
SENATE BILL 5274

State of Washington

61st Legislature

2009 Regular Session

By Senators Hatfield, Schoesler, Morton, Honeyford, Shin, and Holmquist

Read first time 01/19/09. Referred to Committee on Natural Resources,
Ocean & Recreation.

1 AN ACT Relating to damage caused by wildlife; amending RCW
2 77.36.005, 77.36.010, 77.36.040, 77.36.050, 77.36.060, 77.36.070, and
3 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, if during the current
20 fiscal biennium the department has received appropriations from either
21 the state wildlife account or the general fund above the amounts
22 specified in RCW 77.36.070 and 77.36.080 for the reimbursement of
23 damage to commercial livestock. Each individual animal represents one
24 claim, and each claim must be paid the fair market value of the killed
25 or injured animal up to the following values: Two hundred dollars for
26 sheep, one thousand five hundred dollars for cattle, and one thousand
27 five hundred dollars for horses.

28 (c) Damage claim payments under this section shall comprise the
29 exclusive remedy for claims against the state for damages caused by
30 wildlife.

31 (2) The director may, consistent with section 4 of this act, adopt
32 rules for the form of affidavits or proof to be provided in claims
33 under this section(~~(. The director may adopt rules)~~) and to specify
34 the time and method of assessing damage. The burden of proving damages
35 shall be on the claimant. Payment of claims shall remain subject to
36 the other conditions and limits of this chapter.

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

4 (a) The claimant did not notify the department within ten days of
5 discovery of ~~((the))~~ damage to crops or within seventy-two hours of the
6 discovery of a predatory wildlife attack on commercial livestock. If
7 the claimant intends to take steps that prevent determination of
8 damages, such as harvest of damaged crops, then the claimant shall
9 notify the department as soon as reasonably possible after discovery so
10 that the department has an opportunity to document the damage and take
11 steps to prevent additional damage; or

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

15 (4)(a) The director or the director's designee may examine and
16 assess the damage upon notice, and may convene, upon its own initiative
17 or on the request of the claimant, the commercial livestock valuation
18 committee created in section 4 of this act to assist with the
19 assessment of the damage.

20 (b) The department and claimant may agree to an assessment of
21 damages by a neutral person or persons knowledgeable in horticultural
22 ~~((or)),~~ agricultural, or commercial livestock practices. The
23 department and claimant shall share equally in the costs of such third
24 party examination and assessment of damage.

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

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

27 (b) The landowner or claimant failed to use or maintain applicable
28 damage prevention materials or methods furnished by the department, or
29 failed to comply with a wildlife damage prevention agreement under RCW
30 77.12.260;

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

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

37 (6) When there is a determination of claim by the director or the

1 director's designee pursuant to this section, the claimant has sixty
2 days to accept the claim or it is deemed rejected.

3 (7) The limitation on claim payments established in subsection
4 (5)(a) of this section is limited only to crop damage and does not
5 apply to commercial livestock damaged or killed on land leased by a
6 public agency.

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

9 (1)(a) The commercial livestock valuation committee is created to
10 assist the director with the determination of the market value of
11 killed or injured commercial livestock for the purposes of reimbursing
12 the owner under RCW 77.36.040.

13 (b) In assisting with the determination of the market value of
14 injured or killed commercial livestock, the members of the commercial
15 livestock valuation committee must have access to all documentation
16 regarding a particular claim, along with other information that is
17 deemed useful by the committee members.

18 (c) The recommendation of the commercial livestock valuation
19 committee is deemed final when four or more of the committee members
20 determine the fair market value, if any, for the claim in question.

21 (2) The commercial livestock valuation committee is composed of
22 seven members appointed by the commission. The membership of the
23 commercial livestock valuation committee must be 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 committee are
30 appointed for a four-year term. If a vacancy occurs on the committee
31 prior to the expiration of a term, the commission must appoint a
32 replacement within sixty days to complete the term. After a term
33 expires, a committee member may be reappointed.

34 (4) The commercial livestock valuation committee must be convened
35 at time intervals necessary to provide timely recommendations for
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 committee
5 shall serve without compensation but may be reimbursed for travel
6 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 (1) If the claimant does not accept the director's decision under
13 RCW 77.36.040, or if the claim exceeds ten thousand dollars, then the
14 claim may be filed with the (~~office of~~) risk management division of
15 the office of financial management under RCW 4.92.040(5). The (~~office~~
16 ~~of~~) risk management division shall recommend to the legislature
17 whether the claim should be paid. If the legislature approves the
18 claim, the director shall pay it from moneys appropriated for that
19 purpose. No funds shall be expended for damages under this chapter
20 except as appropriated by the legislature.

21 (2) For livestock claims only, the risk management division of the
22 office of financial management may consult the commercial livestock
23 valuation committee created in section 4 of this act.

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

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

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

32 (1) The department may pay no more than one hundred twenty thousand
33 dollars per fiscal year from the state wildlife (~~fund~~) account
34 created in RCW 77.12.170 for crop claims under RCW 77.36.040 and for
35 assessment costs and compromise of claims. Such money shall be used to

1 pay animal damage claims only if the claim meets the conditions of RCW
2 77.36.040 and the damage occurred in a place where the opportunity to
3 hunt was not restricted or prohibited by a county, municipality, or
4 other public entity during the season prior to the occurrence of the
5 damage.

6 (2) The department may pay no more than the amount indicated for
7 predatory wildlife damage in the current fiscal biennium's
8 appropriation to the department from the state wildlife account for
9 claims under RCW 77.36.040 and for assessment costs and compromise of
10 predatory wildlife claims. The money must be used to pay animal damage
11 claims only if the claim meets the conditions of RCW 77.36.040.

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

14 (1) The department may pay no more than thirty thousand dollars per
15 fiscal year from the general fund for claims under RCW 77.36.040 and
16 for assessment costs and compromise of crop claims unless the
17 legislature declares an emergency. Such money shall be used to pay
18 animal damage claims only if the claim meets the conditions of RCW
19 77.36.040 and the damage occurred in a place where the opportunity to
20 hunt was restricted or prohibited by a county, municipality, or other
21 public entity during the season prior to the occurrence of the damage.

22 (2) The department may pay no more than the amount indicated for
23 predatory wildlife damage in the current fiscal biennium's
24 appropriation to the department from the general fund for claims under
25 RCW 77.36.040 and for assessment costs and compromise of predatory
26 wildlife claims. The money must be used to pay animal damage claims
27 only if the claim meets the conditions of RCW 77.36.040.

28 (3) The legislature may declare an emergency, defined for the
29 purposes of this section as any happening arising from weather, fire,
30 or other natural conditions(~~(, or fire)~~) that causes unusually great
31 damage to (~~(commercially raised)~~) commercial livestock by predatory
32 wildlife or to agricultural or horticultural crops by deer or elk. In
33 an emergency, the department may pay as much as may be subsequently
34 appropriated, in addition to the funds authorized under subsection (1)
35 of this section, for claims under RCW 77.36.040 and for assessment and
36 compromise of claims. Such money shall be used to pay animal damage

1 claims only if the claim meets the conditions of RCW 77.36.040 and the
2 department has expended all funds authorized under RCW 77.36.070 or
3 subsection (1) of this section.

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