

**SUSPENSION OF HUNTING OR FISHING
PRIVILEGES FOR ILLEGAL VEHICLE USE**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred R. Hunsaker

Senate Sponsor: _____

LONG TITLE

General Description:

This bill authorizes the Division of Wildlife Resources to suspend privileges for illegal vehicle use.

Highlighted Provisions:

This bill:

► requires the suspension of Wildlife Resources license or permit privileges if the person, while engaged in a wildlife related activity:

- violates off-highway vehicle restrictions; or
- operates a motor vehicle on land not open to motor vehicle use.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

23-19-9, as repealed and reenacted by Chapter 224, Laws of Utah 2001

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

Section 1. Section **23-19-9** is amended to read:



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

(1) As used in this section[;]:

(a) "[~~license~~] 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.

(b) "Wildlife related activity" means to hunt, pursue, harass, catch, capture, angle, seine, trap, kill, observe, photograph, locate, or collect protected wildlife or its parts.

(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~~] license or permit privileges 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;

(D) violating Section 41-22-10.3, 41-22-12, or 41-22-13; or

(E) operating a motor vehicle, as defined in Section 41-22-2, on land not open to motor vehicle use;

(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[-]; and

(c) for offenses listed in Subsections (2)(a)(i)(D) and (E), the hearing officer determines the person committed the offense for the purpose of engaging in a wildlife related activity.

(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:

- 121 (A) class C misdemeanor conviction;
- 122 (B) plea of guilty or no contest to an offense punishable as a class C misdemeanor,
- 123 which plea is held in abeyance pursuant to a plea in abeyance agreement; or
- 124 (C) charge of committing an offense punishable as a class C misdemeanor, the
- 125 prosecution of which is suspended pursuant to a diversion agreement.
- 126 (8) (a) A hearing officer, appointed by the division, may suspend a person's privilege of
- 127 applying for, purchasing, and exercising the benefits conferred by a certificate of registration if:
- 128 (i) the hearing officer determines the person intentionally, knowingly, or recklessly, as
- 129 defined in Section 76-2-103, violated:
- 130 (A) this title;
- 131 (B) a rule or order of the Wildlife Board;
- 132 (C) the terms of a certificate of registration; or
- 133 (D) the terms of a certificate of registration application or agreement; or
- 134 (ii) the person, in a court of law:
- 135 (A) is convicted of an offense that the hearing officer determines bears a reasonable
- 136 relationship to the person's ability to safely and responsibly perform the activities authorized by
- 137 the certificate of registration;
- 138 (B) pleads guilty or no contest to an offense that the hearing officer determines bears a
- 139 reasonable relationship to the person's ability to safely and responsibly perform the activities
- 140 authorized by the certificate of registration, and the plea is held in abeyance in accordance with
- 141 a plea in abeyance agreement; or
- 142 (C) is charged with an offense that the hearing officer determines bears a reasonable
- 143 relationship to the person's ability to safely and responsibly perform the activities authorized by
- 144 the certificate of registration, and prosecution of the offense is suspended in accordance with a
- 145 diversion agreement.
- 146 (b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in
- 147 Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the
- 148 holder of the certificates of registration has violated Section 59-23-5.
- 149 (c) Subsections (4), (5), and (6) do not apply to suspensions of certificates of
- 150 registration.
- 151 (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

183 Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and Title 63, Chapter 46b,
184 Administrative Procedures Act.

Legislative Review Note
as of 2-1-07 2:10 PM

Office of Legislative Research and General Counsel

H.B. 421 - Suspension of Hunting or Fishing Privileges for Illegal Vehicle Use

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill could reduce restricted revenues to the Division of Wildlife Resources by approximately \$2,700 per year.

| | <u>FY 2007 Approp.</u> | <u>FY 2008 Approp.</u> | <u>FY 2009 Approp.</u> | <u>FY 2007 Revenue</u> | <u>FY 2008 Revenue</u> | <u>FY 2009 Revenue</u> |
|-------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| General Fund Restricted | \$0 | \$0 | \$0 | \$0 | (\$2,700) | (\$2,700) |
| Total | \$0 | \$0 | \$0 | \$0 | (\$2,700) | (\$2,700) |

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.