
SUBSTITUTE HOUSE BILL 1404

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Fuhrman, Buck and Basich; by request of Department of Health)

Read first time 02/20/95.

1 AN ACT Relating to seafood safety enhancement; amending RCW
2 69.30.010, 69.30.030, 69.30.050, 69.30.110, 69.30.120, and 69.30.140;
3 adding a new section to chapter 43.70 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 69.30.010 and 1991 c 3 s 303 are each amended to read
6 as follows:

7 When used in this chapter, the following terms shall have the
8 following meanings:

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

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

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

18 (4) "Establishment" means the buildings, together with the
19 necessary equipment and appurtenances, used for the storage, culling,

1 shucking, packing and/or shipping of shellfish in commercial quantity
2 or for sale for human consumption.

3 (5) "Person" means any individual, partnership, firm, company,
4 corporation, association, or the authorized agents of any such
5 entities.

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

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

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

14 (9) "Fish and wildlife enforcement officer" means a fisheries
15 patrol officer or an ex officio fisheries patrol officer as defined in
16 RCW 75.08.011 (4) and (5) or a wildlife agent or an ex officio wildlife
17 agent as defined in RCW 77.08.010 (5) and (6).

18 **Sec. 2.** RCW 69.30.030 and 1955 c 144 s 3 are each amended to read
19 as follows:

20 The state board of health shall cause such investigations to be
21 made as are necessary to determine reasonable requirements governing
22 the sanitation of shellfish, shellfish growing areas, and shellfish
23 plant facilities and operations, in order to protect public health and
24 carry out the provisions of this chapter; and shall adopt such
25 requirements as rules and regulations of the state board of health.
26 Such rules and regulations may include reasonable sanitary requirements
27 relative to the quality of shellfish growing waters and areas, boat and
28 barge sanitation, building construction, water supply, sewage and waste
29 water disposal, lighting and ventilation, insect and rodent control,
30 shell disposal, garbage and waste disposal, cleanliness of
31 establishment, the handling, storage, construction and maintenance of
32 equipment, the handling, storage and refrigeration of shellfish
33 (~~and~~), the identification of containers, and the handling,
34 maintenance, and storage of permits, certificates, and records
35 regarding shellfish taken under this chapter.

36 **Sec. 3.** RCW 69.30.050 and 1985 c 51 s 2 are each amended to read
37 as follows:

1 Shellfish growing areas, from which shellfish are removed in a
2 commercial quantity or for sale for human consumption shall (~~be in a~~
3 ~~safe and sanitary condition, meeting~~) meet the requirements of this
4 chapter and the state board of health; and such shellfish growing areas
5 shall be so certified by the department. Any person desiring to remove
6 shellfish in a commercial quantity or for sale for human consumption
7 from a growing area in the state of Washington shall first apply to the
8 department for a certificate of approval of the growing area. The
9 department shall cause the shellfish growing area to be inspected and
10 if the area meets the (~~sanitary~~) requirements of this chapter and the
11 state board of health, the department shall issue a certificate of
12 approval for that area. Such certificates shall be issued for a period
13 not to exceed twelve months and may be revoked at any time the area is
14 found not to be in compliance with the (~~sanitary~~) requirements of
15 this chapter and the state board of health.

16 Shellfish growing areas from which shellfish are removed in a
17 commercial quantity for purposes other than human consumption including
18 but not limited to bait or seed, shall be readily subject to monitoring
19 and inspections, and shall otherwise be of a character ensuring that
20 shellfish harvested from such areas are not diverted for use as food.
21 A certificate of approval issued by the department for shellfish
22 growing areas from which shellfish are to be removed for purposes other
23 than human consumption shall specify the date or dates and time of
24 harvest and all applicable conditions of harvest, identification by
25 tagging, dying, or other means, transportation, processing, sale, and
26 other factors to ensure that shellfish harvested from such areas are
27 not diverted for use as food.

28 **Sec. 4.** RCW 69.30.110 and 1985 c 51 s 4 are each amended to read
29 as follows:

30 It is unlawful for any person to possess a commercial quantity of
31 shellfish or to sell or offer to sell (~~for human consumption~~)
32 shellfish in the state which have not been grown, shucked, packed, or
33 shipped in accordance with the provisions of this chapter. Failure of
34 a shellfish grower to display immediately a certificate of approval
35 issued under RCW 69.30.050 to an authorized representative of the
36 department, a (~~fisheries patrol officer, or an ex officio fisheries~~
37 ~~patrol officer~~) fish and wildlife enforcement officer, or an ex
38 officio fish and wildlife enforcement officer subjects the grower to

1 the penalty provisions of this chapter, as well as immediate seizure of
2 the shellfish by the representative or officer.

3 Failure of a shellfish processor to display a certificate of
4 approval issued under RCW 69.30.060 to an authorized representative of
5 the department, a (~~(fisheries patrol))~~ fish and wildlife enforcement
6 officer, or an ex officio (~~(fisheries patrol))~~ fish and wildlife
7 enforcement officer subjects the processor to the penalty provisions of
8 this chapter, as well as immediate seizure of the shellfish by the
9 representative or officer.

10 Shellfish seized under this section shall be subject to prompt
11 disposal by the representative or officer and may not be used for human
12 consumption. The state board of health shall develop by rule
13 procedures for the disposal of the seized shellfish.

14 **Sec. 5.** RCW 69.30.120 and 1985 c 51 s 5 are each amended to read
15 as follows:

16 The department may enter and inspect any shellfish growing area or
17 establishment for the purposes of determining compliance with this
18 chapter and rules adopted under this chapter. The department may
19 inspect all shellfish, all permits, all certificates of approval and
20 all (~~(shellfish, and take for inspection such samples of shellfish as~~
21 may reasonably be necessary to carry out the provisions of this
22 chapter)) records.

23 During such inspections the department shall have free and
24 unimpeded access to all buildings, yards, warehouses, storage and
25 transportation facilities, vehicles, and other places reasonably
26 considered to be or to have been part of the regulated business or
27 entity, to all ledgers, books, accounts, memorandums, or records
28 required to be compiled or maintained under this chapter or under rules
29 adopted pursuant to this chapter, and to any products, components, or
30 other materials reasonably believed to be or to have been used,
31 processed, or produced by or in connection with the regulated business
32 or activity. In connection with such inspections the department may
33 take such samples or specimens as may be reasonably necessary to
34 determine whether there exists a violation of this chapter or rules
35 adopted under this chapter.

36 Inspection of establishments may be conducted between eight a.m.
37 and five p.m. on any weekday that is not a legal holiday, during any
38 time the regulated business or entity has established as its usual

1 business hours, at any time the regulated business or entity is open
2 for business or is otherwise in operation, and at any other time with
3 the consent of the owner or authorized agent of the regulated business
4 or entity.

5 The department may apply for an administrative inspection warrant
6 to a court of competent jurisdiction and an administrative inspection
7 warrant may issue where:

8 (1) The department has attempted an inspection under this chapter
9 and access to all or part of the regulated business or entity has been
10 actually or constructively denied; or

11 (2) There is reasonable cause to believe that a violation of this
12 chapter or of rules adopted under this chapter is occurring or has
13 occurred.

14 ~~((For purposes of this chapter, fisheries patrol officers or ex~~
15 ~~officio fisheries patrol officers are limited to entry, inspection, and~~
16 ~~destruction of shellfish to achieve compliance with RCW 69.30.110 and~~
17 ~~to taking for inspection samples of shellfish as may reasonably be~~
18 ~~necessary to carry out this chapter.))~~

19 **Sec. 6.** RCW 69.30.140 and 1985 c 51 s 6 are each amended to read
20 as follows:

21 Any person ~~((found))~~ convicted of violating any of the provisions
22 of this chapter shall be guilty of a gross misdemeanor~~((, and upon~~
23 ~~conviction thereof shall be subject to a fine of not less than twenty-~~
24 ~~five dollars nor more than one thousand dollars, or imprisonment in the~~
25 ~~county jail of the county in which the offense was committed for not~~
26 ~~less than thirty days nor more than one year, or to both fine and~~
27 ~~imprisonment)). A conviction is an unvacated forfeiture of bail or~~
28 ~~collateral deposited to secure the defendant's appearance in court, the~~
29 ~~payment of a fine, a plea of guilty, or a finding of guilt on a~~
30 ~~violation of this chapter, regardless of whether imposition of sentence~~
31 ~~is deferred or the penalty is suspended, and shall be treated as a~~
32 ~~violation conviction for purposes of license forfeiture under RCW~~
33 ~~75.10.120.~~

34 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.70 RCW
35 to read as follows:

36 (1) The department may enter and inspect any property, lands, or
37 waters, of this state in or on which any marine species are located or

1 from which such species are harvested, whether recreationally or for
2 sale or barter, and any land or water of this state which may cause or
3 contribute to the pollution of areas in or on which such species are
4 harvested or processed. The department may take any reasonably
5 necessary samples to determine whether such species or any lot, batch,
6 or quantity of such species is safe for human consumption.

7 (2) If the department determines that any species or any lot,
8 batch, or other quantity of such species is unsafe for human
9 consumption because consumption is likely to cause actual harm or
10 because consumption presents a potential risk of substantial harm, the
11 department may, by order under chapter 34.05 RCW, prohibit or restrict
12 the commercial or recreational harvest or landing of any marine species
13 except the recreational harvest of shellfish as defined in chapter
14 69.30 RCW if taken from privately owned tidelands.

15 (3) It is unlawful to harvest any marine species in violation of a
16 departmental order prohibiting or restricting such harvest under this
17 section or to possess or sell any marine species so harvested.

18 (4) Any person who sells any marine species taken in violation of
19 this section is subject to the penalties provided in RCW 69.30.140 and
20 69.30.150. Any person who harvests or possesses marine species taken
21 in violation of this section is guilty of a civil infraction and is
22 subject to the penalties provided in RCW 69.30.150. Notwithstanding
23 this section, any person who harvests, possesses, sells, offers to
24 sell, culls, shucks, or packs shellfish is subject to the penalty
25 provisions of chapter 69.30 RCW. Charges shall not be brought against
26 a person under both chapter 69.30 RCW and this section in connection
27 with this same action, incident, or event.

28 (5) The criminal provisions of this section are subject to
29 enforcement by fish and wildlife enforcement officers or ex officio
30 fish and wildlife enforcement patrol officers as defined in RCW
31 75.08.011.

32 (6) As used in this section, marine species include all fish,
33 invertebrate or plant species which are found during any portion of the
34 life cycle of those species in the marine environment.

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