
SENATE BILL 5673

State of Washington 60th Legislature 2007 Regular Session

By Senators Holmquist, Clements, Morton, Hewitt, Rasmussen and Stevens

Read first time 01/29/2007. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to wildlife property damage; and amending RCW
2 77.36.005, 77.36.010, 77.36.040, 77.36.050, and 77.36.080.

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

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

6 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)) big game populations, which can damage
16 ((such)) crops and other forms of personal property. The legislature
17 further finds that damage prevention is key to maintaining healthy
18 ((deer and elk)) big game populations, wildlife-related recreational
19 opportunities, and commercially productive agricultural and

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

12 (3) A timely and simplified process for resolving claims for
13 damages caused by (~~(deer and elk for)~~) big game to commercial
14 agricultural or horticultural products, or other forms of personal
15 property, is beneficial to the claimant and the state.

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

18 (~~(Unless otherwise specified,)~~) The (~~(following)~~) definitions in
19 this section apply throughout this chapter(~~(+)~~) unless the context
20 clearly requires otherwise.

21 (1) "Big game" has the same definition as in RCW 77.08.030.

22 (2) "Crop" means a commercially raised horticultural and/or
23 agricultural product and includes growing or harvested product but does
24 not include livestock. For the purposes of this chapter all parts of
25 horticultural trees shall be considered a crop and shall be eligible
26 for claims.

27 (~~(+2)~~) (3) "Emergency" means an unforeseen circumstance beyond the
28 control of the landowner or tenant that presents a real and immediate
29 threat to crops, domestic animals, or fowl.

30 (~~(+3)~~) (4) "Immediate family member" means spouse, brother,
31 sister, grandparent, parent, child, or grandchild.

32 (5) "Personal property" means tangible personal property that can
33 be seen, weighed, measured, felt, or touched, or that is in any other
34 manner perceptible to the senses, and includes but is not limited to
35 livestock, plants, vehicles, animals, hay, and attachments to real
36 property such as fences, pipes, and irrigation systems.

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

3 (1)(a) Pursuant to this section, the director or the director's
4 designee may distribute money appropriated to pay claims for damages to
5 crops caused by wild (~~deer or elk~~) big game in an amount of up to ten
6 thousand dollars per claim. Damages payable under this (~~section~~)
7 subsection are limited to the value of such commercially raised
8 horticultural or agricultural crops, whether growing or harvested, and
9 shall be paid only to the owner of the crop at the time of damage,
10 without assignment.

11 (b) Pursuant to this section, the director or the director's
12 designee may also distribute money appropriated to pay claims in excess
13 of one thousand dollars for damages to tangible personal property
14 caused by big game in an amount of up to ten thousand dollars per
15 claim. Damages payable under this subsection must be based on the fair
16 market value of the tangible personal property, and shall be paid only
17 to the owner of the personal property at the time of damage, without
18 assignment.

19 (c) These damages shall not include damage to other real (~~or~~
20 personal)) property (~~including other vegetation or animals~~), damages
21 caused by animals other than wild (~~deer or elk~~) big game, lost
22 profits, consequential damages, or any other damages whatsoever.
23 (~~These damages~~)

24 (d) Damage claim payments under this section shall comprise the
25 exclusive remedy for claims against the state for damages caused by
26 wildlife.

27 (2) The director may adopt rules for the form of affidavits or
28 proof to be provided in claims under this section. The director may
29 adopt rules to specify the time and method of assessing damage. The
30 burden of proving damages shall be on the claimant. Payment of claims
31 shall remain subject to the other conditions and limits of this
32 chapter.

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

36 (a) The claimant did not notify the department within ten days of
37 discovery of the damage. If the claimant intends to take steps that
38 prevent determination of damages, such as harvest of damaged crops,

1 then the claimant shall notify the department as soon as reasonably
2 possible after discovery so that the department has an opportunity to
3 document the damage and take steps to prevent additional damage; or

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

7 (4) The director or the director's designee may examine and assess
8 the damage upon notice. The department and claimant may agree to an
9 assessment of damages by a neutral person or persons knowledgeable in
10 horticultural or agricultural practices. The department and claimant
11 shall share equally in the costs of such third party examination and
12 assessment of damage.

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

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

15 (b) The landowner or claimant failed to use or maintain applicable
16 damage prevention materials or methods furnished by the department, or
17 failed to comply with a wildlife damage prevention agreement under RCW
18 77.12.260;

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

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

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

28 **Sec. 4.** RCW 77.36.050 and 1996 c 54 s 6 are each amended to read
29 as follows:

30 If the claimant does not accept the director's decision under RCW
31 77.36.040, or if the claim exceeds ten thousand dollars, then the claim
32 may be filed with the (~~office of~~) risk management division under RCW
33 4.92.040(5). The (~~office of~~) risk management division shall
34 recommend to the legislature whether the claim should be paid. If the
35 legislature approves the claim, the director shall pay it from moneys
36 appropriated for that purpose. No funds shall be expended for damages
37 under this chapter except as appropriated by the legislature.

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

3 (1) The department may pay no more than (~~thirty~~) eighty thousand
4 dollars per fiscal year from the general fund for claims under RCW
5 77.36.040 and for assessment costs and compromise of claims unless the
6 legislature declares an emergency. Such money shall be used to pay
7 animal damage claims only if the claim meets the conditions of RCW
8 77.36.040 and, for crop claims only, the damage occurred in a place
9 where the opportunity to hunt was restricted or prohibited by a county,
10 municipality, or other public entity during the season prior to the
11 occurrence of the damage.

12 (2) The legislature may declare an emergency, defined for the
13 purposes of this section as any happening arising from weather, other
14 natural conditions, or fire that causes unusually great damage to
15 commercially raised agricultural or horticultural crops (~~by deer or~~
16 ~~elk~~) or personal property by big game. In an emergency, the
17 department may pay as much as may be subsequently appropriated, in
18 addition to the funds authorized under subsection (1) of this section,
19 for claims under RCW 77.36.040 and for assessment and compromise of
20 claims. Such money shall be used to pay animal damage claims only if
21 the claim meets the conditions of RCW 77.36.040 and the department has
22 expended all funds authorized under RCW 77.36.070 or subsection (1) of
23 this section.

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