

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1696

Chapter 406, Laws of 2005

59th Legislature
2005 Regular Session

FISH AND WILDLIFE--PENALTIES

EFFECTIVE DATE: 7/24/05

Passed by the House April 18, 2005
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 11, 2005
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved May 11, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1696** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 11, 2005 - 2:15 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1696

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Natural Resources, Ecology & Parks (originally sponsored by Representatives Blake, Buck, Takko, Holmquist, McCune, Condotta, Hinkle and B. Sullivan)

READ FIRST TIME 02/28/05.

1 AN ACT Relating to enhanced fish and wildlife penalties; amending
2 RCW 77.15.070, 77.15.370, 77.15.410, 77.15.420, and 77.15.450; adding
3 a new section to chapter 77.15 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 77.15 RCW
6 to read as follows:

7 The fish and wildlife enforcement reward account is created in the
8 custody of the state treasurer. All receipts from criminal wildlife
9 penalty assessments under RCW 77.15.420 must be deposited into the
10 account. The department may accept money or personal property from
11 persons under conditions requiring the property or money to be used
12 consistent with the intent of expenditures from the fish and wildlife
13 enforcement reward account. Expenditures from the account may be used
14 only for investigation and prosecution of fish and wildlife offenses,
15 to provide rewards to persons informing the department about violations
16 of this title and rules adopted under this title, and for other valid
17 enforcement uses as determined by the commission. Only the director or
18 the director's designee may authorize expenditures from the account.

1 The account is subject to allotment procedures under chapter 43.88 RCW,
2 but an appropriation is not required for expenditures.

3 **Sec. 2.** RCW 77.15.070 and 2000 c 107 s 231 are each amended to
4 read as follows:

5 (1) Fish and wildlife officers and ex officio fish and wildlife
6 officers may seize without warrant boats, airplanes, vehicles,
7 motorized implements, conveyances, gear, appliances, or other articles
8 they have probable cause to believe have been held with intent to
9 violate or used in violation of this title or rule of the commission or
10 director. However, fish and wildlife officers or ex officio fish and
11 wildlife officers may not seize any item or article, other than for
12 evidence, if under the circumstances, it is reasonable to conclude that
13 the violation was inadvertent. The property seized is subject to
14 forfeiture to the state under this section regardless of ownership.
15 Property seized may be recovered by its owner by depositing with the
16 department or into court a cash bond or equivalent security equal to
17 the value of the seized property but not more than (~~twenty-five~~) one
18 hundred thousand dollars. Such cash bond or security is subject to
19 forfeiture in lieu of the property. Forfeiture of property seized
20 under this section is a civil forfeiture against property and is
21 intended to be a remedial civil sanction.

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

31 (3) Persons claiming a right of ownership or right to possession of
32 property are entitled to a hearing to contest forfeiture. Such a claim
33 shall specify the claim of ownership or possession and shall be made in
34 writing and served on the director within forty-five days of the
35 seizure. If the seizing authority has complied with notice
36 requirements and there is no claim made within forty-five days, then
37 the property shall be forfeited to the state.

1 (4) If any person timely serves the director with a claim to
2 property, the person shall be afforded an opportunity to be heard as to
3 the person's claim or right. The hearing shall be before the director
4 or director's designee, or before an administrative law judge appointed
5 under chapter 34.12 RCW, except that a person asserting a claim or
6 right may remove the matter to a court of competent jurisdiction if the
7 aggregate value of the property seized is more than five thousand
8 dollars. The department may settle a person's claim of ownership prior
9 to the administrative hearing.

10 (5) The hearing to contest forfeiture and any subsequent appeal
11 shall be as provided for in chapter 34.05 RCW, the administrative
12 procedure act. The seizing authority has the burden to demonstrate
13 that it had reason to believe the property was held with intent to
14 violate or was used in violation of this title or rule of the
15 commission or director. The person contesting forfeiture has the
16 burden of production and proof by a preponderance of evidence that the
17 person owns or has a right to possess the property and:

18 (a) That the property was not held with intent to violate or used
19 in violation of this title; or

20 (b) If the property is a boat, airplane, or vehicle, that the
21 illegal use or planned illegal use of the boat, airplane, or vehicle
22 occurred without the owner's knowledge or consent, and that the owner
23 acted reasonably to prevent illegal uses of such boat, airplane, or
24 vehicle.

25 (6) A forfeiture of a conveyance encumbered by a perfected security
26 interest is subject to the interest of the secured party if the secured
27 party neither had knowledge of nor consented to the act or omission.
28 No security interest in seized property may be perfected after seizure.

29 (7) If seized property is forfeited under this section the
30 department may retain it for official use unless the property is
31 required to be destroyed, or upon application by any law enforcement
32 agency of the state, release such property to the agency for the use of
33 enforcing this title, or sell such property, and deposit the proceeds
34 to the ~~((wildlife fund, as provided for in RCW 77.12.170))~~ fish and
35 wildlife enforcement reward account created in section 1 of this act.

36 **Sec. 3.** RCW 77.15.370 and 2001 c 253 s 38 are each amended to read
37 as follows:

1 (1) A person is guilty of unlawful recreational fishing in the
2 first degree if:

3 (a) The person takes, possesses, or retains two times or more than
4 the bag limit or possession limit of fish or shellfish allowed by any
5 rule of the director or commission setting the amount of food fish,
6 game fish, or shellfish that can be taken, possessed, or retained for
7 noncommercial use;

8 (b) The person fishes in a fishway; ((~~or~~))

9 (c) The person shoots, gaffs, snags, snares, spears, dipnets, or
10 stones fish or shellfish in state waters, or possesses fish or
11 shellfish taken by such means, unless such means are authorized by
12 express rule of the commission or director; or

13 (d) The person fishes for or possesses a fish listed as threatened
14 or endangered in 50 C.F.R. Sec. 17.11 (2002), unless fishing for or
15 possession of such fish is specifically allowed under federal or state
16 law.

17 (2) Unlawful recreational fishing in the first degree is a gross
18 misdemeanor.

19 **Sec. 4.** RCW 77.15.410 and 1999 c 258 s 3 are each amended to read
20 as follows:

21 (1) A person is guilty of unlawful hunting of big game in the
22 second degree if the person:

23 (a) Hunts for, takes, or possesses big game and the person does not
24 have and possess all licenses, tags, or permits required under this
25 title;

26 (b) Violates any rule of the commission or director regarding
27 seasons, bag or possession limits, closed areas including game
28 reserves, closed times, or any other rule governing the hunting,
29 taking, or possession of big game; or

30 (c) Possesses big game taken during a closed season for that big
31 game or taken from a closed area for that big game.

32 (2) A person is guilty of unlawful hunting of big game in the first
33 degree if the person was previously convicted of any crime under this
34 title involving unlawful hunting, killing, possessing, or taking big
35 game, and within five years of the date that the prior conviction was
36 entered the person:

1 (a) Hunts for big game and does not have and possess all licenses,
2 tags, or permits required under this title;

3 (b) Acts in violation of any rule of the commission or director
4 regarding seasons, bag or possession limits, closed areas including
5 game reserves, or closed times; or

6 (c) Possesses big game taken during a closed season for that big
7 game or taken from a closed area for that big game.

8 (3)(a) Unlawful hunting of big game in the second degree is a gross
9 misdemeanor. Upon conviction of an offense involving killing or
10 possession of big game taken during a period of time when hunting for
11 the particular species is not permitted, or in excess of the bag or
12 possession limit, the department shall revoke all hunting licenses and
13 tags and order a suspension of hunting privileges for two years.

14 (b) Unlawful hunting of big game in the first degree is a class C
15 felony. Upon conviction, the department shall revoke all hunting
16 licenses or tags (~~involved in the crime~~) and the department shall
17 order the person's hunting privileges suspended for (~~two~~) ten years.

18 **Sec. 5.** RCW 77.15.420 and 1998 c 190 s 62 are each amended to read
19 as follows:

20 (1) If a person is convicted of violating RCW 77.15.410 and that
21 violation results in the death of wildlife listed in this section, the
22 court shall require payment of the following amounts for each animal
23 killed or possessed. This shall be a criminal wildlife penalty
24 assessment that shall be paid to the clerk of the court and distributed
25 each month to the state treasurer for deposit in the (~~public safety~~
26 ~~and education~~) fish and wildlife enforcement reward account created in
27 section 1 of this act.

28	(a)	Moose, mountain sheep, mountain	
29		goat, and all wildlife species	
30		classified as endangered by rule	
31		of the commission, except for	
32		mountain caribou and grizzly	
33		bear as listed under (d) of this	
34		subsection	\$4,000
35	(b)	Elk, deer, black bear, and cougar . . .	\$2,000
36	(c)	Trophy animal elk and deer	\$6,000

1 (d) Mountain caribou, grizzly bear, and
2 trophy animal mountain sheep ... \$12,000

3 (2) No forfeiture of bail may be less than the amount of the bail
4 established for hunting during closed season plus the amount of the
5 criminal wildlife penalty assessment in subsection (1) of this section.

6 (3) For the purpose of this section a "trophy animal" is:

7 (a) A buck deer with four or more antler points on both sides, not
8 including eyeguards;

9 (b) A bull elk with five or more antler points on both sides, not
10 including eyeguards; or

11 (c) A mountain sheep with a horn curl of three-quarter curl or
12 greater.

13 For purposes of this subsection, "eyeguard" means an antler
14 protrusion on the main beam of the antler closest to the eye of the
15 animal.

16 (4) If two or more persons are convicted of illegally possessing
17 wildlife in subsection (1) of this section, the criminal wildlife
18 penalty assessment shall be imposed on them jointly and separately.

19 (5) The criminal wildlife penalty assessment shall be imposed
20 regardless of and in addition to any sentence, fines, or costs
21 otherwise provided for violating any provision of this title. The
22 criminal wildlife penalty assessment shall be included by the court in
23 any pronouncement of sentence and may not be suspended, waived,
24 modified, or deferred in any respect. This section may not be
25 construed to abridge or alter alternative rights of action or remedies
26 in equity or under common law or statutory law, criminal or civil.

27 (6) A defaulted criminal wildlife penalty assessment may be
28 collected by any means authorized by law for the enforcement of orders
29 of the court or collection of a fine or costs, including but not
30 limited to vacation of a deferral of sentencing or vacation of a
31 suspension of sentence.

32 (7) A person assessed a criminal wildlife penalty assessment under
33 this section shall have his or her hunting license revoked and all
34 hunting privileges suspended until the penalty assessment is paid
35 through the registry of the court in which the penalty assessment was
36 assessed.

37 (8) The criminal wildlife penalty assessments provided in

1 subsection (1) of this section shall be doubled in the following
2 instances:

3 (a) When a person is convicted of spotlighting big game under RCW
4 77.15.450;

5 (b) When a person commits a violation that requires payment of a
6 wildlife penalty assessment within five years of a prior gross
7 misdemeanor or felony conviction under this title;

8 (c) When the person killed the animal in question with the intent
9 of bartering, selling, or otherwise deriving economic profit from the
10 animal or the animal's parts; or

11 (d) When a person kills the animal under the supervision of a
12 licensed guide.

13 **Sec. 6.** RCW 77.15.450 and 1998 c 190 s 27 are each amended to read
14 as follows:

15 (1) A person is guilty of spotlighting big game in the second
16 degree if the person hunts big game with the aid of a spotlight ~~((or))~~,
17 other artificial light, or night vision equipment while in possession
18 or control of a firearm, bow and arrow, or cross bow. For purposes of
19 this section, "night vision equipment" includes electronic light
20 amplification devices, thermal imaging devices, and other comparable
21 equipment used to enhance night vision.

22 (2) A person is guilty of spotlighting big game in the first degree
23 if:

24 (a) The person has any prior conviction for gross misdemeanor or
25 felony for a crime under this title involving big game including but
26 not limited to subsection (1) of this section or RCW 77.15.410; and

27 (b) Within ten years of the date that such prior conviction was
28 entered the person commits the act described by subsection (1) of this
29 section.

30 (3)(a) Spotlighting big game in the second degree is a gross
31 misdemeanor. Upon conviction, the department shall revoke all hunting
32 licenses and tags and order a suspension of the person's hunting
33 privileges for two years.

34 (b) Spotlighting big game in the first degree is a class C felony.
35 Upon conviction, the department shall order suspension of all
36 privileges to hunt wildlife for a period of ~~((two))~~ ten years.

1 (4) A person convicted under this section shall be assessed a
2 criminal wildlife penalty assessment as provided in RCW 77.15.420.

Passed by the House April 18, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor May 11, 2005.

Filed in Office of Secretary of State May 11, 2005.