
HOUSE BILL 2323

State of Washington

57th Legislature

2002 Regular Session

By Representatives Hatfield, Buck, Doumit and Linville

Read first time 01/14/2002. Referred to Committee on Natural Resources.

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; creating a new section; prescribing
4 penalties; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that commercial
7 fishing is vitally important not just to the economy of Washington, but
8 also to the cultural heritage of the maritime communities in the state.
9 Fisher men and women have a long and proud history in the Pacific
10 Northwest. The state government should seek out ways to enable and
11 encourage these professionals to share the rewards of their craft with
12 the nonfishing citizens of and visitors to the state of Washington by
13 removing the administrative roadblocks that discourage the exploration
14 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 license to serve as a single license that permits the holder of a

1 Washington commercial fishing license to process and sell his or her
2 catch directly to consumers at retail, including over the internet.
3 The direct retail license must be issued as an optional addition to all
4 commercial food fish or shellfish licenses that the department offers
5 under this chapter. For the purposes of this section and section 5 of
6 this act, "underlying license" means the existing commercial fishing
7 license that the direct retail license is combined with.

8 (2) The direct retail license must be offered as an addition to a
9 commercial fishing license issued under the chapter at the time of
10 application for the commercial fishing license. Individuals in
11 possession of a commercial fishing license issued under this chapter
12 may add a direct retail license to their current license at any time.
13 The costs, conditions, responsibilities, and privileges associated with
14 the underlying commercial fishing license is not affected or altered in
15 any way by the addition of a direct retail license.

16 (3) An individual need only add one direct retail license to his or
17 her license portfolio. If a direct retail license is selected by an
18 individual holding more than one commercial fishing license issued
19 under this chapter, a single direct retail license is considered to be
20 added to all commercial fishing licenses held by that individual, and
21 is the only license required for the individual to sell at retail the
22 harvest permitted by all of the underlying licenses.

23 (4) In addition to any fees charged for the underlying licenses and
24 harvest documentation as provided for by this chapter or the rules of
25 the department, the department may set a reasonable annual fee not to
26 exceed the administrative costs to the department for a direct retail
27 license.

28 (5) The direct retail license is required for all holders of a
29 commercial fishing license issued under this chapter who sell their
30 catch or harvest to anyone other than a licensed wholesale dealer
31 within or outside this state.

32 (6) The holder of a direct retail license is responsible for
33 documenting the commercial harvest of food fish and shellfish according
34 to the provisions of this chapter and the rules of the department for
35 a wholesale fish dealer.

36 (7) The direct retail license must be displayed wherever a sale to
37 someone other than a licensed wholesale dealer occurs.

38 (8) The direct retail license is to be held by an individual real
39 person and is not transferrable or assignable. If the underlying

1 license is transferred, the direct retail license may not be
2 transferred with the underlying license. The transferor is not
3 eligible for a full or prorated reimbursement of the annual fee paid
4 for the direct retail license.

5 (9) The holder of a direct retail license must abide by the
6 provisions of Title 69 RCW as they apply to the processing and retail
7 sale of seafood. The department must issue a pamphlet with the direct
8 retail license generally describing the labeling requirements set forth
9 in chapter 69.04 RCW as they apply to seafood.

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

12 The department of health may develop health-based standards
13 relating to the processing and retail sale of food fish and shellfish
14 by the holders of a direct retail license. These standards may be
15 developed in consultation with the department, the department of
16 agriculture, any of the local health departments in the state, and any
17 public health professional. The standards should be developed to
18 protect, to the extent possible, the health of the retail consumer.
19 The standards may vary according to the product being processed or sold
20 by the holder of a direct retail license.

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

23 (1) Prior to being issued a direct retail license, an individual
24 must:

25 (a) Obtain and submit to the department a signed letter on
26 appropriate letterhead from the health department of the county in
27 which the individual makes his or her official residence or where the
28 hailing port for any documented vessel owned by the individual is
29 located. The letter must certify that:

30 (i) The methods used by the individual to transport, store, and
31 display fresh food fish and shellfish meets that county's standards for
32 retail seafood operations not possessing a direct retail license;

33 (ii) If the individual makes ice, that it comes from a certified
34 water source;

35 (iii) The individual has access to satisfactory temperature control
36 equipment; and

1 (iv) The individual is in compliance with any other health-based
2 standards developed by the department of health under section 3 of this
3 act; and

4 (b) Submit proof to the department that the individual is in
5 possession of a valid food handlers card.

6 (2) The requirements of subsection (1) of this section must be
7 completed each license year before a renewal direct retail license can
8 be issued.

9 (3) Any individual possessing a direct retail license must make his
10 or her facilities available for inspection by the local health
11 department of any county in which he or she sells food fish or
12 shellfish, any designee of the department of health or the department
13 of agriculture, and any fish and wildlife officer.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.65 RCW
15 to read as follows:

16 (1) The direct retail license and the underlying license are
17 conditioned upon compliance with the requirements of this chapter as
18 they apply to wholesale fish dealers and to the rules of the department
19 relating to the payment of fines for violations of rules for the
20 accounting of the commercial harvest of food fish or shellfish.

21 (2) Violations of the requirements and rules referenced in
22 subsection (1) of this section may result in the suspension of the
23 direct retail license, including the suspension of any rights and
24 privileges provided by the underlying license. The suspended
25 individual must not be reimbursed for any portion of the suspended
26 license. Suspension of the direct retail license may not occur unless
27 and until:

28 (a) The director has notified by order the holder of the direct
29 retail license when a violation of the rules relating to the accounting
30 of commercial harvest has occurred. The notification must specify the
31 type of violation, the liability to be imposed for damages caused by
32 the violation, a notice that the amount of liability is due and payable
33 by the holder of the direct retail license, and an explanation of the
34 options available to satisfy the liability; and

35 (b) The holder of the direct retail license has had at least ninety
36 days after the notification provided in (a) of this subsection was
37 received to either make full payment for all liabilities owed or enter

1 into an agreement with the department to pay off all liabilities within
2 a reasonable time.

3 (3) If, within ninety days after receipt of the order provided in
4 subsection (2)(a) of this section, the amount specified in the order is
5 not paid or the holder of the direct retail license has not entered
6 into an agreement with the department to pay off all liabilities, the
7 prosecuting attorney for any county in which the persons to whom the
8 order is directed do business, or the attorney general upon request of
9 the department, may bring an action on behalf of the state in the
10 superior court for Thurston county, or any county in which the persons
11 to whom the order is directed do business, to seek suspension of the
12 individual's direct retail license for up to five years.

13 (4) Subsections (2) and (3) of this section do not apply to a
14 holder of a direct marketing license that executes a surety bond and
15 abides by the conditions established in RCW 77.65.320 and 77.65.330 as
16 they apply to wholesale dealers.

17 **Sec. 6.** RCW 77.65.280 and 2000 c 107 s 48 are each amended to read
18 as follows:

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

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

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

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

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

34 ~~((+5))~~ (4) A business employing a fish buyer as defined under RCW
35 77.65.340.

36 The annual license fee for a wholesale dealer is two hundred fifty
37 dollars. A wholesale fish dealer's license is not required for persons
38 engaged in the processing, wholesale selling, buying, or brokering of

1 private sector cultured aquatic products as defined in RCW 15.85.020.
2 However, if a means of identifying such products is required by rules
3 adopted under RCW 15.85.060, the exemption from licensing requirements
4 established by this subsection applies only if the aquatic products are
5 identified in conformance with those rules.

6 **Sec. 7.** RCW 77.15.565 and 2000 c 107 s 12 are each amended to read
7 as follows:

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

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

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

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

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

36 **Sec. 8.** RCW 77.15.620 and 2000 c 107 s 253 are each amended to
37 read as follows:

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

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

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

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

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

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

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

30 **Sec. 9.** RCW 77.15.640 and 2000 c 107 s 255 are each amended to
31 read as follows:

32 (1) A person who holds a wholesale fish dealer's license required
33 by RCW 77.65.280, an anadromous game fish buyer's license required by
34 RCW 77.65.480, (~~or~~) a fish buyer's license required by RCW 77.65.340,
35 or a direct retail license under section 2 of this act is guilty of
36 violating rules governing wholesale fish buying and dealing if the
37 person:

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

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

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

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

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

11 **Sec. 10.** RCW 36.71.090 and 1984 c 25 s 4 are each amended to read
12 as follows:

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

24 (2) It is lawful for an individual in possession of a valid direct
25 retail license, as established in section 2 of this act, to sell,
26 deliver, or peddle fish, mollusk, or shellfish caught, harvested, or
27 collected by such a person and no city, town, or county may pass or
28 enforce an ordinance prohibiting the sale by or requiring additional
29 licenses or permits from the holder of the valid direct retail license.
30 However, this subsection does not prohibit a city, town, or county from
31 inspecting an individual displaying a direct retail license to verify
32 that there is sufficient temperature control, that any ice used
33 originates from a certified water source, and that the person is in
34 compliance with other health-based standards developed by the
35 department of health under section 3 of this act.

36 **Sec. 11.** RCW 69.07.100 and 1995 c 374 s 22 are each amended to
37 read as follows:

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

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

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

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

7 (4) Chapter 77.65 RCW, relating to the direct retail license for
8 wild caught seafood;

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

10 ~~((5))~~ (6) Chapter 69.30 RCW, the Sanitary control of shellfish
11 act(~~(:—PROVIDED, That)~~). However, if any such establishments process
12 foods not specifically provided for in the above entitled acts, such
13 establishments shall be subject to the provisions of this chapter.

14 The provisions of this chapter shall not apply to restaurants or
15 food service establishments.

16 NEW SECTION. Sec. 12. This act takes effect April 1, 2003.

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