

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 80

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO FISH AND GAME; AMENDING SECTION 36-1108, IDAHO CODE, TO REVISE  
2 PROVISIONS REGARDING CERTAIN AGREEMENTS AND COMPENSATION FOR DAMAGE BY  
3 PRONGHORN ANTELOPE, ELK, DEER AND MOOSE AND TO MAKE TECHNICAL CORREC-  
4 TIONS.  
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 36-1108, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 36-1108. CONTROL OF DAMAGE BY PRONGHORN ANTELOPE, ELK, DEER OR MOOSE  
10 -- COMPENSATION FOR DAMAGES. (a) Prevention of depredation shall be a pri-  
11 ority management objective of the department, and it is the obligation  
12 of landowners to take all reasonable steps to prevent property loss from  
13 wildlife or to mitigate damages by wildlife. When any pronghorn antelope,  
14 elk, deer or moose is doing damage to or is destroying any property or is  
15 about to do so, the owner or lessee thereof may make complaint and verbally or  
16 electronically report the facts to the director or his designee who shall,  
17 within seventy-two (72) hours, investigate the conditions complained of. If  
18 it appears that the complaint is well-founded and the property of the com-  
19 plainant is being or is likely to be damaged or destroyed by such pronghorn  
20 antelope, elk, deer or moose, the director may:

21 1. Send a representative onto the premises to control, trap, and/or re-  
22 move such animals as will stop the damage to said property. Any ani-  
23 mals so taken shall remain the property of the state and shall be turned  
24 over to the director. The director may provide written authorization  
25 for possession of animals so taken.

26 2. Grant properly safeguarded permission to the complainant to con-  
27 trol, trap and/or remove such animals. Any animals so taken shall  
28 remain the property of the state and shall be turned over to the direc-  
29 tor. The director may provide written authorization for possession of  
30 animals so taken.

31 3. Make an agreement with the owner or lessee to allow continued use of  
32 lands by the animals where damage by them has occurred to stored, grow-  
33 ing or matured crops, prepared seedbed ground, or irrigation equipment  
34 on private property whether owned or leased. The agreement made under  
35 the provisions of this subsection may provide for financial compen-  
36 sation to the owner or lessee. If made, financial compensation under  
37 the provisions of this subsection shall be governed by the provisions  
38 of section 36-115, Idaho Code, and shall not be in addition to any pay-  
39 ments for the same crop losses from any other source. Compensation for  
40 damages under the provisions of this subsection shall be available for  
41 damages done to private lands, whether owned or leased, if the owner  
42 or lessee allowed hunters reasonable access to the property or through

1 the property to public lands for hunting purposes during the preceding  
2 hunting season or as a measure of response to depredation. This provi-  
3 sion shall not negate the provisions of section 36-1603, Idaho Code, re-  
4 lating to the necessity of obtaining permission to enter private land.  
5 If necessary, the arbitration panel provided for in subsection (b) of  
6 this section shall determine the reasonableness of access allowed.

7 (b) 1. In order to establish eligibility for submission of claims for  
8 damages, persons suffering crop, prepared seedbed ground, or irri-  
9 gation equipment damages on privately owned or leased land caused by  
10 pronghorn antelope, elk, deer or moose must:

11 (A) Notify the department within seventy-two (72) hours of dis-  
12 covery of damage.

13 (B) Follow up verbal notification with a written, which may be  
14 electronic, notice within twenty (20) days of the discovery of  
15 damages.

16 (C) The department shall not be held liable or accountable for any  
17 damages occurring more than twenty (20) days prior to the initial  
18 notification of damage. However, the department may extend the  
19 period up to thirty (30) days under exceptional circumstances.

20 The owner or lessee must have allowed hunters reasonable access to  
21 the property or through the property to public lands for hunting pur-  
22 poses during the preceding hunting season or as a measure of response  
23 to depredation, provided such access does not impact on their opera-  
24 tions, or the claim for damages may be disallowed. Compensation for  
25 crop, prepared seedbed ground, or irrigation equipment damages claims  
26 shall not be in addition to any payments for the same crop losses from  
27 any other source and shall not include fence or other types of prop-  
28 erty damage. While fences and ~~irrigation equipment~~ are not subject to  
29 claim for payment, the department is allowed to provide support and  
30 assistance, including provision of materials to design, construct,  
31 and maintain fences for control of depredation. The notice of damages  
32 caused must be in written form, shall be in the form of a claim for dam-  
33 ages substantially the same as required by section 6-907, Idaho Code,  
34 shall be attested to by the claimant under oath, and the claim shall  
35 be at least seven hundred fifty dollars (\$750). The claim shall not be  
36 amended after it is filed, provided however, that a claimant may file  
37 an additional claim in the event additional damage occurs subsequent  
38 to filing the initial claim. The department shall prepare and make  
39 available suitable forms for notice and claim for damages. Claims may  
40 be submitted only for the fiscal year (July 1 through June 30) in which  
41 they occurred, with allowance for submission within the first sixty  
42 (60) days of the following fiscal year if the claim occurred within the  
43 last sixty (60) days of the previous fiscal year. Any person submitting  
44 a fraudulent claim shall be prosecuted for a felony as provided in sec-  
45 tion 18-2706, Idaho Code. For purposes of this subsection, crop damages  
46 shall mean damage to plants grown or stored for profit and exclude or-  
47 namental plants, and damage to prepared seedbed ground or irrigation  
48 equipment shall include necessary parts and documented labor.

49 2. Upon receipt by the department, the department shall review the  
50 claim, and if approved, pay it as provided in section 36-115, Idaho

1 Code, or order it paid as provided in section 36-115, Idaho Code.  
2 Failure on the part of the owner or lessee to allow on-site access for  
3 inspection and investigation of alleged losses shall void the claim for  
4 damages.

5 3. In the event the owner or lessee and the department fail to agree on  
6 the amount of damages within fifteen (15) business days of the written  
7 claim, either party may elect to retain the services of an independent  
8 certified insurance adjuster licensed in the state of Idaho to view the  
9 affected property and determine the amount of damages. In the event the  
10 owner or lessee and the department fail to agree on the amount of damages  
11 and neither party elects to retain the services of an independent certi-  
12 fied insurance adjuster, provisions of ~~subsection (b)~~ paragraph 4. of  
13 this subsection shall apply. The independent certified adjuster shall  
14 complete his review and determination within twenty (20) days from the  
15 date he is retained, and will report his determination in writing by  
16 certified mail to the department and to the owner or lessee. Neither  
17 the owner or lessee, nor the department, shall disturb the affected  
18 property prior to review and determination by the independent insur-  
19 ance adjuster. Costs associated with the services of the independent  
20 insurance adjuster shall be divided equally between the owner or lessee  
21 and the department, subject to reapportionment of the costs by an arbi-  
22 tration panel pursuant to the provisions of ~~subsection (b)~~ paragraph 4.  
23 of this subsection. If the department, or the owner or lessee rejects  
24 the determination of the adjuster, they shall notify the other party in  
25 writing of the rejection within five (5) business days of receipt of the  
26 adjuster's determination. In the event that either party rejects the  
27 adjuster's determination, the provisions of ~~subsection (b)~~ paragraph  
28 4. of this subsection shall apply.

29 4. Within five (5) business days of a rejection of an adjuster's deter-  
30 mination of damages or failure of the owner or lessee and the department  
31 to agree on damages when a certified insurance adjuster is not used, the  
32 director must convene an arbitration panel. To convene an arbitration  
33 panel, the director must, within five (5) business days, appoint the  
34 department's representative and notify the landholder of the appoint-  
35 ment. The landholder(s) shall, within the next five (5) business days  
36 following such notice from the department, appoint his representative  
37 and notify the department of the appointment. Within the next five (5)  
38 business days, the department representative and the landholder must  
39 mutually appoint the third arbitrator. The arbitration panel shall  
40 consist of three (3) members, as follows:

41 (A) The director of the department of fish and game or his de-  
42 signee;

43 (B) The owner or his designee, or the lessee or his designee;

44 (C) One (1) member selected by the two (2) members above.

45 The panel shall convene within thirty (30) days of the selection of the  
46 third arbitrator, and render its decision within fourteen (14) days  
47 after the hearing. When convened, the arbitration panel shall have  
48 the same authority to make on-site inspections as the department. The  
49 owner or lessee shall be responsible for payment of the expenses of his  
50 appointee; the director shall pay the expenses of his appointee from

1 the expendable big game depredation fund; and the expenses of the third  
2 member shall be a joint responsibility of the owner or lessee, and the  
3 department. Provided however, the panel is authorized to review the  
4 costs associated with retaining the independent insurance adjuster and  
5 to determine whether those costs should instead be borne solely by the  
6 owner or lessee, solely by the department, or be apportioned between  
7 the owner or lessee and the department. In cases where an independent  
8 insurance adjuster was used, the party electing to use the adjuster  
9 shall assume the insurance adjuster's determination of damage as their  
10 estimate of damage. The panel shall consider the claim submitted by the  
11 owner or lessee, and the estimate of damages submitted by the depart-  
12 ment, and shall select one ~~(1)~~ amount or the other as being the closest  
13 to the actual damages sustained by the claimant. The arbitration panel  
14 shall report its decision in writing to both the owner or lessee and to  
15 the department within ten (10) days of the decision, and the decision  
16 of the panel shall be binding on the owner or lessee and the department.  
17 The fish and game advisory committee shall develop guidelines to govern  
18 arbitration procedures in accordance with chapter 52, title 67, Idaho  
19 Code.

20 (c) Any claim received by the department under the provisions of sub-  
21 section (b) of this section must be processed by the department within sixty  
22 (60) calendar days of receipt. If the claim is approved for payment, pay-  
23 ment must be made within forty-five (45) calendar days of such approval. Any  
24 damage claim determination by an independent insurance adjuster pursuant to  
25 subsection (b)3. of this section, accepted by the parties, must be paid by  
26 the department within forty-five (45) calendar days of the determination.  
27 If the claim is arbitrated, the arbitration must be completed within one hun-  
28 dred eighty (180) calendar days of filing the claim for such damages.