

SENATE BILL REPORT

HB 2524

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, February 28, 2020

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: Passed House: 2/19/20, 98-0.

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/28/20, 2/28/20 [DPA].

Brief Summary of Amended Bill

- Includes pears as an agricultural product under the Agricultural Marketing and Fair Practices Act.
- Makes 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.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: Do pass as amended.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; Honeyford, McCoy, Rolfes and Short.

Staff: Karen Epps (786-7424)

Background: Washington adopted the state Agricultural Marketing and Fair Practices Act (Act) in 1989. The Act addresses standards for production and marketing negotiations for

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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. An association of producers agrees to reimburse WSDA for all anticipated and uncovered costs incurred by WSDA when filing an application with the Director. The Director must determine that sufficient resources, including public funds and funds to be provided by the applicant under reimbursement agreements, will be available to cover costs for services provided under the application before approving the application. WSDA must provide an association with an estimate of expenses that may be incurred prior to WSDA provision of services. 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 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. 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.

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.

Summary of Amended 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 AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE AMENDMENT(S):

- Specifies that an association of producers, when filing an application with Director under the Agricultural Marketing and Fair Practices Act, agrees to reimburse WSDA for all anticipated and uncovered costs incurred by WSDA.
- Requires the Director to determine that sufficient resources, including public funds and funds to be provided by the applicant under reimbursement agreements, will be available to cover costs for services provided under the application before approving the application.
- Requires WSDA to provide the association with an estimate of expenses that may be incurred prior to WSDA provision of services.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill will serve a valuable purpose of allowing for the sale of fruit that is not premium fruit and is sold by weight. The bill is designed to give growers the opportunity to maximize their product. Washington has the opportunity to have a much larger market in the pear industry. In the pear industry, there are smaller producers and fewer canners. With only two major canners in the Pacific Northwest, some growers have been offered "take it or leave it" prices on fruit they have already grown specifically for the processor market. State law provides an existing means of mitigating the risk to individual growers of perishable commodities where only a small number of processor customers exist. This bill will allow Northwest Pear Growers to be added to the list of producer organizations that can use a mediation process to negotiate price with the two remaining processors/canners.

OTHER: WSDA would like to assist the pear growers to make sure that the processors and the growers are having good conversations. WSDA would like to provide this service if public funding is not provided so the amendment to allow for reimbursement agreements will allow WSDA to cover its costs. There is a public interest in having WSDA assist the pear industry so that the pear industry can stay viable and the industry has limited resources.

Persons Testifying: PRO: Representative Bruce Chandler, Prime Sponsor; Dave Ducharme, Washington State Tree Fruit Association.

OTHER: Evan Sheffels, WSDA.

Persons Signed In To Testify But Not Testifying: No one.