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HOUSE BILL 1404

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Fuhrman, Buck and Basich; by request of Department of Health

Read first time 01/24/95. Referred to Committee on Natural Resources.

1 AN ACT Relating to seafood safety enhancement; amending RCW  
2 69.30.010, 69.30.030, 69.30.050, 69.30.110, 69.30.120, and 69.30.140;  
3 adding a new section to chapter 43.70 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 69.30.010 and 1991 c 3 s 303 are each amended to read  
6 as follows:

7 When used in this chapter, the following terms shall have the  
8 following meanings:

9 (1) "Shellfish" means all varieties of fresh and frozen oysters,  
10 mussels, (~~and~~) clams, and scallops, either shucked or in the shell,  
11 and any fresh or frozen edible products thereof.

12 (2) "Sale" means to sell, offer for sale, barter, trade, deliver,  
13 consign, hold for sale, consignment, barter, trade, or delivery, and/or  
14 possess with intent to sell or dispose of in any commercial manner.

15 (3) "Shellfish growing areas" means the lands and waters in and  
16 upon which shellfish are grown for harvesting in commercial quantity or  
17 for sale for human consumption.

18 (4) "Establishment" means the buildings, together with the  
19 necessary equipment and appurtenances, used for the storage, culling,

1 shucking, packing and/or shipping of shellfish in commercial quantity  
2 or for sale for human consumption.

3 (5) "Person" means any individual, partnership, firm, company,  
4 corporation, association, or the authorized agents of any such  
5 entities.

6 (6) "Department" means the state department of health.

7 (7) "Secretary" means the secretary of health or his or her  
8 authorized representatives.

9 (8) "Commercial quantity" means any quantity exceeding: (a) Forty  
10 pounds of mussels; (b) one hundred oysters; (c) fourteen (~~horse~~clams)  
11 horse clams; (d) six geoducks; (~~(e)~~) (e) fifty pounds of hard or soft  
12 shell clams; or (f) fifty pounds of scallops. The poundage in this  
13 subsection (8) constitutes weight with the shell.

14 **Sec. 2.** RCW 69.30.030 and 1955 c 144 s 3 are each amended to read  
15 as follows:

16 The state board of health shall cause such investigations to be  
17 made as are necessary to determine reasonable requirements governing  
18 the sanitation of shellfish, shellfish growing areas, and shellfish  
19 plant facilities and operations, in order to protect public health and  
20 carry out the provisions of this chapter; and shall adopt such  
21 requirements as rules and regulations of the state board of health.  
22 Such rules and regulations may include reasonable sanitary requirements  
23 relative to the quality of shellfish growing waters and areas, boat and  
24 barge sanitation, building construction, water supply, sewage and waste  
25 water disposal, lighting and ventilation, insect and rodent control,  
26 shell disposal, garbage and waste disposal, cleanliness of  
27 establishment, the handling, storage, construction and maintenance of  
28 equipment, the handling, storage and refrigeration of shellfish  
29 (~~and~~), the identification of containers, and the handling,  
30 maintenance, and storage of permits, certificates, and records  
31 regarding shellfish taken under this chapter.

32 **Sec. 3.** RCW 69.30.050 and 1985 c 51 s 2 are each amended to read  
33 as follows:

34 Shellfish growing areas, from which shellfish are removed in a  
35 commercial quantity or for sale for human consumption shall (~~be in a~~  
36 ~~safe and sanitary condition, meeting~~) meet the requirements of this  
37 chapter and the state board of health; and such shellfish growing areas

1 shall be so certified by the department. Any person desiring to remove  
2 shellfish in a commercial quantity or for sale for human consumption  
3 from a growing area in the state of Washington shall first apply to the  
4 department for a certificate of approval of the growing area. The  
5 department shall cause the shellfish growing area to be inspected and  
6 if the area meets the ((sanitary)) requirements of this chapter and the  
7 state board of health, the department shall issue a certificate of  
8 approval for that area. Such certificates shall be issued for a period  
9 not to exceed twelve months and may be revoked at any time the area is  
10 found not to be in compliance with the ((sanitary)) requirements of  
11 this chapter and the state board of health.

12 Shellfish growing areas from which shellfish are removed in a  
13 commercial quantity for purposes other than human consumption including  
14 but not limited to bait or seed shall be harvested only during daylight  
15 hours, shall be readily subject to monitoring and inspections, and  
16 shall otherwise be of a character ensuring that shellfish harvested  
17 from such areas are not diverted for use as food. A certificate of  
18 approval issued by the department for shellfish growing areas from  
19 which shellfish are to be removed for purposes other than human  
20 consumption shall specify the date or dates of harvest and all  
21 applicable conditions of harvest, identification by tagging, dying, or  
22 other means, transportation, processing, sale, and other factors to  
23 ensure that shellfish harvested from such areas are not diverted for  
24 use as food.

25 **Sec. 4.** RCW 69.30.110 and 1985 c 51 s 4 are each amended to read  
26 as follows:

27 It is unlawful for any person to possess a commercial quantity of  
28 shellfish or to sell or offer to sell ((for human consumption))  
29 shellfish in the state which have not been grown, shucked, packed, or  
30 shipped in accordance with the provisions of this chapter. Failure of  
31 a shellfish grower to display immediately a certificate of approval  
32 issued under RCW 69.30.050 to an authorized representative of the  
33 department, a ((fisheries patrol officer, or an ex officio fisheries  
34 patrol officer)) fish and wildlife enforcement officer, or an ex  
35 officio fish and wildlife enforcement officer subjects the grower to  
36 the penalty provisions of this chapter, as well as immediate seizure of  
37 the shellfish by the representative or officer.

1 Failure of a shellfish processor to display a certificate of  
2 approval issued under RCW 69.30.060 to an authorized representative of  
3 the department, a (~~(fisheries patrol))~~ fish and wildlife enforcement  
4 officer, or an ex officio (~~(fisheries patrol))~~ fish and wildlife  
5 enforcement officer subjects the processor to the penalty provisions of  
6 this chapter, as well as immediate seizure of the shellfish by the  
7 representative or officer.

8 Shellfish seized under this section shall be subject to prompt  
9 disposal by the representative or officer and may not be used for human  
10 consumption. The state board of health shall develop by rule  
11 procedures for the disposal of the seized shellfish.

12 **Sec. 5.** RCW 69.30.120 and 1985 c 51 s 5 are each amended to read  
13 as follows:

14 The department may enter and inspect any shellfish growing area or  
15 establishment for the purposes of determining compliance with this  
16 chapter and rules adopted under this chapter. The department may  
17 inspect all shellfish, all permits, all certificates of approval and  
18 all (~~(shellfish, and take for inspection such samples of shellfish as~~  
19 may reasonably be necessary to carry out the provisions of this  
20 chapter)) records.

21 During such inspections the department shall have free and  
22 unimpeded access to all buildings, yards, warehouses, storage and  
23 transportation facilities, vehicles, and other places reasonably  
24 considered to be or to have been part of the regulated business or  
25 entity, to all ledgers, books, accounts, memorandums, or records  
26 reasonably believed to be or to have been used in connection with the  
27 regulated activity, and to any products, components, or other materials  
28 reasonably believed to be or to have been used, processed, or produced  
29 by or in connection with the regulated business or activity. In  
30 connection with such inspections the department may take such samples  
31 or specimens as may be reasonably necessary to determine whether there  
32 exists a violation of this chapter or rules adopted under this chapter.

33 Inspection of establishments may be conducted between eight a.m.  
34 and five p.m. on any weekday that is not a legal holiday, during any  
35 time the regulated business or entity has established as its usual  
36 business hours, at any time the regulated business or entity is open  
37 for business or is otherwise in operation, and at any other time with

1 the consent of the owner or authorized agent of the regulated business  
2 or entity.

3 The department may apply for an administrative inspection warrant  
4 to a court of competent jurisdiction and an administrative inspection  
5 warrant may issue where:

6 (1) The department has attempted an inspection under this chapter  
7 and access to all or part of the regulated business or entity has been  
8 actually or constructively denied; or

9 (2) There is reasonable cause to believe that a violation of this  
10 chapter or of rules adopted under this chapter is occurring or has  
11 occurred.

12 ~~((For purposes of this chapter, fisheries patrol officers or ex~~  
13 ~~officio fisheries patrol officers are limited to entry, inspection, and~~  
14 ~~destruction of shellfish to achieve compliance with RCW 69.30.110 and~~  
15 ~~to taking for inspection samples of shellfish as may reasonably be~~  
16 ~~necessary to carry out this chapter.))~~

17 **Sec. 6.** RCW 69.30.140 and 1985 c 51 s 6 are each amended to read  
18 as follows:

19 Any person ~~((found))~~ convicted of violating any of the provisions  
20 of this chapter shall be guilty of a gross misdemeanor~~((, and upon~~  
21 ~~conviction thereof shall be subject to a fine of not less than twenty-~~  
22 ~~five dollars nor more than one thousand dollars, or imprisonment in the~~  
23 ~~county jail of the county in which the offense was committed for not~~  
24 ~~less than thirty days nor more than one year, or to both fine and~~  
25 ~~imprisonment)).~~ A conviction is an unvacated forfeiture of bail or  
26 collateral deposited to secure the defendant's appearance in court, the  
27 payment of a fine, a plea of guilty, or a finding of guilt on a  
28 violation of this chapter, regardless of whether imposition of sentence  
29 is deferred or the penalty is suspended, and shall be treated as a  
30 violation conviction for purposes of license forfeiture under RCW  
31 75.10.120.

32 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.70 RCW  
33 to read as follows:

34 (1) The department may enter and inspect any property, lands, or  
35 waters, of this state in or on which any marine species are located or  
36 from which such species are harvested, whether recreationally or for  
37 sale or barter, and any property, land, or water of this state which

1 may cause or contribute to the pollution of areas in or on which such  
2 species are harvested or processed. The department may take any  
3 reasonably necessary samples to determine whether such species or any  
4 lot, batch, or quantity of such species is safe for human consumption.

5 (2) If the department determines that any species or any lot,  
6 batch, or other quantity of such species is unsafe for human  
7 consumption because consumption is likely to cause actual harm or  
8 because consumption presents a potential risk of substantial harm, the  
9 department may, by order under chapter 34.05 RCW, prohibit or restrict  
10 the commercial or recreational harvest or landing of any marine species  
11 except the recreational harvest of shellfish as defined in chapter  
12 69.30 RCW if taken from privately owned tidelands.

13 (3) It is unlawful to harvest any marine species in violation of a  
14 departmental order prohibiting or restricting such harvest under this  
15 section or to possess or sell any marine species so harvested.

16 (4) Any person who sells any marine species taken in violation of  
17 this section is subject to the penalties provided in RCW 69.30.140 and  
18 69.30.150. Any person who harvests or possesses marine species taken  
19 in violation of this section is guilty of a civil infraction and is  
20 subject to the penalties provided in RCW 69.30.150. This subsection  
21 does not govern penalties applicable to the harvest, possession, or  
22 sale of shellfish as defined in chapter 69.30 RCW. Penalties  
23 applicable to the harvest, possession, or sale of shellfish are as  
24 provided in chapter 69.30 RCW.

25 (5) The criminal provisions of this section are subject to  
26 enforcement by fish and wildlife enforcement officers or ex officio  
27 fish and wildlife enforcement patrol officers as defined in RCW  
28 75.08.011.

29 (6) As used in this section, marine species include all fish,  
30 invertebrate or plant species which are found during any portion of the  
31 life cycle of those species in the marine environment.

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