

CHAPTER 314

[Substitute Senate Bill No. 5819]

WILDLIFE OFFENSES—SEIZURE AND FORFEITURE OF PERSONAL PROPERTY
USED TO COMMIT

AN ACT Relating to the seizure and forfeiture of personal property for wildlife offenses; amending RCW 77.12.170, 77.21.040, and 77.21.060; adding new sections to chapter 77.12 RCW; creating a new section; and repealing RCW 77.12.100.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. In order to improve the enforcement of wildlife laws it is important to increase the penalties upon poachers by seizing the conveyances and gear that are used in poaching activities and to cause forfeiture of those items to the department.

NEW SECTION. Sec. 2. (1) Wildlife agents and ex officio wildlife agents may seize without a warrant wildlife, as defined in RCW 77.08.010(16), they have probable cause to believe have been taken, killed, transported, or possessed in violation of this title or rule of the commission or director. Agents may also seize without warrant boat(s), vehicle(s), all conveyances, airplane(s), motorized implement(s), gear, appliance(s), or other articles they have probable cause to believe: (a) Are held with intent to violate; or (b) were used in the violation of Title 77 RCW, or any regulation pursuant thereto when the species involved is one which is listed in RCW 77.21.070, or any wildlife involved in trafficking under RCW 77.16-.040 or illegal netting of game fish under RCW 77.16.060. However, agents may not seize any item or article, other than evidence, from a violator if under the circumstances it is reasonable to conclude that the violation was inadvertent. The articles seized shall be forfeited to the state, upon conviction, plea of guilty, or bail forfeiture. Articles seized may be recovered by their owner by depositing into court a cash bond equal to the value of the seized articles. The cash bond is subject to forfeiture in lieu of the seized articles.

(2)(a) In the event of a seizure of an article under subsection (1) of this section, proceedings for forfeiture shall be deemed commenced by bail forfeiture, plea of guilty, or upon conviction. The seizing authority shall serve notice within fifteen days following the seizure on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested, and service by such mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(b) If no person notifies the department in writing of the person's claim of ownership or right to possession of articles seized pursuant to subsection

(1) of this section within forty-five days of the seizure, the articles shall be deemed forfeited.

(c) If any person notifies the department in writing within forty-five days of the seizure, the person shall be afforded an opportunity to be heard as to the claim or right. The hearing shall be before the director or his designee, or before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. The department hearing and any appeal therefrom shall be under Title 34 RCW. The burden of producing evidence shall be upon the person claiming to be the lawful owner or person claiming lawful right of possession of the articles seized. The department shall promptly return the seized articles to the claimant upon a determination by the director or designee, an administrative law judge, or a court that the claimant is the present lawful owner or is lawfully entitled to possession of the articles seized, and that the seized articles were improperly seized.

(d)(i) No conveyance, including vessels, vehicles, or aircraft, is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(ii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge nor consented to the act or omission.

(e) When seized property is forfeited under this section the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release such property to such agency for the use of enforcing Title 77 RCW, or sell such property, and deposit the proceeds to the wildlife fund in the state treasury, as provided for in RCW 77.12.170.

NEW SECTION. Sec. 3. (1) The burden of proof of any exemption or exception to seizure or forfeiture of personal property involved with wildlife offenses is upon the person claiming it.

(2) An authorized state, county, or municipal officer may be subject to civil liability under section 2 of this act for willful misconduct or gross negligence in the performance of his or her duties.

(3) The director of wildlife, the wildlife commission, or the department of wildlife may be subject to civil liability for their willful or reckless misconduct in matters involving the seizure and forfeiture of personal property involved with wildlife offenses.

Sec. 4. Section 334, chapter 258, Laws of 1984 as amended by section 25, chapter 506, Laws of 1987 and RCW 77.12.170 are each amended to read as follows:

(1) There is established in the state treasury the state wildlife fund which consists of moneys received from:

- (a) Rentals or concessions of the department;
- (b) The sale of real or personal property held for department purposes;
- (c) The sale of licenses, permits, tags, stamps, and punchcards required by this title;
- (d) Fees for informational materials published by the department;
- (e) Fees for personalized vehicle license plates as provided in chapter 46.16 RCW;
- (f) Articles or wildlife sold by the director under this title;
- (g) Compensation for wildlife losses or gifts or grants received under RCW 77.12.320; ~~((and))~~
- (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW; and
- (i) The sale of personal property seized by the department for wildlife violations.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife fund.

Sec. 5. Section 77.12.110, chapter 36, Laws of 1955 as last amended by section 72, chapter 506, Laws of 1987 and RCW 77.21.040 are each amended to read as follows:

~~(1) ((In addition to other penalties provided by law, a court may forfeit, for the use of the department, wildlife seized under this title and proven, in either a criminal or civil action, to have been unlawfully taken, killed, transported, or possessed and articles or devices seized under this title and proven, in either a criminal or civil action, to have been unlawfully used or held with intent to unlawfully use. Unless forfeited by the court, the department shall return an item seized under this title to its owner after the completion of the case and all fines have been paid. If the owner of a seized item cannot be found, the court may forfeit that item after summons has been served by publication as in civil actions and a hearing has been held.~~

~~(2))~~ Wildlife unlawfully taken or possessed remains the property of the state.

~~((3))~~ (2) The director may sell articles or devices seized and forfeited under this title by the court at public auction. The time, place, and manner of holding the sale shall be determined by the director. The director shall publish notice of the sale once a week for at least two consecutive weeks prior to the sale in at least one newspaper of general circulation in the county in which the sale is to be held. Proceeds from the sales shall be deposited in the state treasury to be credited to the state wildlife fund.

Sec. 6. Section 77.32.260, chapter 36, Laws of 1955 as last amended by section 73, chapter 506, Laws of 1987 and RCW 77.21.060 are each amended to read as follows:

(1) Upon conviction of a violation of this title or rules adopted pursuant to this title, the court may forfeit a license, in addition to other penalties

provided by law. Upon subsequent conviction, the forfeiture of the license is mandatory. The director may prohibit issuance of a license to a person convicted two or more times or prescribe the conditions for subsequent issuance of a license.

(2) It shall be unlawful for a person to conduct an activity requiring a wildlife license, tag, or stamp for which they have had a license forfeiture or for which the director has prohibited the issuance of a license.

NEW SECTION. Sec. 7. Sections 2 and 3 of this act are each added to chapter 77.12 RCW.

NEW SECTION. Sec. 8. Section 77.12.100, chapter 36, Laws of 1955, section 23, chapter 78, Laws of 1980, section 21, chapter 506, Laws of 1987 and RCW 77.12.100 are each repealed.

Passed the Senate April 17, 1989.

Passed the House April 11, 1989.

Approved by the Governor May 11, 1989.

Filed in Office of Secretary of State May 11, 1989.

CHAPTER 315

[Substitute House Bill No. 1504]

INDOOR AIR QUALITY—PUBLIC BUILDINGS

AN ACT Relating to indoor air quality in publicly owned or leased buildings; and adding a new chapter to Title 70 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that many Washington residents spend a significant amount of their time working indoors and that exposure to indoor air pollutants may occur in public buildings, schools, work places, and other indoor environments. Scientific studies indicate that pollutants common in the indoor air may include radon, asbestos, volatile organic chemicals including formaldehyde and benzene, combustion by-products including carbon monoxide, nitrogen oxides, and carbon dioxide, metals and gases including lead, chlorine, and ozone, respirable particles, tobacco smoke, biological contaminants, micro-organisms, and other contaminants. In some circumstances, exposure to these substances may cause adverse health effects, including respiratory illnesses, multiple chemical sensitivities, skin and eye irritations, headaches, and other related symptoms. There is inadequate information about indoor air quality within the state of Washington, including the sources and nature of indoor air pollution.

The intent of the legislature is to develop a control strategy that will improve indoor air quality, provide for the evaluation of indoor air quality in public buildings, and encourage voluntary measures to improve indoor air quality.