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**SUBSTITUTE SENATE BILL 5330**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Van De Wege, Salomon, Warnick, and Wilson, C.)

AN ACT Relating to commercial whale watching licenses; amending RCW 77.65.615 and 77.65.620; and declaring an emergency.

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

**Sec.**  RCW 77.65.615 and 2019 c 291 s 2 are each amended to read as follows:

(1) A commercial whale watching license is required for commercial whale watching operators. The annual fee is two hundred dollars in addition to the annual application fee of seventy-five dollars.

(2) The annual fees for a commercial whale watching license as described in subsection (1) of this section must include fees for each motorized or sailing vessel or vessels as follows:

(a) One to twenty-four passengers, three hundred twenty-five dollars;

(b) Twenty-five to fifty passengers, five hundred twenty-five dollars;

(c) Fifty-one to one hundred passengers, eight hundred twenty-five dollars;

(d) One hundred one to one hundred fifty passengers, one thousand eight hundred twenty-five dollars; and

(e) One hundred fifty-one passengers or greater, two thousand dollars.

(3)(a) The annual fees for a commercial whale watching license as described in subsection (1) of this section must include fees for each kayak as follows:

((~~(a)~~)) (i) One to ten kayaks, one hundred twenty-five dollars;

((~~(b)~~)) (ii) Eleven to twenty kayaks, two hundred twenty-five dollars;

((~~(c)~~)) (iii) Twenty-one to thirty kayaks, four hundred twenty-five dollars; and

((~~(d)~~)) (iv) Thirty-one or more kayaks, six hundred twenty-five dollars.

(b) The annual fees in this subsection are waived during the 24-month period beginning May 1, 2021.

(4) The holder of a commercial whale watching license for motorized or sailing vessels required under subsection (2) of this section may substitute the vessel designated on the license, or designate a vessel if none has previously been designated, if the license holder:

(a) Surrenders the previously issued license to the department;

(b) Submits to the department an application that identifies the currently designated vessel, the vessel proposed to be designated, and any other information required by the department; and

(c) Pays to the department a fee of thirty-five dollars and an application fee of one hundred five dollars.

(5) Unless the license holder owns all vessels identified on the application described in subsection (4)(b) of this section, the department may not change the vessel designation on the license more than once per calendar year.

(6) A person who is not the license holder may operate a motorized or sailing commercial whale watching vessel designated on the license only if:

(a) The person holds an alternate operator license issued by the director; and

(b) The person is designated as an alternate operator on the underlying commercial whale watching license.

(7) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial whale watching licenses.

(8) The annual fee for an alternate operator license is two hundred dollars in addition to an annual application fee of seventy-five dollars.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Commercial whale watching" means the act of taking, or offering to take, passengers aboard a vessel in order to view marine mammals in their natural habitat for a fee.

(b) "Commercial whale watching operators" includes commercial vessels and kayak rentals that are engaged in the business of whale watching.

(c) "Commercial whale watching vessel" means any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.

**Sec.**  RCW 77.65.620 and 2019 c 291 s 3 are each amended to read as follows:

(1) The department must adopt rules for holders of a commercial whale watching license established in RCW 77.65.615 for the viewing of southern resident orca whales for the inland waters of Washington by January 1, 2021. The rules must be designed to reduce the daily and cumulative impacts on southern resident orca whales and consider the economic viability of license holders. The department shall at a minimum consider protections for southern resident orca whales by establishing limitations on:

(a) The number of commercial whale watching operators that may view southern resident orca whales at one time;

(b) The number of days and hours that commercial whale watching operators can operate;

(c) The duration spent in the vicinity of southern resident orca whales; and

(d) The areas in which commercial whale watching operators may operate.

(2) The department may phase in requirements, but must adopt rules to implement this section. The department may consider the use of an automatic identification system to enable effective monitoring and compliance.

(3)(a) The department may phase in requirements, but must adopt rules pursuant to chapter 34.05 RCW to implement this section including public, industry, and interested party involvement.

(b) Until July 1, 2023, the prohibition in WAC 220-460-100 as it existed on the effective date of this section applies only when southern resident orca whales are present within the zone described in that rule.

(4) Before January 1, 2021, the department shall convene an independent panel of scientists to review the current body of best available science regarding impacts to southern resident orcas by small vessels and commercial whale watching due to disturbance and noise. The department must use the best available science in the establishment of the southern resident orca whale watching rules and continue to adaptively manage the program using the most current and best available science.

(5) The department shall complete an analysis and report to the governor and the legislature on the effectiveness of and any recommendations for changes to the whale watching rules, license fee structure, and approach distance rules by November 30, 2022, and every two years thereafter until 2026. This report must be in compliance with RCW 43.01.036.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Commercial whale watching" has the same meaning as defined in RCW 77.65.615.

(b) "Commercial whale watching operators" has the same meaning as defined in RCW 77.65.615.

(c) "Inland waters of Washington" means Puget Sound and related inland marine waters, including all salt waters of the state of Washington inside the international boundary line between Washington and British Columbia, and lying east of the junction of the Pacific Ocean and the Strait of Juan de Fuca, and the rivers and streams draining to Puget Sound as mapped by water resource inventory areas 1 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**