
SENATE BILL 5030

State of Washington

58th Legislature

2003 Regular Session

By Senator Morton

Read first time 01/13/2003. Referred to Committee on Parks, Fish & Wildlife.

1 AN ACT Relating to civil forfeiture of property used for fish and
2 wildlife code violations; and amending RCW 77.15.070 and 77.15.100.

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

4 **Sec. 1.** RCW 77.15.070 and 2000 c 107 s 231 are each amended to
5 read as follows:

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

1 to forfeiture in lieu of the property. Forfeiture of property seized
2 under this section is a civil forfeiture against property and is
3 intended to be a 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. The claim may be served by any method authorized by law or
18 court rule, including service by certified mail with return receipt
19 requested. Service by mail is deemed complete upon mailing. If the
20 seizing authority has complied with notice requirements and there is no
21 claim made within forty-five days, then the property shall be forfeited
22 to the state.

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

32 (5) The hearing to contest forfeiture and any subsequent appeal
33 shall be as provided for in chapter 34.05 RCW(~~(, the administrative~~
34 ~~procedure act)~~). The seizing authority has the burden (~~((to demonstrate~~
35 ~~that it had reason to believe))~~) of production and proof by a
36 preponderance of the evidence that the property was held with intent to
37 violate or was used in violation of this title (~~((or rule of the~~
38 ~~commission or director. The person contesting forfeiture has the~~

1 ~~burden of production and proof by a preponderance of evidence~~). It is
2 a defense that the person owns or has a right to possess the property
3 and:

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

6 (b) ~~((If the property is a boat, airplane, or vehicle,))~~ That the
7 illegal use or planned illegal use of the ~~((boat, airplane, or~~
8 ~~vehicle))~~ property occurred without the owner's knowledge or consent,
9 and that the owner acted reasonably to prevent illegal uses of ~~((such~~
10 ~~boat, airplane, or vehicle))~~ the property.

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

16 (7) If seized property is forfeited under this section, the
17 department ~~((may retain it for official use unless the))~~ shall destroy
18 property that is required to be destroyed, ~~((or upon application by any~~
19 ~~law enforcement agency of the state, release such property to the~~
20 ~~agency for the use of enforcing this title, or))~~ sell ~~((such))~~ all
21 other forfeited property, and deposit the proceeds to the wildlife
22 fund, as provided for in RCW 77.12.170.

23 (8) The department shall promptly return all property to the
24 claimant upon a determination by the administrative law judge or court
25 that the claimant is the present owner or is legally entitled to
26 possession of the seized property.

27 (9) In any proceeding to forfeit property under this title, where
28 the claimant substantially prevails, the claimant is entitled to
29 reasonable attorneys' fees reasonably incurred by the claimant.

30 **Sec. 2.** RCW 77.15.100 and 2000 c 107 s 235 are each amended to
31 read as follows:

32 (1) Unless otherwise provided in this title, fish, shellfish, or
33 wildlife unlawfully taken or possessed, or involved in a violation
34 shall be forfeited to the state upon conviction. Unless already held
35 by, sold, destroyed, or disposed of by the department, the court shall
36 order such fish or wildlife to be delivered to the department. Where

1 delay will cause loss to the value of the property and a ready
2 wholesale buying market exists, the department may sell property to a
3 wholesale buyer at a fair market value.

4 (2) When seized property is forfeited to the department, the
5 department (~~may retain it for official use unless the~~) shall destroy
6 property that is required to be destroyed, (~~or upon application by any~~
7 ~~law enforcement agency of the state, release the property to the agency~~
8 ~~for the use of enforcing this title, or~~) sell (~~such~~) all other
9 forfeited property, and deposit the proceeds into the state wildlife
10 fund established under RCW 77.12.170. Any sale of other property shall
11 be at public auction or after public advertisement reasonably designed
12 to obtain the highest price. The time, place, and manner of holding
13 the sale shall be determined by the director. The director may
14 contract for the sale to be through the department of general
15 administration as state surplus property, or, except where not
16 justifiable by the value of the property, the director shall publish
17 notice of the sale once a week for at least two consecutive weeks
18 before the sale in at least one newspaper of general circulation in the
19 county in which the sale is to be held.

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