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**SUBSTITUTE HOUSE BILL 1831**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Natural Resources, Ecology & Parks (originally sponsored by Representatives Kretz, Blake, Grant, Buri, Holmquist, B. Sullivan, Orcutt, Serben, McCune, Sump, Cox, Walsh, Clements, Roach, Linville, Newhouse, Haler and Pearson)

READ FIRST TIME 03/01/05.

1 AN ACT Relating to damage to livestock caused by wildlife; and  
2 amending RCW 77.36.005, 77.36.010, 77.36.040, 77.36.050, 77.36.060,  
3 77.36.070, and 77.36.080.

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

5 **Sec. 1.** RCW 77.36.005 and 1996 c 54 s 1 are each amended to read  
6 as follows:

7 The legislature finds that:

8 (1) As the number of people in the state grows, wildlife management  
9 techniques change, and wildlife habitat is altered, people will  
10 encounter wildlife more frequently. As a result, conflicts between  
11 humans and wildlife will also increase. Wildlife is a public resource  
12 of significant value to the people of the state and the responsibility  
13 to minimize and resolve these conflicts is shared by all citizens of  
14 the state.

15 (2) In particular, the state recognizes the importance of  
16 commercial agricultural and horticultural crop production, the state's  
17 commercial livestock industry, and the value of healthy ((~~deer~~ and  
18 ~~elk~~)) wildlife populations, which can damage ((~~such~~)) crops and  
19 commercial livestock. The legislature further finds that damage

1 prevention is key to maintaining healthy ~~((deer and elk))~~ wildlife  
2 populations, wildlife-related recreational opportunities, ~~((and))~~  
3 commercially productive agricultural and horticultural crops, and a  
4 thriving commercial livestock industry, and that the state,  
5 participants in wildlife recreation, and private landowners and tenants  
6 share the responsibility for damage prevention. Toward this end, the  
7 legislature encourages landowners and tenants to contribute through  
8 their land management practices to healthy wildlife populations and to  
9 provide access for related recreation. It is in the best interests of  
10 the state for the department ~~((of fish and wildlife))~~ to respond  
11 quickly to wildlife damage complaints and to work with these landowners  
12 and tenants to minimize and/or prevent damages and conflicts while  
13 maintaining ~~((deer and elk))~~ wildlife populations for enjoyment by all  
14 citizens of the state.

15 (3) A timely and simplified process for resolving claims for  
16 damages caused by ~~((deer and elk))~~ wildlife for commercial agricultural  
17 ~~((or))~~, horticultural, or commercial livestock products is beneficial  
18 to the claimant and the state.

19 **Sec. 2.** RCW 77.36.010 and 1996 c 54 s 2 are each amended to read  
20 as follows:

21 ~~((Unless otherwise specified,))~~ The ~~((following))~~ definitions in  
22 this section apply throughout this chapter~~((+))~~ unless the context  
23 clearly requires otherwise.

24 (1) "Commercial livestock" means cattle, sheep, and horses held or  
25 raised by a person for sale, trade, or barter, and from which the  
26 person derives an annual income from the sales of the animals in excess  
27 of ten thousand dollars.

28 (2) "Crop" means a commercially raised horticultural and/or  
29 agricultural product and includes growing or harvested product but does  
30 not include livestock. For the purposes of this chapter all parts of  
31 horticultural trees shall be considered a crop and shall be eligible  
32 for claims.

33 ~~((+2))~~ (3) "Emergency" means an unforeseen circumstance beyond the  
34 control of the landowner or tenant that presents a real and immediate  
35 threat to crops, domestic animals, or fowl.

36 ~~((+3))~~ (4) "Immediate family member" means spouse, brother,  
37 sister, grandparent, parent, child, or grandchild.

1       (5) "Predatory wildlife" means bears and cougars.

2       **Sec. 3.** RCW 77.36.040 and 1996 c 54 s 5 are each amended to read  
3 as follows:

4       (1)(a) Pursuant to this section, the director or the director's  
5 designee may distribute money appropriated to pay claims for damages to  
6 crops caused by wild deer or elk in an amount of up to ten thousand  
7 dollars per claim. Damages payable under this section are limited to  
8 the value of such commercially raised horticultural or agricultural  
9 crops, whether growing or harvested, and shall be paid only to the  
10 owner of the crop at the time of damage, without assignment. Damages  
11 shall not include damage to other real or personal property including  
12 other vegetation or animals, damages caused by animals other than wild  
13 deer or elk, lost profits, consequential damages, or any other damages  
14 whatsoever. ~~((These damages))~~

15       (b) Pursuant to this section, the director or the director's  
16 designee may distribute money appropriated to reimburse the owner of  
17 commercial livestock that has been killed by predatory wildlife, or  
18 injured by predatory wildlife to such a degree that the commercial  
19 value of the commercial livestock has been diminished. Each individual  
20 animal represents one claim, and each claim must be paid the fair  
21 market value of the killed or injured animal as determined by the  
22 director upon recommendation of the department of agriculture.

23       (c) Damage claim payments under this section shall comprise the  
24 exclusive remedy for claims against the state for damages caused by  
25 wildlife.

26       (2) The director may adopt rules for the form of affidavits or  
27 proof to be provided in claims under this section. The director may  
28 adopt rules to specify the time and method of assessing damage. The  
29 burden of proving damages shall be on the claimant. Payment of claims  
30 shall remain subject to the other conditions and limits of this  
31 chapter.

32       (3) If funds are limited, payments of claims shall be prioritized  
33 in the order that the claims are received. No claim may be processed  
34 if:

35       (a) The claimant did not notify the department within ten days of  
36 discovery of ~~((the))~~ damage to crops or within seventy-two hours of the  
37 discovery of a predatory wildlife attack on commercial livestock. If

1 the claimant intends to take steps that prevent determination of  
2 damages, such as harvest of damaged crops, then the claimant shall  
3 notify the department as soon as reasonably possible after discovery so  
4 that the department has an opportunity to document the damage and take  
5 steps to prevent additional damage; or

6 (b) The claimant did not present a complete, written claim within  
7 sixty days after the damage, or the last day of damaging if the damage  
8 was of a continuing nature.

9 (4) The director or the director's designee may examine and assess  
10 the damage upon notice. The department and claimant may agree to an  
11 assessment of damages by a neutral person or persons knowledgeable in  
12 horticultural (~~or~~), agricultural, or commercial livestock practices.  
13 The department and claimant shall share equally in the costs of such  
14 third party examination and assessment of damage.

15 (5) There shall be no payment for damages if:

16 (a) The crops are on lands leased from any public agency;

17 (b) The landowner or claimant failed to use or maintain applicable  
18 damage prevention materials or methods furnished by the department, or  
19 failed to comply with a wildlife damage prevention agreement under RCW  
20 77.12.260;

21 (c) The director has expended all funds appropriated for payment of  
22 such claims for the current fiscal year; or

23 (d) The damages are covered by insurance. The claimant shall  
24 notify the department at the time of claim of insurance coverage in the  
25 manner required by the director. Insurance coverage shall cover all  
26 damages prior to any payment under this chapter.

27 (6) When there is a determination of claim by the director or the  
28 director's designee pursuant to this section, the claimant has sixty  
29 days to accept the claim or it is deemed rejected.

30 **Sec. 4.** RCW 77.36.050 and 1996 c 54 s 6 are each amended to read  
31 as follows:

32 If the claimant does not accept the director's decision under RCW  
33 77.36.040, or if the claim exceeds ten thousand dollars, then the claim  
34 may be filed with the (~~office of~~) risk management division of the  
35 office of financial management under RCW 4.92.040(5). The (~~office~~  
36 ~~of~~) risk management division shall recommend to the legislature  
37 whether the claim should be paid. If the legislature approves the

1 claim, the director shall pay it from moneys appropriated for that  
2 purpose. No funds shall be expended for damages under this chapter  
3 except as appropriated by the legislature.

4 **Sec. 5.** RCW 77.36.060 and 1996 c 54 s 7 are each amended to read  
5 as follows:

6 The director may refuse to consider and pay claims ~~((of))~~ for  
7 damage to crops for persons who have posted the property against  
8 hunting or who have not allowed public hunting during the season prior  
9 to the occurrence of the damages.

10 **Sec. 6.** RCW 77.36.070 and 1996 c 54 s 8 are each amended to read  
11 as follows:

12 The department may pay no more than one hundred twenty thousand  
13 dollars per fiscal year from the ~~((wildlife))~~ general fund for claims  
14 under RCW 77.36.040 and for assessment costs and compromise of claims.  
15 Such money shall be used to pay animal damage claims only if the claim  
16 meets the conditions of RCW 77.36.040 and, for crop claims only, the  
17 damage occurred in a place where the opportunity to hunt was not  
18 restricted or prohibited by a county, municipality, or other public  
19 entity during the season prior to the occurrence of the damage.

20 **Sec. 7.** RCW 77.36.080 and 1996 c 54 s 9 are each amended to read  
21 as follows:

22 (1) The department may pay no more than thirty thousand dollars per  
23 fiscal year from the general fund for claims under RCW 77.36.040 and  
24 for assessment costs and compromise of claims unless the legislature  
25 declares an emergency. Such money shall be used to pay animal damage  
26 claims only if the claim meets the conditions of RCW 77.36.040 and, for  
27 crop claims only, the damage occurred in a place where the opportunity  
28 to hunt was restricted or prohibited by a county, municipality, or  
29 other public entity during the season prior to the occurrence of the  
30 damage.

31 (2) The legislature may declare an emergency, defined for the  
32 purposes of this section as any happening arising from weather, other  
33 natural conditions, or fire that causes unusually great damage to  
34 ~~((commercially raised))~~ commercial livestock by predatory wildlife or  
35 agricultural or horticultural crops by deer or elk. In an emergency,

1 the department may pay as much as may be subsequently appropriated, in  
2 addition to the funds authorized under subsection (1) of this section,  
3 for claims under RCW 77.36.040 and for assessment and compromise of  
4 claims. Such money shall be used to pay animal damage claims only if  
5 the claim meets the conditions of RCW 77.36.040 and the department has  
6 expended all funds authorized under RCW 77.36.070 or subsection (1) of  
7 this section.

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