
HOUSE BILL 2103

State of Washington

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By Representatives Lytton, Warnick, Van De Wege, Kretz, Haigh, MacEwen, Blake, Chandler, Hurst, Pettigrew, Smith, Orcutt, Dunshee, and Stanford; by request of Commissioner of Public Lands

Prefiled 12/03/13.

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 constituted negligence or a higher degree of fault;
16 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) The lesser of the difference in the fair market value of the
2 damaged property before and immediately after the fire or the
3 reasonable cost of restoring the damaged property to the condition it
4 was in immediately before the fire;

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

7 (c) Any other objectively verifiable monetary loss, including but
8 not limited to out-of-pocket expenses, loss of earnings, loss of use of
9 property, and loss of business or employment opportunities, provided
10 such a loss is not duplicative of the recovery specified under (a) or
11 (b) of this subsection.

12 (4) This section provides the exclusive cause of action for
13 property damage to public or private forested lands, including real and
14 personal property on those lands, resulting from a fire that started on
15 or spread from public or private forested lands. This section does not
16 apply to or preclude a cause of action under RCW 4.24.630 against a
17 person who goes onto the land of another without authorization and
18 wrongfully, intentionally, and unreasonably causes a fire resulting in
19 property damage.

20 (5) The definitions in this subsection apply throughout this
21 section unless the context clearly requires otherwise.

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 estate, a state-certified general real
27 estate appraiser as defined under RCW 18.140.010; and (ii) for personal
28 property, an appraiser qualified to appraise the property based on
29 training and experience.

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

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

1 (d) "Person" includes: An individual; a corporation; a public or
2 private entity or organization; a local, state, or federal government
3 or governmental entity; any business organization, including
4 corporations and partnerships; or a group of two or more individuals
5 acting with a common purpose.

6 (e) "Public or private forested lands" means any lands used or
7 biologically capable of being used for growing forest tree species
8 regardless of the existing use of the land except when the predominant
9 physical use of the land at the time of the fire is not consistent with
10 the growing, conservation, or preservation of forest tree species.
11 Examples of inconsistent uses include, but are not limited to,
12 buildings, road, railroad and utility rights-of-way, airports, parking
13 lots, mining, solid waste disposal, cropfields, orchards, vineyards,
14 pastures, feedlots, communication sites, and home sites that may
15 include up to five acres.

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

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

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

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

31 (1) Any person availing himself or herself of the provisions of RCW
32 4.24.040, shall be barred of his or her action at common law for the
33 damage so sued for(~~(, and)~~);

34 (2) No action shall be brought at common law for kindling fires in
35 the manner described in RCW 4.24.050(~~(, but)~~). However, if any such
36 fires shall spread and do damage, the person who kindled the (~~same~~)

1 fire and any person present and concerned in driving (~~such~~) the
2 lumber, by whose act or neglect (~~such~~) the fire is suffered to spread
3 and do damage shall be liable in an action on the case for the amount
4 of damages thereby sustained; and

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

9 NEW SECTION. Sec. 4. This act does not affect any action relating
10 to the: Imposition of criminal or civil penalties as authorized by
11 law; or recovery of fire suppression costs as authorized under this
12 chapter.

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

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