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**SUBSTITUTE HOUSE BILL 1453**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Rolfes, Chandler, Blake, Van De Wege, Upthegrove, Stanford, Jinkins, and Kretz; by request of Department of Health)

READ FIRST TIME 02/11/11.

1 AN ACT Relating to commercial shellfish enforcement; amending RCW  
2 69.30.010, 69.30.020, 69.30.030, 69.30.050, 69.30.060, 69.30.080,  
3 69.30.085, 69.30.110, and 69.30.140; and prescribing penalties.

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

5 **Sec. 1.** RCW 69.30.010 and 2001 c 253 s 5 are each amended to read  
6 as follows:

7 ~~((When used in this chapter, the following terms shall have the~~  
8 ~~following meanings:)) The definitions in this section apply throughout  
9 this chapter unless the context clearly requires otherwise.~~

10 (1) "Shellfish" means all varieties of fresh and frozen oysters,  
11 mussels, clams, and scallops, either shucked or in the shell, and any  
12 fresh or frozen edible products thereof.

13 (2) "Sale" means to sell, offer for sale, barter, trade, deliver,  
14 consign, hold for sale, consignment, barter, trade, or delivery, and/or  
15 possess with intent to sell or dispose of in any commercial manner.

16 (3) "Shellfish growing areas" means the lands and waters in and  
17 upon which shellfish are grown for harvesting in commercial quantity or  
18 for sale for human consumption.

1 (4) "Establishment" means the buildings, together with the  
2 necessary equipment and appurtenances, used for the storage, culling,  
3 shucking, packing and/or shipping of shellfish in commercial quantity  
4 or for sale for human consumption.

5 (5) "Person" means any individual, partnership, firm, company,  
6 corporation, association, or the authorized agents of any such  
7 entities.

8 (6) "Department" means the state department of health.

9 (7) "Secretary" means the secretary of health or his or her  
10 authorized representatives.

11 (8) "Commercial quantity" means any quantity exceeding: (a) Forty  
12 pounds of mussels; (b) one hundred oysters; (c) fourteen horse clams;  
13 (d) six geoducks; (e) fifty pounds of hard or soft shell clams; or (f)  
14 fifty pounds of scallops. The poundage in this subsection (8)  
15 constitutes weight with the shell.

16 (9) "Fish and wildlife officer" means a fish and wildlife officer  
17 as defined in RCW 77.08.010.

18 (10) "Ex officio fish and wildlife officer" means an ex officio  
19 fish and wildlife officer as defined in RCW 77.08.010.

20 (11) "Approved shellfish tag or label" means a tag or label meeting  
21 the requirements of the national shellfish sanitation program model  
22 ordinance.

23 (12) "Shellstock" means live molluscan shellfish in the shell.

24 **Sec. 2.** RCW 69.30.020 and 1955 c 144 s 2 are each amended to read  
25 as follows:

26 ((Only shellfish bearing a certificate of)) It is unlawful to sell  
27 or offer to sell shellfish in this state unless the shellfish bear an  
28 approved shellfish tag or label indicating compliance with the sanitary  
29 requirements of this state or a state, territory, province, or country  
30 of origin whose requirements are equal or comparable to those  
31 established pursuant to this chapter ((may be sold or offered for sale  
32 in the state of Washington)). The department, a fish and wildlife  
33 officer, or an ex officio fish and wildlife officer may immediately  
34 seize containers of shellfish that are not affixed with an approved  
35 shellfish tag or label.

1       **Sec. 3.** RCW 69.30.030 and 1995 c 147 s 2 are each amended to read  
2 as follows:

3       (1) The state board of health shall (~~cause such investigations to~~  
4 ~~be made as are necessary to determine reasonable requirements~~) adopt  
5 rules governing the sanitation of shellfish, shellfish growing areas,  
6 and shellfish plant facilities and operations((~~7~~)) in order to protect  
7 public health and carry out the provisions of this chapter(~~(; and shall~~  
8 ~~adopt such requirements as rules and regulations of the state board of~~  
9 ~~health~~)). Such rules and regulations may include reasonable sanitary  
10 requirements relative to the quality of shellfish growing waters and  
11 areas, boat and barge sanitation, building construction, water supply,  
12 sewage and waste water disposal, lighting and ventilation, insect and  
13 rodent control, shell disposal, garbage and waste disposal, cleanliness  
14 of establishment, the handling, storage, construction and maintenance  
15 of equipment, the handling, storage and refrigeration of shellfish, the  
16 identification of containers, and the handling, maintenance, and  
17 storage of permits, certificates, and records regarding shellfish taken  
18 under this chapter. The state board of health shall adopt rules  
19 governing procedures for the disposition of seized shellfish.

20       (2) The state board of health shall consider the most recent  
21 version of the national shellfish sanitation program model ordinance,  
22 adopted by the interstate shellfish sanitation conference, when  
23 adopting rules.

24       **Sec. 4.** RCW 69.30.050 and 1995 c 147 s 3 are each amended to read  
25 as follows:

26       (~~Shellfish growing areas, from which shellfish are removed in a~~  
27 ~~commercial quantity or for sale for human consumption shall meet the~~  
28 ~~requirements of this chapter and the state board of health; and such~~  
29 ~~shellfish growing areas shall be so certified by the department. Any~~  
30 ~~person desiring to~~) (1) It is unlawful for a person to harvest  
31 shellfish from shellfish growing areas in a commercial quantity or for  
32 sale for human consumption unless the shellfish growing area:

33       (a) Has a valid certificate of approval; and

34       (b) Meets the requirements of this chapter and the rules adopted  
35 under this chapter.

36       (2) A person may not remove shellfish in a commercial quantity or

1 for sale for human consumption from a shellfish growing area in the  
2 state of Washington (~~((shall first apply to the department for))~~) unless:

3 (a) The person has received a certificate of approval ((of)) for  
4 the shellfish growing area from the department; and

5 (b) Approved shellfish tags are affixed to each container of  
6 shellstock prior to removal from the shellfish growing area, except  
7 bulk tagging is permitted as allowed in the national shellfish  
8 sanitation program model ordinance. ((The department shall cause the  
9 shellfish growing area to be inspected and if the area meets the  
10 requirements of this chapter and the state board of health, the  
11 department shall issue a certificate of approval for that area. Such  
12 certificates shall be issued for a period not to exceed twelve months  
13 and may be revoked at any time the area is found not to be in  
14 compliance with the requirements of this chapter and the state board of  
15 health.

16 ~~Shellfish growing areas from which shellfish are removed in a~~  
17 ~~commercial quantity for purposes other than human consumption including~~  
18 ~~but not limited to bait or seed, shall be readily subject to monitoring~~  
19 ~~and inspections, and shall otherwise be of a character ensuring that~~  
20 ~~shellfish harvested from such areas are not diverted for use as food.~~  
21 ~~A certificate of approval issued by the department for shellfish~~  
22 ~~growing areas from which shellfish are to be removed))~~

23 (3) Before issuing a certificate of approval, the department shall  
24 inspect the shellfish growing area. The department shall issue a  
25 certificate of approval if the area meets the requirements of this  
26 chapter and the rules adopted under this chapter.

27 (4) A certificate of approval is valid for a period of twelve  
28 months. The department may revoke a certificate of approval at any  
29 time the area is found out of compliance with the requirements of this  
30 chapter or the rules adopted under this chapter.

31 (5) It is unlawful to remove shellfish from shellfish growing areas  
32 without a certificate of approval in a commercial quantity for purposes  
33 other than human consumption, including but not limited to use as bait  
34 or seed, unless:

35 (a) The shellfish operation and shellfish growing area is readily  
36 available to monitoring and inspections; and

37 (b) The department has determined the shellfish operation is

1 designed to ensure that shellfish harvested from such an area is not  
2 diverted for human consumption.

3 (6) Nothing in this section prohibits a person from removing  
4 shellfish for use as bait or seed from an approved shellfish growing  
5 area.

6 (7) The department's certificate of approval to harvest shellfish  
7 for purposes other than human consumption shall specify:

8 (a) The date or dates and time of harvest ((and)) ;

9 (b) All applicable conditions of harvest((τ));

10 (c) Identification by tagging, dying, or other department-approved  
11 means((τ)); and

12 (d) Information about the removal method, transportation method,  
13 processing technique, sale details, and other factors to ensure that  
14 shellfish harvested from such areas are not diverted for ((use as  
15 food)) human consumption.

16 **Sec. 5.** RCW 69.30.060 and 1985 c 51 s 3 are each amended to read  
17 as follows:

18 ~~((No))~~ (1) It is unlawful for a person ((shall)) to cull, shuck, or  
19 pack shellfish in the state of Washington in a commercial quantity or  
20 for sale for human consumption unless the establishment in which such  
21 operations are conducted has been certified by the department as  
22 meeting the requirements of the state board of health. ((Any person  
23 desiring to))

24 (2) A person may not cull, shuck, or pack shellfish within the  
25 state of Washington in a commercial quantity or for sale for human  
26 consumption, ~~((shall apply to the department for))~~ unless the person  
27 has received a certificate of approval from the department for the  
28 establishment in which such operations will be done.

29 (3) Before issuing a certificate of approval, the department shall  
30 ~~((cause such))~~ inspect the establishment ~~((to be inspected)),~~ and if  
31 the establishment meets the ~~((sanitary requirements))~~ rules of the  
32 state board of health, the department shall issue a certificate of  
33 approval. Such certificates of approval shall be issued for a period  
34 not to exceed twelve months, and may be revoked at any time the  
35 establishment or the operations are found not to be in compliance with  
36 the ~~((sanitary requirements))~~ rules of the state board of health.

1       **Sec. 6.** RCW 69.30.080 and 1991 c 3 s 304 are each amended to read  
2 as follows:

3       (1) The department may deny, revoke, or suspend~~((, or modify a~~  
4 ~~certificate of approval, license, or other necessary departmental~~  
5 ~~approval in any case in which it determines there has been a failure or~~  
6 ~~refusal to comply with this chapter or rules adopted under it))~~ a  
7 person's license or certificate of approval for:

8       (a) Violations of this chapter or the rules adopted under this  
9 chapter; or

10       (b) Harassing or threatening an authorized representative of the  
11 department during the performance of his or her duties.

12       (2) RCW 43.70.115 governs notice of a license denial, revocation,  
13 suspension, or modification and provides the right to an adjudicative  
14 proceeding.

15       **Sec. 7.** RCW 69.30.085 and 1998 c 44 s 1 are each amended to read  
16 as follows:

17       (1) A person, or its director or officer, whose license or  
18 certificate of approval is denied, revoked, or suspended as a result of  
19 violations of this chapter or rules adopted under this chapter may not:

20       (a) ((Serve as the person in charge of)) Supervise, be employed by,  
21 or manage~~((, or otherwise participate to any degree in))~~ a shellfish  
22 operation licensed or certified under this chapter or rules adopted  
23 under this chapter; ~~((or))~~

24       (b) Participate in the harvesting, shucking, packing, or shipping  
25 of shellfish in commercial quantities or for sale ~~((for human~~  
26 ~~consumption))~~;

27       (c) Participate in the brokering of shellfish, purchase of  
28 shellfish for resale, or retail sale of shellfish; or

29       (d) Engage in any activity associated with selling or offering to  
30 sell shellfish.

31       (2) Subsections (1)(c) and (d) of this section do not apply to  
32 retail purchases of shellfish for personal use.

33       (3) Subsection (1) of this section applies to a person only during  
34 the period of time in which that person's license or certificate of  
35 approval is denied, revoked, or suspended.

36       (4) Unlawful operations under subsection (1) of this section when  
37 a license or certificate of approval is denied, revoked, or suspended

1 is a class C felony. Upon conviction, the department shall order that  
2 the person's license or certificate of approval be revoked for a period  
3 of at least five years, or that a person whose application for a  
4 license or certificate of approval was denied be ineligible to reapply  
5 for a period of at least five years.

6 (5) A license or certificate of approval issued under this chapter  
7 may not be assigned or transferred in any manner without department  
8 approval.

9 **Sec. 8.** RCW 69.30.110 and 2001 c 253 s 6 are each amended to read  
10 as follows:

11 (1) It is unlawful for any person to possess a commercial quantity  
12 of shellfish or to sell or offer to sell shellfish in the state which  
13 have not been grown, shucked, packed, or shipped in accordance with the  
14 provisions of this chapter. Failure of a shellfish grower to display  
15 ((immediately)) a certificate of approval, or department approved  
16 equivalent, issued under RCW 69.30.050 to an authorized representative  
17 of the department, a fish and wildlife officer, or an ex officio fish  
18 and wildlife officer subjects the grower to the penalty provisions of  
19 this chapter, as well as ((immediate)) seizure and disposition, up to  
20 and including disposal, of the shellfish by the representative or  
21 officer.

22 (2) Failure of a shellfish processor to display a certificate of  
23 approval issued under RCW 69.30.060 to an authorized representative of  
24 the department, a fish and wildlife officer, or an ex officio fish and  
25 wildlife officer subjects the processor to the penalty provisions of  
26 this chapter, as well as ((immediate)) seizure and disposition, up to  
27 and including disposal, of the shellfish by the representative or  
28 officer.

29 ~~((Shellfish seized under this section shall be subject to prompt~~  
30 ~~disposal by the representative or officer and may not be used for human~~  
31 ~~consumption. The state board of health shall develop by rule~~  
32 ~~procedures for the disposal of the seized shellfish.))~~

33 **Sec. 9.** RCW 69.30.140 and 2001 c 253 s 7 are each amended to read  
34 as follows:

35 Except as provided in RCW 69.30.085(4), any person convicted of  
36 violating any of the provisions of this chapter shall be guilty of a

1 gross misdemeanor. A conviction is an unvacated forfeiture of bail or  
2 collateral deposited to secure the defendant's appearance in court, the  
3 payment of a fine, a plea of guilty, or a finding of guilt on a  
4 violation of this chapter or rules adopted under this chapter,  
5 regardless of whether imposition of sentence is deferred or the penalty  
6 is suspended, and shall be treated as a conviction for purposes of  
7 license revocation and suspension of privileges under RCW 77.15.700(5).

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