

WILDLIFE RESOURCES - LICENSE SUSPENSION PROCESS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Stephen D. Clark

This act modifies the Wildlife Resources Code to prescribe procedures for the suspension of privileges conferred by a license, permit, or certificate of registration issued by the Division of Wildlife Resources. The act specifies the grounds for which license, permit, or certificate of registration privileges may be suspended and suspension periods. The Wildlife Board is directed to make rules containing guidelines for determining the type of license or permit privileges to suspend.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS AND REENACTS:

23-19-9, as last amended by Chapter 13, Laws of Utah 1998

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **23-19-9** is repealed and reenacted to read:

23-19-9. Suspension of license or permit privileges -- Suspension of certificates of registration.

(1) As used in this section, "license or permit privileges" means the privilege of applying for, purchasing, and exercising the benefits conferred by a license or permit issued by the division.

(2) A hearing officer, appointed by the division, shall suspend a person's privilege of applying for, purchasing, and exercising the benefits conferred by one or more licenses or permits issued by the division if:

(a) in a court of law, the person:

(i) is convicted of:

(A) violating this title or a rule of the Wildlife Board;

(B) killing or injuring domestic livestock while engaged in an activity regulated under this title; or

(C) violating Section 76-10-508 while engaged in an activity regulated under this title;

(ii) enters into a plea in abeyance agreement, in which the person pleads guilty or no

contest to an offense listed in Subsection (2)(a)(i), and the plea is held in abeyance; or

(iii) is charged with committing an offense listed in Subsection (2)(a)(i), and the person enters into a diversion agreement which suspends the prosecution of the offense; and

(b) the hearing officer determines the person committed the offense intentionally, knowingly, or recklessly, as defined in Section 76-2-103.

(3) The Wildlife Board shall make rules establishing guidelines for a hearing officer to consider in determining the type of license or permit privileges to suspend.

(4) Except as provided in Subsection (5), a hearing officer shall suspend a person's license or permit privileges pursuant to Subsection (2) for the following time periods:

(a) seven years for:

(i) a felony conviction;

(ii) a plea of guilty or no contest to an offense punishable as a felony, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a felony, the prosecution of which is suspended pursuant to a diversion agreement;

(b) five years for:

(i) a class A misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class A misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement; and

(c) three years for:

(i) a class B misdemeanor conviction under Section 23-20-4;

(ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor under Section 23-20-4, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class B misdemeanor under Section 23-20-4, the prosecution of which is suspended pursuant to a diversion agreement.

(5) Suspension periods as set forth in Subsection (4) shall be doubled for offenses:

(a) committed in violation of an existing suspension or revocation order issued by the courts, division, or Wildlife Board; or

(b) involving the unlawful taking of a trophy animal, as defined in Section 23-13-2.

(6) (a) A hearing officer may suspend, pursuant to Subsection (2), a person's privilege to apply for, purchase, and exercise the benefits conferred by a particular license or permit only once for each single criminal episode, as defined in Section 76-1-401.

(b) If a hearing officer addresses two or more single criminal episodes in a hearing, the suspension periods of any license or permit privileges of the same type suspended, pursuant to Subsection (2), shall run consecutively.

(c) If a hearing officer suspends, pursuant to Subsection (2), license or permit privileges of the type that have been previously suspended by a court, a hearing officer, or the Wildlife Board and the suspension period has not expired, the suspension periods shall run consecutively.

(7) (a) A hearing officer, appointed by the division, shall suspend a person's privilege of applying for, purchasing, and exercising the benefits conferred by one or more licenses or permits issued by the division if:

(i) within a five-year period, the person, on three or more occasions, in a court of law, is convicted or enters into a plea in abeyance agreement or diversion agreement as follows:

(A) the person is convicted of an offense listed in Subsection (2)(a)(i) that is punishable as a class B or C misdemeanor;

(B) the person enters into a plea in abeyance agreement in which the person pleads guilty or no contest to an offense listed in Subsection (2)(a)(i) that is punishable as a class B or C misdemeanor, and the plea is held in abeyance; or

(C) the person is charged with an offense listed in Subsection (2)(a)(i) that is punishable as a class B or C misdemeanor, and the person enters into a diversion agreement, which suspends the prosecution of the offense;

(ii) each conviction, plea in abeyance agreement, or diversion agreement listed in Subsection (7)(a)(i) originated from a separate single criminal episode; and

(iii) a suspension or revocation order has not been previously issued as a result of any

conviction, plea in abeyance agreement, or diversion agreement listed in Subsection (7)(a)(i).

(b) An order of suspension may be issued, under this Subsection (7), on a strict liability basis.

(c) A hearing officer shall suspend a person's license or permit privileges, pursuant to this Subsection (7), for a time period equal to the sum of the following:

(i) one year for each:

(A) class B misdemeanor conviction;

(B) plea of guilty or no contest to an offense punishable as a class B misdemeanor, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(C) charge of committing an offense punishable as a class B misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement; and

(ii) six months for each:

(A) class C misdemeanor conviction;

(B) plea of guilty or no contest to an offense punishable as a class C misdemeanor, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(C) charge of committing an offense punishable as a class C misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement.

(8) (a) A hearing officer, appointed by the division, may suspend a person's privilege of applying for, purchasing, and exercising the benefits conferred by a certificate of registration if:

(i) the hearing officer determines the person intentionally, knowingly, or recklessly, as defined in Section 76-2-103, violated:

(A) this title;

(B) a rule or order of the Wildlife Board;

(C) the terms of a certificate of registration; or

(D) the terms of a certificate of registration application or agreement; or

(ii) the person, in a court of law:

(A) is convicted of an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the

certificate of registration;

(B) pleads guilty or no contest to an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration, and the plea is held in abeyance in accordance with a plea in abeyance agreement; or

(C) is charged with an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration, and prosecution of the offense is suspended in accordance with a diversion agreement.

(b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the holder of the certificates of registration has violated Section 59-23-5.

(c) Subsections (4), (5), and (6) do not apply to suspensions of certificates of registration.

(9) The director shall appoint a qualified person as a hearing officer to perform the adjudicative functions provided in this section. The director may not appoint a division employee who investigates or enforces wildlife violations.

(10) (a) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration.

(b) The courts shall promptly notify the division of any suspension orders or recommendations entered.

(c) The division, upon receiving notification of suspension from the courts, shall prohibit the person from applying for, purchasing, or exercising the benefits conferred by a license, permit, or certification of registration for the duration and of the type specified in the court order.

(d) The hearing officer shall consider any recommendation made by a sentencing court concerning suspension before issuing a suspension order.

(11) (a) A person may not apply for, purchase, possess, or attempt to exercise the benefits conferred by any permit, license, or certificate of registration specified in an order of suspension while that order is in effect. Any license possessed or obtained in violation of the order shall be

considered invalid.

(b) A person who violates Subsection (11)(a) is guilty of a class B misdemeanor.

(12) Before suspension under this section, a person must be:

(a) given written notice of any action the division intends to take; and

(b) provided with an opportunity for a hearing.

(13) (a) A person may file an appeal of a hearing officer's decision with the Wildlife Board.

(b) The Wildlife Board shall review the hearing officer's findings and conclusions and any written documentation submitted at the hearing. The Wildlife Board may:

(i) take no action;

(ii) vacate or remand the decision; or

(iii) amend the period or type of suspension.

(14) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

(15) The Wildlife Board may make rules to implement this section in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and Title 63, Chapter 46b, Administrative Procedures Act.