

Representative Casey Snider proposes the following substitute bill:

BIG GAME AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Casey Snider

Senate Sponsor: Michael K. McKell

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 big game animals;
- ▶ amends provisions related to compensation for damage caused by big game animals;
- ▶ addresses appeals; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 [23-16-1.1](#), as enacted by Laws of Utah 2003, Chapter 228
 27 [23-16-3](#), as last amended by Laws of Utah 2011, Chapter 297
 28 [23-16-3.1](#), as enacted by Laws of Utah 2003, Chapter 228
 29 [23-16-3.2](#), as last amended by Laws of Utah 2008, Chapter 382
 30 [23-16-4](#), as last amended by Laws of Utah 2011, Chapter 297

31
 32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section [23-16-1.1](#) is amended to read:

34 **[23-16-1.1. Definitions.](#)**

35 As used in this chapter:

36 (1) "72 hours" means a time period that begins with the hour a request for action is
 37 made pursuant to Section [23-16-3](#) and ends 72 hours later with the exclusion of any hour that
 38 occurs on the day of a legal holiday that is on a Monday or Friday and listed in Section
 39 [63G-1-301](#).

40 [(+)] (2) "Cultivated crops" means:

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

42 (b) perennial orchard trees on cleared and planted land;

43 [(b)] (c) crop residues that have forage value for livestock[-]; and

44 (d) pastures.

45 [(2)] (3) "Depredation mitigation plan" means the plan described in Subsection
 46 [23-16-3\(2\)](#).

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

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

51 [(3)] (6) "Mitigation review panel" means the panel created under Section [23-16-3.2](#).

52 Section 2. Section [23-16-3](#) is amended to read:

53 **[23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation](#)**
 54 **[equipment by big game animals -- Notice to division -- Depredation mitigation plan.](#)**

55 (1) (a) If on private land big game animals [~~are damaging~~] damage cultivated crops,
 56 livestock forage, fences, or irrigation equipment [on private land], the landowner or lessee shall

57 immediately, upon discovery of the damage, request that the division take action to alleviate
58 the depredation problem.

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

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

64 (i) remove the big game animals causing depredation; or

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

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

68 (i) the scheduling of a depredation hunt;

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

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

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

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

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

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

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

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

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

87 (ii) any revenue the landowner derives from:

- 88 (A) participation in a cooperative wildlife management unit;
- 89 (B) use of landowner association permits;
- 90 (C) use of mitigation permits; and
- 91 (D) charging for hunter access.

92 (3) Any fee for accessing the owner's or lessee's land shall be determined by the
93 landowner or lessee.

94 (4) (a) If the landowner or lessee who approved the depredation mitigation plan under
95 Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or
96 lessee may revoke ~~[his or her]~~ the landowner's or lessee's approval of the plan and again request
97 that the division take action pursuant to Subsection (2)(a)(i).

98 (b) A subsequent request for action provided under Subsection (4)(a) shall be
99 considered to be a new request for purposes of the 72-hour time limit specified in Subsection
100 (2)(a).

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

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

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

108 **23-16-3.1. Landowner or lessee authorized to kill big game animals.**

109 (1) (a) A landowner or lessee may kill big game animals damaging those cultivated
110 crops on private land if:

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

112 (ii) 72 hours has expired since ~~[notice was]~~ a request for action is given pursuant to
113 Subsection **23-16-3(1)(a)**;

114 (iii) the landowner or lessee has provided or sent written notice of an intent to kill the
115 big game animal to the nearest regional office;

116 (iv) the landowner or lessee kills the big game animal within 90 days, or a longer
117 period, if approved, in writing, by the division, after having requested that the division take
118 action to prevent depredation under Subsection **23-16-3(1)(a)**; and

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

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

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

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

127 (e) A landowner or lessee who kills big game animals pursuant to this section shall:

128 (i) make reasonable effort to prevent the big game animals from wasting; and

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

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

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

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

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

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

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

142 (i) accept the plan in writing; or

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

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

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

147 or

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

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

150 **23-16-3.2. Mitigation review panel.**151 (1) A mitigation review panel may be convened to review ~~[the]:~~152 (a) a depredation mitigation ~~[plans.] plan; or~~153 (b) division action under Section 23-16-4.

154 (2) Membership of the mitigation review panel shall consist of:

155 (a) the division director or the director's designee;

156 (b) (i) the commissioner of the Department of Agriculture and Food or the
157 commissioner's designee; or158 (ii) a representative of agricultural interests appointed by the commissioner of the
159 Department of Agriculture and Food; and160 (c) a representative of Utah State University Extension Service appointed by the Vice
161 President and Dean for University Extension.

162 (3) (a) The division director shall convene a mitigation review panel if:

163 (i) a landowner or lessee appeals a depredation mitigation plan under Subsection
164 23-16-3.1(2)(b)(ii); ~~[or]~~165 (ii) the division director requests review of a depredation mitigation plan~~[-]; or~~166 (iii) the division receives a petition of an aggrieved party to a final division action
167 under Section 23-16-4.168 (b) Within five business days of an appeal under Subsection 23-16-3.1(2)(b)(ii) or a
169 division request for review ~~[under Subsection 23-16-3.1(3)(b)]~~, the mitigation review panel
170 shall review the depredation mitigation plan and approve or modify the plan.171 (c) A mitigation review panel shall act on a petition described in Subsection (3)(a)(iii)
172 in accordance with rules made by the Wildlife Board under Subsection 23-16-4(6).173 (4) Judicial review of a mitigation review panel action ~~[shall be]~~ under this section is
174 governed by Title 63G, Chapter 4, Administrative Procedures Act.175 Section 5. Section **23-16-4** is amended to read:176 **23-16-4. Compensation for damage to crops, fences, or irrigation equipment --**
177 **Limitations -- Appeals.**178 (1) The division may provide compensation to claimants for damage caused by big
179 game animals to:180 (a) cultivated crops ~~[from or on cleared and planted]~~ on private land;

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

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

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

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

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

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

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

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

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

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

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

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

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

241 [~~(b)~~] (d) [~~has~~] unreasonably [~~restricted~~] restricts hunting on land under the claimant's
242 control or passage through the land to access public lands for the purpose of hunting, after

243 receiving written notification from the division of the necessity of allowing [~~such~~] the hunting
244 or access to control or mitigate damage by big game[-] animals; or

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

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

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

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

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