

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 2323**

Chapter 301, Laws of 2002

57th Legislature  
2002 Regular Session

COMMERCIAL FISHING

EFFECTIVE DATE: 7/1/02

Passed by the House March 12, 2002  
Yeas 97 Nays 0

FRANK CHOPP  
**Speaker of the House of Representatives**

Passed by the Senate March 7, 2002  
Yeas 47 Nays 1

BRAD OWEN  
**President of the Senate**

Approved April 2, 2002

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2323** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER  
**Chief Clerk**

FILED

April 2, 2002 - 10:23 a.m.

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE HOUSE BILL 2323

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AS AMENDED BY THE SENATE

Passed Legislature - 2002 Regular Session

State of Washington                      57th Legislature                      2002 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Hatfield, Buck, Doumit and Linville)

Read first time 02/06/2002. Referred to Committee on .

1            AN ACT Relating to commercial fishers; amending RCW 77.65.280,  
2 77.15.565, 77.15.620, 77.15.640, 36.71.090, and 69.07.100; adding new  
3 sections to chapter 77.65 RCW; adding a new section to chapter 69.04  
4 RCW; creating a new section; prescribing penalties; and providing an  
5 effective date.

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

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

1 Washington salmon or crab commercial fishing license to clean, dress,  
2 and sell his or her catch directly to consumers at retail, including  
3 over the internet. The direct retail endorsement must be issued as an  
4 optional addition to all holders of a salmon or crab commercial fishing  
5 license that the department offers under this chapter.

6 (2) The direct retail endorsement must be offered at the time of  
7 application for the qualifying commercial fishing license. Individuals  
8 in possession of a qualifying commercial fishing license issued under  
9 this chapter may add a direct retail endorsement to their current  
10 license at the time they renew their commercial fishing license.  
11 Individuals who do not have a commercial fishing license for salmon or  
12 crab issued under this chapter may not receive a direct retail  
13 endorsement. The costs, conditions, responsibilities, and privileges  
14 associated with the endorsed commercial fishing license is not affected  
15 or altered in any way by the addition of a direct retail endorsement.  
16 These costs include the base cost of the license and any revenue and  
17 excise taxes.

18 (3) An individual need only add one direct retail endorsement to  
19 his or her license portfolio. If a direct retail endorsement is  
20 selected by an individual holding more than one commercial fishing  
21 license issued under this chapter, a single direct retail endorsement  
22 is considered to be added to all qualifying commercial fishing licenses  
23 held by that individual, and is the only license required for the  
24 individual to sell at retail the harvest of salmon or crab permitted by  
25 all of the underlying endorsed licenses. The direct retail endorsement  
26 applies only to the person named on the endorsed license, and may not  
27 be used by an alternate operator named on the endorsed license.

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

33 (5) The holder of a direct retail endorsement is responsible for  
34 documenting the commercial harvest of salmon and crab according to the  
35 provisions of this chapter, the rules of the department for a wholesale  
36 fish dealer, and the reporting requirements of the endorsed license.  
37 Any salmon or crab caught by the holder of a direct retail endorsement  
38 must be landed in the round and documented on fish tickets, as provided  
39 for by the department, before further processing.

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

9 (7) The direct retail endorsement is to be held by a natural person  
10 and is not transferrable or assignable. If the endorsed license is  
11 transferred, the direct retail endorsement immediately becomes void,  
12 and the transferor is not eligible for a full or prorated reimbursement  
13 of the annual fee paid for the direct retail endorsement. Upon  
14 becoming void, the holder of a direct retail endorsement must surrender  
15 the physical endorsement to the department.

16 (8) The holder of a direct retail endorsement must abide by the  
17 provisions of Title 69 RCW as they apply to the processing and retail  
18 sale of seafood. The department must distribute a pamphlet, provided  
19 by the department of agriculture, with the direct retail endorsement  
20 generally describing the labeling requirements set forth in chapter  
21 69.04 RCW as they apply to seafood.

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

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

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

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

34 (a) Obtain and submit to the department a signed letter on  
35 appropriate letterhead from the health department of the county in  
36 which the individual makes his or her official residence or where the  
37 hailing port for any documented vessel owned by the individual is  
38 located as to the fulfillment of all requirements related to county

1 health rules, including the payment of all required fees. The local  
2 health department generating the letter may charge a reasonable fee for  
3 any necessary inspections. The letter must certify that the methods  
4 used by the individual to transport, store, and display fresh salmon  
5 and crabs meets that county's standards and the statewide standards  
6 adopted by the board of health for food service operations; and

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

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

13 (3) Any individual possessing a direct retail endorsement must  
14 notify the local health department of the county in which retail sales  
15 are to occur, except for the county that conducted the initial  
16 inspection, forty-eight hours before any transaction and make his or  
17 her facilities available for inspection by a fish and wildlife officer,  
18 the local health department of any county in which he or she sells  
19 salmon or crab, and any designee of the department of health or the  
20 department of agriculture.

21 (4) Neither the department or a local health department may be held  
22 liable in any judicial proceeding alleging that consumption of or  
23 exposure to seafood sold by the holder of a direct retail endorsement  
24 resulted in a negative health consequence, as long as the department  
25 can show that the individual holding the direct retail endorsement  
26 complied with the requirements of subsection (1) of this section prior  
27 to being issued his or her direct retail license, and neither the  
28 department nor a local health department acted in a reckless manner.  
29 For the purposes of this subsection, the department or a local health  
30 district shall not be deemed to be acting recklessly for not conducting  
31 a permissive inspection.

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

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

35 (a) With the requirements of this chapter as they apply to  
36 wholesale fish dealers and to the rules of the department relating to  
37 the payment of fines for violations of rules for the accounting of the  
38 commercial harvest of salmon or crabs; and

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

3 (2) Violations of the requirements and rules referenced in  
4 subsection (1) of this section may result in the suspension of the  
5 direct retail endorsement. The suspended individual must not be  
6 reimbursed for any portion of the suspended endorsement. Suspension of  
7 the direct retail endorsement may not occur unless and until:

8 (a) The director has notified by order the holder of the direct  
9 retail endorsement when a violation of subsection (1) of this section  
10 has occurred. The notification must specify the type of violation, the  
11 liability to be imposed for damages caused by the violation, a notice  
12 that the amount of liability is due and payable by the holder of the  
13 direct retail endorsement, and an explanation of the options available  
14 to satisfy the liability; and

15 (b) The holder of the direct retail endorsement has had at least  
16 ninety days after the notification provided in (a) of this subsection  
17 was received to either make full payment for all liabilities owed or  
18 enter into an agreement with the department to pay off all liabilities  
19 within a reasonable time.

20 (3)(a) If, within ninety days after receipt of the order provided  
21 in subsection (2)(a) of this section, the amount specified in the order  
22 is not paid or the holder of the direct retail endorsement has not  
23 entered into an agreement with the department to pay off all  
24 liabilities, the prosecuting attorney for any county in which the  
25 persons to whom the order is directed do business, or the attorney  
26 general upon request of the department, may bring an action on behalf  
27 of the state in the superior court for Thurston county, or any county  
28 in which the persons to whom the order is directed do business, to seek  
29 suspension of the individual's direct retail endorsement for up to five  
30 years.

31 (b) The department may temporarily suspend the privileges provided  
32 by the direct retail endorsement for up to one hundred twenty days  
33 following the receipt of the order provided in subsection (2)(a) of  
34 this section, unless the holder of the direct retail endorsement has  
35 deposited with the department an acceptable performance bond on forms  
36 prescribed and provided by the department. This performance bond must  
37 be a corporate surety bond executed in favor of the department by a  
38 corporation authorized to do business in the state of Washington under

1 chapter 48.28 RCW and approved by the department. The bond must be  
2 filed and maintained in an amount equal to one thousand dollars.

3 (4) For violations of state board of health and local rules under  
4 subsection (1)(b) of this section only, any person inspecting the  
5 facilities of a direct retail endorsement holder under section 3 of  
6 this act may suspend the privileges granted by the endorsement for up  
7 to seven days. Within twenty-four hours of the discovery of the  
8 violation, the inspecting entity must notify the department of the  
9 violation. Upon notification, the department may proceed with the  
10 procedures outlined in this section for suspension of the endorsement.  
11 If the violation of a state board of health rule is discovered by a  
12 local health department, that local jurisdiction may fine the holder of  
13 the direct retail endorsement according to the local jurisdiction's  
14 rules as they apply to retail food operations.

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

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

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

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

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

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

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

36 (5) A business employing a fish buyer as defined under RCW  
37 77.65.340.

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

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

11       Since violation of the rules of the department relating to the  
12 accounting of the commercial harvest of food fish and shellfish result  
13 in damage to the resources of the state, liability for damage to food  
14 fish and shellfish resources is imposed on a wholesale fish dealer or  
15 the holder of a direct retail endorsement for violation of a provision  
16 in chapter 77.65 RCW or a rule of the department related to the  
17 accounting of the commercial harvest of food fish and shellfish and  
18 shall be for the actual damages or for damages imposed as follows:

19       (1) For violation of rules requiring the timely presentation to the  
20 department of documents relating to the accounting of commercial  
21 harvest, fifty dollars for each of the first fifteen documents in a  
22 series and ten dollars for each subsequent document in the same series.  
23 If documents relating to the accounting of commercial harvest of food  
24 fish and shellfish are lost or destroyed and the wholesale dealer or  
25 holder of a direct retail endorsement notifies the department in  
26 writing within seven days of the loss or destruction, the director  
27 shall waive the requirement for timely presentation of the documents.

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

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

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



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

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

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

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

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

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

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

25       (3) A person is guilty of engaging in fish dealing activity without  
26 a license in the first degree if the person commits the act described  
27 by subsection (1) of this section and the violation involves fish or  
28 shellfish worth two hundred fifty dollars or more. Engaging in fish  
29 dealing activity without a license in the first degree is a class C  
30 felony.

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

33       (1) A person who holds a wholesale fish dealer's license required  
34 by RCW 77.65.280, an anadromous game fish buyer's license required by  
35 RCW 77.65.480, (~~or~~) a fish buyer's license required by RCW 77.65.340,  
36 or a direct retail endorsement under section 2 of this act is guilty of  
37 violating rules governing wholesale fish buying and dealing if the  
38 person:

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

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

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

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

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

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

13 (1) It shall be lawful for any farmer, gardener, or other person,  
14 without license, to sell, deliver, or peddle any fruits, vegetables,  
15 berries, eggs, or any farm produce or edibles raised, gathered,  
16 produced, or manufactured by such person and no city or town shall pass  
17 or enforce any ordinance prohibiting the sale by or requiring license  
18 from the producers and manufacturers of farm produce and edibles as  
19 herein defined: PROVIDED, That nothing herein authorizes any person to  
20 sell, deliver, or peddle, without license, in any city or town, any  
21 dairy product, meat, poultry, eel, fish, mollusk, or shellfish where a  
22 license is required to engage legally in such activity in such city or  
23 town.

24 (2) It is lawful for an individual in possession of a valid direct  
25 retail endorsement, as established in section 2 of this act, to sell,  
26 deliver, or peddle wild-caught salmon or crab that is caught,  
27 harvested, or collected under rule of the department of fish and  
28 wildlife by such a person at a temporary food service establishment, as  
29 that term is defined in RCW 69.06.045, and no city, town, or county may  
30 pass or enforce an ordinance prohibiting the sale by or requiring  
31 additional licenses or permits from the holder of the valid direct  
32 retail endorsement. However, this subsection does not prohibit a city,  
33 town, or county from inspecting an individual displaying a direct  
34 retail endorsement to verify that the person is in compliance with  
35 state board of health and local rules for food service operations.

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

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

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

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

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

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

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

10 ~~((+5))~~ (6) Chapter 69.30 RCW, the Sanitary control of shellfish  
11 act(~~(:—PROVIDED, That)~~). However, if any such establishments process  
12 foods not specifically provided for in the above entitled acts, such  
13 establishments shall be subject to the provisions of this chapter.

14 The provisions of this chapter shall not apply to restaurants or  
15 food service establishments.

16 NEW SECTION. Sec. 11. A new section is added to chapter 69.04 RCW  
17 to read as follows:

18 The department of agriculture must develop a pamphlet that  
19 generally describes the labeling requirements for seafood, as set forth  
20 in this chapter, and provide an adequate quantity of the pamphlets to  
21 the department of fish and wildlife to distribute with the issuance of  
22 a direct retail endorsement under section 2 of this act.

23 NEW SECTION. Sec. 12. This act takes effect July 1, 2002.

Passed the House March 12, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor April 2, 2002.

Filed in Office of Secretary of State April 2, 2002.