

CHAPTER 323

NATURAL RESOURCES

SENATE BILL 09-024

BY SENATOR(S) White, Kester, Brophy, Kopp, Penry;
also REPRESENTATIVE(S) Sonnenberg and Curry, Bradford, Gardner C., Gerou, Kerr J., Looper, Marostica, Massey, Pace,
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AN ACT

**CONCERNING RESPONSIBILITIES OF THE DIVISION OF WILDLIFE WITH RESPECT TO GAME DAMAGE
ISSUES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

SECTION 1. 33-3-103 (1) (d), (1) (g), and (2), Colorado Revised Statutes, are amended to read:

33-3-103. No liability for damage - when. (1) The state shall not be liable for:

(d) Damages, if the division has furnished to the claimant sufficient and appropriate damage prevention materials and the claimant has refused to accept or use such materials exclusively for game damage prevention, and if the provisions of ~~subsection (2) of this section~~ 33-3-103.5 have been complied with by the division and the claimant;

(g) Damages caused by wildlife, if claimant charges a fee in excess of ~~one~~ FIVE hundred dollars per person, per season for the purpose of big game hunting access on or across claimant's property.

~~(2) (a) The provisions of this subsection (2) shall be applicable in determining the liability of the state under paragraph (d) of subsection (1) of this section.~~

~~(b) The division shall be responsible for providing to landowners such sufficient and appropriate damage prevention materials prior to September 1 of each year, if the claimant has given at least a thirty-day notice to the division in writing.~~

~~(c) The division shall deliver such materials to the specific sites as directed by the~~

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

claimant, if such delivery may be made by truck:

~~(d) When agreed upon by the claimant or landowner, the division may construct permanent stackyards or orchard fencing in those areas of high wildlife damage potential within the limitations of appropriation by the general assembly for that purpose:~~

~~(e) If the division does not provide sufficient and appropriate damage prevention materials by September 1 when so requested by the claimant, the division shall have the sole responsibility to supply and erect such damage prevention materials. If the division does not provide such damage prevention materials by September 1 of the year in question or if the division, having failed to supply such materials by said date, has failed to supply and erect sufficient and appropriate damage prevention materials subsequent to September 1, when requested by the claimant, the division shall not refuse to pay any wildlife damages caused by the lack of damage prevention materials:~~

~~(f) When erecting damage prevention materials, the division may use division employees, individuals under contract to the division, or voluntary workers. If the division uses voluntary workers to assist in erecting damage prevention materials as provided in this subsection (2), the division shall keep in force workers' compensation insurance as necessary to protect the claimant and the landowner from liability resulting from injuries or death of said voluntary workers while engaged in the erection of such damage prevention materials as provided in this subsection (2). If the division uses contract workers to assist in erecting damage prevention materials as provided in this subsection (2), the division shall require the contractor to provide evidence of workers' compensation insurance as necessary to protect the claimant and the landowner from liability resulting from injuries or death of said contract workers while engaged in the erection of such damage prevention materials as provided in this subsection (2):~~

~~(g) The division has the responsibility to supply useable and appropriate damage prevention materials to the claimant, and the claimant shall keep such materials in good repair throughout their normal life, if such materials have not been destroyed or damaged by wildlife:~~

SECTION 2. Part 1 of article 3 of title 33, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

33-3-103.5. Game damage prevention materials - definitions. (1) THIS SECTION SHALL BE APPLICABLE IN DETERMINING THE LIABILITY OF THE STATE UNDER PARAGRAPH (e) OF SUBSECTION (3) OF THIS SECTION AND SECTION 33-3-103 (1) (d) AND (1) (e).

(2) (a) (I) EVERY LANDOWNER SHALL BE ELIGIBLE TO RECEIVE SUFFICIENT AND APPROPRIATE TEMPORARY GAME DAMAGE PREVENTION MATERIALS PURSUANT TO THIS SECTION.

(II) PERMANENT GAME DAMAGE PREVENTION MATERIALS SHALL BE AVAILABLE ONLY TO A LANDOWNER WHO DOES NOT UNREASONABLY RESTRICT HUNTING OF SPECIES LIKELY TO CAUSE DAMAGE ON LAND UNDER THE LANDOWNER'S CONTROL

OR RESTRICT THE HUNTING OF SPECIES LIKELY TO CAUSE DAMAGE ON ANY OTHER LANDS BY RESTRICTING ACCESS ACROSS LANDS UNDER THE LANDOWNER'S CONTROL, AND:

(A) WHO CHARGES NOT MORE THAN FIVE HUNDRED DOLLARS PER PERSON, PER SEASON, FOR BIG GAME HUNTING ACCESS ON OR ACROSS THE LANDOWNER'S PROPERTY; OR

(B) WHO CHARGES A FEE IN EXCESS OF FIVE HUNDRED DOLLARS PER PERSON, PER SEASON, FOR BIG GAME HUNTING ACCESS ON OR ACROSS THE LANDOWNER'S PROPERTY, IF THE LANDOWNER HAS REQUESTED AND BEEN DENIED GAME DAMAGE PREVENTION MATERIALS FROM THE HABITAT PARTNERSHIP PROGRAM CREATED IN SECTION 33-1-110 (8) AND THE DIVISION DETERMINES THAT EXCESSIVE GAME DAMAGE IS OCCURRING, AND MAY CONTINUE TO OCCUR IN THE FUTURE.

(III) THE DIVISION SHALL NOT DENY A LANDOWNER GAME DAMAGE CLAIMS OR GAME DAMAGE PREVENTION MATERIALS ON THE GROUNDS THAT THE LANDOWNER RECEIVED A VOUCHER PURSUANT TO THE WILDLIFE CONSERVATION LANDOWNER HUNTING PREFERENCE PROGRAM FOR WILDLIFE HABITAT IMPROVEMENT UNDER SECTION 33-4-103 (3) (d).

(IV) AS USED IN THIS SECTION:

(A) "TEMPORARY GAME DAMAGE PREVENTION MATERIALS" MEANS MATERIALS OF AN ADEQUATE SUBSTANCE THAT ARE UTILIZED TO PROTECT PRIVATE PROPERTY FOR A PERIOD OF TIME AGREED UPON BY THE LANDOWNER AND THE DIVISION. SUCH MATERIALS MAY INCLUDE, BUT ARE NOT LIMITED TO, TRANSFERABLE PANELS OR PYROTECHNICS.

(B) "PERMANENT GAME DAMAGE PREVENTION MATERIALS" MEANS MATERIALS OF AN ADEQUATE SUBSTANCE THAT ARE ERECTED IN SUCH A WAY TO PROTECT PRIVATE PROPERTY FOR THE EXPECTED NORMAL LIFE OF THE MATERIALS. THE NORMAL LIFE OF THE MATERIALS SHALL BE AS SPECIFIED IN A WRITTEN AGREEMENT BETWEEN THE LANDOWNER AND THE DIVISION.

(b) THE DIVISION HAS THE RESPONSIBILITY TO SUPPLY USEABLE, SUFFICIENT, AND APPROPRIATE GAME DAMAGE PREVENTION MATERIALS TO A REQUESTING LANDOWNER, AND THE LANDOWNER SHALL KEEP SUCH MATERIALS IN GOOD REPAIR THROUGHOUT THEIR NORMAL LIFE, IF SUCH MATERIALS HAVE NOT BEEN DESTROYED OR DAMAGED BY WILDLIFE.

(3) (a) THE DIVISION SHALL RESPOND TO A LANDOWNER MAKING AN INQUIRY RELATED TO GAME DAMAGE WITHIN TWO BUSINESS DAYS AFTER RECEIVING THE INQUIRY.

(b) (I) WITHIN FIVE BUSINESS DAYS AFTER RECEIVING A REQUEST FOR GAME DAMAGE PREVENTION MATERIALS, THE DIVISION SHALL CONSULT WITH THE LANDOWNER TO DISCUSS THE SUFFICIENT AND APPROPRIATE MATERIALS TO PREVENT OR MITIGATE THE GAME DAMAGE. TEMPORARY GAME DAMAGE PREVENTION MATERIALS SHALL BE DELIVERED TO THE LANDOWNER WITHIN FIFTEEN BUSINESS DAYS AFTER THE CONSULTATION, UNLESS OTHERWISE AGREED TO BY THE DIVISION

AND THE LANDOWNER.

(II) FOR A LANDOWNER ELIGIBLE TO RECEIVE PERMANENT GAME DAMAGE PREVENTION MATERIALS PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, SUCH MATERIALS SHALL BE PROVIDED WITHIN FORTY-FIVE DAYS AFTER THE DATE THAT THE LANDOWNER MAKES THE INITIAL REQUEST FOR THE MATERIALS.

(c) THE DIVISION SHALL DELIVER GAME DAMAGE PREVENTION MATERIALS TO THE SPECIFIC SITE AS DIRECTED BY THE LANDOWNER, IF SUCH DELIVERY MAY BE MADE BY TRUCK.

(d) WHEN AGREED UPON BY THE LANDOWNER, THE DIVISION MAY CONSTRUCT PERMANENT STACKYARDS OR ORCHARD FENCING IN THOSE AREAS OF HIGH WILDLIFE DAMAGE POTENTIAL WITHIN THE LIMITATIONS OF APPROPRIATION BY THE GENERAL ASSEMBLY FOR THAT PURPOSE.

(e) (I) IF THE DIVISION DOES NOT PROVIDE GAME DAMAGE PREVENTION MATERIALS WITHIN THE AMOUNT OF TIME ESTABLISHED BY PARAGRAPH (b) OF THIS SUBSECTION (3), THE DIVISION SHALL HAVE THE SOLE RESPONSIBILITY TO SUPPLY AND ERECT THE DAMAGE PREVENTION MATERIALS, AND THE STATE SHALL BE LIABLE FOR GAME DAMAGES INCURRED ON AND AFTER THE DATE BY WHICH THE DIVISION SHOULD HAVE PROVIDED THE GAME DAMAGE PREVENTION MATERIALS.

(II) WHEN ERECTING GAME DAMAGE PREVENTION MATERIALS PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (e), THE DIVISION MAY USE DIVISION EMPLOYEES, INDIVIDUALS UNDER CONTRACT TO THE DIVISION, OR VOLUNTARY WORKERS. IF THE DIVISION USES VOLUNTARY WORKERS TO ASSIST IN ERECTING GAME DAMAGE PREVENTION MATERIALS, THE DIVISION SHALL KEEP IN FORCE WORKERS' COMPENSATION INSURANCE AS NECESSARY TO PROTECT THE LANDOWNER FROM LIABILITY RESULTING FROM INJURIES OR DEATH OF SAID VOLUNTARY WORKERS WHILE ENGAGED IN THE ERECTION OF SUCH GAME DAMAGE PREVENTION MATERIALS. IF THE DIVISION USES CONTRACT WORKERS TO ASSIST IN ERECTING GAME DAMAGE PREVENTION MATERIALS AS PROVIDED IN THIS SECTION, THE DIVISION SHALL REQUIRE THE CONTRACTOR TO PROVIDE EVIDENCE OF WORKERS' COMPENSATION INSURANCE AS NECESSARY TO PROTECT THE LANDOWNER FROM LIABILITY RESULTING FROM INJURIES OR DEATH OF SAID CONTRACT WORKERS WHILE ENGAGED IN THE ERECTION OF SUCH GAME DAMAGE PREVENTION MATERIALS.

(4) IF THE GAME DAMAGE PREVENTION MATERIALS THAT THE DIVISION PROVIDES TO A LANDOWNER FAIL TO PREVENT GAME DAMAGE DUE TO INSUFFICIENCY OR INAPPROPRIATENESS OF SUCH MATERIALS, OR IF THE DIVISION'S INSUFFICIENT OR INAPPROPRIATE ERECTION OF SUCH MATERIALS FAIL TO PREVENT GAME DAMAGE, THE STATE SHALL BE LIABLE FOR DAMAGES CAUSED BY SUCH MATERIALS OR ERECTION.

SECTION 3. The introductory portion to 33-3-104 (1), Colorado Revised Statutes, is amended to read:

33-3-104. State shall be liable - when. (1) Subject to the limitations contained in ~~section~~ SECTIONS 33-3-103 (1) AND 33-3-103.5, and in part 2 of this article, the

state shall be liable only for:

SECTION 4. 33-3-106 (1), Colorado Revised Statutes, is amended to read:

33-3-106. Excessive damage to property - permit to take wildlife - when - harassment by dogs. (1) (a) Where wildlife is causing excessive damage to property, as determined by the division AFTER CONSULTATION WITH THE PROPERTY OWNER, the division is authorized to issue a permit to the property owner, THE PROPERTY OWNER'S DESIGNEE, or to such other person selected by the division to kill a specified number of the SPECIES OF wildlife causing such excessive damage. UPON REQUEST BY THE PROPERTY OWNER, WHENEVER THE WILDLIFE CAUSING THE EXCESSIVE DAMAGE EXCEEDS THE WILDLIFE OBJECTIVE SET BY THE DIVISION FOR THAT SPECIES FOR THAT GEOGRAPHICAL AREA FOR THE CURRENT YEAR, THE DIVISION IS ENCOURAGED TO ISSUE A PERMIT UNDER THIS SECTION. ANY DETERMINATION BY THE DIVISION THAT THE DAMAGE BEING CAUSED IS NOT EXCESSIVE MAY, UPON APPLICATION BY THE PROPERTY OWNER, BE REVIEWED BY THE COMMISSION.

(b) NO PERMIT TO TAKE WILDLIFE PURSUANT TO THIS SUBSECTION (1) SHALL BE ISSUED OR USED IN VIOLATION OF ANY LOCAL RESTRICTION ON FIREARM USE.

SECTION 5. Part 1 of article 3 of title 33, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

33-3-111. Annual report to the general assembly. (1) COMMENCING WITH THE SECOND REGULAR SESSION OF THE SIXTY-SEVENTH GENERAL ASSEMBLY, THE DIVISION SHALL REPORT AT LEAST ANNUALLY, BY JANUARY 31 OF EACH YEAR, TO THE SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE, AND THE HOUSE OF REPRESENTATIVES AGRICULTURE, LIVESTOCK, AND NATURAL RESOURCES COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, ON GAME DAMAGE AND GAME DAMAGE PREVENTION ISSUES. SUCH REPORT SHALL INCLUDE, AT A MINIMUM:

(a) (I) THE HERD MANAGEMENT OBJECTIVES SET BY THE DIVISION AND WHETHER THOSE OBJECTIVES ARE BEING MET. IN PROVIDING THIS INFORMATION, THE DIVISION SHALL SUPPLY THE ACTUAL NUMBER OF HERD ANIMALS BY GAME UNIT.

(II) IF ANY OF THE HERD MANAGEMENT OBJECTIVES OF THE DIVISION ARE NOT BEING MET, THE DIVISION SHALL SET FORTH IN DETAIL ITS PLANS, STRATEGIES, AND EFFORTS THAT IT IS USING OR INTENDS TO USE IN ORDER TO ACHIEVE COMPLIANCE WITH THE OBJECTIVES.

(b) THE NUMBER OF REQUESTS FOR GAME DAMAGE PREVENTION MATERIALS, THE TIMELINESS OF THE DIVISION IN RESPONDING TO SUCH REQUESTS, THE QUANTITY AND TYPES OF TEMPORARY AND PERMANENT MATERIALS ISSUED, THE NUMBER OF REQUESTS FOR MATERIALS DENIED, AND, TO THE EXTENT THAT SUCH INFORMATION IS AVAILABLE, THE ADEQUACY OF MATERIALS IN PREVENTING GAME DAMAGE;

(c) THE NUMBER OF PERMITS TO TAKE WILDLIFE REQUESTED PURSUANT TO SECTION 33-3-106, THE NUMBER OF PERMITS ISSUED, THE AMOUNT OF WILDLIFE KILLED UNDER SUCH PERMITS, THE NUMBER OF PERMITS DENIED, AND THE REASONS FOR DENIAL;

(d) THE NUMBER OF CLAIMS FOR DAMAGES SUBMITTED UNDER THIS SECTION, HOW MANY OF THOSE CLAIMS WERE SETTLED AND THE MONETARY AMOUNTS OF THE SETTLEMENTS, THE NUMBER OF CLAIMS PENDING AT THE TIME OF THE REPORT, THE NUMBER OF CLAIMS DENIED, AND THE REASONS FOR DENIAL;

(e) ANY OTHER COSTS INCURRED BY THE DIVISION IN ADMINISTERING THIS ARTICLE.

SECTION 6. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the wildlife cash fund created in section 33-1-112 (1) (a), Colorado Revised Statutes, not otherwise appropriated, to the department of natural resources, division of wildlife, special purpose, game damage claims and prevention, for the fiscal year beginning July 1, 2009, the sum of one million four hundred fifty thousand dollars (\$1,450,000), or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the wildlife cash fund created in section 33-1-112 (1) (a), Colorado Revised Statutes, not otherwise appropriated, to the department of natural resources, division of wildlife, for the fiscal year beginning July 1, 2008, the sum of six hundred thousand dollars (\$600,000), or so much thereof as may be necessary, for implementation and administration of article 3 of title 33, Colorado Revised Statutes.

SECTION 7. Applicability. This act shall apply to inquiries related to game damage and requests for game damage prevention materials received by the division of wildlife on or after the effective date of this act.

SECTION 8. 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 1, 2009