

SSB 5972 - S AMD 479

By Senators Pearson, Hargrove

ADOPTED 02/17/2014

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 76.04 RCW
4 to read as follows:

5 (1) The owner of public or private forested lands may bring a civil
6 action in superior court for property damage to public or private
7 forested lands, including real and personal property on those lands,
8 when the damage results from a fire that started on or spread from
9 public or private forested lands.

10 (2) Liability under this section attaches to the extent that
11 evidence demonstrates that:

12 (a) An action or inaction by a person relating to the start or
13 spread of the fire from public or private forested lands constituted
14 negligence or a higher degree of fault; and

15 (b) The action or inaction under (a) of this subsection was a
16 proximate cause of the property damage.

17 (3) Recoverable damages under this section are limited to:

18 (a) Either: (i) The difference in the fair market value of the
19 damaged property immediately before and after the fire. For real
20 property, the state-certified general real estate appraiser must
21 identify and analyze all relevant characteristics and uses of the
22 property including cultural, recreational, and environmental
23 characteristics and uses, to the extent such characteristics or uses
24 contribute to the fair market value of the property based on the
25 highest and best use of the property. The state-certified general real
26 estate appraiser shall expressly address the assumptions and conditions
27 used to evaluate such characteristics and uses, consistent with
28 standards of professional appraisal practice adopted under chapter
29 18.140 RCW; or (ii) the reasonable cost of restoring the damaged
30 property to the general condition it was in immediately before the

1 fire. However, recovery for the cost of restoration may not exceed the
2 difference in the fair market value of the damaged property immediately
3 before and after the fire;

4 (b) The reasonable expenses incurred to suppress or extinguish the
5 fire unless otherwise provided for in this chapter; and

6 (c) Any other objectively verifiable monetary loss, that is not
7 duplicative of the recovery specified under (a) or (b) of this
8 subsection including, but not limited to: Out-of-pocket expenses; loss
9 of earnings; loss of use of property; or loss of business or employment
10 opportunities. Such loss must be established by evidence of prefire
11 investments, income, expenses, or contracts specific to the damaged
12 property.

13 (4) This section provides the exclusive cause of action for
14 property damage to public or private forested lands, including real and
15 personal property on those lands, resulting from a fire that started on
16 or spread from public or private forested lands.

17 (5) The definitions in this subsection only apply throughout this
18 section relating to the specification of damages for fire damage to
19 public and private forested lands, unless the context clearly requires
20 otherwise, and do not apply to and are not intended as a source for
21 interpretation of other sections of this chapter.

22 (a) "Fair market value" means the amount that a willing buyer would
23 pay to a willing seller for property in an arms-length transaction if
24 both parties were fully informed about all advantages and disadvantages
25 of the property and neither party is acting under a compulsion to sell,
26 as determined by: (i) For real property, a state-certified general
27 real estate appraiser as defined under RCW 18.140.010; and (ii) for
28 personal property, an appraiser qualified to appraise the property
29 based on training and experience. For real property, the state-
30 certified general real estate appraiser must identify and analyze all
31 relevant characteristics and uses of the property including cultural,
32 recreational, and environmental characteristics and uses, to the extent
33 such characteristics or uses contribute to the fair market value of the
34 property based on the highest and best use of the property. The state-
35 certified general real estate appraiser shall expressly address the
36 assumptions and conditions used to evaluate such characteristics and
37 uses, consistent with standards of professional appraisal practice
38 adopted under chapter 18.140 RCW.

1 (b) "Forest tree species" means a tree species that is capable of
2 producing logs, fiber, or other wood materials that are suitable for
3 the production of lumber, sheeting, pulp, firewood, or other forest
4 products.

5 (c) "Owner of public or private forested lands" means any person in
6 actual control of public or private forested lands, whether the control
7 is based either on legal or equitable title, or on any other interest
8 entitling the holder to sell or otherwise dispose of any or all of the
9 timber on the land in any manner.

10 (d) "Person" includes: An individual; a corporation; a public or
11 private entity or organization; a local, state, or federal government
12 or governmental entity; any business organization, including
13 corporations and partnerships; or a group of two or more individuals
14 acting with a common purpose.

15 (e) "Public or private forested lands" means any lands used or
16 biologically capable of being used for growing forest tree species
17 regardless of the existing use of the land except when the predominant
18 physical use of the land at the time of the fire is not consistent with
19 the growing, conservation, or preservation of forest tree species.
20 Examples of inconsistent uses include, but are not limited to,
21 buildings, airports, parking lots, mining, solid waste disposal,
22 cropfields, orchards, vineyards, pastures, feedlots, communication
23 sites, and home sites that may include up to ten acres. Public or
24 private forested lands do not include state highways, county roads,
25 railroad rights-of-way, and utility rights-of-way that cross over,
26 under, or through such lands.

27 **Sec. 2.** RCW 4.24.040 and 2009 c 549 s 1001 are each amended to
28 read as follows:

29 Except as provided in section 1 of this act, if any person shall
30 for any lawful purpose kindle a fire upon his or her own land, he or
31 she shall do it at such time and in such manner, and shall take such
32 care of it to prevent it from spreading and doing damage to other
33 persons' property, as a prudent and careful person would do, and if he
34 or she fails so to do he or she shall be liable in an action on the
35 case to any person suffering damage thereby to the full amount of such
36 damage.

1 **Sec. 3.** RCW 4.24.060 and 2011 c 336 s 93 are each amended to read
2 as follows:

3 The common law right to an action for damages done by fires, is not
4 taken away or diminished by RCW 4.24.040, 4.24.050, and 4.24.060(~~(, but~~
5 ~~it may be pursued; but)~~). However:

6 (1) Any person availing himself or herself of the provisions of RCW
7 4.24.040, shall be barred of his or her action at common law for the
8 damage so sued for(~~(, and)~~);

9 (2) No action shall be brought at common law for kindling fires in
10 the manner described in RCW 4.24.050(~~(, but)~~). However, if any such
11 fires shall spread and do damage, the person who kindled the (~~(same))~~)
12 fire and any person present and concerned in driving (~~(such))~~) the
13 lumber, by whose act or neglect (~~(such))~~) the fire is suffered to spread
14 and do damage shall be liable in an action on the case for the amount
15 of damages thereby sustained; and

16 (3) A civil action for property damage to public or private
17 forested lands, including real and personal property on those lands,
18 resulting from a fire that started on or spread from public or private
19 forested lands may be brought only under section 1 of this act.

20 NEW SECTION. Sec. 4. This act does not: Affect or preclude any
21 action relating to the imposition of criminal or civil penalties as
22 authorized by law; affect or preclude the recovery of fire suppression
23 costs as authorized under chapter 76.04 RCW; affect or preclude an
24 action under RCW 4.24.630 against a person who goes onto the land of
25 another without authorization and wrongfully, intentionally, and
26 unreasonably causes a fire resulting in property damage; affect or
27 preclude an action under chapter 27.44 or 27.53 RCW; or affect the
28 provisions of RCW 76.04.016.

29 NEW SECTION. Sec. 5. This act applies prospectively only and not
30 retroactively. It applies only to causes of action that arise on or
31 after the effective date of this section."

ADOPTED 02/17/2014

1 On page 1, line 2 of the title, after "lands;" strike the remainder
2 of the title and insert "amending RCW 4.24.040 and 4.24.060; adding a
3 new section to chapter 76.04 RCW; and creating new sections."

EFFECT: Specifies the process state-certified general real estate appraisers must use to establish fair market value when determining recoverable real property damages; specifies that public or private forested lands do not include state highways, county roads, railroad rights-of-way, and utility rights-of-way that cross over, under, or through such lands; provides that objectively verifiable monetary losses must be established by evidence of prefire investments, income, expenses, or contracts specific to the damaged property; and makes technical and organizational changes.

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