
ENGROSSED SUBSTITUTE HOUSE BILL 2323

State of Washington

57th Legislature

2002 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Hatfield, Buck, Doumit and Linville)

Read first time 02/06/2002. Referred to Committee on .

1 AN ACT Relating to commercial fishers; amending RCW 77.65.280,
2 77.15.565, 77.15.620, 77.15.640, 36.71.090, and 69.07.100; adding new
3 sections to chapter 77.65 RCW; adding a new section to chapter 69.04
4 RCW; creating a new section; prescribing penalties; and providing an
5 effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that commercial
8 fishing is vitally important not just to the economy of Washington, but
9 also to the cultural heritage of the maritime communities in the state.
10 Fisher men and women have a long and proud history in the Pacific
11 Northwest. State and local governments should seek out ways to enable
12 and encourage these professionals to share the rewards of their craft
13 with the nonfishing citizens of and visitors to the state of Washington
14 by encouraging the exploration and development of new niche markets.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.65 RCW
16 to read as follows:

17 (1) The department must establish and administer a direct retail
18 endorsement to serve as a single license that permits the holder of a

1 Washington finfish or crab commercial fishing license to clean, dress,
2 and sell his or her catch directly to consumers at retail, including
3 over the internet. The direct retail endorsement must be issued as an
4 optional addition to all holders of a finfish or crab commercial
5 fishing license that the department offers under this chapter.

6 (2) The direct retail endorsement must be offered at the time of
7 application for the qualifying commercial fishing license. Individuals
8 in possession of a qualifying commercial fishing license issued under
9 this chapter may add a direct retail endorsement to their current
10 license at the time they renew their commercial fishing license.
11 Individuals who do not have a commercial fishing license for finfish or
12 crab issued under this chapter may not receive a direct retail
13 endorsement. The costs, conditions, responsibilities, and privileges
14 associated with the endorsed commercial fishing license is not affected
15 or altered in any way by the addition of a direct retail endorsement.
16 These costs include the base cost of the license and any revenue and
17 excise taxes.

18 (3) An individual need only add one direct retail endorsement to
19 his or her license portfolio. If a direct retail endorsement is
20 selected by an individual holding more than one commercial fishing
21 license issued under this chapter, a single direct retail endorsement
22 is considered to be added to all qualifying commercial fishing licenses
23 held by that individual, and is the only license required for the
24 individual to sell at retail the harvest of finfish or crab permitted
25 by all of the underlying endorsed licenses. The direct retail
26 endorsement applies only to the person named on the endorsed license,
27 and may not be used by an alternate operator named on the endorsed
28 license.

29 (4) In addition to any fees charged for the endorsed licenses and
30 harvest documentation as required by this chapter or the rules of the
31 department, the department may set a reasonable annual fee not to
32 exceed the administrative costs to the department for a direct retail
33 endorsement.

34 (5) The holder of a direct retail endorsement is responsible for
35 documenting the commercial harvest of finfish and crab according to the
36 provisions of this chapter, the rules of the department for a wholesale
37 fish dealer, and the reporting requirements of the endorsed license.
38 Any salmon caught by the holder of a direct retail endorsement must be

1 landed in the round and documented on fish tickets, as provided for by
2 the department, before further processing.

3 (6) The direct retail endorsement must be displayed in a readily
4 visible manner by the seller wherever and whenever a sale to someone
5 other than a licensed wholesale dealer occurs. For sales occurring in
6 a venue other than in person, such as over the internet, through a
7 catalog, or on the phone, the direct retail endorsement number of the
8 seller must be provided to the buyer both at the time of sale and the
9 time of delivery. All internet sales must be conducted in accordance
10 with federal laws and regulations.

11 (7) The direct retail endorsement is to be held by an individual
12 real person and is not transferrable or assignable. If the endorsed
13 license is transferred, the direct retail endorsement immediately
14 becomes void, and the transferor is not eligible for a full or prorated
15 reimbursement of the annual fee paid for the direct retail endorsement.
16 Upon becoming void, the holder of a direct retail endorsement must
17 surrender the physical endorsement to the department.

18 (8) The holder of a direct retail endorsement must abide by the
19 provisions of Title 69 RCW as they apply to the processing and retail
20 sale of seafood. The department must distribute a pamphlet, provided
21 by the department of agriculture, with the direct retail endorsement
22 generally describing the labeling requirements set forth in chapter
23 69.04 RCW as they apply to seafood.

24 (9) The holder of a qualifying commercial fishing license issued
25 under this chapter must either possess a direct retail endorsement or
26 a wholesale dealer license provided for in RCW 77.65.280 in order to
27 lawfully sell their catch or harvest in the state to anyone other than
28 a licensed wholesale dealer.

29 (10) The direct retail endorsement entitles the holder to sell
30 wild-caught finfish or crab only at a temporary food service
31 establishment as that term is defined in RCW 69.06.045.

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.65 RCW
33 to read as follows:

34 (1) Prior to being issued a direct retail endorsement, an
35 individual must:

36 (a) Obtain and submit to the department a signed letter on
37 appropriate letterhead from the health department of the county in
38 which the individual makes his or her official residence or where the

1 hailing port for any documented vessel owned by the individual is
2 located. The local health department generating the letter may charge
3 a reasonable fee for any necessary inspections. The letter must
4 certify that the methods used by the individual to transport, store,
5 and display fresh finfish and crabs meets that county's standards and
6 the statewide standards adopted by the board of health for food service
7 operations; and

8 (b) Submit proof to the department that the individual making the
9 direct retail sales is in possession of a valid food and beverage
10 service worker's permit, as provided for in chapter 69.06 RCW.

11 (2) The requirements of subsection (1) of this section must be
12 completed each license year before a renewal direct retail endorsement
13 can be issued.

14 (3) Any individual possessing a direct retail endorsement must
15 notify the local health department of the county in which retail sales
16 are to occur, except for the county that conducted the initial
17 inspection, forty-eight hours before any transaction and make his or
18 her facilities available for inspection by a fish and wildlife officer,
19 the local health department of any county in which he or she sells
20 finfish or crab, and any designee of the department of health or the
21 department of agriculture.

22 (4) Neither the department or a local health department may be held
23 liable in any judicial proceeding alleging that consumption of or
24 exposure to seafood sold by the holder of a direct retail endorsement
25 resulted in a negative health consequence, as long as the department
26 can show that the individual holding the direct retail endorsement
27 complied with the requirements of subsection (1) of this section prior
28 to being issued his or her direct retail license, and neither the
29 department nor a local health department acted in a reckless manner.
30 For the purposes of this subsection, the department or a local health
31 district shall not be deemed to be acting recklessly for not conducting
32 a permissive inspection.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.65 RCW
34 to read as follows:

35 (1) The direct retail endorsement is conditioned upon compliance:

36 (a) With the requirements of this chapter as they apply to
37 wholesale fish dealers and to the rules of the department relating to

1 the payment of fines for violations of rules for the accounting of the
2 commercial harvest of finfish or crabs; and

3 (b) With the state board of health and local rules for food service
4 establishments.

5 (2) Violations of the requirements and rules referenced in
6 subsection (1) of this section may result in the suspension of the
7 direct retail endorsement. The suspended individual must not be
8 reimbursed for any portion of the suspended endorsement. Suspension of
9 the direct retail endorsement may not occur unless and until:

10 (a) The director has notified by order the holder of the direct
11 retail endorsement when a violation of subsection (1) of this section
12 has occurred. The notification must specify the type of violation, the
13 liability to be imposed for damages caused by the violation, a notice
14 that the amount of liability is due and payable by the holder of the
15 direct retail endorsement, and an explanation of the options available
16 to satisfy the liability; and

17 (b) The holder of the direct retail endorsement has had at least
18 ninety days after the notification provided in (a) of this subsection
19 was received to either make full payment for all liabilities owed or
20 enter into an agreement with the department to pay off all liabilities
21 within a reasonable time.

22 (3)(a) If, within ninety days after receipt of the order provided
23 in subsection (2)(a) of this section, the amount specified in the order
24 is not paid or the holder of the direct retail endorsement has not
25 entered into an agreement with the department to pay off all
26 liabilities, the prosecuting attorney for any county in which the
27 persons to whom the order is directed do business, or the attorney
28 general upon request of the department, may bring an action on behalf
29 of the state in the superior court for Thurston county, or any county
30 in which the persons to whom the order is directed do business, to seek
31 suspension of the individual's direct retail endorsement for up to five
32 years.

33 (b) The department may temporarily suspend the privileges provided
34 by the direct retail endorsement for up to one hundred twenty days
35 following the receipt of the order provided in subsection (2)(a) of
36 this section, unless the holder of the direct retail endorsement has
37 deposited with the department an acceptable performance bond on forms
38 prescribed and provided by the department. This performance bond must
39 be a corporate surety bond executed in favor of the department by a

1 corporation authorized to do business in the state of Washington under
2 chapter 48.28 RCW and approved by the department. The bond must be
3 filed and maintained in an amount equal to one thousand dollars.

4 (4) For violations of state board of health and local rules under
5 subsection (1)(b) of this section only, any person inspecting the
6 facilities of a direct retail endorsement holder under section 3 of
7 this act may suspend the privileges granted by the endorsement for up
8 to seven days. Within twenty-four hours of the discovery of the
9 violation, the inspecting entity must notify the department of the
10 violation. Upon notification, the department may proceed with the
11 procedures outlined in this section for suspension of the endorsement.
12 If the violation of a state board of health rule is discovered by a
13 local health department, that local jurisdiction may fine the holder of
14 the direct retail endorsement according to the local jurisdiction's
15 rules as they apply to retail food operations.

16 (5) Subsections (2) and (3) of this section do not apply to a
17 holder of a direct retail endorsement that executes a surety bond and
18 abides by the conditions established in RCW 77.65.320 and 77.65.330 as
19 they apply to wholesale dealers.

20 **Sec. 5.** RCW 77.65.280 and 2000 c 107 s 48 are each amended to read
21 as follows:

22 A wholesale fish dealer's license is required for:

23 (1) A business in the state to engage in the commercial processing
24 of food fish or shellfish, including custom canning or processing of
25 personal use food fish or shellfish.

26 (2) A business in the state to engage in the wholesale selling,
27 buying, or brokering of food fish or shellfish. A wholesale fish
28 dealer's license is not required of those businesses which buy
29 exclusively from Washington licensed wholesale dealers and sell solely
30 at retail.

31 ~~(3) ((Fishermen who land and sell their catch or harvest in the
32 state to anyone other than a licensed wholesale dealer within or
33 outside the state.~~

34 ~~(4))~~) A business to engage in the commercial manufacture or
35 preparation of fertilizer, oil, meal, caviar, fish bait, or other
36 byproducts from food fish or shellfish.

37 ~~((+5))~~) (4) A business employing a fish buyer as defined under RCW
38 77.65.340.

1 The annual license fee for a wholesale dealer is two hundred fifty
2 dollars. A wholesale fish dealer's license is not required for persons
3 engaged in the processing, wholesale selling, buying, or brokering of
4 private sector cultured aquatic products as defined in RCW 15.85.020.
5 However, if a means of identifying such products is required by rules
6 adopted under RCW 15.85.060, the exemption from licensing requirements
7 established by this subsection applies only if the aquatic products are
8 identified in conformance with those rules.

9 **Sec. 6.** RCW 77.15.565 and 2000 c 107 s 12 are each amended to read
10 as follows:

11 Since violation of the rules of the department relating to the
12 accounting of the commercial harvest of food fish and shellfish result
13 in damage to the resources of the state, liability for damage to food
14 fish and shellfish resources is imposed on a wholesale fish dealer or
15 the holder of a direct retail endorsement for violation of a provision
16 in chapter 77.65 RCW or a rule of the department related to the
17 accounting of the commercial harvest of food fish and shellfish and
18 shall be for the actual damages or for damages imposed as follows:

19 (1) For violation of rules requiring the timely presentation to the
20 department of documents relating to the accounting of commercial
21 harvest, fifty dollars for each of the first fifteen documents in a
22 series and ten dollars for each subsequent document in the same series.
23 If documents relating to the accounting of commercial harvest of food
24 fish and shellfish are lost or destroyed and the wholesale dealer or
25 holder of a direct retail endorsement notifies the department in
26 writing within seven days of the loss or destruction, the director
27 shall waive the requirement for timely presentation of the documents.

28 (2) For violation of rules requiring accurate and legible
29 information relating to species, value, harvest area, or amount of
30 harvest, twenty-five dollars for each of the first five violations of
31 this subsection following July 28, 1985, and fifty dollars for each
32 violation after the first five violations.

33 (3) For violations of rules requiring certain signatures, fifty
34 dollars for each of the first two violations and one hundred dollars
35 for each subsequent violation. For the purposes of this subsection,
36 each signature is a separate requirement.

37 (4) For other violations of rules relating to the accounting of the
38 commercial harvest, fifty dollars for each separate violation.

1 **Sec. 7.** RCW 77.15.620 and 2000 c 107 s 253 are each amended to
2 read as follows:

3 (1) A person is guilty of engaging in fish dealing activity without
4 a license in the second degree if the person:

5 (a) Engages in the commercial processing of fish or shellfish,
6 including custom canning or processing of personal use fish or
7 shellfish and does not hold a wholesale dealer's license required by
8 RCW 77.65.280(1) or 77.65.480 for anadromous game fish, or a direct
9 retail endorsement under section 2 of this act;

10 (b) Engages in the wholesale selling, buying, or brokering of food
11 fish or shellfish and does not hold a wholesale dealer's or buying
12 license required by RCW 77.65.280(2) or 77.65.480 for anadromous game
13 fish;

14 (c) Is a fisher who lands and sells his or her catch or harvest in
15 the state to anyone other than a licensed wholesale dealer within or
16 outside the state and does not hold a (~~wholesale dealer's license~~
17 ~~required by RCW 77.65.280(3) or 77.65.480 for anadromous game fish~~)
18 direct retail endorsement required by section 2 of this act; or

19 (d) Engages in the commercial manufacture or preparation of
20 fertilizer, oil, meal, caviar, fish bait, or other byproducts from food
21 fish or shellfish and does not hold a wholesale dealer's license
22 required by RCW 77.65.280(~~(+4)~~) (3) or 77.65.480 for anadromous game
23 fish.

24 (2) Engaging in fish dealing activity without a license in the
25 second degree is a gross misdemeanor.

26 (3) A person is guilty of engaging in fish dealing activity without
27 a license in the first degree if the person commits the act described
28 by subsection (1) of this section and the violation involves fish or
29 shellfish worth two hundred fifty dollars or more. Engaging in fish
30 dealing activity without a license in the first degree is a class C
31 felony.

32 **Sec. 8.** RCW 77.15.640 and 2000 c 107 s 255 are each amended to
33 read as follows:

34 (1) A person who holds a wholesale fish dealer's license required
35 by RCW 77.65.280, an anadromous game fish buyer's license required by
36 RCW 77.65.480, (~~(or)~~) a fish buyer's license required by RCW 77.65.340,
37 or a direct retail endorsement under section 2 of this act is guilty of

1 violating rules governing wholesale fish buying and dealing if the
2 person:

3 (a) Fails to possess or display his or her license when engaged in
4 any act requiring the license;

5 (b) Fails to display or uses the license in violation of any rule
6 of the department;

7 (c) Files a signed fish-receiving ticket but fails to provide all
8 information required by rule of the department; or

9 (d) Violates any other rule of the department regarding wholesale
10 fish buying and dealing.

11 (2) Violating rules governing wholesale fish buying and dealing is
12 a gross misdemeanor.

13 **Sec. 9.** RCW 36.71.090 and 1984 c 25 s 4 are each amended to read
14 as follows:

15 (1) It shall be lawful for any farmer, gardener, or other person,
16 without license, to sell, deliver, or peddle any fruits, vegetables,
17 berries, eggs, or any farm produce or edibles raised, gathered,
18 produced, or manufactured by such person and no city or town shall pass
19 or enforce any ordinance prohibiting the sale by or requiring license
20 from the producers and manufacturers of farm produce and edibles as
21 herein defined: PROVIDED, That nothing herein authorizes any person to
22 sell, deliver, or peddle, without license, in any city or town, any
23 dairy product, meat, poultry, eel, fish, mollusk, or shellfish where a
24 license is required to engage legally in such activity in such city or
25 town.

26 (2) It is lawful for an individual in possession of a valid direct
27 retail endorsement, as established in section 2 of this act, to sell,
28 deliver, or peddle wild-caught finfish or crab that is caught,
29 harvested, or collected under rule of the department of fish and
30 wildlife by such a person at a temporary food service establishment, as
31 that term is defined in RCW 69.06.045, and no city, town, or county may
32 pass or enforce an ordinance prohibiting the sale by or requiring
33 additional licenses or permits from the holder of the valid direct
34 retail endorsement. However, this subsection does not prohibit a city,
35 town, or county from inspecting an individual displaying a direct
36 retail endorsement to verify that the person is in compliance with
37 state board of health and local rules for food service operations.

1 **Sec. 10.** RCW 69.07.100 and 1995 c 374 s 22 are each amended to
2 read as follows:

3 The provisions of this chapter shall not apply to establishments
4 issued a permit or licensed under the provisions of:

5 (1) Chapter 69.25 RCW, the Washington wholesome eggs and egg
6 products act;

7 (2) Chapter 69.28 RCW, the Washington state honey act;

8 (3) Chapter 16.49 RCW, the Meat inspection act;

9 (4) Chapter 77.65 RCW, relating to the direct retail endorsement
10 for wild-caught seafood;

11 (5) Title 66 RCW, relating to alcoholic beverage control; and

12 ~~((+5))~~ (6) Chapter 69.30 RCW, the Sanitary control of shellfish
13 act((:—PROVIDED, That)). However, if any such establishments process
14 foods not specifically provided for in the above entitled acts, such
15 establishments shall be subject to the provisions of this chapter.

16 The provisions of this chapter shall not apply to restaurants or
17 food service establishments.

18 NEW SECTION. Sec. 11. A new section is added to chapter 69.04 RCW
19 to read as follows:

20 The department of agriculture must develop a pamphlet that
21 generally describes the labeling requirements for seafood, as set forth
22 in this chapter, and provide an adequate quantity of the pamphlets to
23 the department of fish and wildlife to distribute with the issuance of
24 a direct retail endorsement under section 2 of this act.

25 NEW SECTION. Sec. 12. This act takes effect January 1, 2003.

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