

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 313 Session of
2005

INTRODUCED BY HANNA, BASTIAN, BELFANTI, CALTAGIRONE, CAUSER,
DALEY, GERGELY, GOODMAN, HARHAI, HERSHEY, LEVDANSKY,
PISTELLA, SOLOBAY, SURRA, WOJNAROSKI, SHANER, STABACK, WALKO
AND YOUNGBLOOD, FEBRUARY 8, 2005

REFERRED TO COMMITTEE ON GAME AND FISHERIES, FEBRUARY 8, 2005

AN ACT

1 Amending Title 34 (Game) of the Pennsylvania Consolidated
2 Statutes, further providing for deterrent fences for deer,
3 bear and elk and the payment of claims for damages by certain
4 elk; imposing duties on the Department of Agriculture;
5 providing for the establishment of the Elk Damage Fund; and
6 making an appropriation.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 541 of Title 34 of the Pennsylvania
10 Consolidated Statutes is amended to read:

11 § 541. Authority to provide deterrent fences for deer.

12 [(a) Fences for deer or elk.--]In areas of this Commonwealth
13 where deer [and elk] are present on lands open to public hunting
14 and are, in a material way, injuring or destroying farm crops,
15 fruit orchards or commercial tree nurseries where ornamental or
16 fruit trees are grown for sale or regeneration on commercial
17 forest lands, the owners or lessees of such farms, fruit
18 orchards, commercial tree nurseries or commercial forest lands
19 may make application to the commission for assistance in the

erection of a deterrent fence. Except where produce is raised for market on a commercial basis, the provisions of this section shall not apply to gardens or truck patches.

[(b) Fences for bears.--In areas of this Commonwealth where bears are present on lands open to public hunting and are, in a material way, damaging or destroying beehives where ten or more hives are placed at one location or imminent danger exists of such damage or destruction, the owner of such beehives may make application to the director for assistance in the erection of a deterrent fence.]

Section 2. Title 34 is amended by adding sections to read:
Section 541.1. Authority to provide deterrent fences for bear.

In areas of this Commonwealth where bears are present on lands open to public hunting and are, in a material way, damaging or destroying beehives where ten or more hives are placed at one location or imminent danger exists of such damage or destruction, the owner of such beehives may make application to the director for assistance in the erection of a deterrent fence.

Section 541.2. Authority to provide deterrent fences for elk.

In areas of this Commonwealth where elk are present, the owners or lessees of land which has been damaged or is likely to be damaged by elk may make application to the commission for assistance in the erection of deterrent fences. In investigating applications under this section, the commission using standards and priorities established by the Department of Agriculture shall evaluate both the damage or potential for damage to the land and the protection of the elk. This section applies to all land whether used for commercial or noncommercial purposes.

Section 3. Section 543(b) of Title 34 is amended and the

1 section is amended by adding a subsection to read:

2 § 543. Purchase of materials and construction.

3 * * *

4 (b) Construction of deer [or elk] deterrent fences.--

5 (1) The commission may construct, or may enter into
6 contracts for the construction of, or enter into a written
7 agreement with the applicant for the construction of[, deer
8 or elk] deer deterrent fences on sites approved by the
9 commission.

10 (2) In making application for a deterrent fence under
11 the provisions of [this subsection] section 541 (relating to
12 authority to provide deterrent fences for deer), the
13 applicant shall agree to one of the following three fence
14 construction options:

15 (i) The commission may construct, or may contract
16 for the construction of, the deterrent fence.

17 (ii) The applicant may, within six months of
18 delivery of materials, construct the deterrent fence.

19 (iii) The applicant may contract with a third party
20 for the construction of the deterrent fence.

21 The commission may, by regulation, establish a baseline cost
22 per foot of fence.

23 (3) After any deterrent fence for deer is constructed
24 and approved by the commission under the option specified in
25 paragraph (2)(i), the commission shall pay for the cost of
26 installation, and the landowner or lessee shall then
27 reimburse the commission for 50% of the cost of installation.

28 * * *

29 (c.1) Construction of elk deterrent fence.--

30 (1) The commission may construct, or may enter into

1 contracts for the construction of, or enter into a written
2 agreement with the applicant for the construction of elk
3 deterrent fences on sites approved by the commission.

4 (2) In making application for a deterrent fence under
5 the provisions of section 541.2 (relating to authority to
6 provide deterrent fences for elk), the applicant shall agree
7 to one of the following four fence construction options:

8 (i) The commission may construct, or may contract
9 for the construction of, the deterrent fence.

10 (ii) The applicant may, within six months of
11 delivery of materials, construct the deterrent fence.

12 (iii) The applicant may contract with a third party
13 for the construction of the deterrent fence.

14 (iv) Any other procedures for the construction of
15 the elk deterrent fence agreed to by both the
16 landowner/lessee and the commission.

17 The commission may, by regulation, establish a baseline cost
18 per foot of fence.

19 * * *

20 Section 4. Section 544 of Title 34 is amended to read:

21 § 544. Maintenance, repair or replacement.

22 [All] (a) General rule.--Except as provided in subsection
23 (b), deterrent fences for deer and bear, after erection, shall
24 be maintained by the individuals interested, and the commission
25 shall bear no part of any future maintenance.

26 (b) Deterrent fences for elk.--Responsibility for the
27 maintenance of deterrent elk fencing shall be based on the
28 written agreement between the landowner/lessee and the
29 commission.

30 (c) Replacement of deterrent fences.--Replacement of the

deterrent fences when worn out may be on the same basis as the erection of the original fence. The commission shall decide when the replacement deterrent fence is necessary.

Section 5. Title 34 is amended by adding sections to read:

§ 548. Payment for elk damage.

(a) General rule.--The commission shall be responsible for and may make payment for damage caused by elk within or outside of areas protected by elk deterrent fences. Damage reports must be submitted to an office of the commission within 48 hours of discovery. The commission shall investigate all complaints of elk damage within 24 hours of receipt of a damage claim. The refusal of a claimant to erect elk deterrent fence or the killing of an elk by a claimant are relevant factors in determining whether to pay an elk damage claim.

(b) Source of funds for payments.--All costs associated with the purchase and erection of elk deterrent fencing and the payment of approved elk damage claims shall be paid from the Elk Damage Fund established in subsection (c).

(c) Elk Damage Fund.--

(1) There is hereby established within the State Treasury a special fund to be known as the Elk Damage Fund which shall be used for the purchase, construction or maintenance of elk deterrent fences and for the payment of elk damage claims arising under subsection (a).

(2) All moneys deposited into the Elk Damage Fund are hereby appropriated on a continuing basis to the Department of Agriculture for the purposes specified in paragraph (1). No moneys in the Elk Damage Fund shall lapse into the General Fund at the close of each fiscal year until the balance in the fund on June 30 of each fiscal year equals or exceeds

1 \$500,000.

2 (d) Review.--When the commission's officers and the claimant
3 cannot agree upon the value of the damages, the claimant may,
4 within ten days of the conclusion of discussions, request, in
5 writing, that the director review the matter as provided in
6 Subchapter E (relating to review procedures).

7 § 549. Unlawful acts.

8 (a) General rule.--It is unlawful for any landowner/lessee
9 to file a fraudulent claim for damage of any kind alleged to
10 have been done by elk or for any person to violate any other
11 provision of this subchapter.

12 (b) Penalties.--A person who collects or attempts to collect
13 a fraudulent claim for damage by elk contrary to this subchapter
14 commits a summary offense of the first degree. Any other
15 violation of this subchapter is a summary offense of the fifth
16 degree.

17 Section 6. Section 561 of Title 34 is amended to read:

18 § 561. Appointment of hearing examiner.

19 Within 15 days following receipt of a request for review
20 under section 545 (relating to request for review) [or], 554
21 (relating to request for review) or 548(e) (relating to payment
22 for elk damage), a hearing examiner designated by the director
23 shall select a location and a time for hearing the review, which
24 location shall be within the county of origin of the dispute.
25 The applicant for review or the commission officer investigating
26 the claim may, at the time of the review, appear personally or
27 with counsel to testify and present witnesses and evidence in
28 their behalf and to confront and examine witnesses. The hearing
29 shall be conducted in accordance with the provisions of Title 2
30 (relating to administrative law and procedure) and the

1 regulations promulgated by the commission.

2 Section 7. The sum of \$250,000, or as much thereof as may be
3 necessary, is hereby appropriated to the State Treasurer for the
4 fiscal year July 1, 2004, to June 30, 2005, for deposit into the
5 Elk Damage Fund.

6 Section 8. This act shall take effect immediately.