
SENATE BILL 5861

State of Washington 64th Legislature 2015 Regular Session

By Senators Lias, Rivers, and Cleveland

Read first time 02/06/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to modifying the definition of prepared food to
2 exclude food required to be cooked by the consumer prior to
3 consumption; amending RCW 82.08.0293; creating a new section; and
4 providing an effective date.

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

6 **Sec. 1.** RCW 82.08.0293 and 2014 c 140 s 22 are each amended to
7 read as follows:

8 (1) The tax levied by RCW 82.08.020 does not apply to sales of
9 food and food ingredients. "Food and food ingredients" means
10 substances, whether in liquid, concentrated, solid, frozen, dried, or
11 dehydrated form, that are sold for ingestion or chewing by humans and
12 are consumed for their taste or nutritional value. "Food and food
13 ingredients" does not include:

14 (a) "Alcoholic beverages," which means beverages that are
15 suitable for human consumption and contain one-half of one percent or
16 more of alcohol by volume;

17 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
18 tobacco, or any other item that contains tobacco; and

19 (c) Marijuana, useable marijuana, or marijuana-infused products.

20 (2) The exemption of "food and food ingredients" provided for in
21 subsection (1) of this section does not apply to prepared food, soft

1 drinks, or dietary supplements. For purposes of this subsection, the
2 following definitions apply:

3 (a) "Dietary supplement" means any product, other than tobacco,
4 intended to supplement the diet that:

5 (i) Contains one or more of the following dietary ingredients:

6 (A) A vitamin;

7 (B) A mineral;

8 (C) An herb or other botanical;

9 (D) An amino acid;

10 (E) A dietary substance for use by humans to supplement the diet
11 by increasing the total dietary intake; or

12 (F) A concentrate, metabolite, constituent, extract, or
13 combination of any ingredient described in this subsection;

14 (ii) Is intended for ingestion in tablet, capsule, powder,
15 softgel, gelcap, or liquid form, or if not intended for ingestion in
16 such form, is not represented as conventional food and is not
17 represented for use as a sole item of a meal or of the diet; and

18 (iii) Is required to be labeled as a dietary supplement,
19 identifiable by the "supplement facts" box found on the label as
20 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered
21 as of January 1, 2003.

22 (b)(i) "Prepared food" means:

23 (A) Food sold in a heated state or heated by the seller;

24 (B) Food sold with eating utensils provided by the seller,
25 including plates, knives, forks, spoons, glasses, cups, napkins, or
26 straws. A plate does not include a container or packaging used to
27 transport the food; or

28 (C) Two or more food ingredients mixed or combined by the seller
29 for sale as a single item, except:

30 (I) Food that is only cut, repackaged, or pasteurized by the
31 seller; or

32 (II) Raw eggs, fish, meat, poultry, and foods containing these
33 raw animal foods requiring cooking by the consumer as recommended by
34 the federal food and drug administration in chapter 3, part 401.11 of
35 The Food Code, published by the food and drug administration, as
36 amended or renumbered as of January 1, 2003, so as to prevent
37 foodborne illness.

38 (ii) "Prepared food" does not include the following food or food
39 ingredients, if the food or food ingredients are sold without eating
40 utensils provided by the seller:

1 (A) Food sold by a seller whose proper primary North American
2 industry classification system (NAICS) classification is
3 manufacturing in sector 311, except subsector 3118 (bakeries), as
4 provided in the "North American industry classification system—United
5 States, 2002";

6 (B) Food sold in an unheated state by weight or volume as a
7 single item; ((~~or~~))

8 (C) Bakery items. The term "bakery items" includes bread, rolls,
9 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
10 tortes, pies, tarts, muffins, bars, cookies, or tortillas; or

11 (D) Food sold that ordinarily requires additional cooking (as
12 opposed to just reheating) by the consumer prior to consumption.

13 (c) "Soft drinks" means nonalcoholic beverages that contain
14 natural or artificial sweeteners. Soft drinks do not include
15 beverages that contain: Milk or milk products; soy, rice, or similar
16 milk substitutes; or greater than fifty percent of vegetable or fruit
17 juice by volume.

18 (3) Notwithstanding anything in this section to the contrary, the
19 exemption of "food and food ingredients" provided in this section
20 applies to food and food ingredients that are furnished, prepared, or
21 served as meals:

22 (a) Under a state administered nutrition program for the aged as
23 provided for in the older Americans act (P.L. 95-478 Title III) and
24 RCW 74.38.040(6);

25 (b) That are provided to senior citizens, individuals with
26 disabilities, or low-income persons by a not-for-profit organization
27 organized under chapter 24.03 or 24.12 RCW; or

28 (c) That are provided to residents, sixty-two years of age or
29 older, of a qualified low-income senior housing facility by the
30 lessor or operator of the facility. The sale of a meal that is billed
31 to both spouses of a marital community or both domestic partners of a
32 domestic partnership meets the age requirement in this subsection
33 (3)(c) if at least one of the spouses or domestic partners is at
34 least sixty-two years of age. For purposes of this subsection,
35 "qualified low-income senior housing facility" means a facility:

36 (i) That meets the definition of a qualified low-income housing
37 project under 26 U.S.C. Sec. 42 of the federal internal revenue code,
38 as existing on August 1, 2009;

39 (ii) That has been partially funded under 42 U.S.C. Sec. 1485;
40 and

1 (iii) For which the lessor or operator has at any time been
2 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42
3 of the federal internal revenue code.

4 (4)(a) Subsection (1) of this section notwithstanding, the retail
5 sale of food and food ingredients is subject to sales tax under RCW
6 82.08.020 if the food and food ingredients are sold through a vending
7 machine. Except as provided in (b) of this subsection, the selling
8 price of food and food ingredients sold through a vending machine for
9 purposes of RCW 82.08.020 is fifty-seven percent of the gross
10 receipts.

11 (b) For soft drinks and hot prepared food and food ingredients,
12 other than food and food ingredients which are heated after they have
13 been dispensed from the vending machine, the selling price is the
14 total gross receipts of such sales divided by the sum of one plus the
15 sales tax rate expressed as a decimal.

16 (c) For tax collected under this subsection (4), the requirements
17 that the tax be collected from the buyer and that the amount of tax
18 be stated as a separate item are waived.

19 NEW SECTION. **Sec. 2.** The provisions of RCW 82.32.805 and
20 82.32.808 do not apply to this act.

21 NEW SECTION. **Sec. 3.** This act takes effect October 1, 2015.

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