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SENATE BILL NO. 611

Offered January 26, 1998

A BILL to amend and reenact §§ 29.1-352 through 29.1-356 and 29.1-529 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 29.1-355.1 and 29.1-355.2, relating to the Wildlife Crop Replacement Program; penalty.

Patrons—Trumbo; Delegate: Deeds

Referred to the Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 29.1-352 through 29.1-356 and 29.1-529 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 29.1-355.1 and 29.1-355.2 as follows:

Article 3.

~~Stamps~~ Wildlife Crop Replacement Program.

§ 29.1-352. Wildlife crop insurance program established; purpose; intent.

There is hereby established a ~~damage stamp~~ wildlife crop replacement program to (i) provide for an available source of funds to be used to compensate damage to crops, fruit trees, commercially grown Christmas trees, nursery stock, livestock, or farm equipment caused by deer or bear or by big game hunters and (ii) ~~pay the costs of processing the meat of a deer or bear which has been killed as authorized by § 29.1-355.2.~~ It is the intent of the General Assembly that persons suffering loss or damage as the result of these activities should be realistically compensated for damages which occurred to their property as the result of the activity. A local governing body shall encourage to the maximum extent possible the utilization of the ~~damage stamp fund moneys collected from the sale of damage stamps and contributions by landowners made pursuant to § 29.1-353~~ for payment of claims in keeping with the purposes of this article.

§ 29.1-353. Local governing body to adopt ordinance; landowner contribution.

~~A.~~ Any local governing body may adopt an ordinance consistent with the provisions of this article for the purpose of establishing a ~~damage stamp~~ wildlife crop replacement program. ~~No such ordinance shall be in force between May 1 of any year and the following April 30 whenever the amount of money in this special fund is more than twice the average annual disbursement made from the fund for the payment of damage claims in the locality during the immediately preceding three years. However, such estoppel shall not apply to any locality during the first three years immediately following the effective date of the first such ordinance adopted by the governing body of that locality pursuant to this or any earlier similar enabling act.~~

B. Any locality which has adopted an ordinance prior to July 1, 1981, will not be required to adopt a new ordinance; however, any prior ordinance shall be administered pursuant to the provisions of this article. ~~The ordinance shall require that in order to be eligible to receive funds from the program for damages incurred during a calendar year, a landowner shall register with the locality by December 31 of the preceding year and at the time of registration pay into the fund a participation fee of not less than twenty-five dollars nor more than \$100, to be determined by the locality, and one dollar for every five acres of cropland farmed.~~

§ 29.1-354. Stamps required; issuance; fee; affixing stamps; cancellation; penalty.

It shall be unlawful for any person to hunt bear or deer in any locality adopting a ~~damage stamp~~ wildlife crop replacement ordinance within the Commonwealth without having first obtained the special stamp. A violation of this provision shall be punishable as a Class 3 misdemeanor.

~~The annual fee for such a stamp shall be one dollar. The local governing body may shall prescribe any fee, not to exceed five dollars for these special stamps, when issued to nonresidents of the Commonwealth an annual fee of not less than two dollars nor more than five dollars for such a stamp.~~

The special stamps shall be obtained from a locally designated official or from any agent designated by the Board pursuant to § 29.1-327. The agent shall be paid a fee of ~~ten~~ fifty cents from the special fund for each stamp issued.

The stamp shall be affixed to the reverse side of a current hunting license of each person required to obtain the stamp, and that person shall cancel the stamp with his initials.

§ 29.1-355. Disposition of funds.

A. All moneys received from the sale of the special stamps ~~and landowner registration and assessment fees~~ shall be paid into the local treasury to the credit of a ~~special damage stamp~~ wildlife crop replacement fund and identified by the year in which the moneys were collected. The special fund shall

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be used for the following purposes:

1. Payment of (i) damages to crops, fruit trees, commercially grown Christmas trees, nursery stock, livestock, or farm equipment by deer or bear at any time, or by big game hunters during hunting season and (ii) the costs of processing meat of a deer or bear which has been killed as authorized by § 29.1-355.2; and

2. Payment of the actual and necessary costs of the administration of the provisions of this article, including the printing and distribution of the required stamps and the payment of reasonable fees to persons designated by a local governing body to inspect, evaluate, and confirm reported claims and adjust such claims; and

3. In the discretion of the local governing body, payment of the costs of law enforcement directly related to and incidental to carrying out the provisions of this article and the general game laws of the Commonwealth; any person compensated to engage in such law-enforcement activities shall be approved for such employment by the director and appointed to be a special game warden in accordance with the Board's standards and policies governing such appointment; and

4. In the discretion of the local governing body, administrative expenses related to the special stamps, support of a county volunteer fire prevention and suppression program when the program includes fire fighting on big game hunting lands open to the public, and support of local volunteer rescue squads whose services are available to hunters in distress. However, the money appropriated from the special damage stamp fund for these purposes shall not exceed, in the aggregate, in any calendar year, an amount equal to fifty percent of the amount paid into the special damage stamp fund during the fiscal year or previous calendar year. Once selecting the fiscal year or previous calendar year, the local governing body must continue to use that selected period of time in determining the amount of money to be appropriated from the special damage stamp fund.

B. Moneys shall not be disbursed for claims filed during the calendar year until December 31 of that year. The first disbursements shall be made to pay the costs of processing deer or bear meat. If claims exceed the fund's balance in a calendar year, the moneys in the fund shall be distributed on a percentage basis among all claims filed for that calendar year. Any moneys that remain in the fund, after all expenditures have been made pursuant to this section, shall be used to pay for wildlife projects in the locality. The locality shall receive applications for wildlife projects and shall award funds based on the recommendations of the wildlife projects committee established under § 29.1-355.1.

§ 29.1-355.1. Wildlife projects committees established; membership.

There is hereby established in each locality that has adopted an ordinance under § 29.1-353 a wildlife projects committee which shall consist of three members to be appointed in the following manner: one member shall be appointed by the local Farm Bureau Federation, one member shall be appointed by the locality, and one member shall be the member of the Board of Game and Inland Fisheries who represents the congressional district in which the locality is located or his designee. The committee shall review applications for wildlife projects submitted to the locality and shall recommend specific projects for funding.

§ 29.1-355.2. Kill permit; discretion of game warden; processing of meat; penalty.

Any person who participates in the wildlife crop replacement program may, at the discretion of a game warden, be authorized to kill a bear or deer under § 29.1-529. Any person who receives authorization to kill a deer or bear under this section shall provide for the processing of the meat by field dressing and delivering the carcass in a timely manner to a slaughterhouse designated by the locality. Failure to provide for the timely delivery of a carcass to a designated slaughterhouse shall constitute a Class 3 misdemeanor.

§ 29.1-356. Reporting damages; filing and adjudicating claims.

Any person suffering damage pursuant to the provisions of this article shall report the damage to a locally designated official Virginia cooperative extension agent whose duty it shall be to have the damage investigated. The claim for damage shall be filed under oath and in a manner and form as may be prescribed by the local governing body.

If the claimant and the designated local official Virginia cooperative extension agent agree as to the amount of damage, the local governing body may approve the amount and order payment thereof from the special damage stamp wildlife crop replacement fund established by this article. No claim for damages shall be paid to any person who does not permit the hunting of big game by licensed hunters on his property. However, the fact that a landowner places reasonable restrictions on the number of licensed hunters who are permitted to hunt big game on his property shall not disqualify him from filing a claim for damages pursuant to this section. In the event that no agreement as to the amount of damages can be reached, the claimant may initiate an action in the general district court of the county in which the damage occurred.

§ 29.1-529. Killing of deer or bear damaging fruit trees, crops, livestock or personal property or creating a hazard to aircraft or motor vehicles.

Whenever deer or bear are damaging fruit trees, crops, livestock or personal property in the

Commonwealth, the owner or lessee of the lands on which such damage is done shall immediately report the damage to the Director or his designee for investigation. If after investigation the Director or his designee finds that deer or bear are responsible for the damage, he shall authorize in writing the owner, lessee or any other person designated by the Director or his designee to kill such deer or bear when they are found upon the land upon which the damages occurred. The Director or his designee may limit such authorization by specifying in writing the number of animals to be killed and the period of time for which the authorization is effective. The Director or his designees issuing these authorizations shall specify in writing that only antlerless deer shall be killed, unless the Director or his designee determines that there is clear and convincing evidence that the damage was done by deer with antlers. *However, a game warden, may, at his discretion, authorize persons participating in a locality's wildlife and crop replacement program under Article 3 (§ 29.1-352 et seq.) of Chapter 3 of this title to kill deer or bear under the provisions of this section.*

Whenever deer are creating a hazard to the operation of any aircraft or to the facilities connected with the operation of aircraft, the person or persons responsible for the safe operation of the aircraft or facilities shall report such fact to the Director or his designee for investigation. If after investigation the Director or his designee finds that deer are creating a hazard, he shall authorize such person or persons, or their representatives, to kill the deer when they are found to be creating such a hazard.

Whenever deer are creating a hazard to the operation of a motor vehicle within the corporate limits of any city, the operator of a motor vehicle may report such fact to the Director or his designee for investigation. If after investigation the Director or his designee finds that deer are creating a hazard within such city, he may authorize responsible persons, or their representatives, to kill the deer when they are found to be creating such a hazard. The carcass of every deer or bear so killed may be awarded to the owner or lessee by the Director or his designee, who shall give such person a certificate to that effect on forms furnished by the Department. Any person awarded a deer or bear under this section may use the carcass as if he had killed the animal during the hunting season for deer or bear.

The Director or his designee may revoke any authorization granted under this section when it has been shown by a preponderance of the evidence that an abuse of the authorization has occurred.