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**ENGROSSED SUBSTITUTE SENATE BILL 5972**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** Senate Natural Resources & Parks (originally sponsored by Senators Pearson, Rolfes, Hargrove, Mullet, Sheldon, Hewitt, Cleveland, Honeyford, Fain, Hill, Braun, Fraser, Litzow, Parlette, Frockt, and Kline; by request of Commissioner of Public Lands)

READ FIRST TIME 01/22/14.

1       AN ACT Relating to specifying recovery for fire damages to public  
2 or private forested lands; amending RCW 4.24.040 and 4.24.060; adding  
3 a new section to chapter 76.04 RCW; and creating new sections.

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

5       NEW SECTION.   **Sec. 1.** A new section is added to chapter 76.04 RCW  
6 to read as follows:

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

12       (2) Liability under this section attaches to the extent that  
13 evidence demonstrates that:

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

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

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

1 (a) Either: (i) The difference in the fair market value of the  
2 damaged property immediately before and after the fire. For real  
3 property, the state-certified general real estate appraiser must  
4 identify and analyze all relevant characteristics and uses of the  
5 property including cultural, recreational, and environmental  
6 characteristics and uses, to the extent such characteristics or uses  
7 contribute to the fair market value of the property based on the  
8 highest and best use of the property. The state-certified general real  
9 estate appraiser shall expressly address the assumptions and conditions  
10 used to evaluate such characteristics and uses, consistent with  
11 standards of professional appraisal practice adopted under chapter  
12 18.140 RCW; or (ii) the reasonable cost of restoring the damaged  
13 property to the general condition it was in immediately before the  
14 fire. However, recovery for the cost of restoration may not exceed the  
15 difference in the fair market value of the damaged property immediately  
16 before and after the fire;

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

19 (c) Any other objectively verifiable monetary loss, that is not  
20 duplicative of the recovery specified under (a) or (b) of this  
21 subsection including, but not limited to: Out-of-pocket expenses; loss  
22 of earnings; loss of use of property; or loss of business or employment  
23 opportunities. Such loss must be established by evidence of prefire  
24 investments, income, expenses, or contracts specific to the damaged  
25 property.

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

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

35 (a) "Fair market value" means the amount that a willing buyer would  
36 pay to a willing seller for property in an arms-length transaction if  
37 both parties were fully informed about all advantages and disadvantages  
38 of the property and neither party is acting under a compulsion to sell,

1 as determined by: (i) For real property, a state-certified general  
2 real estate appraiser as defined under RCW 18.140.010; and (ii) for  
3 personal property, an appraiser qualified to appraise the property  
4 based on training and experience. For real property, the state-  
5 certified general real estate appraiser must identify and analyze all  
6 relevant characteristics and uses of the property including cultural,  
7 recreational, and environmental characteristics and uses, to the extent  
8 such characteristics or uses contribute to the fair market value of the  
9 property based on the highest and best use of the property. The state-  
10 certified general real estate appraiser shall expressly address the  
11 assumptions and conditions used to evaluate such characteristics and  
12 uses, consistent with standards of professional appraisal practice  
13 adopted under chapter 18.140 RCW.

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

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

23 (d) "Person" includes: An individual; a corporation; a public or  
24 private entity or organization; a local, state, or federal government  
25 or governmental entity; any business organization, including  
26 corporations and partnerships; or a group of two or more individuals  
27 acting with a common purpose.

28 (e) "Public or private forested lands" means any lands used or  
29 biologically capable of being used for growing forest tree species  
30 regardless of the existing use of the land except when the predominant  
31 physical use of the land at the time of the fire is not consistent with  
32 the growing, conservation, or preservation of forest tree species.  
33 Examples of inconsistent uses include, but are not limited to,  
34 buildings, airports, parking lots, mining, solid waste disposal,  
35 cropfields, orchards, vineyards, pastures, feedlots, communication  
36 sites, and home sites that may include up to ten acres. Public or  
37 private forested lands do not include state highways, county roads,

1 railroad rights-of-way, and utility rights-of-way that cross over,  
2 under, or through such lands.

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

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

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

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

18 (1) Any person availing himself or herself of the provisions of RCW  
19 4.24.040, shall be barred of his or her action at common law for the  
20 damage so sued for(~~(, and)~~);

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

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

32 NEW SECTION. **Sec. 4.** This act does not: Affect or preclude any  
33 action relating to the imposition of criminal or civil penalties as  
34 authorized by law; affect or preclude the recovery of fire suppression  
35 costs as authorized under chapter 76.04 RCW; affect or preclude an

1 action under RCW 4.24.630 against a person who goes onto the land of  
2 another without authorization and wrongfully, intentionally, and  
3 unreasonably causes a fire resulting in property damage; affect or  
4 preclude an action under chapter 27.44 or 27.53 RCW; or affect the  
5 provisions of RCW 76.04.016.

6 NEW SECTION. **Sec. 5.** This act applies prospectively only and not  
7 retroactively. It applies only to causes of action that arise on or  
8 after the effective date of this section.

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