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**HOUSE BILL 1237**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Kretz, Blake, Dent, Lytton, Manweller, Pettigrew, Short, Scott, Buys, and Condotta

AN ACT Relating to providing landowners with necessary tools for the protection of their property from forest fires; and amending RCW 76.04.750, 79.02.300, 79.02.320, and 79.02.330.

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

**Sec.**  RCW 76.04.750 and 1988 c 273 s 4 are each amended to read as follows:

(1) Any fire on, or threatening, any forest land burning uncontrolled and without proper action being taken to prevent its spread, ((~~notwithstanding~~))regardless of the origin of the fire, is a public nuisance by reason of its menace to life and property. The landowner and any other person engaged in any activity on such lands((~~,~~)) having knowledge of the fire, ((~~notwithstanding~~))regardless of the origin or subsequent spread ((~~thereof~~))of the fire on his or her own or other forest lands, ((~~and the landowner,~~)) shall make every reasonable effort to suppress the fire.

(2)(a) If the person has not suppressed the fire and the fire is on or threatening forest land within a forest protection zone, the department shall summarily suppress the fire.

(b) If the owner, lessee, other possessor of ((~~such~~))the land, or an agent or contractor of the owner, lessee, or possessor, having knowledge of the fire, has not made a reasonable effort to suppress the fire, the cost ((~~thereof~~))of fire suppression may be recovered from the owner, lessee, or other possessor of the land and the cost of the work shall also constitute a lien upon the real property or chattels under the person's ownership. The lien may be filed by the department in the office of the county auditor and foreclosed in the same manner provided by law for the foreclosure of mechanics' liens. The prosecuting attorney shall bring the action to recover the cost or foreclose the lien, upon the request of the department. In the absence of negligence, no costs, other than those provided in RCW 76.04.475, shall be recovered from any landowner for lands subject to the forest protection assessment with respect to the land on which the fire burns.

(3) When a fire occurs in a land clearing, right‑of‑way clearing, or landowner operation it shall be fought to the full limit of the available employees and equipment, and the firefighting shall be continued with the necessary crews and equipment in such numbers as are, in the opinion of the department, sufficient to suppress the fire. The fire shall not be left without a firefighting crew or fire patrol until authority has been granted in writing by the department.

(4)(a) A landowner, a landowner's agent, or other person with potential duties or liability under this section may access, consistent with this subsection, land owned or managed by the department or the department of fish and wildlife for the purposes of constructing a fire line or taking other preventive measures intended to stop or slow the spread of a fire onto property owned by, or under the responsibility of, the actor.

(b) Land owned or managed by the department may only be accessed under this subsection if the following applies:

(i) The state-managed land is either adjacent to, or in reasonably close proximity to, the land to which the duty or liability under this section attaches;

(ii) There is a reasonable basis to believe that local fire conditions are creating an emergency situation and that there is imminent danger of a fire spreading from, or across, the parcel of state-managed land being accessed;

(iii) There is a reasonable basis to believe that the construction of a fire line or other preventive measure will stop or slow the spread of a fire from, or across, the parcel of state-managed land being accessed; and

(iv) The department or the department of fish and wildlife, whichever is appropriate, has been given notice of the intent to enter state-managed land.

(c) Nothing in this subsection authorizes any person to materially benefit from accessing state-managed land or retain any valuable materials that may be collected or harvested during the construction of a fire line or other preventive measure.

(d) The authority to access state-managed land under this section is limited to the minimum necessary activities reasonably required to stop or slow the spread of a fire.

(e) No civil liability may be imposed by any court on the state or the officers and employees of the state, the department, or the department of fish and wildlife for any direct or proximate adverse impacts resulting from the access to state-managed land allowed under this subsection, or the actions and activities of the individuals accessing the state-managed land, except upon proof of gross negligence or willful or wanton misconduct by the department, the department of fish and wildlife, or the employees of the agencies. The barrier to civil liability created by this subsection includes, but is not limited to, impacts on:

(i) The individuals accessing the state-managed land and their personal property;

(ii) Any structures or land alterations by individuals accessing the state-managed land;

(iii) Other landholdings; and

(iv) Overall environmental resources.

**Sec.**  RCW 79.02.300 and 2009 c 349 s 1 are each amended to read as follows:

(1)(a) Every person who, without authorization, uses or occupies public lands, removes any valuable material as defined in RCW 79.02.010 from public lands, ((~~or~~)) causes waste or damage to public lands, or injures publicly owned personal property or publicly owned improvements to real property on public lands, is liable to the state for treble the amount of the damages. However, liability shall be for single damages if the department determines, or the person proves upon trial, that the person, at time of the unauthorized act or acts, did not know, or have reason to know, that he or she lacked authorization.

(b) Damages recoverable under this section include, but are not limited to, the market value of the use, occupancy, or things removed, had the use, occupancy, or removal been authorized; and any damages caused by injury to the land, publicly owned personal property or publicly owned improvement, including the costs of restoration. In addition, the person is liable for reimbursing the state for its reasonable costs including, but not limited to, its administrative costs, survey costs to the extent they are not included in damages awarded for restoration costs, and its reasonable attorneys' fees and other legal costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 4.24.630, 64.12.030, or 79.02.320.

(3) The department is authorized and directed to investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for, and/or actions for the recovery of the same, to be commenced as provided by law.

(4) For the purposes of this section, accessing department-managed land for the purposes of fire suppression consistent with RCW 76.04.750 is considered authorized access.

**Sec.**  RCW 79.02.320 and 2009 c 349 s 3 are each amended to read as follows:

(1) Every person who ((~~shall~~)) cuts or removes, or causes to be cut or removed, any timber growing or being upon any public lands of the state, including a Christmas tree as defined in RCW ((~~76.48.020~~))76.48.021, or who ((~~shall~~)) manufactures the same into logs, bolts, shingles, lumber, or other articles of use or commerce, unless expressly authorized so to do by a bill of sale from the state, or by a lease or contract from the state under which he or she holds possession of such lands, or by provisions of law under which the bill of sale, lease, or contract was issued, shall be liable to the state for treble the value of the timber or other articles cut, removed, or manufactured, to be recovered in a civil action, and shall forfeit to the state all interest in any article into which the timber is manufactured.

(2) For the purposes of this section, cutting timber for the purposes of fire suppression consistent with RCW 76.04.750 is considered an authorized activity that does not violate the provisions of this section.

**Sec.**  RCW 79.02.330 and 2003 c 334 s 434 are each amended to read as follows:

((~~Every~~))(1) A person ((~~being~~)) in lawful possession of any public lands of the state, ((~~under and~~)) by virtue of ((~~any~~))a lease or contract of purchase from the state, who cuts down, destroys, or injures, or causes to be cut down, destroyed, or injured, any timber standing or growing thereon, or takes or removes, or causes to be taken or removed, therefrom, any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes, or removes therefrom, any earth, soil, clay, sand, gravel, stone, mineral, or other valuable material, or causes the same to be done, or otherwise injures, defaces, or damages, or causes to be injured, defaced, or damaged, any such lands unless expressly authorized so to do by the lease or contract under which possession of such lands is held, or by the provisions of law under and by virtue of which such lease or contract was issued, shall be guilty of a misdemeanor.

(2) For the purposes of this section, removing timber for the purposes of fire suppression consistent with RCW 76.04.750 is considered an authorized activity that does not violate the provisions of this section.

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