

FINAL BILL REPORT

SHB 2426

C 127 L 02

Synopsis as Enacted

Brief Description: Clarifying the nature of "acting for a commercial purpose" with respect to a natural resources violation.

Sponsors: By House Committee on Natural Resources (originally sponsored by Representatives Jackley, Sump, Rockefeller, Doumit, Pearson, Morell and Chase).

House Committee on Natural Resources
Senate Committee on Natural Resources, Parks & Shorelines

Background:

The Fish and Wildlife Enforcement Code contains various commercial fishing violations. These violations include commercial fishing without a license, commercial fishing using unlawful gear, violations of commercial fishing areas or times, failure to report a commercial fish or shellfish harvest, and engaging in a commercial wildlife activity without a license.

To be held guilty for many of these crimes, the individual charged must be shown to be acting for commercial purposes. The code provides a list of actions that define when an individual is acting for commercial purposes. Under the code, if an individual acts with the intent to sell fish or wildlife, uses gear typical to that used in commercial fisheries, exceeds the personal use bag limit by more than three times, delivers fish or wildlife to a wholesaler, sells or deals in raw fur, performs taxidermy services for a fee, or takes fish using a vessel designated for a commercial fishery, then that person is deemed to be acting for commercial purposes.

In November of 2001, a Washington court of appeals found some elements of the commercial fishing violations unconstitutional. The court found the actions that define when an individual acts for commercial purposes creates an unconstitutional irrebuttable presumption that violates due process by preventing the defendant from arguing that he or she possessed fish or wildlife for non-commercial purposes.

Summary:

For purposes of the Fish and Wildlife Enforcement Code, an individual is considered to be acting for commercial purposes if he or she engages in conduct that relates to commerce in fish and wildlife. This may include taking, delivering, selling, buying, or trading fish or wildlife when there is a present or future exchange of value. Evidence

that a person acts for commercial purposes includes using gear typical in commercial fisheries, possessing more than three times his or her personal bag limit, delivering fish or wildlife to a wholesaler, taking fish or shellfish using a vessel designated for a commercial fishery, holding a commercial fishery license, dealing in raw fur, or performing taxidermy services for a fee.

Votes on Final Passage:

House 96 0

Senate 48 0

Effective: June 13, 2002