

## SB0244S03 compared with SB0244S02

~~text~~ shows text that was in SB0244S02 but was deleted in SB0244S03.

text shows text that was not in SB0244S02 but was inserted into SB0244S03.

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**Representative John G. Mathis** proposes the following substitute bill:

### UTAH DEPARTMENT OF AGRICULTURE AND FOOD

#### AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David P. Hinkins**

House Sponsor: John G. Mathis

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#### LONG TITLE

##### General Description:

This bill amends provisions relating to the Department of Agriculture and Food.

##### Highlighted Provisions:

This bill:

- ▶ changes the membership of the Agricultural Advisory Board;
- ▶ modifies provisions relating to cooperative agreements;
- ▶ modifies provisions relating to the Invasive Species Mitigation Account;
- ▶ allows the Department of Agriculture and Food to use a portion of the Invasive Species Mitigation Account on department administration or project expenses;
- ▶ modifies provisions relating to the sale and testing of raw milk;

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- ▶ changes the membership of the State Weed Committee;
- ▶ removes the requirement for:
  - ▶ Senate consent of Utah Horse Racing Commission members; and
  - ▶ gubernatorial appointments of Utah Horse Racing Commission members from each congressional district;
- ▶ amends provisions prohibiting the release of swine on public or private property for hunting purposes;
- ▶ requires the Department of Agriculture and Food to make rules relating to the release of swine on private property for hunting purposes;
- ~~‡~~ ▶ ~~allows the Legislature to appropriate money from the Agriculture Resource Development Fund to the Utah Rural Rehabilitation Fund;~~
- ‡ ▶ allows an agricultural producer to drive off or relocate a wild turkey that causes material damage to the agricultural producer's property; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

- 4-2-7, as last amended by Laws of Utah 2010, Chapters 118 and 286
- 4-2-8.6, as last amended by Laws of Utah 2010, Chapter 278
- 4-2-8.7, as last amended by Laws of Utah 2012, Chapter 124
- 4-3-14, as last amended by Laws of Utah 2009, Chapter 183
- 4-17-3.5, as last amended by Laws of Utah 2010, Chapters 286 and 324
- ~~‡~~ ~~4-18-6, as last amended by Laws of Utah 2007, Chapter 179~~
- ‡ 4-25-12.1, as enacted by Laws of Utah 2012, Chapter 331
- 4-38-3, as last amended by Laws of Utah 2010, Chapter 286

#### ENACTS:

4-23-12, Utah Code Annotated 1953

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

Section 1. Section 4-2-7 is amended to read:

### **4-2-7. Agricultural Advisory Board created -- Composition -- Responsibility --**

#### **Terms of office -- Compensation.**

(1) There is created the Agricultural Advisory Board composed of [~~14~~] 16 members, with each member representing [each] one of the following:

- (a) Utah Farm Bureau Federation;
- (b) Utah Farmers Union;
- (c) Utah Cattlemen's Association;
- (d) Utah Wool Growers' Association;
- (e) Utah Dairymen's Association;
- (f) Utah Pork Producer's Association;
- (g) egg and poultry producers;
- (h) Utah Veterinary Medical Association;
- (i) Livestock Auction Marketing Association;
- (j) Utah Association of Conservation Districts;
- (k) the Utah horse industry;
- (l) the food processing industry;
- (m) the fruit and vegetable industry;
- (n) the turkey industry;
- ~~[(m)]~~ (o) manufacturers of food supplements; and
- ~~[(n)]~~ (p) a consumer affairs group.

(2) The Agricultural Advisory Board shall advise the commissioner regarding:

- (a) the planning, implementation, and administration of the department's programs; and
- (b) the establishment of standards governing the care of livestock and poultry [~~as part of which the Agricultural Advisory Board may consider~~], including consideration of:

- (i) food safety;
- (ii) local availability and affordability of food; and
- (iii) acceptable practices for livestock and farm management.

(3) (a) Except as required by Subsection (3)(c), members are appointed by the commissioner to four-year terms of office.

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(b) ~~[Representatives]~~ The commissioner shall appoint representatives of the organizations cited in Subsections (1)(a) through (h) ~~[shall be appointed]~~ to the Agricultural Advisory Board ~~[by the commissioner]~~ from a list of nominees submitted by each organization.

(c) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(d) Members may be removed at the discretion of the commissioner upon the request of the group they represent.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The board shall elect one member to serve as chair of the Agricultural Advisory Board for a term of one year.

(5) (a) The board shall meet four times annually, but may meet more often at the discretion of the chair.

(b) Attendance of ~~[seven]~~ nine members at a duly called meeting constitutes a quorum for the transaction of official business.

(6) 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 2. Section **4-2-8.6** is amended to read:

**4-2-8.6. Cooperative agreements and grants to rehabilitate areas infested with invasive species or prevent wildland fire.**

After consulting with the Department of Natural Resources and the Conservation Commission, the department may:

(1) enter into a cooperative agreement with a political subdivision, a state agency, a federal agency, or a federal, state, tribal, or private landowner to:

(a) rehabilitate an area that:

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(i) is infested with an invasive species; or

(ii) has a fuel load that may contribute to a catastrophic wildland fire; or

(b) prevent catastrophic wildland fire through land restoration in a watershed that:

~~[(a)]~~ (i) is impacted by [~~cheatgrass or other~~] an invasive species; or

~~[(b)]~~ (ii) has a fuel load that may contribute to a catastrophic wildland fire;

(2) expend money from the Invasive Species Mitigation Account created in Section 4-2-8.7; and

(3) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to:

(a) administer this section; and

(b) give grants from the Invasive Species Mitigation Account.

Section 3. Section 4-2-8.7 is amended to read:

### **4-2-8.7. Invasive Species Mitigation Account created.**

(1) As used in this section, "project" means an undertaking [~~that prevents catastrophic wildland fire through land restoration in a watershed or rehabilitation of an area infested with invasive species]~~ that:

~~[(a) is impacted by cheatgrass or other invasive species; or]~~

~~[(b) has a fuel load that may contribute to a catastrophic wildland fire.]~~

(a) rehabilitates an area that:

(i) is infested with an invasive species; or

(ii) has a fuel load that may contribute to a catastrophic wildland fire; or

(b) prevents catastrophic wildland fire through land restoration in a watershed that:

(i) is impacted by an invasive species; or

(ii) has a fuel load that may contribute to a catastrophic wildland fire.

(2) (a) There is created a restricted account within the General Fund known as the "Invasive Species Mitigation Account."

(b) The restricted account shall consist of:

(i) money appropriated by the Legislature;

(ii) grants from the federal government; and

(iii) grants or donations from a person.

(3) (a) After consulting with the Department of Natural Resources and the

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Conservation Commission, the department may expend money in the restricted account:

- (i) on a project implemented by:
  - (A) the department; or
  - (B) the Conservation Commission; or
- (ii) by giving a grant for a project to:
  - (A) a state agency;
  - (B) a federal agency;
  - (C) a federal, state, tribal, or private landowner; or
  - (D) a political subdivision.

(b) The department may use up to 10% of restricted account funds expended under

Subsection (3)(a)(i) on:

- (i) department administration; or
- (ii) project planning, monitoring, and implementation expenses.
- (c) A federal landowner that receives restricted account funds for a project shall match

the funds received from the restricted account with an amount that is equal to or greater than the amount received from the restricted account.

~~[(b) A grant to a federal landowner shall be matched with at least an equal amount of money by the federal landowner.]~~

~~[(c) In expending the money authorized by Subsection (3)(a)(i), the department shall use existing infrastructure and employees to plan and implement the project.]~~

(4) In giving a grant, the department shall consider the effectiveness of a project in preventing at least one of the following:

- ~~[(a) first, the risk to public safety and health from:]~~
- ~~[(i) air pollution;]~~
- ~~[(ii) flooding;]~~
- ~~[(iii) reduced visibility on a highway; or]~~
- ~~[(iv) increasing encroachment of an invasive species;]~~
- ~~[(b) second, damage to the environment, including:]~~
- ~~[(i) soil erosion;]~~
- ~~[(ii) degraded water quality; and]~~
- ~~[(iii) release of carbon; and]~~

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~~[(c) third, damage to:]~~

~~[(i) a local economy; and]~~

~~[(ii) habitat for wildlife or livestock.]~~

(a) encroachment of an invasive species;

(b) soil erosion;

(c) flooding;

(d) the risk of catastrophic wildfire; or

(e) damage to habitat for wildlife or livestock.

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

### **4-3-14. Sale of raw milk -- Suspension of producer's permit -- Severability not permitted.**

(1) As used in this section:

(a) "Batch" means all the milk emptied from one bulk tank and bottled in a single day.

(b) "Self-owned retail store" means a retail store:

(i) of which the producer owns at least 51% of the value of the real property and tangible personal property used in the operations of the retail store; or

(ii) for which the producer has the power to vote at least 51% of any class of voting shares or ownership interest in the business entity that operates the retail store.

(2) Raw milk may be ~~[sold]~~ manufactured, distributed, sold, delivered, held, stored, or offered for sale if:

(a) the producer obtains a permit from the department to produce milk under Subsection 4-3-8(5);

(b) the sale and delivery of the milk is made upon the premises where the milk is produced, except as provided by Subsection (3);

(c) ~~[it]~~ the raw milk is sold to consumers for household use and not for resale;

(d) ~~[it]~~ the raw milk is bottled or packaged under sanitary conditions and in sanitary containers on the premises where the raw milk is produced;

(e) ~~[it]~~ the raw milk is labeled "raw milk" and meets the labeling requirements under 21 C.F.R. Parts 101 and 131 and rules established by the department;

(f) ~~[it]~~ the raw milk is:

(i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being

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drawn from the animal;

(ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the animal; and

(iii) maintained at 41 degrees Fahrenheit or a lower temperature until ~~it~~ the raw milk is delivered to the consumer;

(g) the bacterial count of the raw milk does not exceed 20,000 colony forming units per milliliter;

(h) ~~[the bacterial plate count and]~~ the coliform count of the raw milk ~~[meet the bacterial and coliform enforcement standards for grade A pasteurized milk]~~ does not exceed 10 colony forming units per milliliter;

(i) the production of the raw milk conforms to departmental rules for the production of grade A milk;

(j) all dairy animals on the premises are:

(i) permanently and individually identifiable; and

(ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and

(k) any person on the premises performing any work in connection with the production, bottling, handling, or sale of the raw milk is free from communicable disease.

(3) A producer may ~~sell~~ distribute, sell, deliver, hold, store, or offer for sale raw ~~whole~~ milk at a self-owned retail store, which is properly staffed, if, in addition to the requirements of Subsection (2), the producer:

(a) transports the raw milk from the premises where the raw milk is produced to the self-owned retail store in a refrigerated truck where the raw milk is maintained at 41 degrees Fahrenheit or a lower temperature;

(b) retains ownership of the raw milk until it is sold to the final consumer, including transporting the raw milk from the premises where the raw milk is produced to the self-owned retail store without any:

(i) intervening storage;

(ii) change of ownership; or

(iii) loss of physical control;

(c) stores the raw milk at 41 degrees Fahrenheit or a lower temperature in a display case equipped with a properly calibrated thermometer at the self-owned retail store;



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(d) places a sign above the display case at the self-owned retail store that reads, "Raw Unpasteurized Milk";

(e) labels the raw milk with:

(i) a date, no more than nine days after the raw milk is produced, by which the raw milk should be sold;

(ii) the statement "Raw milk, no matter how carefully produced, may be unsafe.";

(iii) handling instructions to preserve quality and avoid contamination or spoilage; and

(iv) any other information required by rule;

(f) refrains from offering the raw milk for sale until:

(i) the department or a third party certified by the department tests each batch of raw milk [~~is tested~~] for standard plate count and coliform count [~~from an official sample taken at the self-owned retail store and tested by a third party certified by the department~~]; and

(ii) the test results meet the minimum standards established for those tests;

(g) (i) maintains a database of the raw milk sales; and

(ii) makes the database available to the Department of Health during the self-owned retail store's business hours for purposes of epidemiological investigation;

(h) refrains from offering any pasteurized milk at the self-owned retail store;

(i) ensures that the plant and retail store complies with Title 4, Chapter 5, Utah Wholesome Food Act, and the rules governing food establishments enacted under Section 4-5-9; and

~~[(j) participates in a hazard analysis critical control point system as established by the United States Food and Drug Administration;]~~

~~[(k) conducts monthly tests on a sample taken from a batch of milk for:]~~

~~[(i) Listeria monocytogenes;]~~

~~[(ii) Salmonella typhimurium;]~~

~~[(iii) Salmonella dublin;]~~

~~[(iv) Campylobacter jejuni; and]~~

~~[(v) E. Coli 0157:H7; and]~~

~~[(†)]~~ (j) complies with all applicable rules adopted as authorized by this chapter.

(4) ~~[The]~~ A person [~~conducting the tests~~] who conducts a test required by Subsection (3) shall send a copy of the test results to the department as soon as the test results are

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available.

(5) (a) The department shall adopt rules, as authorized by Section 4-3-2, governing the sale of raw ~~whole~~ milk at a self-owned retail store.

(b) The rules adopted by the department shall include rules regarding:

(i) permits;

(ii) building and premises requirements;

(iii) sanitation and operating requirements, including bulk milk tanks requirements;

(iv) additional tests~~[, including a test for pathogens]~~;

(v) frequency of inspections, including random cooler checks;

(vi) recordkeeping; and

(vii) packaging and labeling.

(c) (i) The department shall establish and collect a fee for the tests and inspections required by this section and by rule ~~[by following the procedures and requirements of]~~ in accordance with Section 63J-1-504.

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

(6) (a) The department shall suspend a permit issued under Section 4-3-8 if:

(i) two out of four consecutive samples or two samples in a 30-day period violate sample limits established under this section; or

(ii) a producer violates ~~[any]~~ a provision of this section or ~~[any rules]~~ a rule adopted as authorized by this section.

(b) The department may reissue a permit that has been suspended under Subsection (6)(a) if the producer has complied with all of the requirements of this section and rules adopted as authorized by this section.

(7) For ~~[2008 and 2009]~~ 2014 and 2015, the Department of Health and the Department of Agriculture and Food shall report on or before November 30th to the Natural Resources, Agriculture, and Environment Interim Committee and the Health and Human Services Interim Committee on any health problems resulting from the sale of raw whole milk at self-owned retail stores.

(8) (a) If any subsection of this section or the application of any subsection to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction,

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the remainder of the section may not be given effect without the invalid subsection or application.

(b) The provisions of this section may not be severed.

Section 5. Section 4-17-3.5 is amended to read:

### **4-17-3.5. Creation of State Weed Committee -- Membership -- Powers and duties -- Expenses.**

(1) There is created a State Weed Committee composed of [~~five~~] eight members, [~~one~~] with each member representing [~~each~~] one of the following:

(a) the Department of Agriculture and Food;

(b) the Department of Natural Resources;

[~~(b)~~] (c) the Utah State University Agricultural Experiment Station;

[~~(c)~~] (d) the Utah State University Extension Service;

[~~(d)~~] (e) the Utah Association of Counties; [~~and~~]

[~~(e)~~] (f) private agricultural industry[-];

(g) the Utah Weed Control Association; and

(h) the Utah Weed Supervisors Association.

(2) The commissioner shall select the members of the committee from those nominated by each of the respective groups or agencies following approval by the Agricultural Advisory Board.

(3) (a) Except as required by Subsection (3)(b), as terms of current committee members expire, the commissioner shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(4) (a) Members may be removed by the commissioner for cause.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) The State Weed Committee shall:

(a) confer and advise on matters pertaining to the planning, implementation, and

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administration of the state noxious weed program;

- (b) recommend names for membership on the committee; and
- (c) serve as members of the executive committee of the Utah Weed Control

Association.

(6) 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 6. ~~Section 4-18-6 is amended to read:~~

~~4-18-6. Agriculture Resource Development Fund -- Contents -- Use of fund money.~~

~~(1) There is created a [revolving loan fund] restricted account known as the Agriculture Resource Development Fund, to be used as a revolving loan fund.~~

~~(2) The Agriculture Resource Development Fund shall consist of:~~

- ~~(a) money appropriated to it by the Legislature;~~
- ~~(b) sales and use tax receipts transferred to the fund pursuant to Section 59-12-103;~~
- ~~(c) money received for the repayment of loans made from the fund;~~
- ~~(d) money made available to the state for agriculture resource development from any source; and~~

~~(e) interest earned on the fund.~~

~~(3) (a) The commission shall make loans from the Agriculture Resource Development Fund as provided by Section 4-18-5.~~

~~(b) The Legislature may appropriate money from the Agriculture Resource Development Fund to the Utah Rural Rehabilitation Fund, created in Section 4-19-4, for use as revolving loan funds in accordance with Section 63A-3-205.~~

~~Section 7.~~ Section 4-23-12 is enacted to read:

**4-23-12. Damage by wild turkeys.**

(1) As used in this section:

(a) "Agricultural producer" means a person who produces an agricultural product.

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(b) "Turkey" means a wild, free ranging turkey and does not include a privately owned or domestic turkey.

(2) Notwithstanding the provisions of Title 23, Wildlife Resources Code, if a turkey materially damages an agricultural producer's private agricultural property, the agricultural producer may:

(a) use a nonlethal method to drive off a turkey from the property; or

(b) capture and relocate a turkey that causes damage to the property.

Section ~~4-8-7~~. Section **4-25-12.1** is amended to read:

### **4-25-12.1. Release of swine for hunting purposes.**

(1) (a) A person may not release swine on public [~~or private~~] property for hunting purposes.

(b) A person may release swine on private property for hunting purposes in accordance with department rules made under Subsection (2).

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules regulating the release of swine on private property for hunting purposes.

Section ~~4-9-8~~. Section **4-38-3** is amended to read:

### **4-38-3. Utah Horse Racing Commission.**

(1) (a) There is created within the Department the Utah Horse Racing Commission.

(b) (i) The commission shall consist of five members who shall be U.S. citizens, Utah residents, and qualified voters of Utah.

(ii) Each member shall have an interest in horse racing.

(c) (i) The governor shall appoint the members of the commission [~~shall be appointed by the governor with the consent of the Senate~~].

(ii) The governor shall appoint commission members from a list of nominees submitted by the commissioner of agriculture and food.

(d) (i) The members of the commission shall be appointed to four-year terms~~[, except that the original members shall be appointed within 30 days after the effective date of this chapter, two of whom shall be appointed for terms expiring December 31, 1992, two for terms expiring December 31, 1994, and one for a term expiring December 31, 1996].~~

(ii) A commission member may not serve more than two consecutive terms.

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~~[(e) The governor shall make the appointments so that a resident of each of Utah's three congressional districts is a member of the commission at all times.]~~

~~[(f)]~~ (e) Each member shall hold office until his or her successor is appointed and qualified.

~~[(g)]~~ (f) Vacancies on the commission shall be filled by appointment by the governor ~~[with the consent of the Senate]~~ for the unexpired term.

~~[(h) Any]~~ (g) (i) A member may be removed from office by the governor for cause after a public hearing.

(ii) Notice of the hearing shall fix the time and place of the hearing and shall specify the charges.

(iii) Copies of the notice of the hearing shall be served on the member by mailing it to the member at his last known address at least 10 days before the date fixed for the hearing.

(iv) The governor may designate a hearing officer to preside over the hearing and report his findings to the governor.

(2) (a) The members of the commission shall annually elect a ~~[chairperson]~~ commission chair.

(b) Three members of the commission shall constitute a quorum for the transaction of any business of the commission.

(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.

(4) All claims and expenditures made under this chapter shall be first audited and passed upon by the commission and when approved shall be paid in the manner provided by law for payment of claims against the state.

(5) Any member of the commission who has a personal or private interest in any matter proposed or pending before the commission shall publicly disclose this fact to the commission and may not vote on the matter.

(6) Any member of the commission who owns or who has any interest or whose spouse

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or member of his immediate family has any interest in a horse participating in a race shall disclose that interest and may not participate in any commission decision involving that race.