

# SB0061S01 compared with SB0061

~~text~~ shows text that was in SB0061 but was deleted in SB0061S01.

inserted text shows text that was not in SB0061 but was inserted into SB0061S01.

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Senator Derrin R. Owens proposes the following substitute bill:

## LIVESTOCK COLLISION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derrin R. Owens**

House Sponsor: \_\_\_\_\_

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### 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;

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

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

REPEALS AND REENACTS:

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

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

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

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

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

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

(1) The department shall:

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

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

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the agricultural products of the state;

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

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

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

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

(i) promote orderly market conditions for any product;

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

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

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

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

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

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

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

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

(ii) establish and enforce quarantines;

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

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

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

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

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

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

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

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

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

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

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

(i) under this title;

(ii) by the department; or

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

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

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

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

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

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

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

(iii) at least 50% of the registered producers and handlers of the affected products vote in favor of the proposed order.

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

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(ii) A board of control shall:

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

(e) "Indemnification provision" means a covenant, promise, agreement or

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understanding in, in connection with, or collateral to a railroad contract requiring the other entity to insure, hold harmless, indemnify, or defend a railroad against liability if:

(i) the damages arise out of:

(A) damage to property, including livestock; or

(B) other related economic loss; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) the investigation under Subsection (3)(c) resulted from a notification from a

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livestock owner of a potential strike as described in Subsection (4)(c); and

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

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

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

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

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

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

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

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

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

(A) investigate the scene of the strike;

(B) identify the livestock that was struck;

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

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

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

(d) (i) After the investigation described in Subsection (3)(b), if possible, the department and relevant law enforcement agency shall notify the owner of the livestock that was struck.

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

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

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

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value of the damage.

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

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

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

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

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

(6) The department shall:

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

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

(7) (a) There is created an expendable special revenue fund called the Railroad Livestock Damage Fund.

(b) The fund shall consist of:

(i) deposits by the Legislature;

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

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

(iv) annual deposits by each railroad for administrative costs as provided under Subsection (7)(e);

(~~iv~~v) money deposited by the department from a civil penalty described in Subsection (3);

(~~v~~vi) other donations or deposits into the fund; and

(~~vi~~vii) interest earned on the balance of the fund.

(c) Before December 31, 2023, each railroad shall pay into the Railroad Livestock Damage Fund ~~{ a }~~:

(i) an initial, one-time fee of \$150 per mile of railroad track owned by the railroad in this state, in accordance with rules made under Subsection (8)(b), to capitalize the fund for



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payment of claims as provided in this section; and

(ii) an initial, one-time fee of \$75 per mile of railroad track owned by the railroad in this state, in accordance with rules made under Subsection (8)(b), to pay for staff salaries and other costs to administer the fund and the department responsibilities under this section.

(d) (i) If the department issues payment from the fund in accordance with Subsection (6), the department shall notify the relevant railroad that is liable for the damage.

(ii) The department shall include in the notice to the railroad described in Subsection (7)(d)(i) relevant information, including:

(A) the date or approximate date that the damage occurred;

(B) the location where the damage occurred;

(C) the type of livestock that was damaged;

(D) the name of the owner of the livestock that was damaged; and

(E) the estimated market value of the damage for which the railroad is responsible.

(iii) Within 30 days of the date the railroad receives the notice described in Subsection (7)(d)(i), the railroad shall remit to the department the value of the damage.

(iv) If a railroad fails to remit to the department the value of the damage as required in Subsection (7)(d)(i), the department may impose a civil penalty up to \$10,000:

(A) for the failure to pay within 30 days as described in Subsection (7)(d)(iii); and

(B) for every additional 30-day period of delinquency.

(v) Payment of a civil penalty described in Subsection (7)(d)(iv) does not release a railroad from liability for damage to livestock.

(e) ~~The~~ (i) Between July 1, 2023, and December 31, 2023, the department shall gather data from livestock strikes reported as required in this section to determine how many livestock strikes occurred during that six months.

(ii) Based on the information gathered under Subsection (7)(e)(i) and extrapolated and adjusted to estimate annual strike rates, beginning on July 1, 2024, the department shall establish and charge an administrative fee for each claim the department processes under this section sufficient to cover the staff salary and other administrative costs directly related to the administration of this section.

(iii) The department shall establish and publish the fee amount in rules made pursuant to Subsection (8).

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(iv) The department may not charge more than necessary to cover the costs of salary and administration directly related to the duties under this chapter.

(f) In addition to payment of claims for damage to livestock as described in this section, the department may use money in the Railroad Livestock Damage Fund to pay for the costs of administration ~~{ and }~~, staff salary, and other support related to the Railroad Livestock Damage Fund and administration of this section.

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

~~(a) }~~ to establish the:

(a) estimated market value of each type of livestock; ~~{ and }~~

(b) ~~{to establish the }~~ official mileage calculation for each railroad for the fee established in Subsection (7)(c) ~~{,}; and~~

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

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

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

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

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

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

(iii) one member who works for the department.

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

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

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

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

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

(f) (i) The Livestock Damages Board may convene twice each year to hear appeals

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regarding the value of livestock damaged by a railroad operation.

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

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

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

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

(1) As used in this section:

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

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

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

(a) land owned by a private owner; or

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

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

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

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

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

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

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

(5) A railroad is liable to a livestock owner for all damages to livestock resulting from a railroad's failure to construct or maintain a fence as required in this section.

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

(b) To recover damage to livestock caused by a damaged fence as described in this

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section, a livestock owner shall follow the procedures described in Section 56-1-12.

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

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

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

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

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

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

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