

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1057

58th Legislature
2003 Regular Session

Passed by the House April 24, 2003
Yeas 91 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 23, 2003
Yeas 46 Nays 0

President of the Senate

Approved

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 **SUBSTITUTE HOUSE BILL 1057** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1057

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Fisheries, Ecology & Parks (originally sponsored by Representatives Hatfield, Buck, Blake and Kessler)

READ FIRST TIME 02/07/03.

1 AN ACT Relating to commercial fishing violations; amending RCW
2 77.15.700 and 77.65.030; adding new sections to chapter 77.15 RCW;
3 creating a new section; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** (1)(a) The legislature finds that existing
6 law as it relates to the suspension of commercial fishing licenses does
7 not take into account the real-life circumstances faced by the state's
8 commercial fishing fleets. The nature of the commercial fishing
9 industry, together with the complexity of fisheries regulations, is
10 such that honest mistakes can be made by well-meaning and otherwise
11 law-abiding fishers. Commercial fishing violations that occur within
12 an acceptable margin of error should not result in the suspension of
13 fishing privileges. Likewise, fishers facing the possibility of
14 license suspension or revocation deserve the opportunity to explain any
15 extenuating circumstances prior to having his or her professional
16 privileges suspended.

17 (b) The legislature intends, by creating the license suspension
18 review committee, to provide a fisher with the opportunity to explain
19 any extenuating circumstances that led to a commercial fishing

1 violation. The legislature intends for the license suspension review
2 committee to give serious considerations to the case-specific facts and
3 scenarios leading up to a violation, and for license suspensions to
4 issue only when the facts indicate a willful act that undermines the
5 conservation of fish stocks. Frivolous violations should not result in
6 the suspension of privileges, and should be punished only by the
7 criminal sanctions attached to the underlying crime.

8 (2)(a) The legislature further finds that gross abuses of fish
9 stocks should not be tolerated. Individuals convicted of even one
10 violation that is egregious in nature, causing serious detriment to a
11 fishery or the competitive disposition of other fishers, should have
12 his or her license suspended and revoked.

13 (b) The legislature intends for the license suspension review
14 committee to take egregious fisheries' violations seriously. When
15 dealing with individuals convicted of only one violation, the license
16 suspension review committee should only consider suspension for
17 individuals that are convicted of violations that are of a severe
18 magnitude and show a wanton disregard for the public's resource.

19 **Sec. 2.** RCW 77.15.700 and 2001 c 253 s 46 are each amended to read
20 as follows:

21 The department shall impose revocation and suspension of privileges
22 upon conviction in the following circumstances:

23 (1) If directed by statute for an offense;

24 (2) If the department finds that actions of the defendant
25 demonstrated a willful or wanton disregard for conservation of fish or
26 wildlife. Such suspension of privileges may be permanent. This
27 subsection (2) does not apply to violations involving commercial
28 fishing;

29 (3) If a person is convicted twice within ten years for a violation
30 involving unlawful hunting, killing, or possessing big game, the
31 department shall order revocation and suspension of all hunting
32 privileges for two years. RCW 77.12.722 or 77.16.050 as it existed
33 before June 11, 1998, may comprise one of the convictions constituting
34 the basis for revocation and suspension under this subsection;

35 (4) If a person is convicted three times in ten years of any
36 violation of recreational hunting or fishing laws or rules, the

1 department shall order a revocation and suspension of all recreational
2 hunting and fishing privileges for two years((+

3 ~~(5) If a person is convicted twice within five years of a gross~~
4 ~~misdemeanor or felony involving unlawful commercial fish or shellfish~~
5 ~~harvesting, buying, or selling, the department shall impose a~~
6 ~~revocation and suspension of the person's commercial fishing privileges~~
7 ~~for one year. A commercial fishery license revoked under this~~
8 ~~subsection may not be used by an alternate operator or transferred~~
9 ~~during the period of suspension)).~~

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.15 RCW
11 to read as follows:

12 (1) If a person is convicted of two or more qualifying commercial
13 fishing violations within a three-year period, the person's privileges
14 to participate in the commercial fishery to which the violations
15 applied may be suspended by the director for up to one year. A
16 commercial fishery license that is suspended under this section may not
17 be transferred after the director issues a notice of suspension, or
18 used by an alternative operator or transferred during the period of
19 suspension, if the person who is the subject of the suspension notice
20 is the person who owns the commercial fishery license.

21 (2) For the purposes of this section only, "qualifying commercial
22 fishing violation" means either:

23 (a) A conviction under RCW 77.15.500, 77.15.510, 77.15.520,
24 77.15.530, 77.15.550(1)(a), 77.15.570, 77.15.580, or 77.15.590;

25 (b) A gross misdemeanor or felony involving commercial fish
26 harvesting, buying, or selling that is unlawful under the terms of the
27 license, this title, or the rules issued pursuant to this title, if the
28 quantity of unlawfully harvested, possessed, bought, or sold fish,
29 other than shellfish, groundfish, or coastal pelagic species of
30 baitfish totals greater than six percent, by weight, of the harvest
31 available for inspection at the time of citation and the cumulative
32 value of the unlawfully harvested fish is more than two hundred fifty
33 dollars at the time of citation;

34 (c) A gross misdemeanor or felony involving commercial groundfish
35 or coastal pelagic baitfish harvest, buying, or selling that is
36 unlawful under the terms of the license, this title, or the rules
37 issued under this title, if: (i) The quantity of unlawfully harvested,

1 possessed, bought, or sold groundfish or coastal pelagic baitfish
2 totals greater than ten percent, by weight, of the harvest available
3 for inspection at the time of citation and has a cumulative value
4 greater than five hundred dollars; or (ii) the quantity, by weight, of
5 the unlawfully commercially harvested groundfish or coastal pelagic
6 baitfish is ten percent greater than the landing allowances provided
7 under rules adopted by the department for species categorized as over-
8 fished by the national marine fisheries service; or

9 (d) A gross misdemeanor or felony involving commercial shellfish
10 harvesting, buying, or selling that is unlawful under the terms of the
11 license, this title, or the rules issued pursuant to this title, if the
12 quantity of unlawfully harvested, possessed, bought, or sold shellfish:
13 (i) Totals greater than six percent of the harvest available for
14 inspection at the time of citation; and (ii) totals fifty or more
15 individual shellfish.

16 (3)(a) The director may refer a person convicted of one qualifying
17 commercial fishing violation to the license suspension review committee
18 if the director feels that the qualifying commercial fishing violation
19 was of a severe enough magnitude to justify suspension of the
20 individual's license renewal privileges.

21 (b) The director may refer any person convicted of one egregious
22 shellfish violation to the license suspension review committee.

23 (c) For the purposes of this section only, "egregious shellfish
24 violation" means a gross misdemeanor or felony involving commercial
25 shellfish harvesting, buying, or selling that is unlawful under the
26 terms of the license, this title, or the rules issued pursuant to this
27 title, if the quantity of unlawfully harvested, possessed, bought, or
28 sold shellfish: (i) Totals more than twenty percent of the harvest
29 available for inspection at the time of citation; (ii) totals five
30 hundred or more individual shellfish; and (iii) is valued at two
31 thousand five hundred dollars or more.

32 (4) A person who has a commercial fishing license suspended or
33 revoked under this section may file an appeal with the license
34 suspension review committee pursuant to section 4 of this act. An
35 appeal must be filed within thirty-one days of notice of license
36 suspension or revocation. If an appeal is filed, the suspension or
37 revocation issued by the department does not take effect until after
38 the license suspension review committee has delivered an opinion. If

1 no appeal is filed within thirty-one days of notice of license
2 suspension or revocation, the right to an appeal is considered waived.
3 All suspensions ordered under this section take effect either thirty-
4 one days following the conviction for the second qualifying commercial
5 fishing violation, or upon a decision pursuant to section 4 of this
6 act, whichever is later.

7 (5) A fishing privilege suspended under this section is in addition
8 to the statutory penalties assigned to the underlying crime.

9 (6) For the purposes of this section only, the burden is on the
10 state to show the dollar amount or the percent of a harvest that is
11 comprised of unlawfully harvested, bought, or sold individual fish or
12 shellfish.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.15 RCW
14 to read as follows:

15 (1) The license suspension review committee is created. The
16 license suspension review committee may only hear appeals from
17 commercial fishers who have had a license revoked or suspended pursuant
18 to section 3 of this act.

19 (2)(a) The license suspension review committee is composed of five
20 voting members and up to four alternates.

21 (b) Two of the members must be appointed by the director and may be
22 department employees.

23 (c) Three members, and up to four alternates, must be peer-group
24 members, who are individuals owning a commercial fishing license issued
25 by the department. If a peer-group member appears before the license
26 suspension review committee because of a qualifying commercial fishing
27 violation, the member must recuse himself or herself from the
28 proceedings relating to that violation. No two voting peer-group
29 members may reside in the same county. All peer-group members must be
30 appointed by the commission, who may accept recommendations from
31 professional organizations that represent commercial fishing interests
32 or from the legislative authority of any Washington county.

33 (d) All license suspension review committee members serve a two-
34 year renewable term.

35 (e) The commission may develop minimum member standards for service
36 on the license suspension review committee, and standards for
37 terminating a member before the expiration of his or her term.

1 (3) The license suspension review committee must convene and
2 deliver an opinion on a license renewal suspension within three months
3 of appeal or of referral from the department. The director shall
4 consider the committee's opinion and make a decision and may issue, not
5 issue, or modify the license suspension.

6 (4) The license suspension review committee shall collect the
7 information and hear the testimony that it feels necessary to deliver
8 an opinion on the proper length, if any, of a suspension of a
9 commercial license. The opinion may be based on extenuating
10 circumstances presented by the individual convicted of the qualifying
11 commercial fishing violation or considerations of the type and
12 magnitude of violations that have been committed by the individual.
13 The maximum length of any suspension may not exceed one year.

14 (5) All opinions of the license suspension review committee must be
15 by a majority vote of all voting members. Alternate committee members
16 may only vote when one of the voting members is unavailable, has been
17 recused, or has decided not to vote on the case before the committee.
18 Nonvoting alternates may be present and may participate at all license
19 suspension review committee meetings.

20 (6) Members of the license suspension review committee serve as
21 volunteers, and are not eligible for compensation other than travel
22 expenses pursuant to RCW 43.03.050 and 43.03.060.

23 (7) Staff of the license suspension review committee must be
24 provided by the department.

25 **Sec. 5.** RCW 77.65.030 and 2001 c 244 s 2 are each amended to read
26 as follows:

27 The application deadline for a commercial license or permit
28 established in this chapter is December 31st of the calendar year for
29 which the license or permit is sought. The department shall accept no
30 license or permit applications after December 31st of the calendar year
31 for which the license or permit is sought. The application deadline in
32 this section does not apply to a license or permit that has not been
33 renewed because of the death or incapacity of the license or permit
34 holder. The license or permit holder's surviving spouse, estate,
35 (~~(or)~~) estate beneficiary, attorney in fact, or guardian must be given
36 (~~(a reasonable opportunity)~~) an additional one hundred eighty days to
37 renew the license or permit.

1 NEW SECTION. **Sec. 6.** Section 5 of this act is necessary for the
2 immediate preservation of the public peace, health, or safety, or
3 support of the state government and its existing public institutions,
4 and takes effect immediately.

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