

Representative Ronda Rudd Menlove proposes the following substitute bill:

WANTON DESTRUCTION OF LIVESTOCK

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill establishes penalties for the wanton destruction of livestock.

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2009.

Utah Code Sections Affected:



AMENDS:

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

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

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

~~10-8-64~~, Utah Code Annotated 1953

ENACTS:

~~76-6-111~~, Utah Code Annotated 1953

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

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

~~4-25-4. Possession of estrays -- Determination and location of owner -- Sale --~~
~~Disposition of proceeds -- Notice -- Title of purchaser -- Immunity from liability.~~

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

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

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

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

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

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

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

~~[(2) No sale of an estray under this section shall be conducted without notice of the~~
~~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 estrays free and clear of all claims of the estray's owner and ~~[any]~~ a person claiming title through
63 the owner.

64 (4) ~~[The]~~ A county, ~~provided it~~ that complies with ~~[this chapter]~~ the provisions of this
65 section, is immune from liability ~~[on account of any]~~ for the sale of an estrays sold at a livestock
66 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 estrays 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 maintain
80 and care for it pending determination and location of ~~[its]~~ the estrays 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 employees 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 estrays owner.

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

(i) take possession of the estray; or

(ii) ~~H~~→ [direct] authorize ~~←H~~ the division in writing or through electronic means to take possession of the estray.

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

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

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

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

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

(i) predation;

(ii) pathogen transmission; or

(iii) genetic introgression.

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

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

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

(6) Notwithstanding the requirements of Subsection (5), the division may immediately take possession of an estray or cause an estray to move away from wildlife if the estray presents an imminent material threat to wildlife by:

(a) predation;

(b) pathogen transmission; or

(c) genetic introgression.

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

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

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

(a) cattle[;];

(b) calves[;];

(c) horses[;];

(d) mules[;];

(e) sheep[;];

(f) goats[;];

(g) hogs[;]; or

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

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

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

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

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

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

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

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

(3) [~~Notice of~~] A county shall publish the intended sale of the impounded livestock

[must be published]:

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

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

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

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

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

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

10-8-64. Livestock at large -- Pound -- Distrain.

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

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

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

(ii) appoint a poundkeeper; and

(iii) prescribe [his] the poundkeeper's duties[;];

(c) distrain and impound animals running at large[;]; and

(d) provide for the sale or disposition of [the same in the manner] animals running at large as provided by law for the sale and disposition of estrays and trespassing animals.

(2) The proceeds arising from the sale of [such] animals running at large, after the 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.

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

183 (i) cattle;

184 (ii) sheep;

185 (iii) goats;

186 (iv) swine;

187 (v) horses;

188 (vi) mules;

189 (vii) poultry; and

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

191 (2) Unless authorized by Sections 4-25-4, 4-25-5, ~~H~~→ [and] ~~←H~~ 4-25-14, ~~H~~→ 4-39-401,

191a or 18-1-3, ~~←H~~ a person is guilty of

192 wanton destruction of livestock if that person:

193 (a) injures, ~~H~~→ physically alters, ~~←H~~ releases, or causes the death of livestock; and

194 (b) does so:

195 (i) intentionally or knowingly; and

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

197 (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 seized;
225 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.

H.B. 240 1st Sub. (Buff) - Wanton Destruction of Livestock

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, or businesses. Although there are very few cases, local governments may benefit from fines and forfeitures.
