

SB0032S01 compared with SB0032

~~{deleted text}~~ shows text that was in SB0032 but was deleted in SB0032S01.

inserted text shows text that was not in SB0032 but was inserted into SB0032S01.

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Representative Melvin R. Brown proposes the following substitute bill:

AGRICULTURE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: ~~{_____}~~ Ronda Rudd Menlove

LONG TITLE

General Description:

This bill makes changes to programs and duties of the Department of Agriculture and Food.

Highlighted Provisions:

This bill:

- ▶ requires the department to participate in an agricultural mediation program;
- ▶ requires the department to promote and support multiple use of public lands, including acting as a mediator concerning public lands issues;
- ▶ allows the commissioner to establish advisory committees, eliminating a provision requiring the commissioner to request the governor to establish the committees;
- ▶ limits the scope of Title 4, Chapter 7, Agricultural Products and Livestock Dealers' Act, to livestock-related concerns and makes related changes to that chapter;

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- ▶ eliminates a provision for the department to grant an annual license, instead of a triennial license, to a pesticide dealer;
- ▶ allows the department to use dedicated credits for improving rangeland health;
- ▶ addresses the Conservation Commission's duties, including expanding the use of certain loan funds;
- ▶ allows the department to use certain restricted account money for the purchase of a conservation easement;
- ▶ changes a provision that decreases payment of the Beef Promotion Fee by the amount of a federal beef promotion assessment to require the payment of both fees;
- ▶ changes the definition of "farm custom mobile unit":
- ▶ removes the requirement that a person who raises an animal may only slaughter an animal without a farm custom slaughter license if the animal is slaughtered on property owned by the person: and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-2-2, as last amended by Laws of Utah 2010, Chapter 391

4-2-8, as last amended by Laws of Utah 2010, Chapter 286

4-7-1, as last amended by Laws of Utah 1995, Chapter 41

4-7-2, as enacted by Laws of Utah 1979, Chapter 2

4-7-3, as last amended by Laws of Utah 2003, Chapter 85

4-7-5, as last amended by Laws of Utah 1995, Chapter 41

4-7-7, as last amended by Laws of Utah 1995, Chapter 41

4-7-8, as last amended by Laws of Utah 2010, Chapter 378

4-7-9, as last amended by Laws of Utah 2003, Chapters 84 and 85

4-7-10, as last amended by Laws of Utah 1995, Chapter 41

4-7-11, as last amended by Laws of Utah 2010, Chapter 378

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4-7-12, as last amended by Laws of Utah 1990, Chapter 25

4-7-13, as last amended by Laws of Utah 1995, Chapter 41

4-7-14, as last amended by Laws of Utah 1995, Chapter 41

4-14-3, as last amended by Laws of Utah 2010, Chapters 378 and 391

4-18-5, as last amended by Laws of Utah 2008, Chapters 360 and 382

4-20-3, as last amended by Laws of Utah 2010, Chapter 278

4-21-3, as last amended by Laws of Utah 2002, Chapter 256

4-32-3, as last amended by Laws of Utah 2010, Chapters 242 and 378

4-32-4, as last amended by Laws of Utah 2010, Chapters 242 and 324

ENACTS:

4-20-10, Utah Code Annotated 1953

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

Section 1. Section 4-2-2 is amended to read:

4-2-2. Functions, powers, and duties of department -- Fees for services --

Marketing orders -- Procedure.

(1) The department shall:

(a) inquire into and promote the interests and products of agriculture and its allied industries;

(b) promote methods for increasing the production and facilitating the distribution of the agricultural products of the state;

(c) (i) inquire into the cause of contagious, infectious, and communicable diseases among livestock and the means for their prevention and cure; and

(ii) initiate, implement, and administer plans and programs to prevent the spread of diseases among livestock;

(d) encourage experiments designed to determine the best means and methods for the control of diseases among domestic and wild animals;

(e) issue marketing orders for any designated agricultural product to:

(i) promote orderly market conditions for any product;

(ii) give the producer a fair return on the producer's investment at the marketplace; and

(iii) only promote and not restrict or restrain the marketing of Utah agricultural

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commodities;

(f) administer and enforce all laws assigned to the department by the Legislature;

(g) establish standards and grades for agricultural products and fix and collect reasonable fees for services performed by the department in conjunction with the grading of agricultural products;

(h) establish operational standards for any establishment that manufactures, processes, produces, distributes, stores, sells, or offers for sale any agricultural product;

(i) adopt, according to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, rules necessary for the effective administration of the agricultural laws of the state;

(j) when necessary, make investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture;

(k) (i) inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any private or public place that may become infested or infected with harmful insects, plant diseases, noxious or poisonous weeds, or other agricultural pests;

(ii) establish and enforce quarantines;

(iii) issue and enforce orders and rules for the control and eradication of pests, wherever they may exist within the state; and

(iv) perform other duties relating to plants and plant products considered advisable and not contrary to law;

(l) inspect apiaries for diseases inimical to bees and beekeeping;

(m) take charge of any agricultural exhibit within the state, if considered necessary by the department, and award premiums at that exhibit;

(n) assist the Conservation Commission in the administration of Title 4, Chapter 18, Conservation Commission Act, and administer and disburse any funds available to assist conservation districts in the state in the conservation of the state's soil and water resources;

[and]

(o) participate in the United States Department of Agriculture certified agricultural mediation program, in accordance with 7 U.S.C. Sec. 5101 and 7 C.F.R. Sec. 785;

(p) promote and support the multiple use of public lands; and

~~(q)~~ (q) perform any additional functions, powers, and duties provided by law.

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(2) The department, by following the procedures and requirements of Section 63J-1-504, may adopt a schedule of fees assessed for services provided by the department.

(3) (a) No marketing order issued under Subsection (1)(e) shall take effect until:

(i) the department gives notice of the proposed order to the producers and handlers of the affected product;

(ii) the commissioner conducts a hearing on the proposed order; and

(iii) at least 50% of the registered producers and handlers of the affected products vote in favor of the proposed order.

(b) (i) The department may establish boards of control to administer marketing orders and the proceeds derived from any order.

(ii) The board of control shall:

(A) ensure that all proceeds are placed in an account in the board of control's name in a depository institution; and

(B) ensure that the account is annually audited by an accountant approved by the commissioner.

(4) Funds collected by grain grading, as provided by Subsection (1)(g), shall be deposited in the General Fund as dedicated credits for the grain grading program.

Section 2. Section **4-2-8** is amended to read:

4-2-8. Temporary advisory committees -- Appointment -- Compensation.

(1) The commissioner may [~~request the governor to~~] appoint other advisory committees on a temporary basis to offer technical advice to the department.

(2) A member of a committee serves at the pleasure of the commissioner.

(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 3. Section **4-7-1** is amended to read:

CHAPTER 7. LIVESTOCK DEALERS' ACT

4-7-1. Title.

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This chapter is known as the [~~"Agricultural Products and~~] "Livestock Dealers' Act."

Section 4. Section **4-7-2** is amended to read:

4-7-2. Purpose declaration.

The Legislature finds and declares that the public interest requires regulation of the sale of [~~products of agriculture~~] livestock between the producer and persons who purchase [~~such products~~] livestock for resale to protect producers from unwarranted hazard and loss in the sale of their [~~products and to ensure an adequate and available supply of products to the ultimate consumer within the state~~] livestock.

Section 5. Section **4-7-3** is amended to read:

4-7-3. Definitions.

As used in this chapter:

(1) "Agent" or "broker" means [~~any~~] a person who, on behalf of a dealer, purchaser, or livestock market, as defined in Section 4-30-1, solicits or negotiates the consignment or purchase of [~~any product of agriculture~~] livestock.

(2) "Consignor" means [~~any~~] a person who ships or delivers [~~any product of agriculture~~] livestock to a dealer for [~~storage~~] feedlot, handling, or sale.

(3) (a) "Dealer" means [~~any~~] a person who:

(i) receives [~~any product of agriculture~~] livestock from [~~any~~] a person for sale [~~or storage~~] on commission; and

(ii) is entrusted with the possession, management, control, or disposal of [~~any product of agriculture~~] livestock for the account of that person.

(b) "Dealer" includes a livestock dealer.

(c) "Dealer" includes a person who owns or leases a [~~warehouse~~] feedlot.

(4) (a) "Immediate resale" means the resale of livestock within 60 days of purchase.

(b) "Immediate resale" does not include the resale of livestock culled within 60 days that were purchased for feeding or replacement.

(5) "Livestock" means cattle, swine, equines, sheep, camelidae, ratites, bison, and domesticated elk as defined in Section 4-39-102.

(6) "Livestock dealer" means a person engaged in the business of purchasing livestock for immediate resale or interstate shipment for immediate resale.

(7) "Producer" means [~~any~~] a person who is primarily engaged in the business of

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raising ~~[any product of agriculture]~~ livestock for profit.

~~[(8) "Product of agriculture" means any product useful to the human species which results from the application of the science and art of the production of plants and animals.]~~

~~[(9) "Product of Agriculture Receipt" means a formal document issued by a dealer for any product of agriculture in accordance with Section 4-7-9. The receipt is a fungible certificate of title and claim for the product of agriculture and may be used as proof of ownership for collateral.]~~

~~[(10) "Warehouse" means every building, structure, yard, or other protected enclosure in which any product of agriculture is or may be stored. It does not include retail stores, except those that buy directly from a producer.]~~

Section 6. Section ~~4-7-5~~ is amended to read:

4-7-5. Exemptions.

The surety and licensing requirements of this chapter do not apply to:

(1) ~~[any]~~ a livestock market ~~[which]~~ that is bonded as required by laws of the United States and Title 4, Chapter 30, Livestock Markets; or

(2) ~~[any]~~ a cooperative incorporated under the laws of this state or another state, except as to the receipt of ~~[products of agriculture]~~ livestock from a nonmember producer.

Section 7. Section ~~4-7-7~~ is amended to read:

4-7-7. Issuance of dealer, broker, and agent licenses -- Fees -- Deposit of bond or trust agreement -- Renewal -- Refusal to issue or renew license.

(1) The commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license to a dealer within 30 days after:

(a) receipt of a proper application and financial statement;

(b) payment of a license fee determined by the department pursuant to Subsection 4-2-2(2); and

(c) the posting of a corporate surety bond, an irrevocable letter of credit, a trust fund agreement, or other security required by Section 4-7-8.

(2) Upon proper application and payment of the license fee determined by the department pursuant to Subsection 4-2-2(2), the commissioner shall issue a license to conduct business as an agent or broker.

(3) A license issued under this chapter:

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(a) entitles the applicant to conduct the business described in the application through December 31 of the year in which the license is issued, subject to suspension or revocation for cause; and

(b) is renewable for a period of one year upon:

(i) receipt of a proper renewal application; and

(ii) payment of an annual license renewal fee determined by the department pursuant to Subsection 4-2-2(2).

(4) A license issued under this chapter shall at all times remain the property of the state, and the licensee is entitled to its possession only for the duration of the license.

(5) The department shall refuse to issue or renew a license if the applicant:

(a) cannot produce a financial statement with sufficient assets to justify the amount of business the applicant contemplates, unless the application is for a broker's or agent's license;

(b) is in violation of this chapter or rules adopted under this chapter;

(c) has made a false or misleading statement as to the health or physical condition of livestock in connection with the buying, receiving, selling, exchanging, soliciting or negotiating the sale of, or the weighing of livestock;

(d) has failed to keep records of purchases and sales or refused to grant inspection of those records by authorized agents of the department;

(e) has failed to comply with a lawful order of the department;

(f) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with the ~~[produce or]~~ livestock transaction;

(g) has been suspended by order of the Secretary of Agriculture of the United States Department of Agriculture under provisions of the Packers and Stockyards Act, 1921, 7 U.S.C. Sec. 181 et seq.;

(h) employs a person required to be licensed whose license cannot be renewed or whose license is under suspension or revocation by the department or the United States Department of Agriculture; or

(i) has any unsatisfied civil judgments related to an activity for which licensing is required by this chapter.

(6) An applicant who has been refused a license or license renewal may not apply again for one year following refusal unless the department determines that the applicant is in

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compliance with this chapter.

Section 8. Section 4-7-8 is amended to read:

4-7-8. Applicant for dealer's license to post security -- Increase in amount of security posted -- Action on security authorized -- Duties of commissioner -- Option to require posting new security if action filed -- Effect of failure to post new security -- Commissioner's authority to call bond if not renewed.

(1) (a) Before a license is issued to a dealer, the applicant shall post a corporate surety bond, irrevocable letter of credit, trust fund agreement, or any other security agreement considered reasonable in an amount not less than \$10,000 nor more than \$200,000, as determined by the commissioner or as required by the Packers and Stockyards Act, 1921, 7 U.S.C. Section 181 et seq.

(b) Any bond shall be written by a surety licensed under the laws of Utah and name the state, as obligee, for the use and benefit of producers.

(c) The bond or other security posted shall be conditioned upon:

(i) the faithful performance of contracts and the faithful accounting for and handling of [~~any product of agriculture~~] livestock consigned to the dealer;

(ii) the performance of the obligations imposed under this chapter; and

(iii) the payment of court costs and attorney's fees to the prevailing party incident to any suit upon the bond or other security posted.

(2) (a) The commissioner may require a dealer who is issued a license to increase the amount of the bond or other security posted under Subsection (1)(a) if the commissioner determines the bond or other security posted is inadequate to secure performance of the dealer's obligations.

(b) The commissioner shall notify the Packers and Stockyards Administration of an increase made under Subsection (2)(a).

(c) The commissioner may suspend a dealer's license for failure to comply with Subsection (2)(a) within 10 days after notice is given to the dealer.

(3) A consignor claiming damages, as a result of fraud, deceit, or willful negligence by a dealer or as a result of the dealer's failure to comply with this chapter, may bring an action upon the bond or other security posted for damages against both the principal and surety.

(4) (a) If it is reported to the department by a consignor that a dealer has failed to pay in

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a timely manner for [~~any product of agriculture~~] livestock received for sale, the commissioner shall:

(i) ascertain the name and address of each consignor who is a creditor of the dealer;

and

(ii) request a verified written statement setting forth the amount claimed due from the dealer.

(b) Upon receipt of the verified statements, the commissioner shall bring an action upon the bond or other security posted on behalf of the consignors who claim amounts due from the dealer.

(5) (a) If an action is filed upon the bond or other security posted, the commissioner may require the filing of new security.

(b) Immediately upon recovery in the action, the commissioner shall require the dealer to file a new bond or other security.

(c) Failure, in either case, to file the bond or other security within 10 days after demand is cause for suspension of the license until a new bond or other security is filed.

(d) If the bond or other security posted under this section is not renewed within 10 days of its expiration date, unless the commissioner states in writing that this is unnecessary, the commissioner may obtain, after a hearing, the full amount of the bond or other security before it expires.

Section 9. Section ~~4-7-9~~ is amended to read:

4-7-9. Dealers -- Records mandated -- Records subject to inspection.

(1) A dealer who receives [~~any product of agriculture~~] livestock for sale[~~, storage,~~] or consignment shall promptly record:

(a) the name and address of the consignor;

(b) the date received;

(c) the condition and quantity upon arrival;

(d) the date of sale for account of the producer-consignor;

(e) the sale price;

(f) an itemized statement of the charges to be paid by the producer-consignor;

(g) the [~~lot number or other means used for identification of the product~~] individual or group identification of the livestock;

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(h) the nature and amount of any claims the dealer has against third persons for overcharges or damages; and

(i) if the dealer has a direct or indirect financial interest in the business of the purchaser, or, if the purchaser has a similar financial interest in the business of the dealer, the name and address of the purchaser.

(2) (a) The dealer shall provide a copy of the ~~[Product of Agriculture Receipt]~~ livestock receipt to the producer immediately upon delivery of the product.

~~[(b) Dealers who issue product of agriculture receipts to producers shall plainly cancel upon the face of the receipts each receipt returned to the dealer upon:]~~

~~[(i) the delivery by the dealer of the product of agriculture for which the receipt was issued; or]~~

~~[(ii) payment by the dealer for the receipted product.]~~

~~[(c)]~~ (b) The records required by this section shall be retained for a period of one year following the date of consignment and shall be available during business hours for inspection by the department.

~~[(d)]~~ (c) A consignor involved in a consignment subject to inquiry may inspect relevant records.

(3) (a) A dealer shall file an annual report of the records required under Subsection (1) with the department on a form prescribed and furnished by ~~[it]~~ the department.

(b) The dealer shall file the report by April 15 following the end of a calendar year, or if the records are kept on a fiscal year basis, by 90 days after the close of the fiscal year.

(c) The commissioner may, for good cause shown or by the commissioner's own motion, grant an extension to the filing deadline under Subsection (3)(b).

(d) For purposes of this Subsection (3), "dealer" does not include a packer buyer registered to purchase livestock for slaughter only.

(e) The department shall accept reports as required by the Packers and Stockyards Administration for livestock under the Packers and Stockyards Act, 9 C.F.R. Sec. 201.97.

(f) The reports required under this Subsection (3) may be subject to audit and establish the basis for bond adequacy.

Section 10. Section ~~4-7-10~~ is amended to read:

4-7-10. Livestock purchases.

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~~[(1) In addition to the requirements of Section 4-7-9, if requested by the consignor, a dealer shall transmit or deliver a written statement of sale to the consignor before the close of the next business day following the sale of the consignor's products. The statement shall show:]~~

~~[(a) the date of sale;]~~

~~[(b) the quantity sold; and]~~

~~[(c) the sales price.]~~

~~[(2) The dealer, within 10 days after payment for any consigned product of agriculture, unless otherwise agreed in writing, shall also remit the proceeds of the sale in full to the consignor less any agreed compensation and other agreed charges together with a settlement statement, which need not list the names and addresses of purchasers, except as required by Section 4-7-9.]~~

~~[(3) If no time for payment is specified in the contract of sale or consignment, payment is due within 30 days after the dealer takes possession or delivery of any product of agriculture.]~~

~~[(4) Subsections (1) through (3) do not apply to the sale of livestock.]~~

Livestock purchases ~~[are to]~~ shall be paid for as provided in the Packers and Stockyards Act, 1921, 7 U.S.C. Sec. 181, et seq.

Section 11. Section ~~4-7-11~~ is amended to read:

4-7-11. Department authority -- Examination and investigation of transactions -- Notice of agency action upon probable cause -- Settlement of disputes -- Cease and desist order -- Enforcement -- Review.

(1) For the purpose of enforcing this chapter the department may, upon its own motion, or shall, upon the verified complaint of an interested consignor, investigate, examine, or inspect any transaction involving:

(a) the solicitation, receipt, sale, or attempted sale of ~~[any product of agriculture]~~ livestock by a dealer or person assuming to act as a dealer;

(b) the failure to make a correct account of sales;

(c) the intentional making of a false statement about market conditions or the condition or quantity of ~~[any product of agriculture]~~ livestock consigned;

(d) the failure to remit payment in a timely manner to the consignor as required by

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contract or by this chapter;

(e) any other consignment transaction alleged to have resulted in damage to the consignor; or

(f) any dealer or agent with an unsatisfied judgment by a civil court related to an activity for which licensing is required by this chapter.

(2) (a) After investigation upon its own motion, if the department determines that probable cause exists to believe that a dealer has engaged or is engaging in acts that violate this chapter, ~~[it]~~ the department shall issue a notice of agency action.

(b) (i) Upon the receipt of a verified complaint, the department shall undertake to effect a settlement between the consignor and the dealer.

(ii) If a settlement cannot be effected, the department shall treat the verified complaint as a request for agency action.

(3) (a) In a hearing upon a verified complaint, if the commissioner, or hearing officer designated by the commissioner, determines by a preponderance of the evidence that the person complained of has violated this chapter and that the violation has resulted in damage to the complainant, the commissioner or officer shall:

(i) prepare written findings of fact detailing the findings and fixing the amount of damage suffered; and

(ii) order the defendant to pay damages.

(b) In a hearing initiated upon the department's own motion, if the commissioner or hearing officer determines by a preponderance of the evidence that the person complained of by the department has engaged in, or is engaging in, acts that violate this chapter, the commissioner or officer shall prepare written findings of fact and an order requiring the person to cease and desist from the activity.

(4) The department may petition any court having jurisdiction in the county where the action complained of occurred to enforce ~~[its]~~ the department's order.

(5) Any dealer aggrieved by an order issued under this section may obtain judicial review of the order.

(6) (a) The department may not act upon a verified complaint submitted to the department more than six months after the consignor allegedly suffered damage.

(b) A livestock claim shall be made in writing within 120 days from the date of the

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transaction.

Section 12. Section **4-7-12** is amended to read:

4-7-12. Sale of livestock -- Prima facie evidence of fraud.

The following constitutes prima facie evidence of fraud in the sale of [~~any product of agriculture~~] livestock:

(1) any sale of [~~a product of agriculture~~] livestock at less than market price by a dealer to a person with whom the dealer has a financial interest; or

(2) any sale out of which the dealer receives part of the sale price other than the agreed commission or other agreed charges.

Section 13. Section **4-7-13** is amended to read:

4-7-13. Suspension or revocation -- Grounds -- Notice to producers.

(1) The department may suspend or revoke the license of and suspend or refuse all department services to [~~any~~] a person licensed under this chapter if [~~it~~] the department finds that the licensee has:

(a) provided false information when making an application for a license;

(b) failed to comply with this chapter or rules adopted under this chapter; or

(c) engaged in any willful conduct [~~which~~] that is detrimental to a producer.

(2) If a license is revoked pursuant to a hearing and the decision is final, or an injunction is imposed by a civil court, the department shall, by publication in a newspaper of a general circulation in the area, notify producers of livestock [~~or farm products~~] in the area in which the licensee operated that the license has been revoked or a department action has been taken.

Section 14. Section **4-7-14** is amended to read:

4-7-14. Prohibited acts.

(1) A person licensed under this chapter may not:

(a) make false charges incident to the sale [~~, handling, or storage of products of agriculture~~] of livestock;

(b) wilfully fail to comply with the requirements of Section 4-7-9 or 4-7-10;

(c) fail to file a schedule of commissions and charges;

(d) reassign [~~products of agriculture~~] livestock without the consent of the producer-consignor for the purpose of charging more than one commission;

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(e) make any false statement to the detriment of the producer regarding current market conditions for [~~products of agriculture~~] livestock or about the condition or quantity of the [~~products~~] livestock consigned for the account of the producer;

(f) engage in fraud or misrepresentation in the procurement or attempted procurement of a license; or

(g) act as a dealer or agent and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money from any bank or other depository to the owner for the purchase price of [~~any farm products or any part thereof~~] livestock, when at the time of the making, drawing, uttering, or delivery the maker or drawer does not have sufficient funds in or credit with the bank or other depository for the payment of the check, draft, or order in full upon its presentation.

(2) (a) The making, drawing, uttering, or delivery of a check, draft, or order in the circumstances specified in this section shall be evidence of an intent to defraud.

(b) As used in this section, "credit" means an arrangement or understanding with the bank or depository for the payment of the check, draft, or order.

Section 15. Section **4-14-3** is amended to read:

4-14-3. Registration required for distribution -- Application -- Fees -- Renewal -- Local needs registration -- Distributor or applicator license -- Fees -- Renewal.

(1) (a) No person may distribute a pesticide in this state that is not registered with the department.

(b) Application for registration shall be made to the department upon forms prescribed and furnished by it accompanied with an annual registration fee determined by the department pursuant to Subsection 4-2-2(2) for each pesticide registered.

(c) Upon receipt by the department of a proper application and payment of the appropriate fee, the commissioner shall issue a registration to the applicant allowing distribution of the registered pesticide in this state through June 30 of each year, subject to suspension or revocation for cause.

(d) (i) Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee.

(ii) Each renewal fee shall be paid on or before June 30 of each year.

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(2) The application shall include the following information:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's name;

(b) the name of the pesticide;

(c) a complete copy of the label which will appear on the pesticide; and

(d) any information prescribed by rule of the department considered necessary for the safe and effective use of the pesticide.

(3) (a) Forms for the renewal of registration shall be mailed to registrants at least 30 days before their registration expires.

(b) A registration in effect on June 30 for which a renewal application has been filed and the registration fee tendered shall continue in effect until the applicant is notified either that the registration is renewed or that it is suspended or revoked pursuant to Section 4-14-8.

(4) The department may, before approval of any registration, require the applicant to submit the complete formula of any pesticide including active and inert ingredients and may also, for any pesticide not registered according to 7 U.S.C. Sec. 136a or for any pesticide on which restrictions are being considered, require a complete description of all tests and test results that support the claims made by the applicant or the manufacturer of the pesticide.

(5) A registrant who desires to register a pesticide to meet special local needs according to 7 U.S.C. Sec. 136v(c) shall, in addition to complying with Subsections (1) and (2), satisfy the department that:

(a) a special local need exists;

(b) the pesticide warrants the claims made for it;

(c) the pesticide, if used in accordance with commonly accepted practices, will not cause unreasonable adverse effects on the environment; and

(d) the proposed classification for use conforms with 7 U.S.C. Sec. 136a(d).

(6) No registration is required for a pesticide distributed in this state pursuant to an experimental use permit issued by the EPA or under Section 4-14-5.

(7) No pesticide dealer may distribute a restricted use pesticide in this state without a license.

(8) A person shall receive a license before applying:

(a) a restricted use pesticide; or

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(b) a general use pesticide for hire or in exchange for compensation.

(9) (a) A license to engage in an activity listed in Subsection (7) or (8) may be obtained by:

(i) submitting an application on a form provided by the department;

(ii) paying the license fee determined by the department according to Subsection 4-2-2(2); and

(iii) complying with the rules adopted as authorized by this chapter.

(b) A person may apply for a triennial license that expires on December 31 ~~[(i) of the calendar year in which the license is issued; or (ii)]~~ of the second calendar year after the calendar year in which the license is issued.

(c) Notwithstanding Section 63J-1-504, the department shall retain the fees as dedicated credits and may only use the fees to administer and enforce:

(i) this chapter[-]; and

(ii) any other chapter of this title for the purpose of improving rangeland health.

Section 16. Section **4-18-5** is amended to read:

4-18-5. Conservation commission -- Functions and duties.

(1) The commission shall:

(a) facilitate the development and implementation of the strategies and programs necessary to protect, conserve, utilize, and develop the soil and water resources of the state;

(b) disseminate information regarding districts' activities and programs;

(c) supervise the formation, reorganization, or dissolution of districts according to the requirements of Title 17D, Chapter 3, Conservation District Act;

(d) prescribe uniform accounting and recordkeeping procedures for districts and require each district to submit annually an audit of its funds to the commission;

(e) approve and make loans for agricultural purposes, from the Agriculture Resource Development Fund for:

(i) ~~[nonfederal]~~ rangeland improvement and management projects;

(ii) watershed protection and flood prevention projects;

(iii) agricultural cropland soil and water conservation projects; and

(iv) programs designed to promote energy efficient farming practices;

(f) administer federal or state funds, including loan funds under this chapter, in

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accordance with applicable federal or state guidelines and make loans or grants from those funds to land occupiers for:

(i) the conservation of soil or water resources; and

(ii) maintenance of rangeland improvement projects;

(g) seek to coordinate soil and water protection, conservation, and development activities and programs of state agencies, local governmental units, other states, special interest groups, and federal agencies; and

(h) plan watershed and flood control projects in cooperation with appropriate local, state, and federal authorities and coordinate flood control projects in the state.

(2) The commission may:

(a) employ, with the approval of the department, an administrator and necessary technical experts and employees;

(b) execute contracts or other instruments necessary to exercise its powers;

(c) sue and be sued; and

(d) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out the powers and duties specified in Subsections (1)(d), (e), (f), and (2)(b).

Section 17. Section **4-20-3** is amended to read:

4-20-3. Rangeland Improvement Account distribution.

(1) The department shall distribute restricted account money as provided in this section.

(a) The department shall:

(i) distribute pro rata to each school district the monies received by the state under Subsection 4-20-2(1)(b)(i) from the sale or lease of public lands based upon the amount of revenue generated from the sale or lease of public lands within the district; and

(ii) ensure that all monies generated from the sale or lease of public lands within a school district are credited and deposited to the general school fund of that school district.

(b) (i) After the commissioner approves a request from a regional board, the department shall distribute pro rata to each regional board monies received by the state under Subsection 4-20-2(1)(b)(i) from fees based upon the amount of revenue generated from the imposition of fees within that grazing district.

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(ii) The regional board shall expend monies received in accordance with Subsection (2).

(c) (i) The department shall distribute or expend monies received by the state under Subsections 4-20-2(1)(b)(ii) through (iv) for the purposes outlined in Subsection (2).

(ii) The department may require entities seeking funding from sources outlined in Subsections 4-20-2(1)(b)(ii) through (iv) to provide matching funds.

(2) The department shall ensure that restricted account distributions or expenditures under Subsections (1)(b) and (c) are used for:

(a) range improvement and maintenance;

(b) the control of predatory and depredating animals;

(c) the control, management, or extermination of invading species, range damaging organisms, and poisonous or noxious weeds;

(d) the purchase or lease of lands or a conservation easement for the benefit of a grazing district;

(e) watershed protection, development, distribution, and improvement; and

(f) the general welfare of livestock grazing within a grazing district.

Section 18. Section **4-20-10** is enacted to read:

4-20-10. Promotion of multiple use of rangeland resources.

(1) The department shall work cooperatively to promote efficient multiple-use management of the rangeland resources of the public lands administered by the federal Bureau of Land Management within the state to benefit the overall public interest.

(2) The department may serve as an independent resource for mediating disputes concerning permit issues within the scope of Subsection (1).

Section 19. Section **4-21-3** is amended to read:

4-21-3. Beef promotion fee -- Deposit of revenue -- Fee set by referendum.

(1) (a) The department shall collect a fee established as required by Subsection (2) on all fee brand inspected cattle upon change of ownership or slaughter in an amount not more than \$1 or less than 25 cents.

(b) The fee is collected by the local brand inspector at the time of inspection of cattle, or deducted and collected by the marketing agency or the purchaser.

(c) All revenue collected under this section shall be paid to the department, which shall

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deposit the revenue in an agency fund that is hereby created and [~~shall be~~] is known as the "Beef Promotion Fund."

(2) Before a fee assessed under Subsection (1) becomes effective, the department shall give notice of the proposed fee to all known beef and dairy cattle producers in the state, invite all beef and dairy cattle producers to register to vote in a referendum, conduct a hearing on the proposed fee change, and conduct a referendum where at least 50% of the registered producers cast a vote with a majority of those voting casting an affirmative vote on the proposed fee level.

(3) Any fee currently assessed by the department continues in effect until modified by the department under Subsections (1) and (2).

(4) The fee assessed under this section [~~shall be reduced by~~] is in addition to the amount of any assessment required to be paid pursuant to the Beef Promotion and Research Act of 1985, 7 U.S.C. Sec. 2901 et seq.

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Legislative Review Note

~~as of 12-28-10 10:47 AM~~

~~Office of Legislative Research and General Counsel~~ Section 20. Section 4-32-3 is amended to read:

4-32-3. Definitions.

As used in this chapter:

(1) "Adulterated" means any meat or poultry product that:

(a) bears or contains any poisonous or deleterious substance that may render it injurious to health, but, if the substance is not an added substance, the meat or poultry product is not considered adulterated under this subsection if the quantity of the substance in or on the meat or poultry product does not ordinarily render it injurious to health;

(b) bears or contains, by reason of the administration of any substance to the animal or otherwise, any added poisonous or added deleterious substance that in the judgment of the commissioner makes the meat or poultry product unfit for human food;

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(c) contains, in whole or in part, a raw agricultural commodity and that commodity bears or contains a pesticide chemical that is unsafe within the meaning of 21 U.S.C. Sec. 346a;

(d) bears or contains any food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348;

(e) bears or contains any color additive that is unsafe within the meaning of 21 U.S.C. Sec. 379e; provided, that a meat or poultry product that is not otherwise considered adulterated under Subsection (1)(c) or (d) of this section is considered adulterated if use of the pesticide chemical, food additive, or color additive is prohibited in official establishments by federal law, regulation, or standard;

(f) consists, in whole or in part, of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) has been prepared, packaged, or held under unsanitary conditions if the meat or poultry product may have become contaminated with filth, or if it may have been rendered injurious to health;

(h) is in whole or in part the product of an animal that died other than by slaughter;

(i) is contained in a container that is composed, in whole or in part, of any poisonous or deleterious substance that may render the meat or poultry product injurious to health;

(j) has been intentionally subjected to radiation, unless the use of the radiation conforms with a regulation or exemption in effect pursuant to 21 U.S.C. Sec. 348;

(k) has a valuable constituent in whole or in part omitted, abstracted, or substituted; or if damage or inferiority is concealed in any manner; or if any substance has been added, mixed, or packed with the meat or poultry product to increase its bulk or weight, or reduce its quality or strength, or to make it appear better or of greater value; or

(l) is margarine containing animal fat and any of the raw material used in the margarine consists in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal" means a domesticated or captive mammalian or avian species.

(3) "Animal food manufacturer" means any person engaged in the business of preparing animal food derived from animal carcasses or parts or products of the carcasses.

(4) "Ante mortem inspection" means an inspection of a live animal immediately before slaughter.

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(5) "Broker" means any person engaged in the business of buying and selling meat or poultry products other than for the person's own account.

(6) "Capable of use as human food" means any animal carcass, or part or product of a carcass, unless it is denatured or otherwise identified as required by rules of the department to deter its use as human food.

(7) "Commissioner" includes a person authorized by the commissioner to carry out this chapter's provisions.

(8) "Container" or "package" means any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

(9) "Custom exempt processing" means processing meat or wild game as a service for the person who owns the meat or wild game and uses the meat and meat food products for the person's own consumption, including consumption by immediate family members and non-paying guests.

(10) "Custom exempt slaughter":

(a) means slaughtering an animal as a service for the person who owns the animal and uses the meat and meat products for the person's own consumption, including consumption by immediate family members and non-paying guests; and

(b) includes farm custom slaughter.

(11) "Director of meat inspection" means a licensed graduate veterinarian whose duties and responsibilities are specified by the commissioner.

(12) "Diseased animal":

(a) means an animal that:

(i) is diagnosed with a disease not known to be cured; or

(ii) has exhibited signs or symptoms of a disease that is not known to be cured; and

(b) does not include an otherwise healthy animal that suffers only from injuries such as fractures, cuts, or bruises.

(13) "Farm custom slaughter" means custom exempt slaughtering of an animal for an owner without inspection.

(14) "Farm custom mobile unit" means a portable slaughter vehicle or trailer that is used by a farm custom slaughter licensee to slaughter animals [on the animal owner's property].

(15) "Farm custom slaughter license" means a license issued by the department to

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allow farm custom slaughter.

(16) "Farm custom slaughter tag" means a tag that specifies the animal's identification and certifies its ownership, which is issued by the department through a brand inspector to the owner of the animal before it is slaughtered.

(17) "Federal acts" means:

(a) the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq;

(b) the Federal Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq.; and

(c) the Humane Slaughter Act, 7 U.S.C. 1901 et seq.

(18) "Federal Food, Drug and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040) (21 U.S.C. 301 et seq.), and any amendments to it.

(19) "Immediate container" means any consumer package, or any other container in which meat or poultry products not consumer packaged, are packed.

(20) "Inspector" means a licensed veterinarian or competent lay person working under the supervision of a licensed graduate veterinarian.

(21) "Label" means a display of printed or graphic matter upon any meat or poultry product or the immediate container, not including package liners, of any such product.

(22) "Labeling" means all labels and other printed or graphic matter:

(a) upon any meat or poultry product or any of its containers or wrappers; or

(b) accompanying a meat or poultry product.

(23) "Licensee" means a person who holds a valid farm custom slaughter license.

(24) "Meat" means the edible muscle and other edible parts of an animal, including edible:

(a) skeletal muscle;

(b) organs;

(c) muscle found in the tongue, diaphragm, heart, or esophagus; and

(d) fat, bone, skin, sinew, nerve, or blood vessel that normally accompanies meat and is not ordinarily removed in processing.

(25) "Meat establishment" means a plant or fixed premises used to:

(a) slaughter animals for human consumption; or

(b) process meat or poultry products for human consumption.

(26) "Meat product" means any product capable of use as human food that is made

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wholly or in part from any meat or other part of the carcass of any non-avian animal.

(27) "Misbranded" means any meat or poultry product that:

(a) bears a label that is false or misleading in any particular;

(b) is offered for sale under the name of another food;

(c) is an imitation of another food, unless the label bears, in type of uniform size and prominence, the word "imitation" followed by the name of the food imitated;

(d) if its container is so made, formed, or filled as to be misleading;

(e) does not bear a label showing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided, that under this Subsection (27)(e), exemptions as to meat and poultry products not in containers may be established by rules of the department and that under this Subsection (27)(e)(ii), reasonable variations may be permitted, and exemptions for small packages may be established for meat or poultry products by rule of the department;

(f) does not bear any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) is a food for which a definition and standard of identity or composition has been prescribed by rules of the department under Section 4-32-7 if the food does not conform to the definition and standard and the label does not bear the name of the food and any other information that is required by the rule;

(h) is a food for which a standard of fill has been prescribed by rule of the department for the container and the actual fill of the container falls below that prescribed unless its label bears, in a manner and form as the rule specifies, a statement that it falls below the standard;

(i) is a food for which no standard or definition of identity has been prescribed under Subsection (27)(g) unless its label bears:

(i) the common or usual name of the food, if there be any; and

(ii) if it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the

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department, be designated as spices, flavorings, and colorings without naming each; provided, that to the extent that compliance with the requirements of this Subsection (27)(i)(ii) is impracticable, or results in deception or unfair competition, exemptions shall be established by rule;

(j) is a food that purports to be or is represented to be for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties as the department, after consultation with the Secretary of Agriculture of the United States, prescribes by rules as necessary to inform purchasers as to its value for special dietary uses;

(k) bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this subsection are impracticable, exemptions shall be prescribed by rules of the department; or

(l) does not bear directly thereon and on its containers, as the department may prescribe by rule, the official inspection legend and establishment number of the official establishment where the product was prepared, and, unrestricted by any of the foregoing, other information as the department may require by rule to assure that the meat or poultry product will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain it in a wholesome condition.

(28) "Official certificate" means any certificate prescribed by rules of the department for issuance by an inspector or other person performing official functions under this chapter.

(29) "Official device" means any device prescribed or authorized by the commissioner for use in applying any official mark.

(30) "Official establishment" means any establishment at which inspection of the slaughter of animals or the preparation of meat or poultry products is maintained under the authority of this chapter.

(31) "Official inspection legend" means any symbol prescribed by rules of the department showing that a meat or poultry product was inspected and passed in accordance with this chapter.

(32) "Official mark" means the official legend or any other symbol prescribed by rules of the department to identify the status of any animal carcass or meat or poultry product under this chapter.

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(33) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity," have the same meanings for purposes of this chapter as ascribed to them in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(34) "Post mortem inspection" means an inspection of a slaughtered food animal's carcass after slaughter.

(35) "Poultry" means any domesticated bird, whether living or dead.

(36) "Poultry product" means any product capable of use as human food that is made wholly or in part from any poultry carcass, excepting products that contain poultry ingredients in relatively small proportion or that historically have not been considered by consumers as products of the poultry food industry, and that are exempted from definition as a poultry product by the commissioner.

(37) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

(38) "Process" means to cut, grind, manufacture, compound, smoke, intermix, or prepare meat or poultry products.

(39) "Renderer" means any person engaged in the business of rendering animal carcasses, or parts or products of animal carcasses, except rendering conducted under inspection or exemption under this chapter.

(40) "Slaughter" means:

(a) the killing of an animal in a humane manner including skinning or dressing; or

(b) the process of performing any of the specified acts in preparing an animal for human consumption.

(41) "Wild game" means an animal, the products of which are food that is not classified as a domesticated food animal, captive game animal, or captive game bird, including the following when not domesticated:

(a) deer;

(b) elk;

(c) antelope;

(d) moose;

(e) bison;

(f) bear;

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(g) rabbit;

(h) squirrel;

(i) raccoon; and

(j) birds.

Section 21. Section 4-32-4 is amended to read:

4-32-4. Meat establishment license -- Slaughtering livestock except in licensed meat establishment prohibited -- Exceptions -- Violation a misdemeanor.

(1) A person may not, except in a licensed meat establishment, slaughter animals for human consumption or assist other persons in the slaughter or processing of animals except as otherwise provided in Subsection (2), (3), or (4).

(2) A person who raises an animal or an employee of that person may slaughter an animal without a farm custom slaughter license if:

~~[(a) (i) the animal is slaughtered on property owned by the person; and]~~

~~[(ii) (A)] (a) slaughtering or processing animals is not prohibited by local ordinance;~~

~~[and]~~

~~[(B)] (b) any hide, viscera, blood, or other tissue is disposed of by removal to a rendering facility, landfill, or by burial, as allowed by law;~~

~~[(b)] (c) the meat or poultry product derived from the slaughtered animal is consumed exclusively by the person or the person's immediate family, regular employees of the person, or nonpaying guests; and~~

~~[(c)] (d) the meat or poultry product is marked "Not For Sale."~~

(3) Farm custom slaughter may be performed by a person who holds a valid farm custom slaughter license.

(4) A retail establishment that processes meat or poultry products primarily for sale to individual consumers at the retail establishment is exempt from provisions requiring licensing of a meat establishment if:

(a) the retail establishment is not engaged in slaughter operations;

(b) the retail establishment sells the processed meat and poultry products only to individual consumers at the retail establishment, or to restaurants or institutions for use in meals served at those restaurants or institutions;

(c) the retail establishment's sales of processed meat and poultry products to restaurants

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or institutions do not exceed the federal adjusted dollar limitation, or 25 percent by dollar volume of all meat sales from the retail establishment, whichever is less;

(d) the retail establishment receives meat only from a meat establishment licensed under this chapter or inspected by the United States Department of Agriculture under 21 U.S.C. Sections 451 to 695;

(e) the operator of the retail establishment does not sell, to any person other than an individual consumer, any meat or poultry product that is cured, smoked, seasoned, canned, or cooked at the retail establishment;

(f) the retail establishment does not sell any meat or poultry product that is cured, smoked, seasoned, canned, or cooked at the retail establishment at a location other than the retail establishment; and

(g) the operator of the retail establishment does not sell, to any person other than an individual consumer, any meat product made by combining meat from different animal species at the retail establishment.

(5) Any person who violates this section, except as otherwise provided in Subsection (6), is guilty of a class C misdemeanor.

(6) Any person who offers for sale or sells any uninspected meat or poultry product is guilty of a class B misdemeanor.