

2 **ESHB 2323** - S COMM AMD

3 By Committee on Natural Resources, Parks & Shorelines

4 ADOPTED AS AMENDED 03/07/02

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** The legislature finds that commercial
8 fishing is vitally important not just to the economy of Washington, but
9 also to the cultural heritage of the maritime communities in the state.
10 Fisher men and women have a long and proud history in the Pacific
11 Northwest. State and local governments should seek out ways to enable
12 and encourage these professionals to share the rewards of their craft
13 with the nonfishing citizens of and visitors to the state of Washington
14 by encouraging the exploration and development of new niche markets.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.65 RCW
16 to read as follows:

17 (1) The department must establish and administer a direct retail
18 endorsement to serve as a single license that permits the holder of a
19 Washington salmon or crab commercial fishing license to clean, dress,
20 and sell his or her catch directly to consumers at retail, including
21 over the internet. The direct retail endorsement must be issued as an
22 optional addition to all holders of a salmon or crab commercial fishing
23 license that the department offers under this chapter.

24 (2) The direct retail endorsement must be offered at the time of
25 application for the qualifying commercial fishing license. Individuals
26 in possession of a qualifying commercial fishing license issued under
27 this chapter may add a direct retail endorsement to their current
28 license at the time they renew their commercial fishing license.
29 Individuals who do not have a commercial fishing license for salmon or
30 crab issued under this chapter may not receive a direct retail
31 endorsement. The costs, conditions, responsibilities, and privileges
32 associated with the endorsed commercial fishing license is not affected
33 or altered in any way by the addition of a direct retail endorsement.
34 These costs include the base cost of the license and any revenue and
35 excise taxes.

1 (3) An individual need only add one direct retail endorsement to
2 his or her license portfolio. If a direct retail endorsement is
3 selected by an individual holding more than one commercial fishing
4 license issued under this chapter, a single direct retail endorsement
5 is considered to be added to all qualifying commercial fishing licenses
6 held by that individual, and is the only license required for the
7 individual to sell at retail the harvest of salmon or crab permitted by
8 all of the underlying endorsed licenses. The direct retail endorsement
9 applies only to the person named on the endorsed license, and may not
10 be used by an alternate operator named on the endorsed license.

11 (4) In addition to any fees charged for the endorsed licenses and
12 harvest documentation as required by this chapter or the rules of the
13 department, the department may set a reasonable annual fee not to
14 exceed the administrative costs to the department for a direct retail
15 endorsement.

16 (5) The holder of a direct retail endorsement is responsible for
17 documenting the commercial harvest of salmon and crab according to the
18 provisions of this chapter, the rules of the department for a wholesale
19 fish dealer, and the reporting requirements of the endorsed license.
20 Any salmon or crab caught by the holder of a direct retail endorsement
21 must be landed in the round and documented on fish tickets, as provided
22 for by the department, before further processing.

23 (6) The direct retail endorsement must be displayed in a readily
24 visible manner by the seller wherever and whenever a sale to someone
25 other than a licensed wholesale dealer occurs. For sales occurring in
26 a venue other than in person, such as over the internet, through a
27 catalog, or on the phone, the direct retail endorsement number of the
28 seller must be provided to the buyer both at the time of sale and the
29 time of delivery. All internet sales must be conducted in accordance
30 with federal laws and regulations.

31 (7) The direct retail endorsement is to be held by a natural person
32 and is not transferrable or assignable. If the endorsed license is
33 transferred, the direct retail endorsement immediately becomes void,
34 and the transferor is not eligible for a full or prorated reimbursement
35 of the annual fee paid for the direct retail endorsement. Upon
36 becoming void, the holder of a direct retail endorsement must surrender
37 the physical endorsement to the department.

38 (8) The holder of a direct retail endorsement must abide by the
39 provisions of Title 69 RCW as they apply to the processing and retail

1 sale of seafood. The department must distribute a pamphlet, provided
2 by the department of agriculture, with the direct retail endorsement
3 generally describing the labeling requirements set forth in chapter
4 69.04 RCW as they apply to seafood.

5 (9) The holder of a qualifying commercial fishing license issued
6 under this chapter must either possess a direct retail endorsement or
7 a wholesale dealer license provided for in RCW 77.65.280 in order to
8 lawfully sell their catch or harvest in the state to anyone other than
9 a licensed wholesale dealer.

10 (10) The direct retail endorsement entitles the holder to sell
11 wild-caught salmon or crab only at a temporary food service
12 establishment as that term is defined in RCW 69.06.045.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.65 RCW
14 to read as follows:

15 (1) Prior to being issued a direct retail endorsement, an
16 individual must:

17 (a) Obtain and submit to the department a signed letter on
18 appropriate letterhead from the health department of the county in
19 which the individual makes his or her official residence or where the
20 hailing port for any documented vessel owned by the individual is
21 located as to the fulfillment of all requirements related to county
22 health rules, including the payment of all required fees. The local
23 health department generating the letter may charge a reasonable fee for
24 any necessary inspections. The letter must certify that the methods
25 used by the individual to transport, store, and display fresh salmon
26 and crabs meets that county's standards and the statewide standards
27 adopted by the board of health for food service operations; and

28 (b) Submit proof to the department that the individual making the
29 direct retail sales is in possession of a valid food and beverage
30 service worker's permit, as provided for in chapter 69.06 RCW.

31 (2) The requirements of subsection (1) of this section must be
32 completed each license year before a renewal direct retail endorsement
33 can be issued.

34 (3) Any individual possessing a direct retail endorsement must
35 notify the local health department of the county in which retail sales
36 are to occur, except for the county that conducted the initial
37 inspection, forty-eight hours before any transaction and make his or
38 her facilities available for inspection by a fish and wildlife officer,

1 the local health department of any county in which he or she sells
2 salmon or crab, and any designee of the department of health or the
3 department of agriculture.

4 (4) Neither the department or a local health department may be held
5 liable in any judicial proceeding alleging that consumption of or
6 exposure to seafood sold by the holder of a direct retail endorsement
7 resulted in a negative health consequence, as long as the department
8 can show that the individual holding the direct retail endorsement
9 complied with the requirements of subsection (1) of this section prior
10 to being issued his or her direct retail license, and neither the
11 department nor a local health department acted in a reckless manner.
12 For the purposes of this subsection, the department or a local health
13 district shall not be deemed to be acting recklessly for not conducting
14 a permissive inspection.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.65 RCW
16 to read as follows:

17 (1) The direct retail endorsement is conditioned upon compliance:

18 (a) With the requirements of this chapter as they apply to
19 wholesale fish dealers and to the rules of the department relating to
20 the payment of fines for violations of rules for the accounting of the
21 commercial harvest of salmon or crabs; and

22 (b) With the state board of health and local rules for food service
23 establishments.

24 (2) Violations of the requirements and rules referenced in
25 subsection (1) of this section may result in the suspension of the
26 direct retail endorsement. The suspended individual must not be
27 reimbursed for any portion of the suspended endorsement. Suspension of
28 the direct retail endorsement may not occur unless and until:

29 (a) The director has notified by order the holder of the direct
30 retail endorsement when a violation of subsection (1) of this section
31 has occurred. The notification must specify the type of violation, the
32 liability to be imposed for damages caused by the violation, a notice
33 that the amount of liability is due and payable by the holder of the
34 direct retail endorsement, and an explanation of the options available
35 to satisfy the liability; and

36 (b) The holder of the direct retail endorsement has had at least
37 ninety days after the notification provided in (a) of this subsection
38 was received to either make full payment for all liabilities owed or

1 enter into an agreement with the department to pay off all liabilities
2 within a reasonable time.

3 (3)(a) If, within ninety days after receipt of the order provided
4 in subsection (2)(a) of this section, the amount specified in the order
5 is not paid or the holder of the direct retail endorsement has not
6 entered into an agreement with the department to pay off all
7 liabilities, the prosecuting attorney for any county in which the
8 persons to whom the order is directed do business, or the attorney
9 general upon request of the department, may bring an action on behalf
10 of the state in the superior court for Thurston county, or any county
11 in which the persons to whom the order is directed do business, to seek
12 suspension of the individual's direct retail endorsement for up to five
13 years.

14 (b) The department may temporarily suspend the privileges provided
15 by the direct retail endorsement for up to one hundred twenty days
16 following the receipt of the order provided in subsection (2)(a) of
17 this section, unless the holder of the direct retail endorsement has
18 deposited with the department an acceptable performance bond on forms
19 prescribed and provided by the department. This performance bond must
20 be a corporate surety bond executed in favor of the department by a
21 corporation authorized to do business in the state of Washington under
22 chapter 48.28 RCW and approved by the department. The bond must be
23 filed and maintained in an amount equal to one thousand dollars.

24 (4) For violations of state board of health and local rules under
25 subsection (1)(b) of this section only, any person inspecting the
26 facilities of a direct retail endorsement holder under section 3 of
27 this act may suspend the privileges granted by the endorsement for up
28 to seven days. Within twenty-four hours of the discovery of the
29 violation, the inspecting entity must notify the department of the
30 violation. Upon notification, the department may proceed with the
31 procedures outlined in this section for suspension of the endorsement.
32 If the violation of a state board of health rule is discovered by a
33 local health department, that local jurisdiction may fine the holder of
34 the direct retail endorsement according to the local jurisdiction's
35 rules as they apply to retail food operations.

36 (5) Subsections (2) and (3) of this section do not apply to a
37 holder of a direct retail endorsement that executes a surety bond and
38 abides by the conditions established in RCW 77.65.320 and 77.65.330 as
39 they apply to wholesale dealers.

1 **Sec. 5.** RCW 77.65.280 and 2000 c 107 s 48 are each amended to read
2 as follows:

3 A wholesale fish dealer's license is required for:

4 (1) A business in the state to engage in the commercial processing
5 of food fish or shellfish, including custom canning or processing of
6 personal use food fish or shellfish.

7 (2) A business in the state to engage in the wholesale selling,
8 buying, or brokering of food fish or shellfish. A wholesale fish
9 dealer's license is not required of those businesses which buy
10 exclusively from Washington licensed wholesale dealers and sell solely
11 at retail.

12 (3) Fishermen who land and sell their catch or harvest in the state
13 to anyone other than a licensed wholesale dealer within or outside the
14 state, unless the fisher has a direct retail endorsement.

15 (4) A business to engage in the commercial manufacture or
16 preparation of fertilizer, oil, meal, caviar, fish bait, or other
17 byproducts from food fish or shellfish.

18 (5) A business employing a fish buyer as defined under RCW
19 77.65.340.

20 The annual license fee for a wholesale dealer is two hundred fifty
21 dollars. A wholesale fish dealer's license is not required for persons
22 engaged in the processing, wholesale selling, buying, or brokering of
23 private sector cultured aquatic products as defined in RCW 15.85.020.
24 However, if a means of identifying such products is required by rules
25 adopted under RCW 15.85.060, the exemption from licensing requirements
26 established by this subsection applies only if the aquatic products are
27 identified in conformance with those rules.

28 **Sec. 6.** RCW 77.15.565 and 2000 c 107 s 12 are each amended to read
29 as follows:

30 Since violation of the rules of the department relating to the
31 accounting of the commercial harvest of food fish and shellfish result
32 in damage to the resources of the state, liability for damage to food
33 fish and shellfish resources is imposed on a wholesale fish dealer or
34 the holder of a direct retail endorsement for violation of a provision
35 in chapter 77.65 RCW or a rule of the department related to the
36 accounting of the commercial harvest of food fish and shellfish and
37 shall be for the actual damages or for damages imposed as follows:

1 (1) For violation of rules requiring the timely presentation to the
2 department of documents relating to the accounting of commercial
3 harvest, fifty dollars for each of the first fifteen documents in a
4 series and ten dollars for each subsequent document in the same series.
5 If documents relating to the accounting of commercial harvest of food
6 fish and shellfish are lost or destroyed and the wholesale dealer or
7 holder of a direct retail endorsement notifies the department in
8 writing within seven days of the loss or destruction, the director
9 shall waive the requirement for timely presentation of the documents.

10 (2) For violation of rules requiring accurate and legible
11 information relating to species, value, harvest area, or amount of
12 harvest, twenty-five dollars for each of the first five violations of
13 this subsection following July 28, 1985, and fifty dollars for each
14 violation after the first five violations.

15 (3) For violations of rules requiring certain signatures, fifty
16 dollars for each of the first two violations and one hundred dollars
17 for each subsequent violation. For the purposes of this subsection,
18 each signature is a separate requirement.

19 (4) For other violations of rules relating to the accounting of the
20 commercial harvest, fifty dollars for each separate violation.

21 **Sec. 7.** RCW 77.15.620 and 2000 c 107 s 253 are each amended to
22 read as follows:

23 (1) A person is guilty of engaging in fish dealing activity without
24 a license in the second degree if the person:

25 (a) Engages in the commercial processing of fish or shellfish,
26 including custom canning or processing of personal use fish or
27 shellfish and does not hold a wholesale dealer's license required by
28 RCW 77.65.280(1) or 77.65.480 for anadromous game fish, or a direct
29 retail endorsement under section 2 of this act;

30 (b) Engages in the wholesale selling, buying, or brokering of food
31 fish or shellfish and does not hold a wholesale dealer's or buying
32 license required by RCW 77.65.280(2) or 77.65.480 for anadromous game
33 fish;

34 (c) Is a fisher who lands and sells his or her catch or harvest in
35 the state to anyone other than a licensed wholesale dealer within or
36 outside the state and does not hold a (~~wholesale dealer's license~~
37 ~~required by RCW 77.65.280(3) or 77.65.480 for anadromous game fish~~)
38 direct retail endorsement required by section 2 of this act; or

1 (d) Engages in the commercial manufacture or preparation of
2 fertilizer, oil, meal, caviar, fish bait, or other byproducts from food
3 fish or shellfish and does not hold a wholesale dealer's license
4 required by RCW 77.65.280(4) or 77.65.480 for anadromous game fish.

5 (2) Engaging in fish dealing activity without a license in the
6 second degree is a gross misdemeanor.

7 (3) A person is guilty of engaging in fish dealing activity without
8 a license in the first degree if the person commits the act described
9 by subsection (1) of this section and the violation involves fish or
10 shellfish worth two hundred fifty dollars or more. Engaging in fish
11 dealing activity without a license in the first degree is a class C
12 felony.

13 **Sec. 8.** RCW 77.15.640 and 2000 c 107 s 255 are each amended to
14 read as follows:

15 (1) A person who holds a wholesale fish dealer's license required
16 by RCW 77.65.280, an anadromous game fish buyer's license required by
17 RCW 77.65.480, ~~((or))~~ a fish buyer's license required by RCW 77.65.340,
18 or a direct retail endorsement under section 2 of this act is guilty of
19 violating rules governing wholesale fish buying and dealing if the
20 person:

21 (a) Fails to possess or display his or her license when engaged in
22 any act requiring the license;

23 (b) Fails to display or uses the license in violation of any rule
24 of the department;

25 (c) Files a signed fish-receiving ticket but fails to provide all
26 information required by rule of the department; or

27 (d) Violates any other rule of the department regarding wholesale
28 fish buying and dealing.

29 (2) Violating rules governing wholesale fish buying and dealing is
30 a gross misdemeanor.

31 **Sec. 9.** RCW 36.71.090 and 1984 c 25 s 4 are each amended to read
32 as follows:

33 (1) It shall be lawful for any farmer, gardener, or other person,
34 without license, to sell, deliver, or peddle any fruits, vegetables,
35 berries, eggs, or any farm produce or edibles raised, gathered,
36 produced, or manufactured by such person and no city or town shall pass
37 or enforce any ordinance prohibiting the sale by or requiring license

1 from the producers and manufacturers of farm produce and edibles as
2 herein defined: PROVIDED, That nothing herein authorizes any person to
3 sell, deliver, or peddle, without license, in any city or town, any
4 dairy product, meat, poultry, eel, fish, mollusk, or shellfish where a
5 license is required to engage legally in such activity in such city or
6 town.

7 (2) It is lawful for an individual in possession of a valid direct
8 retail endorsement, as established in section 2 of this act, to sell,
9 deliver, or peddle wild-caught salmon or crab that is caught,
10 harvested, or collected under rule of the department of fish and
11 wildlife by such a person at a temporary food service establishment, as
12 that term is defined in RCW 69.06.045, and no city, town, or county may
13 pass or enforce an ordinance prohibiting the sale by or requiring
14 additional licenses or permits from the holder of the valid direct
15 retail endorsement. However, this subsection does not prohibit a city,
16 town, or county from inspecting an individual displaying a direct
17 retail endorsement to verify that the person is in compliance with
18 state board of health and local rules for food service operations.

19 **Sec. 10.** RCW 69.07.100 and 1995 c 374 s 22 are each amended to
20 read as follows:

21 The provisions of this chapter shall not apply to establishments
22 issued a permit or licensed under the provisions of:

23 (1) Chapter 69.25 RCW, the Washington wholesome eggs and egg
24 products act;

25 (2) Chapter 69.28 RCW, the Washington state honey act;

26 (3) Chapter 16.49 RCW, the Meat inspection act;

27 (4) Chapter 77.65 RCW, relating to the direct retail endorsement
28 for wild-caught seafood;

29 (5) Title 66 RCW, relating to alcoholic beverage control; and

30 ((+5+)) (6) Chapter 69.30 RCW, the Sanitary control of shellfish
31 act((:—PROVIDED, That)). However, if any such establishments process
32 foods not specifically provided for in the above entitled acts, such
33 establishments shall be subject to the provisions of this chapter.

34 The provisions of this chapter shall not apply to restaurants or
35 food service establishments.

36 NEW SECTION. **Sec. 11.** A new section is added to chapter 69.04 RCW
37 to read as follows:

