
SENATE BILL 5916

State of Washington

56th Legislature

1999 Regular Session

By Senators Jacobsen and Oke

Read first time 02/16/1999. Referred to Committee on Natural Resources, Parks & Recreation.

1 AN ACT Relating to wildlife and wildlife parts; amending RCW
2 77.15.070; adding new sections to chapter 77.15 RCW; creating a new
3 section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) Growing demand throughout the world for wildlife and wildlife
7 parts and products has created a market in which commercial
8 exploitation has threatened the survival of many foreign endangered
9 species, such as certain rhinoceros and tiger populations.

10 (2) There are insufficient legal mechanisms enabling the federal
11 wildlife enforcement agencies to forcefully interdict products that are
12 labeled as containing substances derived from foreign endangered
13 species and prosecute the merchandisers for sale or display of those
14 products.

15 (3) Although approximately seventy-seven thousand import and export
16 shipments occur annually in the United States, the United States fish
17 and wildlife service is able to maintain only ninety-two wildlife
18 inspectors at thirty ports of entry, including thirteen designated
19 ports, to monitor the shipments.

1 (4) Wildlife inspectors are able to physically inspect only an
2 estimated five to ten percent of all import and export shipments,
3 making the rate of detection of contraband wildlife products extremely
4 low.

5 (5) Alternatives are available to the traditional medicinal
6 products that contain substances derived from foreign endangered and
7 other species.

8 (6) State laws prohibiting the trafficking of protected animal
9 parts or products should be strengthened to include foreign endangered
10 species.

11 NEW SECTION. **Sec. 2.** No person may engage in trafficking of any
12 product, item, or a substance intended for human consumption containing
13 or purporting to contain any substance derived from any species listed
14 in 50 C.F.R. Sec. 23.23 as that section existed on the effective date
15 of this section. For the purposes of this section, "trafficking" means
16 attempting to engage or engaging in any form of commercial exchange
17 including but not limited to sale, barter, or purchase.

18 NEW SECTION. **Sec. 3.** A person who knowingly violates section 2 of
19 this act is guilty of a gross misdemeanor.

20 NEW SECTION. **Sec. 4.** Any person who knowingly violates section 2
21 of this act may be assessed a civil penalty by the director of not more
22 than twenty-five thousand dollars for each violation.

23 **Sec. 5.** RCW 77.15.070 and 1998 c 190 s 69 are each amended to read
24 as follows:

25 (1) Fish and wildlife officers and ex officio fish and wildlife
26 officers may seize without warrant boats, airplanes, vehicles, gear,
27 appliances, or other articles they have probable cause to believe have
28 been used in violation of this chapter. However, fish and wildlife
29 officers may not seize any item or article, other than for evidence, if
30 under the circumstances, it is reasonable to conclude that the
31 violation was inadvertent. The property seized is subject to
32 forfeiture to the state under this section regardless of ownership.
33 Property seized may be recovered by its owner by depositing into court
34 a cash bond equal to the value of the seized property but not more than
35 twenty-five thousand dollars. Such cash bond is subject to forfeiture

1 in lieu of the property. Forfeiture of property seized under this
2 section is a civil forfeiture against property intended to be a
3 remedial civil sanction.

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

13 (3) Persons claiming a right of ownership or right to possession of
14 property are entitled to a hearing to contest forfeiture. Such a claim
15 shall specify the claim of ownership or possession and shall be made in
16 writing and served on the director within forty-five days of the
17 seizure. If the seizing authority has complied with notice
18 requirements and there is no claim made within forty-five days, then
19 the property shall be forfeited to the state.

20 (4) If any person timely serves the director with a claim to
21 property, the person shall be afforded an opportunity to be heard as to
22 the person's claim or right. The hearing shall be before the director
23 or director's designee, or before an administrative law judge appointed
24 under chapter 34.12 RCW, except that a person asserting a claim or
25 right may remove the matter to a court of competent jurisdiction if the
26 aggregate value of the property seized is more than five thousand
27 dollars.

28 (5) The hearing to contest forfeiture and any subsequent appeal
29 shall be as provided for in Title 34 RCW. The seizing authority has
30 the burden to demonstrate that it had reason to believe the property
31 was held with intent to violate or was used in violation of this title
32 or rule of the commission or director. The person contesting
33 forfeiture has the burden of production and proof by a preponderance of
34 evidence that the person owns or has a right to possess the property
35 and:

36 (a) That the property was not held with intent to violate or used
37 in violation of this title or Title 75 RCW; or

38 (b) If the property is a boat, airplane, or vehicle, that the
39 illegal use or planned illegal use of the boat, airplane, or vehicle

1 occurred without the owner's knowledge or consent, and that the owner
2 acted reasonably to prevent illegal uses of such boat, airplane, or
3 vehicle.

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

9 (7) If seized property is forfeited under this section the
10 department may retain it for official use unless the property is
11 required to be destroyed, or upon application by any law enforcement
12 agency of the state, release such property to the agency for the use of
13 enforcing this title, or sell such property, and deposit the proceeds
14 to the wildlife fund, as provided for in RCW 77.12.170.

15 (8) Any product, item, or substance sold or attempted to be sold,
16 contrary to the provisions of section 2 of this act shall be subject to
17 forfeiture to the state. All equipment, vessels, vehicles, aircraft,
18 and other means of transportation used to aid the selling, or an
19 attempt to sell any product, item, or substance in violation of section
20 2 of this act shall be subject to forfeiture to the state upon
21 conviction of a criminal violation under section 3 of this act.

22 NEW SECTION. Sec. 6. Sections 2 through 4 of this act are each
23 added to chapter 77.15 RCW.

--- END ---