

## 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

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JUNE 28, 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

1 may make application to the commission for assistance in the  
2 erection of a deterrent fence. Except where produce is raised  
3 for market on a commercial basis, the provisions of this section  
4 shall not apply to gardens or truck patches.

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

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

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

21 Section 541.2. Authority to provide deterrent fences for elk.

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

Section 3. Section 543(b) of Title 34 is amended and the section is amended by adding a subsection to read:

§ 543. Purchase of materials and construction.

\* \* \*

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

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

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

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

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

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

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

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

\* \* \*

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

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

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

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

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

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

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

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

20       \* \* \*

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

22   § 544. Maintenance, repair or replacement.

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

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

1     (c) Replacement of deterrent fences.--Replacement of the  
2 deterrent fences when worn out may be on the same basis as the  
3 erection of the original fence. The commission shall decide when  
4 the replacement deterrent fence is necessary.

5     Section 5. Title 34 is amended by adding sections to read:  
6     § 548. Payment for elk damage.

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

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

20     (c) Elk Damage Fund.--

21         (1) There is hereby established within the State  
22 Treasury a special fund to be known as the Elk Damage Fund  
23 which shall be used for the purchase, construction or  
24 maintenance of elk deterrent fences and FENCES; for the <—  
25 payment of elk damage claims arising under subsection (a); <—  
26 AND FOR THE COSTS OF IMPLEMENTATION AND STAFFING INCURRED BY  
27 THE DEPARTMENT OF AGRICULTURE FOR IMPLEMENTATION OF THIS  
28 SECTION.

29         (2) All moneys deposited into the Elk Damage Fund are  
30 hereby appropriated on a continuing basis to the Department

1 of Agriculture for the purposes specified in paragraph (1).

2 ~~No moneys in the Elk Damage Fund shall lapse into the General~~ <—  
3 ~~Fund at the close of each fiscal year until the balance in~~  
4 ~~the fund on June 30 of each fiscal year equals or exceeds~~  
5 ~~\$500,000.~~

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

11 § 549. Unlawful acts.

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

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

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

22 § 561. Appointment of hearing examiner.

23 Within 15 days following receipt of a request for review  
24 under section 545 (relating to request for review) [or], 554  
25 (relating to request for review) or 548(e) (relating to payment  
26 for elk damage), a hearing examiner designated by the director  
27 shall select a location and a time for hearing the review, which  
28 location shall be within the county of origin of the dispute.  
29 The applicant for review or the commission officer investigating  
30 the claim may, at the time of the review, appear personally or

1 with counsel to testify and present witnesses and evidence in  
2 their behalf and to confront and examine witnesses. The hearing  
3 shall be conducted in accordance with the provisions of Title 2  
4 (relating to administrative law and procedure) and the  
5 regulations promulgated by the commission.

6 SECTION 7. THE EXECUTIVE DIRECTOR OF THE PENNSYLVANIA GAME <—  
7 COMMISSION AND THE SECRETARY OF AGRICULTURE ARE HEREBY  
8 AUTHORIZED AND MAY ENTER INTO SUCH COOPERATIVE AGREEMENTS AS MAY  
9 BE NECESSARY TO IMPLEMENT AND ADMINISTER THE PROVISIONS OF 34  
10 PA.C.S. § 548.

11 Section 7 8. The sum of ~~\$250,000~~ \$300,000, or as much <—  
12 thereof as may be necessary, is hereby appropriated FROM THE <—  
13 GENERAL FUND to the State Treasurer for the fiscal year July 1,  
14 2004, to June 30, 2005, for deposit into the Elk Damage Fund.

15 Section 8 9. This act shall take effect immediately. <—