CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1453

Chapter 194, Laws of 2011

62nd Legislature
2011 Regular Session

COMMERCIAL SHELLFISH ENFORCEMENT

EFFECTIVE DATE: 07/22/11

Passed by the House February 25, 2011
Yeas 96  Nays 2

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 8, 2011
Yeas 49  Nays 0

BRAD OWEN
President of the Senate

Approved April 29, 2011, 3:31 p.m.

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1453 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED
April 29, 2011

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington

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

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

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

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

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

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.
(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shellfish in commercial quantity or for sale for human consumption.

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

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

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

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

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

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

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

(12) "Shellstock" means live molluscan shellfish in the shell.

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

((Only shellfish bearing a certificate of)) It is unlawful to sell or offer to sell shellfish in this state unless the shellfish bear an approved shellfish tag or label indicating compliance with the sanitary requirements of this state or a state, territory, province, or country of origin whose requirements are equal or comparable to those established pursuant to this chapter ((may be sold or offered for sale in the state of Washington)). The department, a fish and wildlife officer, or an ex officio fish and wildlife officer may immediately seize containers of shellfish that are not affixed with an approved shellfish tag or label.
Sec. 3. RCW 69.30.030 and 1995 c 147 s 2 are each amended to read as follows:

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

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

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

((Shellfish growing areas, from which shellfish are removed in a commercial quantity or for sale for human consumption shall meet the requirements of this chapter and the state board of health; and such shellfish growing areas shall be so certified by the department. Any person desiring to harvest shellfish from shellfish growing areas in a commercial quantity or for sale for human consumption unless the shellfish growing area:

(a) Has a valid certificate of approval; and

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

(2) A person may not remove shellfish in a commercial quantity or

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for sale for human consumption from a shellfish growing area in the state of Washington (shall first apply to the department for) unless:

(a) The person has received a certificate of approval (of) for the shellfish growing area from the department; and

(b) Approved shellfish tags are affixed to each container of shellstock prior to removal from the shellfish growing area, except bulk tagging is permitted as allowed in the national shellfish sanitation program model ordinance. (The department shall cause the shellfish growing area to be inspected and if the area meets the requirements of this chapter and the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and may be revoked at any time the area is found not to be in compliance with the requirements of this chapter and the state board of health.

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

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

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

(5) It is unlawful to remove shellfish from shellfish growing areas without a certificate of approval in a commercial quantity for purposes other than human consumption, including but not limited to use as bait or seed, unless:

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

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

(6) Nothing in this section prohibits a person from removing
shellfish for use as bait or seed from an approved shellfish growing
area.

(7) The department's certificate of approval to harvest shellfish
for purposes other than human consumption shall specify:
(a) The date or dates and time of harvest (and);
(b) All applicable conditions of harvest (and);
(c) Identification by tagging, dying, or other department-approved
means (and); and
(d) Information about the removal method, transportation method,
processing technique, sale details, and other factors to ensure that
shellfish harvested from such areas are not diverted for (use as
food) human consumption.

Sec. 5. RCW 69.30.060 and 1985 c 51 s 3 are each amended to read
as follows:

((No)) (1) It is unlawful for a person ((shall)) to cull, shuck, or
pack shellfish in the state of Washington in a commercial quantity or
for sale for human consumption unless the establishment in which such
operations are conducted has been certified by the department as
meeting the requirements of the state board of health. ((Any person
desiring to))

(2) A person may not cull, shuck, or pack shellfish within the
state of Washington in a commercial quantity or for sale for human
consumption, ((shall apply to the department for)) unless the person
has received a certificate of approval from the department for the
establishment in which such operations will be done.

(3) Before issuing a certificate of approval, the department shall
((cause such)) inspect the establishment ((to be inspected)), and if
the establishment meets the ((sanitary requirements)) rules of the
state board of health, the department shall issue a certificate of
approval. Such certificates of approval shall be issued for a period
not to exceed twelve months, and may be revoked at any time the
establishment or the operations are found not to be in compliance with
the ((sanitary requirements)) rules of the state board of health.
Sec. 6. RCW 69.30.080 and 1991 c 3 s 304 are each amended to read as follows:

(1) The department may deny, revoke, or suspend a certificate of approval, license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this chapter or rules adopted under it) a person's license or certificate of approval for:

(a) Violations of this chapter or the rules adopted under this chapter; or

(b) Harassing or threatening an authorized representative of the department during the performance of his or her duties.

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

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

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

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

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

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

(d) Engage in any activity associated with selling or offering to sell shellfish.

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

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

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

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

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

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

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

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

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

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

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