

1 **WILDLIFE CODE AMENDMENTS**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Michael R. Styler**

5 AN ACT RELATING TO FISH AND GAME; PROVIDING FOR REFUNDS OF SALES OF  
6 LICENSES, CERTIFICATES, OR PERMITS; REMOVING THE RESTRICTION ON  
7 CONSERVATION OFFICERS ON SEARCHING A DWELLING WITHOUT A SEARCH  
8 WARRANT; REPEALING PROVISIONS REGARDING ASSAULT OF A  
9 CONSERVATION OFFICER; PROVIDING FOR REVIEW AND APPROVAL OF  
10 COOPERATIVE AGREEMENTS; SPECIFYING REQUIREMENTS FOR COOPERATIVE  
11 WILDLIFE MANAGEMENT UNIT AGENTS; AND REAUTHORIZING THE WILDLIFE  
12 HERITAGE ACT.

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

14 AMENDS:

15 **23-19-38**, as last amended by Chapter 211, Laws of Utah 1995

16 **23-20-1**, as last amended by Chapter 212, Laws of Utah 1992

17 **23-22-1**, as last amended by Chapter 260, Laws of Utah 1992

18 **23-23-2**, as last amended by Chapter 258, Laws of Utah 1997

19 **63-55-223**, as last amended by Chapters 15 and 134, Laws of Utah 1997

20 REPEALS:

21 **23-20-26**, as last amended by Chapter 60, Laws of Utah 1975

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

23 Section 1. Section **23-19-38** is amended to read:

24 **23-19-38. Sales of licenses, certificates, or permits final -- Exceptions -- Reallocation**  
25 **of surrendered permits.**

26 (1) Sales of all licenses, certificates, or permits are final, and no refunds may be made by  
27 the division except as provided in Subsection (2).

(2) The division may refund the amount of the license, certificate, or permit if:

(a) the division or the Wildlife Board discontinues the activity for which the license, certificate, or permit was obtained;

(b) the division determines that it has erroneously collected a fee;

(c) (i) a person is not able to participate in a permitted activity due to illness or injury;

(ii) the person furnishes verification of illness or injury from a physician; and

(iii) the permit is surrendered before the season for which the permit was issued begins;

or

~~[(b)]~~ (d) the person to whom the license, certificate, or permit is issued dies prior to that person's being able to participate in the activity for which the license, certificate, or permit was obtained.

(3) The division director may reallocate surrendered permits in accordance with rules adopted by the Wildlife Board.

Section 2. Section **23-20-1** is amended to read:

**23-20-1. Enforcement authority of conservation officers -- Seizure and disposition of property.**

(1) Conservation officers of the division shall enforce the provisions of this title with the same authority and following the same procedures as other peace officers.

(2) (a) ~~[Except as provided in Subsection (b), conservation]~~ Conservation officers may search vehicles, camps, or other places where wildlife may be possessed or stored, if there is:

(i) probable cause to believe that wildlife illegally taken or held may be found; and

(ii) a reasonable likelihood the wildlife evidence will be lost, destroyed, or hidden before a search warrant may be obtained.

~~[(b) An occupied or unoccupied dwelling may not be searched without a search warrant.]~~

~~[(c)]~~ (b) Conservation officers shall seize any protected wildlife illegally taken or held.

~~[(d)]~~ (c) (i) Upon determination of a defendant's guilt by the court, the protected wildlife shall be confiscated by the court and sold or otherwise disposed of by the division.

(ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.

(iii) Migratory wildfowl may not be sold, but must be given to a charitable institution or used for other charitable purposes.

(3) (a) Materials and devices used for the unlawful taking or possessing of protected

1 wildlife shall be seized, and upon a finding by the court that they were used in the unlawful taking  
2 or possessing of protected wildlife, the materials and devices shall be:

- 3 (i) confiscated by the court;
- 4 (ii) conveyed to the division; and
- 5 (iii) upon the expiration of time for appeal, sold at a public auction or otherwise disposed  
6 of by the division.

7 (b) Any proceeds from the sale of the material or device shall be deposited into the  
8 Wildlife Resources Account.

9 (4) (a) (i) As used in Subsection (4), "owner" means a person, other than a person with a  
10 security interest, having a property interest in or title to a vehicle and entitled to the use and  
11 possession of a vehicle.

12 (ii) "Owner" includes a renter or lessee of a vehicle.

13 (b) (i) Conservation officers may seize and impound a vehicle used for the unlawful taking  
14 or possessing of protected wildlife for any of the following purposes:

15 (A) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;

16 (B) to search the vehicle as provided in Subsection (2)(a) or as provided by a search  
17 warrant; or

18 (C) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or  
19 possessed.

20 (ii) The division shall store any seized vehicle in a public or private garage, state impound  
21 lot, or other secured storage facility.

22 (iii) A seized vehicle shall be released to the owner no later than 30 days after the date the  
23 vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of wildlife by  
24 a person who is charged with committing a felony under this title.

25 (c) (i) Upon a finding by a court that the person who used the vehicle for the unlawful  
26 taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be:

27 (A) confiscated by the court;

28 (B) conveyed to the division; and

29 (C) upon expiration of time for appeal, sold at a public auction or otherwise disposed of  
30 by the division.

31 (ii) Any proceeds from the sale shall be deposited into the Wildlife Resources Account.

1 (iii) If the vehicle is not confiscated by the court, it shall be released to the owner.

2 (d) (i) The owner of a seized vehicle is liable for the payment of any impound fee if the  
3 person who used the vehicle for the unlawful taking or possessing of wildlife is found by a court  
4 to be guilty of a violation of this title.

5 (ii) The owner of a seized vehicle is not liable for the payment of any impound fee or, if  
6 the fees have been paid, is entitled to reimbursement of the fees paid, if:

7 (A) no charges are filed or all charges are dropped which involve the use of the vehicle  
8 for the unlawful taking or possessing of wildlife; or

9 (B) the person charged with using the vehicle for the unlawful taking or possessing of  
10 wildlife is found by a court to be not guilty.

11 Section 3. Section **23-22-1** is amended to read:

12 **23-22-1. Cooperative agreements and programs authorized.**

13 (1) The Division of Wildlife Resources may enter into cooperative agreements and  
14 programs with other state agencies, federal agencies, states, educational institutions,  
15 municipalities, counties, corporations, organized clubs, landowners, associations, and individuals  
16 for purposes of wildlife conservation.

17 (2) Cooperative agreements that are policy in nature must be:

18 (a) approved by the executive director of the Department of Natural Resources; and

19 (b) reviewed by the Wildlife Board.

20 Section 4. Section **23-23-2** is amended to read:

21 **23-23-2. Definitions.**

22 As used in this chapter:

23 (1) "Cooperative wildlife management unit" or "unit" means a generally contiguous area  
24 of land open for hunting small game, waterfowl, or big game which is registered in accordance  
25 with this chapter and rules of the Wildlife Board.

26 (2) (a) "Cooperative wildlife management unit agent" means a person appointed by a  
27 landowner, landowner association, or landowner association operator to perform the functions  
28 described in Section 23-23-9.

29 (b) For purposes of this chapter, a cooperative wildlife management unit agent may not:

30 (i) be appointed by the division or the state;

31 (ii) be an employee or agent of the division [~~or the state~~];

1 (iii) receive compensation from the division or the state to act as a cooperative wildlife  
2 management unit agent; or

3 (iv) act as a peace officer or perform any duties of a peace officer without qualifying as  
4 a peace officer under Title 77, Chapter 1a, Peace Officer Designation.

5 (3) "Cooperative wildlife management unit authorization" means a card, label, ticket, or  
6 other identifying document authorizing the possessor to hunt small game or waterfowl in a  
7 cooperative wildlife management unit.

8 (4) "Cooperative wildlife management unit permit" means a permit authorizing the  
9 possessor to hunt big game in a cooperative wildlife management unit.

10 (5) "Division" means the Division of Wildlife Resources.

11 (6) "Landowner association" means a landowner or an organization of owners of private  
12 lands who operates a cooperative wildlife management unit.

13 (7) (a) "Landowner association operator" means a person designated by a landowner  
14 association to operate the cooperative wildlife management unit.

15 (b) For purposes of this chapter, a landowner association operator may not:

16 (i) be appointed by the division; or

17 (ii) be an employee or agent of the division.

18 Section 5. Section **63-55-223** is amended to read:

19 **63-55-223. Repeal dates, Title 23.**

20 Title 23, Chapter 26, Wildlife Heritage Act, is repealed December 31, [~~1998~~] 2003.

21 Section 6. **Repealer.**

22 This act repeals:

23 Section **23-20-26, Assault or battery upon officer a class A misdemeanor.**

**Legislative Review Note**

**as of 1-26-98 12:41 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**