

1                                   **WANTON DESTRUCTION OF LIVESTOCK**

2   2009 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Ronda Rudd Menlove**

5   Senate Sponsor: Ralph Okerlund

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7 **LONG TITLE**

8 **General Description:**

9           This bill establishes penalties for the wanton destruction of livestock.

10 **Highlighted Provisions:**

11           This bill:

- 12           ▶ defines terms;
- 13           ▶ allows a licensed veterinarian to euthanize certain animals under certain
- 14 circumstances;
- 15           ▶ modifies requirements for reporting estrays;
- 16           ▶ authorizes the Division of Wildlife Resources to capture or cause the death of
- 17 certain animals under certain circumstances;
- 18           ▶ establishes penalties for the wanton destruction of livestock; and
- 19           ▶ provides for the seizure and disposition of property used in the wanton destruction
- 20 of livestock.

21 **Monies Appropriated in this Bill:**

22           None

23 **Other Special Clauses:**

24           This bill takes effect on July 1, 2009.

25 **Utah Code Sections Affected:**

26 **AMENDS:**

27           **4-25-4**, as last amended by Laws of Utah 1997, Chapter 10

28           **4-25-5**, as last amended by Laws of Utah 1983, Chapter 7

29           **4-25-14**, as enacted by Laws of Utah 2002, Chapter 126

30 10-8-64, Utah Code Annotated 1953

31 ENACTS:

32 76-6-111, Utah Code Annotated 1953

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

35 Section 1. Section 4-25-4 is amended to read:

36 4-25-4. Possession of estrays -- Determination and location of owner -- Sale --

37 Disposition of proceeds -- Notice -- Title of purchaser -- Immunity from liability.

38 (1) (a) ~~[Each county, except as otherwise]~~ Except as provided in Section 4-25-5, a  
39 county shall:

40 (i) take physical possession of ~~[any]~~ an estray it finds within its boundaries; and

41 (ii) attempt to determine the name and location of the ~~[animal's]~~ estrays' owner.

42 (b) The department shall assist ~~[any]~~ a county ~~[which]~~ that requests its help in  
43 ~~[locating]~~ determining the name and location of the owner or other person responsible for  
44 ~~[such animal. If ownership of the estray cannot be determined]~~ the estray.

45 (c) (i) ~~Notwithstanding the requirements of Title 67, Chapter 4a, Unclaimed Property~~  
46 Act, if the county cannot determine the estray's owner, or, if having determined ownership,  
47 neither the county nor the department is able to locate the owner within a reasonable period of  
48 time, [the animal, notwithstanding Title 67, Chapter 4a, Unclaimed Property Act,] the estray  
49 shall be sold at a livestock or other appropriate market [and the proceeds of such sale paid,  
50 after the deduction of feed, transportation, and market costs,].

51 (ii) The proceeds of a sale under Subsection (1)(c)(i), less the costs described in  
52 Subsection (1)(c)(iii), shall be paid to the county [causing the sale of such] selling the estray.

53 (iii) The livestock or other market conducting the sale under Subsection (1)(c)(i) may  
54 deduct the cost of feed, transportation, and other market costs from the proceeds of the sale.

55 ~~[(2) No sale of an estray under this section shall be conducted without notice of the~~  
56 ~~intended sale being published]~~

57 (2) A county shall publish notice of the sale of an estray:

58 (a) at least once ten days before the date of the sale; and

59 (b) in a publication with general circulation within the county where the estray was  
60 taken into custody.

61 (3) ~~[The]~~ A purchaser of an estray sold under this section shall receive title to the  
62 estray free and clear of all claims of the estray's owner and ~~[any]~~ a person claiming title  
63 through the owner.

64 (4) ~~[The]~~ A county~~[-, provided it]~~ that complies with ~~[this chapter,]~~ the provisions of  
65 this section is immune from liability ~~[on account of any]~~ for the sale of an estray sold at a  
66 livestock or other appropriate market.

67 (5) Notwithstanding the requirements of Subsection (1)(c), a county may employ a  
68 licensed veterinarian to euthanize an estray if the licensed veterinarian determines that the  
69 estray's physical condition prevents the estray from being sold.

70 Section 2. Section **4-25-5** is amended to read:

71 **4-25-5. Report of estrays -- Possession -- Relief from liability.**

72 (1) As used in this section, "division" means the Division of Wildlife Resources.

73 ~~[(1) Any]~~ (2) A person, other than an official of the county or of an animal control  
74 office under contract with the county, who finds an estray shall report ~~[such fact]~~ it to the  
75 county or animal control office immediately. ~~[The]~~

76 (3) Upon receipt of notification under Subsection (2), the county or the animal control  
77 office ~~[upon receipt of notification]~~ shall ~~[either]:~~

78 (a) take possession of the estray; or~~;~~

79 (b) if ~~[deemed]~~ appropriate, authorize the person in possession of the estray to  
80 maintain and care for it pending determination and location of ~~[its]~~ the estray's owner.

81 ~~[(2) Any]~~ (4) A person who gives notice of an estray and delivers it to the county or  
82 animal control office ~~[is relieved of all liability]~~ is not liable to third ~~[persons]~~ parties on  
83 account of the estray to the extent of the value of the animal.

84 (5) (a) If an employee of the division, acting in the employee's official capacity, finds  
85 an estray, the employee shall:

86 (i) comply with the requirements of Subsection (2); and

87 (ii) make a reasonable attempt to contact the estray's owner.

88 (b) The county or animal control office receiving a report of an estray from an  
89 employee of the division shall:

90 (i) take possession of the estray; or

91 (ii) authorize the division in writing or through electronic means to take possession of  
92 the estray.

93 (c) If the county or animal control office does not comply with Subsection (5)(b)  
94 within 72 hours from the time the division reports an estray, the division may take possession  
95 of the estray.

96 (d) If the division takes possession of the estray, the division shall:

97 (i) make a reasonable attempt to return the estray to the estray's owner; or

98 (ii) if unable to return the estray to the estray's owner, deliver the estray to the county  
99 or animal control office.

100 (e) If the division is unable to take possession of the estray after a reasonable attempt,  
101 the division may cause the death of the estray if the division determines that the estray  
102 presents a material threat to wildlife by:

103 (i) predation;

104 (ii) pathogen transmission; or

105 (iii) genetic introgression.

106 (f) If the division causes the death of an estray under Subsection (5)(e), the division  
107 shall:

108 (i) compensate the owner of the estray at full market value of the estray; or

109 (ii) if the owner of the estray cannot be determined, deposit an amount equal to the full  
110 market value of the estray into the Agricultural and Wildlife Damage Prevention Account  
111 created in Section 4-23-7.5.

112 (6) Notwithstanding the requirements of Subsection (5), the division may immediately  
113 take possession of an estray or cause an estray to move away from wildlife if the estray

114 presents an imminent material threat to wildlife by:

115 (a) predation;

116 (b) pathogen transmission; or

117 (c) genetic introgression.

118 Section 3. Section **4-25-14** is amended to read:

119 **4-25-14. Impounded livestock -- Determination and location of owner -- Sale --**  
120 **Disposition of proceeds -- Notice -- Title of purchaser -- Immunity from liability.**

121 (1) As used in this section, "impounded livestock" means the following animals seized  
122 and retained in legal custody:

123 (a) cattle[;];

124 (b) calves[;];

125 (c) horses[;];

126 (d) mules[;];

127 (e) sheep[;];

128 (f) goats[;];

129 (g) hogs[;]; or

130 (h) domesticated elk [seized and retained in legal custody].

131 (2) (a) [~~Each~~] A county may:

132 (i) take physical possession of impounded livestock seized and retained within its  
133 boundaries; and

134 (ii) attempt to determine the name and location of the impounded livestock's owner.

135 (b) The department shall assist a county who requests help in locating the name and  
136 location of the owner or other person responsible for the impounded livestock.

137 (c) [~~H~~] (i) Notwithstanding the requirements of Title 67, Chapter 4a, Unclaimed  
138 Property Act, if the county cannot determine ownership of the impounded livestock [~~cannot be~~  
139 ~~determined~~], or, if having determined ownership, neither the county nor the department is able  
140 to locate the owner within a reasonable period of time, the impounded livestock[;  
141 ~~notwithstanding Title 67, Chapter 4a, Unclaimed Property Act,~~] shall be sold at a livestock or

142 other appropriate market[, and the proceeds of the sale paid, after the deduction of feed,  
143 transportation, and market costs,].

144 (ii) The proceeds of a sale under Subsection (2)(c)(i), less the costs described in  
145 Subsection (2)(c)(iii), shall be paid to the State School Fund created by the Utah Constitution  
146 Article X, Section 5, Subsection (1).

147 (iii) The livestock or other market conducting the sale under Subsection (2)(c)(i) may  
148 deduct the cost of feed, transportation, and other market costs from the proceeds of the sale.

149 (3) [~~Notice of~~] A county shall publish the intended sale of the impounded livestock  
150 [~~must be published~~]:

151 (a) at least ten days prior to the date of sale; and

152 (b) in a publication with general circulation within the county where the impounded  
153 livestock was taken into custody.

154 (4) [~~The~~] A purchaser of impounded livestock sold under this section shall receive title  
155 to the impounded livestock free and clear of all claims of the livestock's owner or [any] a  
156 person claiming title through the owner.

157 (5) If [~~the~~] a county complies with the provisions of this section, it is immune from  
158 liability for the sale of impounded livestock sold at a livestock or other appropriate market.

159 (6) Notwithstanding the requirements of Subsection (2)(c), a county may employ a  
160 licensed veterinarian to euthanize an impounded livestock if the licensed veterinarian  
161 determines that the impounded livestock's physical condition prevents the impounded  
162 livestock from being sold.

163 Section 4. Section **10-8-64** is amended to read:

164 **10-8-64. Livestock at large -- Pound -- Distraint.**

165 [~~They may~~] (1) A municipality may, within the limits of the municipality:

166 (a) regulate or prohibit the running at large[, within the limits of the city,] of  
167 livestock[;] and [all kinds of] poultry;

168 (b) (i) establish a pound [and];

169 (ii) appoint a poundkeeper; and

- 170 (iii) prescribe [his] the poundkeeper's duties[-];
- 171 (c) distrain and impound animals running at large[-]; and
- 172 (d) provide for the sale or disposition of [the same in the manner] animals running at
- 173 large as provided by law for the sale and disposition of estrays and trespassing animals.
- 174 (2) The proceeds arising from the sale of [~~such~~] animals running at large, after the
- 175 payment of all costs, shall go to the city treasurer to be disposed of according to law.

Section 5. Section **76-6-111** is enacted to read:

**76-6-111. Wanton destruction of livestock -- Penalties -- Seizure and disposition of property.**

(1) As used in this section:

(a) "Law enforcement officer" is as defined in Section 53-13-103.

(b) "Livestock" means a domestic animal or fur bearer raised or kept for profit, including:

(i) cattle;

(ii) sheep;

(iii) goats;

(iv) swine;

(v) horses;

(vi) mules;

(vii) poultry; and

(viii) domesticated elk as defined in Section 4-39-102.

(2) Unless authorized by Section 4-25-4, 4-25-5, 4-25-14, 4-39-401, or 18-1-3, a person is guilty of wanton destruction of livestock if that person:

(a) injures, physically alters, releases, or causes the death of livestock; and

(b) does so:

(i) intentionally or knowingly; and

(ii) without the permission of the owner of the livestock.

(3) Wanton destruction of livestock is punishable as a:

- 198           (a) class B misdemeanor if the aggregate value of the livestock is \$300 or less;
- 199           (b) class A misdemeanor if the aggregate value of the livestock is more than \$300, but
- 200 does not exceed \$1,000;
- 201           (c) third degree felony if the aggregate value of the livestock is more than \$1,000, but
- 202 does not exceed \$5,000; and
- 203           (d) second degree felony if the aggregate value of the livestock is more than \$5,000.
- 204           (4) A material, device, or vehicle used in violation of Subsection (2) is subject to
- 205 forfeiture under the procedures and substantive protections established in Title 24, Chapter 1,
- 206 Utah Uniform Forfeiture Procedures Act.
- 207           (5) A peace officer may seize a material, device, or vehicle used in violation of
- 208 Subsection (2):
- 209           (a) upon notice and service of process issued by a court having jurisdiction over the
- 210 property; or
- 211           (b) without notice and service of process if:
- 212           (i) the seizure is incident to an arrest under:
- 213           (A) a search warrant; or
- 214           (B) an inspection under an administrative inspection warrant;
- 215           (ii) the material, device, or vehicle has been the subject of a prior judgment in favor of
- 216 the state in a criminal injunction or forfeiture proceeding under this section; or
- 217           (iii) the peace officer has probable cause to believe that the property has been used in
- 218 violation of Subsection (2).
- 219           (6) (a) A material, device, or vehicle seized under this section is not repleviable but is
- 220 in custody of the law enforcement agency making the seizure, subject only to the orders and
- 221 decrees of a court or official having jurisdiction.
- 222           (b) A peace officer who seizes a material, device, or vehicle under this section may:
- 223           (i) place the property under seal;
- 224           (ii) remove the property to a place designated by the warrant under which it was
- 225 seized; or

226            (iii) take custody of the property and remove it to an appropriate location for  
227 disposition in accordance with law.

228            Section 6. **Effective date.**

229            This bill takes effect on July 1, 2009.