
SUBSTITUTE SENATE BILL 5272

State of Washington

61st Legislature

2009 Regular Session

By Senate Natural Resources, Ocean & Recreation (originally sponsored by Senators Hatfield, Schoesler, Morton, and Shin)

READ FIRST TIME 02/17/09.

1 AN ACT Relating to wildlife interactions; amending RCW 77.36.010,
2 77.36.070, 77.36.080, 77.36.030, and 77.12.240; adding new sections to
3 chapter 77.36 RCW; creating new sections; decodifying RCW 77.36.900 and
4 77.36.901; repealing RCW 77.36.005, 77.36.020, 77.36.040, 77.36.050,
5 77.36.060, and 77.12.260; providing an effective date; and providing an
6 expiration date.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that healthy
9 wildlife populations are a valuable and treasured public resource to
10 the people of the state of Washington. However, the legislature also
11 finds that as the human population increases and encroaches on wildlife
12 habitat, interactions between humans and wildlife will become more
13 frequent.

14 (2) The legislature further finds that interactions between humans
15 and wildlife can have significant financial impacts on the affected
16 landowner. Although the resulting wildlife damage is felt most closely
17 by the landowner, the general public, as beneficiaries and stewards of
18 healthy wildlife populations, should bear some responsibility, as
19 outlined in and limited by this act, for providing a measure of

1 restitution to the impacted landowner, provided that the landowner has
2 exhausted all legal, practicable self-help methods available to prevent
3 wildlife damage from occurring.

4 (3) The legislature further finds that the commercial agriculture,
5 horticulture, and livestock industries are important components of the
6 state economy that can be negatively impacted by interactions with
7 wildlife. However, the legislature also finds that other landowners,
8 both commercial and residential, may be faced with wildlife
9 interactions that result in property damage. It is the intent of the
10 legislature to craft a solution whereby all property owners have a
11 potential avenue to petition the state for some mitigation of the
12 damages caused by wildlife.

13 (4) The legislature further finds that it is in the best interests
14 of the state for the department of fish and wildlife to respond quickly
15 to wildlife damage complaints and to work with those affected to
16 prevent and minimize negative interactions while maintaining healthy
17 wildlife populations.

18 (5) The legislature further finds that negative wildlife
19 interactions can be best reduced by encouraging landowners to
20 contribute, through their land management practices, to healthy
21 wildlife populations and to provide access for related recreation.

22 **Sec. 2.** RCW 77.36.010 and 1996 c 54 s 2 are each amended to read
23 as follows:

24 ~~((Unless otherwise specified,))~~ The ~~((following))~~ definitions in
25 this section apply throughout this chapter~~((+))~~ unless the context
26 clearly requires otherwise.

27 (1) "Claim" means an application to the department for compensation
28 under this chapter.

29 (2) "Commercial crop" means a ~~((commercially raised))~~ horticultural
30 ~~((and/or))~~ or agricultural product ~~((and includes)), including the~~
31 growing or harvested product ~~((but does not include livestock))~~. For
32 the purposes of this chapter all parts of horticultural trees shall be
33 considered a commercial crop and shall be eligible for claims.

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

1 (3) "Commercial livestock" means cattle, sheep, and horses held or
2 raised by a person for sale.

3 (4) "Compensation" means a cash payment, materials, or service.

4 (5) "Damage" means economic losses caused by wildlife interactions.

5 (6) "Immediate family member" means spouse, state registered
6 domestic partner, brother, sister, grandparent, parent, child, or
7 grandchild.

8 (7) "Owner" means a person who has a legal right to commercial
9 crops, commercial livestock, or other property that was damaged during
10 a wildlife interaction.

11 (8) "Wildlife interaction" means the negative interaction and the
12 resultant damage between wildlife and commercial crops, commercial
13 livestock, or other property.

14 NEW SECTION. Sec. 3. A new section is added to chapter 77.36 RCW
15 to read as follows:

16 (1)(a) Except as limited by RCW 77.36.070 and 77.36.080, the
17 department shall offer to distribute money appropriated to pay claims
18 to the owner of commercial crops for damage caused by wild deer or elk
19 or to the owners of commercial livestock that has been killed by bears,
20 wolves, or cougars, or injured by bears, wolves, or cougars to such a
21 degree that the market value of the commercial livestock has been
22 diminished. Payments for claims for damage to commercial livestock are
23 not subject to the limitations of RCW 77.36.070 and 77.36.080, but may
24 not exceed the total amount specifically appropriated therefor.

25 (b) Owners of commercial crops or commercial livestock are only
26 eligible for a claim under this subsection if:

27 (i) The owner satisfies the definition of "eligible farmer" in RCW
28 82.08.855;

29 (ii) The conditions of section 4 of this act have been satisfied;
30 and

31 (iii) The damage caused to the commercial crop or commercial
32 livestock satisfies the criteria for damage established by the
33 commission under this subsection.

34 (c) The commission shall adopt and maintain by rule criteria that
35 clarifies the damage to commercial crops and commercial livestock
36 qualifying for compensation under this subsection. An owner of a
37 commercial crop or commercial livestock must satisfy the criteria prior

1 to receiving compensation under this subsection. The criteria for
2 damage adopted under this subsection must include, but not be limited
3 to, a required minimum economic loss to the owner of the commercial
4 crop or commercial livestock, which may not be set at a value of less
5 than five hundred dollars.

6 (2)(a) The department may offer to provide noncash compensation
7 only to offset wildlife interactions to a person who applies to the
8 department for compensation for damage to property other than
9 commercial crops or commercial livestock that is the result of a
10 mammalian or avian species of wildlife on a case-specific basis if the
11 conditions of section 4 of this act have been satisfied and if the
12 damage satisfies the criteria for damage established by the commission
13 under this subsection.

14 (b) The commission shall adopt and maintain by rule criteria for
15 damage to property other than a commercial crop or commercial livestock
16 that is damaged by wildlife and may be eligible for compensation under
17 this subsection, including criteria for filing a claim for compensation
18 under this subsection.

19 (3)(a) To prevent or offset wildlife interactions, the department
20 may offer materials or services to a person who applies to the
21 department for assistance in providing mitigating actions designed to
22 reduce wildlife interactions if the actions are designed to address
23 damage that satisfies the criteria for damage established by the
24 commission under this subsection.

25 (b) The commission shall adopt and maintain by rule criteria for
26 mitigating actions designed to address wildlife interactions that may
27 be eligible for materials and services under this section, including
28 criteria for submitting an application under this section.

29 (4) An owner who files a claim under this section may appeal the
30 decision of the department pursuant to rules adopted by the commission
31 if the claim:

32 (a) Is denied; or

33 (b) Is disputed by the owner and the owner disagrees with the
34 amount of compensation determined by the department.

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.36 RCW
36 to read as follows:

1 (1) No owner may receive compensation for wildlife interactions
2 under this chapter unless the owner has, as determined by the
3 department, first:

4 (a) Utilized applicable legal and practicable self-help preventive
5 measures available to prevent the damage, including the use of
6 nonlethal methods and department-provided materials and services when
7 available under section 3 of this act; and

8 (b) Exhausted all available compensation options available from
9 nonprofit organizations that provide compensation to private property
10 owners due to financial losses caused by wildlife interactions.

11 (2) In determining if the requirements of this section have been
12 satisfied, the department may recognize and consider the following:

13 (a) Property losses may occur without future or anticipated
14 knowledge of potential problems resulting in an owner being unable to
15 take preemptive measures.

16 (b) Normal agricultural practices, animal husbandry practices,
17 recognized standard management techniques, and other industry-
18 recognized management practices may represent adequate preventative
19 efforts.

20 (c) Under certain circumstances, as determined by the department,
21 wildlife may not logistically or practicably be managed by nonlethal
22 efforts.

23 (d) Not all available legal preventative efforts are cost-effective
24 for the owner to practicably employ.

25 (e) There are certain effective preventative control options not
26 available due to federal or state restrictions.

27 (f) Under certain circumstances, as determined by the department,
28 permitting public hunting may not be a practicable self-help method due
29 to the size and nature of the property, the property's setting, or the
30 ability of the landowner to accommodate public access.

31 (3) An owner is not eligible to receive compensation if the damages
32 are covered by insurance.

33 (4) The commission shall adopt rules implementing this section,
34 including requirements that owners document nonlethal preventive
35 efforts undertaken and all permits issued by the department under RCW
36 77.12.240 and 77.12.150.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.36 RCW
2 to read as follows:

3 The department shall establish:

4 (1) The form of affidavits or proof required to accompany all
5 claims under this chapter;

6 (2) The process, time, and methods used to identify and assess
7 damage, including the anticipated timeline for the initiation and
8 conclusion of department action;

9 (3) How claims will be prioritized when available funds for
10 reimbursement are limited;

11 (4) Timelines after the discovery of damage by which an owner must
12 file a claim or notify the department;

13 (5) Protocols for an owner to follow if the owner wishes to
14 undertake activities that would complicate the determination of
15 damages, such as harvesting damaged crops;

16 (6) The process for determining damage assessments, including the
17 role and selection of professional damage assessors and the
18 responsibility for reimbursing third-party assessors for their
19 services;

20 (7) Timelines for a claimant to accept, reject, or appeal a
21 determination made by the department;

22 (8) The identification of instances when an owner would be
23 ineligible for compensation;

24 (9) An appeals process for an owner eligible for compensation under
25 section 3 of this act who is denied a claim or feels the compensation
26 is insufficient; and

27 (10) Other policies necessary for administering this chapter.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.36 RCW
29 to read as follows:

30 (1) Except as otherwise provided in this section and as limited by
31 section 3 of this act and RCW 77.36.070 and 77.36.080, the cash
32 compensation portion of each claim by the department under this chapter
33 is limited to the lesser of:

34 (a) The value of the damage to the property by wildlife reduced by
35 the amount of compensation provided to the claimant by any nonprofit
36 organizations that provide compensation to private property owners due
37 to financial losses caused by wildlife interactions, except that,

1 subject to appropriation to pay compensation for damage to commercial
2 livestock, the value of killed or injured commercial livestock may be
3 no more than two hundred dollars per sheep, one thousand five hundred
4 dollars per head of cattle, and one thousand five hundred dollars per
5 horse; or

6 (b) Ten thousand dollars.

7 (2) The department may offer to pay a claim for an amount in excess
8 of ten thousand dollars to the owners of commercial crops or commercial
9 livestock filing a claim under section 3 of this act only if the
10 outcome of an appeal filed by the claimant under section 3 of this act
11 determines a payment higher than ten thousand dollars.

12 (3) All payments of claims by the department under this chapter
13 must be paid to the owner of the damaged property and may not be
14 assigned to a third party.

15 (4) The burden of proving all property damage, including damage to
16 commercial crops and commercial livestock, belongs to the claimant.

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

19 The department may pay no more than one hundred twenty thousand
20 dollars per fiscal year from the state wildlife ((fund)) account for
21 claims ~~((under RCW 77.36.040 and for assessment costs and compromise of~~
22 ~~claims. Such money shall be used to pay animal damage claims only if~~
23 ~~the claim meets the conditions of RCW 77.36.040 and the damage occurred~~
24 ~~in a place where the opportunity to hunt was not restricted or~~
25 ~~prohibited by a county, municipality, or other public entity during the~~
26 ~~season prior to the occurrence of the damage)) and assessment costs for~~
27 ~~damage to commercial crops caused by wild deer or elk submitted under~~
28 ~~section 3 of this act.~~

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

31 (1) Unless the legislature declares an emergency under this
32 section, the department may pay no more than thirty thousand dollars
33 per fiscal year from the general fund for claims ~~((under RCW 77.36.040~~
34 ~~and for assessment costs and compromise of claims unless the~~
35 ~~legislature declares an emergency. Such money shall be used to pay~~
36 ~~animal damage claims only if the claim meets the conditions of RCW~~

1 ~~77.36.040 and the damage occurred in a place where the opportunity to~~
2 ~~hunt was restricted or prohibited by a county, municipality, or other~~
3 ~~public entity during the season prior to the occurrence of the damage))~~
4 and assessment costs for damage to commercial crops caused by wild deer
5 or elk submitted under section 3 of this act.

6 (2)(a) The legislature may declare an emergency(~~(, defined for the~~
7 ~~purposes of this section as any happening arising from))~~ if weather,
8 fire, or other natural (~~(conditions, or fire that causes unusually~~
9 ~~great))~~ events result in deer or elk causing excessive damage to
10 (~~(commercially raised agricultural or horticultural))~~ commercial crops
11 (~~(by deer or elk))~~). (~~(In))~~

12 (b) After an emergency declaration, the department may pay as much
13 as may be subsequently appropriated, in addition to the funds
14 authorized under subsection (1) of this section, for claims and
15 assessment costs under (~~(RCW 77.36.040 and for assessment and~~
16 ~~compromise of claims))~~ section 3 of this act. Such money shall be used
17 to pay (~~(animal damage))~~ wildlife interaction claims only if the claim
18 meets the conditions of (~~(RCW 77.36.040))~~ section 3 of this act and the
19 department has expended all funds authorized under RCW 77.36.070 or
20 subsection (1) of this section.

21 **Sec. 9.** RCW 77.36.030 and 1996 c 54 s 4 are each amended to read
22 as follows:

23 (1) Subject to (~~(the following))~~) limitations and conditions
24 established by the commission, the owner, the owner's immediate family
25 member, the owner's documented employee, or a tenant of real property
26 may trap, consistent with RCW 77.15.194, or kill wildlife that is
27 threatening human safety or causing property damage on that property,
28 without the licenses required under RCW 77.32.010 or authorization from
29 the director under RCW 77.12.240(~~(, wild animals or wild birds that are~~
30 ~~damaging crops, domestic animals, or fowl~~);

31 ~~(a) Threatened or endangered species shall not be hunted, trapped,~~
32 ~~or killed;~~

33 ~~(b) Except in an emergency situation, deer, elk, and protected~~
34 ~~wildlife shall not be killed without a permit issued and conditioned by~~
35 ~~the director or the director's designee. In an emergency, the~~
36 ~~department may give verbal permission followed by written permission to~~

1 ~~trap or kill any deer, elk, or protected wildlife that is damaging~~
2 ~~crops, domestic animals, or fowl; and~~

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

13 ~~(2) ((Except for coyotes and Columbian ground squirrels,))~~ The
14 commission shall establish the limitations and conditions of this
15 section by rule. The rules must include:

16 (a) Appropriate protection for threatened or endangered species;

17 (b) Instances when verbal or written permission is required to kill
18 wildlife;

19 (c) Species that may be killed under this section; and

20 (d) Requirements for the disposal of wildlife trapped or killed
21 under this section ((remain the property of the state, and the person
22 trapping or killing the wildlife shall notify the department
23 immediately. The department shall dispose of wildlife so taken within
24 three days of receiving such a notification and in a manner determined
25 by the director to be in the best interest of the state)).

26 (3) In establishing the limitations and conditions of this section,
27 the commission shall take into consideration the recommendations of the
28 Washington state wolf conservation and management plan.

29 NEW SECTION. Sec. 10. A new section is added to chapter 77.36 RCW
30 to read as follows:

31 This chapter represents the exclusive remedy against the state for
32 damage caused by wildlife interactions.

33 **Sec. 11.** RCW 77.12.240 and 1989 c 197 s 1 are each amended to read
34 as follows:

35 (1) The ((director)) department may authorize the removal or

1 killing of wildlife that is destroying or injuring property, or when it
2 is necessary for wildlife management or research.

3 (2) The (~~director or other employees of the~~) department shall
4 dispose of wildlife taken or possessed by them under this title in the
5 manner determined by the director to be in the best interest of the
6 state. Proceeds from sales shall be deposited in the state treasury to
7 be credited to the state wildlife (~~fund~~) account created in RCW
8 77.12.170.

9 NEW SECTION. Sec. 12. The fish and wildlife commission shall
10 formally review the rules and policies adopted under this act. If, in
11 the process of reviewing the rules, the fish and wildlife commission
12 identifies recommended statutory changes related to the subject of this
13 act and to the ability of the fish and wildlife commission to fulfill
14 the intent of this act, those recommendations must be forwarded to the
15 appropriate policy committees of the legislature during the regularly
16 scheduled 2014 legislative session.

17 NEW SECTION. Sec. 13. The following acts or parts of acts are
18 each repealed:

- 19 (1) RCW 77.36.005 (Findings) and 1996 c 54 s 1;
20 (2) RCW 77.36.020 (Game damage control--Special hunt/remedial
21 action) and 2003 c 385 s 1 & 1996 c 54 s 3;
22 (3) RCW 77.36.040 (Payment of claims for damages--Procedure--
23 Limitations) and 1996 c 54 s 5;
24 (4) RCW 77.36.050 (Claimant refusal--Excessive claims) and 1996 c
25 54 s 6;
26 (5) RCW 77.36.060 (Claim refused--Posted property) and 1996 c 54 s
27 7; and
28 (6) RCW 77.12.260 (Agreements to prevent damage to private
29 property) and 1987 c 506 s 34, 1980 c 78 s 43, & 1955 c 36 s 77.12.260.

30 NEW SECTION. Sec. 14. The following sections are each decodified:
31 RCW 77.36.900; and
32 RCW 77.36.901.

33 NEW SECTION. Sec. 15. This act applies prospectively only and not
34 retroactively. This act applies only to claims that arise on or after

1 July 1, 2010. Claims under chapter 77.36 RCW that arise prior to July
2 1, 2010, must be adjudicated under chapter 77.36 RCW as it existed
3 prior to July 1, 2010.

4 NEW SECTION. **Sec. 16.** The fish and wildlife commission shall
5 complete all initial rule-making activities that are required in order
6 to allow sections 1 through 14 of this act to take effect on July 1,
7 2010.

8 NEW SECTION. **Sec. 17.** Sections 1 through 14 of this act take
9 effect July 1, 2010.

10 NEW SECTION. **Sec. 18.** Section 12 of this act expires July 30,
11 2014.

12 NEW SECTION. **Sec. 19.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

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