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HOUSE BILL 2524

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Pearson, Kretz, and Kristiansen

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1            AN ACT Relating to providing an opportunity for the reimbursement  
2 of agricultural appurtenances that are damaged by wildlife; and  
3 amending RCW 77.36.010, 77.36.030, and 77.36.040.

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

5            **Sec. 1.** RCW 77.36.010 and 1996 c 54 s 2 are each amended to read  
6 as follows:

7            (~~Unless otherwise specified, the following definitions apply~~  
8 ~~throughout this chapter:~~) The definitions in this section apply  
9 throughout this chapter unless the context clearly requires otherwise.

10            (1) "Appurtenance" includes personal property, equipment, stored  
11 livestock feed, or other possessions reasonably necessary or useful for  
12 the production of crops or livestock or commonly used in crop  
13 production. The term includes, but is not limited to, fencing and  
14 bales of hay.

15            (2) "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.

1       (~~(2)~~) (3) "Emergency" means an unforeseen circumstance beyond the  
2 control of the landowner or tenant that presents a real and immediate  
3 threat to crops, domestic animals, or fowl.

4       (~~(3)~~) (4) "Immediate family member" means spouse, brother,  
5 sister, grandparent, parent, child, or grandchild.

6       **Sec. 2.** RCW 77.36.030 and 1996 c 54 s 4 are each amended to read  
7 as follows:

8       (1) Subject to the following limitations and conditions, the owner,  
9 the owner's immediate family member, the owner's documented employee,  
10 or a tenant of real property may trap or kill on that property, without  
11 the licenses required under RCW 77.32.010 or authorization from the  
12 director under RCW 77.12.240, wild animals or wild birds that are  
13 damaging crops, appurtenances, domestic animals, or fowl:

14       (a) Threatened or endangered species shall not be hunted, trapped,  
15 or killed;

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

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

32       (2) Except for coyotes and Columbian ground squirrels, wildlife  
33 trapped or killed under this section remain the property of the state,  
34 and the person trapping or killing the wildlife shall notify the  
35 department immediately. The department shall dispose of wildlife so  
36 taken within three days of receiving such a notification and in a

1 manner determined by the director to be in the best interest of the  
2 state.

3 **Sec. 3.** RCW 77.36.040 and 1996 c 54 s 5 are each amended to read  
4 as follows:

5 (1) Pursuant to this section, the director or the director's  
6 designee may distribute money appropriated to pay claims for damages to  
7 crops and appurtenances caused by wild deer or elk in an amount of up  
8 to ten thousand dollars per claim. Damages payable under this section  
9 are limited to the value of (~~(such commercially raised horticultural or~~  
10 ~~agricultural)) the crops or appurtenances, whether growing or  
11 harvested, and shall be paid only to the owner of the crop or  
12 appurtenance at the time of damage, without assignment. Damages shall  
13 not include damage to other real or personal property including other  
14 vegetation or animals, damages caused by animals other than wild deer  
15 or elk, lost profits, consequential damages, or any other damages  
16 whatsoever. These damages shall comprise the exclusive remedy for  
17 claims against the state for damages caused by wildlife.~~

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

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

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

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

36 (4) The director or the director's designee may examine and assess  
37 the damage upon notice. The department and claimant may agree to an

1 assessment of damages by a neutral person or persons knowledgeable in  
2 horticultural or agricultural practices. The department and claimant  
3 shall share equally in the costs of such third party examination and  
4 assessment of damage.

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

6 (a) The crops or appurtenances are on lands leased from any public  
7 agency;

8 (b) The landowner or claimant failed to use or maintain applicable  
9 damage prevention materials or methods furnished by the department, or  
10 failed to comply with a wildlife damage prevention agreement under RCW  
11 77.12.260;

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

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

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

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