

BIOPROSPECTING

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Fred R Hunsaker

LONG TITLE

General Description:

This bill modifies provisions related to state lands to address requirements related to bioprospecting.

Highlighted Provisions:

This bill:

- ▶ enacts the Utah Bioprospecting Act, including:
 - defining terms;
 - providing for the scope of the chapter;
 - requiring registration;
 - providing for the state's reservation of economic rights; and
 - providing for penalties.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

65A-14-101, Utah Code Annotated 1953

65A-14-102, Utah Code Annotated 1953

65A-14-103, Utah Code Annotated 1953

65A-14-104, Utah Code Annotated 1953

65A-14-201, Utah Code Annotated 1953

30 65A-14-202, Utah Code Annotated 1953

31 65A-14-301, Utah Code Annotated 1953



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

34 Section 1. Section 65A-14-101 is enacted to read:

35 **CHAPTER 14. UTAH BIOPROSPECTING ACT**

36 **Part 1. General Provisions**

37 **65A-14-101. Title.**

38 This chapter is known as the "Utah Bioprospecting Act."

39 Section 2. Section 65A-14-102 is enacted to read:

40 **65A-14-102. Definitions.**

41 As used in this chapter:

42 (1) (a) "Bioprospecting" means the removal from a natural environment for research or
43 commercial use of:

44 (i) a naturally occurring microorganism, plant, or fungus; or

45 (ii) information concerning a naturally occurring microorganism's, plant's, or fungus'
46 physical or genetic properties.

47 (b) "Bioprospecting" does not include:

48 (i) horticultural cultivation, except for horticultural genetic engineering conducted in a
49 manner otherwise constituting bioprospecting;

50 (ii) an agricultural enterprise;

51 (iii) a forest and range management practice;

52 (iv) invasive weed management;

53 (v) Christmas tree and related sales; or

54 (vi) incidental removal of a microorganism, plant, or fungus while engaged in bona
55 fide research or commercial enterprises.

56 (2) "Nonfederal public land" means land in the state that:

57 (a) is not owned, controlled, or held in trust by the federal government; and

- 58 (b) (i) is owned or controlled by:
- 59 (A) the state;
- 60 (B) a county, city, or town; or
- 61 (C) a governmental entity other than the federal government; or
- 62 (ii) is school and institutional trust lands, as defined in Section 53C-1-103.

63 Section 3. Section **65A-14-103** is enacted to read:

64 **65A-14-103. Scope of chapter.**

65 (1) This chapter does not modify or replace any other requirement under federal, state,
66 or local law related to an act that under this chapter is considered bioprospecting, including
67 any requirement to obtain the permission of a landowner.

68 (2) This chapter applies only to non-federal public land.

69 Section 4. Section **65A-14-104** is enacted to read:

70 **65A-14-104. Rulemaking.**

71 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
72 division may make rules necessary to fulfill the purposes of this chapter.

73 Section 5. Section **65A-14-201** is enacted to read:

74 **Part 2. Registration for Bioprospecting**

75 **65A-14-201. Registration for bioprospecting.**

76 (1) (a) On and after July 1, 2011, before engaging in an act of bioprospecting, a person
77 shall register with the division.

78 (b) A registration under this chapter expires on June 30 of each year.

79 (2) To register with the division or renew a registration, a person shall:

80 (a) submit a registration form created by the division in accordance with Subsection
81 (3); and

82 (b) pay a fee established by the division in accordance with Section 63J-1-504.

83 (3) The division shall create, by rule made in accordance with Title 63G, Chapter 3,
84 Utah Administrative Rulemaking Act, a registration form for purposes of this chapter that
85 includes:

86 (a) notice of the state's reservation of economic interests provided in Section
87 65A-14-202;

88 (b) a statement to be signed by a person who registers that states that the person agrees
89 to negotiate as described in Section 65A-14-202; and

90 (c) a requirement that the person lists the locations at which the person anticipates
91 bioprospecting during the 12-month period of the registration.

92 Section 6. Section **65A-14-202** is enacted to read:

93 **65A-14-202. Reservation of economic interests -- Agreement to negotiate in good**
94 **faith.**

95 (1) The right of a person to engage in an act of bioprospecting in this state is subject to
96 the state's reservation of any right the state may have to an economic benefit derived from:

97 (a) the act of bioprospecting;

98 (b) a microorganism, plant, or fungus removed from a natural environment in the
99 state; or

100 (c) information concerning a microorganism's, plant's, or fungus' physical or genetic
101 properties removed from a natural environment in the state.

102 (2) A person may not engage in an act of bioprospecting in this state if the person, as
103 part of the registration required under Section 65A-14-201, does not agree in writing to
104 negotiate in good faith with the state if the state asserts an economic interest described in
105 Subsection (1).

106 Section 7. Section **65A-14-301** is enacted to read:

107 **Part 3. Penalties**

108 **65A-14-301. Economic benefits of bioprospecting denied.**

109 (1) A person who engages in an act of bioprospecting in violation of this chapter is
110 guilty of criminal trespass punishable in accordance with Section 76-6-206.

111 (2) If found guilty of a violation under this chapter, a court may in addition to a
112 penalty imposed under Section 76-6-206, order restitution that is proportional to the economic
113 interests the state may have under Section 65A-14-202.

