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which the license is issued, subject to suspension or revocation for cause. A weighman's license is annually renewable on or before December 31 of each year upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection 4-2-2(2).

(2) Each weighman's surety bond shall be written by a surety licensed under the laws of Utah and name the state, as obligee, for the use and benefit of persons who consign livestock to a livestock market. The bond shall further be conditioned for the faithful and accurate weighing of livestock consigned to a livestock market, and for the payment of court costs and a reasonable attorney's fee to the prevailing party incident to any suit brought upon the bond.

**History:** C. 1953, 4-30-8, enacted by L. 1979, ch. 2, § 31; L. 1980, ch. 1, § 9; 1984 (2nd S.S.), ch. 15, § 20; 1985, ch. 130, § 17.

**Amendment Notes.** — The 1984 (2nd S.S.) amendment substituted fees determined by the department pursuant to Subsection 63-38-3(2)

for fees of \$10 in Subsection (1); and made minor changes in phraseology.

The 1985 amendment substituted "Subsection 4-2-2(2)" for "Subsection 63-38-3(2)" in two places in Subsection (1).

### 4-30-9. Suspension or revocation — Livestock market or weighman's license — Grounds.

The department is authorized to suspend or revoke the license of any livestock market or livestock market weighman who engages in any fraudulent or deceitful activity.

**History:** C. 1953, 4-30-9, enacted by L. 1979, ch. 2, § 31.

**Cross-References.** — Procedure for suspension or revocation of licenses, § 4-1-5.

## CHAPTER 31 LIVESTOCK INSPECTION AND QUARANTINE

| Section |  | Section  |  |
|---------|--|----------|--|
| 4-31-1. | Outbreak of contagious or infectious disease — Assistance of federal authorities.  | 4-31-9.  | Imported livestock and zoo animals — Certificate.                                    |
| 4-31-2. | Epidemic of contagious or infectious disease — Condemnation or destruction of infected or exposed livestock — Destruction of other property. | 4-31-10. | Imported swine — Quarantine period — Exceptions to quarantine.                       |
| 4-31-3. | Appraisal of fair market value before destruction.   | 4-31-11. | Restrictions on movement of swine — License required to feed garbage to swine — Fee. |
| 4-31-4. | Slaughter for post-mortem examination.   | 4-31-12. | Carcass of infected swine to be burned or buried.                                    |
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| 4-31-6. | Dairy cattle subject to inspection for disease.  | 4-31-14. | Restrictions on movement of infected or exposed domestic animals.                    |
| 4-31-7. | Claims for indemnity for destroyed or slaughtered cattle.  | 4-31-15. | Report of vesicular disease.   |
| 4-31-8. | Tuberculosis and Bangs Account created — Exclusive use of revenue.   | 4-31-16. | Contagious or infectious disease — Duties of department.                             |
|         |  | 4-31-17. | Quarantine — Peace officers to assist in maintenance of quarantine.                  |
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|  |                    |
|--|--------------------|
| Section  | Section            |
| 4-31-19. Fee to compensate state for quarantine and sanitary procedures. | 4-31-20. Repealed. |

### 4-31-1. Outbreak of contagious or infectious disease — Assistance of federal authorities.

If there is an outbreak of contagious or infectious disease among domestic animals in this state that imperils livestock in adjoining states, the commissioner shall seek the assistance of the United States Animal, Plant and Health Inspection Service in preventing the spread of the disease to other states.

**History:** C. 1953, 4-31-1, enacted by L. 1979, ch. 2, § 32.

**Cross-References.** — Bees, §§ 4-11-1 to 4-11-15.

Quarantine by health officials for rabies and other animal diseases, §§ 26-6-11 to 26-6-15.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d Animals §§ 31 to 39.

out statutory duties with respect to it, 2 A.L.R.3d 822.

**C.J.S.** — 3A C.J.S. Animals, §§ 66 to 98.

Extent of liability of seller of livestock infected with communicable disease, 14 A.L.R.4th 1096.

**A.L.R.** — Personal liability of public officer for killing or injuring animal while carrying

**Key Numbers.** — Animals ⇌ 29 to 37.

### 4-31-2. Epidemic of contagious or infectious disease — Condemnation or destruction of infected or exposed livestock — Destruction of other property.

If there is an outbreak of contagious or infectious disease of epidemic proportion among domestic animals in this state which imperils livestock, the commissioner, with approval of the governor, may condemn, destroy, or dispose of any infected livestock or any livestock exposed to, or deemed by the commissioner capable of, communicating disease to other domestic animals. The commissioner may also, with gubernatorial approval, condemn and destroy any barns, sheds, corrals, pens, or other property deemed necessary to prevent the spread of contagion or infection.

**History:** C. 1953, 4-31-2, enacted by L. 1979, ch. 2, § 32.

### 4-31-3. Appraisal of fair market value before destruction.

Before any livestock or property is condemned and destroyed, an appraisal of the fair market value of the livestock or other property shall be forwarded to the commissioner by a panel of three qualified appraisers appointed as follows:

- (1) one by the commissioner;
- (2) one by the owner of the livestock or other property subject to condemnation; and

(3) one by the appraisers specified in Subsections (1) and (2) of this section.

After review, the commissioner shall forward the appraisal to the board of examiners together with his recommendation concerning the amount, if any, which should be allowed. Any costs incurred in the appraisal shall be paid by the state.

**History:** C. 1953, 4-31-3, enacted by L. 1979, ch. 2, § 32.

#### **4-31-4. Slaughter for post-mortem examination.**

The commissioner may order the slaughter and post-mortem examination of any one or more diseased domestic animals if the exact nature of their disease is not readily ascertained through other means.

**History:** C. 1953, 4-31-4, enacted by L. 1979, ch. 2, § 32.

#### **4-31-5. Imported dairy cattle — Tuberculosis certificates.**

No person shall bring cattle into this state for dairy or breeding purposes, unless they are certified as having been examined and tested negative for tuberculosis within 30 days before shipment to Utah. The certificate required by this section may be waived if the commissioner determines the cattle are shipped directly to Utah from an area approved by the United States Department of Agriculture as an accredited tuberculosis free area.

**History:** C. 1953, 4-31-5, enacted by L. 1979, ch. 2, § 32; L. 1981, ch. 5, § 1; 1982, ch. 2, § 3.

#### **4-31-6. Dairy cattle subject to inspection for disease.**

Any dairy cattle in the state are subject to inspection at reasonable times and places for tuberculosis or other infectious or contagious disease by the department.

**History:** C. 1953, 4-31-6, enacted by L. 1979, ch. 2, § 32.

#### **4-31-7. Claims for indemnity for destroyed or slaughtered cattle.**

The owner of cattle, other than tubercular cattle, or other property which is destroyed or slaughtered under authority of this chapter, shall present a claim to the commissioner within 90 days from the date of the loss. The commissioner shall present the claim to the Board of Examiners with a recommendation as to the amount, if any, which should be allowed. A claim under this section shall be considered and processed like any other claim against the state.



**History:** C. 1953, 4-31-7, enacted by L. 1979, ch. 2, § 32.

#### **4-31-8. Tuberculosis and Bangs Account created — Exclusive use of revenue.**

There is created within the General Fund a restricted fund account known as the "Tuberculosis and Bangs Disease Control Account." Revenue deposited in the Tuberculosis and Bangs Disease Control Account shall be used exclusively by the commissioner for the payment of expenses in administering tubercular tests and Bangs disease tests and for the payment of indemnities for slaughtered tubercular and Bang reacting dairy cattle.

**History:** C. 1953, 4-31-8, enacted by L. 1979, ch. 2, § 32; L. 1985, ch. 116, § 1; 1985, ch. 165, § 1.

**Amendment Notes.** — The 1985 amendment by Chapter 116 deleted the former second and third sentences which read as enacted by Laws 1979, Chapter 2, § 32.

The 1985 amendment by Chapter 165 substituted ".0006" for "three mills for each dollar" in the former third sentence.

**Effective Dates.** — The composite of this section as amended by Laws 1985, ch. 116, § 1 and ch. 165, § 1 takes effect January 1, 1986.

#### **4-31-9. Imported livestock and zoo animals — Certificate.**

No person, except as may otherwise be provided by regulation promulgated by the department, shall import any livestock or zoo animal into this state unless it is certified in writing by a veterinarian or qualified technician to be free from contagious, infectious, or communicable disease.

**History:** C. 1953, 4-31-9, enacted by L. 1979, ch. 2, § 32; L. 1982, ch. 2, § 4.

#### **4-31-10. Imported swine — Quarantine period — Exceptions to quarantine.**

No person shall load swine for shipment to or within this state, except those for immediate slaughter, until the car is cleaned and disinfected in accordance with departmental regulations. All swine shipped into the state, except those for immediate slaughter, shall, upon arrival at their final destination in the state, be kept in a clean and disinfected place away from other swine for a period of 18 days. The owner or consignee of such swine shall notify the commissioner of the date of their arrival and the place where they are being held.

**History:** C. 1953, 4-31-10, enacted by L. 1979, ch. 2, § 32.

#### **4-31-11. Restrictions on movement of swine — License required to feed garbage to swine — Fee.**

(1) No person may (a) move or allow swine to stray from a quarantine area established under this chapter, or (b) move or allow swine affected or exposed to hog cholera or swine plague to stray from one area to another, except in accordance with departmental regulations.

(2) No person may feed garbage, as specified in Subsection (3), to swine unless such person has a license issued by the department. Application for a swine feeder license shall be made to the department upon forms prescribed and furnished by it. Upon approval of the application and payment of a fee in an amount determined by the department pursuant to Subsection 4-2-2(2), the department shall issue the applicant a swine feeder license valid through December 31 of the year in which the license is issued. A swine feeder license is annually renewable for a period of one year upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection 4-2-2(2).

(3) No person may feed swine any garbage collected from any county, city, town, hotel, restaurant, meat market, railroad, or other place unless it is heated to a temperature of at least 212° Fahrenheit for 30 minutes or more, or is subjected to such other process as the department may approve through regulation.

**History:** C. 1953, 4-31-11, enacted by L. 1979, ch. 2, § 32; L. 1984 (2nd S.S.), ch. 15, § 21; 1985, ch. 130, § 18.

**Amendment Notes.** — The 1984 (2nd S.S.) amendment substituted "determined by the department pursuant to Subsection 63-38-3(2)" for "of \$10" in two places in Subsection (2);

deleted "on or before December 31 of each year" at the end of Subsection (2); and made minor changes in phraseology.

The 1985 amendment substituted "Subsection 4-2-2(2)" for "Subsection 63-38-3(2)" in two places in Subsection (2).

#### **4-31-12. Carcass of infected swine to be burned or buried.**

A person who owns or has possession of a swine which dies from hog cholera or another contagious, infectious, or communicable disease shall dispose of the carcass by burying or burning it within 24 hours after death.

**History:** C. 1953, 4-31-12, enacted by L. 1979, ch. 2, § 32.

#### **4-31-13. Stockyards — Disinfection.**

All stockyards are considered infectious, and all swine and other livestock, except those for immediate slaughter, shall be unloaded in chutes in a section of the yards which is cleaned and disinfected in accordance with departmental regulations.

**History:** C. 1953, 4-31-13, enacted by L. 1979, ch. 2, § 32.

#### **4-31-14. Restrictions on movement of infected or exposed domestic animals.**

No person who owns or has possession of a domestic animal with knowledge that it is infected with, or has been exposed to, any contagious or infectious disease shall permit it to run at large, or to come in contact with another domestic animal which can be infected; nor, shall such a person sell, ship, trade, or give away an infected animal without disclosing that it is diseased or has been exposed to disease.

**History:** C. 1953, 4-31-14, enacted by L. 1979, ch. 2, § 32.

#### NOTES TO DECISIONS

**Willfulness not required.**

In an action for damages allegation that the diseased sheep were "willfully" intermingled with others was not required, but it was sufficient if such intermingling was done or permit-

ted after the defendant knew that his sheep were "afflicted with a contagious or infectious disease." *Lindsay Land & Livestock Co. v. Smart Land & Livestock Co.*, 43 Utah 554, 137 P. 837 (1913).

#### 4-31-15. Report of vesicular disease.

Any person who identifies symptoms of vesicular disease in livestock shall immediately report it to the department. Failure of a veterinarian licensed in this state to report a diagnosed case of vesicular disease to the department constitutes ground for the revocation of such veterinarian's license. Failure by the owner of livestock to report symptoms of vesicular disease among such owner's livestock constitutes forfeiture of the right to claim an indemnity for an animal slaughtered on account of the disease.

**History:** C. 1953, 4-31-15, enacted by L. 1979, ch. 2, § 32.

#### 4-31-16. Contagious or infectious disease — Duties of department.

The department shall investigate and may quarantine any reported case of contagious or infectious disease, or any epidemic, or poisoning affecting domestic animals or any animal or animals which it believes may jeopardize the health of animals within the state. The department shall make a prompt and thorough examination of all circumstances surrounding the disease, epidemic, or poisoning and may order quarantine, care, or any necessary remedies. The department may also order immunization or testing and sanitary measures to prevent the spread of disease. Investigations involving fish or wildlife shall be conducted under a cooperative agreement with the Division of Wildlife Resources.

If the owner or person in possession of such animals, after written notice from the department, fails to take the action ordered, the commissioner is authorized to seize and hold the animals and take action necessary to prevent the spread of disease, including but not limited to: immunization; testing; dipping; or spraying. Animals seized for testing or treatment under this section shall be sold by the commissioner at public sale to reimburse the department for all costs incurred in the seizure, testing, treatment, maintenance, and sale of such animals unless the owner sooner tenders payment for the costs incurred by the department. No seized animal shall be sold however, until the owner or person in possession is served with a notice specifying the itemized costs incurred by the department and the time, place, and purpose of sale and the number of animals to be sold. The notice shall be served at least three days in advance of sale in the manner (1) prescribed for personal service in Rule 4(e)(1), Utah Rules of Civil Procedure, or (2), if the owner cannot be found after due diligence, in the manner prescribed for service by publication

in Rule 4(f)(1), Utah Rules of Civil Procedure. Any amount realized from the sale of the animals over the total charges shall be paid to the owner of the animals if the owner is known or can by reasonable diligence be found; otherwise, the excess shall be paid to the tuberculosis and Bangs Disease Control Account.

**History:** C. 1953, 4-31-16, enacted by L. 1979, ch. 2, § 32; L. 1981, ch. 9, § 1.

#### NOTES TO DECISIONS

##### **Civil liability of officer.**

Under former statute, acts of inspecting and quarantining sheep, and defining place and limits of quarantine involved such discretionary powers as to make their exercise judicial in

nature, and officer performing them was not liable in civil action, in absence of averments and proof that he acted with malice or through fraud or corruption. *Garff v. Smith*, 31 Utah 102, 86 P. 772, 120 Am. St. R. 924 (1906).

#### **4-31-17. Quarantine — Peace officers to assist in maintenance of quarantine.**

The commissioner may quarantine any infected domestic animal or area within the state to prevent the spread of infectious or contagious disease. Sheriffs and other peace officers within the state shall, upon request of the commissioner, assist the department in maintaining a quarantine and shall arrest anyone who violates it. The department shall pay all costs and fees incurred by any law enforcement authority in assisting the department.

**History:** C. 1953, 4-31-17, enacted by L. 1979, ch. 2, § 32.

diseases, quarantine and muzzling against, §§ 26-6-11 to 26-6-15.

**Cross-References.** — Rabies and animal

#### **4-31-18. State chemist — Assistance in diagnosis of disease.**

The state chemist, upon submission by the commissioner, shall examine and analyze all tissue, grass, water, or other substances necessary in the proper diagnosis of disease or losses among livestock.

**History:** C. 1953, 4-31-18, enacted by L. 1979, ch. 2, § 32.

**Cross-References.** — State chemist generally, §§ 4-2-9, 4-2-10.

#### **4-31-19. Fee to compensate state for quarantine and sanitary procedures.**

To compensate the state for the expense of carrying out quarantine and sanitary procedures, the commissioner may collect a fee, determined by the department pursuant to Subsection 4-2-2(2), on cattle, horses, and sheep that enter the state from a quarantined or infected area.

**History:** C. 1953, 4-31-19, enacted by L. 1979, ch. 2, § 32; L. 1984 (2nd S.S.), ch. 15, § 22; 1985, ch. 130, § 19.

**Amendment Notes.** — The 1984 (2nd S.S.) amendment substituted a fee determined by the department pursuant to Subsection

63-38-3(2) for a fee of five cents per head on cattle and horses and three cents per head on sheep.

The 1985 amendment substituted "Subsection 4-2-2(2)" for "Subsection 63-38-3(2)."

**4-31-20. Repealed.**

**Repeals.** — Section 4-31-20 (L. 1979, ch. 2, § 32), making violation of the chapter a class

"B" misdemeanor, was repealed by Laws 1985, ch. 104, § 8.

**CHAPTER 32  
MEAT AND POULTRY**

- Section 4-32-1. Short title.
- 4-32-2. Purpose declaration.
- 4-32-3. Definitions.
- 4-32-4. License required to operate slaughterhouse — Slaughtering livestock except in slaughterhouse prohibited — Exceptions — Violation class "C" misdemeanor.
- 4-32-5. Slaughterhouse licenses and farm custom slaughter permits — Application — Fees — Expiration — Renewal.
- 4-32-6. Duties of person who holds a farm custom slaughter permit.
- 4-32-7. Mandatory functions, powers, and duties of department prescribed.
- 4-32-8. Discretionary functions, powers, and duties of commissioner prescribed.
- 4-32-9. Additional powers of commissioner.
- 4-32-10. Judicial review of orders enforcing chapter.
- 4-32-11. Unlawful acts specified with respect to livestock or poultry or products of either.
- 4-32-12. Unlawful acts specified with respect to official devices, marks, or certificates — False statements.
- 4-32-13. Meat or carcasses of horses, mules, or other equines to be marked or labeled — Livestock or poultry

- Section products not intended for human food — Dead, dying, disabled, or diseased animals.
- 4-32-14. Attempt to bribe state officer or employee — Acceptance of bribe — Interference with official duties — Penalties.
- 4-32-15. Inspection of products placed in containers — Supervision of inspector — Access to establishment.
- 4-32-16. Detention of animals or livestock or poultry products — Removal of official marks.
- 4-32-17. Quarantine authorized — Conditions giving rise to quarantine.
- 4-32-18. Regulations for the construction and operation of slaughterhouses authorized.
- 4-32-19. Repealed.
- 4-32-20. Suspension or revocation — Grounds.
- 4-32-21. Denial of application for farm custom slaughter permit — Venue for judicial review.
- 4-32-22. Livestock or poultry slaughtered or the products of either not intended for human use — No inspection — Products to be denatured or otherwise identified.

**4-32-1. Short title.**

This chapter shall be known as and may be cited as the "Utah Meat and Poultry Products Inspection and Licensing Act."

**History:** C. 1953, 4-32-1, enacted by L. 1979, ch. 2, § 33.

Eggs, §§ 4-4-1 to 4-4-7.

**Cross-References.** — Cities and towns, regulation of slaughterhouses by, § 10-8-66.



## NOTES TO DECISIONS

**Pork.**

Where a supplier of pork was requested by a retailer to supply uncooked pork, was advised that the retailer would finish the necessary processing, and had no knowledge that the retailer was selling unfinished pork, even though

supplier knew that uncooked pork was dangerous, he was not liable to retailer's customer who contracted trichinosis from eating the pork. *Schneider v. Suhrmann*, 8 Utah 2d 35, 327 P.2d 822 (1958); *Bodon v. Suhrmann*, 8 Utah 2d 42, 327 P.2d 826 (1958).

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 35 Am. Jur. 2d Food § 35.  
**C.J.S.** — 3A C.J.S. Animals §§ 117, 118;  
 36A C.J.S. Food § 3.  
**A.L.R.** — Liability of packer, foodstore, or

restaurant for causing trichinosis, 96 A.L.R.3d 451.

**Key Numbers.** — Animals ⇐ 15; Food ⇐ 2.

**4-32-2. Purpose declaration.**

It is the purpose of this chapter to provide meat and poultry products inspection programs in the state at least equal to those imposed under the Federal Meat Inspection Act and the Federal Poultry Products Inspection Act. The commissioner is directed to administer and enforce this chapter to accomplish this purpose.

**History:** C. 1953, 4-32-2, enacted by L. 1979, ch. 2, § 33.

**Compiler's Notes.** — The Federal Meat In-

spection Act is compiled as 21 U.S.C., § 601 et seq.; the Federal Poultry Products Inspection Act is compiled as 21 U.S.C., § 451 et seq.

**4-32-3. Definitions.**

As used in this chapter:

(1) "Adulterated" means any livestock product or poultry product which:

(a) bears or contains any poisonous or deleterious substance which may render it injurious to health, but, if the substance is not an added substance, the livestock product shall not be considered adulterated under this subsection if the quantity of the substance in or on the livestock product does not ordinarily render it injurious to health;

(b) bears or contains (by reason of the administration of any substance to the livestock or poultry or otherwise) any added poisonous or added deleterious substance which in the judgment of the commissioner makes the livestock product unfit for human food;

(c) contains, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 of the Federal Food, Drug and Cosmetic Act;

(d) bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug and Cosmetic Act;

(e) bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug and Cosmetic Act; provided, that a livestock product which is not otherwise deemed adulterated under Subsection (c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food

additive, or color additive is prohibited in official establishments by regulations of the commissioner;

(f) consists, in whole or in part, of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) has been prepared, packaged, or held under unsanitary conditions if it may have become contaminated with filth, or if it may have been rendered injurious to health;

(h) is in whole or in part the product of an animal which has died otherwise than by slaughter;

(i) is contained in a container which is composed, in whole or in part, of any poisonous or deleterious substance which may render the meat product injurious to health;

(j) has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug and Cosmetic Act;

(k) has a valuable constituent in whole or in part omitted, abstracted, or substituted; or if damage or inferiority is concealed in any manner; or if any substance has been added, mixed, or packed with the meat product to increase its bulk or weight, or reduce its quality or strength, or to make it appear better or of greater value; or

(l) is margarine containing animal fat and any of the raw material used in the margarine consists in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal food manufacturer" means any person engaged in the business of preparing animal food derived from livestock carcasses or parts or products of such carcasses.

(3) "Broker" means any person engaged in the business of buying or selling livestock or livestock products on commission, or otherwise negotiating purchases or sales of livestock or livestock products other than for such person's own account.

(4) "Capable of use as human food" means any livestock carcass, or part or product of a carcass, unless it is denatured or otherwise identified as required by regulations of the department to deter its use as human food, or unless it is naturally inedible by humans.

(5) "Container" or "package" means any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

(6) "Director of meat inspection" means a licensed graduate veterinarian whose duties and responsibilities are specified by the commissioner.

(7) "Farm custom slaughter" means custom slaughtering of livestock or poultry for an owner without inspection.

(8) "Farm custom slaughter permit" means a permit issued by the department to allow farm custom slaughter.

(9) "Farm custom slaughter tag" means a tag which specifies the animal's identification and certifies its ownership which is issued by the department through a brand inspector to the owner of the animal before it is slaughtered.

(10) "Federal Food, Drug and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040) (21 U.S.C. 301, et seq.), and any amendments to it.



(11) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584) (21 U.S.C. 601, et seq.); the term "Federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791) (21 U.S.C. 451, et seq.); and the term "federal acts" means these two federal acts.

(12) "Immediate container" means any consumer package, or any other container in which livestock products not consumer packaged, are packed.

(13) "Inspector" means a licensed veterinarian or competent lay person working under the supervision of a licensed graduate veterinarian.

(14) "Label" means a display of printed, or graphic matter upon any livestock or poultry product or the immediate container (not including package liners) of any such product.

(15) "Labeling" means all labels and other printed, or graphic matter (a) upon any livestock product or any of its containers or wrappers, or (b) accompanying a livestock product.

(16) "Livestock" means any cattle, sheep, swine, goats, horses, mules or other equines, whether living or dead.

(17) "Livestock product" means any carcass, part of a carcass, meat, or meat food product of any livestock.

(18) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other part of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other parts of such carcasses in relatively small proportion or which historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the commissioner. Meat food product as applied to food products of equines shall have a meaning comparable to that provided in this subsection with respect to cattle, sheep, swine, and goats.

(19) "Misbranded" means any livestock product or poultry product which:

(a) bears a label that is false or misleading in any particular;

(b) is offered for sale under the name of another food;

(c) is an imitation of another food, unless the label bears, in type of uniform size and prominence, the word "imitation" followed by the name of the food imitated;

(d) if its container is so made, formed, or filled as to be misleading;

(e) does not bear a label showing (i) the name and place of business of the manufacturer, packer, or distributor and (ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided, that under this Subsection (e), exemptions as to livestock products not in containers may be established by regulations of the department and that under Clause (ii) of this subsection, reasonable variations may be permitted, and exemptions for small packages may be established for livestock or poultry products by regulation of the department;

(f) does not bear any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed with such conspicuousness (as compared with other words, statements, designs, or devices, in the

labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) is a food for which a definition and standard of identity or composition has been prescribed by regulations of the department under § 4-32-7 if the food does not conform to such definition and standard and the label does not bear the name of the food and any other information that is required by the regulation;

(h) is a food for which a standard of fill has been prescribed by regulation of the department for the container and the actual fill of the container falls below that prescribed unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(i) is a food for which no standard or definition of identity has been prescribed under Subsection (g) of this section unless its label bears (i) the common or usual name of the food, if any there be, and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the department, be designated as spices, flavorings, and colorings without naming each; provided, that to the extent that compliance with the requirements of Clause (ii) of this Subsection (i) is impracticable, or results in deception or unfair competition, exemptions shall be established by regulation;

(j) is a food which purports to be or is represented to be for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department, after consultation with the Secretary of Agriculture of the United States, prescribes by regulation as necessary to inform purchasers as to its value for such uses;

(k) bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this subsection are impracticable, exemptions shall be prescribed by regulations of the department; or

(l) does not bear directly thereon and on its containers, as the department may prescribe by regulation, the official inspection legend and establishment number of the official establishment where the product was prepared, and, unrestricted by any of the foregoing, such other information as the department may require by regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain it in a wholesome condition.

(20) "Official certificate" means any certificate prescribed by regulations of the department for issuance by an inspector or other person performing official functions under this chapter.

(21) "Official device" means any device prescribed or authorized by the commissioner for use in applying any official mark.

(22) "Official establishment" means any establishment at which inspection of the slaughter of livestock or the preparation of livestock products is maintained under the authority of this chapter.

(23) "Official inspection legend" means any symbol prescribed by regulations of the department showing that a livestock product was inspected and passed in accordance with this chapter.

(24) "Official mark" means the official legend or any other symbol prescribed by regulations of the department to identify the status of any livestock or livestock product under this chapter.

(25) "Permittee" means a person who holds a valid farm custom slaughter permit.

(26) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity," have the same meanings for purposes of this chapter as ascribed to them in the Federal Food, Drug and Cosmetic Act.

(27) "Poultry" means any domesticated bird, whether living or dead.

(28) "Poultry product" means any product capable of use as human food which is made wholly or in part from any poultry carcass, excepting products which contain poultry ingredients in relatively small proportion or which historically have not been considered by consumers as products of the poultry food industry, and which are exempted from definition as a poultry product by the commissioner.

(29) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

(30) "Renderer" means any person engaged in the business of rendering livestock carcasses, or parts or products of such carcasses, except rendering conducted under inspection or exemption under this chapter.

(31) "Slaughter" means the killing of livestock or poultry in a humane manner including skinning, dressing, or the process of performing any of the specified acts in preparing livestock or poultry for human consumption.

(32) "Slaughterhouse" or "custom slaughterhouse" means any building, plant, or establishment used for the purpose of killing, dressing, or processing, whether such dressing or processing is in conjunction with a killing operation or is a separate business, livestock or livestock products or poultry or poultry products offered for sale or to be used for human consumption.

(33) "Slaughtering of livestock or poultry as a business" means the slaughtering of livestock or poultry for the owner or caretaker of the livestock or poultry by a person who is not a full-time employee of the owner or caretaker of such livestock or poultry.

History: C. 1953, 4-32-3, enacted by L. 1979, ch. 2, § 33.

Compiler's Notes. — Sections 408, 409 and

706 of the Federal Food, Drug and Cosmetic Act are compiled as 21 U.S.C., §§ 346a, 348 and 376, respectively.

#### **4-32-4. License required to operate slaughterhouse — Slaughtering livestock except in slaughterhouse prohibited — Exceptions — Violation class "C" misdemeanor.**

(1) No person shall operate a slaughterhouse in this state without a license issued by the department, nor shall any person, (except in a licensed slaughterhouse) slaughter livestock as a business or assist other persons in the

slaughter of livestock except as otherwise provided in Subsection (2) or (3) of this section.

(2) A person who raises his own livestock or an employee of such person may slaughter livestock without a farm custom slaughter permit if (a) the livestock is slaughtered on property owned by such person, (b) the livestock product derived from the slaughtered animal is consumed exclusively by such person or his immediate family, regular employees of such person, or nonpaying guests, and (c) the livestock product is marked "Not For Sale."

(3) Farm custom slaughter may be performed by a person who holds a valid farm custom slaughter permit.

(4) Any person who violates this section, except as otherwise provided in Subsection (5) of this section, is guilty of a class "C" misdemeanor.

(5) Any person who offers for sale or sells any uninspected livestock product is guilty of a class "A" misdemeanor.

**History:** C. 1953, 4-32-4, enacted by L. 1979, ch. 2, § 33.

Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

**Cross-References.** — Brand inspection certificate required for slaughter of cattle, calves, horses or mules, § 4-24-13.

#### **4-32-5. Slaughterhouse licenses and farm custom slaughter permits — Application — Fees — Expiration — Renewal.**

(1) Application for a license to operate a slaughterhouse shall be made to the department upon forms prescribed and furnished by it. Upon receipt of a proper application, compliance with all applicable regulations, and the payment of an annual license fee determined by the department pursuant to Subsection 4-2-2(2), the commissioner, if satisfied that the public convenience and necessity will be served, shall issue a license allowing the applicant to operate a slaughterhouse through December 31 of the year in which the license is issued, subject to suspension or revocation for cause. A slaughterhouse license is annually renewable on or before December 31 of each year, upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection 4-2-2(2).

(2) Application for a farm custom slaughter permit to engage in the business of slaughtering livestock shall be made to the department on forms prescribed and furnished by it. Upon receipt of a proper application, compliance with all applicable regulations, and payment of a permit fee in an amount determined by the department pursuant to Subsection 4-2-2(2), the commissioner shall issue a permit allowing the applicant to engage in farm custom slaughtering. A farm custom slaughter permit is annually renewable on or before December 31 of each year, upon the payment of an annual renewal permit fee in an amount determined by the department pursuant to Subsection 4-2-2(2).

**History:** C. 1953, 4-32-5, enacted by L. 1979, ch. 2, § 33; L. 1984 (2nd S.S.), ch. 15, § 23; 1985, ch. 130, § 20.

**Amendment Notes.** — The 1984 (2nd S.S.) amendment substituted fees determined by the department pursuant to Subsection 63-38-3(2)

for fees of \$10 throughout the section; and made minor changes in phraseology.

The 1985 amendment substituted "Subsection 4-2-2(2)" for "Subsection 63-38-3(2)" in four places.



#### 4-32-6. Duties of person who holds a farm custom slaughter permit.

Each person who holds a farm custom slaughter permit shall:

(1) keep accurate records of each animal slaughtered including the name, address, and telephone number of each person for whom livestock is slaughtered, a full description of each animal slaughtered including brands, marks, or other identifying marks, proof of ownership, destination of the carcass for processing, and the date of slaughter;

(2) require that each animal presented for slaughter bear a farm custom slaughter tag;

(3) render the animal to be slaughtered insensible to pain by captive bolt, gunshot, electric shock, or other humane means before it is shackled, hoisted, thrown, cast, or cut; and

(4) stamp and tag the carcass of any slaughtered animal "Not For Sale."

**History:** C. 1953, 4-32-6, enacted by L. 1979, ch. 2, § 33.

tificate required for slaughter of cattle, calves, horses or mules, § 4-24-13.

**Cross-References.** — Brand inspection cer-

#### 4-32-7. Mandatory functions, powers, and duties of department prescribed.

The department has and shall exercise, through regulations promulgated pursuant to the Utah [Administrative] Rulemaking Act, the following functions, powers, and duties, in addition to those specified in Chapter 1 of this code in the administration and enforcement of this chapter:

(1) require ante-mortem and post-mortem inspections, quarantine, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all official establishments, except as exempted in Subsection 4-32-8(13);

(2) require the identification of livestock and poultry for inspection purposes, and the marking and labeling of livestock products or poultry products or their containers, or both, as "Utah Inspected and Passed" if the products are found upon inspection to be unadulterated, and as "Utah Inspected and Condemned" if adulterated; and, also the destruction for human food of all such condemned products under the supervision of an inspector;

(3) prohibit the entry into official establishments of livestock products and poultry products not prepared under inspection pursuant to this chapter, and further limit the entry of such products and other materials into official establishments as deemed necessary to effectuate the purposes of this chapter;

(4) require that when livestock products and poultry products leave official establishments they bear directly or on their containers, or both, all information required under Subsection 4-32-3(19); and require approval of all labeling and containers to be used for such products when sold or transported to assure that they comply with the requirements of this chapter;

(5) prescribe sanitary standards for all official establishments required to have inspection under Subsection (1) of this section and investigate the

sanitary conditions of each official establishment and withdraw or otherwise refuse to provide inspection service at any establishment where the sanitary conditions are such as to allow adulteration of any livestock product or poultry product; and

(6) require any person that engages (a) in the business of slaughtering livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling (as brokers, wholesalers, or otherwise), transporting, or storing any livestock or poultry products for human or animal food; or (b) in the business as renderer or in the business of buying, selling, or transporting any dead, dying, disabled, or diseased livestock or poultry, or parts of the carcasses of any livestock or poultry that died otherwise than by slaughter to keep accurate records disclosing all transactions involved in such person's business, and to permit inspection of such person's business premises at reasonable times for the purpose of examining inventory, records, and facilities, and for the purpose of taking inventory samples upon the payment of their fair market value.

**History:** C. 1953, 4-32-7, enacted by L. 1979, ch. 2, § 33.

**Cross-References.** — Utah Administrative Rulemaking Act, §§ 63-46a-1 to 63-46a-16.

#### **4-32-8. Discretionary functions, powers, and duties of commissioner prescribed.**

In addition to the functions, powers, and duties enumerated in § 4-32-7 the commissioner may:

(1) remove inspectors from any official establishment that fails to destroy condemned products as required under Subsection 4-32-7(2), or that fails to comply with any other requirements of this chapter;

(2) refuse to provide inspection with respect to any official establishment for causes specified in Section 401 of the Federal Meat Inspection Act or Section 18 of the Federal Poultry Products Inspection Act;

(3) order labeling and containers to be withheld from use if the labeling is false or misleading or the containers are of a misleading size or form;

(4) prescribe, after consultation with the secretary of agriculture, the size and style of type to be used for labeling information and definitions and standards of identity or composition or standards of fill of container, consistent with federal standards, when deemed appropriate for the protection of the public;

(5) prescribe conditions for the storage and handling of livestock and poultry products by persons engaged in the business of buying, selling, freezing, storing, or transporting such products to assure that they will not become adulterated or misbranded;

(6) require that equines be slaughtered and prepared in establishments separate from establishments where other livestock is slaughtered or their products are prepared;

(7) require that every person engaged in business as a broker, renderer, animal food manufacturer, wholesaler, or public warehouseman of livestock or poultry products, or engaged in the business of buying, selling, or transporting any dead, dying, disabled, or diseased livestock or poultry or parts of their carcasses that died otherwise than by slaughter,

register the name and address of each place of business at which and all trade names under which such person conducts business;

(8) adopt by reference or otherwise such provisions of the rules and regulations under the federal acts (with such changes as the commissioner deems appropriate to make them applicable to operations and transactions subject to this chapter) and promulgate such other rules and regulations as deemed necessary for the efficient execution of the provisions of this chapter, including rules of practice providing an opportunity for hearing in connection with the issuance of orders under Subsection 4-32-7(5) or under Subsection (1), (2) or (3) of this section and prescribing procedures for proceedings in such cases; provided, that such procedures shall not preclude a requirement that a label or container be withheld from use, or a refusal of inspection, under Subsection 4-32-7(5) or Subsection (1) or (3) of this section pending issuance of a final order in any such proceeding;

(9) divide the state into inspection districts and designate killing days and partial killing days for each official establishment if deemed advisable;

(10) cooperate with the secretary of agriculture of the United States in the administration of this chapter; accept federal assistance and use funds appropriated for the administration of this chapter to pay this state's proportionate share of the cooperative program;

(11) recommend the names of officials and employees of the department to the secretary of agriculture of the United States for appointment to the advisory committees provided for in the federal acts;

(12) serve as the representative of the governor for consultation with the secretary of agriculture under paragraph (c) of Section 301 of the Federal Meat Inspection Act and paragraph (c) of Section 5 of the Federal Poultry Products Inspection Act, unless the governor selects another representative;

(13) exempt from inspection:

(a) the slaughter and processing of livestock and poultry by any person who raises livestock or poultry for use by him and members of his household, his employees, and nonpaying guests;

(b) farm custom slaughter performed by a permittee;

(c) any other operations which the commissioner determines should be exempted to further the purposes of this chapter, to the extent that such exemptions conform to the federal acts; and

(14) in order to further the wholesomeness of harvested wild game, exempt from this chapter, the processing of wild game; provided, the game is not processed in the same room at the same time that inspected and passed livestock and poultry products are being processed and that such game is stored in a separate cooler from inspected and passed products.

**History:** C. 1953, 4-32-8, enacted by L. 1979, ch. 2, § 33.

**Compiler's Notes.** — Sections 301 and 401 of the Federal Meat Inspection Act are compiled as 21 U.S.C., §§ 661 and 671, respectively.

Sections 5 and 18 of the Federal Poultry Products Inspection Act are compiled as 21 U.S.C., §§ 454 and 467, respectively.



#### 4-32-9. Additional powers of commissioner.

(1) The commissioner also has power:

(a) to gather and compile information concerning and, to investigate the organization, business, conduct, practices, and management of any person subject to this chapter;

(b) to require any person subject to this chapter to file information regarding the person's business or operation as the commissioner requires;

(c) for the purpose of this chapter, at all reasonable times to have access to, for the purpose of examination, and the right to copy any documentary evidence, of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation;

(d) to require the attendance of witnesses and the production of documentary evidence at any place designated for hearing; in case of disobedience to a subpoena, the commissioner may invoke the aid of any court of competent jurisdiction to compel the attendance of witnesses and the production of documentary evidence; and

(e) to order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of the proceeding or investigation; the depositions may be taken before any person with power to administer oaths designated by the commissioner, and the testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent;

(2) No person may be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the commissioner or in obedience to the subpoena of the commissioner, whether the subpoena is signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture; but no individual may be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying may not be exempt from prosecution or punishment for perjury committed while so testifying.

(3) (a) Any person that neglects or refuses to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commissioner is guilty of a class A misdemeanor; a fine imposed shall be not less than \$500.

(b) Any person that willfully makes, or causes to be made, any false entry or statement of fact in any report required to be made under this chapter, or that willfully makes, or causes to be made, any false entry in any account, record, or memorandum kept by any person subject to this chapter, or that neglects or fails to make, or to cause to be made, full, true, and correct entries in those accounts, records, or memoranda, of all

facts and transactions appertaining to the business of that person or that willfully removes out of the jurisdiction of this state, or willfully mutilates, alters, or by any other means falsifies any documentary evidence of any person subject to this chapter or that willfully refuses to submit to the commissioner or to any of the commissioner's authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this chapter within the person's possession or control is guilty of a class A misdemeanor, and a fine imposed shall be not less than \$500.

(c) If any person required by this chapter to file any annual or special report fails to do so within the time fixed by the commissioner, and the failure continues for 30 days after notice of default, the person shall forfeit to the state the sum of \$10 for each day of the continuance of the failure, which forfeiture is payable into the treasury of this state, and is recoverable in a civil suit in the name of the state brought in the district where the person has a principal office or in any district in which he does business. The various county attorneys, under the direction of the attorney general of this state, shall prosecute for the recovery of the forfeitures. The costs and expenses of prosecution shall be paid out of the appropriation for the expenses of the courts of this state.

**History:** C. 1953, 4-32-9, enacted by L. 1979, ch. 2, § 33; 1986, ch. 178, § 2.

**Amendment Notes.** — The 1986 amendment redesignated former Subsections (2)(a) to (2)(d) as present Subsections (1)(c) to (1)(e) and (2), respectively; substituted "a class A misdemeanor; a fine imposed shall be not less than \$500" for "an offense and upon conviction by a court of competent jurisdiction shall be punished by a fine of not less than \$500 nor more than \$1,000, or by imprisonment for not more

than one year, or by both" in Subsection (3)(a); substituted "guilty of a class A misdemeanor, and a fine imposed shall be not less than \$500" for "subject, upon conviction, to a fine of not less than \$500 or more than \$1,000, or to imprisonment for a term of not more than one year, or to both" in Subsection (3)(b); and made minor phraseology and punctuation changes throughout the section.

**Cross-References.** — Penalty for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

#### 4-32-10. Judicial review of orders enforcing chapter.

(1) Any party aggrieved by an order issued under Subsection 4-32-7(3) or under Subsection 4-32-8(1), (2), or (3) may obtain judicial review.

(2) The district courts have jurisdiction to enforce this chapter, and to prevent and restrain violations of this chapter, and have jurisdiction in all other kinds of cases arising under this chapter.

(3) All proceedings for the enforcement of this chapter, or to restrain violations of this chapter, shall be by and in the name of this state.

**History:** C. 1953, 4-32-10, enacted by L. 1979, ch. 2, § 33; 1987, ch. 161, § 14.

**Amendment Notes.** — The 1987 amend-

ment, effective January 1, 1988, rewrote Subsection (1) and made minor changes in phraseology and punctuation in Subsection (2).

#### 4-32-11. Unlawful acts specified with respect to livestock or poultry or products of either.

No person with respect to any livestock or poultry or any livestock products or poultry products shall:

(1) slaughter any livestock or poultry or prepare any livestock or poultry product which is capable of use as human food, except in compliance with the requirements of this chapter;

(2) sell, transport, offer for sale or transportation, or receive for transportation, any livestock or poultry product which is capable of use as human food that is adulterated or misbranded or any product that is required to be inspected under this chapter unless it has been inspected and passed; or,

(3) with respect to any such products which are capable of use as human food, do any act while they are being transported or held for sale after such transportation that is intended to cause or causes such products to be adulterated or misbranded; or

(4) Violate any provision of the regulations or orders of the commissioner under Subsection 4-32-7(3) or (6), or Subsection 4-32-8(3), (5), (7), or (14).

**History:** C. 1953, 4-32-11, enacted by L. 1979, ch. 2, § 33.

**Cross-References.** — Brand inspection cer-

tificate required for slaughter of cattle, calves, horses or mules, § 4-24-13.

#### COLLATERAL REFERENCES

**A.L.R.** — Federal pre-emption of state food labeling legislation or regulation, 79 A.L.R. Fed. 181.

Validity, under commerce (Art. I, § 8, cl. 3), of state statutes regulating labeling of food, 79 A.L.R. Fed. 246.

#### 4-32-12. Unlawful acts specified with respect to official devices, marks, or certificates — False statements.

(1) No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation of such mark, or any label bearing any such mark or simulation of such mark, or any form of official certificate or simulation of such certificate, except as authorized by the commissioner.

(2) No person shall:

(a) forge any official device, mark, or certificate;

(b) without authorization from the commissioner, use any official device, mark, or certificate;

(c) alter, detach, deface, or destroy any official device, mark, or certificate;

(d) contrary to the regulations, fail to use, detach, deface, or destroy any official device, mark, or certificate;

(e) knowingly possess any official device or any counterfeit, simulated, forged, or altered official certificate or any device or label or any carcass of any animal (including poultry), or part or product of such animal, bearing any unauthorized, counterfeit, simulated, forged, or altered official mark;

(f) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the commissioner; or

(g) knowingly represent that any livestock or poultry product has been inspected and passed, or exempted, under this chapter when, in fact, it has not been inspected and passed, or exempted.

History: C. 1953, 4-32-12, enacted by L. 1979, ch. 2, § 33.

**4-32-13. Meat or carcasses of horses, mules, or other equines to be marked or labeled — Livestock or poultry products not intended for human food — Dead, dying, disabled, or diseased animals.**

(1) No person shall sell, transport, offer for sale or transportation, or receive for transportation, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the commissioner to show the kinds of animals from which they were derived.

(2) No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation any livestock products or poultry products which are not intended for human food unless they are denatured or otherwise identified as required by the regulations of the commissioner or are naturally inedible by humans.

(3) No person engaged in the business of buying, selling, or transporting dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation such animals or parts of carcasses unless such transaction or transportation is made in accordance with regulations prescribed by the commissioner to assure that such animals or parts of carcasses will be prevented from being used for human food.

History: C. 1953, 4-32-13, enacted by L. 1979, ch. 2, § 33.

COLLATERAL REFERENCES

A.L.R. — Federal pre-emption of state food labeling legislation or regulation, 79 A.L.R. Fed. 181.

Validity, under commerce clause (Art. I, § 8, cl. 3), of state statutes regulating labeling of food, 79 A.L.R. Fed. 246.

**4-32-14. Attempt to bribe state officer or employee — Acceptance of bribe — Interference with official duties — Penalties.**

(1) Any person that gives, pays, or offers, directly or indirectly, any money or other thing of value, to any officer or employee of this state authorized to perform any duties under this chapter, with intent to influence the officer or employee in the discharge of any such duty, is guilty of a felony of the third

degree, and upon conviction, shall be punished by a fine of not more than \$5,000 or by imprisonment for a period of not more than five years, or both; and any officer or employee of this state authorized to perform duties under this chapter who accepts any money, gift, or other thing of value from any person given with intent to influence his official action, is guilty of a class "B" misdemeanor and shall, upon conviction, be summarily discharged from office.

(2) Any person that assaults, opposes, impedes, intimidates, or interferes with any person while engaged in the performance of official duties under this chapter, with or without a dangerous or deadly weapon, is guilty of a felony of the third degree and upon conviction shall be punished by a fine of not more than \$5,000, or by imprisonment for a period of not more than five years, or both.

**History:** C. 1953, 4-32-14, enacted by L. Sentencing for misdemeanors, §§ 76-3-201, 1979, ch. 2, § 33. 76-3-204, 76-3-301.

**Cross-References.** — Sentencing for felonies, §§ 76-3-201, 76-3-203, 76-3-301.

#### **4-32-15. Inspection of products placed in containers — Supervision of inspector — Access to establishment.**

(1) No inspection of products placed in any container at any official establishment shall be deemed to be complete until the products are sealed or enclosed under the supervision of an inspector.

(2) For purposes of any inspection of products required by this chapter, inspectors authorized by the department shall have access at all times to every part of every establishment required to have inspection whether the establishment is operated or not.

**History:** C. 1953, 4-32-15, enacted by L. 1979, ch. 2, § 33.

#### **4-32-16. Detention of animals or livestock or poultry products — Removal of official marks.**

Whenever any livestock or poultry product or any product exempted from the definition of a livestock or poultry product, or any dead, dying, disabled, or diseased livestock or poultry, is found by any authorized representative of the commissioner, and there is reason to believe that it is adulterated or misbranded and is capable of use as human food, or that it has not been inspected and passed, or that it has been or is intended to be distributed in violation of this chapter, it may be detained by such representative pending action under § 4-32-17, and shall not be moved by any person from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such product or animal before it is released.

**History:** C. 1953, 4-32-16, enacted by L. 1979, ch. 2, § 33.



### 4-32-17. Quarantine authorized — Conditions giving rise to quarantine.

(1) Any livestock or poultry product, or any dead, dying, disabled, or diseased livestock or poultry that is being transported or is held for sale in this state, and that (a) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter, or (b) is capable of use as human food and is adulterated or misbranded, or (c) in any other way is in violation of this chapter, shall be seized and quarantined. Quarantined animals or products shall be condemned and destroyed, except that the owner of such animals or products may request a hearing within five days, and the commissioner shall, within five days after such request, conduct a hearing to decide whether quarantined animals or products shall be condemned. The commissioner's decision shall be final, and all condemned animals or products shall forthwith be destroyed or denatured in the presence of the commissioner or an inspector.

(2) This section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter, or other laws.

**History:** C. 1953, 4-32-17, enacted by L. 1979, ch. 2, § 33.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d Animals §§ 33, 35; 35 Am. Jur. 2d Food §§ 65, 66.      **Key Numbers.** — Animals ⇐ 30, 32; Food ⇐ 24.  
**C.J.S.** — 3A C.J.S. Animals §§ 73, 76; 36A C.J.S. Food § 50.

### 4-32-18. Regulations for the construction and operation of slaughterhouses authorized.

For the purposes of administering this chapter and qualifying slaughterhouses for licenses, the commissioner has authority to adopt sanitary inspection rules and regulations, and all other necessary rules and regulations, including those pertaining to the construction, equipment, and facilities of slaughterhouses. Such rules and regulations shall, so far as practical, be in conformity with the regulations promulgated under the federal acts.

**History:** C. 1953, 4-32-18, enacted by L. 1979, ch. 2, § 33.

### 4-32-19. Repealed.

**Repeals.** — Section 4-32-19 (L. 1979, ch. 2, § 33), making violation of the chapter a class "A" misdemeanor, and for treatment of minor violations, was repealed by Laws 1985, ch. 104, § 8.  
 "B" misdemeanor or, if fraud involved, a class

#### 4-32-20. Suspension or revocation — Grounds.

The department may upon its own motion and shall upon the verified complaint in writing of any person, investigate or cause to be investigated the operation of any slaughterhouse, and may suspend or revoke the license of such slaughterhouse upon any of the following grounds:

- (1) the license was obtained by any false or misleading statement;
- (2) for slaughtering any livestock or poultry without inspection (antemortem and postmortem), or for processing any livestock or poultry or products of either that have not been inspected and passed, (or exempted) and so identified;
- (3) the advertising or publicizing of any false or misleading statements which pertain to the slaughtering, processing, or distribution of livestock or livestock products or poultry or poultry products;
- (4) the failure to maintain refrigeration, sanitation, or dispose of waste as required by regulations of the department; or
- (5) the failure to comply with regulations of the department pertaining to the disposal of carcasses or parts of carcasses which have been determined to be unfit for human consumption.

**History:** C. 1953, 4-32-20, enacted by L. 1979, ch. 2, § 33.

#### 4-32-21. Denial of application for farm custom slaughter permit — Venue for judicial review.

(1) Any applicant, whose application for a license to operate a slaughterhouse or to obtain a farm custom slaughter permit is denied, may file a request for agency action with the department, requesting a hearing on the issue of denial.

(2) (a) Any person who is aggrieved by an order issued under this section may obtain judicial review.

(b) Venue for judicial review of informal adjudicative proceeding is in the district court in the county in which the alleged unlawful activity occurred or, in the case of an order denying a license application, in the county where the applicant resides.

(3) The attorney general's office shall represent the department in any original action or any appeal under this section.

**History:** C. 1953, 4-32-21, enacted by L. 1979, ch. 2, § 33; 1987, ch. 161, § 15.

**Amendment Notes.** — The 1987 amendment, effective January 1, 1988, deleted former Subsection (1); designated the first sentence of former Subsection (2) as present Subsection (1) and deleted the former second sentence; designated former Subsection (3) as present Subsection (2) and in Subsection (2)(a) substituted the

present provisions for the former provisions following "under this section may" and added at the beginning of Subsection (2)(b) the language preceding "in the district court"; deleted former Subsection (4); designated former Subsection (5) as present Subsection (3); and made minor changes in phraseology and punctuation throughout the section.



**4-32-22. Livestock or poultry slaughtered or the products of either not intended for human use — No inspection — Products to be denatured or otherwise identified.**

Inspection shall not be provided under this chapter at any establishment for the slaughter of livestock or poultry or the preparation of any livestock products or poultry products which are not intended for use as human food, but such products shall be denatured or otherwise identified as prescribed by regulations of the department prior to their offer for sale or transportation.

**History:** C. 1953, 4-32-22, enacted by L. 1979, ch. 2, § 33.

## CHAPTER 33

### MOTOR FUELS INSPECTION

| Section |  | Section  |  |
|---------|--|----------|--|
| 4-33-1. | Short title.   |          | lation of chapter — Posting notice — Removal of sealed fuel — Re-sealing.    |
| 4-33-2. | Purpose of chapter.  |          |  |
| 4-33-3. | Definition.  |          |  |
| 4-33-4. | Administrative and enforcement powers of department.               | 4-33-9.  | Warrant to enter premises for inspection or sampling.                        |
| 4-33-5. | Prohibitions.  | 4-33-10. | Interstate commerce — Chapter inapplicable to fuel in transit through state. |
| 4-33-6. | Octane rating determination and posting.                           | 4-33-11. | Violation of chapter as misdemeanor.   |
| 4-33-7. | Inspection, sampling, testing and analysis of fuels by department. |          |  |
| 4-33-8. | Locking and sealing of pumps in vio-                               |          |  |

#### 4-33-1. Short title.

This chapter shall be known as the "Motor Fuel Inspection Act."

**History:** C. 1953, 4-33-1, enacted by L. 1981, ch. 8, § 2.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 38 Am. Jur. 2d Gas and Oil §§ 151, 152, 228 to 235.

**C.J.S.** — 61A C.J.S. Motor Vehicles § 770 et seq.

**A.L.R.** — Liability of owner or operator of garage or gasoline filling station for bodily injury to nonemployees on premises, 8 A.L.R.3d 6.

Liability in connection with fire or explosion incident to bulk storage, transportation, deliv-

ery, loading, or unloading of petroleum products, 32 A.L.R.3d 1169.

Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations, 46 A.L.R.3d 1393.

Gasoline or other fuel storage tanks as nuisance, 50 A.L.R.3d 209.

**Key Numbers.** — Automobiles ⇌ 395.

### 4-33-2. Purpose of chapter.

It is the purpose of this chapter to promote the safety and welfare of users of motor fuels in this state and also to promote the orderly marketing of motor fuels.

**History:** C. 1953, 4-33-2, enacted by L. 1981, ch. 8, § 3.

### 4-33-3. Definition.

As used in this chapter, "motor fuel" means any combustible gas, liquid, matter, or substance which is used in an internal combustion engine for the generation of power.

**History:** C. 1953, 4-33-3, enacted by L. 1981, ch. 8, § 4.

### 4-33-4. Administrative and enforcement powers of department.

The department shall administer and enforce this chapter and may:

(1) promulgate, subject to the Utah [Administrative] Rulemaking Act, rules and regulations necessary for the effective administration and enforcement of this chapter;

(2) acquire and test motor fuel samples to determine compliance with this chapter;

(3) maintain and staff a laboratory to test motor fuel samples;

(4) enter public or private premises during normal working hours to enforce this chapter;

(5) stop and detain any commercial vehicle transporting motor fuel to inspect its contents and applicable documents or to acquire motor fuel samples; and

(6) require that records applicable to this chapter be available for examination and review upon request by the department.

**History:** C. 1953, 4-33-4, enacted by L. 1981, ch. 8, § 5.

**Cross-References.** — Utah Administrative Rulemaking Act, §§ 63-46a-1 to 63-46a-16.

### 4-33-5. Prohibitions.

It is unlawful for any person in this state:

(1) to offer for sale, sell, or deliver any motor fuel which fails to meet the standards prescribed by the department;

(2) to advertise or display the price of motor fuel without advertising or displaying the grade of the motor fuel and the type of service when both self service and full service are offered; or

(3) to haul or transport motor fuel for the purpose of sale or delivery in this state without an invoice or bill of lading stating the name and address of the owner or person consigning the fuel for transport, the Utah grade of the motor fuel, and the number of gallons consigned.

History: C. 1953, 4-33-5, enacted by L.  
1981, ch. 8, § 6.

#### **4-33-6. Octane rating determination and posting.**

The determination of octane ratings and the posting of the octane on dispensing devices shall be in accord with Federal Trade Commission requirements.

History: C. 1953, 4-33-6, enacted by L.  
1981, ch. 8, § 7.

#### **4-33-7. Inspection, sampling, testing and analysis of fuels by department.**

(1) The department shall periodically sample, inspect, analyze and test motor fuels dispensed in this state and may enter any public premises or vehicle for the purpose of determining compliance with this chapter.

(2) Methods of sampling, testing, analyzing and designating motor fuels shall accord with those specified and published by the American Society for Testing and Materials. The department shall use the latest published standards of the American Society for Testing and Materials.

(3) Upon request the department shall pay the posted price for samples and the person from whom the sample is taken shall give a signed receipt evidencing payment.

(4) Tests and analyses conducted by the department shall be prima facie evidence of the facts shown by such tests in any court proceeding.

History: C. 1953, 4-33-7, enacted by L.  
1981, ch. 8, § 8.

#### **4-33-8. Locking and sealing of pumps in violation of chapter — Posting notice — Removal of sealed fuel — Resealing.**

(1) The department may lock and seal any pump or other dispensing device which is in violation of this chapter. If such action is taken, the department shall post a notice in a conspicuous place on the pump or other dispensing device stating that the device has been sealed by the department and that it is unlawful to break or destroy the seal or to mutilate or alter the notice.

(2) Any person who is aggrieved by the action of the department may advise the department that such person intends to remove the balance of the motor fuel from the tank or other container which contains the sealed fuel. The department, within two working days after the receipt of such notice, shall break the seal or lock for the container to be emptied.

(3) If the aggrieved party fails to remove the sealed motor fuel within 24 hours after the department breaks the seal, the department may reseal the dispensing device. The seal may not be broken nor the contents of any container removed, except after a subsequent written notice of intent to remove is filed with the department and upon the payment of a service charge determined by the department pursuant to Subsection 4-2-2(2).

**History:** C. 1953, 4-33-8, enacted by L. 1981, ch. 8, § 9; L. 1984 (2nd S.S.), ch. 15, § 24; 1985, ch. 130, § 21.

**Amendment Notes.** — The 1984 (2nd S.S.) amendment substituted "service charge determined by the department pursuant to Subsec-

tion 63-38-3(2)" in Subsection (3) for "\$50.00 service charge"; and made a minor change in phraseology.

The 1985 amendment substituted "Subsection 4-2-2(2)" for "Subsection 63-38-3(2)" at the end of the section.

**4-33-9. Warrant to enter premises for inspection or sampling.**

If admittance is refused to the department either for sampling or for inspection of transport invoices or bills of lading, the department may obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of inspection or taking samples or to examine transport documents.

**History:** C. 1953, 4-33-9, enacted by L. 1981, ch. 8, § 10.

**4-33-10. Interstate commerce — Chapter inapplicable to fuel in transit through state.**

This chapter is inapplicable to motor fuel being transported through this state in interstate commerce; provided, that none of the motor fuel is consigned or destined for delivery in the state.

**History:** C. 1953, 4-33-10, enacted by L. 1981, ch. 8, § 11.

**4-33-11. Violation of chapter as misdemeanor.**

Any person who violates this chapter is guilty of a class B misdemeanor.

**History:** C. 1953, 4-33-11, enacted by L. 1981, ch. 8, § 12.

**Cross-References.** — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

**CHAPTER 34**

**CHARITABLE DONATION OF FOOD**

|         |   |         |  |
|---------|---|---------|--|
| Section |   | Section |  |
| 4-34-1. | Definitions.  | 4-34-5. | Limitation of liability of donor, charitable organization and county.                  |
| 4-34-2. | Donation to charitable organization authorized.         | 4-34-6. | Sale or use of donations by employee of public agency or charity prohibited — Penalty. |
| 4-34-3. | County surplus food collection and distribution system. |         |  |
| 4-34-4. | Inspection of donated food.                             |         |  |

### **4-34-1. Definitions.**

For purposes of this chapter:

(1) "Agricultural product" means any fowl, animal, fish, vegetable, or other product or article, fresh or processed, which is customary food, or which is proper food for human consumption.

(2) "Nonprofit charitable organization" means any organization which was organized and is operating for charitable purposes and which meets the requirements of the Internal Revenue Service of the U.S. Department of Treasury that exempt the organization from income taxation under the provisions of the Internal Revenue Code.

(3) "Gleaner" means a person who harvests, for free distribution, an agricultural crop that has been donated by the owner.

History: L. 1981, ch. 70, § 1.

### **4-34-2. Donation to charitable organization authorized.**

Any person engaged in the business of producing, processing, selling, or distributing any agricultural product may donate, free of charge, any such product which is in a fit condition for use as food for human consumption to a nonprofit charitable organization within the state of Utah.

History: L. 1981, ch. 70, § 2.

### **4-34-3. County surplus food collection and distribution system.**

To accomplish the purposes of § 4-34-2, any county may establish and publicize the availability of a surplus food collection and distribution system and may provide information to donee organizations concerning the availability of agricultural products and to donors concerning organizations that desire or need donated agricultural products. Any nonprofit charitable organization needing agricultural products on a regular basis may be listed with the county for the purpose of receiving notice that the products are available.

History: L. 1981, ch. 70, § 3.

### **4-34-4. Inspection of donated food.**

The county may provide for the inspection of donated agricultural products by the county health officer upon the request of the donee nonprofit charitable organization to determine whether the products are fit for human consumption.

History: L. 1981, ch. 70, § 4.

#### 4-34-5. Limitation of liability of donor, charitable organization and county.

Except in the event of an injury resulting from gross negligence, recklessness, or intentional conduct, neither a county nor an agency of a county nor a donor of an agricultural product participating in good faith in a food donation program, nor a nonprofit charitable organization receiving, accepting, gleaning, or distributing any agricultural product donated in good faith to it under this chapter shall be liable for damages in any civil action or subject to prosecution in any criminal proceeding for any injury that occurs as a result of any act or the omission of any act, including injury resulting from ingesting the donated agricultural product.

**History:** L. 1981, ch. 70, § 5.

#### 4-34-6. Sale or use of donations by employee of public agency or charity prohibited — Penalty.

(1) An employee of a non-profit charitable organization or of a public agency may not sell, offer for sale, use, or consume any agricultural product donated or distributed under this chapter.

(2) Any violation of this section is a class B misdemeanor.

**History:** L. 1981, ch. 70, § 6; 1986, ch. 178, § 3.

**Amendment Notes.** — The 1986 amendment substituted "may" for "shall" and made a minor punctuation change in Subsection (1)

and substituted "a class B misdemeanor" for "punishable by a fine not to exceed \$299" in Subsection (2).

**Cross-References.** — Penalty for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

## CHAPTER 35

# INSECT INFESTATION EMERGENCY CONTROL ACT

| Section |  | Section  |  |
|---------|--|----------|--|
| 4-35-1. | Short title.   | 4-35-6.  | Money deposited as dedicated credits — Balance nonlapsing — Matching funds allowed.  |
| 4-35-2. | Definitions.   | 4-35-7.  | Notice to owner or occupant — Corrective action required — Directive issued by department — Costs — Owner or occupant may prohibit spraying. |
| 4-35-3. | Decision and Action Committee created — Members — How appointed — Duties of committee — Per diem and expenses allowed. | 4-35-8.  | Persons and activities exempt from civil liability.  |
| 4-35-4. | Commissioner to declare emergency — Powers of commissioner in emergency.   | 4-35-9.  | Department to adopt rules.   |
| 4-35-5. | Commissioner to act upon certification by committee — Deposit required.  | 4-35-10. | Violation.   |



**4-35-1. Short title.**

This chapter is known as the "Insect Infestation Emergency Control Act".

**History:** C. 1953, 4-35-1, enacted by L. 1985, ch. 133, § 1.

**Effective Dates.** — Section 2 of Laws 1985, ch. 133 provided: "This act takes effect upon approval by the governor, or the day following

the constitutional time limit of Article VII, Sec. 8 without the governor's signature, or in the case of a veto, the date of veto override." Effective April 29, 1985. Failed to obtain two-thirds vote required for earlier effect.

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 3 Am. Jur. 2d Agriculture §§ 42 to 51.

**C.J.S.** — 3 C.J.S. Agriculture §§ 83 to 104.

**4-35-2. Definitions.**

As used in this chapter:

- (1) "Commissioner" means the Commissioner of Agriculture.
- (2) "Committee" means the Decision and Action Committee created by and established under this chapter.
- (3) "Department" means the Department of Agriculture.
- (4) "Insect" means, but is not limited to, grasshopper, range caterpillar, mormon cricket, apple maggot, cherry fruit fly, plum curculio, and cereal leaf beetle.

**History:** C. 1953, 4-35-2, enacted by L. 1985, ch. 133, § 1.

**4-35-3. Decision and Action Committee created — Members — How appointed — Duties of committee — Per diem and expenses allowed.**

(1) There is created the Decision and Action Committee which consists of not fewer than six members. One member is the commissioner and one member is appointed to represent the department. The remaining members of the committee are appointed by the commissioner on an ad hoc basis as necessary from persons directly affected by and involved in the current insect infestation emergency.

(2) The committee shall:

(a) establish a system of priorities for any insect infestation emergency;

(b) certify to the commissioner any area which requires the establishment of an insect control district in areas of infestation and in which a simple majority of the landowners and lessees whose total production exceeds 50% of the production in that area has agreed to pay proportionate shares of the costs of controlling the insects infesting the area.

(3) Committee members, other than the commissioner and the member from the department, are entitled to per diem and expenses incurred in the performance of duties in accordance with § 63-2-15 [as established by the director of the division of finance in §§ 63-1-14.5 and 63-1-15].



**History:** C. 1953, 4-35-3, enacted by L. 1985, ch. 133, § 1.

**Compiler's Notes.** — Section 63-2-15, referred to at the end of the section, was repealed by Laws 1981, ch. 257, § 13. The bracketed

provisions have been inserted to reflect the amendment of a similar reference to § 63-2-15 in §§ 4-2-7 and 4-2-8 by Laws 1986, Chapter 194.

#### **4-35-4. Commissioner to declare emergency — Powers of commissioner in emergency.**

(1) The commissioner with the consent of the governor may declare that an insect infestation emergency situation exists which jeopardizes property and resources, and designate the area or areas affected.

(2) The commissioner is authorized subject to the requirements of § 4-35-5 to direct all emergency measures the commission considers necessary to alleviate the emergency condition. The commissioner shall:

(a) utilize equipment, supplies, facilities, personnel, and other available resources;

(b) enter into contracts for the acquisition, rental, or hire of equipment, services, materials, and supplies;

(c) accept assistance, services, and facilities offered by federal and local governmental units or private agencies; and

(d) accept on behalf of the state the provisions and benefits of acts of Congress designated to provide assistance.

**History:** C. 1953, 4-35-4, enacted by L. 1985, ch. 133, § 1.

#### **4-35-5. Commissioner to act upon certification by committee — Deposit required.**

(1) The commissioner initiates operations to control the insect infestation in the designated area or areas:

(a) upon certification by the committee under Subsection 4-35-4(2); and

(b) upon deposit of the owner's and lessee's projected proportionate share of the costs.

(2) The commissioner and the members of the committee may suspend or terminate control operations upon a determination that the operations will not significantly reduce the insect population in the designated emergency area.

**History:** C. 1953, 4-35-5, enacted by L. 1985, ch. 133, § 1.

#### **4-35-6. Money deposited as dedicated credits — Balance nonlapsing — Matching funds allowed.**

All money received by the state under this chapter is deposited by the Department of Agriculture as dedicated credits for the purpose of insect control with the state. Any unexpended balance at the end of a fiscal year is nonlapsing. This money may be used as matching funds for (1) participation in programs of the United States Department of Agriculture, and (2) in con-

tracts with private property owners who own croplands contiguous to infested public rangelands.

**History:** C. 1953, 4-35-6, enacted by L. 1985, ch. 133, § 1; 1986, ch. 15, § 1.

**Amendment Notes.** — The 1986 amendment, in the last sentence, substituted "This

money may be" for "Funds may also be", inserted the "(1)" designation, and added the language beginning "and (2) in contracts" at the end.

**4-35-7. Notice to owner or occupant — Corrective action required — Directive issued by department — Costs — Owner or occupant may prohibit spraying.**

(1) The department or an authorized agent of the department shall notify the owner or occupant of the problem and the available alternatives to remedy the problem. The owner or occupant must take corrective action within 48 hours.

(2) If the owner or occupant fails to take corrective action under Subsection (1), the department may issue a directive for corrective action which must be taken within 24 hours. If the owner or occupant fails to act within the required time, the department shall take the necessary action. The department may recover costs incurred for controlling an insect infestation emergency from the owner or occupant of the property on whose property corrective action was taken.

(3) Owners or occupants of property may prohibit spraying by presenting an affidavit from their attending physician to the department which states that the spraying as planned is a danger to their health. The department shall provide the owner or occupant with alternatives to spraying which will abate the infestation.

**History:** C. 1953, 4-35-7, enacted by L. 1985, ch. 133, § 1.

**4-35-8. Persons and activities exempt from civil liability.**

No state agency or its officers and employees nor the officers, agents, employees, or representatives of any governmental or private entity acting under the authority granted by this chapter is liable for claims arising out of the reasonable exercise or performance of duties and responsibilities under this chapter.

**History:** C. 1953, 4-35-8, enacted by L. 1985, ch. 133, § 1.

**4-35-9. Department to adopt rules.**

The department is authorized to adopt and enforce rules to administer this chapter.

**History:** C. 1953, 4-35-9, enacted by L. 1985, ch. 133, § 1.

**4-35-10. Violation.**

Any person who violates this chapter is guilty of a class B misdemeanor.

**History:** C. 1953, 4-35-10, enacted by L. 1985, ch. 133, § 1.

**Cross-References.** — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

**CHAPTER 36**  
**PEST CONTROL COMPACT**

|         |   |         |   |
|---------|---|---------|---|
| Section |   | Section |   |
| 4-36-1. | Compact enacted and entered into.             | 4-36-4. | Compact administrator.                            |
| 4-36-2. | Cooperation with Pest Control Insurance Fund. | 4-36-5. | Applications for assistance.                      |
| 4-36-3. | Filing of compact.                            | 4-36-6. | Disposition of money from compact insurance fund. |
|         |   | 4-36-7. | Executive head defined.                           |

**4-36-1. Compact enacted and entered into.**

The "Pest Control Compact" is enacted into law and entered into with all other jurisdictions legally joining therein, in the form substantially as follows:

PEST CONTROL COMPACT

Article I  
Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately \$10,000,000 from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of varying climatic, geographic, and economic factors, each state may be affected differently by particular species of pests, but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equi-

table means of financing cooperative pest eradication and control programs.

## Article II Definitions

As used in this compact, unless the context clearly requires a different construction:

- (a) "state" means a state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;
- (b) "requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states;
- (c) "responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article;
- (d) "pest" means an invertebrate animal, pathogen, parasitic plant, or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value;
- (e) "insurance fund" means the pest control insurance fund established pursuant to this compact;
- (f) "governing board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact; and
- (g) "executive committee" means the committee established pursuant to Article V (e) of this compact.

## Article III The Insurance Fund

There is established the "Pest Control Insurance Fund" for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The insurance fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provisions of this compact.

## Article IV The Insurance Fund, Internal Operations and Management

(a) The insurance fund shall be administered by a governing board and executive committee as hereinafter provided. The actions of the governing board and executive committee pursuant to this compact shall be considered the actions of the insurance fund.

(b) The members of the governing board shall be entitled to one vote each on such board. No action of the governing board shall be binding unless taken at a meeting at which a majority of the total number of voters on the govern-

ing board are cast in favor thereof. Action of the governing board shall be only at a meeting at which a majority of the members are present.

(c) The insurance fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the governing board may provide.

(d) The governing board shall elect annually, from among its members, a chairman, a vice chairman, a secretary, and a treasurer. The chairman may not succeed himself. The governing board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the governing board. The governing board shall make provision for the bonding of such of the officers and employees of the insurance fund as may be appropriate.

(e) Irrespective of the civil service, personnel, or other merit system laws of any party states, the executive director, or if there is no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the functions of the insurance fund and shall fix the duties and compensation of such personnel. The governing board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The insurance fund may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(g) The insurance fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation, gift, or grants accepted by the governing board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the insurance fund. Such report shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

(h) The governing board shall adopt bylaws for the conduct of the business of the insurance fund and shall have the power to amend and rescind these bylaws. The insurance fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The insurance fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The insurance fund may make such additional reports as it may consider desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the insurance fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.



## Article V

## Compact and Insurance Fund Administration

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the compact in his state; and

2. Represent his state on the governing board of the insurance fund.

(b) If the laws of the United States specifically so provide, or if administrative provisions are made therefore within the Federal Government, the United States may be represented on the governing board of the insurance fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the governing board or on the executive committee thereof.

(c) The governing board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the insurance fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the insurance fund. Additional meetings of the governing board shall be held on call of the chairman, the executive committee, or a majority of the membership of the governing board.

(d) At such times as it may be meeting, the governing board shall pass upon applications for assistance from the insurance fund and authorize disbursements therefrom. When the governing board is not in session, the executive committee thereof shall act as agent of the governing board, with full authority to act for it in passing upon such applications.

(e) The executive committee shall be composed of the chairman of the governing board and four additional members of the governing board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The governing board shall make such geographic groupings. If there is representation of the United States on the governing board, one such representative may meet with the executive committee. The chairman of the governing board shall be chairman of the executive committee. No action of the executive committee shall be binding unless taken at a meeting at which at least four members of such committee are present and vote in favor thereof. Necessary expenses of each of the five members of the executive committee incurred in attending meetings of such committee, when not held at the same time and place as a meeting of the governing board, shall be charges against the insurance fund.

## Article VI

## Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.

2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may require the governing board to authorize expenditures from the insurance fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the insurance fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the insurance fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.

2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivision, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefore, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in Item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in Item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the insurance fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the governing board may require consistent with the provisions of this compact.

(d) The governing board or executive committee shall give due notice of any meeting at which an application for assistance from the insurance fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the governing board or executive committee shall authorize support of the program. The governing board or the executive committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the governing board or executive committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the executive committee shall upon notice in writing given within 20 days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the governing board. Determinations of the executive committee shall be reviewable only by the governing board at one of its regular meetings, or at a special meeting held in such manner as the governing board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the insurance fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the insurance fund. The governing board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the insurance fund pursuant to an application of a requesting state, the insurance fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The insurance fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the insurance fund, cooperating federal agencies, states, and any other entities concerned.

## Article VII

### Advisory and Technical Committees

The governing board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof, may meet with and participate in its deliberations. Upon request of the governing board or executive committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the insurance fund being considered by such board or committee and the board or committee may receive and consider the same; provided that any participant in a meeting of the governing board or executive committee, held pursuant to Article VI (d) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting, if made prior thereto or as a part thereof or, if made thereafter, no later than the time

at which the governing board or executive committee makes its disposition of the application.

### Article VIII Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the insurance fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the governing board or executive committee in the same manner as an application with respect to a pest within a party state except as provided in this Article.

(b) At or in connection with any meeting of the governing board or executive committee held pursuant to Article VI (d) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the governing board or executive committee may provide. A nonparty state shall not be entitled to review of any determination made by the executive committee.

(c) The governing board or executive committee shall authorize expenditures from the insurance fund to be made in a nonparty state only after determining that the conditions in the state and the value of the expenditures to the party states as a whole justify them. The governing board or executive committee may set any conditions which it considers appropriate with respect to the expenditure of moneys from the insurance fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may consider necessary or appropriate to protect the interests of the insurance fund with respect to expenditures and activities outside of party states.

### Article IX Finance

(a) The insurance fund shall submit to the executive head or designated officer or officers of each party state a budget for the insurance fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriation shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the insurance fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the insurance fund shall be maintained in two accounts to be designated respectively as the "operating account" and the "claims account." The operating account shall consist only of those assets necessary for the administration of the insurance fund during the next ensuing two-year period. The claims account shall contain all moneys not included



in the operating account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the insurance fund for a period of three years. At any time when the claims account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the governing board shall reduce its budget request on a pro rata basis in such manner as to keep the claims account within the maximum limit. Any moneys in the claims account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this paragraph only to the extent that moneys are available to meet demands arising out of claims.

(d) The insurance fund shall not pledge the credit of any party state. The insurance fund may meet any of its obligations in whole or in part with moneys available to it under Article IV (g) of this compact, provided that the governing board takes specific action setting aside moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the insurance fund makes use of moneys available to it under Article IV (g) hereof, the insurance fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The insurance fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the insurance fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the insurance fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the insurance fund.

(f) The accounts of the insurance fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the insurance fund.

#### Article X

##### Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of withdrawal.

#### Article XI

##### Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this



compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**History:** C. 1953, 4-36-1, enacted by L. ch. 191 provided: "This act takes effect on July 1, 1985."

**Effective Dates.** — Section 2 of Laws 1985,

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 3 Am. Jur. 2d Agriculture §§ 42 to 51.

**C.J.S.** — 3 C.J.S. Agriculture §§ 83 to 104.

### 4-36-2. Cooperation with Pest Control Insurance Fund.

Consistent with law and within available appropriations, the departments, agencies, and officers of this state may cooperate with the Insurance Fund established by the Pest Control Compact.

**History:** C. 1953, 4-36-2, enacted by L. 1985, ch. 191, § 1.

### 4-36-3. Filing of compact.

Pursuant to Article IV (h) of the compact, copies of bylaws and amendments to the compact shall be filed with the Department of Agriculture.

**History:** C. 1953, 4-36-3, enacted by L. 1985, ch. 191, § 1.

### 4-36-4. Compact administrator.

The compact administrator for this state shall be the commissioner of the Department of Agriculture.

**History:** C. 1953, 4-36-4, enacted by L. 1985, ch. 191, § 1.

### 4-36-5. Applications for assistance.

Within the meaning of Article VI (b) or VIII (a), a request or application for assistance from the Insurance Fund may be made by the compact administrator for this state, whenever in the compact administrator's judgment the conditions qualifying this state for assistance exist and it would be in the best interest of this state to make a request.

**History:** C. 1953, 4-36-5, enacted by L. 1985, ch. 191, § 1.

#### **4-36-6. Disposition of money from compact insurance fund.**

The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified under this compact shall have credited to the appropriate account in the state treasury the amount of any payments made to this state to defray the cost of the program, or any part thereof, or as reimbursement thereof.

**History:** C. 1953, 4-36-6, enacted by L. 1985, ch. 191, § 1.

#### **4-36-7. Executive head defined.**

As used in the compact, with reference to this state, "executive head" means the governor.

**History:** C. 1953, 4-36-7, enacted by L. 1985, ch. 191, § 1.

## **CHAPTER 37**

### **AQUACULTURE INDUSTRY**

| Section |   | Section |                                      |
|---------|---|---------|--------------------------------------|
| 4-37-1. | General purpose — Branch of agriculture for purposes of certain laws. | 4-37-2. | "Aquaculture" defined.               |
|         |   | 4-37-3. | Marketing and promotion.             |
|         |   | 4-37-4. | Control of fish species and disease. |

#### **4-37-1. General purpose — Branch of agriculture for purposes of certain laws.**

(1) The Legislature declares that it is in the interest of the people of the state to encourage the practice of aquaculture in order to augment food production, expand employment, promote economic development, and protect and better utilize the land and water resources of the state.

(2) The Legislature further declares that aquaculture should be considered a branch of the agricultural industry of the state for purposes of any laws that apply to or provide for the advancement, benefit, or protection of the agricultural industry within the state.

**History:** C. 1953, 4-37-1, enacted by L. 1987, ch. 127, § 2.

#### **4-37-2. "Aquaculture" defined.**

As used in this chapter, "aquaculture" means the cultivation and husbandry of aquatic organisms by a person in the private sector.

**History:** C. 1953, 4-37-2, enacted by L.  
1987, ch. 127, § 3.

### **4-37-3. Marketing and promotion.**

The department is the principal state agency responsible for the marketing and promotion of the state's aquaculture industry.

**History:** C. 1953, 4-37-3, enacted by L.  
1987, ch. 127, § 4.

### **4-37-4. Control of fish species and disease.**

The Division of Wildlife Resources is the principal state agency responsible for the control of fish species and disease in the state's aquaculture industry.

**History:** C. 1953, 4-37-4, enacted by L.  
1987, ch. 127, § 5.