
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6146

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Loveland, Swecker, Drew and Oke; by request of Department of Fish and Wildlife)

Read first time 02/02/96.

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. For the purposes of this chapter all parts of
18 horticultural trees shall be considered a crop and shall be eligible
19 for claims.

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

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

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

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

1 NEW SECTION. **Sec. 4.** (1) Subject to the following limitations and
2 conditions, the owner, the owner's immediate family member, the owner's
3 documented employee, or a tenant of real property may trap or kill on
4 that property, without the licenses required under RCW 77.32.010 or
5 authorization from the director under RCW 77.12.240, wild animals or
6 wild birds that are damaging crops, domestic animals, or fowl:

7 (a) Threatened or endangered species shall not be hunted, trapped,
8 or killed;

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

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

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

32 NEW SECTION. **Sec. 5.** (1) Pursuant to this section, the director
33 or the director's designee may distribute money appropriated to pay
34 claims for damages to crops caused by wild deer or elk in an amount of
35 up to ten thousand dollars per claim. Damages payable under this
36 section are limited to the value of such commercially raised
37 horticultural or agricultural crops, whether growing or harvested, and
38 shall be paid only to the owner of the crop at the time of damage,

1 without assignment. Damages shall not include damage to other real or
2 personal property including other vegetation or animals, damages caused
3 by animals other than wild deer or elk, lost profits, consequential
4 damages, or any other damages whatsoever. These damages shall comprise
5 the exclusive remedy for claims against the state for damages caused by
6 wildlife.

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

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

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

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

25 (4) The director or the director's designee may examine and assess
26 the damage upon notice. The department and claimant may agree to an
27 assessment of damages by a neutral person or persons knowledgeable in
28 horticultural or agricultural practices. The department and claimant
29 shall share equally in the costs of such third party examination and
30 assessment of damage.

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

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

33 (b) The landowner or claimant failed to use or maintain applicable
34 damage prevention materials or methods furnished by the department, or
35 failed to comply with a wildlife damage prevention agreement under RCW
36 77.12.260;

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

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

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

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

17 NEW SECTION. **Sec. 7.** The director may refuse to consider and pay
18 claims of persons who have posted the property against hunting or who
19 have not allowed public hunting during the season prior to the
20 occurrence of the damages.

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

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

1 by a county, municipality, or other public entity during the season
2 prior to the occurrence of the damage.

3 (2) The legislature may declare an emergency, defined for the
4 purposes of this section as any happening arising from weather, other
5 natural conditions, or fire that causes unusually great damage to
6 commercially raised agricultural or horticultural crops by deer or elk.
7 In an emergency, the department may pay as much as may be subsequently
8 appropriated, in addition to the funds authorized under subsection (1)
9 of this section, for claims under section 5 of this act and for
10 assessment and compromise of claims. Such money shall be used to pay
11 animal damage claims only if the claim meets the conditions of section
12 5 of this act and the department has expended all funds authorized
13 under section 8 of this act or subsection (1) of this section.

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

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

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

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

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

25 (3) RCW 77.12.280 and 1987 c 506 s 37, 1986 c 126 s 12, 1980 c 78
26 s 46, 1979 c 151 s 176, 1977 ASCE c 144 s 8, 1957 c 177 s 1, & 1955 c
27 36 s 77.12.280;

28 (4) RCW 77.12.290 and 1987 c 506 s 38, 1980 c 78 s 47 1963 c 177 s
29 9, 1957 c 177 s 2, & 1955 c 36 s 77.12.290; and

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

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

1 NEW SECTION. **Sec. 14.** (1) Notwithstanding any repeal, until July
2 1, 1996, claims exceeding two thousand dollars that have been filed
3 under RCW 77.12.280(1) and that have been submitted to the legislature
4 under RCW 4.92.040(5) by the risk management office may be paid by the
5 department from moneys appropriated for payment of such claims.

6 (2) This section shall expire June 30, 1996.

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