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States' Fence Statutes:

*Utah*



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# A National Agricultural Law Center Research Publication

## States' Fence Statutes: Utah

**U.C.A. §§ 4-25-101 to 4-25-401, §§ 4-26-101 to 4-26-104, §§ 41-6a-407 to 41-6a-408, §§ 56-1-12 to 56-1-13, §§ 56-2-6 to 56-2-12.**

*Current through Act 2020-206*

### **Chapter 25. Estraying and Trespassing Animals.**

#### **§ 4-25-101. Title.**

This chapter is known as “Estrays.”

#### **§ 4-25-102. Definitions.**

For the purpose of this chapter:

(1)

(a) “Estray” means:

(i) an unbranded sheep, cow, horse, mule, or ass found running at large;

(ii) a branded sheep, cow, horse, mule, or ass found running at large whose owner cannot be found after reasonable search; or

(iii) a swine found running at large whose owner cannot be found after reasonable search.

(b) “Estray” does not mean any unweaned animal specified in this section that is running with its mother.

(2) “Feral swine” means any species, or hybrid species:

(a) of the family Suidae, including the European boar, the Eurasian boar, the Russian boar, a feral hog, or a domestic pig;

(b) that is not conspicuously identified by an ear tag or other form of visual identification; and

(c) that is roaming freely upon public land or private land.

(3) “Swine” means any domesticated species of the family Suidae that is conspicuously identified by an ear tag or other form of visible identification.

#### **§ 4-25-103. County responsibility for estrays--Contracts with other local governments authorized.**

(1) Each county is responsible for the disposition of all estrays found within the county's boundaries.

(2) Each county in the discharge of the county's responsibility, however, may contract upon mutually agreeable terms with any city, town, or other county with an animal control



office to perform any or all of the functions imposed by this chapter.

**§ 4-25-3. Department authorized to make and enforce rules.**

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are necessary to administer and enforce this chapter.

**§ 4-25-104. Department authorized to make and enforce rules.**

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in the department's judgment are necessary to administer and enforce this chapter.

**§ 4-25-201 Possession of estrays--Determination and location of owner--Sale--Disposition of proceeds--Notice--Title of purchaser--Immunity from liability.**

(1)

(a) Except as provided in Section 4-25-202, a county shall:

- (i) take physical possession of an estray the county finds within county boundaries;
- (ii) attempt to determine the name and location of the estray's owner; and
- (iii) contact the local brand inspector.

(b) The department shall assist a county that requests its help in determining the name and location of the owner or other person responsible for the estray.

(c)

- (i) Notwithstanding the requirements of Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act, if the county cannot determine the estray's owner, or, if having determined ownership, neither the county nor the department is able to locate the owner within a reasonable period of time, the estray shall be sold at a livestock or other appropriate market.
- (ii) The proceeds of a sale under Subsection (1)(c)(i), less the costs described in Subsection (1)(c)(iii), shall be paid to the county selling the estray.
- (iii) The livestock or other market conducting the sale under Subsection (1)(c)(i) may deduct the cost of feed, transportation, and other market costs from the proceeds of the sale.

(2) A county shall publish notice of the sale of an estray:

- (a) at least once 10 days before the date of the sale; and
- (b) through electronic means or in a publication with general circulation within the county where the estray was taken into custody.

(3) A purchaser of an estray sold under this section shall receive title to the estray free and clear of all claims of the estray's owner and a person claiming title through the owner.

(4) A county that complies with the provisions of this section is immune from liability for the sale of an estray sold at a livestock or other appropriate market.



(5) Notwithstanding the requirements of Subsection (1)(c), a county may employ a licensed veterinarian to euthanize an estray if the licensed veterinarian determines that the estray's physical condition prevents the estray from being sold.

**§ 4-25-202. Report of estrays--Possession--Relief from liability.**

(1) As used in this section, "division" means the Division of Wildlife Resources.

(2) A person, other than an official of the county or of an animal control office under contract with the county, who finds an estray shall report the estray to the county or animal control office immediately.

(3) Upon receipt of notification under Subsection (2), the county or the animal control office shall:

(a) take possession of the estray; or

(b) if appropriate, authorize the person in possession of the estray to maintain and care for the estray pending determination and location of the estray's owner.

(4) A person who gives notice of an estray and delivers the estray to the county or animal control office is not liable to third parties on account of the estray to the extent of the value of the animal.

(5)

(a) If an employee of the department or the division, acting in the employee's official capacity, finds an estray, the employee shall:

(i) comply with the requirements of Subsection (2); and

(ii) make a reasonable attempt to contact the estray's owner.

(b) The county or animal control office receiving a report of an estray from an employee of the department or the division shall:

(i) take possession of the estray; or

(ii) authorize the department or the division in writing or through electronic means to take possession of the estray.

(c) If the county or animal control office does not comply with Subsection (5)(b) within 72 hours from the time the division reports an estray, the division may take possession of the estray.

(d) If the division takes possession of the estray, the division shall:

(i) make a reasonable attempt to return the estray to the estray's owner; or

(ii) if unable to return the estray to the estray's owner, deliver the estray to the county or animal control office.

(e) If the division is unable to take possession of the estray after a reasonable attempt, the division may cause the death of the estray if the division determines that the estray presents a material threat to wildlife by:

(i) predation;



- (ii) pathogen transmission; or
- (iii) genetic introgression.

(f) If the division causes the death of an estray under Subsection (5)(e), the division shall:

- (i) compensate the owner of the estray at full market value of the estray; or
- (ii) if the owner of the estray cannot be determined, deposit an amount equal to the full market value of the estray into the Agricultural and Wildlife Damage Prevention Account created in Section 4-23-108.

(6) Notwithstanding the requirements of Subsection (5), the division may immediately take possession of an estray or cause an estray to move away from wildlife if the estray presents an imminent material threat to wildlife by:

- (a) predation;
- (b) pathogen transmission; or
- (c) genetic introgression.

**§ 4-25-203. Compensation for care of estrays--Liability of county--Notice required.**

(1) A person who finds an estray and who, after giving notice is authorized by the county to maintain and care for the estray, is entitled to compensation from the owner, or from the county, as the case may be, for the reasonable costs of feeding and maintaining the estray; provided, that the county is liable for such cost only if the owner is not located after diligent search.

(2) No person who finds an estray, however, is entitled to reimbursement for feed and maintenance or for any other cost incurred on behalf of the estray before such time as notice of the estray is given to the county or to the appropriate animal control office.

**§ 4-25-204. County legislative body authorized to adopt fence ordinance--Lawful fence to be specified by ordinance--Dividing the county into divisions for different fencing regulations.**

(1) A county legislative body may, by ordinance, declare and enforce a general policy within the county for the fencing of farms, subdivisions, or other private property to allow domestic animals to graze without trespassing on farms, subdivisions, or other private property.

(2) If an ordinance is adopted under Subsection (1), the county legislative body:

- (a) shall through ordinance declare and specify what constitutes a lawful fence; and
- (b) may divide the county into divisions and prescribe different fencing regulations for each division.

**§ 4-25-205. Owner liable for trespass of animals--Exception--Intervention by county representative.**

(1) The owner of any cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not enclosed by a lawful fence in a county or municipality that has adopted a fence ordinance, is liable in a



civil action to the owner or occupant of the premises for any damage inflicted by the trespass.

(2) A county representative may intervene to remove the animal and the county is entitled to fair compensation for costs incurred. If the animal is not claimed within 10 days after written notification is sent to the animal's owner, a county representative may sell the animal to cover costs incurred.

(3) Notwithstanding Subsections (1) and (2), the owner of any cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person is not liable in a civil action to the owner or occupant of the premises for damage inflicted by the trespass if:

(a) the animal enters the premises from an historic livestock trail, as defined in Section 57-13b-102; and

(b) the premises that was trespassed is not enclosed by an adequate fence at the time the trespass occurs.

#### **§ 4-25-206. Animals running at large--Prohibition--Limited exception.**

No person who owns or is in possession of a stallion, jack, or ridgeling over 18 months old, or a ram over three months old, shall permit it to run at large within the limits of, or on the summer range of, any town or settlement; provided, that two-thirds of the voters of any county or isolated part of a county may elect through an election to make this section ineffective in all or part of the county during part of the year.

#### **§ 4-25-301. Allowing swine to run at large--Class B misdemeanor.**

(1) A person is guilty of a class B misdemeanor if the person:

(a) is in control of a swine; and

(b) allows the swine to run at large.

(2) A person described in Subsection (1) is liable for damage caused by the swine running at large.

#### **§ 4-25-302. Release of swine or feral swine for any purpose.**

A person is guilty of a third-degree felony if the person releases a:

(1) swine on public or private property for hunting purposes; or

(2) feral swine on public or private property for any purpose.

#### **§ 4-25-303. Feral swine detrimental to state's interests--Seizure, capture, or destruction of feral swine**

(1) Feral swine are detrimental to the state's interests in agriculture and wildlife.

(2) Feral swine may be seized, captured, or destroyed at any time, in any place, and in any manner by:

(a) the department and the department's authorized agents;

(b) the Division of Wildlife Resources and the Division of Wildlife Resources' authorized agents; or



- (c) a certified peace officer.
- (3)
- (a) Notwithstanding Section 76-9-301, and subject to the requirements of this section, an individual may kill a feral swine roaming on private or public land.
  - (b) An individual shall obtain the consent of the landowner before killing a feral swine on private land.
  - (c) Feral swine may be killed:
    - (i) year-round;
    - (ii) in any number; and
    - (iii) with a firearm, bow and arrow, or crossbow.
- (4) Feral swine may not be hunted or killed under Subsection (3)(c):
- (a) with the use of artificial light or night vision equipment, except as authorized by county ordinance; or
  - (b) from or with any airborne vehicle or device, except as provided in Section 4-23-106.
- (5) An individual may not receive compensation, or attempt to receive compensation, from hunting feral swine.
- (6) An authorized individual who kills a swine under this section is not liable to the owner for the loss of the swine, unless:
- (a) the swine is conspicuously identified by an ear tag or other form of visual identification; and
  - (b) the individual who killed the swine knew the swine was identified by an ear tag or other form of usual identification.

**§ 4-25-401. Impounded livestock--Determination and location of owner--Sale--Disposition of proceeds--Notice--Title of purchaser--Immunity from liability**

- (1) As used in this section, "impounded livestock" means the following animals seized and retained in legal custody:
- (a) cattle ;
  - (b) calves ;
  - (c) horses ;
  - (d) mules ;
  - (e) sheep ;
  - (f) goats ;
  - (g) hogs ; or
  - (h) domesticated elk.



- (2)
- (a) A county may:
    - (i) take physical possession of impounded livestock seized and retained within its boundaries; and
    - (ii) attempt to determine the name and location of the impounded livestock's owner.
  - (b) The department shall assist a county who requests help in locating the name and location of the owner or other person responsible for the impounded livestock.
  - (c)
    - (i) Notwithstanding the requirements of Title 67, Chapter 4a, Unclaimed Property Act, if the county cannot determine ownership of the impounded livestock, or, if having determined ownership, neither the county nor the department is able to locate the owner within a reasonable period of time, the impounded livestock shall be sold at a livestock or other appropriate market .
    - (ii) The proceeds of a sale under Subsection (2)(c)(i), less the costs described in Subsection (2)(c)(iii), shall be paid to the State School Fund created by the Utah Constitution Article X, Section 5, Subsection (1).
    - (iii) The livestock or other market conducting the sale under Subsection (2)(c)(i) may deduct the cost of feed, transportation, and other market costs from the proceeds of the sale.

(3) A county shall publish the intended sale of the impounded livestock :

- (a) at least 10 days prior to the date of sale; and
- (b) in a publication with general circulation within the county where the impounded livestock was taken into custody.

(4) A purchaser of impounded livestock sold under this section shall receive title to the impounded livestock free and clear of all claims of the livestock's owner or a person claiming title through the owner.

(5) If a county complies with the provisions of this section, it is immune from liability for the sale of impounded livestock sold at a livestock or other appropriate market.

(6) Notwithstanding the requirements of Subsection (2)(c), a county may employ a licensed veterinarian to euthanize an impounded livestock if the licensed veterinarian determines that the impounded livestock's physical condition prevents the impounded livestock from being sold.

**§ 4-26-101. Title--Failure to close entrance to enclosure--Class C misdemeanor--Damages**

(1) This chapter is known as "Enclosures and Fences."

(2) A person who willfully throws down a fence or opens bars or gates into any enclosure other than the person's own enclosure or into any enclosure jointly owned or occupied by such person and others, and leaves the enclosure open:

- (a) is guilty of a class C misdemeanor; and





(b) is liable in damage for any injury sustained by any person as a result of such an act.

**§ 4-26-102. Adjoining landowners--Partition fences--Contribution**

(1) If two or more persons agree to a fence enclosure or to the construction of a partition fence, the cost of construction and maintenance of the fence shall be apportioned between each party to the agreement based upon the amount of land enclosed.

(2) A person who is a party to an agreement described in Subsection (1) and who fails to maintain such person's part of the fence is liable in a civil action for any damage sustained by another party to the agreement as a result of the failure to maintain the fence.

(3)

(a) If a person has enclosed land with a fence and the owner of adjoining land desires to enclose land adjoining the fence so that the existing fence or any part of it will become a partition fence between such tracts of land, the owner of the adjoining land shall, before making the enclosure, pay to the owner of the existing fence one-half of the value of all that part of the fence that will become a partition fence.

(b) If a person whose land is enclosed, in whole or in part, by a partition fence ceases to improve or cultivate that person's land or opens the enclosure, the person:

(i) shall give notice to the other owner of the partition fence and an opportunity to pay for the person's reasonable value of the fence;

(ii) may not remove any part of the partition fence until the earlier of:

(A) 30 days after the day on which the person gave notice to the other owner, as described in Subsection (3)(b)(i); or

(B) the day the other owner pays the person for the person's reasonable value of the fence; and

(iii) notwithstanding Subsection (3)(b)(ii), may not remove the partition fence if the crops enclosed by the fence will be exposed to injury.

**§ 4-26-103. Definitions--Qualified landowners' and qualified adjoining landowners' partition fences--Contribution--Civil action for damages.**

(1) As used in this section:

(a) "Qualified adjoining landowner" means a private landowner whose land adjoins the land of a qualified landowner and is used for grazing livestock or as habitat for big game wildlife and:

(i) is land which qualifies under the definition of "conservation easement" as defined in Section 57-18-2, under Title 57, Chapter 18, Land Conservation Easement Act; or

(ii) is "land in agricultural use" that meets the requirements of Section 59-2-502.

(b) "Qualified landowner" means a private landowner whose land is used for grazing livestock and:

(i) is land which qualifies under the definition of "conservation easement"



as defined in Section 57-18-2, under Title 57, Chapter 18, Land Conservation Easement Act; or

(ii) is “land in agricultural use” that meets the requirements of Section 59-2-502.

(2) A qualified landowner may require the qualified adjoining landowner to pay for one-half of the cost of the fence if:

(a) the fence is or becomes a partition fence separating the qualified landowner's land from that belonging to the qualified adjoining landowner;

(b) the cost is reasonable for that type of fence;

(c) that type of fence is commonly found in that particular area; and

(d) the construction of the fence is no more expensive than the cost for posts, wire, and connectors.

(3) If the qualified adjoining landowner refuses, the qualified landowner may maintain a civil action against the qualified adjoining landowner for one-half of the cost of that portion of the fence.

(4) The cost of the maintenance of the fence shall also be apportioned between each party based on the amount of land enclosed. A party who fails to maintain that party's part of the fence is also liable in a civil action for any damage sustained by the other party as a result of the failure to maintain the fence.

#### **§ 4-26-104. Fencing for bison.**

Perimeter fencing intended to hold bison shall meet the following minimum standards:

(1) fence sections and gates shall:

(a) reach a height of at least eight feet above ground level; and

(b) be constructed in a mesh pattern consisting of:

(i) hi-tensile steel wire of at least 14- ½ gauge;

(ii) a maximum mesh size of six inches by six inches; or

(iii) a material with the strength equivalent of the material described in Subsections (1)(b)(i) and (ii);

(2) fence posts shall:

(a)

(i) be constructed of treated wood at least four inches in diameter; and

(ii) be constructed of a material with the strength equivalent of the material described in Subsection (2)(a)(i);

(b) reach a height of at least six feet, two inches above ground level;

(c) have at least two feet of length below ground level;

(d) be installed at intervals of no more than 20 feet; and



(e) if located on a corner or connected to a gate, be braced with wood or the strength equivalent of wood; and

(3) fence stays shall:

(a) be constructed of treated wood or steel;

(b) be installed at intervals of no more than 10 feet from any fence post; and

(c) reach a height of at least six feet, two inches above ground level.

## **Chapter 6A. Traffic Code.**

### **Part 4. Accident Responsibilities.**

#### **§ 41-6a-407. Livestock on highway--Restrictions--Collision, action for damages.**

(1)

(a) A person who owns or is in possession or control of any livestock may not willfully or negligently permit any of the livestock to stray or remain unaccompanied on a highway, if both sides of the highway are separated from adjoining property by a fence, wall, hedge, sidewalk, curb, lawn, or building.

(b) Subsection (1)(a) does not apply to range stock drifting onto any highway moving to or from their accustomed ranges.

(2)

(a) A person may not drive any livestock upon, over, or across any highway during the period from half an hour after sunset to half an hour before sunrise.

(b) Subsection (2)(a) does not apply if the person has a sufficient number of herders with warning lights on continual duty to open the road to permit the passage of vehicles.

(3) A violation of Subsection (1) or (2) is an infraction.

(4) In any civil action brought for damages caused by collision with any domestic animal or livestock on a highway, there is no presumption that the collision was due to negligence on behalf of the owner or the person in possession of the domestic animal or livestock.

#### **§ 41-6a-408. Peace officer investigating accident to notify owner if livestock or broken fence involved--Exempt from liability.**

(1) A peace officer investigating an accident resulting in injury or death of any livestock shall make reasonable efforts as soon as possible to:

(a) locate the owner of the livestock;

(b) inform the owner of the injured or dead animal; and

(c)

(i) make arrangements with the owner of the livestock to deliver, mail, email, fax, or otherwise provide the owner of the livestock a copy of the accident report prepared in accordance with Section 41-6a-404; or

(ii) advise the owner of the livestock where a copy of the accident report prepared in accordance with Section 41-6a-404 may be obtained.

(2) A peace officer investigating an accident resulting in a broken fence, if it appears the



fence contains or controls the movement of livestock, shall make reasonable efforts as soon as possible to locate the owner of the property and inform the owner of the broken fence.

(3)

(a) Civil or criminal liability for claims does not arise against any peace officer for failure to locate the owner of the livestock or property.

(b) Subsection (3)(a) does not preclude disciplinary action by the law enforcement agency against a peace officer for failure to perform duties required by this section.

## **Title 56. Railroads.**

### **Chapter 1. General Provisions.**

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

Every person operating a railroad within this state that injures or kills any livestock of any description by the running of any engine or engines, car or cars, over or against any such livestock shall within three days thereafter post at the first railroad station in each direction from the place of such injury or killing in some conspicuous place on the outside of such station a notice in writing of the number and kind of animals so injured or killed, with a full description of each, and the time and place as near as may be of such injury or killing. Such notice shall be dated and signed by some officer or agent of such railroad, and a duplicate thereof shall be filed with the county clerk of the county in which stock is so injured or killed. Every person willfully failing, neglecting or refusing to comply with the provisions of this section is guilty of a class B misdemeanor and shall be fined in any sum not exceeding \$50.

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

Every railroad company shall erect and maintain a fence on each side of its rights of way where the same passes through lands owned and improved by private owners, and at all public road crossings shall connect the same with cattle guards. Such fence shall not be less than four and one-half feet in height and may be constructed of barbed or other fencing wire with not less than five wires, and good, substantial posts not more than one rod apart with a stay midway between the posts attached to the wires to keep said wires in place; and whenever such railroad company shall provide gates for private crossings for the convenience of the owners of the land through which such railroad passes, such gates shall be so constructed that they may be easily operated; and every railroad company shall be liable for all damages sustained by the owner of any domestic animal killed or injured by such railroad in consequence of the failure to build or maintain such fence. The owner of such lands shall keep such gate closed at all times when not in actual use, and if such owner fails to keep such gates closed, and in consequence thereof, any animal owned by him strays upon such railroad, and is killed or injured, such owner shall not be entitled to recover damages therefor.

### **Chapter 2. Movement of Defective Rolling Stock and Fencing Right-Of-Way.**

#### **§ 56-2-6. Fencing rights of way to protect livestock--Power of Public Service Commission to require.**

The Public Service Commission shall have the jurisdiction and authority to require every railroad company or corporation operating any steam or electric railroad in this state to erect and maintain fences on each side or either side of such railroad, where such railroad is not now required by law to erect and maintain fences, at such places as the commission shall determine such fences to be necessary to protect sheep, cattle, horses or mules or any other domestic animal being driven, ranged or grazed upon lands adjacent to such railroad



from being wounded, maimed or killed by the operation or management of engines, cars or other rolling stock upon or over such railroad, with necessary openings and gates in such fences, and crossings and cattle guards.

**§ 56-2-7. Exercise of fencing power by commission--Necessity of application by livestock owners.**

The Public Service Commission may exercise the jurisdiction and authority granted in Section 56-2-6 only when at least three persons with the right to drive, range, or graze sheep, cattle, horses, or mules upon land adjacent to the portion of the railroad sought to be fenced file a request for agency action with the Public Service Commission.

**§ 56-2-8. Contents of livestock owners' application for fencing**

In addition to the information required by Title 63G, Chapter 4, Administrative Procedures Act, the request for agency action shall:

- (1) identify the lands;
- (2) identify the name and address of the owner of the lands;
- (3) if any of the lands are owned by the United States or the state of Utah, designate the agency or department of government that administers the lands;
- (4) identify the nature of the right of each petitioner to drive, range, or graze sheep, cattle, horses, or mules on the lands; and
- (5) specify the ownership of the railroad sought to be fenced.

**§ 56-2-11. Modification or revocation of commission's orders requiring fencing.**

Such commission shall also have the jurisdiction and authority to modify or revoke any such order when upon its determination the necessity for any such fence shall cease to exist.

**§ 56-2-12. Liability for railroad's noncompliance with commission's fencing orders.**

The failure of any railroad company or corporation to comply with any order of the commission authorized by this act shall not subject such noncomplying railroad company or corporation, or any of its officers, agents or employees, to any of the penalties prescribed in Sections 54-7-25 and 54-7-26, Utah Code Annotated 1953, but shall subject such company or corporation to the liability prescribed by Section 56-1-13, Utah Code Annotated 1953.

