

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION  
2008**

**COMMITTEE STATEMENT**

**LB1164**

---

**Hearing Date:** February 21, 2008

**Committee On:** Natural Resources

**Introducer(s):** (Lautenbaugh)

**Title:** Adopt the Wildlife Damage Act

---

**Roll Call Vote - Final Committee Action:**

Indefinitely Postponed

---

**Vote Results:**

8 Yes                      Senators Carlson, Christensen, Dubas, Fischer,  
Hudkins, Kopplin, Louden, Wallman

0 No

0 Absent

0 Present, not voting

---

**Proponents:**

Senator Scott Lautenbaugh

Jessica Kolterman

Jeff Shaner

**Representing:**

Introducer

Nebraska Farm Bureau Federation

Self

**Opponents:**

Wes Sheets

**Representing:**

Nebraska Division, Izaak Walton League

Joe Herrod  
Jim Douglas

Nebraska Council of Sportsmens Clubs  
Game and Parks Commission

**Neutral:**  
Elaine Menzel

**Representing:**  
Nebraska Association of County Officials

---

### **Summary of purpose and/or change:**

LB 1164 does the following:

Section 1 Creates the Wildlife Damage Act.

Section 2 Definitions:

- (1) Commission – Game and Parks Commission
- (2) Wildlife damage – damage caused by deer, geese, turkey, and elk

- Section 3
- (1) Requires the commission to assist counties with wildlife damage abatement and wildlife damage claim programs through technical aid, program guidance, research, demonstration, funding, plan review, audit and evaluation services.
  - (2) Requires the commission to adopt rules and regulations for eligibility and funding requirements for the wildlife abatement program and the wildlife damage claim program including rules and regulations to establish:
    - (a) Authorized wildlife damage abatement measures and methods for implementing and funding such measures;
    - (b) Forms and procedures for payment and processing of statements of claims and applications for abatement assistance;
    - (c) Procedures and standards for determining the amount of wildlife damage;
    - (d) A methodology for proration of wildlife damage claim payments; and
    - (e) Procedures for record keeping, audits and inspections.
  - (3) Requires the commission to provide guidelines to counties applying for participation in the programs, and to approve the plan submitted by the counties if it meets certain requirements.
  - (4) Requires the commission to provide funding to each participating county for costs in administering the programs based on the estimate of anticipated administrative costs. The commission shall determine payments based on the actual administrative costs.

Section 4 (1) Prohibits the commission from administering the programs on behalf or instead of a county.

- (2) Requires the county to apply to the commission by November 1 in the following calendar year.
- (3) Requires the application to contain the plan of administration which must include:
  - (a) a provision allowing all records available to the commission for audit on the programs;
  - (b) a description of authorized wildlife damage abatement measures;
  - (c) a summary of billing, allocation and accounting procedures;
  - (d) a procedure to be used to determine land suitable for hunting;
  - (e) a procedure to be used in administering the programs;
  - (f) a commitment to administer the programs so that participants are encouraged to pursue sound conservation as well as normal agricultural practices;
  - (g) a summary of the organization and structure of the agency or unit of the county which is responsible for administration of the programs;
  - (h) an estimate of administrative costs; and
  - (i) any additional information required by the commission.
- (4) Requires a participating county to maintain a list of participants in the program;
- (5) Allows the commission to revoke its approval if a county does not comply with the plan of administration.

- Section 5 (1) To be eligible for wildlife damage abatement assistance:
- (a) The land must be located within the participating county;
  - (b) An application must be made by the owner or lessee of the land, or an owner of an apiary or livestock;
  - (c) The damage must be to commercial seedings or crops growing on agricultural land, damage to crops that have been harvested for sale or further use but that have not been removed from the agricultural land, damage to orchard trees or nursery, or damage to apiaries or livestock; and
  - (d) An individual must comply with all eligibility rules.
- (2) Requires a participating county to review each application to determine if wildlife damage is occurring or likely to occur.
  - (3) Requires a participating county to recommend only those measures that are cost-effective in relation to the wildlife damage claim payments that would be paid if the wildlife damage abatement measures are not implemented.
  - (4) Requires the commission to pay seventy-five percent of the actual cost of providing assistance if the measures are carried out in full compliance under the act.

- Section 6 (1) Eligibility for wildlife damage claim payments:

- (a) The land where the damage occurred is located within the participating county;
  - (b) A claim must be filed with the commission;
  - (c) The claim must be filed within fourteen days after the time the damage first occurs;
  - (d) The claimant must have complied with any abatement measures recommended by the participating county;
  - (e) The claimant must have managed the damaged property in accordance with normal agricultural practices;
  - (f) The damage must be to commercial seedings or crops growing on agricultural land, damage to crops that have been harvested for sale or further use but that have not been removed from the agricultural land, damage to orchard trees or nursery, or damage to apiaries or livestock; and
  - (g) An individual must comply with all eligibility rules.
- (2) Requires the participating county to investigate each statement of claim and determine the total amount of damage that occurred;
  - (3) The participating county shall calculate the amount of the claim payment as follows:
    - (a) Claims of \$250.00 or less shall receive no payment;
    - (b) Claims of more than \$250.00 but less than \$5,250.00 shall receive 100% of the claim that exceeds \$250.00;
    - (c) Claims in excess of \$5,250.00 shall be paid 80% of the amount in excess of \$5,250.00 plus the amount set forth in (3)(b); and
    - (d) Caps the amount that any one claimant can receive at \$15,000.00 for each claim.
  - (4) If the damage occurs in more than one county, the amount of the claim shall be prorated between or among the participating counties based on the amount of damage occurring in each county.
  - (5) (a) Requires the commission to pay the damage claim payments no later than June 1 of the calendar year after the calendar in which the statement of claims were filed;
  - (b) Payments from the fund for damage claims shall be made after deducting payments for county administrative costs and for wildlife damage abatement assistance; if there are not enough funds to pay damage claims, the claimants shall be paid on a prorated basis.

- Section 7 (1) Any person who receives wildlife abatement assistance or wildlife damage claim payments and any other person who owns, leases, or controls the land where the wildlife damage occurred shall permit hunting of the type of wild animals causing the damage on that land and on contiguous land under the same ownership. The land shall be open to hunting during the appropriate open season, and the county, with the assistance of the commission, shall determine the acreage of land suitable for hunting.
- (2) A hunter may hunt on the land described in section (1) only if:

- (a) The hunter notifies the landowner of his or her intent to hunt;
  - (b) The hunter does not bring a motor vehicle onto the land without the permission of the landowner; and
  - (c) The hunter does not use a stand located on such land without the permission of the landowner.
- (3) A landowner may deny a hunter access for reasonable cause including:
- (a) The presence of at least two hunters per forty acres;
  - (b) The hunter appears intoxicated or unruly;
  - (c) The hunter causes property damage; or
  - (d) The hunter fails to notify the landowner of his or her intent to hunt or brings a motor vehicle onto the land without the permission of the landowner.
- (4) A person seeking wildlife abatement assistance does not have to allow hunting if the person does not have authority to control entry on the land or if the damage on the land is damage to apiaries.
- (5) The requirement to allow hunting does not apply to a person whom the commission grants a shooting permit for deer causing damage that is issued as an abatement measure if:
- (a) The permit is the only abatement measure the person receives; and
  - (b) The person waives eligibility to receive a wildlife damage claim payment for wildlife damage caused by deer.
- (6) If any person who is required to allow hunting fails to do so, he or she is liable for:
- (a) Repayment of any money paid for the wildlife damage claim;
  - (b) Payment of cost of any wildlife damage abatement assistance paid for under the act; and
  - (c) Payment for costs for reviewing and approving the wildlife damage claim or wildlife damage abatement assistance and the costs of investigating the failure to permit hunting on the land.

Section 8 Nothing in this act prohibits a person who owns, leases, or occupies land on which wildlife damage occurs and who does not have the authority to control entry on the land for the purposes of hunting from seeking wildlife damage abatement assistance or wildlife damage claim payments.

Section 9 A participating county's determination of the amount of damage, the amount of the wildlife damage claim, and the amount of wildlife damage abatement assistance shall be treated as a final decision. Such decision may be appealed to the district court of the county where the damage occurred.

Section 10 (1) Requires a person receiving payments under the act to retain all records required by the participating county or the commission and to make them available to the participating county or to the commission for inspection at reasonable times.

(2) Allows the commission or county to enter upon any land for which a

wildlife damage claim has been filed or for which wildlife damage abatement measures have been implemented.

- (3) No person may refuse entry or access to or withhold records from the commission or the participating county under the Wildlife Damage Act or obstruct or interfere with an inspection by the commission or participating county.

Requires the commission or participating county to furnish a report setting forth all of the factual findings by the commission or the participating county that relate to the inspection.

- (4) Requires the commission to conduct random audits of the programs.

Section 11 (1) Any person making a false claim is liable for:

- (a) Repayment of any money paid for the wildlife damage;
- (b) Payment of the costs of any wildlife damage abatement assistance paid for under the act; and
- (c) Payment of the costs for reviewing and approving the wildlife damage claim or wildlife damage abatement assistance and the costs in investigating and determining whether a false statement or representation was made.

- (2) Prohibits a person from knowingly making or causing to be made any false statement or representation of material fact under the program.

- (3) If a court finds a person in violation of this act, it may order one or more of the following:

- (a) Payment equal to two times the total amount of wildlife damage claim payments received and the value of any wildlife damage abatement measures implemented, plus an amount not to exceed one thousand dollars;
- (b) Revocation of the person's hunting and fishing privileges for three years if the person owns, leases, or controls land, or owns livestock or apiaries, to which the false statement or representation relates; or
- (c) Prohibiting the individual from receiving any benefits under the wildlife damage abatement program or the wildlife damage claim program for a period of ten years commencing after the day that the false statement or representation occurred.
- (d) Makes any person in violation of subsection 2 of this section or who fails to allow hunting as required ineligible to participate in the program for a period of ten years commencing after the day on which the false statement or representation occurred, regardless of whether the person knew or should have known of the false statement or misrepresentation.

Section 12 (1) Requires the commission to prepare an annual report concerning wildlife damage, the wildlife damage abatement program, and the wildlife damage claim program, including a summary of:

- (a) All wildlife damage believed to have occurred in the state;
  - (b) The wildlife damage claims that were filed under this act;
  - (c) The wildlife damage abatement measures that were taken under the act;
  - (d) The percentage of the total number of filed wildlife damage claims that are rejected for failure to meet the requirements of the program; and
  - (e) The percentage of the total number of wildlife damage claims for which the amount of the payment to the claimant was prorated.
- (2) The report must be submitted no later than June 1 of each year to the Natural Resources Committee and to the Governor beginning on June 1, 2010.

Section 13 Requires the commission to adopt and promulgate rules and regulations to establish standards for tolerable levels of damage caused by deer living in the wild to crops on agricultural land, including commercial seedings, orchard trees, and nursery stock. The commission shall use the standards in setting goals for managing deer.

**Explanation of amendments, if any:**

None

\_\_\_\_\_  
Senator LeRoy Loudon, Chairperson