HOUSE BILL 1909

State of Washington 60th Legislature 2007 Regular Session

By Representatives Orcutt, B. Sullivan, Roach, Blake, Takko, Pearson, Kristiansen and Hinkle

Read first time 01/31/2007. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to specialized forest products; amending RCW 76.48.020, 76.48.040, 76.48.050, 76.48.060, 76.48.070, 76.48.085, 76.48.094, 76.48.098, 76.48.110, 76.48.120, and 76.48.150; adding new sections to chapter 76.48 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that the current law on specialized forest products provides important protections to the owners of forest land in Washington. However, these protections, as presently constituted, create a complicated regulatory environment for wood carvers, wood turners, instrument makers, and other wood hobbyists and small businesses. The criminal penalties possible under chapter 76.48 RCW increase the risk to otherwise lawful wood hobbyists who have difficulty navigating this complicated regulatory regime.

With the introduction of this act, the legislature intends to begin a conversation on proper revisions to chapter 76.48 RCW that streamlines the permitting system for specialized forest products and creates a more equitable and manageable situation for wood hobbyists,
while maintaining the chapter's important protections that it provides
to forest landowners.

NEW SECTION. Sec. 2. A new section is added to chapter 76.48 RCW
to read as follows:

It is the intent of legislature for this chapter to be used by law
enforcement authorities and others responsible for its implementation
to pursue and prosecute those individuals that are genuinely engaged in
the theft of large quantities of valuable forest materials, and not
those individuals who are responsibly collecting wood or wood pieces
from landowners who are aware and accepting of the collection. The
legislature urges prosecutorial discretion where warranted and the
consideration of all factors involved with a situation before bringing
a criminal action under this chapter.

Sec. 3. RCW 76.48.020 and 2005 c 401 s 1 are each amended to read
as follows:

The definitions in this section apply throughout this chapter
unless the context clearly requires otherwise.

(1) "Authorization" means a properly completed preprinted form
authorizing the transportation or possession of Christmas trees which
contains the information required by RCW 76.48.080, a sample of which
is filed before the harvesting occurs with the sheriff of the county in
which the harvesting is to occur.

(2) "Bill of lading" means a written or printed itemized list or
statement of particulars pertinent to the transportation or possession
of a specialized forest product.

(3) "Carver" means an individual who either for business, artistic,
or hobbyist pursuits uses specialized forest products to produce
carvings or other artistic products.

(4) "Cascara bark" means the bark of a Cascara tree.
((4))) (5) "Cedar processor" means any person other than a carver
who purchases, takes, or retains possession of cedar products or cedar
salvage for later sale in the same or modified form following removal
and delivery from the land where harvested.
((5))) (6) "Cedar products" means cedar shakeboards, shake and
shingle bolts, and rounds one to three feet in length.
"Cedar salvage" means cedar chunks, slabs, stumps, and logs having a volume greater than one cubic foot and being harvested or transported from areas not associated with the concurrent logging of timber stands (a) under a forest practices application approved or notification received by the department of natural resources, or (b) under a contract or permit issued by an agency of the United States government.

"Christmas trees" means any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

"Cut or picked evergreen foliage," commonly known as brush, means evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, mosses, bear grass, (scotch broom (Cytisus scoparius)) and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not mean cones, berries, (any) foliage from any plant that does not remain green year-round, or seeds.

"Department" means the department of natural resources.

"Harvest" means to separate, by cutting, chopping, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection or contact with (the) land not owned by the person conducting the harvest or vegetation upon which it is or was growing or (b) from the position in which it is lying upon the land, and the land is not owned by the person conducting the harvest.

"Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products (close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone).

"Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.
"Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

"Permit area" means a designated tract of land that may contain single or multiple harvest sites.

"Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

"Processed cedar products" means cedar shakes, bolts, shingles, fence posts, hop poles, pickets, stakes, rails, or rounds sized between two and twelve inches in length.

"Sheriff" means, for the purpose of validating specialized forest products permits, the county sheriff, deputy sheriff, or an authorized employee of the sheriff's office or an agent of the office for the county where the permittee lives, the county from which wood was harvested or transported from, the county where the wood is designated to be transported to, or the county adjacent to any of the previously listed qualifying counties.

"Specialized forest products" means Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, unprocessed cedar products, cedar salvage, specialty wood, wild edible mushrooms, and Cascara bark.

"Specialized forest products permit" means a printed document in a form printed by the department of natural resources, or true copy thereof, that is signed by a landowner or his or her authorized agent or representative, referred to in this chapter as "permittors" and validated by an appropriate county sheriff and authorizes a designated person, referred to in this chapter as "permittee," who has also signed the permit, to harvest, possess, and transport a designated specialized forest product from land owned or controlled and specified by the permittor (and that is located in the county where the permit is issued).

"Specialty wood" means wood that is in logs less than eight feet in length, chunks, slabs, stumps, or burls of one or more of the following:

(a) is of the species western red cedar (Thuja plicata),
Englemann spruce (*Picea englemannii*), Sitka spruce (*Picea sitchensis*), big leaf maple (*Acer macrophyllum*), or western red alder(*Alnus rubra*), has a total aggregated weight of two hundred pounds, and satisfies one or more of the following:

(a) Is without knots in a portion of the surface area at least twenty-one inches long and seven and a quarter inches wide when measured from the outer surface toward the center; or

(b) Suitable for the purposes of making *stringed* musical instruments that are plucked or played with a bow or ornamental boxes larger than six inches high by six inches wide by six inches long or that are two hundred sixteen cubic inches or larger and made with a wood product that has a value greater than one hundred dollars.

"Specialty wood buyer" means the first person that receives any specialty wood product after it leaves the harvest site.

"Specialty wood processor" means any person who purchases, takes, or retains possession of specialty wood products or specialty wood salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

"Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

"True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and permittor signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittee and permittor specify an earlier date. A permittor may require the actual signatures of both the permittee and permittor for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and permittor, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof.

"Wild edible mushrooms" means edible mushrooms not cultivated or propagated by artificial means.
Sec. 4. RCW 76.48.040 and 1995 c 366 s 3 are each amended to read as follows:

(1) Agencies charged with the enforcement of this chapter shall include, but not be limited to:

(a) The Washington state patrol;

(b) County sheriffs and their deputies;

(c) County or municipal police forces;

(d) Authorized personnel of the United States forest service;

and

(e) Authorized personnel of the department and the department of fish and wildlife.

(2) Primary enforcement responsibility of this chapter lies with the county sheriffs and their deputies. The legislature encourages county sheriffs' offices to enter into interlocal agreements with other agencies listed in this section in order to receive additional assistance with their enforcement responsibilities.

(3) Enforcement of this chapter must be carried out consistent with section 12 of this act.

Sec. 5. RCW 76.48.050 and 2005 c 401 s 2 are each amended to read as follows:

(1) Specialized forest products permits issued under this chapter must be properly completed and validated by an appropriate sheriff (of the county in which the specialized forest products are to be harvested). Each permit shall be separately numbered and display the name of the county and a contact number for the county where the permit was issued. All specialized forest products permits shall expire at the end of the calendar year in which issued, or sooner, at the discretion of the permittor.

(2) A properly completed specialized forest products permit form shall include:

(a) The date of its execution and expiration;

(b) The name, address, telephone number, if any, and signature of the permittor;

(c) The name, address, telephone number, if any, and signature of the permittee;
The type of specialized forest products to be harvested or transported;

The approximate amount or volume of specialized forest products to be harvested or transported;

The street address or legal description of the property from which the specialized forest products are to be harvested or transported, including the name of the county, or the state or province if outside the state of Washington;

A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;

For cedar products, cedar salvage, and specialty wood, a copy of a map or aerial photograph, with defined permitted boundaries, included as an attachment to the permit;

A copy of a valid picture identification; and

Any other condition or limitation which the permittor may specify.

Except for the harvesting of Christmas trees, the permit or true copy of the permit must be carried by the permittee and the permittee's agents and be available for inspection at all times. For the harvesting of Christmas trees only a single permit or true copy of the permit is necessary to be available at the harvest site.

Sec. 6. RCW 76.48.060 and 2005 c 401 s 3 are each amended to read as follows:

(1) A specialized forest products permit validated by an appropriate county sheriff shall be obtained by a person prior to harvesting from any lands, including his or her own, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any unprocessed cedar products, cedar salvage, or more than five pounds of Cascara bark, or more than five United States gallons of a single species of wild edible mushroom.

(2)(a) Specialized forest products permit forms shall be provided by the department, and shall be made available to permittees or permittors through the office of the county sheriff.
to permittees or permittors in reasonable quantities) department's internet web site and from the sheriff's office of each county.

(b) A permit form shall be completed in triplicate for each permittor's property on which a permittee harvests specialized forest products.

(c) A properly completed permit form shall be mailed or presented for validation to the sheriff of the county in which the specialized forest products are to be harvested.

(3) Before a permit form is validated by the sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form and the sheriff may conduct other investigations as deemed necessary to determine the validity of the information alleged on the form. When the sheriff is reasonably satisfied as to the truth of the information, the form shall be validated with the sheriff's validation stamp.

(4) Upon validation, the form shall become the specialized forest products permit authorizing the harvesting, possession, or transportation of specialized forest products, subject to any other conditions or limitations which the permittor may specify. Two copies of the permit shall be given or mailed to the permittor, or one copy shall be given or mailed to the permittor and the other copy given or mailed to the permittee. The original permit shall be retained in the office of the county sheriff validating the permit.

(5) (In the event a single land ownership is situated in two or more counties, a specialized forest product permit shall be completed as to the land situated in each county.

(6)) While engaged in harvesting of specialized forest products, permittees, or their agents or employees, must have readily available at each harvest site a valid permit or true copy of the permit.

Sec. 7. RCW 76.48.070 and 2005 c 401 s 4 are each amended to read as follows:

(1) Except as provided in RCW 76.48.100 and 76.48.075, it is unlawful for any person (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington, subject to any other conditions or limitations specified in the specialized forest products permit by the permittor, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of
cut or picked evergreen foliage, any processed cedar products, or more than five pounds of Cascara bark, or more than five gallons of a single species of wild edible mushroom without having in his or her possession a written authorization, sales invoice, bill of lading, or specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of specialized forest products being so possessed or transported.

(2) It is unlawful for any person either (a) to possess, (b) to transport from the harvest site to the first cedar or specialty wood processor or buyer, or (c) to possess and transport from the harvest site to the first cedar or specialty wood processor buyer within the state of Washington any cedar products, cedar salvage, or specialty wood without having in his or her possession either a specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of the materials being so possessed or transported, or a dated written receipt showing the possessor's lawful purchase of the specialized forest product. The specialized forest products permit, true copy, or receipt is valid to possess, transport, or possess and transport the cedar products, cedar salvage, or specialty wood from the harvest site to the first cedar or specialty wood processor or buyer.

(3) For the purposes of subsection (2) of this section:

(a) A true copy requires the actual signatures of both the permittee and the permittor for the execution of a true copy; and

(b) A receipt must contain the specific location from where the wood was removed or harvested, a description of the wood, and the contact phone number or residence address of the person who owns the land from where the wood was harvested so that the law enforcement authorities may confirm the receipt's legitimate status. The description of the wood must include the species of the wood and one of the following: The height, the width, the length, or the volume of the wood.

Sec. 8. RCW 76.48.085 and 2005 c 401 s 6 are each amended to read as follows:

(1) Buyers who purchase specialized forest products are required to record (a) The permit number; (b) the type of forest
product purchased; ((3)) (c) the permit holder's name; and ((4)) (d) the amount of forest product purchased. The buyer or processor shall keep a record of this information for a period of one year from the date of purchase and must make the records available for inspection upon demand by authorized enforcement officials.

(2) The buyer of specialized forest products must record the license plate number of the vehicle transporting the forest products on the bill of sale, as well as the seller's permit number on the bill of sale. This section shall not apply to transactions involving Christmas trees.

(3) This section shall not apply to buyers of specialized forest products at the retail sales level.

Sec. 9. RCW 76.48.094 and 2005 c 401 s 7 are each amended to read as follows:

(1) Cedar or specialty wood processors shall make and maintain a record of the purchase, taking possession, or retention of cedar products, cedar salvage, or specialty wood for at least one year after the date of receipt. The record must be legible and must be made at the time each delivery is made.

(2) The bill of lading, specialized forest products permit, or a license to transport specialized forest products under section 11 of this act must accompany all cedar products, cedar salvage, or specialty wood products ((after the products are received by the cedar or specialty wood processor)) during transport or during the time when the material is on property not owned by the owner of the material. The bill of lading must include the specialized forest products permit number or the information provided for in RCW 76.48.075(5) and must also specify:

(a) The date of transportation;
(b) The name and address of the first cedar or specialty wood processor or buyer who recorded the specialized forest products information;
(c) The name and address from where the cedar or specialty wood products are being transported;
(d) The name of the person receiving the cedar or specialty wood products;
(e) The address to where the cedar or specialty wood products are being transported;
(f) The name of the driver;
(g) The vehicle license number;
(h) The type of cedar or specialty wood product being shipped;
((and))
(i) The amount of cedar or specialty wood product being shipped;
and
(j) A description of the cedar or specialty wood product, including species and size dimensions.

(3) Any piece of cedar or specialty wood that matches the species listed on the information provided under this section and that, given its size, could have been cut from a larger piece of wood documented under this section is presumed to be covered under the bill of lading, specialized forest products permit, or a license to transport specialized forest products required under this section.

Sec. 10. RCW 76.48.098 and 2005 c 401 s 9 are each amended to read as follows:
(1) Every cedar or specialty wood buyer or processor shall prominently display a valid registration certificate, or copy thereof, obtained from the department of revenue under RCW 82.32.030 at each location where the buyer or processor receives cedar products, cedar salvage, or specialty wood.
(2) Permittees shall sell cedar products, cedar salvage, or specialty wood products only to cedar or specialty wood processors displaying registration certificates which appear to be valid or to carvers who are licensed under section 9 of this act.

NEW SECTION. Sec. 11. A new section is added to chapter 76.48 RCW to read as follows:
(1) The department shall provide to an applicant carver a license to transport specialized forest products. The license must be made available to any person who can demonstrate to the satisfaction of the department that he or she is a carver.
(2) The license to transport specialized forest products must be provided at no charge to the applicant carver and may be issued from the department's administrative headquarters in Olympia, any department
Sec. 12. RCW 76.48.110 and 2005 c 401 s 11 are each amended to read as follows:

(1)(a) Whenever any law enforcement officer has probable cause to believe that a person is harvesting or is in possession of or transporting specialized forest products in violation of the provisions of this chapter, he or she may, at the time of making an arrest, seize and take possession of any specialized forest products found. If the specialized forest product is a cedar product, cedar salvage, or specialty wood, at the time of making an arrest the law enforcement officer may seize and take possession of any equipment, vehicles, tools, or paperwork. The law enforcement officer shall provide reasonable protection for the equipment, vehicles, tools, paperwork, or specialized forest products involved during the period of litigation or he or she shall dispose of the equipment, vehicles, tools, paperwork, or specialized forest products at the discretion or order of the court before which the arrested person is ordered to appear.

((2)) (b) Upon any disposition of the case by the court, the court shall make a reasonable effort to return the equipment, vehicles, tools, paperwork, or specialized forest products to its rightful owner or pay the proceeds of any sale of specialized forest products less any reasonable expenses of the sale to the rightful owner. If for any reason, the proceeds of the sale cannot be disposed of to the rightful owner, the proceeds, less the reasonable expenses of the sale, shall be paid to the treasurer of the county in which the violation occurred. The county treasurer shall deposit the same in the county general fund. The return of the equipment, vehicles, tools, paperwork, or specialized forest products or the payment of the proceeds of any sale of products seized to the owner shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter.

(2) If no seizure of specialized forest products is made under this section, but the specialized forest products are later proved to be stolen, the sheriff shall commission an independent third-party appraisal based on the description of the stolen specialized forest products.
products. Upon conviction, the transporter of the stolen specialized forest products shall pay the rightful owner three times the appraised market value of the specialized forest products and reimburse the sheriff for reasonable appraisal costs.

(3) Upon conviction under this chapter, a person must be denied a specialized forest products permit for the following periods of time:

(a) Three months for a first conviction;
(b) Six months for a second conviction; and
(c) Permanently for any convictions subsequent to a third conviction.

Sec. 13. RCW 76.48.120 and 2003 c 53 s 373 are each amended to read as follows:

(1) It is unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other instrument in writing purporting to be a specialized forest products permit, or true copy thereof, authorization, sales invoice, receipt or bill of lading, or to make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, knowing the same to be in any manner false, fraudulent, forged, or stolen.

(2) Any person who knowingly or intentionally violates this section is guilty of a class C felony punishable by imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both imprisonment and fine.

(3) Whenever any law enforcement officer reasonably suspects that a specialized forest products permit or true copy thereof, authorization, sales invoice, or bill of lading is forged, fraudulent, or stolen, it may be retained by the officer until its authenticity can be verified.

NEW SECTION. Sec. 14. A new section is added to chapter 76.48 RCW to read as follows:

(1) For the purposes of this chapter, a person transporting specialized forest products is presumed to be in compliance with this chapter if any wood in his or her possession matches the description of
the specialized forest products on his or her permit, bill of lading, or receipt, or if the wood:
(a) Is of the same species as the wood listed on the permit, bill of lading, or receipt; and
(b) Is of such size that it would have been cut from the products listed on the permit, bill of lading, or receipt.
(2) Any law enforcement officer initiating an investigation under this chapter must document the product in question by species, size, and quality to the best of his or her ability.

Sec. 15. RCW 76.48.150 and 2005 c 401 s 13 are each amended to read as follows:
(1) The department of natural resources is the designated agency to develop and print the specialized forest products permit and distribute it to the county sheriffs. ((In addition,))
(2) The department of natural resources shall develop educational material and other printed information for law enforcement, forest landowners, and specialized forest products harvesters, buyers, and processors specific to this chapter.
(3) The department of natural resources shall feature on its official internet web site a guide to understanding and complying with this chapter. The department of fish and wildlife, the department of ecology, the state parks and recreation commission, and the department of agriculture shall feature links to the guide on their respective internet web sites.

--- END ---