

HOUSE BILL REPORT

HB 2426

As Reported by House Committee On:

Natural Resources

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: Representatives Jackley, Sump, Rockefeller, Doumit, Pearson, Morell and Chase.

Brief History:

Committee Activity:

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

Brief Summary of Substitute Bill

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

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.

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.

Substitute Bill Compared to Original Bill:

The original bill removed the element of acting for commercial purposes from two violations contained in the fish and wildlife code. The original bill also allowed evidence showing that an individual was acting for commercial purposes if that person had substantially more of a fish or animal than their personal limit allowed. The substitute changes this language back to the existing language, which is more than three times the personal allowance.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: 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.