

sion on pensions and retirement as of July 1, ~~1986~~ 1987, and adjusted for the actual receipts of contributions and investment income and actual disbursements of benefits, refunds, and administrative expenses attributable to the correctional employees retirement plan occurring between July 1, 1987, and the date on which the correctional employees retirement fund is established.

Subd. 2. **EFFECTIVE DATE.** Subdivision 1 is effective on the day following final enactment of H.F. No. 1026, at the 1987 regular session.

Approved June 2, 1987

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### CHAPTER 373—H.F.No. 1351

*An act relating to natural resources; authorizing the taking of elk and amending related laws; authorizing compensation for certain crop damage caused by elk; appropriating money; amending Minnesota Statutes 1986, sections 3.736, subdivision 3; 97A.421, subdivision 6; 97A.431, subdivision 3; 97A.465, subdivisions 1 and 3; 97A.471, subdivision 3; 97A.475, subdivision 2; 97A.525, subdivision 1; 97A.535; 97B.201; proposing coding for new law in Minnesota Statutes, chapters 3; 97A; and 97B.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 3.736, subdivision 3, is amended to read:

Subd. 3. **EXCLUSIONS.** Without intent to preclude the courts from finding additional cases where the state and its employees should not, in equity and good conscience, pay compensation for personal injuries or property losses, the legislature declares that the state and its employees are not liable for the following losses:

(a) Any loss caused by an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule;

(b) Any loss caused by the performance or failure to perform a discretionary duty, whether or not the discretion is abused;

(c) Any loss in connection with the assessment and collection of taxes;

(d) Any loss caused by snow or ice conditions on any highway or public sidewalk that does not abut a publicly-owned building or a publicly-owned parking lot, except when the condition is affirmatively caused by the negligent acts of a state employee;

(e) Any loss caused by wild animals in their natural state, except as provided in section 2;

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(f) Any loss other than injury to or loss of property or personal injury or death;

(g) Any loss caused by the condition of unimproved real property owned by the state, which means land that the state has not improved, and appurtenances, fixtures and attachments to land that the state has neither affixed nor improved;

(h) Any loss incurred by a user within the boundaries of the outdoor recreation system and arising from the construction, operation, or maintenance of the system, as defined in section 86A.04, or from the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, or from the construction, operation, or maintenance of a water access site created by the iron range resources and rehabilitation board, except that the state is liable for conduct that would entitle a trespasser to damages against a private person;

(i) Any loss of benefits or compensation due under a program of public assistance or public welfare, except where state compensation for loss is expressly required by federal law in order for the state to receive federal grants-in-aid;

(j) Any loss based on the failure of any person to meet the standards needed for a license, permit, or other authorization issued by the state or its agents;

(k) Any loss based on the usual care and treatment, or lack of care and treatment, of any person at a state hospital or state corrections facility where reasonable use of available appropriations has been made to provide care;

(l) Any loss, damage, or destruction of property of a patient or inmate of a state institution;

(m) Any loss for which recovery is prohibited by section 169.121, subdivision 9.

The state will not pay punitive damages.

## Sec. 2. [3.7371] COMPENSATION FOR CROP DAMAGE CAUSED BY ELK.

Subdivision 1. AUTHORIZATION. Notwithstanding section 3.736, subdivision 3, paragraph (e), or any other law to the contrary, a person who owns an agricultural crop shall be compensated by the commissioner of agriculture for an agricultural crop that is damaged or destroyed by elk as provided in this section.

Subd. 2. CLAIM FORM. The crop owner must prepare a claim on forms provided by the commissioner of agriculture and available at the county extension agent's office. The claim form must be filed with the commissioner of agriculture. A claim form may not be filed for crop damage or destruction that occurs before the effective date of this act.

Subd. 3. COMPENSATION. The crop owner shall be entitled to the target price or market price, whichever is greater, of the damaged or destroyed crop

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plus adjustments for yield loss determined according to agricultural stabilization and conservation service programs for individual farms, adjusted annually, as determined by the commissioner of agriculture, upon recommendation of the county extension agent for the owner's county or a federal crop adjuster. The commissioner of agriculture, upon recommendation of the agent or adjuster, shall determine whether the crop damage or destruction is caused by elk and, if so, the amount of the crop that is damaged or destroyed. In any calendar year, a crop owner may not be compensated for a damaged or destroyed crop that is less than \$100 and may be compensated up to \$20,000 in value, as determined under this section, provided normal harvest procedures for the area are followed.

Subd. 4. INSURANCE DEDUCTION. Payments authorized by this section must be reduced by amounts received by the owner as proceeds from an insurance policy covering crop losses, or from any other source for the same purpose including, but not limited to, a federal program.

Subd. 5. DECISION ON CLAIMS; OPENING LAND TO HUNTING. If the commissioner of agriculture finds that the crop owner has shown that the damage or destruction of the owner's crop was caused more probably than not by elk, the commissioner of agriculture shall pay compensation as provided in this section and the rules of the commissioner. Total compensation to all claimants shall not exceed the amount of funds appropriated for this act. A crop owner who receives compensation under this section may, by written permission, permit hunting on the land at the landowner's discretion.

Subd. 6. DENIAL OF CLAIM; APPEAL. (a) If the commissioner denies compensation claimed by a crop owner under this section, the commissioner shall issue a written decision based upon the available evidence including a statement of the facts upon which the decision is based and the conclusions on the material issues of the claim. A copy of the decision must be transmitted to the crop owner by first class mail.

(b) A decision denying compensation claimed under this section is not subject to the contested case review procedures of chapter 14, but a crop owner may have the claim reviewed in a trial de novo in the county court in the county where the loss occurred. The decision of the county court may be appealed as in other civil cases. Review in the county court may be obtained by the filing of a petition for review with the administrator of the county court within 60 days following receipt of a decision under this section. Upon the filing of a petition, the administrator of the county court shall mail a copy of it to the commissioner and set a time for hearing within 90 days after the filing of the petition.

Subd. 7. RULES. The commissioner of agriculture shall adopt rules and may adopt emergency rules and may amend rules to carry out the provisions of this section. The rules must include:

- (1) methods of valuation of crops damaged or destroyed;

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(2) criteria for determination of the cause of the crop damage or destruction;

(3) notice requirements by the owner of the damaged or destroyed crop; and

(4) any other matters determined necessary by the commissioner to carry out the provisions of this section.

Sec. 3. Minnesota Statutes 1986, section 97A.421, subdivision 6, is amended to read:

Subd. 6. **APPLICABILITY TO MOOSE OR ELK LICENSES.** In this section the term "license" includes an application for a license to take either moose or elk.

Sec. 4. Minnesota Statutes 1986, section 97A.431, subdivision 3, is amended to read:

Subd. 3. **APPLICATION FOR LICENSE.** An application for a moose license must be on a form provided by the commissioner and accompanied by a ~~\$1~~ \$3 nonrefundable application fee per person. A person may not make more than one application for each season. If a person makes more than one application, the person is ineligible for a license for that season after determination by the commissioner, without a hearing.

Sec. 5. **[97A.433] ELK LICENSES.**

Subdivision 1. NUMBER OF LICENSES. The commissioner shall include the number of licenses to be issued in an order setting the dates for an elk season.

Subd. 2. ELIGIBILITY. Persons eligible for an elk license shall be determined under this section and commissioner's order. A person is eligible for an elk license only if the person:

(1) is a resident;

(2) is at least age 16 before the season opens; and

(3) has never been issued an elk license.

Subd. 3. APPLICATION FOR LICENSE. An application for an elk license must be on a form provided by the commissioner and accompanied by a \$10 nonrefundable application fee per person. A person may not make more than one application for each season. If a person makes more than one application, the person is ineligible for a license for that season after determination by the commissioner, without a hearing.

Subd. 4. SEPARATE SELECTION; ELIGIBILITY. The commissioner may conduct a separate selection for up to 20 percent of the elk licenses to be issued for an area. Only owners of, and tenants living on, at least 160 acres of agricultural or grazing land in the area are eligible for the separate selection. Persons that are unsuccessful in a separate selection must be included in the selection for the remaining licenses. Persons who obtain an elk license in a separate selection must allow public elk hunting on their land during the elk season for which the license is valid.

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Sec. 6. Minnesota Statutes 1986, section 97A.465, subdivision 1, is amended to read:

Subdivision 1. **RESIDENTS ON LEAVE.** A resident that is in the armed forces of the United States, stationed outside of the state, and in the state on leave, may hunt and fish without a license if the resident possesses official military leave papers. The resident must obtain the seals, tags, and coupons required of a licensee, which must be furnished without charge. This subdivision does not apply to the taking of moose or elk.

Sec. 7. Minnesota Statutes 1986, section 97A.465, subdivision 3, is amended to read:

Subd. 3. **NONRESIDENTS STATIONED IN THE STATE.** The commissioner may issue a resident license to take fish or game to a person in the armed forces of the United States that is stationed in the state. This subdivision does not apply to the taking of moose or elk.

Sec. 8. Minnesota Statutes 1986, section 97A.471, subdivision 3, is amended to read:

Subd. 3. **NONAPPLICABILITY TO MOOSE HUNTING.** This section does not apply to taking moose or elk.

Sec. 9. Minnesota Statutes 1986, section 97A.475, subdivision 2, is amended to read:

Subd. 2. **RESIDENT HUNTING.** Fees for the following licenses, to be issued to residents only, are:

- (1) for persons under age 65 to take small game, \$7;
- (2) for persons age 65 or over, \$3.50;
- (3) to take turkey, \$10;
- (4) to take deer with firearms, \$15;
- (5) to take deer by archery, \$15;
- (6) to take moose, for a party of not more than four persons, \$200; ~~and~~
- (7) to take bear, \$25; and
- (8) to take elk, for a party of not more than two persons, \$200.

Sec. 10. Minnesota Statutes 1986, section 97A.525, subdivision 1, is amended to read:

Subdivision 1. **RESIDENTS.** A resident may transport wild animals within the state by common carrier without being in the vehicle if the resident has the

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license required to take the animals and they are shipped to the resident. The wild animals that may be transported by common carrier are:

- (1) deer, bear, elk, and moose;
- (2) undressed game birds; and
- (3) fish.

Sec. 11. Minnesota Statutes 1986, section 97A.535, is amended to read:

**97A.535 POSSESSION AND TRANSPORTATION OF DEER, BEAR, ELK, AND MOOSE.**

Subdivision 1. **TAGS REQUIRED.** A person may not possess or transport deer, bear, elk, or moose taken in the state unless a tag is attached to the carcass in a manner prescribed by the commissioner. The commissioner must prescribe the type of tag that has the license number of the owner, the year of its issue, and other information prescribed by the commissioner. The tag must be attached to the deer, bear, elk, or moose when:

- (1) the animal is in a camp, or a place occupied overnight or the yard surrounding the place; or
- (2) the animal is on a motor vehicle.

Subd. 2. **DEER TAKEN BY ARCHERY, ELK, AND MOOSE MUST HAVE ADDITIONAL TAG.** Deer taken by archery, elk, and moose must be tagged as prescribed by the commissioner, in addition to the tag required in subdivision 1.

Subd. 3. **TRANSPORTATION PERIOD RESTRICTED.** A person may transport one deer, one bear, one elk, or one moose during the open season and the two days following the season, and afterwards as prescribed by the commissioner.

Subd. 4. **TRANSPORTATION BY PERSON OTHER THAN LICENSEE.** A person other than the licensee may transport deer, bear, elk, or moose that the licensee has registered as prescribed by the commissioner. The person must transport the animal by the most direct route. A tag must be attached to the animal and marked in ink with the address, license number, signature of the licensee, and the locations from which and to which the animal is being transported.

Subd. 5. **HEADS, HIDES, AND CLAWS.** A resident that has a license to take deer, bear, elk, or moose may transport the head or hide of the animal within or out of the state for mounting or tanning. The hides of deer, bear, elk, and moose, and the claws of bear legally taken and with the tags that are required by this section, may be bought, sold, and transported at any time.

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Sec. 12. Minnesota Statutes 1986, section 97B.201, is amended to read:  
97B.201 **NO OPEN SEASON FOR ~~ELK~~, CARIBOU, AND ANTELOPE.**

There may not be an open season on ~~elk~~, caribou, or antelope.

Sec. 13. **[97B.515] ELK; LICENSE REQUIRED, SEASONS, RESTRICTIONS.**

Subdivision 1. LICENSE REQUIRED. A person may not take an elk without an elk license.

Subd. 2. SEASON AND RESTRICTIONS. The commissioner may, by order, prescribe the open season and the areas and conditions for the taking of elk when the precalving population exceeds 20 animals.

Subd. 3. STAND RESTRICTIONS. A person may not take elk from a constructed platform or other structure higher than nine feet above the ground. The restriction does not apply to a portable stand that is chained, belted, clamped, or tied with rope.

Sec. 14. **[97B.516] ELK MANAGEMENT PLAN.**

The commissioner of natural resources must adopt an elk management plan that:

- (1) recognizes the value and uniqueness of elk;
- (2) provides for integrated management of an elk population in harmony with the environment;
- (3) affords optimum recreational opportunities; and
- (4) restricts elk to nonagricultural land in the state.

Sec. 15. **FEE TRANSFER.**

All fees collected under this act are appropriated to the commissioners of agriculture and natural resources for the administrative costs incurred under this act and the amounts above and beyond the administrative costs associated with the programs established by this act shall be deposited in the general fund as reimbursement for payments made to the commissioner of agriculture for land-owner compensation under a bill styled as H.F. No. 1315, enacted at the 1987 regular session.

Sec. 16. **EFFECTIVE DATE.**

This act is effective the day following final enactment. However, a person may not apply for compensation for crop damage until after the commissioner of agriculture promulgates rules under section 2.

Approved June 2, 1987

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