

1 **WILDLIFE REMEDIATION ON PRIVATE**
2 **PROPERTY**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Michael R. Styler**

6 **This act modifies the Wildlife Resources Code to amend provisions relating to big game**
7 **animal damage to cultivated crops, forage, fences, or irrigation equipment on private land.**

8 **This act requires the owner to provide the Division of Wildlife Resources with reasonable**
9 **access to the owner's property to alleviate depredation, and provides remedial action**
10 **considerations for the Division of Wildlife Resources to consider. This act provides a time**
11 **limit, after notification of the Division of Wildlife Resources, within which the owner may**
12 **kill big game animals. This act amends compensation provisions for damage caused by big**
13 **game animals.**

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

15 AMENDS:

16 **23-16-3**, as last amended by Chapter 66, Laws of Utah 1995

17 **23-16-3.5**, as last amended by Chapter 140, Laws of Utah 1998

18 **23-16-4**, as last amended by Chapter 28, Laws of Utah 1995

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

20 Section 1. Section **23-16-3** is amended to read:

21 **23-16-3. Damage to cultivated crops by big game animals -- Notice to division -- Crop**
22 **owner authorized to kill animals.**

23 (1) (a) To obtain assistance from the division in removing big game animals that are
24 damaging cultivated crops from or upon cleared and planted land, the owner of the crops shall
25 immediately, upon discovery of the damage, notify the division.

26 (b) The notice must be made both orally and in writing.

27 (c) The owner must allow division personnel reasonable access to the property to verify



28 and alleviate the depredation problem.

29 (2) (a) Upon being notified of the damage and after consulting with the owner of the crops,
30 the division shall take action to prevent further damage by big game animals which may include
31 any or all of the following:

32 (i) sending a representative onto the premises to control or remove the animals;

33 (ii) scheduling a depredation hunt; or

34 (iii) issuing tags to the landowner or lessee for the harvest of big game animals causing
35 depredation.

36 (b) (i) The division shall specify the number and sex of the big game animals that may be
37 taken pursuant to Subsection (2)(a)(iii). Control efforts shall be directed toward antlerless animals,
38 sparing if possible, but not excluding, trophy animals.

39 (ii) Any tag issued for an antlered animal must be approved by the division director or the
40 director's designee.

41 (c) The division and the landowner or lessee shall jointly determine the number of animals
42 taken pursuant to Subsection (2)(a)(iii) of which the landowner or lessee may retain possession.

43 (d) In determining appropriate remedial action under this Subsection (2), the division shall
44 consider:

45 (i) the extent of damage experienced or expected; and

46 (ii) any revenue the landowner derives from:

47 (A) participation in a cooperative wildlife management unit;

48 (B) use of landowner permits;

49 (C) use of mitigation permits; and

50 (D) charging for hunter access.

51 (3) (a) ~~[If the removal of big game animals is not accomplished in a reasonable time, not~~
52 ~~to exceed 72 hours, and it becomes necessary for the crop owner to]~~ The landowner may kill big
53 game animals if:

54 (i) it is necessary to protect cultivated crops [from or upon] on cleared and planted land[;
55 ~~he may do so];~~

56 (ii) the division fails to remove the big game animals in a reasonable time, not to exceed
57 72 hours, after the division is given notice; and

58 (iii) the landowner kills the big game animal within 90 days after having first notified the

59 division of the necessity of removing the animals.

60 (b) Immediately after making the kill, the crop owner shall notify the division.

61 (4) (a) The carcass of an animal killed pursuant to Subsection (3) shall become the
62 property of the division and shall be disposed of by it.

63 (b) Any money derived from the sale of the animals shall be placed in the Wildlife
64 Resources Account.

65 (5) For purposes of this section, cultivated crops may include crop residues that have
66 forage value for livestock.

67 Section 2. Section **23-16-3.5** is amended to read:

68 **23-16-3.5. Damage to livestock forage, fences, or irrigation equipment on private**
69 **lands.**

70 (1) If big game animals are damaging livestock forage, fences, or irrigation equipment on
71 private land or are consuming livestock forage on private land, the landowner or lessee may
72 request the division to take action to prevent depredation.

73 (2) (a) Within a reasonable time, not to exceed 72 hours after receiving the request, the
74 division shall investigate the situation. If it appears that depredation by big game may continue,
75 the division may, after consulting with the landowner or lessee, take action appropriate for the
76 extent of damage experienced or expected. Action taken may include:

77 (i) sending a representative onto the premises to control or remove the animals;

78 (ii) scheduling a depredation hunt; or

79 (iii) issuing tags to the landowner or lessee for the harvest of big game animals causing
80 depredation.

81 (b) (i) The division shall specify the number and sex of the big game animals that may be
82 taken pursuant to Subsection (2)(a)(iii). Control efforts shall be directed toward antlerless animals,
83 sparing if possible, but not excluding, trophy animals.

84 (ii) Any tag issued for an antlered animal must be approved by the division director or the
85 director's designee.

86 (c) The division and the landowner or lessee shall jointly determine the number of animals
87 taken pursuant to Subsection (2)(a)(iii) of which the landowner or lessee may retain possession.

88 (3) (a) The division may implement the measures specified in Subsections (4) through (6)
89 to mitigate damage to livestock forage, if:

90 (i) actions taken to control or remove depredating big game are not successful or are not
91 likely to be successful; or

92 (ii) both the division and landowner or lessee determine the measure is preferable to
93 immediately controlling or removing big game animals.

94 (b) (i) The measures specified in Subsections (4) through (6) may also be used to mitigate
95 damage to fences or irrigation equipment on private land or cultivated crops from or upon cleared
96 and planted land, if:

97 (A) the landowner or lessee elects to not file a claim under Section 23-16-4; or

98 (B) the landowner or lessee and the division agree upon a combination of mitigation
99 measures to be used pursuant to Subsections (4) through (6) and a payment of damage under
100 Section 23-16-4.

101 (ii) The agreement must be made before a claim for damage is filed and the mitigation
102 measures are taken.

103 (iii) A landowner or lessee who elects to pursue mitigation through the measures specified
104 in Subsections (4) through (6) may not subsequently file a claim under Section 23-16-4, except as
105 provided by an agreement made under Subsection (3)(b)(i).

106 (c) In determining appropriate mitigation, the division shall consider:

107 (i) the extent of damage experienced or expected; and

108 (ii) any revenue the landowner derives from participation in a cooperative wildlife
109 management unit, use of landowner permits, use of mitigation permits, and charging for hunter
110 access.

111 (4) (a) (i) The division may issue tags to the landowner or lessee for the harvest of big
112 game on the owner's or lessee's land during a general or special season hunt authorized by the
113 Wildlife Board.

114 (ii) In accordance with rules adopted by the Wildlife Board, the division may issue tags
115 to groups of landowners or lessees for the harvest of big game on their lands during a general or
116 special season hunt authorized by the Wildlife Board.

117 (b) Any tag issued for an antlered animal must be approved by the division director or the
118 director's designee.

119 (5) (a) (i) In accordance with rules adopted by the Wildlife Board, the division may allow
120 a landowner or lessee to designate who shall receive big game permits to be used for hunting on

121 the owner's or lessee's land during a general or special season hunt authorized by the Wildlife
122 Board.

123 (ii) In accordance with rules adopted by the Wildlife Board, the division may allow groups
124 of landowners or lessees to designate who shall receive big game permits to be used for hunting
125 on their lands during a general or special season hunt authorized by the Wildlife Board.

126 (b) Any fee for accessing the owner's or lessee's land shall be determined by the owner or
127 lessee.

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

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

134 Section 3. Section **23-16-4** is amended to read:

135 **23-16-4. Compensation for damage to crops, fences, or irrigation equipment --**
136 **Limitations -- Appeals.**

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

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

140 (b) fences on private land; or

141 (c) irrigation equipment on private land.

142 (2) For purposes of this section, "cultivated crops" includes crop residues that provide
143 forage value for livestock.

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

145 (a) must notify the division of the damage within 72 hours after the damage is
146 discovered[-]; and

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

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

151 (b) In determining damage payment, the division and claimant shall consider:

- 152 (i) the extent of damage experienced; and
- 153 (ii) any revenue the landowner derives from:
- 154 (A) participation in a cooperative wildlife management unit;
- 155 (B) use of landowner permits;
- 156 (C) use of mitigation permits; and
- 157 (D) charging for hunter access.

158 ~~(b)~~ (c) If the claimant and the division are unable to agree on a fair and equitable damage
159 payment, they shall designate a third party, consisting of one or more persons familiar with the
160 crops, fences, or irrigation equipment and the type of game animals doing the damage, to appraise
161 the damage.

162 (5) (a) Notwithstanding Section 63-38-3.2, the total amount of compensation that may be
163 provided by the division pursuant to this section and the total cost of fencing materials provided
164 by the division to prevent crop damage may not exceed the legislative appropriation for fencing
165 material and compensation for damaged crops, fences, and irrigation equipment.

166 (b) (i) Any claim of ~~[\$500]~~ \$1,000 or less may be paid after appraisal of the damage as
167 provided in Subsection (4), unless the claim brings the total amount of claims submitted by the
168 claimant in the fiscal year to an amount in excess of ~~[\$500]~~ \$1,000.

169 (ii) Any claim for damage to irrigation equipment may be paid after appraisal of the
170 damage as provided in Subsection (4).

171 (c) (i) Any claim in excess of ~~[\$500]~~ \$1,000, or claim that brings the total amount of
172 claims submitted by the claimant in the fiscal year to an amount in excess of ~~[\$500]~~ \$1,000, shall
173 be treated as follows:

- 174 (A) \$1,000 may be paid pursuant to the conditions of this section; and
- 175 (B) the amount in excess of \$1,000 may not be paid until the total amount of the approved
176 claims of all the claimants and expenses for fencing materials for the fiscal year are determined.

177 (ii) If the total exceeds the amount appropriated by the Legislature pursuant to Subsection
178 (5)(a), claims in excess of ~~[\$500]~~ \$1,000, or any claim that brings the total amount of a claimant's
179 claims in a fiscal year to an amount in excess of ~~[\$500]~~ \$1,000, shall be prorated.

180 (6) The division may deny or limit compensation if the claimant:

- 181 (a) has failed to exercise reasonable care and diligence to avoid the loss or minimize the
182 damage; or

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

187 (7) (a) The Wildlife Board shall make rules specifying procedures for the appeal of
188 division actions under this section.

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

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

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

Legislative Review Note
as of 1-30-02 1:59 PM

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

Office of Legislative Research and General Counsel