

## HB0375S03 compared with HB0375S02

~~deleted text~~ shows text that was in HB0375S02 but was deleted in HB0375S03.

inserted text shows text that was not in HB0375S02 but was inserted into HB0375S03.

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Representative ~~Stephen G.~~Keven J. Handy~~Stratton~~ proposes the following substitute bill:

### AGRICULTURE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen G. Handy**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill addresses the regulation of agriculture.

##### Highlighted Provisions:

This bill:

- ▶ addresses the regulation of bedding, upholstered furniture, quilted clothing, or filling material;
- ▶ addresses the Utah Dairy Commission;
- ▶ removes regulation of marks apart from brands;
- ▶ modifies regulation of brands;
- ▶ updates language related to websites promoting the sale of livestock;
- ▶ modifies language related to travel permits;

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{ → ~~addresses the powers of brand inspectors;~~

- ‡ ▶ modifies provisions related to contagious or infectious disease, epidemic, or poisoning including addressing stopping of vehicles and entering premises;
- ▶ addresses quarantines, including assessment of costs;
- ▶ modifies provisions related to aquaculture or fee fishing facilities, including addressing inspections and stocking; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

4-10-102, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-10-104, as last amended by Laws of Utah 2020, Chapter 316

4-10-106, as last amended by Laws of Utah 2020, Chapters 316 and 354

4-10-107, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-10-112, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-22-103, as last amended by Laws of Utah 2020, Chapter 6

4-24-102, as last amended by Laws of Utah 2018, Chapter 355

4-24-201, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-24-202, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-24-203, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-24-204, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-24-205, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-24-303, as last amended by Laws of Utah 2018, Chapter 355

4-24-305, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-24-306, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-24-401, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-24-402, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-24-403, as renumbered and amended by Laws of Utah 2017, Chapter 345

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4-24-405, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-24-502, as last amended by Laws of Utah 2018, Chapter 355

4-24-504, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-31-115, as last amended by Laws of Utah 2017, Chapter 345

4-31-116, as last amended by Laws of Utah 2017, Chapter 345

4-37-104, as last amended by Laws of Utah 2017, Chapter 412

4-37-204, as last amended by Laws of Utah 2017, Chapter 412

4-37-502, as last amended by Laws of Utah 2010, Chapter 378

4-37-503, as last amended by Laws of Utah 2010, Chapters 286 and 378

4-39-108, as last amended by Laws of Utah 2017, Chapter 345

ENACTS:

4-10-114, Utah Code Annotated 1953

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

Section 1. Section 4-10-102 is amended to read:

**4-10-102. Definitions.**

As used in this chapter:

(1) "Article" means [a] bedding, upholstered furniture, quilted clothing, or filling material.

(2) "Bedding" means a:

(a) quilted, packing, mattress, or hammock pad; or

(b) mattress, boxspring, comforter, quilt, sleeping bag, studio couch, pillow, or cushion made with a filling material that can be used for sleeping or reclining.

(3) "Consumer" means a person who purchases, rents, or leases an article for the article's intended, everyday use.

(4) "Filling material" means cotton, wool, kapok, feathers, down, shoddy, hair, or other material, or a combination of materials, whether loose or in bags, bales, batting, pads, or other prefabricated form that is, or can be, used in bedding, upholstered furniture, or quilted clothing.

(5) "Label" means the display of written, printed, or graphic matter upon a tag or upon the immediate container of a bedding, upholstered furniture, quilted clothing, or filling material.

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(6) (a) "Manufacture" means to make, process, or prepare from new or secondhand material, in whole or in part, a bedding, upholstered furniture, quilted clothing, or filling material for sale.

(b) "Manufacture" does not include making, processing, or preparing an article described in Subsection (6)(a) if:

(i) a person sells three or fewer of the articles per year; and

(ii) the articles are sold by persons who are not primarily engaged in the making, processing, or preparation of the articles.

(7) (a) "New material" means material that has not previously been used in the manufacture of another article used for any purpose.

(b) "New material" includes:

(i) by-products from a textile mill using only new raw material synthesized from a product that has been melted, liquified, and re-extruded[-]; and

(ii) down and feather that has been sterilized in accordance with the department's rules made under Sections 4-10-103 and 4-10-113.

(8) "Owner's own material" means an article owned or in the possession of a person for the person's own or a tenant's use that is sent to another person for manufacture or repair.

(9) "Quilted clothing" means a filled garment or apparel, exclusive of trim used for aesthetic effect, or a stiffener, shoulder pad, interfacing, or other material that is made in whole or in part from filling material and sold or offered for sale.

(10) "Reclaimed" or "reclaimed material" means material that would have otherwise been disposed of as waste or used for energy recovery, but instead is collected and used as a material input, in lieu of new primary material, as defined by rule by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(11) "Recycled" or "recycled material" means material that has been reprocessed from reclaimed material by means of an accepted manufacturing process and made into a final product or into a component for incorporation into a product as defined by rule by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~(10)~~ (12) "Repair" means to restore, recover, alter, or renew bedding or upholstered furniture for a consideration.

~~(11)~~ (13) "Retailer" means a person who sells bedding, upholstered furniture, quilted

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clothing, or filling material to a consumer for use primarily for personal, family, household, or business purposes.

~~[(12)]~~ (14) (a) "Sale" or "sell" means to offer or expose for sale, barter, trade, deliver, consign, lease, or give away any bedding, upholstered furniture, quilted clothing, or filling material.

(b) "Sale" or "sell" does not include a judicial, executor's, administrator's, or guardian's sale of an item described in Subsection ~~[(12)]~~ (14)(a).

~~[(13)]~~ (15) "Secondhand" means an article or filling material, or portion of an article or filling material, that has previously been used.

~~[(14)]~~ (16) "Sterilize" means to disinfect, decontaminate, sanitize, cleanse, or purify as required by Section 4-10-113.

~~[(15)]~~ (17) "Tag" means a card, flap, or strip attached to an article for the purpose of displaying information required by this chapter or under rule made pursuant to it.

~~[(16)]~~ (18) (a) "Used" means an article that has been sold to a consumer and has left the store.

(b) "Used" does not include an article returned to the store:

- (i) with ~~[its]~~ the article's original tags; and
- (ii) in ~~[its]~~ the article's original packaging.

~~[(17)]~~ (19) "Upholstered furniture" means portable or fixed furniture, except fixed seats in motor vehicles, boats, or aircraft, that is made in whole or in part with filling material, exclusive of trim used for aesthetic effect.

~~[(18)]~~ (20) "Wholesaler" means a person who offers an article for resale to a retailer or institution rather than a final consumer.

Section 2. Section **4-10-104** is amended to read:

**4-10-104. Manufacture, repair, or wholesale sale of bedding, upholstered furniture, quilted clothing, or filling material -- Permit required.**

(1) It is unlawful for ~~[any]~~ a person to engage in the manufacture, repair, or wholesale sale of ~~[any]~~ bedding, upholstered furniture, quilted clothing, or filling material without a permit issued by the department.

(2) Notwithstanding Subsection (1), a person may engage in the repair of quilted clothing without a permit issued by the department if that person is not otherwise required to

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obtain a permit issued by the department under this chapter or by department rule.

Section 3. Section **4-10-106** is amended to read:

### **4-10-106. Unlawful acts specified.**

It is unlawful for ~~[any]~~ a person to:

- (1) sell bedding, upholstered furniture, quilted clothing, or filling material as new unless it is made from new material and properly tagged;
- (2) sell bedding, upholstered furniture, quilted clothing or filling material made from secondhand material ~~[which]~~ that is not properly tagged;
- (3) label or sell a used or secondhand article as if it were a new article;
- (4) use burlap or other material ~~[which]~~ that has been used for packing or baling, or to use any unsanitary, filthy, or vermin or insect infested filling material in the manufacture or repair of ~~[any]~~ an article;
- (5) sell bedding, upholstered furniture, quilted clothing or filling material ~~[which]~~ that is not properly tagged regardless of point of origin;
- (6) use ~~[any]~~ a false or misleading statement, term, or designation on ~~[any]~~ a tag;
- (7) use ~~[any]~~ a false or misleading label;
- (8) sell new bedding, upholstered furniture, or quilted clothing with filling material made of down, feather, wool, or hair that has not been properly sterilized; or
- (9) engage in the manufacture, repair, sterilization, or wholesale sale of bedding, upholstered furniture, quilted clothing, or filling material without a permit issued by the department as required by this chapter, unless otherwise exempt under Section 4-10-104 with respect to the repair of quilted clothing.

Section 4. Section **4-10-107** is amended to read:

### **4-10-107. Tagging requirements for bedding, upholstered furniture, and filling material.**

(1) (a) ~~[All bedding]~~ The manufacturer, retailer, or repairer shall securely tag bedding, upholstered furniture, and filling material [shall be securely tagged by the manufacturer, retailer, or repairer].

(b) ~~[Tags]~~ A tag shall be at least six square inches and plainly and indelibly labeled with:

- (i) information as the department requires by rule;

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(ii) according to the filling material type, the words "All New Material," "Secondhand Material," or "Owner's Material," stamped or printed on the label; and

(iii) the word "USED" stamped or printed on the label of a used mattress.

(c) ~~[Each]~~ A label shall be placed on the article in such a position as to facilitate ease of examination.

(2) (a) If more than one type of filling material is used in an item, the percentage, by weight, of each component part shall be listed in order of predominance.

(b) If a descriptive ~~[statements are]~~ statement is made about the frame, cover, or style of the article, ~~[such statements]~~ the statement shall, in fact, be true.

(c) ~~[All quilted]~~ Quilted clothing shall be tagged and labeled in conformity with the Federal Textile Fiber Products Identification Act, 15 U.S.C. Secs. 70 through ~~[70k]~~ 70i.

(3) ~~[No]~~ A person, except the purchaser, may not remove, deface, or alter a tag attached according to this chapter.

(4) A used mattress shall be tagged with the word "USED," in accordance with rules established by the department.

(5) The retailer of a used mattress shall display the mattress so that the "USED" tag is clearly visible to a customer.

(6) (a) For items containing down or feather, a manufacturer, retailer, or repairer may use the terms "reclaimed," "reclaimed material," "recycled," or "recycled material" on a tag attached to the item if the item contains reclaimed or recycled material as defined in Section 4-10-102.

(b) If a term allowed under this Subsection (6) is included on a tag, a manufacturer, retailer, or repairer shall:

(i) indicate whether an item is "new" or "used" as defined in this chapter; and

(ii) comply with Subsection (2).

Section 5. Section **4-10-112** is amended to read:

**4-10-112. Stop sale, use, or removal order authorized -- Conditions for release specified -- Condemnation or seizure -- Procedure specified -- Award of costs authorized.**

(1) (a) The department may issue a "stop sale, use, or removal order" to ~~[any]~~ a manufacturer, repairer, wholesaler, or retailer of any designated article or articles ~~[which it]~~ that the department finds or has reason to believe violates this chapter.

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(b) The order shall be in writing and no article subject to [it] the order shall be removed, offered, or exposed for sale, except upon subsequent written release by the department.

(c) Before a release is issued, the department may require the manufacturer, repairer, wholesaler, or retailer of the "stopped" article to pay the expense incurred by the department in connection with the withdrawal of the article from the market or for any other expense incurred in enforcing this chapter and the department's rules made under this chapter.

(2) (a) The department [~~is authorized~~] may seek in a court of competent jurisdiction [~~to seek~~] an order of seizure or condemnation of [~~any~~] an article [~~which~~] that violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent violation of this chapter.

(b) [~~No bond shall~~] A bond may not be required of the department in an injunctive proceeding brought under this section.

(3) (a) Except as provided in Subsection (3)(b), if condemnation is ordered, the article shall be disposed of as the court directs.

(b) The court may not order condemnation without giving the claimant of the article an opportunity to apply to the court for permission to bring the article into conformance, or for permission to remove [it] the article from the state.

(4) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the article.

Section 6. Section **4-10-114** is enacted to read:

### **4-10-114. Use of reclaimed or recycled material.**

(1) A person may advertise an item filled with down, down and feather, or feather as "new" if it is manufactured using 100% reclaimed or recycled material, provided that the tag clearly discloses that the item is manufactured using 100% reclaimed or recycled material.

(2) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules governing the use of reclaimed or recycled material under this chapter.

Section 7. Section **4-22-103** is amended to read:

### **4-22-103. Utah Dairy Commission created.**

(1) There is created an independent state agency known as the Utah Dairy Commission.



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(2) Subject to Subsection (5), the Utah Dairy Commission consists of 11 members as follows:

(a) nine voting members as follows:

(i) two from District 1, which consists of Cache and Rich Counties;

(ii) four members from District 2, which consists of Box Elder, Weber, Morgan, Salt Lake, Davis, Utah, ~~and~~ Tooele, Wasatch, Summit, Duchesne, Uintah, and Daggett Counties; and

(iii) three members from District 3, which consists of Millard, Beaver, Iron, Washington, Sanpete, Carbon, Emery, Grand, Juab, San Juan, Piute, Wayne, Kane, Garfield, and Sevier Counties; and

(b) two nonvoting members as follows:

(i) the commissioner or the commissioner's designee; and

(ii) the dean of the College of Agriculture at Utah State University, or the dean's designee.

(3) The voting members listed in Subsection (2)(a) shall be elected to four-year terms of office as provided in Section 4-22-105.

(4) A voting member shall enter office on July 1 of the year in which the member is elected. The commission shall stagger the voting members' terms so that no more than three voting members' terms expire in a given year.

(5) (a) To maintain equitable representation of active milk producers on the commission, the commission may, by a two-thirds vote:

(i) alter the boundaries comprising the districts established in Subsection (2)(a); or

(ii) increase or decrease the number of voting members in each district without altering the total number of commission members.

(b) If the commission increases the number of voting members in a district under this Subsection (5), a new member will be elected as provided in Section 4-22-105.

(c) If the commission decreases the number of voting members in a district under this Subsection (5), each member representing the district will continue in office through the end of the member's term and the member whose term expires first will not be replaced or reelected upon expiration of the member's term.

(d) If the commission acts under this Subsection (5), it shall report the changes to the

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Natural Resources, Agriculture, and Environment Interim Committee.

(6) A member shall be:

(a) a citizen of the United States;

(b) 21 years [~~of age~~] old or older;

(c) an active milk producer with five consecutive years of experience in milk production within this state immediately preceding election; and

(d) a resident of Utah and the district represented.

Section 8. Section **4-24-102** is amended to read:

### **4-24-102. Definitions.**

As used in this chapter:

(1) "Brand" means [~~any~~] an identifiable mark, including a tattoo or cutting and shaping of the ears or brisket area, applied to livestock that is intended to show ownership and the mark's location.

(2) "Carcass" means any part of the body of an animal, including entrails and edible meats.

(3) "Domesticated elk" means the same as that term is defined in Section 4-39-102.

(4) "Hide" means any skins or wool removed from livestock.

(5) "Livestock" means cattle, calves, horses, mules, sheep, goats, or hogs.

(6) (a) "Livestock market" means a public market place consisting of pens or other enclosures where cattle, calves, horses, or mules are received on consignment and kept for subsequent sale, either through public auction or private sale.

(b) "Livestock market" does not mean:

(i) a place used solely for liquidation of livestock by a farmer, dairyman, livestock breeder, or feeder who is going out of business; or

(ii) a place where an association of livestock breeders under the association's own management;

(A) offers registered livestock or breeding sires for sale[;];

(B) assumes [~~all~~] the responsibility for the sale[;];

(C) guarantees title to the livestock or sires sold[;]; and

(D) arranges with the department for brand inspection of [~~all~~] the animals sold.

~~[(7) "Mark" means any cutting and shaping of the ears or brisket area of livestock that~~

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is intended to show ownership.]

~~[(8)]~~ (7) "Open range" means land upon which cattle, sheep, or other domestic animals are grazed or permitted to roam by custom, license, lease, or permit.

~~[(9)]~~ (8) "Slaughterhouse" means ~~[any]~~ a building, plant, or establishment where animals are harvested, dressed, or processed and ~~[their]~~ the animals' meat or meat products produced for human consumption.

Section 9. Section 4-24-201 is amended to read:

### Part 2. Brand

**4-24-201. Central Brand Registry -- Division of state into brand districts -- Identical or confusingly similar brands -- Publication of registered brands.**

(1) The department shall maintain a central Brand ~~[and Mark]~~ Registry ~~[which shall list]~~ that lists each brand ~~[or mark]~~ recorded in this state. For each brand ~~[or mark]~~ registered the list shall specify:

(a) the name and address of the registrant;

(b) a facsimile or diagram of the brand recorded ~~[or a diagram showing the kind of mark recorded]~~;

(c) the location of the brand ~~[or mark]~~ upon the animal; and

(d) the date the brand ~~[or mark]~~ is filed in the ~~[registry]~~ central Brand Registry.

(2) The commissioner may divide the state into districts for the purpose of recording ~~[marks]~~ brands, but ~~[no mark]~~ a brand that is identical or confusingly similar to a ~~[mark]~~ brand previously recorded in a district ~~[shall]~~ may not be recorded.

(3) (a) ~~[No]~~ A brand that is identical or confusingly similar to a brand previously filed in the central ~~[brand and mark registry shall]~~ Brand Registry may not be recorded.

(b) If two or more brands ~~[or marks]~~ appear identical or confusingly similar:

(i) the brand ~~[or mark]~~ first recorded shall prevail over a later conflicting brand ~~[or mark]~~; and

(ii) the later brand ~~[or mark]~~ shall be cancelled and ~~[all]~~ the recording fees refunded to the owner.

(4) (a) The commissioner shall publish from time to time a list of all brands ~~[and marks]~~ recorded in the central Brand ~~[and Mark]~~ Registry and may issue supplements to ~~[such]~~ that publication containing additional brands ~~[and marks]~~ or changes in ownership of brands

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~~[and marks]~~ recorded after the last publication.

(b) The ~~[brand book]~~ publication published under Subsection (4)(a) shall contain a facsimile or diagram of all brands ~~[and marks]~~ recorded together with the owner's name and address.

(c) The commissioner shall, upon request, send one copy of the ~~[brand book]~~ publication published under Subsection (4)(a) and each supplement to each brand inspector, county clerk, county sheriff, livestock organization, ~~[and]~~ or any other person ~~[deemed]~~ considered appropriate.

(d) ~~[Brand books and supplements shall be]~~ The department shall make publications under this Subsection (4) available to the public at the cost of printing and distribution per ~~[book or supplement]~~ publication.

Section 10. Section **4-24-202** is amended to read:

### **4-24-202. Recordation of brand.**

(1) (a) Application for a recorded brand ~~[or mark]~~ shall be made to the department upon forms prescribed and furnished by the department.

(b) The application shall contain ~~[such]~~ the information ~~[as]~~ the commissioner prescribes.

(c) ~~[No]~~ An application ~~[shall]~~ may not be approved without payment of the appropriate recording fee.

(d) Upon receipt of a proper application, payment of the recording fee, and recordation of the brand ~~[or mark]~~ in the central Brand ~~[or Mark]~~ Registry of the department, the commissioner shall issue the applicant a certified copy of recording that entitles the applicant to the exclusive use of the brand ~~[or mark]~~ recorded.

(2) (a) ~~[Each]~~ A recorded brand ~~[or mark]~~ filed with the central Brand ~~[and Mark]~~ Registry ~~[shall expire]~~ expires during the calendar year 1980, and during each fifth year thereafter.

(b) (i) The department shall give notice in writing to all persons who are owners of recorded brands ~~[and marks]~~ within a reasonable time ~~[prior to]~~ before the date of expiration of recordation.

(ii) The notice required by this Subsection (2)(b) may be provided by email or regular mail at the department's discretion.

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(iii) The holder of a registered brand has an affirmative duty to inform the department of a change to the contact information provided on the initial application for a recorded brand.

(c) Brand [~~or mark~~] renewal is [~~effected~~] affected by filing an appropriate application with the department together with payment of the renewal fee.

(d) A recorded brand [~~or mark~~], not timely renewed, shall lapse and be removed from the central Brand [~~and Mark~~] Registry.

Section 11. Section ~~4-24-203~~ is amended to read:

### **4-24-203. Fees for recordation, transfer, renewal, and certified copies of brands.**

(1) The department, with the approval of the Livestock Brand Board, shall charge and collect fees for the recordation, transfer, and renewal of [~~any~~] a brand [~~or mark~~] in each position, and may charge a fee for a certified copy of the recordation.

(2) The fees shall be determined by the department pursuant to Subsection 4-2-103(2).

Section 12. Section ~~4-24-204~~ is amended to read:

### **4-24-204. Effect of recorded brand -- Transfer -- Reservation of certain brands.**

(1) Except as provided in Subsection (2), the owner of a recorded brand [~~or mark~~] has a vested property right in the brand [~~or mark~~] that is transferable by a duly acknowledged instrument, provided that a transferee has no rights in the brand [~~or mark~~] until the instrument of transfer is recorded with the department.

(2) Notwithstanding any other provision of this chapter:

(a) no person other than a member of the Ute Indian Tribe has any vested property right in the brand "ID" which is reserved exclusively for use by members of the Ute Indian Tribe on the Uintah and Ouray Reservation; and

(b) no person other than a member of the Navajo Indian Tribe has any vested right in the brand "- N" (Bar N) which is reserved exclusively for use by members of the Navajo Indian Tribe on the Navajo Indian Reservation as long as it appears on the left shoulder of the animal branded.

(3) The left jaw of cattle is reserved exclusively for use by the department to identify diseased cattle.

Section 13. Section ~~4-24-205~~ is amended to read:

**4-24-205. Livestock on open range or outside enclosure to be branded -- Cattle upon transfer of ownership to be branded -- Exceptions.**

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(1) (a) [~~Except as provided in~~] Subject to Subsections (1)(b) and (c), [~~no~~] livestock [~~shall~~] may not forage upon an open range in this state or outside an enclosure unless [~~they bear~~] the livestock bears a brand [~~or mark~~] recorded in accordance with this chapter.

(b) Swine, goats, and unweaned calves or colts are not required to bear a brand [~~or mark~~] to forage upon open range or outside an enclosure.

(c) Domesticated elk may not forage upon open range or outside an enclosure under any circumstances as provided in Chapter 39, Domesticated Elk Act.

(2) (a) Except as provided in Subsection (2)(b), [~~all~~] cattle, upon sale or other transfer of ownership, shall be branded [~~or marked~~] with the recorded brand [~~or mark~~] of the new owner within 30 days after transfer of ownership.

(b) [~~No branding or marking~~] Branding, upon change of ownership, is not required within the 30-day period for:

- (i) unweaned calves;
- (ii) registered or certified cattle;
- (iii) youth project calves, if the number transferred is less than five; or
- (iv) dairy cattle held on farms.

Section 14. Section ~~4-24-303~~ is amended to read:

**4-24-303. Livestock -- Verification of ownership through brand inspection -- Issuance of certificate of brand inspection -- Brand inspector may demand evidence of ownership -- Brand inspection of livestock seized by the federal government prohibited -- Exception.**

(1) A brand inspector, as an agent of the department, shall verify livestock ownership by conducting a brand inspection during daylight hours.

(2) After conducting the brand inspection, the brand inspector, if satisfied that the livestock subject to inspection bears registered brands [~~or marks~~] owned by the owner of the livestock, shall issue a brand inspection certificate to the owner or owner's agent.

(3) The brand inspector shall record the number, sex, breed, and brand [~~or mark~~] on each animal inspected together with the owner's name.

(4) If any livestock subject to inspection bears a brand [~~or mark~~] other than that of the owner, or if no brand [~~or mark~~] appears on the livestock, for if the ownership of the livestock is disputed, } the brand inspector may demand evidence of ownership before issuing a brand

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inspection certificate ~~{ or may decline to issue a brand inspection certificate until the ownership dispute is resolved }~~.

(5) A brand inspector may not issue a brand inspection certificate for [any] privately owned livestock seized by the federal government unless the:

- (a) brand inspector receives consent from the livestock's owner;
- (b) owner is unknown; or
- (c) brand inspector receives a copy of a court order authorizing the seizure.

(6) Breed papers alone do not constitute proof of ownership, but may be considered as a factor in determining ownership.

Section 15. Section **4-24-305** is amended to read:

### **4-24-305. Transportation by air or rail -- Brand inspection required -- Application for brand inspection -- Time and place of inspection.**

(1) Except as provided in Subsection (2), [no] a person may not offer, [or] and a railroad or airline company may not accept, [any] cattle, calves, horses, domesticated elk, or mules for transport until [~~they have~~] the animal has been brand inspected.

(2) Before cattle, calves, horses, domesticated elk, or mules are transported by rail or air, the shipper shall:

- (a) request the department to inspect the brands [~~and marks~~] of the animals being transported; and
- (b) specify the time and place where the animals may be inspected.

Section 16. Section **4-24-306** is amended to read:

### **4-24-306. Movement across state line -- Brand inspection required -- Exception -- Request for brand inspection -- Time and place of inspection.**

(1) Except as provided in Subsection (2), a person may not drive or transport any cattle, calves, horses, domesticated elk, or mules from any place within this state to a place outside this state until [~~they have~~] the animal has been brand inspected.

(2) Subsection (1) does not apply if the animals specified in Subsection (1) customarily forage on an open range which transgresses the Utah state line and that of an adjoining state.

(3) The owner or person responsible for driving or transporting the animals shall request the department to inspect the brands [~~and marks~~] of the animals to be moved.

(4) The department shall conduct the inspection at the time and place determined by

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the department.

Section 17. Section **4-24-401** is amended to read:

**4-24-401. Hides and pelts -- Bill of sale to accompany purchase -- Purchaser to maintain records -- Hides and records examination and inspection.**

(1) (a) [~~Any~~] A person who buys a hide or pelt shall secure a bill of sale from the seller.

(b) The bill of sale shall be executed in duplicate with one copy being retained by the seller and the other by the buyer.

(c) The bill of sale shall specify the number of hides or pelts sold and the brand [~~or mark~~] borne by each hide or pelt.

(2) (a) [~~Each~~] A hide buyer within this state shall maintain a record specifying the name and address of the seller, date of purchase, and the brands or other identification found on the hides and pelts purchased.

(b) The hides and records of any hide buyer are subject to examination and inspection by the department at reasonable times and places.

Section 18. Section **4-24-402** is amended to read:

**4-24-402. Livestock markets -- Records to be maintained -- Retention of records -- Schedule of fees and charges to be posted.**

(1) [~~Each~~] An owner or operator of a livestock market shall keep a record of:

(a) the date [~~each~~] a consignment of livestock is received for sale together with the number of each type of livestock within [~~such~~] the consignment;

(b) the name and address of [~~each~~] the buyer;

(c) the date of sale and the number and species of livestock purchased by [~~each~~] the buyer; and

(d) the description and brand [~~or mark~~] appearing on each animal at the time of sale to the buyer.

(2) [~~The~~] An owner or operator of a livestock market shall retain the records mandated by this section [~~shall be retained~~] for a period of two years from the date on which the livestock market sold the livestock.

(3) A schedule of [~~all~~] the fees and commission rates charged by the livestock market shall be posted in a conspicuous place on the premises of each market.



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(4) A statement of the gross sales price, commission, and other fees charged for the sale of ~~[each]~~ a consignment shall be available for inspection by the department, and a copy furnished the owner or consignor of the livestock.

Section 19. Section **4-24-403** is amended to read:

### **4-24-403. Websites promoting the sale of livestock.**

(1) A website, created and maintained within the state, that markets the sale of livestock shall have the following statement clearly visible on each web page that displays advertised livestock: "Legality of Sales and Purchase, Health Laws. If you sell or purchase livestock on this site, you shall comply with all applicable legal requirements governing the transfer and shipment of livestock, including Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, and Title 4, Chapter 31, Control of Animal Disease. Please contact the Utah Department of Agriculture and Food at ~~[801-538-7137]~~ 801-982-2200 with any questions.".

(2) A person who violates this section ~~[shall be]~~ is subject to the penalties described in Section 4-24-506.

Section 20. Section **4-24-405** is amended to read:

### **4-24-405. Travel permit in lieu of brand inspection certificate -- Fees.**

(1) The department may issue a permit upon the payment of a fee determined by the department pursuant to Subsection 4-2-103(2), in lieu of a certificate of brand inspection, for the transport of ~~[any]~~ a show horse, show mule, or show cattle transported from ~~[any]~~ a place within this state to a place outside the state.

(2) The words "travel permit" shall be stamped or printed on the permit.

(3) A permit:

(a) shall accompany ~~[each]~~ a show animal while the show animal is in transit and shall identify the show animal to which the permit applies by age, sex, color, brand, ~~[mark]~~, and scars; and

(b) is valid for the calendar year of the date of issuance, which date shall appear on the permit.

Section 21. Section **4-24-502** is amended to read:

**4-24-502. Unlawful acts specified -- Allegation concerning evidence of ownership relative to hides.**

(1) It is unlawful for ~~[any]~~ a person to:

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(a) permit ~~[any]~~ cattle, calves, horses, mules, or sheep, except unweaned calves or colts, that are not branded ~~[or marked]~~ in accordance with this chapter, to forage upon an open range in this state or outside an enclosure;

(b) brand ~~[or mark any]~~ livestock with a brand ~~[or mark]~~ that is not a matter of record on the central ~~[brand and mark registry]~~ Brand Registry;

(c) obliterate, change, or remove a recorded brand ~~[or mark]~~;

(d) destroy, mutilate, or conceal ~~[any]~~ a hide with intent to, or for the purpose of, removing evidence of ownership of the hide, or ownership of the animal from which the hide was removed;

(e) hold or ship an estray or livestock owned by another without notifying the owner, a brand inspector, or law enforcement; or

(f) offer for sale an estray or the livestock owned by another.

(2) In ~~[any]~~ a prosecution for violation of this section:

(a) the state does not need to allege the ownership of the hide or the animal or carcass from which the hide was removed; and

(b) the complaint or information is sufficient if the complaint or information alleges that ownership is unknown and that the hide is not the property of the defendant.

Section 22. Section ~~4-24-504~~ is amended to read:

### **4-24-504. Enforcement -- Brand inspector's powers delineated.**

(1) A brand inspector ~~[is empowered with]~~ has the authority of a special function officer for the purpose of enforcing this chapter and ~~[such an]~~ the brand inspector may, if proper, stop ~~[any]~~ a vehicle carrying livestock or livestock carcasses for the purpose of examining brands, ~~[marks,]~~ certificates of brand inspection, and bills of lading or bills of sale relating to the livestock in transit.

(2) (a) ~~[Brand inspectors]~~ A brand inspector may enter ~~[any]~~ premises where livestock are kept or maintained for the purpose of examining brands ~~[or marks]~~.

(b) If admittance is refused, the department may proceed immediately to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of examining brands ~~[or marks]~~ or other evidence of ownership.

Section 23. Section ~~4-31-115~~ is amended to read:

### **4-31-115. Contagious or infectious disease, or any epidemic or poisoning -- Duties**

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**of department.**

(1) (a) The department shall investigate and may quarantine [any] a reported case of contagious or infectious disease, or any epidemic or poisoning, affecting a domestic animal or an animal that the department believes may jeopardize the health of animals within the state.

(b) The department shall make a prompt and thorough examination of [att] the circumstances surrounding the disease, epidemic, or poisoning and may order quarantine, care, or any necessary remedies.

(c) The department may also order immunization or testing and sanitary measures to prevent the spread of disease.

(d) An investigation involving fish or wildlife shall be conducted under a cooperative agreement with the Division of Wildlife Resources.

~~{(2)}{(a) A brand inspector has the authority of a special function officer and, in coordination with the state veterinarian, may stop a vehicle carrying livestock or livestock carcasses for the purpose of investigating a reported case of contagious or infectious disease, epidemic, or poisoning:~~

~~— }{(b) A brand inspector has the authority of a special function officer and, in coordination with the state veterinarian, may enter premises where livestock are kept or maintained for the purpose of investigating a reported case of contagious or infectious disease, epidemic, or poisoning:~~

~~— (c) If admittance is refused, the department may proceed immediately to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of investigating a reported case of contagious or infectious disease, epidemic, or poisoning:~~

~~— [(2)](3) (a) If the owner or person in possession of [such] an animal with a contagious or infectious disease, epidemic, or poisoning, after written notice from the department, fails to take the action ordered, the commissioner [is authorized to] may seize and hold the animal and take action necessary to prevent the spread of disease, including immunization, testing, dipping, or spraying.~~

(b) An animal seized for testing or treatment under this section may be sold by the commissioner at public sale to reimburse the department for [att] the costs incurred in the seizure, testing, treatment, maintenance, and sale of the animal unless the owner, before the

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sale, tenders payment for the costs incurred by the department.

(c) (i) ~~[N]~~ The commissioner may not sell a seized animal ~~[shall be sold]~~ until the owner or person in possession of the animal is served with a notice specifying the itemized costs incurred by the department, the time, place, and purpose of sale, and the number of animals to be sold.

(ii) The notice shall be served at least three days in advance of sale in the manner:

(A) prescribed for personal service in Rule 4(d)(1), Utah Rules of Civil Procedure; or

(B) if the owner cannot be found after due diligence, prescribed for service by publication in Rule 4(d)(4), Utah Rules of Civil Procedure.

~~§(3)§(4)~~ (a) Any amount realized from the sale of the animal over the total charges shall be paid to the owner of the animal if the owner is known or can by reasonable diligence be found.

(b) If the owner is unknown and cannot be found by reasonable diligence, as described in Subsection ~~§(3)§(4)~~(a), the excess shall remain in the General Fund.

(c) If the total cost incurred is greater than the amount realized, the owner shall pay the difference.

Section 24. Section **4-31-116** is amended to read:

### **4-31-116. Quarantine -- Authority of individuals to assist in maintenance of quarantine -- Charges.**

(1) The commissioner may quarantine ~~[any]~~ an infected domestic animal or area within the state to prevent the spread of infectious or contagious disease.

~~§(2) A brand inspector has the authority of a special function officer for the purpose of enforcing a quarantine.~~

~~§(3)2~~ The state veterinarian may:

(a) take any action the department warrants, in the department's sole discretion, necessary to enforce the quarantine; and

(b) delegate an action described in Subsection (3)(a) to another department employee, as appropriate, to ensure the quarantine is being enforced.

~~(2)~~ ~~(4)3~~ A sheriff or other peace officer in the state shall, upon request of the commissioner, assist the department in maintaining a quarantine and arrest a person who violates the quarantine.

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~~(3)~~ ~~(5)(4)~~ The department shall pay ~~all~~ the costs and fees incurred by any law enforcement authority in assisting the department.

~~(6)(5)~~ The department may charge a person who violates a quarantine the costs to the department incurred in enforcing the quarantine of that person's animal and use that money to reimburse law enforcement or the state in expenditures related to the quarantine.

Section 25. Section **4-37-104** is amended to read:

### **4-37-104. Department's responsibilities.**

(1) The department is responsible for enforcing laws and rules made by the Wildlife Board governing species of aquatic animals ~~[which]~~ that may be imported into the state or possessed or transported within the state that are applicable to aquaculture or fee fishing facilities ~~[and the promotion of the state's aquaculture industry].~~

(2) Subject to the policies and rules of the Fish Health Policy Board, the department shall:

(a) act to prevent the outbreak and act to control the spread of disease-causing pathogens among aquatic animals in aquaculture and fee fishing facilities; and

(b) act to prevent the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from aquaculture or fee fishing facilities to wild aquatic animals, other animals, and humans.

Section 26. Section **4-37-204** is amended to read:

### **4-37-204. Sale of aquatic animals from aquaculture facilities.**

(1) (a) Except as provided by Subsection ~~[(1)(b)]~~ (1)(c) and subject to Subsection (1)(b), a person holding a certificate of registration for an aquaculture facility may take an aquatic animal as approved on the certificate of registration from the facility at any time and offer the aquatic animal for sale~~[-however,].~~

(b) A live aquatic [animals] animal may be sold within Utah only to a person who:

(i) has been issued a certificate of registration to possess the aquatic animal; or

(ii) is eligible to receive the aquatic animal without a certificate of registration under ~~[Division of Wildlife Resources]~~ Wildlife Board rules.

~~[(b)]~~ (c) A person who owns or operates an aquaculture facility may ~~[stock a live fish in a private fish pond or at a short-term fishing event]~~ sell live aquatic animals if the person:

(i) obtains a health approval number for the aquaculture facility;

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~~[(ii) provides the buyer with a brochure published by the Division of Wildlife Resources that summarizes the statutes and rules related to a private fish pond or short-term fishing event and the possession of fish;]~~

~~[(iii)]~~ (ii) inspects the pond or holding facility to verify that the pond or facility is in compliance with Subsections 23-15-10(2) and (3)(c); and

~~[(iv)]~~ (iii) stocks the species~~[-strain,]~~ and reproductive capability of ~~[fish]~~ aquatic animals authorized by the Wildlife Board in accordance with Section 23-15-10 for stocking in the area where the pond or holding facility is located.

(2) An aquatic animal sold or transferred by the owner or operator of an aquaculture facility shall be accompanied by the seller's receipt that contains the following information:

(a) date of transaction;

(b) name, address, certificate of registration number, and health approval number~~[-and signature of seller];~~

(c) number and weight of aquatic animal by:

(i) species; and

~~[(ii) strain; and]~~

~~[(iii)]~~ (ii) reproductive capability; and

(d) name and address of the receiver.

(3) (a) A person holding a certificate of registration for an aquaculture facility shall submit to the department an annual report of each sale of live aquatic animals or each transfer of live aquatic animals ~~[to:]~~ in Utah. The department shall forward the report to the Division of Wildlife Resources. The department or Division of Wildlife Resources may request copies of receipts from an aquaculture facility.

~~[(i) another aquaculture facility; or]~~

~~[(ii) a fee fishing facility.]~~

(b) The report shall contain the following information:

(i) name, address, and certificate of registration number of the seller or supplier;

(ii) number and weight ~~[by species]~~ of aquatic animals by species and reproductive capacity;

(iii) date of sale or transfer; and

(iv) name, address, phone number, and certificate of registration number of the

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receiver.

~~[(4) (a) A person who owns or operates an aquaculture facility shall submit to the Division of Wildlife Resources an annual report of each sale or transfer of a live fish to a private fish pond or short-term fishing event.]~~

~~[(b) The report shall contain:]~~

~~[(i) the name, address, and health approval number of the person;]~~

~~[(ii) the name, address, and phone number of the private fish pond's owner or short-term fishing event's operator;]~~

~~[(iii) the number and weight of fish by:]~~

~~[(A) species;]~~

~~[(B) strain; and]~~

~~[(C) reproductive capability;]~~

~~[(iv) date of sale or transfer;]~~

~~[(v) the location of the private fish pond's or short-term fishing event's holding facility; and]~~

~~[(vi) verification that the private fish pond or short-term fishing event's holding facility was inspected and is in compliance with Subsections 23-15-10(2) and (3)(c).]~~

(4) Geographic coordinates of the stocking location shall be provided if the receiver is eligible to stock the aquatic animal without a certificate of registration under Wildlife Board rules.

(5) ~~[The reports required by Subsections (3) and (4)]~~ A report required by Subsection (3) shall be submitted before:

(a) a certificate of registration is renewed or a subsequent certificate of registration is issued ~~[for an aquaculture facility in the state];~~ or

(b) a health approval number is issued ~~[for an out-of-state source].~~

Section 27. Section ~~4-37-502~~ is amended to read:

**4-37-502. Inspections -- Health approval report -- Report for quarantine facility -- Qualifications of inspectors -- Notification of department.**

(1) ~~[(a) Except as provided by Subsection (1)(b), approval]~~ Approval shall be based upon inspections carried out in accordance with standards and rules of the Fish Health Policy Board made pursuant to Section 4-37-503.

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~~[(b) An owner or operator of an aquaculture facility that is under quarantine or whose health approval has been canceled or denied prior to July 1, 2007 may seek health approval without submitting or complying with a biosecurity plan required by rule by submitting a new health inspection report to the department.]~~

~~[(2)(a) The inspections shall be done by an individual who has received certification from the American Fisheries Society as a fish health inspector.]~~

(2) (a) An inspection shall be conducted under the direction of an individual certified by the American Fisheries Society as an aquatic animal health inspector or fish pathologist. A sample may be collected by a federally accredited veterinarian, a state or federal animal health official, or an American Fisheries Society certified aquatic animal health inspector or fish pathologist.

(b) An inspection of an aquaculture facility may not be done by an inspector who is employed by, or has pecuniary interest in, the facility being inspected.

(c) The department shall post on its website a current list of:

(i) certified fish health inspectors; and

(ii) approved laboratories to which a fish health inspector may send the samples collected during the inspections required by this section.

(d) (i) If the fish health inspector conducting the inspection is not an employee of the department, the owner or operator of the aquaculture facility shall notify the department of the date and time of the inspection at least five business days before the date on which the inspection will occur.

(ii) The department may be present for the inspection.

(3) To receive a health approval number, inspection reports and other evidence of the disease status of a source facility shall be submitted to the agency responsible for certifying the source as health approved pursuant to Section 4-37-501.

Section 28. Section ~~4-37-503~~ is amended to read:

### **4-37-503. Fish Health Policy Board.**

(1) There is created within the department the Fish Health Policy Board [~~which~~] that shall establish policies designed to prevent the outbreak of, control the spread of, and eradicate pathogens that cause disease in aquatic animals.

(2) The Fish Health Policy Board shall:



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(a) in accordance with Subsection (6)(b), determine procedures and requirements for certifying a source of aquatic animals as health approved, including:

- (i) the pathogens for which inspection is required to receive health approval;
- (ii) the pathogens that may not be present to receive health approval; and
- (iii) standards and procedures required for the inspection of aquatic animals;

(b) establish procedures for the timely reporting of the presence of a pathogen and disease threat;

(c) create policies and procedures for, and appoint, an emergency response team to:

- (i) investigate a serious disease threat;
- (ii) develop and monitor a plan of action; and
- (iii) report to:

(A) the commissioner of agriculture and food;

(B) the director of the Division of Wildlife Resources; and

(C) the chair of the Fish Health Policy Board; and

(d) develop a unified statewide aquaculture disease control plan.

(3) The Fish Health Policy Board shall advise the commissioner of agriculture and food and the executive director of the Department of Natural Resources regarding:

(a) educational programs and information systems to educate and inform the public about practices that the public may employ to prevent the spread of disease; and

(b) communication and interaction between the department and the Division of Wildlife Resources regarding fish health policies and procedures.

(4) (a) (i) The governor shall appoint the following seven members to the Fish Health Policy Board:

(A) one member from names submitted by the Department of Natural Resources;

(B) one member from names submitted by the Department of Agriculture and Food;

(C) one member from names submitted by a nonprofit corporation that promotes sport fishing;

(D) one member from names submitted by a nonprofit corporation that promotes the aquaculture industry;

(E) one member from names submitted by the Department of Natural Resources and the Department of Agriculture and Food;

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(F) one member from names submitted by a nonprofit corporation that promotes sport fishing; and

(G) one member from names submitted by a nonprofit corporation that promotes the aquaculture industry.

(ii) The members appointed under Subsections (4)(a)(i)(E) through (G) shall be:

(A) (I) faculty members of an institution of higher education; or

(II) qualified professionals; and

(B) have education and knowledge in:

(I) fish pathology;

(II) business;

(III) ecology; or

(IV) parasitology.

(iii) At least one member appointed under Subsections (4)(a)(i)(E) through (G) shall have education and knowledge about fish pathology.

(iv) (A) A nominating person shall submit at least three names to the governor.

(B) If the governor rejects all the names submitted for a member, the recommending person shall submit additional names.

(b) Except as required by Subsection (4)(c), the term of office of board members shall be four years.

(c) Notwithstanding the requirements of Subsection (4)(b), the governor 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) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(e) The board members shall elect a chair of the board from the board's membership.

(f) The board shall meet upon the call of the chair or a majority of the board members.

(g) An action of the board shall be adopted upon approval of the majority of voting members.

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

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- (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.

(6) (a) The board shall make rules consistent with its responsibilities and duties specified in this section.

(b) Except as provided by this chapter, [aH] rules adopted by the Fish Health Policy Board shall be consistent with the suggested procedures for the detection and identification of pathogens published by the American Fisheries Society's Fish Health Section or the World Organisation for Animal Health, Manual for Diagnostic Tests for Aquatic Animals.

(c) (i) Rules of the department and Fish Health Policy Board pertaining to the control of disease shall remain in effect until the Fish Health Policy Board enacts rules to replace those provisions.

(ii) The Fish Health Policy Board shall promptly amend rules that are inconsistent with the current suggested procedures published by the American Fisheries Society or the World Organisation for Animal Health, Manual for Diagnostic Tests for Aquatic Animals.

(d) The Fish Health Policy Board may waive a requirement established by the Fish Health Policy Board's rules if:

- (i) the rule specifies the waiver criteria and procedures; and
- (ii) the waiver will not threaten other aquaculture facilities or wild aquatic animal

populations.

Section 29. Section **4-39-108** is amended to read:

### **4-39-108. Deposit of fees.**

The department shall deposit all fees collected under this chapter into the Utah Livestock Brand and Anti-Theft Account created in Section [~~4-24-502~~] 4-24-501.