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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 2575** Session of  
2008

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INTRODUCED BY HANNA, MAY 30, 2008

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REFERRED TO COMMITTEE ON GAME AND FISHERIES, MAY 30, 2008

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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; and  
5 providing for the establishment of the Elk Damage Fund.

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

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

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

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

1 for market on a commercial basis, the provisions of this section  
2 shall not apply to gardens or truck patches.

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

10 Section 2. Title 34 is amended by adding sections to read:

11 § 541.1. Authority to provide deterrent fences for bear.

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

19 § 541.2. Authority to provide deterrent fences for elk.

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

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

1 § 543. Purchase of materials and construction.

2 \* \* \*

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

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

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

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

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

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

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

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

27 \* \* \*

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

29 (1) The commission may construct, or may enter into  
30 contracts for the construction of, or enter into a written

1 agreement with the applicant for the construction of elk  
2 deterrent fences on sites approved by the commission.

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

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

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

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

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

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

18 \* \* \*

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

20 § 544. Maintenance, repair or replacement.

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

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

29 (c) Replacement of deterrent fences.--Replacement of the  
30 deterrent fences when worn out may be on the same basis as the

1 erection of the original fence. The commission shall decide when  
2 the replacement deterrent fence is necessary.

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

4 § 548. Payment for elk damage.

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

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

18 (c) Elk Damage Fund.--

19 (1) There is hereby established within the State  
20 Treasury a special fund to be known as the Elk Damage Fund  
21 which shall be used for the purchase, construction or  
22 maintenance of elk deterrent fences; for the payment of elk  
23 damage claims arising under subsection (a); and for the costs  
24 of implementation and staffing incurred by the Department of  
25 Agriculture for implementation of this section.

26 (2) All moneys deposited into the Elk Damage Fund are  
27 hereby appropriated on a continuing basis to the Department  
28 of Agriculture for the purposes specified in paragraph (1).

29 (d) Review.--When the commission's officers and the claimant  
30 cannot agree upon the value of the damages, the claimant may,

1 within ten days of the conclusion of discussions, request, in  
2 writing, that the director review the matter as provided in  
3 Subchapter E (relating to review procedures).

4 § 549. Unlawful acts.

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

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

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

15 § 561. Appointment of hearing examiner.

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

29 Section 7. The Executive Director of the Pennsylvania Game  
30 Commission and the Secretary of Agriculture are hereby

1 authorized and may enter into such cooperative agreements as may  
2 be necessary to implement and administer the provisions of 34  
3 Pa.C.S. § 548.

4 Section 8. This act shall take effect immediately.