provided by chapter 8.26 RCW, the contents of real
2 estate appraisals, made for or by any agency relative to the
3 acquisition or sale of property, until the project or prospective sale
4 is abandoned or until such time as all of the property has been
5 acquired or the property to which the sale appraisal relates is sold,
6 but in no event shall disclosure be denied for more than three years
7 after the appraisal.

8 (h) Valuable formulae, designs, drawings, and research data
9 obtained by any agency within five years of the request for disclosure
10 when disclosure would produce private gain and public loss.

11 (i) Preliminary drafts, notes, recommendations, and intra-agency
12 memorandums in which opinions are expressed or policies formulated or
13 recommended except that a specific record shall not be exempt when
14 publicly cited by an agency in connection with any agency action.

15 (j) Records which are relevant to a controversy to which an agency
16 is a party but which records would not be available to another party
17 under the rules of pretrial discovery for causes pending in the
18 superior courts.

19 (k) Records, maps, or other information identifying the location of
20 archaeological sites in order to avoid the looting or depredation of
21 such sites.

22 (l) Any library record, the primary purpose of which is to maintain
23 control of library materials, or to gain access to information, which
24 discloses or could be used to disclose the identity of a library user.

25 (m) Financial information supplied by or on behalf of a person,
26 firm, or corporation for the purpose of qualifying to submit a bid or
27 proposal for (a) a ferry system construction or repair contract as
28 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
29 or improvement as required by RCW 47.28.070.

1 (n) Railroad company contracts filed with the utilities and
2 transportation commission under RCW 81.34.070, except that the
3 summaries of the contracts are open to public inspection and copying as
4 otherwise provided by this chapter.

5 (o) Financial and commercial information and records supplied by
6 private persons pertaining to export services provided pursuant to
7 chapter 43.163 RCW and chapter 53.31 RCW.

8 (p) Financial disclosures filed by private vocational schools under
9 chapter 28C.10 RCW.

10 (q) Records filed with the utilities and transportation commission
11 or attorney general under RCW 80.04.095 that a court has determined are
12 confidential under RCW 80.04.095.

13 (r) Financial and commercial information and records supplied by
14 businesses during application for loans or program services provided by
15 chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

16 (s) Membership lists or lists of members or owners of interests of
17 units in timeshare projects, subdivisions, camping resorts,
18 condominiums, land developments, or common-interest communities
19 affiliated with such projects, regulated by the department of
20 licensing, in the files or possession of the department.

21 (t) All applications for public employment, including the names of
22 applicants, resumes, and other related materials submitted with respect
23 to an applicant.

24 (u) The residential addresses and residential telephone numbers of
25 employees or volunteers of a public agency which are held by the agency
26 in personnel records, employment or volunteer rosters, or mailing lists
27 of employees or volunteers.

28 (v) The residential addresses and residential telephone numbers of
29 the customers of a public utility contained in the records or lists
30 held by the public utility of which they are customers.

1 (w) Information obtained by the board of pharmacy as provided in
2 RCW 69.45.090.

3 (x) Information obtained by the board of pharmacy or the department
4 of health and its representatives as provided in RCW 69.41.044,
5 69.41.280, and 18.64.420.

6 (y) Financial information, business plans, examination reports, and
7 any information produced or obtained in evaluating or examining a
8 business and industrial development corporation organized or seeking
9 certification under chapter 31.24 RCW.

10 (z) Financial and commercial information supplied to the state
11 investment board by any person when the information relates to the
12 investment of public trust or retirement funds and when disclosure
13 would result in loss to such funds or in private loss to the providers
14 of this information.

15 (aa) Financial and valuable trade information under RCW 51.36.120.

16 (bb) Client records maintained by an agency that is a domestic
17 violence program as defined in RCW 70.123.020 or a rape crisis center
18 as defined in RCW 70.125.030.

19 (cc) Financial and valuable trade information under section 11 of
20 this act.

21 (2) Except for information described in subsection (1)(c)(i) of
22 this section and confidential income data exempted from public
23 inspection pursuant to RCW 84.40.020, the exemptions of this section
24 are inapplicable to the extent that information, the disclosure of
25 which would violate personal privacy or vital governmental interests,
26 can be deleted from the specific records sought. No exemption may be
27 construed to permit the nondisclosure of statistical information not
28 descriptive of any readily identifiable person or persons.

29 (3) Inspection or copying of any specific records exempt under the
30 provisions of this section may be permitted if the superior court in

1 the county in which the record is maintained finds, after a hearing
2 with notice thereof to every person in interest and the agency, that
3 the exemption of such records is clearly unnecessary to protect any
4 individual's right of privacy or any vital governmental function.

5 (4) Agency responses refusing, in whole or in part, inspection of
6 any public record shall include a statement of the specific exemption
7 authorizing the withholding of the record (or part) and a brief
8 explanation of how the exemption applies to the record withheld.

9 NEW SECTION. **Sec. 13.** CAPTIONS NOT LAW. Captions as used in
10 sections 6, 8, 9, 11, and 13 of this act do not constitute part of the
11 law.

12 NEW SECTION. **Sec. 14.** Sections 6, 8, 9, 11, and 13 of this act
13 are each added to chapter 15.86 RCW.