

SHB 1057 - S AMD 423

By Senators Keiser, Oke, Doumit

ADOPTED 04/23/2003

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1)(a) The legislature finds that existing  
4 law as it relates to the suspension of commercial fishing licenses does  
5 not take into account the real-life circumstances faced by the state's  
6 commercial fishing fleets. The nature of the commercial fishing  
7 industry, together with the complexity of fisheries regulations, is  
8 such that honest mistakes can be made by well-meaning and otherwise  
9 law-abiding fishers. Commercial fishing violations that occur within  
10 an acceptable margin of error should not result in the suspension of  
11 fishing privileges. Likewise, fishers facing the possibility of  
12 license suspension or revocation deserve the opportunity to explain any  
13 extenuating circumstances prior to having his or her professional  
14 privileges suspended.

15 (b) The legislature intends, by creating the license suspension  
16 review committee, to provide a fisher with the opportunity to explain  
17 any extenuating circumstances that led to a commercial fishing  
18 violation. The legislature intends for the license suspension review  
19 committee to give serious considerations to the case-specific facts and  
20 scenarios leading up to a violation, and for license suspensions to  
21 issue only when the facts indicate a willful act that undermines the  
22 conservation of fish stocks. Frivolous violations should not result in  
23 the suspension of privileges, and should be punished only by the  
24 criminal sanctions attached to the underlying crime.

25 (2)(a) The legislature further finds that gross abuses of fish  
26 stocks should not be tolerated. Individuals convicted of even one  
27 violation that is egregious in nature, causing serious detriment to a  
28 fishery or the competitive disposition of other fishers, should have  
29 his or her license suspended and revoked.

1 (b) The legislature intends for the license suspension review  
2 committee to take egregious fisheries' violations seriously. When  
3 dealing with individuals convicted of only one violation, the license  
4 suspension review committee should only consider suspension for  
5 individuals that are convicted of violations that are of a severe  
6 magnitude and show a wanton disregard for the public's resource.

7 **Sec. 2.** RCW 77.15.700 and 2001 c 253 s 46 are each amended to read  
8 as follows:

9 The department shall impose revocation and suspension of privileges  
10 upon conviction in the following circumstances:

- 11 (1) If directed by statute for an offense;
- 12 (2) If the department finds that actions of the defendant  
13 demonstrated a willful or wanton disregard for conservation of fish or  
14 wildlife. Such suspension of privileges may be permanent. This  
15 subsection (2) does not apply to violations involving commercial  
16 fishing;

17 (3) If a person is convicted twice within ten years for a violation  
18 involving unlawful hunting, killing, or possessing big game, the  
19 department shall order revocation and suspension of all hunting  
20 privileges for two years. RCW 77.12.722 or 77.16.050 as it existed  
21 before June 11, 1998, may comprise one of the convictions constituting  
22 the basis for revocation and suspension under this subsection;

23 (4) If a person is convicted three times in ten years of any  
24 violation of recreational hunting or fishing laws or rules, the  
25 department shall order a revocation and suspension of all recreational  
26 hunting and fishing privileges for two years((+

27 ~~(5) If a person is convicted twice within five years of a gross~~  
28 ~~misdemeanor or felony involving unlawful commercial fish or shellfish~~  
29 ~~harvesting, buying, or selling, the department shall impose a~~  
30 ~~revocation and suspension of the person's commercial fishing privileges~~  
31 ~~for one year. A commercial fishery license revoked under this~~  
32 ~~subsection may not be used by an alternate operator or transferred~~  
33 ~~during the period of suspension)).~~

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.15 RCW  
35 to read as follows:

1 (1) If a person is convicted of two or more qualifying commercial  
2 fishing violations within a three-year period, the person's privileges  
3 to participate in the commercial fishery to which the violations  
4 applied may be suspended by the director for up to one year. A  
5 commercial fishery license that is suspended under this section may not  
6 be transferred after the director issues a notice of suspension, or  
7 used by an alternative operator or transferred during the period of  
8 suspension, if the person who is the subject of the suspension notice  
9 is the person who owns the commercial fishery license.

10 (2) For the purposes of this section only, "qualifying commercial  
11 fishing violation" means either:

12 (a) A conviction under RCW 77.15.500, 77.15.510, 77.15.520,  
13 77.15.530, 77.15.550(1)(a), 77.15.570, 77.15.580, or 77.15.590;

14 (b) A gross misdemeanor or felony involving commercial fish  
15 harvesting, buying, or selling that is unlawful under the terms of the  
16 license, this title, or the rules issued pursuant to this title, if the  
17 quantity of unlawfully harvested, possessed, bought, or sold fish,  
18 other than shellfish, groundfish, or coastal pelagic species of  
19 baitfish totals greater than six percent, by weight, of the harvest  
20 available for inspection at the time of citation and the cumulative  
21 value of the unlawfully harvested fish is more than two hundred fifty  
22 dollars at the time of citation;

23 (c) A gross misdemeanor or felony involving commercial groundfish  
24 or coastal pelagic baitfish harvest, buying, or selling that is  
25 unlawful under the terms of the license, this title, or the rules  
26 issued under this title, if: (i) The quantity of unlawfully harvested,  
27 possessed, bought, or sold groundfish or coastal pelagic baitfish  
28 totals greater than ten percent, by weight, of the harvest available  
29 for inspection at the time of citation and has a cumulative value  
30 greater than five hundred dollars; or (ii) the quantity, by weight, of  
31 the unlawfully commercially harvested groundfish or coastal pelagic  
32 baitfish is ten percent greater than the landing allowances provided  
33 under rules adopted by the department for species categorized as over-  
34 fished by the national marine fisheries service; or

35 (d) A gross misdemeanor or felony involving commercial shellfish  
36 harvesting, buying, or selling that is unlawful under the terms of the  
37 license, this title, or the rules issued pursuant to this title, if the

1 quantity of unlawfully harvested, possessed, bought, or sold shellfish:  
2 (i) Totals greater than six percent of the harvest available for  
3 inspection at the time of citation; and (ii) totals fifty or more  
4 individual shellfish.

5 (3)(a) The director may refer a person convicted of one qualifying  
6 commercial fishing violation to the license suspension review committee  
7 if the director feels that the qualifying commercial fishing violation  
8 was of a severe enough magnitude to justify suspension of the  
9 individual's license renewal privileges.

10 (b) The director may refer any person convicted of one egregious  
11 shellfish violation to the license suspension review committee.

12 (c) For the purposes of this section only, "egregious shellfish  
13 violation" means a gross misdemeanor or felony involving commercial  
14 shellfish harvesting, buying, or selling that is unlawful under the  
15 terms of the license, this title, or the rules issued pursuant to this  
16 title, if the quantity of unlawfully harvested, possessed, bought, or  
17 sold shellfish: (i) Totals more than twenty percent of the harvest  
18 available for inspection at the time of citation; (ii) totals five  
19 hundred or more individual shellfish; and (iii) is valued at two  
20 thousand five hundred dollars or more.

21 (4) A person who has a commercial fishing license suspended or  
22 revoked under this section may file an appeal with the license  
23 suspension review committee pursuant to section 4 of this act. An  
24 appeal must be filed within thirty-one days of notice of license  
25 suspension or revocation. If an appeal is filed, the suspension or  
26 revocation issued by the department does not take effect until after  
27 the license suspension review committee has delivered an opinion. If  
28 no appeal is filed within thirty-one days of notice of license  
29 suspension or revocation, the right to an appeal is considered waived.  
30 All suspensions ordered under this section take effect either thirty-  
31 one days following the conviction for the second qualifying commercial  
32 fishing violation, or upon a decision pursuant to section 4 of this  
33 act, whichever is later.

34 (5) A fishing privilege suspended under this section is in addition  
35 to the statutory penalties assigned to the underlying crime.

36 (6) For the purposes of this section only, the burden is on the

1 state to show the dollar amount or the percent of a harvest that is  
2 comprised of unlawfully harvested, bought, or sold individual fish or  
3 shellfish.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.15 RCW  
5 to read as follows:

6 (1) The license suspension review committee is created. The  
7 license suspension review committee may only hear appeals from  
8 commercial fishers who have had a license revoked or suspended pursuant  
9 to section 3 of this act.

10 (2)(a) The license suspension review committee is composed of five  
11 voting members and up to four alternates.

12 (b) Two of the members must be appointed by the director and may be  
13 department employees.

14 (c) Three members, and up to four alternates, must be peer-group  
15 members, who are individuals owning a commercial fishing license issued  
16 by the department. If a peer-group member appears before the license  
17 suspension review committee because of a qualifying commercial fishing  
18 violation, the member must recuse himself or herself from the  
19 proceedings relating to that violation. No two voting peer-group  
20 members may reside in the same county. All peer-group members must be  
21 appointed by the commission, who may accept recommendations from  
22 professional organizations that represent commercial fishing interests  
23 or from the legislative authority of any Washington county.

24 (d) All license suspension review committee members serve a two-  
25 year renewable term.

26 (e) The commission may develop minimum member standards for service  
27 on the license suspension review committee, and standards for  
28 terminating a member before the expiration of his or her term.

29 (3) The license suspension review committee must convene and  
30 deliver an opinion on a license renewal suspension within three months  
31 of appeal or of referral from the department. The director shall  
32 consider the committee's opinion and make a decision and may issue, not  
33 issue, or modify the license suspension.

34 (4) The license suspension review committee shall collect the  
35 information and hear the testimony that it feels necessary to deliver  
36 an opinion on the proper length, if any, of a suspension of a

1 commercial license. The opinion may be based on extenuating  
2 circumstances presented by the individual convicted of the qualifying  
3 commercial fishing violation or considerations of the type and  
4 magnitude of violations that have been committed by the individual.  
5 The maximum length of any suspension may not exceed one year.

6 (5) All opinions of the license suspension review committee must be  
7 by a majority vote of all voting members. Alternate committee members  
8 may only vote when one of the voting members is unavailable, has been  
9 recused, or has decided not to vote on the case before the committee.  
10 Nonvoting alternates may be present and may participate at all license  
11 suspension review committee meetings.

12 (6) Members of the license suspension review committee serve as  
13 volunteers, and are not eligible for compensation other than travel  
14 expenses pursuant to RCW 43.03.050 and 43.03.060.

15 (7) Staff of the license suspension review committee must be  
16 provided by the department.

17 **Sec. 5.** RCW 77.65.030 and 2001 c 244 s 2 are each amended to read  
18 as follows:

19 The application deadline for a commercial license or permit  
20 established in this chapter is December 31st of the calendar year for  
21 which the license or permit is sought. The department shall accept no  
22 license or permit applications after December 31st of the calendar year  
23 for which the license or permit is sought. The application deadline in  
24 this section does not apply to a license or permit that has not been  
25 renewed because of the death or incapacity of the license or permit  
26 holder. The license or permit holder's surviving spouse, estate,  
27 ((~~or~~)) estate beneficiary, attorney in fact, or guardian must be given  
28 ((~~a reasonable opportunity~~)) an additional one hundred eighty days to  
29 renew the license or permit.

30 NEW SECTION. **Sec. 6.** Section 5 of this act is necessary for the  
31 immediate preservation of the public peace, health, or safety, or  
32 support of the state government and its existing public institutions,  
33 and takes effect immediately."

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1        On page 1, line 1 of the title, after "violations;" strike the  
2 remainder of the title and insert "amending RCW 77.15.700 and  
3 77.65.030; adding new sections to chapter 77.15 RCW; creating a new  
4 section; and declaring an emergency."

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