

Representative Casey Snider proposes the following substitute bill:

BIG GAME AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Casey Snider

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to depredation by big game.

Highlighted Provisions:

This bill:

- ▶ amends the definition provision;
- ▶ modifies provisions related to damage to cultivated crops, livestock forage, fences, or irrigation equipment;
- ▶ addresses under what circumstances a landowner or lessee may kill a big game animal;
- ▶ amends provisions related to compensation for damage caused by a big game animal;
- ▶ addresses appeals; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **23-16-1.1**, as enacted by Laws of Utah 2003, Chapter 228

28 **23-16-3**, as last amended by Laws of Utah 2011, Chapter 297

29 **23-16-3.1**, as enacted by Laws of Utah 2003, Chapter 228

30 **23-16-3.2**, as last amended by Laws of Utah 2008, Chapter 382

31 **23-16-4**, as last amended by Laws of Utah 2011, Chapter 297

32

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

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

35 **23-16-1.1. Definitions.**

36 As used in this chapter:

37 (1) "72 hours" means a time period that begins with the hour a request for action is
 38 made pursuant to Section 23-16-3 and ends 72 hours later with the exclusion of any hour that
 39 occurs on the day of a legal holiday listed in Section 63G-1-301.

40 ~~(1)~~ (2) "Cultivated crops" means:

41 (a) annual crops harvested from or on cleared and planted land; ~~and~~

42 perennial orchard trees on cleared and planted land; and

43 ~~(b)~~ (c) crop residues that have forage value for livestock.

44 ~~(2)~~ (3) "Depredation mitigation plan" means the plan described in Subsection
 45 23-16-3(2).

46 (4) "Growing season" means the portion of a year in which local conditions permit
 47 normal plant growth.

48 (5) "Management unit" means a prescribed area of contiguous land designated by the
 49 division for the purpose of managing a species of big game animal.

50 ~~(3)~~ (6) "Mitigation review panel" means the panel created under Section 23-16-3.2.

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

52 **23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation**
 53 **equipment by a big game animal -- Notice to division -- Depredation mitigation plan.**

54 (1) (a) If on private land a big game ~~[animals are damaging]~~ animal damages cultivated
 55 crops, livestock forage, fences, or irrigation equipment ~~[on private land]~~, the landowner or
 56 lessee shall immediately, upon discovery of the damage, request that the division take action to

57 alleviate the depredation problem.

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

60 (2) (a) Within 72 hours after receiving the request for action under Subsection (1)(a),
61 the division shall investigate the situation, and if it appears that depredation by a big game
62 [~~animals~~] animal may continue, the division shall:

63 (i) remove the big game [~~animals~~] animal causing depredation; or

64 (ii) implement a depredation mitigation plan [~~which has been~~] that is approved, in
65 writing, by the landowner or lessee.

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

67 (i) the scheduling of a depredation hunt;

68 (ii) issuing permits to the landowners or lessees, to take a big game [~~animals~~] animal
69 causing depredation during a general or special season hunt authorized by the Wildlife Board;

70 (iii) allowing landowners or lessees to designate recipients who may obtain a
71 mitigation permit to take a big game [~~animals~~] animal on the landowner's or lessee's land
72 during a general or special season hunt authorized by the Wildlife Board; or

73 (iv) a description of how the division will assess and compensate the landowner or
74 lessee under Section 23-16-4 for damage to cultivated crops, fences, or irrigation equipment.

75 (c) (i) The division shall specify the number and sex of the big game animals that may
76 be taken pursuant to Subsections (2)(b)(ii) and (iii).

77 (ii) Control efforts shall be directed toward antlerless animals, if possible.

78 (d) A permit issued for an antlered animal shall be approved by the division director or
79 the director's designee.

80 (e) The division and the landowner or lessee shall jointly determine the number of big
81 game animals taken pursuant to Subsection (2)(b)(ii) of which the landowner or lessee may
82 retain possession.

83 (f) In determining appropriate remedial action under this Subsection (2), the division
84 shall consider:

85 (i) the extent of damage experienced or expected in a single growing season; and

86 (ii) any revenue the landowner derives from:

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

88 (B) use of landowner association permits;

89 (C) use of mitigation permits; and

90 (D) charging for hunter access.

91 (3) Any fee for accessing the owner's or lessee's land shall be determined by the

92 landowner or lessee.

93 (4) (a) If the landowner or lessee who approved the depredation mitigation plan under

94 Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or

95 lessee may revoke [~~his or her~~] the landowner's or lessee's approval of the plan and again request

96 that the division take action pursuant to Subsection (2)(a)(i).

97 (b) A subsequent request for action provided under Subsection (4)(a) shall be

98 considered to be a new request for purposes of the 72-hour time limit specified in Subsection

99 (2)(a).

100 (5) (a) The division may enter into a conservation lease with the owner or lessee of

101 private lands for a fee or other remuneration as compensation for depredation.

102 (b) Any conservation lease entered into under this section shall provide that the

103 claimant may not unreasonably restrict hunting on the land or passage through the land to

104 access public lands for the purpose of hunting, if those actions are necessary to control or

105 mitigate damage by a big game animal.

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

107 **23-16-3.1. Landowner or lessee authorized to kill big game animals.**

108 (1) (a) A landowner or lessee may kill a big game [~~animals~~] animal damaging those

109 cultivated crops on private land if:

110 (i) it is necessary to protect cultivated crops;

111 (ii) 72 hours has expired since [~~notice was~~] a request for action is given pursuant to

112 Subsection **23-16-3(1)(a)**;

113 (iii) the landowner or lessee has provided or sent written notice of an intent to kill the

114 big game animal to the nearest regional office;

115 (iv) the landowner or lessee kills the big game animal within 90 days, or a longer

116 period, if approved, in writing, by the division, after having requested that the division take

117 action to prevent depredation under Subsection **23-16-3(1)(a)**; and

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

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

121 (c) The carcass of ~~[an]~~ a big game animal killed under Subsection (1)(a) ~~[shall become]~~
122 is the property of the division and [shall be disposed of by the division] the division shall
123 dispose of the carcass.

124 (d) ~~[Any money]~~ Money derived from the sale of ~~[animals]~~ a big game animal killed
125 shall be placed in the Wildlife Resources Account created in Section 23-14-13.

126 (e) A landowner or lessee who kills a big game animal pursuant to this section shall:

127 (i) make reasonable effort to prevent the big game animal from wasting; and

128 (ii) provide the division reasonable access to the landowner's or lessee's land to retrieve
129 and dispose of the big game animal.

130 (2) (a) The division director may prohibit the killing of a big game ~~[animals]~~ animal
131 under Subsection (1)(a) if, within 72 hours after a landowner or lessee has requested that the
132 division take action to remove a depredateing ~~[animals]~~ big game animal, the division:

133 (i) determines that the restitution value of the big game animal or animals, as
134 established under Section 23-20-4.5, is more than twice the estimated value of the cultivated
135 crops that have been or will be damaged or consumed within a single growing season;

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

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

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

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

141 (i) accept the plan in writing; or

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

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

145 (a) the division takes the actions described in Subsections (2)(a)(i) through (iv); ~~[and]~~
146 or

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

148 Section 4. Section 23-16-3.2 is amended to read:

149 **23-16-3.2. Mitigation review panel.**

- 150 (1) A mitigation review panel may be convened to review ~~[the]~~:
- 151 (a) a depredation mitigation ~~[plans:]~~ plan; or
- 152 (b) division action under Section 23-16-4.
- 153 (2) Membership of the mitigation review panel shall consist of:
- 154 (a) the division director or the director's designee;
- 155 (b) (i) the commissioner of the Department of Agriculture and Food or the
- 156 commissioner's designee; or
- 157 (ii) a representative of agricultural interests appointed by the commissioner of the
- 158 Department of Agriculture and Food; and
- 159 (c) a representative of Utah State University Extension Service appointed by the Vice
- 160 President and Dean for University Extension.
- 161 (3) (a) The division director shall convene a mitigation review panel if:
- 162 (i) a landowner or lessee appeals a depredation mitigation plan under Subsection
- 163 23-16-3.1(2)(b)(ii); ~~[or]~~
- 164 (ii) the division director requests review of a depredation mitigation plan~~[-];~~ or
- 165 (iii) the division receives a petition of an aggrieved party to a final division action
- 166 under Section 23-16-4.
- 167 (b) Within five business days of an appeal under Subsection 23-16-3.1(2)(b)(ii) or a
- 168 division request for review ~~[under Subsection 23-16-3.1(3)(b)]~~, the mitigation review panel
- 169 shall review the depredation mitigation plan and approve or modify the plan.
- 170 (c) A mitigation review panel shall act on a petition described in Subsection (3)(a)(iii)
- 171 in accordance with rules made by the Wildlife Board under Subsection 23-16-4(6).
- 172 (4) Judicial review of a mitigation review panel action ~~[shall be]~~ under this section is
- 173 governed by Title 63G, Chapter 4, Administrative Procedures Act.
- 174 Section 5. Section **23-16-4** is amended to read:
- 175 **23-16-4. Compensation for damage to crops, fences, or irrigation equipment --**
- 176 **Limitations -- Appeals.**
- 177 (1) The division may provide compensation to claimants for damage caused by a big
- 178 game animal to:
- 179 (a) cultivated crops ~~[from or on cleared and planted]~~ on private land;
- 180 (b) fences on private land; or

- 181 (c) irrigation equipment on private land.
- 182 (2) To be eligible to receive compensation as provided in this section, the claimant
183 shall:
- 184 (a) notify the division of the damage within 72 hours after the damage is discovered;
185 and
- 186 (b) allow division personnel reasonable access to the property to verify and alleviate
187 the depredation problem.
- 188 (3) (a) The appraisal of the damage shall be made by the claimant and the division as
189 soon after notification as possible.
- 190 (b) In determining damage payment, the division and claimant shall consider:
- 191 (i) the extent of damage experienced; and
- 192 (ii) any revenue the landowner derives from:
- 193 (A) participation in a cooperative wildlife management unit;
- 194 (B) use of landowner association permits;
- 195 (C) use of mitigation permits; and
- 196 (D) charging for hunter access.
- 197 (c) The division and claimant may not include speculative damages or claims of future
198 value in an appraisal or damage payment under this section.
- 199 (d) The division may deduct revenue received by the landowner or the landowner's
200 lessee from wildlife related activities described in Subsection (3)(b) for the lands owned or
201 leased within the management unit where the big game animal damage occurs.
- 202 ~~[(e)]~~ (e) In determining how to assess and compensate for damages to cultivated crops,
203 the division's determination shall be based on the:
- 204 (i) estimated number of big game animals that damaged or consumed cultivated crops;
- 205 (ii) estimated quantity of cultivated crops damaged or consumed by a big game animal;
- 206 ~~[(i)]~~ ~~(iii)~~ ~~[full replacement value in the local market]~~ local market value of the
207 cultivated crops that actually have been or will be damaged or consumed by a big game
208 ~~[animals]~~ animal; and
- 209 ~~[(ii) cost of delivery of a replacement crop to the location of the damaged crop or other~~
210 ~~location that is not farther from the source of the replacement crop.]~~
- 211 (iv) other documented costs directly incurred by the landowner or lessee because of

212 damage to cultivated crops by a big game animal.

213 ~~[(d)]~~ (f) If the claimant and the division are unable to agree on a fair and equitable
214 damage payment, ~~[they]~~ the claimant and division shall designate a third party, consisting of
215 one or more persons familiar with the crops, fences, or irrigation equipment and the type of big
216 game animals doing the damage, to appraise the damage.

217 (4) (a) ~~[Notwithstanding Section 63J-1-504, the]~~ The total amount of compensation
218 that may be provided by the division pursuant to this section and the total cost of fencing
219 materials provided by the division to prevent crop damage may not exceed the legislative
220 appropriation for fencing material and compensation for damaged crops, fences, and irrigation
221 equipment.

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

225 (ii) ~~[Any]~~ A claim for damage to irrigation equipment may be paid after appraisal of
226 the damage as provided in Subsection (3).

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

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

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

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

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

238 (a) ~~[has failed]~~ fails to exercise reasonable care and diligence to avoid the loss or
239 minimize the damage; ~~[or]~~

240 (b) fails to provide the division reasonable access to the property;

241 (c) fails to allow the division to use reasonable mitigation tools to alleviate the damage;

242 ~~[(b)]~~ (d) ~~[has]~~ unreasonably [restricted] restricts hunting on land under the claimant's

243 control or passage through the land to access public lands for the purpose of hunting, after
244 receiving written notification from the division of the necessity of allowing [~~such~~] the hunting
245 or access to control or mitigate damage by a big game[-] animal; or

246 (e) fails to provide supporting evidence of cultivated crop values and claimed costs to
247 the division during the damage appraisal process.

248 (6) (a) The Wildlife Board shall make rules, in accordance with Title 63G, Chapter 3,
249 Utah Administrative Rulemaking Act, and consistent with Subsection (6)(d), specifying
250 procedures for the appeal of division actions under this section.

251 (b) Upon the petition of an aggrieved party to a final division action, [~~the Wildlife~~
252 ~~Board~~] a mitigation review panel may review the action on the record and issue an order
253 modifying or rescinding the division action.

254 (c) [~~A qualified hearing examiner may be appointed~~] A mitigation review panel may
255 appoint a third party designated under Subsection (3)(f) for purposes of taking evidence and
256 making recommendations for [a board] an order of the mitigation review panel. The [~~board~~]
257 mitigation review panel shall consider the recommendations of the [~~examiner~~] designated third
258 party in making decisions.

259 (d) [~~Board~~] A mitigation review panel's review of final agency action and judicial
260 review of final [board action shall be] action by a mitigation review panel is governed by Title
261 63G, Chapter 4, Administrative Procedures Act.