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SECOND SUBSTITUTE HOUSE BILL 1752

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State of Washington

57th Legislature

2001 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Clements, Grant, G. Chandler, B. Chandler, Linville, Lisk, McMorris, Armstrong, Schoesler and Mulliken)

Read first time 03/07/2001. Referred to Committee on .

1 AN ACT Relating to wildlife damage claims on rangeland suitable for  
2 grazing or browsing of domestic livestock; amending RCW 77.36.005,  
3 77.36.010, 77.36.030, 77.36.040, and 77.36.080; providing an effective  
4 date; and declaring an emergency.

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

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

8 The legislature finds that:

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

15 (2) In particular, the state recognizes the importance of  
16 commercial agricultural and horticultural crop production, rangeland  
17 suitable for grazing or browsing of domestic livestock, and the value  
18 of healthy deer and elk populations, which can damage such crops. The  
19 legislature further finds that damage prevention is key to maintaining

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

14 (3) A timely and simplified process for resolving claims for  
15 damages caused by deer and elk for commercial agricultural ~~((or))~~  
16 products, horticultural products, or rangeland suitable for grazing or  
17 browsing of domestic livestock is beneficial to the claimant and the  
18 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) "Crop" means a commercially raised horticultural and/or  
25 agricultural product and includes growing or harvested product ~~((but~~  
26 ~~does not include livestock))~~ and rangeland forage on privately owned  
27 land or on lands leased from any public agency suitable for grazing or  
28 browsing of domestic livestock for at least a portion of the year. For  
29 the purposes of this chapter all parts of horticultural trees shall be  
30 considered a crop and shall be eligible for claims.

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

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

36 **Sec. 3.** RCW 77.36.030 and 1996 c 54 s 4 are each amended to read  
37 as follows:

1 (1) Subject to the following limitations and conditions, the owner,  
2 the owner's immediate family member, the owner's documented employee,  
3 or a tenant of real property may trap or kill on that property, without  
4 the licenses required under RCW 77.32.010 or authorization from the  
5 director under RCW 77.12.240, wild animals or wild birds that are  
6 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 and on lands leased  
16 from any public agency suitable for grazing or browsing of domestic  
17 livestock, the landowner or lessee may declare an emergency only when  
18 the department has not responded within forty-eight hours after having  
19 been contacted by the landowner or lessee regarding damage caused by  
20 wild animals or wild birds. In such an emergency, the owner or lessee  
21 may trap or kill any deer, elk, or other protected wildlife that is  
22 causing the damage but deer and elk may only be killed if such lands  
23 were open to public hunting during the previous hunting season, or the  
24 closure to public hunting was coordinated with the department to  
25 protect property and livestock.

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

33 **Sec. 4.** RCW 77.36.040 and 1996 c 54 s 5 are each amended to read  
34 as follows:

35 (1) Pursuant to this section, the director or the director's  
36 designee may distribute money appropriated to pay claims for damages to  
37 crops caused by wild deer or elk in an amount of up to ten thousand  
38 dollars per claim. Damages payable under this section are limited to:

1       (a) The value of such commercially raised horticultural or  
2 agricultural crops, whether growing or harvested(~~(, and)~~); or

3       (b) Damages to rangeland livestock forage on privately owned land  
4 or on lands leased from any public agency and fenced ranch or farm  
5 units that are specifically limited to hay meadows, pasture meadows,  
6 artificially seeded rangelands, and grazing land that is deferred to  
7 seasonal use. Payments to lessees for damages to rangeland livestock  
8 forage may not exceed the annual amount of the lease payment paid for  
9 leased lands.

10       Damages shall be paid only to the owner of the crop or the lessee  
11 of rangeland at the time of damage, without assignment. Damages shall  
12 not include damage to other real or personal property including other  
13 vegetation or animals, damages caused by animals other than wild deer  
14 or elk, lost profits, consequential damages, or any other damages  
15 whatsoever. These damages shall comprise the exclusive remedy for  
16 claims against the state for damages caused by wildlife.

17       (2) The director may adopt rules for the form of affidavits or  
18 proof to be provided in claims under this section. The director may  
19 adopt rules to specify the time and method of assessing damage. The  
20 burden of proving damages shall be on the claimant. Payment of claims  
21 shall remain subject to the other conditions and limits of this  
22 chapter.

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

26       (a) The claimant did not notify the department within ten days of  
27 discovery of the damage. If the claimant intends to take steps that  
28 prevent determination of damages, such as harvest of damaged crops,  
29 then the claimant shall notify the department as soon as reasonably  
30 possible after discovery so that the department has an opportunity to  
31 document the damage and take steps to prevent additional damage; or

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

35       (4) The director or the director's designee may examine and assess  
36 the damage upon notice. The department and claimant may agree to an  
37 assessment of damages by a neutral person or persons knowledgeable in  
38 horticultural or agricultural practices. The department and claimant

1 shall share equally in the costs of such third party examination and  
2 assessment of damage.

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

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

5 ~~(b)))~~ The landowner or claimant failed to use or maintain  
6 applicable damage prevention materials or methods furnished by the  
7 department, or failed to comply with a wildlife damage prevention  
8 agreement under RCW 77.12.260;

9 ~~((e)))~~ (b) The director has expended all funds appropriated for  
10 payment of such claims for the current fiscal year; or

11 ~~((d)))~~ (c) The damages are covered by insurance. The claimant  
12 shall notify the department at the time of claim of insurance coverage  
13 in the manner required by the director. Insurance coverage shall cover  
14 all damages prior to any payment under this chapter.

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

18 **Sec. 5.** RCW 77.36.080 and 1996 c 54 s 9 are each amended to read  
19 as follows:

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

28 (2) The legislature may declare an emergency, defined for the  
29 purposes of this section as any happening arising from weather, other  
30 natural conditions, or fire that causes unusually great damage to  
31 commercially raised agricultural or horticultural crops, or rangeland  
32 forage on privately owned land or on lands leased from any public  
33 agency suitable for grazing or browsing of domestic livestock for at  
34 least a portion of the year by deer or elk. In an emergency, the  
35 department may pay as much as may be subsequently appropriated, in  
36 addition to the funds authorized under subsection (1) of this section,  
37 for claims under RCW 77.36.040 and for assessment and compromise of  
38 claims. Such money shall be used to pay animal damage claims only if

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

4 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
5 preservation of the public peace, health, or safety, or support of the  
6 state government and its existing public institutions, and takes effect  
7 July 1, 2001.

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