
SENATE BILL 5126

State of Washington

54th Legislature

1995 Regular Session

By Senators Drew, Oke and Owen; by request of Department of Fish and Wildlife

Read first time 01/12/95. Referred to Committee on Natural Resources.

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; and creating a new section.

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

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

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

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

17 (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, which is hereby created in the custody of the
6 state treasurer. Moneys in the fish habitat restoration fund may be
7 expended by the department for the purposes of protection,
8 rehabilitation, preservation, or conservation of the state fish
9 resources, including their habitats. Only the director or the
10 director's designee may authorize expenditures from the fund. The fund
11 is subject to allotment procedures under chapter 43.88 RCW, but no
12 appropriation is required for expenditures;

13 (d) The sale of real or personal property held for department
14 purposes;

15 (e) Rentals or concessions of the department;

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

18 (g) Gifts.

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

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

24 (4) Proceeds from the sale of food fish or shellfish taken in test
25 fishing conducted by the department, to the extent that these proceeds
26 exceed the estimates in the budget approved by the legislature, may be
27 allocated as unanticipated receipts under RCW 43.79.270 to reimburse
28 the department for unanticipated costs for test fishing operations in
29 excess of the allowance in the budget approved by the legislature.

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

37 (6) Moneys received by the director under RCW 75.08.045, to the
38 extent these moneys exceed estimates in the budget approved by the
39 legislature, may be allocated as unanticipated receipts under RCW

1 43.79.270. Allocations under this subsection shall be made only for
2 the specific purpose for which the moneys were received, unless the
3 moneys were received in settlement of a claim for damages to food fish
4 or shellfish, in which case the moneys may be expended for the
5 conservation of these resources.

6 (7) Proceeds from the sale of herring spawn on kelp fishery
7 licenses by the department, to the extent those proceeds exceed
8 estimates in the budget approved by the legislature, may be allocated
9 as unanticipated receipts under RCW 43.79.270. Allocations under this
10 subsection shall be made only for herring management, enhancement, and
11 enforcement.

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

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

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

36 (b) If no person notifies the department in writing of the person's
37 claim of ownership or right to possession of the articles seized under

1 subsection (1) of this section within forty-five days of the seizure,
2 the articles shall be deemed forfeited.

3 (c) If any person notifies the department in writing within forty-
4 five days of the seizure, the person shall be afforded an opportunity
5 to be heard as to the claim or right. The hearing shall be before the
6 director or the director's designee, or before an administrative law
7 judge appointed under chapter 34.12 RCW, except that a person asserting
8 a claim or right may remove the matter to a court of competent
9 jurisdiction if the aggregate value of the articles seized is more than
10 five thousand dollars. The department hearing and any subsequent
11 appeal shall be as provided for in Title 34 RCW. The burden of
12 producing evidence shall be upon the person claiming to be the lawful
13 owner or person claiming lawful right of possession of the articles
14 seized. The department shall promptly return the seized articles to
15 the claimant upon a determination by the director or the director's
16 designee, an administrative law judge, or a court that the claimant is
17 the present lawful owner or is lawfully entitled to possession of the
18 articles seized, and that the seized articles were improperly seized.

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

23 (ii) A forfeiture of a conveyance encumbered by a perfected
24 security interest is subject to the interest of the secured party if
25 the secured party neither had knowledge nor consented to the act or
26 omission.

27 (e) When seized property is forfeited under this section the
28 department may retain it for official use unless the property is
29 required to be destroyed, or upon application by any law enforcement
30 agency of the state, release such property to the agency for the use of
31 enforcing this title, or sell such property, and deposit the net
32 proceeds to the state general fund, as provided for in RCW 75.08.230.

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

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

1 (1) There is established in the state treasury the state wildlife
2 fund which consists of moneys received from:
3 (a) Rentals or concessions of the department;
4 (b) The sale of real or personal property held for department
5 purposes;
6 (c) The sale of licenses, permits, tags, stamps, and punchcards
7 required by this title;
8 (d) Fees for informational materials published by the department;
9 (e) Fees for personalized vehicle license plates as provided in
10 chapter 46.16 RCW;
11 (f) Articles or wildlife sold by the director under this title;
12 (g) Compensation for wildlife losses ~~((or))~~ and gifts or grants
13 received under RCW 77.12.320, or reimbursements for big game losses
14 received under RCW 77.21.070;
15 (h) Excise tax on anadromous game fish collected under chapter
16 82.27 RCW; ~~((and))~~
17 (i) The sale of personal property seized by the department for
18 wildlife violations; and
19 (j) Restitution moneys for violation of this title ordered by
20 courts to be paid to the department.
21 (2) State and county officers receiving any moneys listed in
22 subsection (1) of this section shall deposit them in the state treasury
23 to be credited to the state wildlife fund.

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

26 (1) A person violating RCW 77.16.040, 77.16.050, 77.16.060,
27 77.16.080, 77.16.210, 77.16.220, 77.16.310, 77.16.320, or 77.32.211, or
28 committing a violation of RCW 77.16.020 or 77.16.120 involving
29 77.16.210, 77.16.220, 77.16.310, 77.16.320, 77.16.340, or 77.32.211, or
30 committing a violation of RCW 77.16.020 or 77.16.120 involving big game
31 or an endangered species is guilty of a gross misdemeanor and shall be
32 punished by a fine of not less than two hundred fifty dollars and not
33 more than one thousand dollars or by imprisonment in the county jail
34 for not less than thirty days and not more than one year or by both the
35 fine and imprisonment. Each subsequent violation within a five-year
36 period of RCW 77.16.040, 77.16.050, or 77.16.060, or of RCW 77.16.020
37 or 77.16.120 involving big game or an endangered species, as defined by
38 the commission under the authority of RCW 77.04.090, shall be

1 prosecuted and punished as a class C felony as defined in RCW
2 9A.20.020. In connection with each such felony prosecution, the
3 director shall provide the court with an inventory of all articles or
4 devices seized under this title in connection with the violation.
5 Inventoried articles or devices shall be disposed of pursuant to RCW
6 77.21.040.

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

15 (3) A person placing traps on private property without permission
16 of the owner, lessee, or tenant where the land is improved and
17 apparently used, or where the land is fenced or enclosed in a manner
18 designed to exclude intruders or to indicate a property boundary line,
19 or where notice is given by posting in a conspicuous manner, is guilty
20 of the misdemeanor of trespass as defined and established in RCW
21 9A.52.010 and 9A.52.080 and shall be punished for each offense by a
22 fine of not less than two hundred fifty dollars.

23 (4) Persons convicted of a violation shall pay the costs of
24 prosecution and the penalty assessment in addition to the fine or
25 imprisonment.

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

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

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