
SUBSTITUTE SENATE BILL 5426

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Parks, Fish & Wildlife (originally sponsored by Senators Oke and Doumit)

READ FIRST TIME 02/27/03.

1 AN ACT Relating to the selling of commercially harvested fish; and
2 amending RCW 77.08.010, 77.65.510, 77.65.515, 77.65.520, 36.71.090, and
3 82.27.020.

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

5 **Sec. 1.** RCW 77.08.010 and 2002 c 281 s 2 are each amended to read
6 as follows:

7 As used in this title or rules adopted under this title, unless the
8 context clearly requires otherwise:

9 (1) "Director" means the director of fish and wildlife.

10 (2) "Department" means the department of fish and wildlife.

11 (3) "Commission" means the state fish and wildlife commission.

12 (4) "Person" means and includes an individual; a corporation; a
13 public or private entity or organization; a local, state, or federal
14 agency; all business organizations, including corporations and
15 partnerships; or a group of two or more individuals acting with a
16 common purpose whether acting in an individual, representative, or
17 official capacity.

18 (5) "Fish and wildlife officer" means a person appointed and
19 commissioned by the director, with authority to enforce this title and

1 rules adopted pursuant to this title, and other statutes as prescribed
2 by the legislature. Fish and wildlife officer includes a person
3 commissioned before June 11, 1998, as a wildlife agent or a fisheries
4 patrol officer.

5 (6) "Ex officio fish and wildlife officer" means a commissioned
6 officer of a municipal, county, state, or federal agency having as its
7 primary function the enforcement of criminal laws in general, while the
8 officer is in the appropriate jurisdiction. The term "ex officio fish
9 and wildlife officer" includes special agents of the national marine
10 fisheries service, state parks commissioned officers, United States
11 fish and wildlife special agents, department of natural resources
12 enforcement officers, and United States forest service officers, while
13 the agents and officers are within their respective jurisdictions.

14 (7) "To hunt" and its derivatives means an effort to kill, injure,
15 capture, or harass a wild animal or wild bird.

16 (8) "To trap" and its derivatives means a method of hunting using
17 devices to capture wild animals or wild birds.

18 (9) "To fish," "to harvest," and "to take," and their derivatives
19 means an effort to kill, injure, harass, or catch a fish or shellfish.

20 (10) "Open season" means those times, manners of taking, and places
21 or waters established by rule of the commission for the lawful hunting,
22 fishing, taking, or possession of game animals, game birds, game fish,
23 food fish, or shellfish that conform to the special restrictions or
24 physical descriptions established by rule of the commission or that
25 have otherwise been deemed legal to hunt, fish, take, harvest, or
26 possess by rule of the commission. "Open season" includes the first
27 and last days of the established time.

28 (11) "Closed season" means all times, manners of taking, and places
29 or waters other than those established by rule of the commission as an
30 open season. "Closed season" also means all hunting, fishing, taking,
31 or possession of game animals, game birds, game fish, food fish, or
32 shellfish that do not conform to the special restrictions or physical
33 descriptions established by rule of the commission as an open season or
34 that have not otherwise been deemed legal to hunt, fish, take, harvest,
35 or possess by rule of the commission as an open season.

36 (12) "Closed area" means a place where the hunting of some or all
37 species of wild animals or wild birds is prohibited.

1 (13) "Closed waters" means all or part of a lake, river, stream, or
2 other body of water, where fishing or harvesting is prohibited.

3 (14) "Game reserve" means a closed area where hunting for all wild
4 animals and wild birds is prohibited.

5 (15) "Bag limit" means the maximum number of game animals, game
6 birds, or game fish which may be taken, caught, killed, or possessed by
7 a person, as specified by rule of the commission for a particular
8 period of time, or as to size, sex, or species.

9 (16) "Wildlife" means all species of the animal kingdom whose
10 members exist in Washington in a wild state. This includes but is not
11 limited to mammals, birds, reptiles, amphibians, fish, and
12 invertebrates. The term "wildlife" does not include feral domestic
13 mammals, old world rats and mice of the family Muridae of the order
14 Rodentia, or those fish, shellfish, and marine invertebrates classified
15 as food fish or shellfish by the director. The term "wildlife"
16 includes all stages of development and the bodily parts of wildlife
17 members.

18 (17) "Wild animals" means those species of the class Mammalia whose
19 members exist in Washington in a wild state and the species *Rana*
20 *catesbeiana* (bullfrog). The term "wild animal" does not include feral
21 domestic mammals or old world rats and mice of the family Muridae of
22 the order Rodentia.

23 (18) "Wild birds" means those species of the class Aves whose
24 members exist in Washington in a wild state.

25 (19) "Protected wildlife" means wildlife designated by the
26 commission that shall not be hunted or fished.

27 (20) "Endangered species" means wildlife designated by the
28 commission as seriously threatened with extinction.

29 (21) "Game animals" means wild animals that shall not be hunted
30 except as authorized by the commission.

31 (22) "Fur-bearing animals" means game animals that shall not be
32 trapped except as authorized by the commission.

33 (23) "Game birds" means wild birds that shall not be hunted except
34 as authorized by the commission.

35 (24) "Predatory birds" means wild birds that may be hunted
36 throughout the year as authorized by the commission.

37 (25) "Deleterious exotic wildlife" means species of the animal

1 kingdom not native to Washington and designated as dangerous to the
2 environment or wildlife of the state.

3 (26) "Game farm" means property on which wildlife is held or raised
4 for commercial purposes, trade, or gift. The term "game farm" does not
5 include publicly owned facilities.

6 (27) "Person of disability" means a permanently disabled person who
7 is not ambulatory without the assistance of a wheelchair, crutches, or
8 similar devices.

9 (28) "Fish" includes all species classified as game fish or food
10 fish by statute or rule, as well as all fin fish not currently
11 classified as food fish or game fish if such species exist in state
12 waters. The term "fish" includes all stages of development and the
13 bodily parts of fish species.

14 (29) "Raffle" means an activity in which tickets bearing an
15 individual number are sold for not more than twenty-five dollars each
16 and in which a permit or permits are awarded to hunt or for access to
17 hunt big game animals or wild turkeys on the basis of a drawing from
18 the tickets by the person or persons conducting the raffle.

19 (30) "Youth" means a person fifteen years old for fishing and under
20 sixteen years old for hunting.

21 (31) "Senior" means a person seventy years old or older.

22 (32) "License year" means the period of time for which a
23 recreational license is valid. The license year begins April 1st, and
24 ends March 31st.

25 (33) "Saltwater" means those marine waters seaward of river mouths.

26 (34) "Freshwater" means all waters not defined as saltwater
27 including, but not limited to, rivers upstream of the river mouth,
28 lakes, ponds, and reservoirs.

29 (35) "State waters" means all marine waters and fresh waters within
30 ordinary high water lines and within the territorial boundaries of the
31 state.

32 (36) "Offshore waters" means marine waters of the Pacific Ocean
33 outside the territorial boundaries of the state, including the marine
34 waters of other states and countries.

35 (37) "Concurrent waters of the Columbia river" means those waters
36 of the Columbia river that coincide with the Washington-Oregon state
37 boundary.

1 (38) "Resident" means a person who has maintained a permanent place
2 of abode within the state for at least ninety days immediately
3 preceding an application for a license, has established by formal
4 evidence an intent to continue residing within the state, and who is
5 not licensed to hunt or fish as a resident in another state.

6 (39) "Nonresident" means a person who has not fulfilled the
7 qualifications of a resident.

8 (40) "Shellfish" means those species of marine and freshwater
9 invertebrates that have been classified and that shall not be taken
10 except as authorized by rule of the commission. The term "shellfish"
11 includes all stages of development and the bodily parts of shellfish
12 species.

13 (41) "Commercial" means related to or connected with buying,
14 selling, or bartering.

15 (42) "To process" and its derivatives mean preparing or preserving
16 fish, wildlife, or shellfish.

17 (43) "Personal use" means for the private use of the individual
18 taking the fish or shellfish and not for sale or barter.

19 (44) "Angling gear" means a line attached to a rod and reel capable
20 of being held in hand while landing the fish or a hand-held line
21 operated without rod or reel.

22 (45) "Fishery" means the taking of one or more particular species
23 of fish or shellfish with particular gear in a particular geographical
24 area.

25 (46) "Limited-entry license" means a license subject to a license
26 limitation program established in chapter 77.70 RCW.

27 (47) "Seaweed" means marine aquatic plant species that are
28 dependent upon the marine aquatic or tidal environment, and exist in
29 either an attached or free floating form, and includes but is not
30 limited to marine aquatic plants in the classes Chlorophyta,
31 Phaeophyta, and Rhodophyta.

32 (48) "Trafficking" means offering, attempting to engage, or
33 engaging in sale, barter, or purchase of fish, shellfish, wildlife, or
34 deleterious exotic wildlife.

35 (49) "Invasive species" means a plant species or a nonnative animal
36 species that either:

37 (a) Causes or may cause displacement of, or otherwise threatens,
38 native species in their natural communities;

1 (b) Threatens or may threaten natural resources or their use in the
2 state;

3 (c) Causes or may cause economic damage to commercial or
4 recreational activities that are dependent upon state waters; or

5 (d) Threatens or harms human health.

6 (50) "Prohibited aquatic animal species" means an invasive species
7 of the animal kingdom that has been classified as a prohibited aquatic
8 animal species by the commission.

9 (51) "Regulated aquatic animal species" means a potentially
10 invasive species of the animal kingdom that has been classified as a
11 regulated aquatic animal species by the commission.

12 (52) "Unregulated aquatic animal species" means a nonnative animal
13 species that has been classified as an unregulated aquatic animal
14 species by the commission.

15 (53) "Unlisted aquatic animal species" means a nonnative animal
16 species that has not been classified as a prohibited aquatic animal
17 species, a regulated aquatic animal species, or an unregulated aquatic
18 animal species by the commission.

19 (54) "Aquatic plant species" means an emergent, submersed,
20 partially submersed, free-floating, or floating-leaving plant species
21 that grows in or near a body of water or wetland.

22 (55) "Retail-eligible species" means commercially harvested salmon,
23 crab, and sturgeon.

24 **Sec. 2.** RCW 77.65.510 and 2002 c 301 s 2 are each amended to read
25 as follows:

26 (1) The department must establish and administer a direct retail
27 endorsement to serve as a single license that permits the holder of a
28 Washington ~~((salmon or crab commercial fishing))~~ license to
29 commercially harvest retail-eligible species and to clean, dress, and
30 sell his or her catch directly to consumers at retail, including over
31 the internet. The direct retail endorsement must be issued as an
32 optional addition to all holders of a ~~((salmon or crab))~~ commercial
33 fishing license for retail-eligible species that the department offers
34 under this chapter.

35 (2) The direct retail endorsement must be offered at the time of
36 application for the qualifying commercial fishing license. Individuals
37 in possession of a qualifying commercial fishing license issued under

1 this chapter may add a direct retail endorsement to their current
2 license at ~~((the))~~ any time ~~((they renew their commercial fishing~~
3 ~~license))~~. Individuals who do not have a commercial fishing license
4 for ~~((salmon or crab))~~ retail-eligible species issued under this
5 chapter may not receive a direct retail endorsement. The costs,
6 conditions, responsibilities, and privileges associated with the
7 endorsed commercial fishing license is not affected or altered in any
8 way by the addition of a direct retail endorsement. These costs
9 include the base cost of the license and any revenue and excise taxes.

10 (3) An individual need only add one direct retail endorsement to
11 his or her license portfolio. If a direct retail endorsement is
12 selected by an individual holding more than one commercial fishing
13 license issued under this chapter, a single direct retail endorsement
14 is considered to be added to all qualifying commercial fishing licenses
15 held by that individual, and is the only license required for the
16 individual to sell at retail ~~((the harvest of salmon or crab))~~ any
17 retail-eligible species permitted by all of the underlying endorsed
18 licenses. The direct retail endorsement applies only to the person
19 named on the endorsed license, and may not be used by an alternate
20 operator named on the endorsed license.

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

26 (5) The holder of a direct retail endorsement is responsible for
27 documenting the commercial harvest of salmon and crab according to the
28 provisions of this chapter, the rules of the department for a wholesale
29 fish dealer, and the reporting requirements of the endorsed license.
30 Any ~~((salmon or crab))~~ retail-eligible species caught by the holder of
31 a direct retail endorsement must be ~~((landed in the round and))~~
32 documented on fish tickets ~~((, as provided for by the department, before~~
33 ~~further processing))~~.

34 (6) The direct retail endorsement must be displayed in a readily
35 visible manner by the seller wherever and whenever a sale to someone
36 other than a licensed wholesale dealer occurs. The commission may
37 require that the holder of a direct retail endorsement notify the
38 department up to eighteen hours before conducting an in-person sale of

1 retail-eligible species, except for in-person sales that have a
2 cumulative retail sales value of less than one hundred fifty dollars in
3 a twenty-four hour period that are sold directly from the vessel. For
4 sales occurring in a venue other than in person, such as over the
5 internet, through a catalog, or on the phone, the direct retail
6 endorsement number of the seller must be provided to the buyer both at
7 the time of sale and the time of delivery. All internet sales must be
8 conducted in accordance 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))~~ a retail-eligible species only at a
29 temporary food service establishment as that term is defined in RCW
30 69.06.045, or directly to a restaurant or other nonretail food service
31 business.

32 **Sec. 3.** RCW 77.65.515 and 2002 c 301 s 3 are each amended to read
33 as follows:

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

36 (a) Obtain and submit to the department a signed letter on
37 appropriate letterhead from the health department of the county in

1 which the individual makes his or her official residence or where the
2 hailing port for any documented vessel owned by the individual is
3 located as to the fulfillment of all requirements related to county
4 health rules, including the payment of all required fees. The local
5 health department generating the letter may charge a reasonable fee for
6 any necessary inspections. The letter must certify that the methods
7 used by the individual to transport, store, and display any fresh
8 (~~salmon and crabs~~) retail-eligible species meets that county's
9 standards and the statewide standards adopted by the board of health
10 for food service operations; and

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

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

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

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

1 **Sec. 4.** RCW 77.65.520 and 2002 c 301 s 4 are each amended to read
2 as follows:

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

4 (a) With the requirements of this chapter as they apply to
5 wholesale fish dealers and to the rules of the department relating to
6 the payment of fines for violations of rules for the accounting of the
7 commercial harvest of (~~salmon or crabs~~) retail eligible species; and

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

10 (2) Violations of the requirements and rules referenced in
11 subsection (1) of this section may result in the suspension of the
12 direct retail endorsement. The suspended individual must not be
13 reimbursed for any portion of the suspended endorsement. Suspension of
14 the direct retail endorsement may not occur unless and until:

15 (a) The director has notified by order the holder of the direct
16 retail endorsement when a violation of subsection (1) of this section
17 has occurred. The notification must specify the type of violation, the
18 liability to be imposed for damages caused by the violation, a notice
19 that the amount of liability is due and payable by the holder of the
20 direct retail endorsement, and an explanation of the options available
21 to satisfy the liability; and

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

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

1 (b) The department may temporarily suspend the privileges provided
2 by the direct retail endorsement for up to one hundred twenty days
3 following the receipt of the order provided in subsection (2)(a) of
4 this section, unless the holder of the direct retail endorsement has
5 deposited with the department an acceptable performance bond on forms
6 prescribed and provided by the department. This performance bond must
7 be a corporate surety bond executed in favor of the department by a
8 corporation authorized to do business in the state of Washington under
9 chapter 48.28 RCW and approved by the department. The bond must be
10 filed and maintained in an amount equal to one thousand dollars.

11 (4) For violations of state board of health and local rules under
12 subsection (1)(b) of this section only, any person inspecting the
13 facilities of a direct retail endorsement holder under RCW 77.65.515
14 may suspend the privileges granted by the endorsement for up to seven
15 days. Within twenty-four hours of the discovery of the violation, the
16 inspecting entity must notify the department of the violation. Upon
17 notification, the department may proceed with the procedures outlined
18 in this section for suspension of the endorsement. If the violation of
19 a state board of health rule is discovered by a local health
20 department, that local jurisdiction may fine the holder of the direct
21 retail endorsement according to the local jurisdiction's rules as they
22 apply to retail food operations.

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

27 **Sec. 5.** RCW 36.71.090 and 2002 c 301 s 9 are each amended to read
28 as follows:

29 (1) It shall be lawful for any farmer, gardener, or other person,
30 without license, to sell, deliver, or peddle any fruits, vegetables,
31 berries, eggs, or any farm produce or edibles raised, gathered,
32 produced, or manufactured by such person and no city or town shall pass
33 or enforce any ordinance prohibiting the sale by or requiring license
34 from the producers and manufacturers of farm produce and edibles as
35 ((herein)) defined(~~(:—PROVIDED, That)~~) in this section. However,
36 nothing ((herein)) in this section authorizes any person to sell,
37 deliver, or peddle, without license, in any city or town, any dairy

1 product, meat, poultry, eel, fish, mollusk, or shellfish where a
2 license is required to engage legally in such activity in such city or
3 town.

4 (2) It is lawful for an individual in possession of a valid direct
5 retail endorsement, as established in RCW 77.65.510, to sell, deliver,
6 or peddle (~~(wild-caught salmon or crab)~~) any legally harvested retail-
7 eligible species, as that term is defined in RCW 77.08.010, that is
8 caught, harvested, or collected under rule of the department of fish
9 and wildlife by such a person at a temporary food service
10 establishment, as that term is defined in RCW 69.06.045, and no city,
11 town, or county may pass or enforce an ordinance prohibiting the sale
12 by or requiring additional licenses or permits from the holder of the
13 valid direct retail endorsement. However, this subsection does not
14 prohibit a city, town, or county from inspecting an individual
15 displaying a direct retail endorsement to verify that the person is in
16 compliance with state board of health and local rules for food service
17 operations.

18 **Sec. 6.** RCW 82.27.020 and 2001 c 320 s 9 are each amended to read
19 as follows:

20 (1) In addition to all other taxes, licenses, or fees provided by
21 law there is established an excise tax on the commercial possession of
22 enhanced food fish as provided in this chapter. The tax is levied upon
23 and shall be collected from the owner of the enhanced food fish whose
24 possession constitutes the taxable event. The taxable event is the
25 first possession in Washington by an owner after the enhanced food fish
26 has been landed. Processing and handling of enhanced food fish by a
27 person who is not the owner is not a taxable event to the processor or
28 handler.

29 (2) A person in possession of enhanced food fish and liable to this
30 tax may deduct from the price paid to the person from which the
31 enhanced food fish (except oysters) are purchased an amount equal to a
32 tax at one-half the rate levied in this section upon these products.

33 (3) The measure of the tax (~~(is the value of the)~~) for all enhanced
34 food fish, including retail-eligible fish sold with a direct retail
35 endorsement pursuant to RCW 77.65.510, is the comparable sales price
36 for similar species of fish at the point of landing.

1 (4) The tax shall be equal to the measure of the tax multiplied by
2 the rates for enhanced food fish as follows:
3 (a) Chinook, coho, and chum salmon and anadromous game fish: Five
4 and twenty-five one-hundredths percent;
5 (b) Pink and sockeye salmon: Three and fifteen one-hundredths
6 percent;
7 (c) Other food fish and shellfish, except oysters, sea urchins, and
8 sea cucumbers: Two and one-tenth percent;
9 (d) Oysters: Eight one-hundredths of one percent;
10 (e) Sea urchins: Four and six-tenths percent through December 31,
11 2005, and two and one-tenth percent thereafter; and
12 (f) Sea cucumbers: Four and six-tenths percent through December
13 31, 2005, and two and one-tenth percent thereafter.
14 (5) An additional tax is imposed equal to the rate specified in RCW
15 82.02.030 multiplied by the tax payable under subsection (4) of this
16 section.

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