

CHAPTER 290

NATURAL RESOURCES

HOUSE BILL 93-1077

BY REPRESENTATIVES Chlouber, Acquafresca, Allen, Clark, Dyer, Epps, Fleming, Foster, George, R. Hernandez, Jerke, June, Kaufman, Martin, May, Moellenberg, Ratterree, Reeser, Shoemaker, and Taylor;
also SENATORS Wattenberg, Cassidy, and L. Powers.

AN ACT

CONCERNING THE VALUATION OF PROPERTY DAMAGE CAUSED BY WILDLIFE, AND, IN CONNECTION THEREWITH, CURTAILING THE AUTHORITY OF THE WILDLIFE COMMISSION TO PROMULGATE RULES GOVERNING SUCH VALUATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION

1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Large-scale damage to the property of individual landowners by wildlife, particularly elk, is an increasingly common occurrence throughout Colorado;

(b) While instances of such damage may be isolated, each can cause significant and potentially devastating consequences to the landowner involved unless quick, effective action is taken; and

(c) The existing claims procedure is often too time-consuming, and the available financial assistance often inadequate, to remedy such damage properly or prevent its recurrence.

(2) The general assembly further finds and declares that:

(a) Ruminating animals such as cows, deer, antelope, and elk tend to eat for short periods of time during the day and then move to resting places at other times, making it appear as though they are not continuously present; and

(b) Notwithstanding such appearances, it is appropriate to recognize that when

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

such animals graze on private or leased private land intermittently during any given day, the amount they consume may be comparable to the amount they would consume if they remained present and visible on such land for the entire day.

SECTION 2. The introductory portion to 33-3-104 (1) and 33-3-104 (1) (d), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

33-3-104. State shall be liable - when. (1) Subject to the limitations contained in section 33-3-103 AND IN PART 2 OF THIS ARTICLE, the state shall be liable only for:

(d) Damages caused by those species of wildlife enumerated in section 33-1-102 (2) to orchards, nurseries, crops under cultivation, and harvested crops, damages to LAWFUL fences AS DEFINED IN SECTION 35-46-101 (1) when such damages exceed ten percent of the value of the specific fence involved, and damages to livestock forage in excess of ten percent of historic use levels for privately owned and fenced ranch or farm units which are specifically limited to hay meadows, pasture meadows, artificially seeded rangelands, and grazing land which is deferred to seasonal uses. Damages to aftermath on alfalfa shall be paid to the full extent of such damages without regard to historic numbers of wildlife. Historic levels shall be designated by the claimant at the time of making a claim. Historic levels shall be expressed in average numbers of wildlife present on the property in question based on the twenty-year period ending January 1, 1973. If the division does not agree with the claimant on normal historic levels or any element of a damage settlement, the matter shall be submitted to arbitration within ten days of notice by either party. The arbitration panel shall consist of one arbitrator chosen by the landowner, one arbitrator chosen by the division, and one arbitrator chosen by the other two arbitrators. If the two arbitrators cannot agree within ten days on a third arbitrator, a request by either party shall be made to the district court for the judicial district of the county in which the damage is located for appointment of a third impartial arbitrator. The division and the landowner shall equally share the cost of the use of the third arbitrator. Historic levels or any element settled by arbitration may be included in an appeal to a court of competent jurisdiction, and the court shall not be bound by the finding of the arbitration panel.

SECTION 3. Article 3 of title 33, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 2 FORAGE LOSSES

33-3-201. Scope of part - definition. (1) THIS PART 2 SHALL GOVERN CLAIMS FOR DAMAGE ARISING FROM THE FORAGING OF WILD RUMINANTS ON PRIVATELY OWNED OR LEASED PRIVATE LAND AND FOR WHICH DAMAGE THE STATE IS LIABLE UNDER SECTION 33-3-104 (1) (d). EXCEPT WHERE INCONSISTENT WITH A SPECIFIC PROVISION OF THIS PART 2, THE PROVISIONS OF PART 1 OF THIS ARTICLE SHALL ALSO APPLY TO SUCH CLAIMS.

(2) FOR PURPOSES OF THIS PART 2, "WILD RUMINANTS" INCLUDES ELK AND OTHER RUMINANTS WITHIN THE DEFINITION OF BIG GAME AS SET FORTH IN SECTION 33-1-102 (2).

33-3-202. Head counts. THE CLAIMANT'S HEAD COUNT OF WILD RUMINANTS SHALL BE MADE UPON NO LESS THAN TWENTY-FOUR HOURS' NOTICE TO THE DIVISION, WHICH MAY ARRANGE TO HAVE ITS PERSONNEL PRESENT WHEN THE COUNT IS MADE. THE TIME OF DAY AT WHICH THE COUNT IS MADE SHALL BE AT THE CLAIMANT'S DISCRETION. IF THE DIVISION CHOOSES NOT TO HAVE PERSONNEL PRESENT, THE CLAIMANT'S HEAD COUNT SHALL BE CONCLUSIVE. SUBSEQUENT HEAD COUNTS MAY BE MADE AT INTERVALS OF TEN DAYS.

33-3-203. Claims procedure. (1) WHEN ANY PERSON HAS SUSTAINED DAMAGE TO LIVESTOCK FORAGE CAUSED BY WILD RUMINANTS, SUCH PERSON SHALL NOTIFY THE DIVISION OF SUCH DAMAGES WITHIN TEN DAYS AFTER THE DISCOVERY THEREOF. IN THE CASE OF RECURRING DAMAGE, THE DIVISION SHALL BE NOTIFIED WITHIN TEN DAYS AFTER THE DISCOVERY OF EACH NEW OR DIFFERENT OCCURRENCE OF DAMAGE.

(2) (a) PROOF OF LOSS FORMS SHALL BE FILED WITHIN NINETY DAYS AFTER THE LAST NOTICE OF LOSS IS SUBMITTED TO THE DIVISION UNDER SUBSECTION (1) OF THIS SECTION. THE DIVISION, WITHIN THIRTY DAYS AFTER THE FILING OF SUCH PROOF OF LOSS FORMS, SHALL MAKE AN INVESTIGATION OF THE ALLEGED LOSS, AND, WHERE POSSIBLE, SHALL ATTEMPT TO REACH AN AGREEMENT WITH THE CLAIMANT UPON AN AMOUNT OF SETTLEMENT. ALL SUCH AGREEMENTS SHALL BE COMPLETED AND THE SETTLEMENT AMOUNT PAID IN FULL WITHIN SIXTY DAYS AFTER TERMS AND CONDITIONS HAVE BEEN AGREED UPON; OTHERWISE, AT THE CLAIMANT'S OPTION, THE MATTER SHALL PROCEED TO ARBITRATION OR TO COURT AS PROVIDED IN THIS ARTICLE.

(b) (I) IF THE DIVISION DOES NOT AGREE WITH THE CLAIMANT ON NORMAL HISTORIC LEVELS, OR ANY ELEMENT OF A DAMAGE SETTLEMENT, THE MATTER SHALL BE SUBMITTED TO ARBITRATION WITHIN TEN DAYS OF NOTICE BY EITHER PARTY UNLESS THE CLAIMANT WAIVES ARBITRATION. THE ARBITRATION PANEL SHALL CONSIST OF ONE ARBITRATOR CHOSEN BY THE LANDOWNER, ONE ARBITRATOR CHOSEN BY THE DIVISION, AND ONE ARBITRATOR CHOSEN BY THE OTHER TWO ARBITRATORS. IF THE TWO ARBITRATORS CANNOT AGREE WITHIN TEN DAYS ON A THIRD ARBITRATOR, A REQUEST BY EITHER PARTY SHALL BE MADE TO THE DISTRICT COURT FOR THE JUDICIAL DISTRICT OF THE COUNTY IN WHICH THE DAMAGE IS LOCATED FOR APPOINTMENT OF A THIRD IMPARTIAL ARBITRATOR. THE DIVISION AND THE LANDOWNER SHALL EQUALLY SHARE THE COST OF THE USE OF THE THIRD ARBITRATOR.

(II) IN ANY CASE WHICH GOES TO ARBITRATION, ALL ARBITRATORS CHOSEN SHALL RESIDE WITHIN FIFTY MILES OF THE SUBJECT PROPERTY. THE ARBITRATION PROCEEDING SHALL BE CONDUCTED PURSUANT TO THE "UNIFORM ARBITRATION ACT OF 1975", PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S. THE DECISION OF THE ARBITRATION PANEL SHALL BE BINDING AND SHALL BE SUBJECT TO JUDICIAL REVIEW ONLY FOR STATUTORY COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE 3 AND THE SAID ACT. THE CLAIMANT OR THE DIVISION MAY SEEK SUCH REVIEW BY FILING AN ACTION FOR SAME IN THE COUNTY OR DISTRICT COURT IN THE COUNTY OR JUDICIAL DISTRICT WHERE THE SUBJECT DAMAGE IS ALLEGED TO HAVE OCCURRED WITHIN THIRTY DAYS AFTER RECEIPT OF THE ARBITRATION PANEL'S DECISION.

(c) ANY WAIVER OF ARBITRATION SHALL BE IN WRITING AND SHALL BE MAILED TO THE DIVISION WITHIN TEN DAYS AFTER THE CLAIMANT RECEIVES NOTIFICATION FROM

THE DIVISION OF THE DENIAL OF THE CLAIM, OR WITHIN TEN DAYS AFTER THE CLAIMANT RECEIVES FROM THE DIVISION AN OFFER OF SETTLEMENT UNACCEPTABLE TO SUCH CLAIMANT.

(d) IN ADJUDICATION OF ANY CLAIM, SHOULD THE COURT FIND THAT THE CLAIMANT HAS MADE OR THE DIVISION HAS CONTESTED THE CLAIM WITHOUT A SUBSTANTIAL LEGAL OR FACTUAL BASIS, THE COURT SHALL AWARD THE OTHER PARTY REASONABLE ATTORNEY FEES, NOT TO EXCEED THE ACTUAL AMOUNT INCURRED, UPON THE SUBMISSION OF SATISFACTORY PROOF THEREOF.

(3) FOR PAYMENT TO A CLAIMANT, THE CONTROLLER SHALL DRAW A WARRANT UPON A VOUCHER APPROVED BY THE DIVISION AND THE STATE TREASURER SHALL PAY THE AMOUNT OF SETTLEMENT OUT OF THE WILDLIFE CASH FUND.

(4) THE DIVISION SHALL FURNISH FORMS TO BE USED FOR THE NOTICE AND PROOF OF LOSS REQUIRED UNDER THIS SECTION.

33-3-204. Waiver of arbitration - action for damages. IF A CLAIMANT WAIVES THE RIGHT TO ARBITRATION PURSUANT TO THE PROVISIONS OF SECTION 33-3-203, THE COMMISSION SHALL REVIEW THE CLAIM AS PROVIDED IN SECTION 33-3-107. SUCH CLAIMANT MAY COMMENCE AN ACTION FOR DAMAGES AND, IN CONNECTION THEREWITH, SHALL BE ENTITLED TO A TRIAL DE NOVO IN ANY COURT OF THE COUNTY IN WHICH THE DAMAGE OR ANY PORTION THEREOF IS ALLEGED TO HAVE OCCURRED. THE DIVISION MAY BE REPRESENTED BY A FULL-TIME EMPLOYEE IN SMALL CLAIMS COURT. SUCH ACTION SHALL BE FILED WITHIN SIXTY DAYS AFTER THE CLAIMANT RECEIVES NOTICE OF DENIAL BY THE COMMISSION, WHICH NOTICE SHALL SET FORTH THE REASONS FOR DENIAL, OR WITHIN SIXTY DAYS AFTER THE CLAIMANT RECEIVES AN OFFER OF SETTLEMENT FROM THE COMMISSION. IF THE ACTION IS NOT FILED WITHIN SAID SIXTY-DAY PERIOD, SUCH ACTION SHALL BE FOREVER BARRED.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 1993