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**PLANT PEST EMERGENCY CONTROL**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derrin R. Owens**

Senate Sponsor: Ralph Okerlund

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**LONG TITLE**

**General Description:**

This bill addresses plant pest emergency control.

**Highlighted Provisions:**

This bill:

- ▶ expands the scope of the insect infestation emergency control chapter;
- ▶ modifies definitions;
- ▶ addresses decision and action committees;
- ▶ addresses commissioner's authority to address plant pest emergencies;
- ▶ creates the Plant Pest Fund;
- ▶ amends provisions related to recovery of costs from an owner or occupant; and
- ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 4-1-110**, as renumbered and amended by Laws of Utah 2017, Chapter 345
- 4-35-101**, as renumbered and amended by Laws of Utah 2017, Chapter 345
- 4-35-102**, as renumbered and amended by Laws of Utah 2017, Chapter 345
- 4-35-103**, as renumbered and amended by Laws of Utah 2017, Chapter 345
- 4-35-104**, as renumbered and amended by Laws of Utah 2017, Chapter 345

30 **4-35-105**, as renumbered and amended by Laws of Utah 2017, Chapter 345

31 **4-35-106**, as renumbered and amended by Laws of Utah 2017, Chapter 345

32 **4-35-107**, as last amended by Laws of Utah 2019, Chapter 349

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

35 Section 1. Section **4-1-110** is amended to read:

36 **4-1-110. Growing or storing food for personal or family use.**

37 (1) As used in this section, "family food" means food owned by an individual that is  
38 intended for the individual's consumption, or for consumption by members of the individual's  
39 immediate family, that:

- 40 (a) is legal for human consumption;
- 41 (b) is lawfully possessed; and
- 42 (c) poses no risk:
  - 43 (i) to health;
  - 44 (ii) of spreading [~~insect~~] plant pest infestation; or
  - 45 (iii) of spreading agricultural disease.

46 (2) Family food that is grown by an individual on the individual's property is not  
47 subject to local or federal regulation if growth of the family food:

- 48 (a) does not negatively impact the rights of adjoining property owners; and
- 49 (b) complies with the food safety requirements of this title.

50 (3) A government entity may not confiscate family food described in Subsection (2) or  
51 family food that is stored by the owner in the owner's home or dwelling.

52 (4) (a) If any provision of this section or the application of any provision of this section  
53 to any person or circumstance is held invalid by a final decision of a court of competent  
54 jurisdiction, the remainder of this section shall be given effect without the invalid provision or  
55 application.

56 (b) The provisions of this section are severable.

57 Section 2. Section **4-35-101** is amended to read:

58 CHAPTER 35. PLANT PEST EMERGENCY CONTROL ACT

59 4-35-101. Title.

60 This chapter is known as the "[~~Insect Infestation~~] Plant Pest Emergency Control Act."

61 Section 3. Section 4-35-102 is amended to read:

62 4-35-102. Definitions.

63 As used in this chapter:

64 (1) "Committee" means the Decision and Action Committee created by [~~and~~

65 ~~established under~~] this chapter.

66 (2) "Department" means the Department of Agriculture and Food.

67 (3) "Fund" means the Plant Pest Fund created by Section [4-35-106](#).

68 [~~(3)~~] (4) [~~"Insect"~~] "Plant pest" means [~~any animal in the class insect~~] a biological agent

69 that the commissioner determines to be a threat to agriculture in the state as described in

70 Subsection [4-2-103](#)(1)(k)(i).

71 Section 4. Section 4-35-103 is amended to read:

72 4-35-103. Decision and Action Committee created -- Members -- How appointed

73 -- Duties of committee -- Per diem and expenses allowed.

74 (1) (a) There is created the Decision and Action Committee that consists of not fewer  
75 than six members.

76 (b) One member is the commissioner and one member is appointed to represent the  
77 department.

78 (c) The remaining members of the committee are appointed by the commissioner [~~on~~  
79 ~~an ad hoc basis~~] as necessary from persons directly affected by and involved in the current  
80 [~~insect infestation~~] plant pest emergency.

81 (d) The commissioner, or the commissioner's designee, shall cast the deciding vote in  
82 the event of a tie.

83 (e) The committee is dissolved when the commissioner declares that the [~~insect~~  
84 ~~infestation~~] plant pest emergency is over.

85 (f) Attendance of a majority of committee members at a meeting called of the

86 committee constitutes a quorum for the transaction of business.

87 (g) The committee is governed by Title 52, Chapter 4, Open and Public Meetings Act,  
 88 and Title 63G, Chapter 2, Government Records Access and Management Act.

89 (2) The committee shall~~[(a)]~~ establish a system of priorities for ~~[any insect~~  
 90 ~~infestation]~~ a plant pest emergency~~[, and]~~.

91 ~~[(b) certify to the commissioner any area which requires the establishment of an insect~~  
 92 ~~control district in areas of infestation and in which a simple majority of the landowners and~~  
 93 ~~lessees whose total production exceeds 50% of the production in that area has agreed to pay~~  
 94 ~~proportionate shares of the costs of controlling the insects infesting the area.]~~

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

97 (a) Section 63A-3-106;

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

99 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
 100 63A-3-107.

101 Section 5. Section 4-35-104 is amended to read:

102 **4-35-104. Commissioner to declare emergency -- Powers of commissioner in**  
 103 **emergency.**

104 (1) (a) The commissioner, with the consent of the governor, may declare that ~~[an insect~~  
 105 ~~infestation]~~ a plant pest emergency situation exists ~~[which]~~ that jeopardizes property and  
 106 resources, and designate the area or areas affected.

107 (b) ~~[The]~~ An area referred to in Subsection (1)(a) may include federal lands, after  
 108 notification of the appropriate federal land manager.

109 (2) The commissioner is authorized, subject to ~~[the requirements of]~~ Section 4-35-105,  
 110 to direct all emergency measures the ~~[commission]~~ commissioner considers necessary to  
 111 alleviate the emergency condition.

112 (3) The commissioner shall:

113 (a) ~~[utilize]~~ use equipment, supplies, facilities, personnel, and other available

114 resources;

115 (b) enter into contracts for the acquisition, rental, or hire of equipment, services,  
116 materials, and supplies;

117 (c) accept assistance, services, and facilities offered by federal and local governmental  
118 units or private agencies; and

119 (d) accept on behalf of the state the provisions and benefits of acts of Congress  
120 designated to provide assistance.

121 Section 6. Section **4-35-105** is amended to read:

122 **4-35-105. Commissioner to act upon declaration of a plant pest emergency.**

123 (1) The commissioner initiates operations to control [~~the insect infestation~~] a plant pest  
124 in the designated area or [~~areas: (a)~~] upon declaration of an infestation emergency[~~; as~~  
125 ~~described in Section 4-35-104; and~~].

126 [~~(b) upon deposit of the owner's and lessee's projected proportionate share of the costs.~~]

127 (2) The commissioner and the members of the committee may suspend or terminate  
128 control operations upon a determination that the operations will not significantly reduce the  
129 [~~insect~~] plant pest population in the designated emergency area.

130 Section 7. Section **4-35-106** is amended to read:

131 **4-35-106. Plant Pest Fund.**

132 [~~(1) All money received by the state under this chapter is deposited by the Department~~  
133 ~~of Agriculture and Food as dedicated credits for the purpose of insect control with the state.~~]

134 [~~(2) The dedicated credits may be used as matching funds for:~~]

135 (1) There is created an expendable special revenue fund known as the "Plant Pest  
136 Fund."

137 (2) The fund is funded from:

138 (a) money the plant industry division within the department receives under this title;

139 (b) the landowner's and lessee's share of costs, if required by rule made by the  
140 department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

141 (c) appropriations from the Legislature;

142 (d) federal money deposited into the fund; and

143 (e) the interest and earnings on the fund.

144 (3) The department may only use money in the fund to fund survey, detection,  
145 eradication, or suppression efforts for plant pests with the exception designated in Subsection  
146 (4).

147 (4) The department may annually use an amount not to exceed the lesser of the  
148 following to carry out the department's duties under this chapter:

149 (a) 10% of the fund annually; or

150 (b) \$300,000.

151 (5) (a) The fund may not exceed \$10,000,000 of money deposited under Subsections  
152 (2)(a), (c), and (e).

153 (b) The Division of Finance shall transfer the money described in Subsection (5)(a) in  
154 excess of \$10,000,000 at the end of a fiscal year into the General Fund.

155 (6) Federal money deposited into the fund shall be accounted for separately.

156 ~~[(a)]~~ (7) Fund money may be used as matching funds for participation in programs of  
157 the United States Department of Agriculture~~[-and]~~ for survey, detection, eradication, or  
158 suppression efforts of plant pests.

159 ~~[(b) in contracts with private property owners who own croplands contiguous to~~  
160 ~~infested public rangelands.]~~

161 Section 8. Section **4-35-107** is amended to read:

162 **4-35-107. Notice to owner or occupant -- Corrective action required -- Directive**  
163 **issued by department -- Costs -- Owner or occupant may prohibit treatment.**

164 (1) The department or an authorized agent of the department shall notify the owner or  
165 occupant of the problem and the available alternatives to remedy the problem. The owner or  
166 occupant shall take corrective action within 30 days.

167 (2) (a) If the owner or occupant fails to take corrective action under Subsection (1), the  
168 department may issue a directive for corrective action ~~[which]~~ that shall be taken within 15  
169 days.

170 (b) If the owner or occupant fails to act within the required time, the department shall  
171 take the necessary action.

172 (c) The department may recover full or partial costs incurred for controlling [~~an insect~~  
173 ~~infestation~~] a plant pest emergency from the owner or occupant of the property on whose  
174 property corrective action was taken. The amount of costs to be recovered is at the  
175 department's sole discretion.

176 (3) (a) [~~Owners or occupants~~] An owner or occupant of property may prohibit  
177 treatment by presenting an affidavit from the owner's or occupant's attending physician or  
178 physician assistant to the department [~~which~~] that states that the treatment as planned is a  
179 danger to the owner's or occupant's health.

180 (b) The department shall provide the owner or occupant with alternatives to treatment  
181 [~~which~~] that will abate the [~~infestation~~] plant pest.