

LIVESTOCK COLLISION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

House Sponsor: Mike Schultz

LONG TITLE

General Description:

This bill enacts provisions related to railroads, fencing of railroad rights-of-way, and liability for damage to livestock.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a railroad to report livestock strikes;
- ▶ clarifies liability for damages to livestock caused by railroad operations;
- ▶ creates a process for a livestock owner to be compensated for livestock damaged by a railroad;
- ▶ provides an appeal process regarding the actual fair market value of damaged livestock;
- ▶ modifies and clarifies requirements regarding a railroad's duty to construct and maintain fencing along railroad rights-of-way;
- ▶ requires each railroad to pay a fee based on mileage to cover damages to livestock caused by railroad operations;
- ▶ allows the Department of Agriculture and Food to pay for costs of administration and staff salary related to the administration of livestock damage claims from fees paid by railroads;
- ▶ grants rulemaking authority to the Department of Agriculture and Food regarding compensation for livestock damaged by a railroad;

- 29 ▶ prohibits a railroad from entering into an indemnification agreement related to
- 30 damages to livestock; and
- 31 ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill provides a special effective date.

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **4-2-103**, as last amended by Laws of Utah 2022, Chapters 68, 79

39 REPEALS AND REENACTS:

40 **56-1-12**, as last amended by Laws of Utah 2018, Chapter 148

41 **56-1-13**, as Utah Code Annotated 1953



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

44 Section 1. Section **4-2-103** is amended to read:

45 **4-2-103. Functions, powers, and duties of department -- Fees for services --**

46 **Marketing orders -- Procedure -- Purchasing and auditing.**

47 (1) The department shall:

48 (a) inquire into and promote the interests and products of agriculture and allied

49 industries;

50 (b) promote methods for increasing the production and facilitating the distribution of

51 the agricultural products of the state;

52 (c) (i) inquire into the cause of contagious, infectious, and communicable diseases

53 among livestock and the means for their prevention and cure; and

54 (ii) initiate, implement, and administer plans and programs to prevent the spread of

55 diseases among livestock;

- 56 (d) encourage experiments designed to determine the best means and methods for the
- 57 control of diseases among domestic and wild animals;
- 58 (e) issue marketing orders for any designated agricultural product to:
- 59 (i) promote orderly market conditions for any product;
- 60 (ii) give the producer a fair return on the producer's investment at the marketplace; and
- 61 (iii) only promote and not restrict or restrain the marketing of Utah agricultural
- 62 commodities;
- 63 (f) administer and enforce all laws assigned to the department by the Legislature;
- 64 (g) establish standards and grades for agricultural products and fix and collect
- 65 reasonable fees for services performed by the department in conjunction with the grading of
- 66 agricultural products;
- 67 (h) establish operational standards for any establishment that manufactures, processes,
- 68 produces, distributes, stores, sells, or offers for sale any agricultural product;
- 69 (i) adopt, according to Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 70 rules necessary for the effective administration of the agricultural laws of the state;
- 71 (j) when necessary, make investigations, subpoena witnesses and records, conduct
- 72 hearings, issue orders, and make recommendations concerning matters related to agriculture;
- 73 (k) (i) inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any
- 74 private or public place that may become infested or infected with harmful insects, plant
- 75 diseases, noxious or poisonous weeds, or other agricultural pests;
- 76 (ii) establish and enforce quarantines;
- 77 (iii) issue and enforce orders and rules for the control and eradication of pests,
- 78 wherever they may exist within the state; and
- 79 (iv) perform other duties relating to plants and plant products considered advisable and
- 80 not contrary to law;
- 81 (l) inspect apiaries for diseases inimical to bees and beekeeping;
- 82 (m) take charge of any agricultural exhibit within the state, if considered necessary by

83 the department, and award premiums at that exhibit;

84 (n) provide for the coordination of state conservation efforts, including by:

85 (i) assisting the Conservation Commission in the administration of Chapter 18,
86 Conservation Commission Act;

87 (ii) implementing Chapter 46, Conservation Coordination Act, including entering into
88 agreements with other state agencies; and

89 (iii) administering and disbursing money available to assist conservation districts in the
90 state in the conservation of the state's soil and water resources;

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

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

94 (q) ensure that any training or certification required of a public official or public
95 employee, as those terms are defined in Section [63G-22-102](#), complies with Title 63G, Chapter
96 22, State Training and Certification Requirements, if the training or certification is required:

97 (i) under this title;

98 (ii) by the department; or

99 (iii) by an entity within the department; [~~and~~]

100 (r) administer the requirements described in Section [56-1-12](#) pertaining to livestock
101 damaged by railroad operations; and

102 [~~(r)~~] (s) perform any additional functions, powers, and duties provided by law.

103 (2) The department, by following the procedures and requirements of Section
104 [63J-1-504](#), may adopt a schedule of fees assessed for services provided by the department.

105 (3) (a) A marketing order issued under Subsection (1)(e) may not take effect until:

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

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

109 (iii) at least 50% of the registered producers and handlers of the affected products vote

110 in favor of the proposed order.

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

113 (ii) A board of control shall:

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

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

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

120 (5) In fulfilling the department's duties in this chapter, the department may:

121 (a) purchase, as authorized or required by law, services that the department is
122 responsible to provide for legally eligible persons;

123 (b) take necessary steps, including legal action, to recover money or the monetary value
124 of services provided to a recipient who is not eligible;

125 (c) examine and audit the expenditures of any public funds provided to a local
126 authority, agency, or organization that contracts with or receives funds from those authorities or
127 agencies;

128 (d) accept and administer grants from the federal government and from other sources,
129 public or private; and

130 (e) fund grants using money appropriated by the Legislature or money received from
131 any other source.

132 Section 2. Section **56-1-12** is repealed and reenacted to read:

133 **56-1-12. Injury to livestock -- Notice -- Livestock Damages Fund and Board --**
134 **Appeals -- Compensation and fees -- Rulemaking.**

135 (1) As used in this section:

136 (a) "Actual fair market value" means the actual value of damages to livestock as

137 determined by the Livestock Damages Board.

138 (b) "Damage" means injury or loss to livestock resulting from a strike by a railroad
139 operation.

140 (c) "Department" means the Department of Agriculture and Food created in Section
141 4-2-102.

142 (d) "Estimated market value" means the market value of livestock as determined in
143 rules made in accordance with Subsection (8).

144 (e) "Indemnification provision" means a covenant, promise, agreement or
145 understanding in, in connection with, or collateral to a railroad contract requiring the other
146 entity to insure, hold harmless, indemnify, or defend a railroad against liability if:

147 (i) the damages arise out of:

148 (A) damage to property, including livestock; or

149 (B) other related economic loss; and

150 (ii) the damages are caused by or resulting from the fault, in whole or in part, of the
151 railroad or the railroad's agents or employees.

152 (f) "Law enforcement agency" means the same as that term is defined in Section
153 53-1-102.

154 (g) "Livestock" means the same as that term is defined in Section 4-1-109.

155 (h) "Livestock Damages Board" means the Livestock Damages Board created in
156 Subsection (9).

157 (i) "Railroad" means the same as that term is defined in 49 C.F.R. Sec. 200.3.

158 (j) "Railroad Livestock Damage Fund" or "fund" means the Railroad Livestock
159 Damage Fund created in Subsection (7).

160 (k) "Statewide railroad engineer" means the statewide railroad engineer within the
161 Department of Transportation.

162 (2) Each railroad that operates in this state shall provide to the department current
163 contact information suitable for communication between the department and the railroad

164 regarding injury to livestock caused by a railroad.

165 (3) (a) A railroad operator that strikes, injures, or kills livestock during the operation of
166 an engine or car shall:

167 (i) immediately record the location of the strike; and

168 (ii) within 24 hours of the strike, notify and provide pertinent information to the
169 department and the statewide railroad engineer.

170 (b) (i) If a railroad fails to report a strike as required in Subsection (3)(a), the railroad is
171 liable for a civil penalty of at least \$5,000 per incident.

172 (ii) It is prima facie evidence that a railroad has failed to report if:

173 (A) an investigation described in Subsection (3)(c) determines that livestock was struck
174 by railroad;

175 (B) the investigation under Subsection (3)(c) resulted from a notification from a
176 livestock owner of a potential strike as described in Subsection (4)(c); and

177 (C) the railroad has not reported a corresponding strike under Subsection (3)(a).

178 (iii) If the department determines that a railroad has failed to report as described in
179 Subsection (3)(b)(ii):

180 (A) the department shall notify the railroad and assess a civil penalty; and

181 (B) the railroad shall pay the civil penalty assessed by the department.

182 (iv) The department shall deposit into the Railroad Livestock Damage Fund any money
183 received for a civil penalty under this Subsection (3)(b).

184 (v) Payment of a civil penalty described in this Subsection (3)(b) does not release a
185 railroad from liability for damage to livestock.

186 (c) After receiving the notification described in Subsection (3)(a), the department shall:

187 (i) notify the relevant law enforcement agency with jurisdiction over the location of the
188 livestock strike; and

189 (ii) in consultation with the relevant law enforcement agency and the statewide railroad
190 engineer, make reasonable efforts to:

- 191 (A) investigate the scene of the strike;
192 (B) identify the livestock that was struck;
193 (C) determine ownership of the livestock that was struck;
194 (D) assess the state of repair of the fences along the railroad right-of-way; and
195 (E) document and preserve relevant evidence of the scene of the strike.
196 (d) (i) After the investigation described in Subsection (3)(b), if possible, the
197 department and relevant law enforcement agency shall notify the owner of the livestock that
198 was struck.
199 (ii) The department shall create and maintain a website to document and provide notice
200 and information to the public regarding livestock strikes within this state.
201 (iii) If the relevant law enforcement agency and department are unable to identify the
202 owner of the injured livestock as described in Subsection (3)(b), the department shall post and
203 maintain relevant information regarding the strike on a website to provide notice to the public
204 regarding each livestock strike.
205 (4) (a) If livestock is struck by an implement of railroad operations, the owner of the
206 livestock may receive compensation for the estimated market value or the actual fair market
207 value of the damage.
208 (b) To obtain compensation, the owner of the damaged livestock shall notify the
209 department as soon as possible after discovering the damage.
210 (c) A livestock owner shall notify the department each time the owner believes
211 livestock has been damaged by railroad operations.
212 (5) A livestock owner shall file a proof of loss form, provided by the department, no
213 later than 30 days after the date of the original notification livestock damage:
214 (a) has been received by the livestock owner pursuant to Subsection (3)(c); or
215 (b) has been received by the department pursuant to Subsection (4)(c).
216 (6) The department shall:
217 (a) within 30 days after the day the department receives a proof of loss form from a

218 livestock owner, either accept or deny the claim for damages to livestock; and
219 (b) to the extent money is available in the Railroad Livestock Damage Fund created in
220 Subsection (7), pay all accepted claims in accordance with the livestock estimated market value
221 established pursuant to Subsection (8).
222 (7) (a) There is created an expendable special revenue fund called the Railroad
223 Livestock Damage Fund.
224 (b) The fund shall consist of:
225 (i) deposits by the Legislature;
226 (ii) an initial deposit by each railroad as described in Subsection (7)(c);
227 (iii) periodic payments by each railroad as required in Subsection (7)(d);
228 (iv) annual deposits by each railroad for administrative costs as provided under
229 Subsection (7)(e);
230 (v) money deposited by the department from a civil penalty described in Subsection
231 (3);
232 (vi) other donations or deposits into the fund; and
233 (vii) interest earned on the balance of the fund.
234 (c) Before December 31, 2023, each railroad shall pay into the Railroad Livestock
235 Damage Fund:
236 (i) an initial, one-time fee of \$150 per mile of railroad track owned by the railroad in
237 this state, in accordance with rules made under Subsection (8)(b), to capitalize the fund for
238 payment of claims as provided in this section; and
239 (ii) an initial, one-time fee of \$75 per mile of railroad track owned by the railroad in
240 this state, in accordance with rules made under Subsection (8)(b), to pay for staff salaries and
241 other costs to administer the fund and the department responsibilities under this section.
242 (d) (i) If the department issues payment from the fund in accordance with Subsection
243 (6), the department shall notify the relevant railroad that is liable for the damage.
244 (ii) The department shall include in the notice to the railroad described in Subsection

245 (7)(d)(i) relevant information, including:
246 (A) the date or approximate date that the damage occurred;
247 (B) the location where the damage occurred;
248 (C) the type of livestock that was damaged;
249 (D) the name of the owner of the livestock that was damaged; and
250 (E) the estimated market value of the damage for which the railroad is responsible.
251 (iii) Within 30 days of the date the railroad receives the notice described in Subsection
252 (7)(d)(iii), the railroad shall remit to the department the value of the damage.
253 (iv) If a railroad fails to remit to the department the value of the damage as required in
254 Subsection (7)(d)(i), the department may impose a civil penalty up to \$10,000:
255 (A) for the failure to pay within 30 days as described in Subsection (7)(d)(iii); and
256 (B) for every additional 30-day period of delinquency.
257 (v) Payment of a civil penalty described in Subsection (7)(d)(iv) does not release a
258 railroad from liability for damage to livestock.
259 (e) (i) Between July 1, 2023, and December 31, 2023, the department shall gather data
260 from livestock strikes reported as required in this section to determine how many livestock
261 strikes occurred during that six months.
262 (ii) Based on the information gathered under Subsection (7)(e)(i) and extrapolated and
263 adjusted to estimate annual strike rates, beginning on July 1, 2024, the department shall
264 establish and charge an administrative fee for each claim the department processes under this
265 section sufficient to cover the staff salary and other administrative costs directly related to the
266 administration of this section.
267 (iii) The department shall establish and publish the fee amount in rules made pursuant
268 to Subsection (8).
269 (iv) The department may not charge more than necessary to cover the costs of salary
270 and administration directly related to the duties under this chapter.
271 (f) In addition to payment of claims for damage to livestock as described in this

272 section, the department may use money in the Railroad Livestock Damage Fund to pay for the
273 costs of administration, staff salary, and other support related to the Railroad Livestock
274 Damage Fund and administration of this section.

275 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
276 department shall make rules necessary to implement and enforce this section, including rules to
277 establish the:

278 (a) estimated market value of each type of livestock;

279 (b) official mileage calculation for each railroad for the fee established in Subsection
280 (7)(c); and

281 (c) administrative fee per claim as described in Subsection (7)(e).

282 (9) (a) A livestock owner may appeal the estimated market value granted by the
283 department for damage to livestock by appealing to the Livestock Damages Board.

284 (b) There is created the Livestock Damages Board, which shall consist of three
285 members appointed as described in Subsection (9)(c).

286 (c) The commissioner of the department shall appoint three members to the Livestock
287 Damages Board as follows:

288 (i) one member who owns or administers a livestock auction;

289 (ii) one member who owns livestock and is engaged in a livestock business; and

290 (iii) one member who works for the department.

291 (d) Except as described in Subsection (9)(e)(ii), a member of the Livestock Damages
292 Board may serve for up to two terms of four years.

293 (e) (i) The commissioner shall appoint the first members to the Livestock Damages
294 Board on or before January 1, 2024.

295 (ii) The commissioner shall stagger the initial terms of the members of the Livestock
296 Damages Board appointed on or before January 1, 2024, by:

297 (A) designating one appointee to serve an initial term of five years; and

298 (B) designating one appointee to serve an initial term of three years.

299 (f) (i) The Livestock Damages Board may convene twice each year to hear appeals
300 regarding the value of livestock damaged by a railroad operation.

301 (ii) If a livestock owner provides clear and convincing evidence that the value of the
302 damage to livestock caused by a railroad operation exceeds the estimated market value
303 established pursuant to Subsection (8), the Livestock Damages Board may issue payment from
304 the fund at the actual fair market value amount established in the hearing.

305 (10) An indemnification provision in a contract between a railroad and another entity
306 that operates on a railroad facility is against public policy and is void and unenforceable to the
307 extent the indemnification provision is related to damages to livestock or another provision in
308 this section.

309 Section 3. Section **56-1-13** is repealed and reenacted to read:

310 **56-1-13. Fencing right-of-way -- Gates.**

311 (1) As used in this section:

312 (a) "Livestock" means the same as that term is defined in Section [4-1-109](#).

313 (b) "Railroad" means the same as that term is defined in 49 C.F.R. Sec. 200.3.

314 (2) Each railroad shall erect and maintain a fence on each side of any railroad
315 right-of-way owned or operated by the railroad that passes through:

316 (a) land owned by a private owner; or

317 (b) public land upon which grazing of livestock occurs.

318 (3) A railroad shall ensure that a fence required under Subsection (2) is:

319 (a) at least four and one-half feet high;

320 (b) constructed with barbed or other fencing wire, with at least five wires;

321 (c) constructed with substantial posts no more than 16.5 feet apart; and

322 (d) reasonably constructed to ensure livestock are unable to pass through the fence.

323 (4) A railroad shall ensure that fences required under Subsection (2) include proper
324 gates and cattle guards at each private crossing.

325 (5) A railroad is liable to a livestock owner for all damages to livestock resulting from

326 a railroad's failure to construct or maintain a fence as required in this section.

327 (6) (a) If a fence falls into disrepair or is damaged, the railroad shall ensure that the
328 fence is repaired as soon as possible, but not later than 30 days after the date the railroad
329 receives notice of the disrepair or damage.

330 (b) To recover damage to livestock caused by a damaged fence as described in this
331 section, a livestock owner shall follow the procedures described in Section [56-1-12](#).

332 (7) (a) If a railroad fails to repair a fence within 30 days after the date the railroad
333 receives notice as described in Subsection (6)(a), the owner of the adjacent property may
334 construct or repair the fence.

335 (b) If a land owner repairs a fence as described in Subsection (7)(a):

336 (i) the railroad is liable for the full value of the work and materials for the construction
337 or repair; and

338 (ii) if the railroad fails to timely reimburse the land owner, the land owner may file a
339 civil action in a court of competent jurisdiction.

340 (8) Any work by a land owner to repair a fence required by this section does not:

341 (a) shift liability for damage to livestock as described in Section [56-1-12](#) to the land
342 owner; or

343 (b) relieve the railroad from liability for damage to livestock as described in Section
344 [56-1-12](#).

345 **Section 4. Effective date.**

346 This bill takes effect on April 1, 2024.