

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 1164**

Introduced by Lautenbaugh, 18.

Read first time January 23, 2008

Committee: Natural Resources

A BILL

- 1 FOR AN ACT relating to agriculture; to adopt the Wildlife Damage
- 2 Act.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. This act shall be known and may be cited as  
2 the Wildlife Damage Act.

3           Sec. 2. For purposes of the Wildlife Damage Act:

4           (1) Commission means the Game and Parks Commission; and

5           (2) Wildlife damage means damage caused by any of the  
6 following wild animals that are not subject to regulation under the  
7 Domesticated Cervine Animal Act:

8           (a) Deer;

9           (b) Geese;

10          (c) Turkey; and

11          (d) Elk.

12          Sec. 3. (1) The commission shall assist counties in  
13 developing and administering the wildlife damage abatement and  
14 wildlife damage claim programs. The commission shall provide this  
15 assistance through technical aid, program guidance, research,  
16 demonstration, funding, plan review, audit, and evaluation  
17 services.

18          (2) The commission shall adopt and promulgate rules  
19 and regulations for eligibility and funding requirements for the  
20 wildlife damage abatement program and the wildlife damage claim  
21 program in order to maximize the cost effectiveness of these  
22 programs. The commission shall also adopt and promulgate rules and  
23 regulations to establish:

24          (a) Authorized wildlife damage abatement measures and  
25 methods for implementing and paying for the abatement measures;

1           (b) Forms and procedures for payment and processing of  
2 statements of claims and applications for abatement assistance;

3           (c) Procedures and standards for determining the amount  
4 of wildlife damage;

5           (d) A methodology for proration of wildlife damage claim  
6 payments; and

7           (e) Procedures for record keeping, audits, and  
8 inspections.

9           (3) The commission shall provide guidelines to counties  
10 applying for participation in the wildlife damage abatement and  
11 wildlife damage claim programs. The commission shall review each  
12 plan of administration submitted and shall approve the plan if it  
13 is in substantial compliance with section 4 of this act and the  
14 rules and regulations adopted and promulgated under this section.

15           (4) The commission shall provide funding to each county  
16 participating in the wildlife damage abatement program, wildlife  
17 damage claim program, or both for costs incurred in administering  
18 the programs under the Wildlife Damage Act. The amount of funding  
19 to be allocated for each county shall be based on the estimate of  
20 anticipated administrative costs prepared under subdivision (3) (h)  
21 of section 4 of this act, but the commission shall determine  
22 payments based on the actual administrative costs incurred. If  
23 actual costs exceed the estimate, the commission may allocate  
24 additional funding based on criteria and using procedures adopted  
25 and promulgated by rule and regulation.

1           Sec. 4. (1) Eligibility for the wildlife damage abatement  
2 program or the wildlife damage claim program requires participation  
3 of the county in the administration of programs under the Wildlife  
4 Damage Act as specified under sections 5 and 6 of this act. The  
5 commission shall not administer a wildlife damage abatement program  
6 or wildlife damage claim program on behalf of or instead of a  
7 county.

8           (2) A county seeking to administer the wildlife damage  
9 abatement program or the wildlife damage abatement and wildlife  
10 damage claim programs shall apply to the commission on forms  
11 provided by it on or before November 1 for the administration  
12 of these programs in the following calendar year or other period  
13 specified in the application.

14           (3) The application shall include a plan of  
15 administration to which the county agrees and in the form  
16 required by the commission. The plan of administration shall  
17 include all of the following:

18           (a) An agreement that the county shall make all records  
19 and files relating to the wildlife damage abatement program  
20 and wildlife damage claim program, including records and files  
21 concerning access of hunters to lands for which a wildlife damage  
22 claim is filed, available to the commission for audit at reasonable  
23 times with the full cooperation of the county;

24           (b) A description of authorized wildlife damage abatement  
25 measures, including designation of specifications for woven wire

1 deer fences, for which reimbursement may be provided under the  
2 wildlife damage abatement program or which may be recommended under  
3 the wildlife damage claim program;

4 (c) A summary of billing, allocation, and accounting  
5 procedures to be used by the county and the commission under the  
6 act. These procedures shall be consistent with generally accepted  
7 accounting practices;

8 (d) The procedure or formula to be used to determine land  
9 suitable for hunting and other hunting requirements necessary to  
10 comply with section 7 of this act;

11 (e) The procedures to be used in administering the  
12 wildlife damage abatement and wildlife damage claim programs;

13 (f) A commitment that the county agrees to administer  
14 the wildlife damage abatement and wildlife damage claim programs so  
15 that participants are encouraged to pursue sound conservation as  
16 well as normal agricultural practices;

17 (g) A summary of the organization and structure of  
18 the agency or unit of the county which is responsible for the  
19 administration of the wildlife damage abatement and wildlife damage  
20 claim programs;

21 (h) An estimate of anticipated administrative costs,  
22 anticipated wildlife damage abatement assistance costs, and  
23 anticipated wildlife damage claim payments; and

24 (i) Other information and conditions the commission  
25 requires.

1           (4) A county that administers the wildlife damage  
2 abatement program or the wildlife damage claim program shall  
3 maintain a list of participants in the program and shall make the  
4 list available for public inspection.

5           (5) A county shall not administer the wildlife damage  
6 abatement program or the wildlife damage claim program and a  
7 county is not considered a participating county for the purpose  
8 of administering these programs unless the commission approves the  
9 plan of administration. The commission may revoke its approval if  
10 a county does not comply with the plan of administration or this  
11 section.

12           Sec. 5. (1) In order to be eligible for wildlife damage  
13 abatement assistance:

14           (a) The land for which assistance is sought is required  
15 to be located in a county which is participating in the  
16 administration of the wildlife damage abatement program;

17           (b) A person shall file an application with the  
18 participating county in a form acceptable to the county. An owner  
19 or lessee of land, a person who controls land, or an owner of an  
20 apiary or livestock may file an application;

21           (c) The type of wildlife damage to be abated is damage to  
22 commercial seedings or crops growing on agricultural land, damage  
23 to crops that have been harvested for sale or further use but that  
24 have not been removed from the agricultural land, damage to orchard  
25 trees or nursery stock, or damage to apiaries or livestock; and

1           (d) A person shall comply with eligibility rules and  
2 regulations adopted and promulgated by the commission under  
3 subsection (2) of section 3 of this act and with eligibility  
4 requirements specified in the plan of administration under  
5 subsection (3) of section 4 of this act.

6           (2) A participating county shall review each application  
7 for wildlife damage abatement assistance to determine if wildlife  
8 damage is occurring or likely to occur.

9           (3) A participating county may provide wildlife damage  
10 assistance where wildlife damage is occurring or is likely to occur  
11 for the reimbursement of costs associated with wildlife damage  
12 abatement measures if the measures are authorized in the plan  
13 of administration under section 4 of this act. A participating  
14 county may recommend only those wildlife damage abatement measures  
15 that are cost-effective in relation to the wildlife damage claim  
16 payments that would be paid if the wildlife damage abatement  
17 measures are not implemented.

18           (4) The commission shall pay participating counties  
19 seventy-five percent of the actual cost of providing wildlife  
20 damage abatement assistance if wildlife damage abatement measures  
21 are carried out in full compliance with the direction of the  
22 county and comply with funding rules and regulations adopted and  
23 promulgated by the commission pursuant to subsection (2) of section  
24 3 of this act.

25           Sec. 6. (1) In order to be eligible for wildlife damage

1 claim payments:

2 (a) The land where the wildlife damage occurred is  
3 located in a county which is participating in the administration of  
4 both the wildlife damage abatement program and the wildlife damage  
5 claim program;

6 (b) A person shall file a statement of claim with the  
7 commission in a form acceptable to the commission. An owner or  
8 lessee of land, a person who controls land, or an owner of an  
9 apiary or livestock may file a statement of claim;

10 (c) A person shall file a statement of claim within  
11 fourteen days after the time the wildlife damage first occurs;

12 (d) A person shall have complied with any wildlife  
13 damage abatement measures to abate that wildlife damage that were  
14 recommended by the county;

15 (e) A person shall have managed the seedings, crops,  
16 orchard trees, nursery stock, apiaries, or livestock which the  
17 person is seeking the claim payments in accordance with normal  
18 agricultural practices;

19 (f) The type of wildlife damage is damage to commercial  
20 seedings or crops growing on agricultural land, damage to crops  
21 that have been harvested for sale or further use but that have not  
22 been removed from the agricultural land, damage to orchard trees or  
23 nursery stock, or damage to apiaries or livestock; and

24 (g) A person shall comply with eligibility rules and  
25 regulations adopted and promulgated by the commission under



1 subsection (2) of section 3 of this act and with eligibility  
2 requirements specified in the plan of administration under  
3 subsection (3) of section 4 of this act.

4 (2) A participating county shall investigate each  
5 statement of claim and determine the total amount of the wildlife  
6 damage that occurred, regardless of the amount that may be eligible  
7 for payment under subsection (3) of this section.

8 (3) In calculating the amount of the wildlife damage  
9 claim payment to be paid for a claim, the participating county  
10 shall determine the amount as follows:

11 (a) If the amount of the claim is two hundred fifty  
12 dollars or less, the claimant shall receive no payment;

13 (b) If the amount of the claim is more than two hundred  
14 fifty dollars but not more than five thousand two hundred fifty  
15 dollars, the claimant will be paid one hundred percent of the  
16 amount of the claim that exceeds two hundred fifty dollars;

17 (c) If the amount of the claim is more than five thousand  
18 two hundred fifty dollars, the claimant will be paid the amount  
19 calculated under subdivision (3)(b) of this section plus eighty  
20 percent of the amount of the claim that exceeds five thousand  
21 two hundred fifty dollars, subject to subdivision (3)(d) of this  
22 section; and

23 (d) The total amount paid to a claimant under this  
24 subsection shall not exceed fifteen thousand dollars for each  
25 claim.

1           (4) If the land where the wildlife damage occurred is  
2 located in more than one participating county and the person files  
3 a statement of claim with more than one participating county,  
4 the amount of the claim shall be prorated between or among the  
5 participating counties based on the amount of wildlife damage  
6 occurring in each county.

7           (5)(a) Except as provided under subsection (2) of this  
8 section, the commission shall pay claimants the full amount  
9 of wildlife damage claim payments calculated in accordance with  
10 subsection (3) of this section and funding rules and regulations  
11 adopted and promulgated under subsection (2) of section 3 of this  
12 act no later than June 1 of the calendar year after the calendar  
13 year in which the statement of claims were filed.

14           (b) The commission shall pay claimants based upon the  
15 amount of money remaining from the appropriation for such program  
16 after first deducting payments made for county administrative costs  
17 and payments made for wildlife damage abatement assistance. If  
18 the amount remaining after such deductions from the appropriation  
19 for such year is not sufficient to pay the full amount required  
20 under subdivision (5)(a) of this section, the commission shall pay  
21 claimants on a prorated basis.

22           Sec. 7. (1) A person who receives wildlife damage  
23 abatement assistance or wildlife damage claim payments and any  
24 other person who owns, leases, or controls the land where the  
25 wildlife damage occurred shall permit hunting of the type of

1 wild animals causing the wildlife damage on that land and on  
2 contiguous land under the same ownership, lease or control, subject  
3 to subsections (2) through (5) of this section. In order to satisfy  
4 the requirement to permit hunting under this subsection, the land  
5 shall be open to hunting during the appropriate open season. The  
6 county, with the assistance of the commission, shall determine the  
7 acreage of land suitable for hunting.

8 (2) A hunter may hunt on land covered by subsection (1)  
9 of this section only if:

10 (a) The hunter notifies the landowner of his or her  
11 intent to hunt on the land;

12 (b) The hunter does not bring a motor vehicle onto the  
13 land without the permission of the landowner; and

14 (c) The hunter does not use a stand located on such land  
15 without the permission of the landowner.

16 (3) A landowner may deny a hunter access to land covered  
17 by subsection (1) of the section for reasonable cause, including:

18 (a) The presence of at least two hunters per forty acres  
19 of eligible land when the hunter notifies the landowner that he or  
20 she intends to hunt on the land;

21 (b) The hunter appears to be intoxicated or unruly;

22 (c) The hunter causes property damage; or

23 (d) The hunter fails to notify the landowner of his or  
24 her intent to hunt on the land or brings a motor vehicle onto the  
25 land without the permission of the landowner.

1           (4) The requirements to allow hunting under subsection  
2 (1) of this section do not apply to a person seeking wildlife  
3 damage abatement assistance if the person does not have authority  
4 to control entry on the land that is subject to such requirements  
5 and if the damage on the land is damage to apiaries.

6           (5) The requirements under subsection (1) of this section  
7 do not apply to a person whom the commission grants a shooting  
8 permit for deer causing damage that is issued as an abatement  
9 measure recommended under this section if:

10           (a) The permit is the only abatement measure the person  
11 receives for wildlife damage caused by deer; and

12           (b) The person waives any eligibility to receive a  
13 wildlife damage claim payment for wildlife damage caused by deer.

14           (6) If any person who is required to permit hunting on  
15 land as required under subsection (1) of this section fails to do  
16 so, the person is liable for:

17           (a) Repayment of any money paid for the wildlife damage  
18 claim;

19           (b) Payment of the cost of any wildlife damage abatement  
20 assistance paid for under the Wildlife Damage Act; and

21           (c) Payment of the costs for reviewing and approving the  
22 wildlife damage claim or wildlife damage abatement assistance and  
23 the costs of investigating the failure to permit hunting on the  
24 land.

25           Sec. 8. Nothing in the Wildlife Damage Act prohibits a

1 person who owns, leases, or occupies land on which wildlife damage  
2 occurs and who does not have the authority to control entry on  
3 the land for the purposes of hunting from seeking wildlife damage  
4 abatement assistance or wildlife damage claim payments.

5           Sec. 9. A participating county's determination of the  
6 amount of wildlife damage, the amount of a wildlife damage claim,  
7 and the amount of wildlife damage abatement assistance shall be  
8 treated as final decisions for purposes of appeal. The district  
9 court of the county where the damage occurred has jurisdiction to  
10 hear the appeal.

11           Sec. 10. (1) A person receiving wildlife damage abatement  
12 assistance or wildlife damage claim payments shall retain all  
13 records as required by the participating county or the commission  
14 and make them available to the participating county or the  
15 commission for inspection at reasonable times.

16           (2) The commission or a participating county may enter  
17 and inspect, at reasonable times, any land for which a wildlife  
18 damage claim has been filed or for which wildlife damage abatement  
19 measures have been implemented.

20           (3) No person may refuse entry or access to or withhold  
21 records from the commission or the participating county under the  
22 Wildlife Damage Act or obstruct or interfere with an inspection  
23 by the commission or a participating county under the act. The  
24 commission or participating county if requested, shall furnish to  
25 the person a report setting forth all of the factual findings

1 by the commission or participating county that relate to the  
2 inspection.

3 (4) The commission shall conduct random audits of  
4 wildlife damage abatement claims paid, wildlife damage abatement  
5 measures recommended, and wildlife damage assistance paid for under  
6 the act. The commission shall conduct audits of all claims filed  
7 by, and payments made to, commission employees and of all wildlife  
8 damage abatement measures for the benefit of crops, livestock, or  
9 apiaries owned or controlled by such employees for which assistance  
10 was provided under section 5 of this act.

11 Sec. 11. (1) For a wildlife damage statement of claim or  
12 application for wildlife damage abatement assistance, if the person  
13 filing the claim or applying for the assistance negligently makes,  
14 or causes to be made, a false statement or representation of a  
15 material fact in making the claim or application, the person is  
16 liable for:

17 (a) Repayment of any money paid for the wildlife damage  
18 claim;

19 (b) Payment of the cost of any wildlife damage abatement  
20 assistance paid for under the Wildlife Damage Act; and

21 (c) Payment of the costs for reviewing and approving  
22 the wildlife damage claim or wildlife damage abatement assistance  
23 and the costs in investigating and determining whether a false  
24 statement or representation was made.

25 (2) No person may knowingly make or cause to be made

1 any false statement or representation of material fact under the  
2 wildlife damage abatement program or the wildlife damage claim  
3 program.

4 (3) A court finding a person to be in violation of  
5 subsection (2) of this section may order one or more of the  
6 following:

7 (a) That the person pay a forfeiture equal to two times  
8 the total amount of wildlife damage claim payments received and the  
9 value of any wildlife damage abatement measures implemented, plus  
10 an amount not to exceed one thousand dollars;

11 (b) The revocation of the person's hunting and fishing  
12 privileges for three years if the person owns, leases, or controls  
13 land, or owns livestock or apiaries, to which the false statement  
14 or representation relates; or

15 (c) That the person is prohibited from receiving any  
16 benefits under the wildlife damage abatement program or the  
17 wildlife damage claim program for a period of ten years commencing  
18 after the day that the false statement or representation occurred.

19 (4) Any person who owns, leases, or controls land or  
20 owns livestock or apiaries for which a benefit was received in  
21 violation of subsection (2) of this section or who fails to allow  
22 hunting as required under section 7 of this act is not eligible  
23 for any benefits under the wildlife damage abatement program or the  
24 wildlife damage claim program for a period of ten years commencing  
25 after the day on which the false statement or representation

1 occurred, regardless of whether the person knew or should have  
2 known of the false statement or misrepresentation.

3           Sec. 12. (1) The commission shall prepare an annual  
4 report concerning wildlife damage, the wildlife damage abatement  
5 program, and the wildlife damage claim program, including a summary  
6 of:

7           (a) All of the wildlife damage believed to have occurred  
8 in the state;

9           (b) The wildlife damage claims that were filed under the  
10 Wildlife Damage Act;

11           (c) The wildlife damage abatement measures that were  
12 recommended or implemented under the act;

13           (d) The percentage of the total number of filed  
14 wildlife damage claims that are rejected for failure to meet the  
15 requirements of the program; and

16           (e) The percentage of the total number of wildlife damage  
17 claims for which the amount of the payment to the claimant was  
18 prorated under subdivision (5)(b) of section 6 of this act.

19           (2) The commission shall submit the report no later  
20 than June 1 of each year to the Natural Resources Committee of  
21 the Legislature and to the Governor. The first report shall be  
22 submitted no later than June 1, 2010. Each report shall cover  
23 the twelve-month period ending on the December 31 that immediately  
24 precedes the date of the report.

25           Sec. 13. The commission shall adopt and promulgate rules



1 and regulations to establish standards for tolerable levels of  
2 damage caused by deer living in the wild to crops on agricultural  
3 land, including commercial seedings, orchard trees, and nursery  
4 stock. The commission shall use the standards in setting goals for  
5 managing deer.