
SUBSTITUTE HOUSE BILL 1147

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Kretz, B. Sullivan, Hinkle, Pettigrew, Linville, Kristiansen, Blake, Takko, Newhouse, Warnick, Hailey, Grant, Armstrong, Kessler, Wallace, Haigh, Moeller, Haler and Condotta)

READ FIRST TIME 02/02/07.

1 AN ACT Relating to damage to livestock caused by wildlife; amending
2 RCW 77.36.005, 77.36.010, 77.36.040, 77.36.050, 77.36.060, 77.36.070,
3 and 77.36.080; and adding a new section to chapter 77.36 RCW.

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

1 (5) "Predatory wildlife" means bears, wolves, 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 market value of
19 the commercial livestock has been diminished. Each individual animal
20 represents one claim, and each claim must be paid the fair market value
21 of the killed or injured animal as determined under section 4 of this
22 act.

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, consistent with section 4 of this act, adopt
27 rules for the form of affidavits or proof to be provided in claims
28 under this section(~~(. The director may adopt rules))~~ and to specify
29 the time and method of assessing damage. The burden of proving damages
30 shall be on the claimant. Payment of claims shall remain subject to
31 the other conditions and limits of this 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)(a) The director or the director's designee may examine and
10 assess the damage upon notice.

11 (b)(i) The department and claimant may agree to an assessment of
12 damages by a neutral person or persons knowledgeable in horticultural
13 (~~(or)~~), agricultural, or commercial livestock practices. The
14 department and claimant shall share equally in the costs of such third
15 party examination and assessment of damage.

16 (ii) For losses of commercial livestock only, the claimant may
17 appeal the director's decision of fair market value to the commercial
18 livestock valuation and appeals committee created in section 4 of this
19 act.

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

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

22 (b) The landowner or claimant failed to use or maintain applicable
23 damage prevention materials or methods furnished by the department, or
24 failed to comply with a wildlife damage prevention agreement under RCW
25 77.12.260;

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

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

32 (6) When there is a determination of claim by the director or the
33 director's designee pursuant to this section, the claimant has sixty
34 days to accept the claim or (~~it is~~) appeal the claim to the
35 commercial livestock valuation and appeals committee created in section
36 4 of this act, if applicable, or the claim shall be deemed rejected.

37 (7) The limitation on claim payments established in subsection

1 (5)(a) of this section is limited only to crop damage and does not
2 apply to commercial livestock damaged or killed on land leased by a
3 public agency.

4 NEW SECTION. Sec. 4. A new section is added to chapter 77.36 RCW
5 to read as follows:

6 (1)(a) The commercial livestock valuation and appeals committee is
7 created to determine the market value of killed or injured commercial
8 livestock for the purposes of reimbursing the owner under RCW
9 77.36.040.

10 (b) In determining the market value of injured or killed commercial
11 livestock, the members of the commercial livestock valuation and
12 appeals committee must have access to all documentation regarding a
13 particular claim, along with other information that is deemed useful by
14 the committee members.

15 (c) The decision of the commercial livestock valuation and appeals
16 committee is deemed final when four or more of the committee members
17 determine the fair market value, if any, for the claim in question.
18 The amount identified in the final decision represents the exact amount
19 the director must offer to the claimant under RCW 77.36.040.

20 (2) The commercial livestock valuation and appeals committee is
21 composed of seven members appointed by the commission. The membership
22 of the commercial livestock valuation and appeals committee must be
23 composed as follows:

24 (a) Three members must be professionally involved in sheep
25 production;

26 (b) Three members must be professionally involved in cattle
27 production; and

28 (c) One member must be professionally involved in horse production.

29 (3) The members of the commercial livestock valuation and appeals
30 committee are appointed for a four-year term. If a vacancy occurs on
31 the committee prior to the expiration of a term, the commission must
32 appoint a replacement within sixty days to complete the term. After a
33 term expires, a committee member may be reappointed.

34 (4) The commercial livestock valuation and appeals committee must
35 meet at least semiannually, and may meet at other times as required by
36 claims filed under RCW 77.36.040. A majority of members currently

1 serving on the committee constitutes a quorum, and the chair of the
2 committee must be selected by the committee members. The department
3 must provide staff support for all official committee meetings.

4 (5) Each member of the commercial livestock valuation and appeals
5 committee shall serve without compensation but may be reimbursed for
6 travel expenses as authorized in RCW 43.03.050 and 43.03.060.

7 (6) The members of the commercial livestock valuation committee, or
8 individuals acting on their behalf, are immune from civil liability for
9 official acts performed in the course of their duties.

10 **Sec. 5.** RCW 77.36.050 and 1996 c 54 s 6 are each amended to read
11 as follows:

12 For crop claims only, if the claimant does not accept the
13 director's decision under RCW 77.36.040, or if the claim exceeds ten
14 thousand dollars, then the claim may be filed with the (~~office of~~)
15 risk management division of the office of financial management under
16 RCW 4.92.040(5). The (~~office of~~) risk management division shall
17 recommend to the legislature whether the claim should be paid. If the
18 legislature approves the claim, the director shall pay it from moneys
19 appropriated for that purpose. No funds shall be expended for damages
20 under this chapter except as appropriated by the legislature.

21 **Sec. 6.** RCW 77.36.060 and 1996 c 54 s 7 are each amended to read
22 as follows:

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

27 **Sec. 7.** RCW 77.36.070 and 1996 c 54 s 8 are each amended to read
28 as follows:

29 (1) The department may pay no more than one hundred twenty thousand
30 dollars per fiscal year from the state wildlife (~~fund~~) account
31 created in RCW 77.12.170 for claims under RCW 77.36.040 and for
32 assessment costs and compromise of claims. Such money shall be used to
33 pay animal damage claims only if the claim meets the conditions of RCW
34 77.36.040 and, for crop claims only, the damage occurred in a place

1 where the opportunity to hunt was not restricted or prohibited by a
2 county, municipality, or other public entity during the season prior to
3 the occurrence of the damage.

4 (2) Of the amount the department is authorized to pay for claims
5 under this section, no more than one-half of that amount may be used to
6 reimburse the owners of commercial livestock under this chapter for
7 losses due to predatory wildlife attacks.

8 **Sec. 8.** RCW 77.36.080 and 1996 c 54 s 9 are each amended to read
9 as follows:

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

19 (2) The legislature may declare an emergency, defined for the
20 purposes of this section as any happening arising from weather, fire,
21 or other natural conditions(~~(, or fire)~~) that causes unusually great
22 damage to (~~commercially raised~~) commercial livestock by predatory
23 wildlife or to agricultural or horticultural crops by deer or elk. In
24 an emergency, the department may pay as much as may be subsequently
25 appropriated, in addition to the funds authorized under subsection (1)
26 of this section, for claims under RCW 77.36.040 and for assessment and
27 compromise of claims. Such money shall be used to pay animal damage
28 claims only if the claim meets the conditions of RCW 77.36.040 and the
29 department has expended all funds authorized under RCW 77.36.070 or
30 subsection (1) of this section.

31 (3) Of the amount the department is authorized to pay for claims
32 under this section, no more than one-half of that amount may be used to
33 reimburse the owners of commercial livestock under this chapter for
34 losses due to predatory wildlife attacks.

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