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SENATE BILL 5683

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State of Washington

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By Senators Oke, Jacobsen, Kastama, Swecker, Berkey, Schoesler, Morton, Delvin, Shin and Rasmussen

Read first time 02/02/2005. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to enhanced fish and wildlife penalties; amending  
2 RCW 77.15.070, 77.15.370, 77.15.380, 77.15.410, 77.15.420, and  
3 77.15.450; adding a new section to chapter 77.15 RCW; and prescribing  
4 penalties.

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

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

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

1 the director's designee may authorize expenditures from the account.  
2 The account is subject to allotment procedures under chapter 43.88 RCW,  
3 but an appropriation is not required for expenditures.

4 **Sec. 2.** 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 or  
11 director. However, fish and wildlife officers or ex officio fish and  
12 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 with the  
17 department or into court a cash bond or equivalent security equal to  
18 the value of the seized property but not more than (~~twenty-five~~) one  
19 hundred thousand dollars. Such cash bond or security is subject to  
20 forfeiture in lieu of the property. Forfeiture of property seized  
21 under this section is a civil forfeiture against property and is  
22 intended to be a remedial civil sanction.

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

32 (3) Persons claiming a right of ownership or right to possession of  
33 property are entitled to a hearing to contest forfeiture. Such a claim  
34 shall specify the claim of ownership or possession and shall be made in  
35 writing and served on the director within forty-five days of the  
36 seizure. If the seizing authority has complied with notice

1 requirements and there is no claim made within forty-five days, then  
2 the property shall be forfeited to the state.

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

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

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

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

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

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

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

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

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

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

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

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

19           (2) Unlawful recreational fishing in the first degree is a gross  
20 misdemeanor.

21           **Sec. 4.** RCW 77.15.380 and 2001 c 253 s 39 are each amended to read  
22 as follows:

23           (1) A person is guilty of unlawful recreational fishing in the  
24 second degree if the person fishes for, takes, possesses, or harvests  
25 fish or shellfish and:

26           (a) The person does not have and possess the license or the catch  
27 record card required by chapter 77.32 RCW for such activity; or

28           (b) The action violates any rule of the commission or the director  
29 regarding seasons, bag or possession limits but less than two times the  
30 bag or possession limit, closed areas, closed times, or any other rule  
31 addressing the manner or method of fishing or possession of fish,  
32 except for:

33           (i) Use of a net to take fish as provided for in RCW 77.15.580; or

34           (ii) Fishing for or possession of a fish listed as threatened or  
35 endangered in 50 C.F.R. Sec. 17.11 (2002), unless fishing for or  
36 possession of such fish is specifically allowed under federal or state  
37 law.

1 (2) Unlawful recreational fishing in the second degree is a  
2 misdemeanor.

3 **Sec. 5.** RCW 77.15.410 and 1999 c 258 s 3 are each amended to read  
4 as follows:

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

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

10 (b) Violates any rule of the commission or director regarding  
11 seasons, bag or possession limits, closed areas including game  
12 reserves, closed times, or any other rule governing the hunting,  
13 taking, or possession of big game; or

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

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

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

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

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

28 (3)(a) Unlawful hunting of big game in the second degree is a gross  
29 misdemeanor. Upon conviction of an offense involving killing or  
30 possession of big game taken during closed season or in excess of the  
31 bag or possession limit, the department shall revoke all hunting  
32 licenses and tags and order a suspension of hunting privileges for two  
33 years.

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

1       **Sec. 6.** RCW 77.15.420 and 1998 c 190 s 62 are each amended to read  
2 as follows:

3       (1) If a person is convicted of violating RCW 77.15.410 and that  
4 violation results in the death of wildlife listed in this section, the  
5 court shall require payment of the following amounts for each animal  
6 killed or possessed. This shall be a criminal wildlife penalty  
7 assessment that shall be paid to the clerk of the court and distributed  
8 each month to the state treasurer for deposit in the ((~~public safety~~  
9 ~~and education~~)) fish and wildlife enforcement reward account created in  
10 section 1 of this act.

- 11                           (a)       Moose, mountain sheep, mountain  
12   goat, and all wildlife species  
13   classified as endangered by rule  
14   of the commission, except for  
15   mountain caribou and grizzly  
16   bear as listed under (d) of this ~~\$(4,000)~~  
17   subsection . . . . .                         8,000  
18                           (b)       Elk, deer, black bear, and cougar . . . ~~\$(2,000)~~  
19   4,000

20                           (i)       However, upon the accidental  
21   shooting of a nontrophy elk, deer,  
22   black bear, or cougar during an  
23   open season for the species when the  
24   shooter reports the shooting to the  
25   department within twenty-four  
26   hours and surrenders the animal to  
27   the department, the shooter is not  
28   subject to a fine or a loss of hunting  
29   privileges.

30                           (ii)       A hunter who accidentally shoots a  
31   nontrophy elk, deer, black bear, or  
32   cougar during an open season for  
33   the species, but fails to meet the  
34   requirements of (b)(i) of this  
35   subsection, is subject to both a five  
36   hundred dollar fine and a one year  
37   revocation of hunting privileges.

- 1 (c) Trophy animal elk and deer . . . . . ~~\$(6,000)~~
- 2 12,000
- 3 (d) Mountain caribou, grizzly bear, and
- 4 trophy animal mountain sheep . . . ~~\$(12,000)~~
- 5 24,000

6 (2) For the purposes of subsection (1)(a) through (d) of this  
 7 section, except for an accidental shooting under subsection (1)(b) of  
 8 this section, if the shooter: (a) Reports the shooting to the  
 9 department within twenty-four hours; (b) admits guilt; and (c)  
 10 surrenders the animal, then the shooter is required to pay only  
 11 one-half of the fine required under subsection (1)(a) through (d) of  
 12 this section, and have the shooter's hunting privileges revoked for one  
 13 year.

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

17 ~~((+3))~~ (4) For the purpose of this section a "trophy animal" is:

- 18 (a) A buck deer with four or more antler points on both sides, not
- 19 including eyeguards;
- 20 (b) A bull elk with five or more antler points on both sides, not
- 21 including eyeguards; or
- 22 (c) A mountain sheep with a horn curl of three-quarter curl or
- 23 greater.

24 For purposes of this subsection, "eyeguard" means an antler  
 25 protrusion on the main beam of the antler closest to the eye of the  
 26 animal.

27 ~~((+4))~~ (5) If two or more persons are convicted of illegally  
 28 possessing wildlife in subsection (1) of this section, the criminal  
 29 wildlife penalty assessment shall be imposed on them jointly and  
 30 separately.

31 ~~((+5))~~ (6) The criminal wildlife penalty assessment shall be  
 32 imposed regardless of and in addition to any sentence, fines, or costs  
 33 otherwise provided for violating any provision of this title. The  
 34 criminal wildlife penalty assessment shall be included by the court in  
 35 any pronouncement of sentence and may not be suspended, waived,  
 36 modified, or deferred in any respect. This section may not be  
 37 construed to abridge or alter alternative rights of action or remedies  
 38 in equity or under common law or statutory law, criminal or civil.

1       (~~(6)~~) (7) A defaulted criminal wildlife penalty assessment may be  
2 collected by any means authorized by law for the enforcement of orders  
3 of the court or collection of a fine or costs, including but not  
4 limited to vacation of a deferral of sentencing or vacation of a  
5 suspension of sentence.

6       (~~(7)~~) (8) A person assessed a criminal wildlife penalty  
7 assessment under this section shall have his or her hunting license  
8 revoked and all hunting privileges suspended until the penalty  
9 assessment is paid through the registry of the court in which the  
10 penalty assessment was assessed.

11       **Sec. 7.** RCW 77.15.450 and 1998 c 190 s 27 are each amended to read  
12 as follows:

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

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

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

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

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

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

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