
SUBSTITUTE HOUSE BILL 1227

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Buck, Basich, Fuhrman and Kessler; by request of Department of Fish and Wildlife)

Read first time 02/06/95.

1 AN ACT Relating to recovery of moneys pursuant to forfeitures or
2 court-ordered restitution; amending RCW 75.08.230, 75.10.030,
3 77.12.170, and 77.21.010; adding a new section to chapter 75.08 RCW;
4 and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the reasonable
7 costs of seizing and forfeiting property involved in wildlife, food
8 fish, and shellfish violations should be recoverable, leaving allocated
9 funds to be used for conservation and propagation. The legislature
10 further finds that court-ordered restitution to the department of fish
11 and wildlife should not be required to be deposited to the general
12 fund, but should be used as intended by the court.

13 **Sec. 2.** RCW 75.08.230 and 1993 c 340 s 48 are each amended to read
14 as follows:

15 (1) Except as provided in this section, state and county officers
16 receiving the following moneys shall deposit them in the state general
17 fund:

18 (a) The sale of licenses required under this title;

1 (b) The (~~sale of~~) net proceeds from property seized or
2 confiscated under this title;

3 (c) Fines and forfeitures collected under this title, except that
4 restitution costs ordered by a court shall be deposited in the fish
5 habitat restoration fund as established in section 6 of this act;

6 (d) The sale of real or personal property held for department
7 purposes;

8 (e) Rentals or concessions of the department;

9 (f) Moneys received for damages to food fish, shellfish or
10 department property; and

11 (g) Gifts.

12 (2) The director shall make weekly remittances to the state
13 treasurer of moneys collected by the department.

14 (3) All fines and forfeitures collected or assessed by a district
15 court for a violation of this title or rule of the director shall be
16 remitted as provided in chapter 3.62 RCW.

17 (4) Proceeds from the sale of food fish or shellfish taken in test
18 fishing conducted by the department, to the extent that these proceeds
19 exceed the estimates in the budget approved by the legislature, may be
20 allocated as unanticipated receipts under RCW 43.79.270 to reimburse
21 the department for unanticipated costs for test fishing operations in
22 excess of the allowance in the budget approved by the legislature.

23 (5) Proceeds from the sale of salmon and salmon eggs by the
24 department, to the extent these proceeds exceed estimates in the budget
25 approved by the legislature, may be allocated as unanticipated receipts
26 under RCW 43.79.270. Allocations under this subsection shall be made
27 only for hatchery operations partially or wholly financed by sources
28 other than state general revenues or for purposes of processing human
29 consumable salmon for disposal.

30 (6) Moneys received by the director under RCW 75.08.045, to the
31 extent these moneys exceed estimates in the budget approved by the
32 legislature, may be allocated as unanticipated receipts under RCW
33 43.79.270. Allocations under this subsection shall be made only for
34 the specific purpose for which the moneys were received, unless the
35 moneys were received in settlement of a claim for damages to food fish
36 or shellfish, in which case the moneys may be expended for the
37 conservation of these resources.

38 (7) Proceeds from the sale of herring spawn on kelp fishery
39 licenses by the department, to the extent those proceeds exceed

1 estimates in the budget approved by the legislature, may be allocated
2 as unanticipated receipts under RCW 43.79.270. Allocations under this
3 subsection shall be made only for herring management, enhancement, and
4 enforcement.

5 **Sec. 3.** RCW 75.10.030 and 1990 c 144 s 5 are each amended to read
6 as follows:

7 (1) Fisheries patrol officers and ex officio fisheries patrol
8 officers may seize without warrant food fish or shellfish they have
9 reason to believe have been taken, killed, transported, or possessed in
10 violation of this title or rule of the director and may seize without
11 warrant boats, vehicles, gear, appliances, or other articles they have
12 reason to believe (~~(is [are])~~) are held with intent to violate or (~~(has~~
13 ~~[have])~~) have been used in violation of this title or rule of the
14 director. The articles seized shall be subject to forfeiture to the
15 state, regardless of ownership. Articles seized may be recovered by
16 their owner by depositing into court a cash bond equal to the value of
17 the seized articles but not more than twenty-five thousand dollars.
18 The cash bond is subject to forfeiture to the state in lieu of the
19 seized article.

20 (2)(a) In the event of a seizure of an article under subsection (1)
21 of this section, proceedings for forfeiture shall be deemed commenced
22 by the seizure. Within fifteen days following the seizure, the seizing
23 authority shall serve notice on the owner of the property seized and on
24 any person having any known right or interest in the property seized.
25 Notice may be served by any method authorized by law or court rule,
26 including service by certified mail with return receipt requested.
27 Service by mail shall be deemed complete upon mailing within the
28 fifteen-day period following the seizure.

29 (b) If no person notifies the department in writing of the person's
30 claim of ownership or right to possession of the articles seized under
31 subsection (1) of this section within forty-five days of the seizure,
32 the articles shall be deemed forfeited.

33 (c) If any person notifies the department in writing within forty-
34 five days of the seizure, the person shall be afforded an opportunity
35 to be heard as to the claim or right. The hearing shall be before the
36 director or the director's designee, or before an administrative law
37 judge appointed under chapter 34.12 RCW, except that a person asserting
38 a claim or right may remove the matter to a court of competent

1 jurisdiction if the aggregate value of the articles seized is more than
2 five thousand dollars. The department hearing and any subsequent
3 appeal shall be as provided for in Title 34 RCW. The burden of
4 producing evidence shall be upon the person claiming to be the lawful
5 owner or person claiming lawful right of possession of the articles
6 seized. The department shall promptly return the seized articles to
7 the claimant upon a determination by the director or the director's
8 designee, an administrative law judge, or a court that the claimant is
9 the present lawful owner or is lawfully entitled to possession of the
10 articles seized, and that the seized articles were improperly seized.

11 (d)(i) No conveyance, including vessels, vehicles, or aircraft, is
12 subject to forfeiture under this section by reason of any act or
13 omission established by the owner of the conveyance to have been
14 committed or omitted without the owner's knowledge or consent.

15 (ii) A forfeiture of a conveyance encumbered by a perfected
16 security interest is subject to the interest of the secured party if
17 the secured party neither had knowledge nor consented to the act or
18 omission.

19 (e) When seized property is forfeited under this section the
20 department may retain it for official use unless the property is
21 required to be destroyed, or upon application by any law enforcement
22 agency of the state, release such property to the agency for the use of
23 enforcing this title, or sell such property, and deposit the net
24 proceeds to the state general fund, as provided for in RCW 75.08.230,
25 and deposit the cost of sale and expenses incurred by the department
26 for investigation and prosecution of the forfeiture into the fish
27 habitat restoration fund under section 6 of this act.

28 (f) The net proceeds of the sale of forfeited property is the value
29 of the interest remaining after deducting first, the bona fide security
30 interest and second, the cost of sale and the expenses incurred by the
31 department for investigation and prosecution of the forfeiture.

32 **Sec. 4.** RCW 77.12.170 and 1989 c 314 s 4 are each amended to read
33 as follows:

34 (1) There is established in the state treasury the state wildlife
35 fund which consists of moneys received from:

36 (a) Rentals or concessions of the department;

37 (b) The sale of real or personal property held for department
38 purposes;

1 (c) The sale of licenses, permits, tags, stamps, and punchcards
2 required by this title;

3 (d) Fees for informational materials published by the department;

4 (e) Fees for personalized vehicle license plates as provided in
5 chapter 46.16 RCW;

6 (f) Articles or wildlife sold by the director under this title;

7 (g) Compensation for wildlife losses (~~(or)~~) and gifts or grants
8 received under RCW 77.12.320, or reimbursements for big game losses
9 received under RCW 77.21.070;

10 (h) Excise tax on anadromous game fish collected under chapter
11 82.27 RCW; (~~and~~)

12 (i) The sale of personal property seized by the department for
13 wildlife violations; and

14 (j) Restitution moneys for violation of this title ordered by
15 courts to be paid to the department.

16 (2) State and county officers receiving any moneys listed in
17 subsection (1) of this section shall deposit them in the state treasury
18 to be credited to the state wildlife fund.

19 **Sec. 5.** RCW 77.21.010 and 1988 c 265 s 3 are each amended to read
20 as follows:

21 (1) A person violating RCW 77.16.040, 77.16.050, 77.16.060,
22 77.16.080, 77.16.210, 77.16.220, 77.16.310, 77.16.320, or 77.32.211, or
23 committing a violation of RCW 77.16.020 or 77.16.120 involving
24 77.16.210, 77.16.220, 77.16.310, 77.16.320, 77.16.340, or 77.32.211, or
25 committing a violation of RCW 77.16.020 or 77.16.120 involving big game
26 or an endangered species is guilty of a gross misdemeanor and shall be
27 punished by a fine of not less than two hundred fifty dollars and not
28 more than one thousand dollars or by imprisonment in the county jail
29 for not less than thirty days and not more than one year or by both the
30 fine and imprisonment. Each subsequent violation within a five-year
31 period of RCW 77.16.040, 77.16.050, or 77.16.060, or of RCW 77.16.020
32 or 77.16.120 involving big game or an endangered species, as defined by
33 the commission under the authority of RCW 77.04.090, shall be
34 prosecuted and punished as a class C felony as defined in RCW
35 9A.20.020. In connection with each such felony prosecution, the
36 director shall provide the court with an inventory of all articles or
37 devices seized under this title in connection with the violation.

1 Inventoried articles or devices shall be disposed of pursuant to RCW
2 77.21.040.

3 (2) A person violating or failing to comply with this title or
4 rules adopted pursuant to this title for which no penalty is otherwise
5 provided is guilty of a misdemeanor and shall be punished for each
6 offense by a fine of five hundred dollars or by imprisonment for not
7 more than ninety days in the county jail or by both the fine and
8 imprisonment. The commission may provide, when not inconsistent with
9 applicable statutes, that violation of a specific rule is an infraction
10 under chapter 7.84 RCW.

11 (3) A person placing traps on private property without permission
12 of the owner, lessee, or tenant where the land is improved and
13 apparently used, or where the land is fenced or enclosed in a manner
14 designed to exclude intruders or to indicate a property boundary line,
15 or where notice is given by posting in a conspicuous manner, is guilty
16 of the misdemeanor of trespass as defined and established in RCW
17 9A.52.010 and 9A.52.080 and shall be punished for each offense by a
18 fine of not less than two hundred fifty dollars.

19 (4) Persons convicted of a violation shall pay the costs of
20 prosecution and the penalty assessment in addition to the fine or
21 imprisonment.

22 (5) The unlawful killing, taking, or possession of each wildlife
23 member constitutes a separate offense.

24 (6) District courts have jurisdiction concurrent with the superior
25 courts ((of)) over misdemeanors and gross misdemeanors committed in
26 violation of this title or rules adopted pursuant to this title and may
27 impose the punishment provided for these offenses. Fines imposed and
28 collected by the district courts shall be disposed as provided for in
29 RCW 3.62.020, except restitution moneys for violation of this title
30 ordered by the court to be paid to the department and reimbursements
31 received under RCW 77.21.070 are to be deposited to the state wildlife
32 fund as provided for in RCW 77.12.170. Superior courts have
33 jurisdiction over felonies committed in violation of this title.

34 NEW SECTION. Sec. 6. A new section is added to chapter 75.08 RCW
35 to read as follows:

36 There is established in the custody of the state treasurer a fish
37 habitat restoration fund. Moneys in the fish habitat restoration fund
38 may be expended by the department for the purposes of protection,

1 rehabilitation, preservation, or conservation of the state fish
2 resources, including their habitats. Only the director or the
3 director's designee may authorize expenditures from the fund. The fund
4 is subject to allotment procedures under chapter 43.88 RCW, but no
5 appropriation is required for expenditures.

--- END ---