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SENATE BILL NO. 868

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 31, 2011)

(Patrons Prior to Substitute—Senators Stuart and Puckett [SB 1023])

A *BILL to amend and reenact § 29.1-529 of the Code of Virginia, relating to damage of crops and livestock; lawful killing of deer, elk and bear.*

Be it enacted by the General Assembly of Virginia:

1. That § 29.1-529 of the Code of Virginia is amended and reenacted as follows:

§ 29.1-529. Killing of deer, elk, or bear damaging agricultural operations and residential property; wildlife creating a hazard to aircraft or motor vehicles.

A. Whenever deer, elk, or bear are damaging ~~fruit trees, crops, livestock or personal property utilized for commercial agricultural production in the Commonwealth agriculture operations, as defined in § 3.2-300,~~ 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, or his representative, shall request authorization from the Director or his designee prior to killing such deer, elk, or bear when they are found upon the land upon which the damages occurred. ~~However~~ The Director or his designee shall, without undue delay and subject to subsection F, authorize the owner or his representative to kill such deer, elk, or bear for a term of 12 months from the date of registration, except during the open season for each species. The owner or his representative authorized to kill such deer, elk, or bear pursuant to this subsection shall (i) report animals killed to the Director or his designee without undue delay and (ii) be subject to local ordinances regulating the discharge of firearms.

B. Whenever deer, elk, or bear cause damage to residential property used for purposes other than agricultural operations, as defined in § 3.2-300, the Director or his designee shall have the option of authorizing may (i) issue a written authorization to kill the deer, elk, or bear or (ii) authorize non-lethal control measures rather than authorizing the killing of the bear, provided that such measures occur within a reasonable period of time; and whenever deer cause damage on parcels of land of five acres or less, except when such acreage is used for commercial agricultural production, the Director or his designee shall have discretion as to whether to issue a written authorization to kill the deer. The Director or his designee may limit such any authorization to kill the deer, elk, or bear by specifying in writing the number of animals to be killed and duration for which the authorization is effective and may in proximity to residential areas and under other appropriate circumstances limit or prohibit the authorization between 11:00 p.m. and one-half hour before sunrise of the following day. 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. ~~Any owner or lessee of land who has been issued a written authorization~~ The owner or his representative authorized to kill deer, elk, or bear pursuant to this subsection shall not be issued receive an authorization in subsequent years unless he can demonstrate to the satisfaction of the Director or his designee that during the period following the prior authorization, the owner or his designee representative has hunted ~~bear or~~ deer, elk, or bear on the land for which he received a previous authorization.

B. Subject to the provisions of subsection A, the Director or his designee may issue a written authorization to kill deer causing damage to residential plants, whether ornamental, noncommercial agricultural, or other types of residential plants. The Director may charge a fee not to exceed actual costs. The holder of this written authorization owner or his representative authorized to kill deer, elk, or bear pursuant to this subsection shall be subject to local ordinances, including those regulating the discharge of firearms.

C. Whenever wildlife is 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 wildlife is creating a hazard, he shall authorize such person or persons or their representatives to kill wildlife when the wildlife is found to be creating such a hazard. As used in this subsection, the term "wildlife" shall not include any federally protected species.

D. Whenever deer are creating a hazard to the operation of motor vehicle traffic 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

60 they are found to be creating such a hazard.

61 E. Whenever deer are damaging property *used for purposes other than agricultural operations, as*
62 *defined in § 3.2-300*, in a locality in which deer herd population reduction has been recommended in the
63 current Deer Management Plan adopted by the Board, the owner ~~or lessee~~ of the lands on which such
64 damage is being done, *or his representative*, may report such damage to the Director or his designee for
65 investigation. If after investigation the Director or his designee finds that deer are responsible for the
66 damage, he may authorize in writing the owner, ~~lessee~~ *his representative*, or any other person designated
67 by the Director or his designee to kill such deer when they are found upon the land upon which the
68 damages occurred. The Director or his designee also may limit such authorization by specifying in
69 writing the number of animals to be killed and the period of time for which the authorization is
70 effective. The requirement in subsection A ~~of this section~~ *B*, that an owner or lessee of land demonstrate
71 that during the period following the prior authorization deer, *elk*, or bear have been hunted on his land,
72 shall not apply to any locality that conducts a deer population control program authorized by the
73 Department.

74 F. The Director or his designee may revoke or refuse to reissue any authorization granted under this
75 section when it has been shown by a preponderance of the evidence that an abuse of the authorization
76 has occurred. Such evidence may include a *founded* complaint filed by any person with the Department
77 alleging that an abuse of the written authorization has occurred. Any person aggrieved by the issuance,
78 denial or revocation of a written authorization can appeal the decision to the Department of Game and
79 Inland Fisheries. Any person convicted of violating any provision of the hunting and trapping laws and
80 regulations shall be entitled to receive written authorization to kill deer, *elk*, or bear. However, such
81 person shall not (i) be designated as a shooter nor (ii) carry out the authorized activity for a person who
82 has received such written authorization for a period of at least two years and up to five years following
83 his most recent conviction for violating any provision of the hunting and trapping laws and regulations.
84 In determining the appropriate length of this restriction, the Director shall take into account the nature
85 and severity of the most recent violation and of any past violations of the hunting and trapping laws and
86 regulations by the applicant. No person shall be designated as a shooter under this section during a
87 period when such person's hunting license or privileges to hunt have been suspended or revoked.

88 G. The Director or his designee may authorize, subject to the provisions of this section, the killing of
89 deer over bait within the political boundaries of any city or town, or any county with a special late
90 antlerless season, in the Commonwealth when requested by a certified letter from the governing body of
91 such locality.

92 H. The parts of any deer, *elk*, or bear killed pursuant to this section or wildlife killed pursuant to
93 subsection C shall not be used for the purposes of taxidermy, mounts, or any public display unless
94 authorized by the Director or his designee. However, the meat of any such animal may be used for
95 human consumption. The carcass and any unused meat of any such animal shall be disposed of within
96 24 hours of being killed. Any person who violates any provision of this subsection is guilty of a Class 3
97 misdemeanor.

98 I. *Any person receiving authorization to kill deer, elk, or bear under this section shall not charge a*
99 *fee to transfer such privilege.*

100 J. It is unlawful to willfully and intentionally impede any person who is engaged in the lawful
101 killing of a ~~bear or deer pursuant to written authorization issued under wildlife pursuant to~~ this section.
102 Any person convicted of a violation of this subsection is guilty of a Class 3 misdemeanor.