

---

**SUBSTITUTE HOUSE BILL 1696**

---

**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
- 29 (a) Moose, mountain sheep, mountain
- 30 goat, and all wildlife species
- 31 classified as endangered by rule
- 32 of the commission, except for
- 33 mountain caribou and grizzly
- 34 bear as listed under (d) of this ~~\$(4,000)~~
- 35 subsection..... 8,000

1	(b)	Elk, deer, black bear, and cougar . . .	<del>\$(2,000)</del>
2			<u>4,000</u>
3	(c)	Trophy animal elk and deer . . . . .	<del>\$(6,000)</del>
4			<u>12,000</u>
5	(d)	Mountain caribou, grizzly bear, and	
6		trophy animal mountain sheep . . .	<del>\$(12,000)</del>
7			<u>24,000</u>

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

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

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

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

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

18 For purposes of this subsection, "eyeguard" means an antler  
19 protrusion on the main beam of the antler closest to the eye of the  
20 animal.

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

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

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

37 (7) A person assessed a criminal wildlife penalty assessment under  
38 this section shall have his or her hunting license revoked and all

1 hunting privileges suspended until the penalty assessment is paid  
2 through the registry of the court in which the penalty assessment was  
3 assessed.

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

6 (1) A person is guilty of spotlighting big game in the second  
7 degree if the person hunts big game with the aid of a spotlight or  
8 other artificial light while in possession or control of a firearm, bow  
9 and arrow, or cross bow.

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

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

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

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

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

--- END ---