

# HOUSE BILL REPORT

## HB 2524

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### As Amended by the Senate

**Title:** An act relating to expanding the scope of agricultural products subject to requirements in chapter 15.83 RCW related to negotiation concerning production or marketing.

**Brief Description:** Expanding the scope of agricultural products subject to requirements in chapter 15.83 RCW related to negotiation concerning production or marketing.

**Sponsors:** Representatives Chandler, Blake and Dent.

#### **Brief History:**

##### **Committee Activity:**

Rural Development, Agriculture, & Natural Resources: 1/24/20, 1/31/20 [DP];  
Appropriations: 2/8/20 [DP].

##### **Floor Activity:**

Passed House: 2/19/20, 98-0.  
Senate Amended.  
Passed Senate: 3/4/20, 46-0.

#### **Brief Summary of Bill**

- Includes pears as an agricultural product under the Agricultural Marketing and Fair Practices Act.
- Declares it unlawful for an agricultural product handler to refuse to meet with a mutually agreed upon third-party mediator to resolve a price dispute.
- Specifies that a producer is responsible for paying any fees associated with a third-party mediation.

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### HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 13 members: Representatives Blake, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chapman, Dye, Kretz, Orcutt, Pettigrew, Ramos, Schmick, Springer and Walsh.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Rebecca Lewis (786-7339).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass. Signed by 31 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

**Staff:** Dan Jones (786-7118).

### **Background:**

Washington adopted the state Agricultural Marketing and Fair Practices Act (Act) in 1989. The Act addresses standards for production and marketing negotiations for agricultural products. For the purposes of the Act, "agricultural product" is defined as sweet corn and potatoes.

### Negotiating Units.

An association of producers may file an application with the Director of the Department of Agriculture (Director) requesting accreditation as the exclusive negotiating agent for its members within a negotiating unit with respect to the sweet corn or potatoes produced by its members. The Director must approve an application if the Director finds that the association satisfies certain specified requirements.

### Negotiations.

Negotiations between agricultural product handlers (handler) and accredited associations of producers regarding the sale, compensation, or production of sweet corn or potatoes must begin at least 60 days before the normal planting date of the crop. The required negotiations must conclude within 30 days of the normal planting date. A serious, fair, and reasonable attempt to reach agreement is required. However, neither party to a negotiation must agree to a proposal, make a concession, or enter into a contract, nor is either party required to disclose proprietary business or financial records or information.

Negotiation is not required by a processor that only cleans, sorts, grades, and packages these products for sale without altering the natural condition of the products. A cooperative association that contracts for crops from its own members is not required to negotiate.

### Prohibited Acts.

It is unlawful for a handler to:

- coerce a producer regarding the producer's right to belong to or contract with an association;

- discriminate against any producer in price or other terms because of such a membership or contract or the producer's promotion of legislation on behalf of an association of producers;
- offer inducements to a producer for refusing or ceasing to belong to an association;
- make, knowingly, certain false reports regarding an association;
- refuse to negotiate with an accredited association; or
- engage in certain other related activities.

It is unlawful for an association to:

- refuse to negotiate with a handler;
- coerce or intimidate a handler with respect to terminating a contract with an association or a member of the association;
- knowingly make certain false reports regarding an association or a handler; or
- engage in certain related activities.

The Director must investigate complaints regarding alleged violations of these requirements. If the Director issues a complaint charging a violation, a hearing on the charge must be conducted as a contested case under the Administrative Procedure Act. Any person injured by a violation of the Act may sue to recover damages, and reasonable attorneys' fees and costs within two years. A person who violates the Act may also be assessed a civil penalty by the Director of not more than \$5,000. The Director or an aggrieved producer or handler may seek injunctive relief regarding violations.

#### Advisory Committee.

A 12-member advisory committee studies and reports on issues relating to the Act. The Act requires six of the members to be producers from names submitted by an association of producers, and six must be handlers selected from names submitted by handlers.

#### **Summary of Bill:**

Pears are added to the definition of "agricultural products" under the state Agricultural Marketing and Fair Practices Act. For pears, "negotiate" means meeting at reasonable times and for reasonable periods commencing at least 60 days before the normal harvest date, and concluding within 30 days of the normal harvest date.

It is unlawful for an agricultural product handler to refuse to meet with a mutually agreed upon third-party mediator to resolve a price dispute. The producer is responsible for paying any fees associated with the third-party mediation.

#### **EFFECT OF SENATE AMENDMENT(S):**

##### The Senate amendment:

- requires that an association of producers, when filing an application with the director of the Department of Agriculture (WSDA) under the Agricultural Marketing and Fair Practices Act (Act), agrees to reimburse the WSDA for all anticipated and uncovered costs incurred by WSDA;

- requires the Director of the WSDA to ensure that sufficient resources will be provided by the applicant to cover WSDA costs for services provided under the application, including any costs incurred by WSDA if a decision is appealed. Resources include both public funds and any funds provided by the applicant under reimbursement agreements;
- requires WSDA to provide the producer's association with an estimate of expenses that may be incurred prior to providing the services under the Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony** (Rural Development, Agriculture, & Natural Resources):

(In support) There is a long tradition of negotiating between pear producers and processors; however, there have been challenges in the past few years. Pear producers often send their culls, which do not meet standards for the fresh market, for processing as other products. Price negotiations are generally underway during the growing season. Most pear producers in Washington are smaller producers, and the number of processors in the state have decreased, reducing competition. The price of growing pears has increased over the years, and processors are demanding lower prices. Recently, a processor refused to negotiate, and demanded a lower price than was previously agreed to.

(Opposed) None.

(Other) The Department of Agriculture (WSDA) recognizes the issue and would like to help if it can. There have been conversations about this topic over the interim. The Agricultural Marketing and Fair Practices Act has not been used since the 1990s but includes a cumbersome quasi-judicial process. Some of the provisions would also restrain producers. The WSDA has not yet completed the fiscal note, and this policy is not included in the Governor's budget proposal.

**Staff Summary of Public Testimony** (Appropriations):

(In support) None.

(Opposed) None.

**Persons Testifying** (Rural Development, Agriculture, & Natural Resources): (In support) Representative Chandler, prime sponsor; Dave Ducharme, Washington State Tree Fruit Association; and Shawn Phelps.

(Other) Evan Sheffels, Department of Agriculture.

**Persons Testifying** (Appropriations): None.

**Persons Signed In To Testify But Not Testifying** (Rural Development, Agriculture, & Natural Resources): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations): None.