

DEPREDATING WILDLIFE AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions regarding mitigation of damage caused by big game animals.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes the owner of a golf course damaged by a big game animal to kill the animal in certain circumstances; and
- ▶ authorizes the Division of Wildlife Resources to:
 - investigate damage to a golf course by a big game animal;
 - remove a big game animal that is damaging a golf course;
 - implement a depredation mitigation plan for a golf course; and
 - compensate a golf course owner for damage caused by a big game animal.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

23-16-1.1, as enacted by Laws of Utah 2003, Chapter 228



28 **23-16-3**, as last amended by Laws of Utah 2003, Chapter 228
 29 **23-16-3.1**, as enacted by Laws of Utah 2003, Chapter 228
 30 **23-16-4**, as last amended by Laws of Utah 2003, Chapter 228



31
 32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **23-16-1.1** is amended to read:

34 **23-16-1.1. Definitions.**

35 As used in this chapter:

36 (1) "Cultivated crops" means:

37 (a) crops from or on cleared and planted land; and

38 (b) crop residues that have forage value for livestock.

39 (2) "Depredation mitigation plan" means the plan described in Subsection 23-16-3(2).

40 (3) "Golf course" means an area of land laid out for golf that is:

41 (a) open to the public to play golf for a fee; and

42 (b) adjacent to a wildlife management unit.

43 ~~[(3)]~~ (4) "Mitigation review panel" means the panel created under Section 23-16-3.2.

44 Section 2. Section **23-16-3** is amended to read:

45 **23-16-3. Damage big game animals -- Notice to division.**

46 (1) (a) If big game animals are damaging cultivated crops, livestock forage, fences, or
 47 irrigation equipment on private land[;] or a golf course, the landowner or lessee shall
 48 immediately, upon discovery of the damage, request that the division take action to alleviate
 49 the depredation problem.

50 (b) The landowner or lessee shall allow division personnel reasonable access to the
 51 property sustaining damage to verify and alleviate the depredation problem.

52 (2) (a) Within 72 hours after receiving the request for action under Subsection (1)(a),
 53 the division shall investigate the situation, and if it appears that depredation by big game
 54 animals may continue, the division shall:

55 (i) remove the big game animals causing depredation; or

56 (ii) implement a depredation mitigation plan which has been approved, in writing, by
 57 the landowner or lessee.

58 (b) A depredation mitigation plan may provide for any or all of the following:

- 59 (i) the scheduling of a depredation hunt;
- 60 (ii) issuing permits to the landowners or lessees, to take big game animals causing
61 depredation during a general or special season hunt authorized by the Wildlife Board;
- 62 (iii) allowing landowners or lessees to designate recipients who may obtain a
63 mitigation permit to take big game animals on the landowner's or lessee's land during a general
64 or special season hunt authorized by the Wildlife Board; or
- 65 (iv) a description of how the division will assess and compensate the landowner or
66 lessee under Section 23-16-4 for damage to cultivated crops, fences, [or] irrigation equipment,
67 or a golf course.
- 68 (c) (i) The division shall specify the number and sex of the big game animals that may
69 be taken pursuant to Subsections (2)(b)(ii) and (iii).
- 70 (ii) Control efforts shall be directed toward antlerless animals, if possible.
- 71 (d) A permit issued for an antlered animal must be approved by the division director or
72 the director's designee.
- 73 (e) The division and the landowner or lessee shall jointly determine the number of
74 animals taken pursuant to Subsection (2)(b)(ii) of which the landowner or lessee may retain
75 possession.
- 76 (f) In determining appropriate remedial action under this Subsection (2), the division
77 shall consider:
- 78 (i) the extent of damage experienced or expected; and
- 79 (ii) any revenue the landowner derives from:
- 80 (A) participation in a cooperative wildlife management unit;
- 81 (B) use of landowner association permits;
- 82 (C) use of mitigation permits; and
- 83 (D) charging for hunter access.
- 84 (3) Any fee for accessing the owner's or lessee's land shall be determined by the
85 landowner or lessee.
- 86 (4) (a) If the landowner or lessee who approved the depredation mitigation plan under
87 Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or
88 lessee may revoke his or her approval of the plan and again request that the division take action
89 pursuant to Subsection (2)(a)(i).

90 (b) A subsequent request for action provided under Subsection (4)(a) shall be
91 considered to be a new request for purposes of the 72-hour time limit specified in Subsection
92 (2)(a).

93 (5) (a) The division may enter into a conservation lease with the owner or lessee of
94 private lands for a fee or other remuneration as compensation for depredation.

95 (b) Any conservation lease entered into under this section shall provide that the
96 claimant may not unreasonably restrict hunting on the land or passage through the land to
97 access public lands for the purpose of hunting, if those actions are necessary to control or
98 mitigate damage by big game.

99 Section 3. Section **23-16-3.1** is amended to read:

100 **23-16-3.1. Landowner authorized to kill animals.**

101 (1) (a) A landowner or lessee may kill big game animals damaging a golf course or
102 those cultivated crops on private land if:

103 (i) it is necessary to protect;

104 (A) cultivated crops; or

105 (B) the golf course;

106 (ii) 72 hours has expired since notice was given pursuant to Subsection 23-16-3(1)(a);

107 (iii) the landowner or lessee has provided or sent written notice of an intent to kill the
108 big game animal to the nearest regional office;

109 (iv) the landowner or lessee kills the big game animal within 90 days, or a longer
110 period, if approved, in writing, by the division, after having requested that the division take
111 action to prevent depredation under Subsection 23-16-3(1)(a); and

112 (v) the killing is not prohibited by Subsection (2)(a) or (3).

113 (b) Immediately after killing a big game animal under Subsection (1)(a), the landowner
114 or lessee shall notify the division of the killing.

115 (c) The carcass of an animal killed under Subsection (1)(a) shall become the property
116 of the division and shall be disposed of by the division.

117 (d) Any money derived from the sale of animals killed shall be placed in the Wildlife
118 Resources Account created in Section 23-14-13.

119 (2) (a) The division director may prohibit the killing of big game animals under
120 Subsection (1)(a) if, within 72 hours after a landowner or lessee has requested that the division

121 take action to remove depredate animals, the division:

122 (i) determines that the restitution value of the big game animal or animals, as
123 established under Section 23-20-4.5, is more than twice the estimated value of:

124 (A) the cultivated crops that have been or will be damaged or consumed; or

125 (B) the repairs to the golf course that are necessary because of the damage;

126 (ii) determines that the prohibition is consistent with the management plan established
127 under Section 23-16-7;

128 (iii) notifies the landowner or lessee of the prohibition; and

129 (iv) offers the landowner or lessee a depredation mitigation plan.

130 (b) A landowner or lessee who is offered a depredation mitigation plan may:

131 (i) accept the plan in writing; or

132 (ii) refuse to accept the plan and appeal the plan, in writing, to the division director.

133 (3) After a landowner or lessee has killed a big game animal under Subsection (1)(a),
134 the division director may prohibit any further killing of big game animals if:

135 (a) the division takes the actions described in Subsections (2)(a)(i) through (iv); and

136 (b) the mitigation review panel reviews and approves the depredation mitigation plan.

137 Section 4. Section **23-16-4** is amended to read:

138 **23-16-4. Compensation for damage by big game -- Limitations -- Appeals.**

139 (1) The division may provide compensation to claimants for damage caused by big
140 game to:

141 (a) cultivated crops from or on cleared and planted land;

142 (b) fences on private land; [or]

143 (c) irrigation equipment on private land[-]; or

144 (d) a golf course.

145 (2) To be eligible to receive compensation as provided in this section, the claimant:

146 (a) must notify the division of the damage within 72 hours after the damage is
147 discovered; and

148 (b) allow division personnel reasonable access to the property to verify and alleviate
149 the depredation problem.

150 (3) (a) The appraisal of the damage shall be made by the claimant and the division as
151 soon after notification as possible.

- 152 (b) In determining damage payment, the division and claimant shall consider:
- 153 (i) the extent of damage experienced; and
- 154 (ii) any revenue the landowner derives from:
- 155 (A) participation in a cooperative wildlife management unit;
- 156 (B) use of landowner association permits;
- 157 (C) use of mitigation permits; and
- 158 (D) charging for hunter access.

159 (c) In determining how to assess and compensate for damages to cultivated crops, the
160 division's determination shall be based on the:

- 161 (i) full replacement value in the local market of the cultivated crops that actually have
162 been or will be damaged or consumed by big game animals; and
- 163 (ii) cost of delivery of a replacement crop to the location of the damaged crop or other
164 location that is not farther from the source of the replacement crop.

165 (d) In determining how to assess and compensate for damage to a golf course, the
166 division's determination shall be based on the repair costs that the golf course owner or lessee
167 will incur as a result of damage by a big game animal to the golf course.

168 [~~d~~] (e) If the claimant and the division are unable to agree on a fair and equitable
169 damage payment, they shall designate a third party, consisting of one or more persons familiar
170 with the crops, fences, [~~or~~] irrigation equipment, or a golf course and the type of game animals
171 doing the damage, to appraise the damage.

172 (4) (a) Notwithstanding Section 63-38-3.2, the total amount of compensation that may
173 be provided by the division pursuant to this section and the total cost of fencing materials
174 provided by the division to prevent crop damage may not exceed the legislative appropriation
175 for fencing material and compensation for damaged crops, fences, [~~and~~] irrigation equipment,
176 and golf courses.

177 (b) (i) Any claim of \$1,000 or less may be paid after appraisal of the damage as
178 provided in Subsection (3), unless the claim brings the total amount of claims submitted by the
179 claimant in the fiscal year to an amount in excess of \$1,000.

180 (ii) Any claim for damage to irrigation equipment may be paid after appraisal of the
181 damage as provided in Subsection (3).

182 (c) (i) Any claim in excess of \$1,000, or claim that brings the total amount of claims

183 submitted by the claimant in the fiscal year to an amount in excess of \$1,000, shall be treated
184 as follows:

185 (A) \$1,000 may be paid pursuant to the conditions of this section; and

186 (B) the amount in excess of \$1,000 may not be paid until the total amount of the
187 approved claims of all the claimants and expenses for fencing materials for the fiscal year are
188 determined.

189 (ii) If the total exceeds the amount appropriated by the Legislature pursuant to
190 Subsection (4)(a), claims in excess of \$1,000, or any claim that brings the total amount of a
191 claimant's claims in a fiscal year to an amount in excess of \$1,000, shall be prorated.

192 (5) The division may deny or limit compensation if the claimant:

193 (a) has failed to exercise reasonable care and diligence to avoid the loss or minimize
194 the damage; or

195 (b) has unreasonably restricted hunting on land under the claimant's control or passage
196 through the land to access public lands for the purpose of hunting, after receiving written
197 notification from the division of the necessity of allowing such hunting or access to control or
198 mitigate damage by big game.

199 (6) (a) The Wildlife Board shall make rules specifying procedures for the appeal of
200 division actions under this section.

201 (b) Upon the petition of an aggrieved party to a final division action, the Wildlife
202 Board may review the action on the record and issue an order modifying or rescinding the
203 division action.

204 (c) A qualified hearing examiner may be appointed for purposes of taking evidence and
205 making recommendations for a board order. The board shall consider the recommendations of
206 the examiner in making decisions.

207 (d) Board review of final agency action and judicial review of final board action shall
208 be governed by Title 63, Chapter 46b, Administrative Procedures Act.

Legislative Review Note
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Office of Legislative Research and General Counsel