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HOUSE BILL 1453

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State of Washington

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2011 Regular Session

By Representatives Rolfes, Chandler, Blake, Van De Wege, Upthegrove, Stanford, Jinkins, and Kretz; by request of Department of Health

Read first time 01/21/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to commercial shellfish enforcement; amending RCW  
2 69.30.010, 69.30.020, 69.30.030, 69.30.050, 69.30.060, 69.30.080,  
3 69.30.085, 69.30.110, and 69.30.140; and prescribing penalties.

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

5 **Sec. 1.** RCW 69.30.010 and 2001 c 253 s 5 are each amended to read  
6 as follows:

7 ~~((When used in this chapter, the following terms shall have the~~  
8 ~~following meanings:))~~ The definitions in this section apply throughout  
9 this chapter unless the context clearly requires otherwise.

10 (1) "Shellfish" means all varieties of fresh and frozen oysters,  
11 mussels, clams, and scallops, either shucked or in the shell, and any  
12 fresh or frozen edible products thereof.

13 (2) "Sale" means to sell, offer for sale, barter, trade, deliver,  
14 consign, hold for sale, consignment, barter, trade, or delivery, and/or  
15 possess with intent to sell or dispose of in any commercial manner.

16 (3) "Shellfish growing areas" means the lands and waters in and  
17 upon which shellfish are grown for harvesting in commercial quantity or  
18 for sale for human consumption.

1 (4) "Establishment" means the buildings, together with the  
2 necessary equipment and appurtenances, used for the storage, culling,  
3 shucking, packing and/or shipping of shellfish in commercial quantity  
4 or for sale for human consumption.

5 (5) "Person" means any individual, partnership, firm, company,  
6 corporation, association, or ~~((the))~~ a director, officer, owner, or  
7 authorized agent~~((s))~~ of any such ~~((entities))~~ entity.

8 (6) "Department" means the state department of health.

9 (7) "Secretary" means the secretary of health or his or her  
10 authorized representatives.

11 (8) "Commercial quantity" means any quantity exceeding: (a) Forty  
12 pounds of mussels; (b) one hundred oysters; (c) fourteen horse clams;  
13 (d) six geoducks; (e) fifty pounds of hard or soft shell clams; or (f)  
14 fifty pounds of scallops. The poundage in this subsection (8)  
15 constitutes weight with the shell.

16 (9) "Fish and wildlife officer" means a fish and wildlife officer  
17 as defined in RCW 77.08.010.

18 (10) "Ex officio fish and wildlife officer" means an ex officio  
19 fish and wildlife officer as defined in RCW 77.08.010.

20 (11) "Approved shellfish tag" means a tag meeting the requirements  
21 of the national shellfish sanitation program model ordinance.

22 **Sec. 2.** RCW 69.30.020 and 1955 c 144 s 2 are each amended to read  
23 as follows:

24 ~~((Only shellfish bearing a certificate of))~~ (1) It is unlawful to  
25 sell or offer to sell shellfish in this state unless the shellfish bear  
26 an approved shellfish tag indicating compliance with the sanitary  
27 requirements of this state or a state, territory, province, or country  
28 of origin whose requirements are equal or comparable to those  
29 established pursuant to this chapter ~~((may be sold or offered for sale~~  
30 ~~in the state of Washington))~~.

31 (2) Approved shellfish tags must be affixed to each container of  
32 shellfish prior to removal from the harvest area.

33 (3) The department, a fish and wildlife officer, or an ex officio  
34 fish and wildlife officer may immediately seize containers of shellfish  
35 that are not affixed with an approved shellfish tag.

1           **Sec. 3.** RCW 69.30.030 and 1995 c 147 s 2 are each amended to read  
2 as follows:

3           (1) The state board of health shall (~~cause such investigations to~~  
4 ~~be made as are necessary to determine reasonable requirements~~) adopt  
5 rules governing the sanitation of shellfish, shellfish growing areas,  
6 and shellfish plant facilities and operations((~~7~~)) in order to protect  
7 public health and carry out the provisions of this chapter(~~(; and shall~~  
8 ~~adopt such requirements as rules and regulations of the state board of~~  
9 ~~health~~)). Such rules and regulations may include reasonable sanitary  
10 requirements relative to the quality of shellfish growing waters and  
11 areas, boat and barge sanitation, building construction, water supply,  
12 sewage and waste water disposal, lighting and ventilation, insect and  
13 rodent control, shell disposal, garbage and waste disposal, cleanliness  
14 of establishment, the handling, storage, construction and maintenance  
15 of equipment, the handling, storage and refrigeration of shellfish, the  
16 identification of containers, and the handling, maintenance, and  
17 storage of permits, certificates, and records regarding shellfish taken  
18 under this chapter. The state board of health shall adopt rules  
19 governing procedures for the disposition of seized shellfish.

20           (2) The state board of health shall consider the most recent  
21 version of the national shellfish sanitation program model ordinance,  
22 adopted by the interstate shellfish sanitation conference, when  
23 adopting rules.

24           **Sec. 4.** RCW 69.30.050 and 1995 c 147 s 3 are each amended to read  
25 as follows:

26           (~~Shellfish growing areas, from which shellfish are removed in a~~  
27 ~~commercial quantity or for sale for human consumption shall meet the~~  
28 ~~requirements of this chapter and the state board of health; and such~~  
29 ~~shellfish growing areas shall be so certified by the department. Any~~  
30 ~~person desiring to~~) (1) It is unlawful for a person to remove  
31 shellfish from growing areas in a commercial quantity or for sale for  
32 human consumption unless the growing area:

33           (a) Has a valid certificate of approval; and

34           (b) Meets the requirements of this chapter and the rules adopted  
35 under this chapter.

36           (2) A person may not remove shellfish in a commercial quantity or  
37 for sale for human consumption from a growing area in the state of

1 Washington (~~shall first apply to the department for~~) unless the  
2 person has received a certificate of approval of the growing area from  
3 the department. (~~The department shall cause the shellfish growing~~  
4 ~~area to be inspected and if the area meets the requirements of this~~  
5 ~~chapter and the state board of health, the department shall issue a~~  
6 ~~certificate of approval for that area. Such certificates shall be~~  
7 ~~issued for a period not to exceed twelve months and may be revoked at~~  
8 ~~any time the area is found not to be in compliance with the~~  
9 ~~requirements of this chapter and the state board of health.~~

10 Shellfish growing areas from which shellfish are removed in a  
11 commercial quantity for purposes other than human consumption including  
12 but not limited to bait or seed, shall be readily subject to monitoring  
13 and inspections, and shall otherwise be of a character ensuring that  
14 shellfish harvested from such areas are not diverted for use as food.  
15 A certificate of approval issued by the department for shellfish  
16 growing areas from which shellfish are to be removed))

17 (3) Before issuing a certificate of approval, the department shall  
18 inspect the shellfish growing area. The department shall issue a  
19 certificate of approval if the area meets the requirements of this  
20 chapter and the rules adopted under this chapter.

21 (4) A certificate of approval is valid for a period of twelve  
22 months. The department may revoke a certificate of approval at any  
23 time the area is found out of compliance with the requirements of this  
24 chapter or the rules adopted under this chapter.

25 (5) It is unlawful to remove shellfish from growing areas in a  
26 commercial quantity for purposes other than human consumption,  
27 including but not limited to use as bait or seed, unless:

28 (a) The shellfish operation and growing area is readily available  
29 to monitoring and inspections; and

30 (b) The department has determined the shellfish operation is  
31 designed to ensure that shellfish harvested from such an area is not  
32 diverted for human consumption.

33 (6) The department's certificate of approval to harvest shellfish  
34 for purposes other than human consumption shall specify:

35 (a) The date or dates and time of harvest ((and)) ;

36 (b) All applicable conditions of harvest((τ));

37 (c) Identification by tagging, dying, or other department-approved  
38 means((τ)); and



1       (2) RCW 43.70.115 governs notice of a license denial, revocation,  
2 suspension, or modification and provides the right to an adjudicative  
3 proceeding.

4       **Sec. 7.** RCW 69.30.085 and 1998 c 44 s 1 are each amended to read  
5 as follows:

6       (1) A person whose license or certificate of approval is denied,  
7 revoked, or suspended as a result of violations of this chapter or  
8 rules adopted under this chapter may not:

9       (a) ~~((Serve as the person in charge of))~~ Supervise, be employed by,  
10 manage, or otherwise participate to any degree in a shellfish operation  
11 licensed or certified under this chapter or rules adopted under this  
12 chapter; ~~((or))~~

13       (b) Participate in the harvesting, shucking, packing, or shipping  
14 of shellfish in commercial quantities or for sale ~~((for human  
15 consumption))~~;

16       (c) Participate in the brokering of shellfish, purchase of  
17 shellfish for resale, or retail sale of shellfish; or

18       (d) Engage, directly or indirectly, in any activity associated with  
19 selling or offering to sell shellfish.

20       (2) Subsections (1)(c) and (d) of this section do not apply to  
21 retail purchases of shellfish for personal use.

22       (3) Subsection (1) of this section applies to a person only during  
23 the period of time in which that person's license or certificate of  
24 approval is denied, revoked, or suspended.

25       (4) Unlawful operations under subsection (1) of this section when  
26 a license or certificate of approval is denied, revoked, or suspended  
27 is a class C felony. Upon conviction, the department shall order that  
28 the person's license or certificate of approval be revoked for a period  
29 of at least five years, or that a person whose application for a  
30 license or certificate of approval was denied be ineligible to reapply  
31 for a period of at least five years.

32       (5) A license or certificate of approval issued under this chapter  
33 may not be assigned or transferred in any manner without department  
34 approval.

35       **Sec. 8.** RCW 69.30.110 and 2001 c 253 s 6 are each amended to read  
36 as follows:

1       (1) It is unlawful for any person to possess a commercial quantity  
2 of shellfish or to sell or offer to sell shellfish in the state which  
3 have not been grown, shucked, packed, or shipped in accordance with the  
4 provisions of this chapter. Failure of a shellfish grower to display  
5 immediately a certificate of approval issued under RCW 69.30.050 to an  
6 authorized representative of the department, a fish and wildlife  
7 officer, or an ex officio fish and wildlife officer subjects the grower  
8 to the penalty provisions of this chapter, as well as immediate seizure  
9 and prompt disposal of the shellfish by the representative or officer.

10       (2) Failure of a shellfish processor to display a certificate of  
11 approval issued under RCW 69.30.060 to an authorized representative of  
12 the department, a fish and wildlife officer, or an ex officio fish and  
13 wildlife officer subjects the processor to the penalty provisions of  
14 this chapter, as well as immediate seizure and prompt disposal of the  
15 shellfish by the representative or officer.

16       (~~Shellfish seized under this section shall be subject to prompt  
17 disposal by the representative or officer and may not be used for human  
18 consumption. The state board of health shall develop by rule  
19 procedures for the disposal of the seized shellfish.~~)

20       **Sec. 9.** RCW 69.30.140 and 2001 c 253 s 7 are each amended to read  
21 as follows:

22       Except as provided in RCW 69.30.085(4), any person convicted of  
23 violating any of the provisions of this chapter shall be guilty of a  
24 gross misdemeanor. A conviction is an unvacated forfeiture of bail or  
25 collateral deposited to secure the defendant's appearance in court, the  
26 payment of a fine, a plea of guilty, or a finding of guilt on a  
27 violation of this chapter or rules adopted under this chapter,  
28 regardless of whether imposition of sentence is deferred or the penalty  
29 is suspended, and shall be treated as a conviction for purposes of  
30 license revocation and suspension of privileges under RCW 77.15.700(5).

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