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LIVESTOCK COLLISION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

House Sponsor: _____

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;
- ▶ grants rulemaking authority to the Department of Agriculture and Food regarding compensation for livestock damaged by a railroad; and
- ▶ makes technical changes.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **4-2-103**, as last amended by Laws of Utah 2022, Chapters 68, 79

34 REPEALS AND REENACTS:

35 **56-1-12**, as last amended by Laws of Utah 2018, Chapter 148

36 **56-1-13**, as Utah Code Annotated 1953



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

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

40 **4-2-103. Functions, powers, and duties of department -- Fees for services --**

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

42 (1) The department shall:

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

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

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

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

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

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

54 (i) promote orderly market conditions for any product;

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

56 (iii) only promote and not restrict or restrain the marketing of Utah agricultural
57 commodities;

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

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

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

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

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

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

71 (ii) establish and enforce quarantines;

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

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

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

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

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

80 (i) assisting the Conservation Commission in the administration of Chapter 18,
81 Conservation Commission Act;

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

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

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

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

89 (q) ensure that any training or certification required of a public official or public

90 employee, as those terms are defined in Section [63G-22-102](#), complies with Title 63G, Chapter
91 22, State Training and Certification Requirements, if the training or certification is required:

- 92 (i) under this title;
- 93 (ii) by the department; or
- 94 (iii) by an entity within the department; [~~and~~]
- 95 (r) administer the requirements described in Section [56-1-12](#) pertaining to livestock
96 damaged by railroad operations; and

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

98 (2) The department, by following the procedures and requirements of Section
99 [63J-1-504](#), may adopt a schedule of fees assessed for services provided by the department.

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

- 101 (i) the department gives notice of the proposed order to the producers and handlers of
102 the affected product;
- 103 (ii) the commissioner conducts a hearing on the proposed order; and
- 104 (iii) at least 50% of the registered producers and handlers of the affected products vote
105 in favor of the proposed order.

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

108 (ii) A board of control shall:

- 109 (A) ensure that proceeds are placed in an account in the board of control's name in a
110 depository institution; and
- 111 (B) ensure that the account is annually audited by an accountant approved by the
112 commissioner.

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

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

- 116 (a) purchase, as authorized or required by law, services that the department is
117 responsible to provide for legally eligible persons;
- 118 (b) take necessary steps, including legal action, to recover money or the monetary value
119 of services provided to a recipient who is not eligible;
- 120 (c) examine and audit the expenditures of any public funds provided to a local

121 authority, agency, or organization that contracts with or receives funds from those authorities or
122 agencies;

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

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

127 Section 2. Section [56-1-12](#) is repealed and reenacted to read:

128 **56-1-12. Injury to livestock -- Notice.**

129 (1) As used in this section:

130 (a) "Actual fair market value" means the actual value of damages to livestock as
131 determined by the Livestock Damages Board.

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

134 (c) "Department" means the Department of Agriculture and Food created in Section
135 [4-2-102](#);

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

138 (e) "Law enforcement agency" means the same as that term is defined in Section
139 [53-1-102](#);

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

141 (g) "Livestock Damages Board" means the Livestock Damages Board created in
142 Subsection (9).

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

144 (i) "Railroad Livestock Damage Fund" or "fund" means the Railroad Livestock
145 Damage Fund created in Subsection (7).

146 (j) "Statewide railroad engineer" means the statewide railroad engineer within the
147 Department of Transportation.

148 (2) Each railroad that operates in this state shall provide to the department current
149 contact information suitable for communication between the department and the railroad
150 regarding injury to livestock caused by a railroad.

151 (3) (a) A railroad operator that strikes, injures, or kills livestock during the operation of

152 an engine or car shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

177 (A) investigate the scene of the strike;

178 (B) identify the livestock that was struck;

179 (C) determine ownership of the livestock that was struck;

180 (D) assess the state of repair of the fences along the railroad right-of-way; and

181 (E) document and preserve relevant evidence of the scene of the strike.

182 (d) (i) After the investigation described in Subsection (3)(b), if possible, the

183 department and relevant law enforcement agency shall notify the owner of the livestock that
184 was struck.

185 (ii) The department shall create and maintain a website to document and provide notice
186 and information to the public regarding livestock strikes within this state.

187 (iii) If the relevant law enforcement agency and department are unable to identify the
188 owner of the injured livestock as described in Subsection (3)(b), the department shall post and
189 maintain relevant information regarding the strike on a website to provide notice to the public
190 regarding each livestock strike.

191 (4) (a) If livestock is struck by an implement of railroad operations, the owner of the
192 livestock may receive compensation for the estimated market value or the actual fair market
193 value of the damage.

194 (b) To obtain compensation, the owner of the damaged livestock shall notify the
195 department as soon as possible after discovering the damage.

196 (c) A livestock owner shall notify the department each time the owner believes
197 livestock has been damaged by railroad operations.

198 (5) A livestock owner shall file a proof of loss form, provided by the department, no
199 later than 30 days after the date of the original notification livestock damage:

200 (a) has been received by the livestock owner pursuant to Subsection (3)(c); or

201 (b) has been received by the department pursuant to Subsection (4)(c).

202 (6) The department shall:

203 (a) within 30 days after the day the department receives a proof of loss form from a
204 livestock owner, either accept or deny the claim for damages to livestock; and

205 (b) to the extent money is available in the Railroad Livestock Damage Fund created in
206 Subsection (7), pay all accepted claims in accordance with the livestock estimated market value
207 established pursuant to Subsection (8).

208 (7) (a) There is created the Railroad Livestock Damage Fund.

209 (b) The fund shall consist of:

210 (i) deposits by the Legislature;

211 (ii) an initial deposit by each railroad as described in Subsection (7)(c);

212 (iii) periodic payments by each railroad as required in Subsection (7)(d);

213 (iv) money deposited by the department from a civil penalty described in Subsection

214 (3);
215 (v) other donations or deposits into the fund; and
216 (vi) interest earned on the balance of the fund.
217 (c) Before December 31, 2023, each railroad shall pay into the Railroad Livestock
218 Damage Fund a fee of \$150 per mile of railroad track owned by the railroad in this state, in
219 accordance with rules made under Subsection (8)(b).
220 (d) (i) If the department issues payment from the fund in accordance with Subsection
221 (6), the department shall notify the relevant railroad that is liable for the damage.
222 (ii) The department shall include in the notice to the railroad described in Subsection
223 (7)(d)(i) relevant information, including:
224 (A) the date or approximate date that the damage occurred;
225 (B) the location where the damage occurred;
226 (C) the type of livestock that was damaged;
227 (D) the name of the owner of the livestock that was damaged; and
228 (E) the estimated market value of the damage for which the railroad is responsible.
229 (iii) Within 30 days of the date the railroad receives the notice described in Subsection
230 (7)(d)(i), the railroad shall remit to the department the value of the damage.
231 (iv) If a railroad fails to remit to the department the value of the damage as required in
232 Subsection (7)(d)(i), the department may impose a civil penalty up to \$10,000:
233 (A) for the failure to pay within 30 days as described in Subsection (7)(d)(iii); and
234 (B) for every additional 30-day period of delinquency.
235 (v) Payment of a civil penalty described in Subsection (7)(d)(iv) does not release a
236 railroad from liability for damage to livestock.
237 (e) The department may use money in the Railroad Livestock Damage Fund to pay for
238 the costs of administration and staff support related to the Railroad Livestock Damage Fund.
239 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
240 department shall make rules necessary to implement and enforce this section, including rules:
241 (a) to establish the estimated market value of each type of livestock; and
242 (b) to establish the official mileage calculation for each railroad for the fee established
243 in Subsection (7)(c).
244 (9) (a) A livestock owner may appeal the estimated market value granted by the

245 department for damage to livestock by appealing to the Livestock Damages Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

268 **56-1-13. Fencing right-of-way -- Gates.**

269 (1) As used in this section:

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

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

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

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

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

276 (3) A railroad shall ensure that a fence required under Subsection (2) is:
277 (a) at least four and one-half feet high;
278 (b) constructed with barbed or other fencing wire, with at least five wires;
279 (c) constructed with substantial posts no more than 16.5 feet apart; and
280 (d) reasonably constructed to ensure livestock are unable to pass through the fence.
281 (4) A railroad shall ensure that fences required under Subsection (2) include proper
282 gates and cattle guards at each private crossing.
283 (5) A railroad is liable to a livestock owner for all damages to livestock resulting from
284 a railroad's failure to construct or maintain a fence as required in this section.
285 (6) (a) If a fence falls into disrepair or is damaged, the railroad shall ensure that the
286 fence is repaired as soon as possible, but not later than 30 days after the date the railroad
287 receives notice of the disrepair or damage.
288 (b) To recover damage to livestock caused by a damaged fence as described in this
289 section, a livestock owner shall follow the procedures described in Section [56-1-12](#).
290 (7) (a) If a railroad fails to repair a fence within 30 days after the date the railroad
291 receives notice as described in Subsection (6)(a), the owner of the adjacent property may
292 construct or repair the fence.
293 (b) If a land owner repairs a fence as described in Subsection (7)(a):
294 (i) the railroad is liable for the full value of the work and materials for the construction
295 or repair; and
296 (ii) if the railroad fails to timely reimburse the land owner, the land owner may file a
297 civil action in a court of competent jurisdiction.
298 (8) Any work by a land owner to repair a fence required by this section does not:
299 (a) shift liability for damage to livestock as described in Section [56-1-12](#) to the land
300 owner; or
301 (b) relieve the railroad from liability for damage to livestock as described in Section
302 [56-1-12](#).