
HOUSE BILL 1809

State of Washington

68th Legislature

2023 Regular Session

By Representative Wylie

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

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

6 **Sec. 1.** RCW 82.08.0293 and 2022 c 16 s 152 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~~) 0.5
16 percent or 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) Cannabis, useable cannabis, or cannabis-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, bottled water, or dietary supplements. The definitions in
2 this subsection apply throughout this section unless the context
3 clearly requires otherwise.

4 (a) "Bottled water" means water that is placed in a safety sealed
5 container or package for human consumption. Bottled water is calorie
6 free and does not contain sweeteners or other additives except that
7 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)
8 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;
9 (vi) preservatives; and (vii) only those flavors, extracts, or
10 essences derived from a spice or fruit. "Bottled water" includes
11 water that is delivered to the buyer in a reusable container that is
12 not sold with the water.

13 (b) "Dietary supplement" means any product, other than tobacco,
14 intended to supplement the diet that:

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

16 (A) A vitamin;

17 (B) A mineral;

18 (C) An herb or other botanical;

19 (D) An amino acid;

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

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

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

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

32 (c) (i) "Prepared food" means:

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

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

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

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

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

9 (ii) Food is "sold with eating utensils provided by the seller"
10 if:

11 (A) The seller's customary practice for that item is to
12 physically deliver or hand a utensil to the customer with the food or
13 food ingredient as part of the sales transaction. If the food or food
14 ingredient is prepackaged with a utensil, the seller is considered to
15 have physically delivered a utensil to the customer unless the food
16 and utensil are prepackaged together by a food manufacturer
17 classified under sector 311 of the North American industry
18 classification system (NAICS);

19 (B) A plate, glass, cup, or bowl is necessary to receive the food
20 or food ingredient, and the seller makes those utensils available to
21 its customers; or

22 (C) (I) The seller makes utensils available to its customers, and
23 the seller has more than (~~seventy-five~~) 75 percent prepared food
24 sales. For purposes of this subsection (2)(c)(ii)(C), a seller has
25 more than (~~seventy-five~~) 75 percent prepared food sales if the
26 seller's gross retail sales of prepared food under (c)(i)(A),
27 (c)(i)(C), and (c)(ii)(B) of this subsection equal more than
28 (~~seventy-five~~) 75 percent of the seller's gross retail sales of all
29 food and food ingredients, including prepared food, soft drinks, and
30 dietary supplements.

31 (II) However, even if a seller has more than (~~seventy-five~~) 75
32 percent prepared food sales, four servings or more of food or food
33 ingredients packaged for sale as a single item and sold for a single
34 price are not "sold with utensils provided by the seller" unless the
35 seller's customary practice for the package is to physically hand or
36 otherwise deliver a utensil to the customer as part of the sales
37 transaction. Whenever available, the number of servings included in a
38 package of food or food ingredients must be determined based on the
39 manufacturer's product label. If no label is available, the seller
40 must reasonably determine the number of servings.

1 (III) The seller must determine a single prepared food sales
2 percentage annually for all the seller's establishments in the state
3 based on the prior year of sales. The seller may elect to determine
4 its prepared food sales percentage based either on the prior calendar
5 year or on the prior fiscal year. A seller may not change its elected
6 method for determining its prepared food percentage without the
7 written consent of the department. The seller must determine its
8 annual prepared food sales percentage as soon as possible after
9 accounting records are available, but in no event later than
10 (~~ninety~~) 90 days after the beginning of the seller's calendar or
11 fiscal year. A seller may make a good faith estimate of its first
12 annual prepared food sales percentage if the seller's records for the
13 prior year are not sufficient to allow the seller to calculate the
14 prepared food sales percentage. The seller must adjust its good faith
15 estimate prospectively if its relative sales of prepared foods in the
16 first ninety days of operation materially depart from the seller's
17 estimate.

18 (iii) "Prepared food" does not include the following items, if
19 sold without eating utensils provided by the seller:

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

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

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

29 (D) Food sold that ordinarily requires additional cooking,
30 instead of just reheating, by the consumer prior to consumption.

31 (d) "Soft drinks" means nonalcoholic beverages that contain
32 natural or artificial sweeteners. Soft drinks do not include
33 beverages that contain: Milk or milk products; soy, rice, or similar
34 milk substitutes; or greater than fifty percent of vegetable or fruit
35 juice by volume.

36 (3) Notwithstanding anything in this section to the contrary, the
37 exemption of "food and food ingredients" provided in this section
38 applies to food and food ingredients that are furnished, prepared, or
39 served as meals:

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

4 (b) That are provided to senior citizens, individuals with
5 disabilities, or low-income persons by a nonprofit organization
6 organized under chapter 24.03A or 24.12 RCW; or

7 (c) That are provided to residents, (~~sixty-two~~) 62 years of age
8 or older, of a qualified low-income senior housing facility by the
9 lessor or operator of the facility. The sale of a meal that is billed
10 to both spouses of a marital community or both domestic partners of a
11 domestic partnership meets the age requirement in this subsection
12 (3)(c) if at least one of the spouses or domestic partners is at
13 least (~~sixty-two~~) 62 years of age. For purposes of this subsection,
14 "qualified low-income senior housing facility" means a facility:

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

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

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

23 (4)(a) Subsection (1) of this section notwithstanding, the retail
24 sale of food and food ingredients is subject to sales tax under RCW
25 82.08.020 if the food and food ingredients are sold through a vending
26 machine. Except as provided in (b) of this subsection, the selling
27 price of food and food ingredients sold through a vending machine for
28 purposes of RCW 82.08.020 is (~~fifty-seven~~) 57 percent of the gross
29 receipts.

30 (b) For soft drinks, bottled water, and hot prepared food and
31 food ingredients, other than food and food ingredients which are
32 heated after they have been dispensed from the vending machine, the
33 selling price is the total gross receipts of such sales divided by
34 the sum of one plus the sales tax rate expressed as a decimal.

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

38 NEW SECTION. **Sec. 2.** RCW 82.32.805 and 82.32.808 do not apply
39 to this act.

1 NEW SECTION. **Sec. 3.** This act takes effect October 1, 2023.

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