

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1071

Introduced by Hughes, 44.

Read first time January 21, 2020

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to wildlife; to amend sections 37-324 and
- 2 37-1273, Reissue Revised Statutes of Nebraska; to adopt the Wildlife
- 3 Damage Recovery Act; to state intent regarding and provide for
- 4 transfers of funds as prescribed; and to repeal the original
- 5 sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known and may be
2 cited as the Wildlife Damage Recovery Act.

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

4 (1) Claimant means a person who has a direct financial interest in
5 farming or livestock production in Nebraska upon which damage has been
6 sustained due to wildlife activity and who files a claim pursuant to the
7 Wildlife Damage Recovery Act;

8 (2) Commission means the Game and Parks Commission;

9 (3) Council means the Wildlife Damage Recovery Council;

10 (4) Farm product means those plants and animals useful to
11 individuals and includes, but is not limited to, forages and sod crops,
12 grains and feed crops, including those stored for future feeding uses,
13 poultry and poultry products, livestock, including breeding and grazing
14 livestock, fruits, and vegetables;

15 (5) Farming or livestock production means the active use,
16 management, and operation of real and personal property for the
17 production of a farm product; and

18 (6) Wildlife means antelope, deer, and elk.

19 Sec. 3. The Legislature finds that:

20 (1) Agricultural commodity producers experience financial losses due
21 to crop damage caused by wildlife managed by the commission;

22 (2) Such financial losses cause economic hardship for some
23 producers; and

24 (3) The State of Nebraska benefits financially from the hunting of
25 wildlife and should assist such producers to mitigate such damages or
26 reimburse such producers for their losses.

27 Sec. 4. (1) The Wildlife Damage Recovery Council is created. The
28 Governor shall appoint the members of the council with the consent of a
29 majority of the members of the Legislature. To be eligible to serve as a
30 member of the council, a person shall be actively engaged in farming or
31 livestock production. The members of the council shall include residents

1 from the districts created in section 37-102 as follows:

2 (a) One representative from district one or two;

3 (b) One representative from district three, four, or eight; and

4 (c) One representative from district five, six, or seven.

5 (2) The council shall select a chairperson from among its members.

6 The council shall hold quarterly meetings and shall hold other meetings
7 at the call of the chairperson or upon request of a majority of the
8 members.

9 Sec. 5. (1) The members of the council may be reimbursed for
10 expenses incurred in connection with serving on the council.

11 (2) The commission shall provide administrative support for the
12 council.

13 Sec. 6. The council shall advise the commission on the
14 administration and management of the Wildlife Damage Recovery Fund and
15 shall determine the financial loss suffered by a claimant due to wildlife
16 activity.

17 Sec. 7. (1) The Wildlife Damage Recovery Fund is created. The
18 commission shall administer the fund. Any money in the fund available for
19 investment shall be invested by the state investment officer pursuant to
20 the Nebraska Capital Expansion Act and the Nebraska State Funds
21 Investment Act.

22 (2) It is the intent of the Legislature to transfer three million
23 dollars each fiscal year from the State Game Fund to the Wildlife Damage
24 Recovery Fund.

25 Sec. 8. (1) A person who has a direct financial interest in farming
26 or livestock production in Nebraska whose farm products within Nebraska
27 have sustained damage due to wildlife activity may file a claim for
28 compensation with the commission pursuant to the Wildlife Damage Recovery
29 Act and rules and regulations adopted and promulgated under the act. A
30 claim may be filed for orchards at any time damage occurs, for farm
31 products under cultivation within seventy-two hours after discovery of

1 the damage, and for harvested farm products within seventy-two hours
2 after discovery of the damage.

3 (2) In order to recover compensation from the Wildlife Damage
4 Recovery Fund for a claim under the act, a claimant:

5 (a) Shall notify the commission within seventy-two hours after
6 discovery of the damage which is the subject of the claim;

7 (b) Shall provide personnel designated by the commission with
8 reasonable access to the property to verify the damage; and

9 (c) Shall have the burden of proof regarding the cause of the damage
10 and the financial loss sustained due to wildlife activity.

11 (3) The commission shall cause an investigation and appraisal of the
12 damage to be completed as soon as practical after notification under this
13 section. The council may accept the results of the appraisal or make a
14 separate determination of damages in accordance with this section.

15 (4) In determining the amount of compensation to be awarded for the
16 financial loss sustained due to wildlife activity, the council shall
17 consider:

18 (a) The extent of the damage due to wildlife activity;

19 (b) The revenue the claimant derives from participation in wildlife
20 management, the use of landowner permits, and hunter access charges; and

21 (c) The amount available in the Wildlife Damage Recovery Fund.

22 (5)(a) The council may deny or limit compensation to a claimant if
23 the claimant:

24 (i) Failed to exercise reasonable care and diligence to avoid the
25 loss or minimize the damage; or

26 (ii) Unreasonably restricted hunting or passage upon the property
27 after receiving written notice from the commission of the necessity of
28 allowing such hunting or access to control or mitigate damage upon such
29 property due to wildlife activity.

30 (b) In considering whether hunting or passage upon such property was
31 unreasonably restricted, the council shall consider only whether such

1 restriction significantly and adversely reduced a necessary harvest of
2 wildlife.

3 Sec. 9. The council may deny a claim or may designate the amount to
4 be paid on a claim based on the investigation and appraisal and taking
5 into consideration the information gathered under the Wildlife Damage
6 Recovery Act with respect to the claim.

7 Sec. 10. A claimant may refuse an award on a claim filed under the
8 Wildlife Damage Recovery Act. If a claimant refuses or is denied an award
9 by the council, the claimant may file an action for damages in the county
10 court or district court of the county in which the damage due to wildlife
11 activity or any portion thereof occurred. The action shall be filed
12 within sixty days after the refusal or denial of the award. If the action
13 is not filed with such sixty-day period, the action shall be forever
14 barred. The court shall forward a certified copy of its judgment in such
15 action to the commission.

16 Sec. 11. The commission may offer materials and services to a
17 person who has a direct financial interest in farming or livestock
18 production in Nebraska and who applies for assistance in mitigating
19 damage due to wildlife activity which may result in a claim under the
20 Wildlife Damage Recovery Act.

21 Sec. 12. The commission may adopt and promulgate rules and
22 regulations to carry out the Wildlife Damage Recovery Act.

23 Sec. 13. Section 37-324, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 37-324 (1) Except as otherwise provided in subsection (3) of this
26 section, the The funds derived from the sale of permits and publications
27 as provided in the Game Law, any unexpended balance now on hand from the
28 sale of hunting, fur-harvesting, and fishing permits, and all money
29 required by the Game Law to be paid into the State Game Fund are hereby
30 appropriated to the use of the commission (a) for the propagation,
31 importation, protection, preservation, and distribution of game and fish

1 and necessary equipment therefor and all things pertaining thereto, (b)
2 for the creation of cash funds under section 37-326, (c) for the
3 administration and enforcement of the State Boat Act, (d) for boating
4 safety educational programs, (e) for the construction and maintenance of
5 boating and docking facilities, navigation aids, and access to boating
6 areas and such other uses which will promote the safety and convenience
7 of the boating public in Nebraska, and (f) for publishing costs for
8 publications relating to topics listed in subdivisions (a) and (b) of
9 this subsection and other topics of general interest to the state as
10 approved by the commission. An amount equal to two dollars from each
11 annual resident fishing permit and two dollars from each combination
12 hunting and fishing permit sold in this state shall be used by the
13 commission for the administration, construction, operation, and
14 maintenance of fish hatcheries and for the distribution of fish.

15 (2) Expenditures for publications on topics of general interest to
16 the state shall not exceed the income derived from single-copy and
17 subscription sales of commission publications and advertising revenue
18 from such publications.

19 (3) It is the intent of the Legislature to transfer up to three
20 million dollars each fiscal year from the State Game Fund to the Wildlife
21 Damage Recovery Fund for purposes of the Wildlife Damage Recovery Act.

22 Sec. 14. Section 37-1273, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 37-1273 All fees as provided by the State Boat Act shall be remitted
25 to the State Treasurer for credit to the State Game Fund to be used
26 primarily for (1) administration and enforcement of the State Boat Act,
27 (2) boating safety educational programs, (3) the construction and
28 maintenance of boating and docking facilities, navigation aids, and
29 access to boating areas and such other uses as will promote the safety
30 and convenience of the boating public in Nebraska, (4) the Aquatic
31 Invasive Species Program, and (5) publishing costs subject to the

1 restrictions and limitations in section 37-324. Secondary uses for the
2 fees shall be for the propagation, importation, protection, preservation,
3 and distribution of game and fish and necessary equipment therefor and
4 all things pertaining thereto and for transfers to the General Fund and
5 the Wildlife Damage Recovery Fund as provided in section 37-324.

6 Sec. 15. Original sections 37-324 and 37-1273, Reissue Revised
7 Statutes of Nebraska, are repealed.