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**SUBSTITUTE SENATE BILL 6146**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** Senate Committee on Natural Resources (originally sponsored by Senators Loveland, Swecker, Drew and Oke; by request of Department of Fish and Wildlife)

Read first time 01/26/96.

1 AN ACT Relating to property damage by wildlife; adding a new  
2 chapter to Title 77 RCW; creating new sections; repealing RCW  
3 77.12.265, 77.12.270, 77.12.280, 77.12.290, and 77.12.300; providing an  
4 effective date; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

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

13 (2) In particular, the state recognizes the importance of  
14 commercial agricultural and horticultural crop production and the value  
15 of healthy deer and elk populations, which can damage such crops. The  
16 legislature further finds that damage prevention is key to maintaining  
17 healthy deer and elk populations, wildlife-related recreational  
18 opportunities, and commercially productive agricultural and  
19 horticultural crops, and that the state, participants in wildlife

1 recreation, and private landowners and tenants share the responsibility  
2 for damage prevention. Toward this end, the legislature encourages  
3 landowners and tenants to contribute through their land management  
4 practices to healthy wildlife populations and to provide access for  
5 related recreation. It is in the best interests of the state for the  
6 department of fish and wildlife to respond quickly to wildlife damage  
7 complaints and to work with these landowners and tenants to minimize  
8 and/or prevent damages and conflicts while maintaining deer and elk  
9 populations for enjoyment by all citizens of the state.

10 (3) A timely and simplified process for resolving claims for  
11 damages caused by deer and elk for commercial agricultural or  
12 horticultural products is beneficial to the claimant and the state.

13 NEW SECTION. **Sec. 2.** Unless otherwise specified, the following  
14 definitions apply throughout this chapter:

15 (1) "Crop" means a commercially raised horticultural and/or  
16 agricultural product and includes growing or harvested product but does  
17 not include livestock.

18 (2) "Emergency" means an unforeseen circumstance beyond the control  
19 of the landowner or tenant that presents a real and immediate threat to  
20 crops, domestic animals, or fowl.

21 (3) "Immediate family member" means spouse, brother, sister,  
22 grandparent, parent, child, or grandchild.

23 NEW SECTION. **Sec. 3.** The department shall work closely with  
24 landowners and tenants suffering game damage problems to control damage  
25 without killing the animals when practical, to increase the harvest of  
26 damage-causing animals in hunting seasons, and to kill the animals when  
27 no other practical means of damage control is feasible.

28 If the department receives recurring complaints regarding property  
29 being damaged as described in this section or section 4 of this act  
30 from the owner or tenant of real property, or receives such complaints  
31 from several such owners or tenants in a locale, the commission shall  
32 consider conducting a special hunt or special hunts to reduce the  
33 potential for such damage.

34 NEW SECTION. **Sec. 4.** (1) Subject to the following limitations and  
35 conditions, the owner, the owner's immediate family member, the owner's  
36 documented employee, or a tenant of real property may trap or kill on

1 that property, without the licenses required under RCW 77.32.010 or  
2 authorization from the director under RCW 77.12.240, wild animals or  
3 wild birds that are damaging crops, domestic animals, or fowl:

4 (a) Threatened or endangered species shall not be hunted, trapped,  
5 or killed;

6 (b) Except in an emergency situation, deer, elk, and protected  
7 wildlife shall not be killed without a permit issued and conditioned by  
8 the director or the director's designee. In an emergency, the  
9 department may give verbal permission followed by written permission to  
10 trap or kill any deer, elk, or protected wildlife that is damaging  
11 crops, domestic animals, or fowl; and

12 (c) On privately owned cattle ranching lands, the land owner or  
13 lessee may declare an emergency only when the department has not  
14 responded within forty-eight hours after having been contacted by the  
15 land owner or lessee regarding damage caused by wild animals or wild  
16 birds. In such an emergency, the owner or lessee may trap or kill any  
17 deer, elk, or other protected wildlife that is causing the damage but  
18 deer and elk may only be killed if such lands were open to public  
19 hunting during the previous hunting season, or the closure to public  
20 hunting was coordinated with the department to protect property and  
21 livestock.

22 (2) Except for coyotes and Columbian ground squirrels, wildlife  
23 trapped or killed under this section remain the property of the state,  
24 and the person trapping or killing the wildlife shall notify the  
25 department immediately. The department shall dispose of wildlife so  
26 taken within three days of receiving such a notification and in a  
27 manner determined by the director to be in the best interest of the  
28 state.

29 NEW SECTION. **Sec. 5.** (1) Pursuant to this section, the director  
30 or the director's designee may distribute money appropriated to pay  
31 claims for damages to crops caused by wild deer or elk in an amount of  
32 up to ten thousand dollars per claim. Damages payable under this  
33 section are limited to the value of such commercially raised  
34 horticultural or agricultural crops, whether growing or harvested, and  
35 shall be paid only to the owner of the crop at the time of damage,  
36 without assignment. Damages shall not include damage to other real or  
37 personal property including other vegetation or animals, damages caused  
38 by animals other than wild deer or elk, lost profits, consequential

1 damages, or any other damages whatsoever. These damages shall comprise  
2 the exclusive remedy for claims against the state for damages caused by  
3 wildlife.

4 (2) The director may adopt rules for the form of affidavits or  
5 proof to be provided in claims under this section. The director may  
6 adopt rules to specify the time and method of assessing damage. The  
7 burden of proving damages shall be on the claimant. Payment of claims  
8 shall remain subject to the other conditions and limits of this  
9 chapter.

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

13 (a) The claimant did not notify the department within ten days of  
14 discovery of the damage. If the claimant intends to take steps that  
15 prevent determination of damages, such as harvest of damaged crops,  
16 then the claimant shall notify the department as soon as reasonably  
17 possible after discovery so that the department has an opportunity to  
18 document the damage and take steps to prevent additional damage; or

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

22 (4) The director or the director's designee may examine and assess  
23 the damage upon notice. The department and claimant may agree to an  
24 assessment of damages by a neutral person or persons. The department  
25 and claimant shall share equally in the costs of such third party  
26 examination and assessment of damage.

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

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

29 (b) The landowner or claimant failed to use or maintain applicable  
30 damage prevention materials or methods furnished by the department, or  
31 failed to comply with a wildlife damage prevention agreement under RCW  
32 77.12.260;

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

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

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

4 NEW SECTION. **Sec. 6.** If the claimant does not accept the  
5 director's decision under section 5 of this act, or if the claim  
6 exceeds ten thousand dollars, then the claim may be filed with the  
7 office of risk management under RCW 4.92.040(5). The office of risk  
8 management shall recommend to the legislature whether the claim should  
9 be paid. If the legislature approves the claim, the director shall pay  
10 it from moneys appropriated for that purpose. No funds shall be  
11 expended for damages under this chapter except as appropriated by the  
12 legislature.

13 NEW SECTION. **Sec. 7.** The director may refuse to consider and pay  
14 claims of persons who have posted the property against hunting or who  
15 have in any way not allowed public hunting during the season prior to  
16 the occurrence of the damages.

17 NEW SECTION. **Sec. 8.** The department may pay no more than one  
18 hundred twenty thousand dollars per fiscal year from the wildlife fund  
19 for claims under section 5 of this act and for assessment costs and  
20 compromise of claims. Such money shall be used to pay animal damage  
21 claims only if the claim meets the conditions of section 5 of this act  
22 and the damage occurred in a place where the opportunity to hunt was  
23 not restricted or prohibited by a county, municipality, or other public  
24 entity during the season prior to the occurrence of the damage.

25 NEW SECTION. **Sec. 9.** (1) The department may pay no more than  
26 thirty thousand dollars per fiscal year from the general fund for  
27 claims under section 5 of this act and for assessment costs and  
28 compromise of claims unless the legislature declares an emergency.  
29 Such money shall be used to pay animal damage claims only if the claim  
30 meets the conditions of section 5 of this act and the damage occurred  
31 in a place where the opportunity to hunt was restricted or prohibited  
32 by a county, municipality, or other public entity during the season  
33 prior to the occurrence of the damage.

34 (2) The legislature may declare an emergency, defined for the  
35 purposes of this section as any happening arising from weather, other

1 natural conditions, or fire that causes unusually great damage to  
2 commercially raised agricultural or horticultural crops by deer or elk.  
3 In an emergency, the department may pay as much as may be subsequently  
4 appropriated from the general fund, in addition to the funds authorized  
5 under subsection (1) of this section, for claims under section 5 of  
6 this act and for assessment and compromise of claims. Such money shall  
7 be used to pay animal damage claims only if the claim meets the  
8 conditions of section 5 of this act and the department has expended all  
9 funds authorized under section 8 of this act or subsection (1) of this  
10 section.

11 NEW SECTION. **Sec. 10.** This act applies prospectively only and not  
12 retroactively. It applies only to claims that arise on or after the  
13 effective date of this act.

14 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act shall  
15 constitute a new chapter in Title 77 RCW.

16 NEW SECTION. **Sec. 12.** The following acts or parts of acts are  
17 each repealed:

18 (1) RCW 77.12.265 and 1995 c 210 s 1, 1987 c 506 s 35, 1985 c 355  
19 s 1, 1980 c 78 s 91, & 1955 c 36 s 77.16.230;

20 (2) RCW 77.12.270 and 1987 c 506 s 36, 1986 c 126 s 11, 1980 c 78  
21 s 45, 1963 c 177 s 8, & 1955 c 36 s 77.12.270;

22 (3) RCW 77.12.280 and 1987 c 506 s 37, 1986 c 126 s 12, 1980 c 78  
23 s 46, 1979 c 151 s 176, 1977 ASCE c 144 s 8, 1957 c 177 s 1, & 1955 c  
24 36 s 77.12.280;

25 (4) RCW 77.12.290 and 1987 c 506 s 38, 1980 c 78 s 47 1963 c 177 s  
26 9, 1957 c 177 s 2, & 1955 c 36 s 77.12.290; and

27 (5) RCW 77.12.300 and 1987 c 506 s 39, 1980 c 78 s 48, 1957 c 177  
28 s 3, & 1955 c 36 s 77.12.300.

29 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act shall  
30 take effect July 1, 1996.

31 NEW SECTION. **Sec. 14.** (1) Notwithstanding any repeal, until July  
32 1, 1996, claims exceeding two thousand dollars that have been filed  
33 under RCW 77.12.280(1) and that have been submitted to the legislature

1 under RCW 4.92.040(5) by the risk management office may be paid by the  
2 department from moneys appropriated for payment of such claims.  
3 (2) This section shall expire June 30, 1996.

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