

# HOUSE BILL REPORT

## SHB 2426

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### As Passed Legislature

**Title:** An act relating to acting for commercial purposes under the fish and wildlife code.

**Brief Description:** Clarifying the nature of "acting for a commercial purpose" with respect to a natural resources violation.

**Sponsors:** By House Committee on Natural Resources (originally sponsored by Representatives Jackley, Sump, Rockefeller, Doumit, Pearson, Morell and Chase).

### Brief History:

#### Committee Activity:

Natural Resources: 1/23/02, 1/25/02 [DPS].

#### Floor Activity:

Passed House: 2/12/02, 96-0.

Passed Senate: 3/5/02, 48-0.

Passed Legislature.

### Brief Summary of Substitute Bill

- Redefines "acting for commercial purposes" under the Fish and Wildlife Enforcement Code.

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## HOUSE COMMITTEE ON NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Doumit, Chair; Rockefeller, Vice Chair; Sump, Ranking Minority Member; Buck, Eickmeyer, Ericksen, Jackley, McDermott, Orcutt, Pearson and Upthegrove.

**Staff:** Jason Callahan (786-7117).

### Background:

The Fish and Wildlife Enforcement Code, as found in RCW Chapter 77.15, contains various commercial fishing violations. These violations include commercial fishing without a license, commercial fishing using unlawful gear, violations of commercial fishing areas or times, failure to report a commercial fish or shellfish harvest, and

engaging in a commercial wildlife activity without a license.

In order to be held guilty for many of these crimes, the individual charged must be shown to be acting for commercial purposes. RCW 77.15.110 provides a list of actions that define when an individual is acting for commercial purposes. Under this section, if an individual acts with the intent to sell fish or wildlife, uses gear typical to that used in commercial fisheries, exceeds the personal use bag limit by more than three times, delivers fish or wildlife to a wholesaler, sells or deals in raw fur, performs taxidermy services for a fee, or takes fish using a vessel designated for a commercial fishery, then that person is deemed to be acting for commercial purposes.

In November of 2001, a Washington court of appeals found RCW 77.15.110 unconstitutional as it serves as an element for commercial fishing violations. The court found that the actions defining when an individual acts for commercial purposes creates an unconstitutional irrebuttable presumption that violates due process by preventing the defendant from arguing that he or she possessed fish or wildlife for non-commercial purposes.

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**Summary of Substitute Bill:**

An individual is considered to be acting for commercial purposes if he or she engages in conduct that relates to commerce in fish and wildlife. This may include taking, delivering, selling, buying, or trading fish or wildlife when there is a present or future exchange of value. A person can be shown to be acting for commercial purposes with evidence that the person used gear typical in commercial fisheries, possesses more than three times his or her personal bag limit, delivers fish or wildlife to a wholesaler, takes fish or shellfish using a vessel designated for a commercial fishery, holds a commercial fishery license, deals in raw fur, or performs taxidermy services for a fee.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** This section of the law has to be corrected so that future courts may uphold convictions against individuals abusing the state's fish and wildlife resources. The intent of this bill is to correct a constitutional defect.

**Testimony Against:** None.

**Testified:** Representative Jackley, prime sponsor; Ed Owens, Coalition of Coastal

Fisheries; and Bruce Bjork and Josh Weiss, Department of Fish and Wildlife.