
SUBSTITUTE HOUSE BILL 2502

State of Washington

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By House Committee on Agriculture & Rural Development (originally sponsored by Representatives R. Johnson, Chandler, McLean, Rayburn, Miller, Paris, Lisk, Spanel, Rasmussen and P. Johnson; by request of Department of Agriculture)

Read first time 02/07/92.

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 or arranges the sale of organic
16 food to the consumer or 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 by rule as being one
22 which imposes, for certification, standards consistent with this
23 chapter.

24 (7) "Processor" means any person engaged in the canning, freezing,
25 drying, dehydrating, cooking, pressing, powdering, packaging, baking,
26 heating, mixing, grinding, churning, separating, extracting, cutting,
27 fermenting, eviscerating, preserving, jarring, or otherwise processing
28 organic food.

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

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

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

6 (11) "Sale" means selling, offering for sale, holding for sale,
7 preparing for sale, trading, bartering, offering a gift as an
8 inducement for sale of, and advertising for sale in any media.

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

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

1 the director under RCW 15.86.060 if the substance is applied to the
2 plants, soil, or water, on or in which the food product is being
3 produced at any time (~~((before))~~) from three years before harvest to the
4 final sale to retail purchasers.

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

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

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

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

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

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

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

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

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

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

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

27 (a) Approve the use of natural substances except for specific
28 natural substances that may not be used in the production and handling

1 of agricultural products labeled as organic because these substances
2 would be harmful to human health or the environment and are
3 inconsistent with organic farming principles;

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

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

8 (ii) Are necessary to the production or handling of the
9 agricultural products;

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

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

18 (v) Are used in production and contain synthetic inert ingredients.

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

29 (4) The director may deny, suspend, or revoke a certification
30 provided for in this chapter if he or she determines that an applicant

1 or certified person has violated this chapter or rules adopted under
2 it.

3 NEW SECTION. **Sec. 8.** MANDATORY CERTIFICATION AND REGISTRATION.

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

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

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

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

24 (2) An agricultural product that is being grown, raised, or
25 produced under the provisions of this chapter and contains residues of
26 materials not on the approved substances list established by the
27 director under RCW 15.86.060 in excess of five percent of the United
28 States environmental protection agency tolerance level or, where there

1 is no tolerance level, five percent of the United States food and drug
2 administration action level may not be labeled, sold, or represented as
3 organic.

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

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

20 NEW SECTION. **Sec. 11.** (1) Except as provided in subsection (2)
21 of this section, the department shall keep confidential any business
22 related information obtained under this chapter concerning an entity
23 certified under this chapter or an applicant for such certification and
24 such information shall be exempt from public inspection and copying
25 under chapter 42.17 RCW.

26 (2) Applications for certification under this chapter and
27 laboratory analyses pertaining to that certification shall be available
28 for public inspection and copying.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (m) Financial information supplied by or on behalf of a person,
28 firm, or corporation for the purpose of qualifying to submit a bid or
29 proposal for (a) a ferry system construction or repair contract as

1 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
2 or improvement as required by RCW 47.28.070.

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

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

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

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

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

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

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

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

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

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

6 (x) Information obtained by the board of pharmacy or the department
7 of health and its representatives as provided in RCW 69.41.044,
8 69.41.280, and 18.64.420.

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

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

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

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

22 (cc) Business related information protected from public inspection
23 and copying under section 11 of this act.

24 (2) Except for information described in subsection (1)(c)(i) of
25 this section and confidential income data exempted from public
26 inspection pursuant to RCW 84.40.020, the exemptions of this section
27 are inapplicable to the extent that information, the disclosure of
28 which would violate personal privacy or vital governmental interests,
29 can be deleted from the specific records sought. No exemption may be

1 construed to permit the nondisclosure of statistical information not
2 descriptive of any readily identifiable person or persons.

3 (3) Inspection or copying of any specific records exempt under the
4 provisions of this section may be permitted if the superior court in
5 the county in which the record is maintained finds, after a hearing
6 with notice thereof to every person in interest and the agency, that
7 the exemption of such records is clearly unnecessary to protect any
8 individual's right of privacy or any vital governmental function.

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

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

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