

HOUSE BILL REPORT

SHB 2779

As Passed Legislature

Title: An act relating to the sale of wild huckleberries.

Brief Description: Requiring a specialized forest products permit to sell raw or unprocessed huckleberries.

Sponsors: By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Orcutt, Blake, Chase, McCoy, Lantz and Skinner).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/31/08, 2/4/08 [DPS].

Floor Activity:

Passed House: 2/19/08, 95-0.

Senate Amended.

Passed Senate: 3/5/08, 46-1.

House Concurred.

Passed House: 3/8/08, 93-0.

Passed Legislature.

<h3>Brief Summary of Substitute Bill</h3>

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| <ul style="list-style-type: none">• Requires a person planning to sell raw or unprocessed huckleberries to obtain a specialized forest product before conducting the sale. |
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HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Blake, Chair; Van De Wege, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Eickmeyer, Grant, Kristiansen, Lantz, Loomis, McCoy, Nelson, Newhouse and Orcutt.

Staff: Jason Callahan (786-7117).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Specialized Forest Products

A specialized forest product (SFP) is, generally, an item found in the forest with a value other than that found with traditional timber. The term SFP is defined to include native shrubs, cedar products, cedar salvage, processed cedar products, speciality wood, edible mushrooms, and certain barks. Many of these terms are further defined to include items such as certain logs or slabs of cedar, spruce, maple, and alder, along with cedar shakes and fence posts.

A SFP permit, or a true copy of the permit, is required in order to possess or transport the following:

- a cedar product or salvage;
- specialty wood;
- more than five Christmas trees or native ornamental trees or shrubs;
- more than five pounds of picked foliage or Cascara bark; and
- more than five gallons of a single mushroom species.

The SFP permit must be obtained prior to harvesting or collecting the products, even from one's own land, and is available only from county sheriffs on forms provided by the Department of Natural Resources (DNR). The permit must be validated by a sheriff.

For cedar and speciality wood, a processor must keep records of the purchase for one year, and have a bill of lading available to accompany all cedar or speciality wood products.

Violations of the law on SFPs is punishable as a gross misdemeanor, and a convicted individual may face a fine up to \$1,000 and/or up to one year in a county jail. In addition, a law enforcement officer with probable cause may seize and take possession of any SFPs found and, if the product seized was cedar or specialty wood, may also seize any equipment, vehicles, tools, or paperwork.

An affirmative defense is available to a person being prosecuted under the SFP laws if the SFPs in question were harvested from the defendant's own land or if the SFPs in question were harvested with the permission of the landowner. The burden of proving the defense rests with the defendant, who must establish the defense by a preponderance of the evidence.

Huckleberries

It is considered a violation of the law on SFPs if a person harvests huckleberries in any amount using a rake, mechanical device, or any other method that can damage the huckleberry bush.

Summary of Substitute Bill:

Requirements on Huckleberry Sellers

An SFP permit must be obtained by a person planning to offer raw or unprocessed huckleberries for sale prior to actually selling the huckleberries. The requirement to obtain a permit prior to selling huckleberries applies regardless of whether the huckleberries were

obtained from the land of the seller or a consenting landowner. The only exemption to the permit requirement is if the seller of the huckleberries can show that the huckleberries came from land owned by the United States Forest Service and is able to provide documentation that the huckleberries were harvested lawfully.

The SFP permit required to sell huckleberries may be obtained either before or after the huckleberry harvest, and is available directly from the DNR or from any county sheriff's office. The actual permit must contain information as to where the huckleberries were or are planned to be harvested, and the approximate amount of huckleberries offered for sale.

A SFP permit is not required to harvest, possess, or transport huckleberries. However, obtaining an SFP permit does not give the permit holder the authority to harvest huckleberries on land not owned by the permit holder. The permit holder must still seek permission from the landowner to harvest huckleberries and abide by whatever terms are negotiated between the landowner and the permit holder. The actual SFP permit must include a statement informing the holder of the requirement to obtain a landowner's permission prior to harvest.

Requirements on Huckleberry Buyers

A buyer of raw or unprocessed huckleberries is required to record the permit number of the seller, the name of the permit holder, the license plate of the seller, and the amount of huckleberries purchased. The records must be retained by the buyer for one year and, if requested, make the records available to law enforcement or university research.

Huckleberries as an SFP

The definition of an SFP is not expanded to include huckleberries. However, many of the provisions that apply to SFPs also apply to huckleberries. In addition, translation services and other community outreach efforts that are encouraged for SFP workers are also encouraged for huckleberry harvesters.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) There are serious and real problems associated with the state's huckleberry resource. The huckleberry is a traditional part of tribal culture and religion, and access to the huckleberry is guaranteed in treaties. Too often, commercial pickers take all of the berries before the tribes have an opportunity to engage in their cultural harvest. The once vast fields of huckleberries have been reduced to just a portion of their original size due to inferior land management practices.

Promises were made by legislators over this past interim to investigate the needs for additional huckleberry management tools. This bill protects the resource while respecting the needs of recreational huckleberry pickers by focusing only on commercial harvesters. The management mechanism created in the bill provides a workable enforcement mechanism and valuable records and data that can be used to assess what is occurring with the resource.

(Opposed) None.

Persons Testifying: Representative Orcutt, prime sponsor; David Powell, Yakima Nation; Bonnie Bunning, Department of Natural Resources; and Miguel Perez-Gibson, Colville Tribe.

Persons Signed In To Testify But Not Testifying: None.