

HISTORICAL LIVESTOCK TRAILS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Bradley T. Johnson

LONG TITLE

General Description:

This bill addresses historical livestock trails.

Highlighted Provisions:

This bill:

- ▶ provides a defense for an owner of livestock whose livestock damages property abutting an historical livestock trail that is not fenced;
 - ▶ enacts provisions allowing a prescriptive easement for an historical livestock trail;
- and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-25-8, as last amended by Chapter 126, Laws of Utah 2002

ENACTS:

57-13b-101, Utah Code Annotated 1953

57-13b-102, Utah Code Annotated 1953

57-13b-201, Utah Code Annotated 1953

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

Section 1. Section **4-25-8** is amended to read:

4-25-8. Owner liable for trespass of animals -- Exception -- Intervention by county representative.

(1) The owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not enclosed by a lawful fence in a county or municipality [~~which~~] that has adopted a fence ordinance, is liable in a civil action to the owner or occupant of the premises for any damage inflicted by the trespass.

(2) A county representative may intervene to remove the animal and the county is entitled to fair compensation for costs incurred. If the animal is not claimed within ten days after written notification is sent to its owner, a county representative may sell the animal to cover costs incurred.

(3) Notwithstanding Subsections (1) and (2), the owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person is not liable in a civil action to the owner or occupant of the premises for damage inflicted by the trespass if:

(a) the animal enters the premises from an historic livestock trail, as defined in Section 57-13b-102; and

(b) the premises that was trespassed is not enclosed by an adequate fence at the time the trespass occurs.

Section 2. Section **57-13b-101** is enacted to read:

CHAPTER 13b. EASEMENT FOR HISTORICAL LIVESTOCK TRAIL ACT

Part 1. General Provisions

57-13b-101. Title.

This chapter is known as the "Easement for Historical Livestock Trail Act."

Section 3. Section **57-13b-102** is enacted to read:

57-13b-102. Definition.

As used in this chapter, "historical livestock trail" means property over which livestock has historically traveled to or from a grazing area or market.

Section 4. Section **57-13b-201** is enacted to read:

Part 2. Prescriptive Easement

57-13b-201. Prescriptive easement for livestock trail.

(1) A prescriptive easement may be established if:

(a) a property owner uses an historical livestock trail that crosses another person's property for a period of 20 years; and

(b) the use of the other owner's property as an historical livestock trail for the 20-year period described in Subsection (1)(a) is:

(i) continuous;

(ii) open and notorious; and

(iii) adverse.

(2) If a property owner establishes that a use is continuous and open and notorious under Subsections (1)(b)(i) and (ii), there is a rebuttable presumption that the use is adverse.

(3) Notwithstanding Subsections (1) and (2), a prescriptive easement under this chapter may only be established on private lands.