

Senator Michael K. McKell 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 addresses provisions related to 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;
- ▶ enacts limitations on compensating people to locate big game animals; 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 ENACTS:

33 **23-20-33**, Utah Code Annotated 1953



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

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

37 **23-16-1.1. Definitions.**

38 As used in this chapter:

39 (1) "72 hours" means a time period that begins with the hour a request for action is
40 made pursuant to Section 23-16-3 and ends 72 hours later with the exclusion of any hour that
41 occurs on the day of a legal holiday that is on a Monday or Friday and listed in Section
42 63G-1-301.

43 [~~(1)~~] (2) "Cultivated crops" means:

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

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

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

47 (d) pastures.

48 [~~(2)~~] (3) "Depredation mitigation plan" means the plan described in Subsection
49 **23-16-3(2).**

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

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

54 [~~(3)~~] (6) "Mitigation review panel" means the panel created under Section **23-16-3.2.**

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

56 **23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation**

57 **equipment by big game animals -- Notice to division -- Depredation mitigation plan.**

58 (1) (a) If on private land big game animals [~~are damaging~~] damage cultivated crops,
59 livestock forage, fences, or irrigation equipment [~~on private land~~], the landowner or lessee shall
60 immediately, upon discovery of the damage, request that the division take action to alleviate
61 the depredation problem.

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

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

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

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

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

71 (i) the scheduling of a depredation hunt;

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

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

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

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

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

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

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

87 (f) In determining appropriate remedial action under this Subsection (2), the division

88 shall consider:

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

90 (ii) any revenue the landowner derives from:

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

92 (B) use of landowner association permits;

93 (C) use of mitigation permits; and

94 (D) charging for hunter access.

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

96 landowner or lessee.

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

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

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

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

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

111 **23-16-3.1. Landowner or lessee authorized to kill big game animals.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

145 (i) accept the plan in writing; or

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

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

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

150 or

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

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

153 **23-16-3.2. Mitigation review panel.**

154 (1) A mitigation review panel may be convened to review ~~[the]~~:

155 (a) a depredation mitigation ~~[plans.]~~ plan; or

156 (b) division action under Section 23-16-4.

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

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

159 (b) (i) the commissioner of the Department of Agriculture and Food or the
160 commissioner's designee; or

161 (ii) a representative of agricultural interests appointed by the commissioner of the
162 Department of Agriculture and Food; and

163 (c) a representative of Utah State University Extension Service appointed by the Vice
164 President and Dean for University Extension.

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

166 (i) a landowner or lessee appeals a depredation mitigation plan under Subsection
167 23-16-3.1(2)(b)(ii); ~~[or]~~

168 (ii) the division director requests review of a depredation mitigation plan~~[-];~~ or

169 (iii) the division receives a petition of an aggrieved party to a final division action
170 under Section 23-16-4.

171 (b) Within five business days of an appeal under Subsection 23-16-3.1(2)(b)(ii) or a
172 division request for review ~~[under Subsection 23-16-3.1(3)(b)]~~, the mitigation review panel
173 shall review the depredation mitigation plan and approve or modify the plan.

174 (c) A mitigation review panel shall act on a petition described in Subsection (3)(a)(iii)
175 in accordance with rules made by the Wildlife Board under Subsection 23-16-4(6).

176 (4) Judicial review of a mitigation review panel action ~~[shall be]~~ under this section is
177 governed by Title 63G, Chapter 4, Administrative Procedures Act.

178 Section 5. Section 23-16-4 is amended to read:

179 **23-16-4. Compensation for damage to crops, fences, or irrigation equipment --**
180 **Limitations -- Appeals.**

181 (1) The division may provide compensation to claimants for damage caused by big
182 game animals to:

183 (a) cultivated crops [~~from or on cleared and planted~~] on private land;

184 (b) fences on private land; or

185 (c) irrigation equipment on private land.

186 (2) To be eligible to receive compensation as provided in this section, the claimant
187 shall:

188 (a) notify the division of the damage within 72 hours after the damage is discovered;

189 and

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

192 (3) (a) The appraisal of the damage shall be made by the claimant and the division as
193 soon after notification as possible.

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

195 (i) the extent of damage experienced; and

196 (ii) any revenue the landowner derives from:

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

198 (B) use of landowner association permits;

199 (C) use of mitigation permits; and

200 (D) charging for hunter access.

201 (c) The division and claimant may not include speculative damages or claims of future
202 value in an appraisal or damage payment beyond the growing season when the damage
203 occurred under this section.

204 [~~(c)~~] (d) In determining how to assess and compensate for damages to cultivated crops,
205 the division's determination shall be based on the:

206 (i) estimated number of big game animals that damaged or consumed cultivated crops;

207 (ii) estimated quantity of cultivated crops damaged or consumed by big game animals;

208 [~~(i)~~] (iii) [~~full replacement value in the local market~~] local market value of the

209 cultivated crops that actually have been or will be damaged or consumed by big game animals;

210 [~~and~~]

211 [~~(ii) cost of delivery of a replacement crop to the location of the damaged crop or other~~]

212 location that is not farther from the source of the replacement crop.]

213 (iv) replacement value of an equivalent aged tree for perennial orchard trees; and

214 (v) other documented costs directly incurred by the landowner or lessee because of
215 damage to cultivated crops by big game animals.

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

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

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

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

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

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

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

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

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

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

243 (b) fails to provide the division reasonable access to the property;
244 (c) fails to allow the division to use reasonable mitigation tools to alleviate the damage;
245 ~~[(b)]~~ (d) [has] unreasonably [restricted] restricts hunting on land under the claimant's
246 control or passage through the land to access public lands for the purpose of hunting, after
247 receiving written notification from the division of the necessity of allowing [such] the hunting
248 or access to control or mitigate damage by big game[-] animals; or
249 (e) fails to provide supporting evidence of cultivated crop values and claimed costs to
250 the division during the damage appraisal process.

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

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

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

262 (d) [Board] A mitigation review panel's review of final agency action and judicial
263 review of final [board action shall be] action by a mitigation review panel is governed by Title
264 63G, Chapter 4, Administrative Procedures Act.

265 Section 6. Section **23-20-33** is enacted to read:

266 **23-20-33. Limitation on compensating people to locate big game animals.**

267 (1) As used in this section:

268 (a) "Compensate" or "compensated" means anything of value in excess of \$25 that is
269 paid, loaned, given, granted, donated, or transferred to a person for or in consideration of
270 locating or monitoring the location of big game animals.

271 (b) "Retain" or "retained" means a written or oral agreement for the delivery of
272 outfitting services or hunting guide services between an outfitter or hunting guide and the
273 recipient of those services.

274 (2) Except as provided in Subsections (3) and (4), a person may not compensate
275 another person to locate or monitor the location of big game animals on public land in
276 connection with or furtherance of taking a big game animal under this title.

277 (3) A person may compensate a registered outfitter or hunting guide, as defined in
278 Section 58-79-102, to help the person locate and take a big game animal on public land if:

279 (a) the outfitter or hunting guide is registered and in good standing under Title 58,
280 Chapter 79, Hunting Guides and Outfitters Registration Act;

281 (b) the person has retained the outfitter or hunting guide and is the recipient of the
282 outfitting services and hunting guide services, as defined in Section 58-79-102;

283 (c) the person possesses the licenses and permits required to take a big game animal;

284 (d) the person retains and uses not more than one outfitter or hunting guide in
285 connection with taking a big game animal; and

286 (e) the retained outfitter or hunting guide uses no more than one compensated
287 individual in locating or monitoring the location of big game animals on public land.

288 (4) A registered outfitter or hunting guide in good standing may compensate another
289 person to locate or monitor the location of big game animals on public land if:

290 (a) the outfitter or hunting guide has been retained by the recipient of the outfitting
291 services or hunting guide services to assist the recipient take a big game animal on public land;

292 (b) the recipient possesses the licenses and permits required to take a big game animal;

293 (c) the recipient is not simultaneously using another outfitter or hunting guide to assist
294 in taking the same species and sex of big game animal; and

295 (d) the outfitter or hunting guide compensates not more than one other individual to
296 locate or monitor the location of big game animals in connection with assisting the recipient
297 take a big game animal on public land.

298 (5) A violation of:

299 (a) this section constitutes an unlawful take under Section 23-20-3; and

300 (b) Subsection (4) constitutes unlawful conduct under Sections 58-1-501, 58-1-502,
301 and 58-79-501.