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Recommended Citation
Utah Code Annotated Title 4-14 (Michie, 1995)

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4-13-9. Sales or exchanges of commercial fertilizers or soil amendments between manufacturers, importers, or manipulators permitted.

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil amendments to each other by importers, manufacturers, or manipulators who mix fertilizer or soil amendment materials for sale or as preventing the free and unrestricted shipment of commercial fertilizer or soil amendments to manufacturers or manipulators who have registered their brands as required by this chapter.

History: C. 1953, 4-13-9, enacted by L. 1979, ch. 2, § 14.

4-13-10. Repealed.

Repeals. — Section 4-13-10, as enacted by Laws 1979, ch. 2, § 14, making violations of the chapter class "B" misdemeanors, was repealed by Laws 1985, ch. 104, § 8.

CHAPTER 14

UTAH PESTICIDE CONTROL ACT

Section

4-14-1. Short title.
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4-14-9. Examination requirements for license to act as applicator may be waived through reciprocal agreement.
4-14-10. Pesticide Committee created — Composition — Terms — Compensation — Duties.
4-14-11. Repealed.
4-14-12. Defenses.

4-14-1. Short title.

This chapter shall be known and may be cited as the "Utah Pesticide Control Act."

History: C. 1953, 4-14-1, enacted by L. 1979, ch. 2, § 15.

COLLATERAL REFERENCES

Utah Law Review. — Agriculture and the Pollution Problem, 1970 Utah L. Rev. 395.

Am. Jur. 2d. — 3 Am. Jur. 2d Agriculture §§ 48, 55, 69; 61A Am. Jur. 2d Pollution Control §§ 293 to 450.

C.J.S. — 3 C.J.S. Agriculture §§ 95 to 104.

A.L.R. — Liability for injury caused by spraying or dusting of crops, 37 A.L.R.3d 833.

Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 A.L.R.4th 462.

Federal pre-emption of state common-law products liability claims pertaining to pesticides, 101 A.L.R. Fed. 887.

Key Numbers. — Agriculture ⚿ 9.12.

4-14-2. Definitions.

As used in this chapter:

(1) "Active ingredient" means any ingredient which prevents, destroys, repels, controls, or mitigates pests, or which acts as a plant regulator, defoliant, or desiccant.

(2) "Adulterated pesticide" means any pesticide the strength or purity of which is below the standard of quality expressed on the label under which it is offered for sale.

(3) "Animal" means all vertebrate or invertebrate species.

(4) "Beneficial insect" means any insect which is an effective pollinator of plants, or which is a parasite or predator of pests, or is otherwise beneficial.

(5) "Defoliant" means any substance or mixture intended to cause leaves or foliage to drop from a plant, with or without causing abscission.

(6) "Desiccant" means any substance or mixture intended to artificially accelerate the drying of plant or animal tissue.

(7) "Distribute" means to offer for sale, sell, barter, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver pesticides in this state.

(8) "Environment" means all living plants and animals, water, air, land, and the interrelationships which exist between them.

(9) (a) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power to apply a pesticide.

(b) "Equipment" does not mean any pressurized hand-sized household apparatus used to apply a pesticide or any equipment or contrivance used to apply a pesticide which is dependent solely upon energy expelled by the person making the pesticide application.

(10) "EPA" means the United States Environmental Protection Agency.

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

(12) "Fungus" means any nonchlorophyll-bearing thallophyte (that is, any nonchlorophyll-bearing plant of an order lower than mosses and liverworts), for example, rust, smut, mildew, mold, yeast and bacteria, except those on or in living man or other animals, and except those on or in processed food, beverages, or pharmaceuticals.

(13) "Insect" means any invertebrate animal generally having a more or less obviously segmented body, for the most part belonging to the Class Insecta, comprising six-legged, usually winged forms; for example, beetles, bugs, bees, flies, and allied classes of arthropods that are wingless usually having more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(14) "Label" means any written, printed, or graphic matter on, or attached to, a pesticide or a container or wrapper of a pesticide.

(15) "Labeling" means all labels and all other written, printed, or graphic matter:

(a) accompanying a pesticide or equipment; or

(b) to which reference is made on the label or in literature accompanying a pesticide or equipment, except to current official publications of the EPA, the United States Departments of Agriculture or Interior, the Department of Health, Education, and Welfare, state experimental stations, state agricultural colleges, and other federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(16) "Land" means all land, water, air, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant or situated thereon, whether fixed or mobile, including any used for transportation.

(17) "Misbranded" means any label or labeling which is false or misleading or which does not strictly comport with the label and labeling requirements set forth in Section 4-14-4.

(18) "Misuse" means use of any pesticide in a manner inconsistent with its label or labeling.

(19) "Nematode" means invertebrate animals of the Phylum Nemathelminthes and Class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, also known as nemas or eelworms.

(20) "Pest" means:

(a) any insect, rodent, nematode, fungus, weed; or

(b) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism which is injurious to health or to the environment or which the commissioner declares to be a pest; except, viruses, bacteria, or other microorganisms on or in living man or other living animals, or protected wildlife species identified in Section 23-13-2 which are regulated by the Division of Wildlife Resources in accordance with Sections 23-14-1 through 23-14-4.

(21) "Pesticide" means any:

(a) substance or mixture of substances including a living organism which is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other form of plant or animal life that is normally considered to be a pest or that the commissioner declares to be a pest;

(b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid its application or effect; and

(d) any other substance designated by the commissioner by rule.

(22) "Pesticide dealer" means any person who distributes restricted use pesticides.

(23) "Plant regulator" means any substance or mixture intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or otherwise alter the behavior of ornamental or crop plants, but it does not mean plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(24) "Restricted use pesticide" means any pesticide, including a highly toxic pesticide which is a serious hazard to beneficial insects, animals, or land; or any pesticide or pesticide use restricted by the administrator of EPA or by the commissioner.

(25) "Weed" means any plant which grows where not wanted.

(26) "Wildlife" means all living things that are neither human, domesticated, nor pests.

History: C. 1953, 4-14-2, enacted by L. 1979, ch. 2, § 15; 1987, ch. 92, § 2; 1993, ch. 4, § 3.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, subdivided Subsection (9), substituted "Section 23-13-2" for "Subsection 23-13-2(27)" in Subsection (20)(b), and made stylistic changes.

Federal Law. — The Federal Insecticide, Fungicide, and Rodenticide Act, cited in Subsection (11), is compiled as 7 U.S.C. § 136 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control § 294.

C.J.S. — 3 C.J.S. Agriculture § 95.

4-14-3. Registration required for distribution — Application — Fees — Renewal — Local needs registration — Distributor or applicator license — Fees — Renewal.

(1) No person may distribute a pesticide in this state which is not registered with the department. Application for registration shall be made to the department upon forms prescribed and furnished by it accompanied with an annual registration fee determined by the department pursuant to Subsection 4-2-2(2) for each pesticide registered. Upon receipt by the department of a proper application and payment of the appropriate fee, the commissioner shall issue a registration to the applicant allowing distribution of the registered pesticide in this state through June 30 of each year, subject to suspension or revocation for cause. Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee. Each renewal fee shall be paid on or before June 30 of each year.

(2) The application shall include the following information:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's name;

(b) the name of the pesticide;

(c) a complete copy of the label which will appear on the pesticide; and

(d) any information prescribed by regulation of the department deemed necessary for the safe and effective use of the pesticide.

(3) Forms for the renewal of registration shall be mailed to registrants at least 30 days before their registration expires. A registration in effect on June 30 for which a renewal application has been filed and the registration fee tendered shall continue in effect until the applicant is notified either that the registration is renewed or that it is suspended or revoked pursuant to Section 4-14-8.

(4) The department may, before approval of any registration, require the applicant to submit the complete formula of any pesticide including active and

inert ingredients and may also, for any pesticide not registered pursuant to Section (3) of FIFRA or for any pesticide on which restrictions are being considered, require a complete description of all tests and test results that support the claims made by the applicant or the manufacturer of the pesticide.

(5) A registrant who desires to register a pesticide to meet special local needs pursuant to Section 24(c) of FIFRA shall, in addition to complying with Subsections (1) and (2), satisfy the department that:

(a) a special local need exists;

(b) the pesticide warrants the claims made for it;

(c) the pesticide, if used in accordance with commonly accepted practices, will not cause unreasonable adverse effects on the environment; and

(d) the proposed classification for use conforms with Section 3(d) of FIFRA.

(6) No registration is required for a pesticide distributed in this state pursuant to an experimental use permit issued by the EPA or under Section 4-14-5.

(7) No pesticide dealer may distribute a restricted use pesticide in this state without a license. No person may apply a pesticide for hire in this state without a license. A license to engage in either activity may be obtained upon application from the department upon the payment of a license fee determined by the department pursuant to Subsection 4-2-2(2), which shall entitle the applicant to engage in the otherwise proscribed activity through December 31 of the year in which the license is issued. Such a license is annually renewable upon the payment of an annual license renewal fee determined by the department pursuant to Subsection 4-2-2(2).

History: C. 1953, 4-14-3, enacted by L. 1979, ch. 2, § 15; 1984 (2nd S.S.), ch. 15, § 13; 1985, ch. 130, § 9.

Federal Law. — Sections 3 and 24 of the Federal Insecticide, Fungicide, and Rodenticide Act, cited in Subsections (4) and (5), are compiled as 7 U.S.C. §§ 136a and 136v, respectively.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control §§ 305 to 323.

C.J.S. — 3 C.J.S. Agriculture § 97.

4-14-4. Labeling requirement for pesticides specified.

(1) Each container of pesticide distributed in this state shall bear a label setting forth:

(a) the name, brand, or trademark under which it is distributed;

(b) an accurate statement of the ingredients on that part of the immediate container (and on the outside container and wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase; provided, that the ingredient statement may appear prominently on another part of the container as permitted pursuant to Section 2(q)(2)(A) of FIFRA if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(c) a warning or caution statement if necessary, which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect the health and environment;

(d) the net weight or measure of the content;

(e) the name and address of the manufacturer, registrant, or person for whom manufactured;

(f) the EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide, if required by regulations under FIFRA;

(g) the federal use classification under which the pesticide is registered or designated for "experimental use only"; and

(h) directions for use of the pesticide sufficient to effectuate the purposes for which the product is intended and which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment.

(2) If the pesticide is highly toxic the label shall, in addition to the other label requirements, display:

(a) the skull and crossbones;

(b) the word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(c) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

History: C. 1953, 4-14-4, enacted by L. 1979, ch. 2, § 15; 1981, ch. 3, § 2.

Federal Law. — Sections 2 and 3 of the Federal Insecticide, Fungicide, and Rodenticide Act, cited in Subsections (1)(b), (1)(c), and (1)(h), are compiled as 7 U.S.C. §§ 136 and 136a, respectively.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control § 312.

4-14-5. Issuance of experimental use permits — Application — Terms and conditions for issuance.

(1) The department upon application may:

(a) issue an experimental use permit to any person if it determines that the applicant needs such a permit in order to accumulate information necessary to register a pesticide under Section 4-14-3; or

(b) refuse to issue an experimental permit if it determines that issuance is not warranted or that the pesticide use to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment.

(2) The department may also with respect to issuance of an experimental use permit:

(a) prescribe the terms and conditions for the conduct of the experimental use which in all events shall be under the supervision of the department; and

(b) revoke or modify any experimental use permit if it determines that the terms or conditions of the experimental use are being violated, or that the terms and conditions prescribed are inadequate to avoid unreasonable adverse effects to the environment.

(3) Application for an experimental use permit may be made before, after, or simultaneously with an application for registration.

History: C. 1953, 4-14-5, enacted by L. 1979, ch. 2, § 15.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control §§ 354 to 368.

4-14-6. Department authorized to make and enforce regulations.

The department is authorized, subject to the Utah [Administrative] Rulemaking Act, to:

(1) declare as a pest any form of plant or animal life (other than man and other than bacteria, viruses, and other microorganisms on or in living man or other living animals) which is injurious to health or the environment;

(2) determine in accordance with the regulations promulgated by the EPA under Section 25(c)(2) of FIFRA whether pesticides registered for special local needs under the authority of Section 24(c) of FIFRA are highly toxic to man;

(3) determine, consistent with EPA regulations, that certain pesticides, or quantities of substances contained in these pesticides, are injurious to the environment;

(4) adopt a list of "restricted use pesticides" for the state or designated areas within the state if it determines upon substantial evidence presented at a public hearing and upon recommendation of the pesticide committee that restricted use is necessary to prevent damage to property or to the environment; or

(5) adopt any regulation, not inconsistent with federal regulations promulgated under FIFRA, deemed necessary to administer and enforce this chapter, including but not limited to, regulations relating to the sale, distribution, use, and disposition of pesticides as deemed necessary to prevent damage and to protect the public health.

History: C. 1953, 4-14-6, enacted by L. 1979, ch. 2, § 15.

Federal Law. — Sections 24 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, cited in Subsection (2), are compiled as 7 U.S.C. §§ 136v and 136w, respectively.

Cross-References. — Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

4-14-7. Enforcement — Inspection and sampling authorized — Notice of deficiency to be given registrant — Objects of inspection delineated — Warrants.

(1) The department to determine compliance with this chapter, shall periodically sample, inspect, and analyze pesticides distributed within this state; observe and investigate the use and application of pesticides within this state;

and inspect equipment used to apply pesticides in this state to determine if they comply with this chapter.

(2) If a pesticide sample, upon analysis, fails to comply with this chapter, the department shall give written notice to that effect to the registrant or owner of the pesticide. Nothing in this chapter, however, shall be construed as requiring the department to refer minor violations for criminal prosecution or for the institution of condemnation proceedings if it believes the public interest will best be served through informal action.

(3) The department, for the purpose of enforcing this section, is authorized at reasonable times, to enter any private or public premises for the purpose of:

(a) inspecting any equipment used in applying pesticides;

(b) inspecting or sampling lands actually or reported to be exposed to pesticides;

(c) inspecting storage or disposal areas;

(d) investigating complaints of injury to animals or lands;

(e) sampling pesticides wherever located including in vehicles; or

(f) observing the use and application of a pesticide.

(4) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for any purpose specified in Subsection (3) of this section.

History: C. 1953, 4-14-7, enacted by L. 1979, ch. 2, § 15.

Cross-References. — Enforcement of Agricultural Code, § 4-1-4.

4-14-8. Suspension or revocation — Grounds — Stop sale, use, or removal order authorized — Court action — Procedure — Award of costs authorized.

(1) The department may revoke or suspend the registration of any pesticide upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the registration of the pesticide or in its distribution in this state.

(2) The department may issue a "stop sale, use, or removal order" to the owner or distributor of any designated pesticide or lot of pesticide which it finds or has reason to believe is being offered or exposed for sale in violation of this chapter. The order shall be in writing and no pesticide subject to it shall be moved, offered, or exposed for sale, except upon the subsequent written release by the department. Before a release is issued, the department may require the owner or distributor of the "stopped" pesticide or lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(3) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of a pesticide which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent the violation of this chapter. No bond shall be required of the department in an injunctive proceeding brought under this section.

(4) If condemnation is ordered, the pesticide or equipment shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the registrant or other person an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the pesticide into conformance, or for permission to remove it from the state.

(5) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the pesticide or equipment.

History: C. 1953, 4-14-8, enacted by L. 1979, ch. 2, § 15.

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

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control §§ 319, 398 to 401.

C.J.S. — 3 C.J.S. Agriculture § 98.

4-14-9. Examination requirements for license to act as applicator may be waived through reciprocal agreement.

The department may waive any or all examination requirements which may be specified by regulation for noncommercial, commercial, and private applicators through a reciprocal agreement with another state whose examination requirements and standards for licensure are substantially similar to those of Utah.

History: C. 1953, 4-14-9, enacted by L. 1979, ch. 2, § 15.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control §§ 333 to 346.

C.J.S. — 3 C.J.S. Agriculture §§ 101 to 104.

4-14-10. Pesticide Committee created — Composition — Terms — Compensation — Duties.

(1) There is created a Pesticide Committee comprising nine persons appointed by the governor with the advice and consent of the Senate to four-year terms of office, one member from each of the following state agencies and organizations:

(a) Utah State Agricultural Extension Service;
(b) Department of Agriculture;
(c) Department of Health;
(d) Division of Wildlife Resources;
(e) Department of Environmental Quality;
(f) Utah Pest Control Association;
(g) agricultural chemical industry;
(h) Utah Farmers Union; and
(i) Utah Farm Bureau Federation.

(2) The committee shall elect one of its members to serve as chairman. The chairman is responsible for the call and conduct of meetings of the Pesticide Committee.

(3) Attendance of a simple majority of the members constitutes a quorum for the transaction of official business. Members, exclusive of those who are employees of the state, are entitled to per diem and expenses at the rates

established by the director of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(4) The Pesticide Committee shall make recommendations to the commissioner regarding making rules pertaining to the sale, distribution, use, and disposal of pesticides.

History: C. 1953, 4-14-10, enacted by L. 1981, ch. 126, § 32; 1991, ch. 112, § 1; 1993, ch. 212, § 2.

Repeals and Reenactments. — Laws 1981, ch. 126, § 32 repealed former § 4-14-10, as enacted by Laws 1979, ch. 2, § 15, relating to the Pesticide Committee, and enacted the present section.

Amendment Notes. — The 1991 amendment, effective July 1, 1991, rewrote Subsection (1), adding a member from the Department of Environmental Quality; in Subsection (2), divided the former sentence into two sentences, substituted "members" for "number" in the first sentence, and added "The chairman" at the beginning of the second sentence; in Subsection (3), substituted "constitutes" for "shall constitute" and "at the same rate provided in Sections 63-1-14.5 and 63-1-15" for "in accordance with section 63-2-15"; and in Subsection (4), substituted "making rules" for "the promulgation of regulations."

The 1993 amendment, effective May 3, 1993, made stylistic changes in Subsection (1) and substituted "the rates established by the director of the Division of Finance under Sections 63A-3-106 and 63A-3-107" for "the same rate provided in Sections 63-1-14.5 and 63-1-15" in Subsection (3).

Sunset Act. — See Section 63-55-204 for the repeal date of the Pesticide Committee.

4-14-11. Repealed.

Repeals. — Section 4-14-11, as enacted by Laws 1979, ch. 2, § 15, making violations of the chapter class "B" misdemeanors, was repealed by Laws 1985, ch. 104, § 8.

4-14-12. Defenses.

(1) As an affirmative defense to any action brought as a result of the alleged misuse or misapplication of a pesticide, a person may present evidence that as of the time of the alleged violation, he was in compliance with label directions, this chapter, and any rules issued in accordance with this chapter.

(2) A person is not liable for injuries resulting from the misuse or misapplication of a pesticide unless the applicator was negligent.

History: C. 1953, 4-14-12, enacted by L. 1991, ch. 20, § 1.

Effective Dates. — Laws 1991, ch. 20 became effective on April 29, 1991, pursuant to Utah Const., Art. VI, Sec. 25.

CHAPTER 15

UTAH NURSERY ACT

Section
4-15-1. Short title.
4-15-2. Definitions.
4-15-3. Department authorized to make and enforce regulations.
4-15-4. Unlawful to offer nursery stock for sale or to solicit orders for nursery stock without license.
4-15-5. License — Application — Fees — Expiration — Renewal.
4-15-6. Nursery stock for wholesale or retail sale — Graded and sized — Labels and tags — Information to appear on label or tag.
4-15-7. Inspection — Issuance of certificate — Destruction of infested or diseased stock.
4-15-8. Transport of out-of-state nursery stock to Utah — Certificate of inspection to be filed with department by out-of-state nurs-

Section

eries — Option in department to accept exchange list in lieu of certificate of inspection — Imported stock to be tagged — Treatment of stock not tagged.

4-15-9. Nursery stock offered or advertised for sale — Unlawful to misrepresent name, origin, grade, variety, quality or vitality — Information required in advertisements.

4-15-10. Infested or diseased stock not to be offered for sale — Identification of "nonestablished container stock" — Requirements for container stock — Inspected and certified stock only to be offered for sale — Prohibition against coating aerial plant surfaces.

4-15-11. Enforcement — Inspection — Stop sale order — Procedure — Warrants.

4-15-12. Suspension or revocation — Grounds — Notice and hearing.

4-15-13. Repealed.

4-15-1. Short title.

This chapter shall be known and may be cited as "The Utah Nursery Act."

History: C. 1953, 4-15-1, enacted by L. 1979, ch. 2, § 16.

COLLATERAL REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d Agriculture § 55.

C.J.S. — 3 C.J.S. Agriculture § 68.

4-15-2. Definitions.

As used in this chapter:

(1) "Balled and burlapped stock" means nursery stock which is removed from the growing site with a ball of soil containing its root system intact and encased in burlap or other material to hold the soil in place;

(2) "Bare-root stock" means nursery stock which is removed from the growing site with the root system free of soil;

(3) "Container stock" means nursery stock which is transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid container for a period sufficient to allow newly developed fibrous roots to form so that if the plant is removed from the container its root-media ball will remain intact;

(4) "Etiolated growth" means bleached and unnatural growth resulting from the exclusion of sunlight;

(5) "Minimum indices of vitality" mean standards adopted by the department to determine the health and vigor of nursery stock offered for sale in this state;

(6) "Nonestablished container stock" means deciduous nursery stock which is transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid container for a period insufficient to allow the formation of fibrous roots sufficient to form a root-media ball;

(7) "Nursery" means any place where nursery stock is propagated and grown for sale or distribution;

(8) "Nursery outlet" means any place or location where nursery stock is offered for wholesale or retail sale;

(9) "Nursery stock" means all plants, whether field grown, container grown, or collected native plants; trees, shrubs, vines, grass sod; seedlings,

perennials, biennials; and buds, cuttings, grafts, or scions grown or collected or kept for propagation, sale, or distribution; except that it shall not mean dormant bulbs, tubers, roots, corms, rhizomes, pips; field, vegetable, or flower seeds; or bedding plants, annual plants, florists' greenhouse or field-grown plants, flowers or cuttings;

(10) "Place of business" means each separate nursery, or nursery outlet, where nursery stock is offered for sale, sold, or distributed;

(11) "Packaged stock" means bare-root stock which is packed either in bundles or in single plants with the roots in some type of moisture-retaining material designed to retard evaporation and hold the moisture-retaining material in place.

History: C. 1953, 4-15-2, enacted by L. 1979, ch. 2, § 16.

4-15-3. Department authorized to make and enforce regulations.

The department is authorized, subject to the Utah [Administrative] Rulemaking Act, to make and enforce such regulations as in its judgment are necessary to administer and enforce this chapter.

History: C. 1953, 4-15-3, enacted by L. 1979, ch. 2, § 16.

Cross-References. — Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

4-15-4. Unlawful to offer nursery stock for sale or to solicit orders for nursery stock without license.

It is unlawful for any person in this state to offer nursery stock for sale at a nursery or nursery outlet, or to solicit or receive orders for nursery stock for a person who regularly engages in the business of operating a nursery or nursery outlet, without a license issued by the department.

History: C. 1953, 4-15-4, enacted by L. 1979, ch. 2, § 16.

Cross-References. — Doing business without license, § 76-8-410.

4-15-5. License — Application — Fees — Expiration — Renewal.

(1) Application for a license to operate a nursery or nursery outlet or to solicit or receive orders of nursery stock for a person regularly engaged in the business of operating a nursery or nursery outlet shall be made to the department on forms prescribed and furnished by it. Upon receipt of a proper application and compliance with applicable regulations, and payment of a license fee determined by the department pursuant to Subsection 4-2-2(2) for each place of business where the applicant intends to offer nursery stock for wholesale or retail sale, or the payment of a fee determined by the department pursuant to Subsection 4-2-2(2) in the case of an agent, the commissioner, if satisfied the convenience and necessity of the industry and the public will be served, shall issue a license to engage in the otherwise proscribed activity through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(2) A license to operate a nursery or nursery outlet or an agent's license is renewable on or before December 31 of each year for a period of one year upon the payment of an annual license renewal fee determined by the department pursuant to Subsection 4-2-2(2).

History: C. 1953, 4-15-5, enacted by L. 1979, ch. 2, § 16; 1984 (2nd S.S.), ch. 15, § 14; 1985, ch. 130, § 10.

4-15-6. Nursery stock for wholesale or retail sale — Graded and sized — Labels and tags — Information to appear on label or tag.

Each type of nursery stock delivered to a nursery or nursery outlet for subsequent wholesale or retail sale shall be sized and graded in accordance with the applicable regulations of the department and shall bear a tag or label with the name, grade, size, and variety of the stock. Each bundle, single lot, or single nursery stock sold at retail shall bear a secure tag or label with the common or botanical name, grade, size, and variety of the stock legibly printed or written on it.

History: C. 1953, 4-15-6, enacted by L. 1979, ch. 2, § 16.

4-15-7. Inspection — Issuance of certificate — Destruction of infested or diseased stock.

(1) Each nursery shall be inspected by the department at least once each year. If upon inspection it appears that the nursery and its stock are free of insect pests and plant disease the department shall issue a certificate to that effect to the nursery.

(2) Each nursery outlet shall be inspected by the department at least once each year during the period nursery stock is offered for retail sale. An inspection certificate may be issued by the department to a nursery outlet to permit the interstate shipment of nursery stock if the stock contemplated for shipment appears free of insect pests and plant disease.

(3) Nursery stock found to be infested with insect pests or infected with plant disease shall be destroyed or otherwise treated as determined by the department.

History: C. 1953, 4-15-7, enacted by L. 1979, ch. 2, § 16.

4-15-8. Transport of out-of-state nursery stock to Utah — Certificate of inspection to be filed with department by out-of-state nurseries — Option in department to accept exchange list in lieu of certificate of inspection — Imported stock to be tagged — Treatment of stock not tagged.

(1) Out-of-state nurseries and nursery outlets transporting nursery stock to a nursery or nursery outlet in this state shall annually deliver to the department a certified duplicate copy of the "state of origin" certificate of inspection for each such out-of-state nursery or nursery outlet; provided, that the department may accept and exchange a list of certified or licensed out-of-state nurseries or nursery outlets in lieu of a certificate of inspection for each such individual nursery or nursery outlet.

(2) Nursery stock originating outside and imported into this state for customer delivery or for resale shall bear a tag stating that the nursery stock has been inspected and certified free from plant pests and disease. The tag shall also bear the name and address of the shipper or consignor. A shipment of nursery stock destined for delivery in this state which is not accompanied with such a tag may be returned to the owner or consignor at such person's expense, or may be destroyed, or otherwise disposed of by the department without compensation to the owner or consignor.

History: C. 1953, 4-15-8, enacted by L. 1979, ch. 2, § 16.

4-15-9. Nursery stock offered or advertised for sale — Unlawful to misrepresent name, origin, grade, variety, quality or vitality — Information required in advertisements.

No person shall misrepresent the name, origin, grade, variety, quality, or indice of vitality of any nursery stock advertised or offered for sale at a nursery or nursery outlet. All advertisements of nursery stock shall clearly state the name, size, and grade of the stock where applicable.

History: C. 1953, 4-15-9, enacted by L. 1979, ch. 2, § 16.

4-15-10. Infested or diseased stock not to be offered for sale — Identification of "nonestablished container stock" — Requirements for container stock — Inspected and certified stock only to be offered for sale — Prohibition against coating aerial plant surfaces.

(1) Nursery stock which is infested with plant pests, including noxious weeds, or infected with disease or which does not meet minimum indices of vitality shall not be offered for sale.

(2) All nonestablished container stock offered for sale shall be identified by the words "nonestablished container stock" legibly printed on a water resistant tag which states the length of time it has been planted or the date it was planted and shall not be offered for sale in any manner which leads a purchaser to believe it is container stock.

(3) All container stock offered for sale shall be established with a root-media mass that will retain its shape and hold together when removed from the container.

(4) No nursery stock other than officially inspected and certified stock shall be offered for wholesale or retail sale in this state.

(5) Colored waxes or other materials which coat the aerial parts of a plant and change the appearance of the plant surface are prohibited.

History: C. 1953, 4-15-10, enacted by L. 1979, ch. 2, § 16.

4-15-11. Enforcement — Inspection — Stop sale order — Procedure — Warrants.

(1) The department may issue a "stop sale" order to any nursery or nursery outlet which it finds, or has reason to believe, is offering, advertising, or selling nursery stock in violation of Section 4-15-10. The "stop sale" order shall be in writing and no nursery stock subject to it shall be advertised or sold, except upon subsequent written release by the department.

(2) The department is authorized for the purpose of ascertaining compliance with this chapter to enter and inspect any nursery or nursery outlet where nursery stock is kept during their business hours. If access for the purpose of inspection is denied, the department may proceed immediately to the nearest court of competent jurisdiction and obtain an ex parte warrant or its equivalent to permit inspection of the nursery or nursery outlet.

History: C. 1953, 4-15-11, enacted by L. 1979, ch. 2, § 16.

Cross-References. — Enforcement of Agricultural Code, § 4-1-4.

4-15-12. Suspension or revocation — Grounds — Notice and hearing.

The department may suspend or revoke the license of any nursery, nursery outlet, or agent that violates Section 4-15-9 or 4-15-10; provided, that no suspension or revocation shall be effective until after the nursery, nursery outlet, or agent is afforded notice and a hearing.

History: C. 1953, 4-15-12, enacted by L. 1979, ch. 2, § 16.

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

4-15-13. Repealed.

Repeals. — Section 4-15-13, as enacted by Laws 1979, ch. 2, § 16, making violations of the chapter class "B" misdemeanors, was repealed by Laws 1985, ch. 104, § 8.

CHAPTER 16

UTAH SEED ACT

Section
4-16-1. Short title.
4-16-2. Definitions.
4-16-3. Department authorized to make and enforce regulations — Cooperation with state and federal agencies authorized.
4-16-4. Labeling requirements specified for containers of agricultural seed, mixtures of lawn and turf seed, vegetable seed, flower seed, and tree and shrub seed.
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4-16-6. Chapter inapplicable to seed not intended for sowing, to seed at seed processing plant, or to seed transported or delivered for transportation in the ordinary course of business.
4-16-7. Inspection — Samples — Analysis — Seed testing facilities to be maintained — Regulations to control offensive seeds — Notice of offending seeds — Warrants.
4-16-8. Enforcement — Stop sale, use, or removal authorized — Court action — Procedures — Costs.
4-16-9. Designation of official testing agency for certification of seed.
4-16-10. False or misleading advertising with respect to seed quality prohibited.
4-16-11. Distributors of seed to keep record of each lot of seed distributed.
4-16-12. Repealed.

4-16-1. Short title.

This chapter shall be known and may be cited as the "Utah Seed Act."

History: C. 1953, 4-16-1, enacted by L. 1979, ch. 2, § 17.

Cross-References. — Pure sugar-beet seed districts, § 17A-3-1101.

COLLATERAL REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d Agriculture §§ 52 to 55.

C.J.S. — 3 C.J.S. Agriculture §§ 65 to 67.

4-16-2. Definitions.

As used in this chapter:

(1) "Advertisement" means any representation made relative to seeds, plants, bulbs, or ground stock other than those on the label of a seed container, disseminated in any manner.

(2) "Agricultural seeds" mean seeds of grass, forage plants, cereal crops, fiber crops, sugar beets, seed potatoes, or any other kinds of seed or mixtures of seed commonly known within this state as agricultural or field seeds.

(3) "Flower seeds" mean seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts commonly known and sold under the name of flower seeds in this state.

(4) "Foundation seed," "registered seed," or "certified seed" means seed that is produced and labeled in accordance with procedures officially recognized by a seed certifying agency approved and accredited in this state.

(5) "Hybrid" means the first generation seed of a cross produced by controlling pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open-pollinated variety; or (c) two varieties or species, except open-pollinated varieties of corn (Zea mays). The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(6) "Kind" means one or more related species or subspecies of seed which singly or collectively is known by one name, for example: corn, oats, alfalfa, and timothy.

(7) "Label" means all written, printed, or graphic representations accompanying and pertaining to any seeds, plants, bulbs, or ground stock whether in bulk or in containers, and includes representations on invoices, bills, and letterheads; provided, that all written or printed matter shall appear in English.

(8) "Lot" means a definite quantity of seed identified by a number or other mark, every part or bag of which is uniform within recognized tolerances.

(9) "Noxious-weed seeds" mean weed seeds declared noxious by the commissioner.

(10) "Pure seed," "germination," or other such terms in common use for testing seeds for purposes of labeling shall have ascribed to them the meaning set forth for such terms in the most recent edition of "Rules for Seed Testing" published by the Association of Official Seed Analysts.

(11) "Sowing" means the placement of agricultural seeds, vegetable seeds, flower seeds, tree and shrub seeds, or seeds used for sprouting purposes in a selected environment for the purpose of obtaining plant growth.

(12) "Treated" means seed that has received an application of a substance to reduce, control, or repel certain disease organisms, fungi, insects or other pests which may attack the seed or its seedlings, or has received some other treatment to improve its planting value.

(13) "Tree and shrub seeds" mean seeds of woody plants commonly known and sold under the name of tree and shrub seeds in this state.

(14) "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic, which differentiate it from other plants of the same kind.

(15) "Vegetable seeds" mean seeds of crops grown in gardens or on truck farms that are generally known and sold under the name of vegetable seeds, plants, bulbs, and ground stocks in this state.

(16) "Weed seeds" mean seeds of any plant generally recognized as a weed within this state.

History: C. 1953, 4-16-2, enacted by L. 1979, ch. 2, § 17.

4-16-3. Department authorized to make and enforce regulations — Cooperation with state and federal agencies authorized.

The department is authorized, subject to the Utah [Administrative] Rulemaking Act, to make and enforce such regulations as in its judgment are deemed necessary to administer and enforce this chapter; and, in conjunction with its administration and enforcement, it is authorized to cooperate with other state agencies, other states, and with the United States Department of Agriculture or other departments or agencies of the federal government.

History: C. 1953, 4-16-3, enacted by L. 1979, ch. 2, § 17.

Cross-References. — Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

4-16-4. Labeling requirements specified for containers of agricultural seed, mixtures of lawn and turf seed, vegetable seed, flower seed, and tree and shrub seed.

(1) Each container of agricultural seed offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the common name of the kind or kind and variety of each seed component in excess of 5% by weight of the whole and the percent by weight of each component in the order of its predominance, provided:

(i) that if any component is required by regulation of the department to be labeled as a variety, the label, in addition to stating the common name of the seed, shall specify the name of the variety or state "Variety Not Stated";

(ii) that if any component is a hybrid seed, that fact shall be stated on the label; and

(iii) that if more than one component is required to be named the word "mixture" shall appear.

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the lot number or other lot identification;

(d) the percentage by weight of all weed seeds;

(e) the percentage by weight of agricultural or crop seeds other than those named on the label;

(f) the percentage by weight of inert matter;

(g) the name and rate of occurrence per pound of each kind of noxious-weed seed for which tolerance is permitted;

(h) the origin, if known, of alfalfa, red clover, or field corn and, if the origin is unknown, that fact shall be stated;

(i) the month and year seed tests were conducted specifying:

(i) percent of germination, exclusive of hard seed;

(ii) percent of hard seed; and

(iii) total germination of hard seed.

(2) Each container of seed mixtures for lawn or turf seed offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the common name of [the] kind or kind and variety of each agricultural seed component in excess of 5% by weight of the whole, and the percentage by weight of pure seed in order of its predominance in columnar form;
(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;
(c) the lot number or other lot identification;
(d) the percentage by weight of all weed seeds;
(e) the percentage by weight of agricultural seeds or crop seeds other than those required to be named on the label;
(f) the percentage by weight of inert matter;
(g) the name and rate of occurrence per pound of each kind of noxious-weed seed for which tolerance is permitted;
(h) the month and year seed tests were conducted specifying:
(i) percent of germination, exclusive of hard seed; and
(ii) percent of hard seed;
(i) the word "mixed" or "mixture";
(j) its net weight.

(3) Each container of vegetable seeds weighing one pound or less offered or exposed for sale or prepared for home gardens or household plantings or preplanted in containers, mats, tapes, or other devices shall be labeled with the following information:
(a) the common name of the kind and variety of seed;
(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;
(c) the calendar month and year the seed was tested or the year for which the seed was packaged;
(d) if germination of the seed is less than the germination standard last established for such seed by the department, the label shall specify:
(i) percentage of germination, exclusive of hard seed;
(ii) percentage of hard seed, if present;
(iii) the calendar month and year the germination test was completed to determine such percentages; and
(iv) the words "Below Standard" in not less than eight-point type;
(e) if the seeds are placed in a germination medium, mat, tape, or other device which makes it difficult to determine the quantity of the seed without removing the seeds, a statement to indicate the minimum number of seeds in the container.

(4) Each container of vegetable seeds weighing more than one pound offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:
(a) the common name of each kind and variety of seed component present in excess of 5% by weight of the whole and the percentage by weight of each in order of its predominance;
(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;
(c) the lot number or other lot identification;
(d) the month and year seed tests were conducted specifying:
(i) the percentage of germination, exclusive of hard seed; and
(ii) the percentage of hard seed, if present;
(e) the name and rate of occurrence per pound of each kind of noxious-weed seed for which tolerance is permitted.

(5) Each container of flower seeds prepared in packets for use in home flower gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices and offered or exposed for sale in this state shall be labeled with the following information:

(a) the common name of the kind and variety of the seeds or a statement of the type and performance characteristics of the seed;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the calendar month and year the seed was tested or the year for which the seed was packaged;

(d) if germination of the seed is less than the germination standard last established by the department, the label shall specify:

(i) percentage of germination, exclusive of hard seed;

(ii) percentage of hard seed, if present; and

(iii) the words "Below Standard" in not less than eight-point type;

(e) if the seeds are placed in a germination medium, mat, tape, or other device which makes it difficult to determine the quantity of seed without removing the seeds, a statement to indicate the minimum number of seeds in the container.

(6) Each container of flower seeds in other than packets prepared for use in home flower gardens or household plantings and other than in preplanted containers, mats, tapes, and other devices offered or exposed for sale in this state shall be labeled with the following information:

(a) the common name of the kind and variety of the seed or a statement of the type and performance characteristics of the seed;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the lot number or other lot identification;

(d) the month and year the seed was tested, or the year for which it was packaged;

(e) for those kinds of seeds for which standard testing procedures are prescribed:

(i) the percentage of germination, exclusive of hard seed; and

(ii) the percentage of hard seed, if present.

(7) Each container of tree and shrub seeds offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the common name of the species of seed (and subspecies), if appropriate;

(b) the scientific name of the genus and species (and subspecies, if appropriate);

(c) the name and address of the person who labeled the seed or who offers or exposes it for sale in this state;

(d) the lot number or other lot identification;

(e) information as to origin as follows:

(i) for seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, or geographic description, or political subdivision such as state or county; and

(ii) for seed collected from other than a predominantly indigenous stand, identity of the area of collection and the origin of the stand or state "origin not indigenous";

(f) the elevation or the upper and lower limits of elevation within which said seed was collected;

(g) purity as a percentage of pure seed by weight;

(h) for those species for which standard germination testing procedures are prescribed by the commissioner, the following:

(i) percentage of germination, exclusive of hard seed;

(ii) percentage of hard seed, if present; and

(iii) the calendar month and year the test was completed to determine such percentages;

(i) for those species for which standard germination testing procedures have not been prescribed by the commissioner, the calendar year in which the seed was collected.

History: C. 1953, 4-16-4, enacted by L. 1979, ch. 2, § 17.

4-16-5. Distribution of seeds — Germination tests required — Results to appear on label — Seed to be free of noxious weed seed — Special requirements for treated seeds — Prohibitions.

(1) (a) No person in this state shall offer or expose any agricultural, vegetable, flower, or tree and shrub seed for sale or sowing unless:

(i) For agricultural seeds, including mixtures of such seeds —

A test to determine the percentage of germination has been performed within 18 months, exclusive of the month such seed is tested, of the date the seed is offered for sale, and the date of such test appears on the label;

(ii) For vegetable, flower, or tree and shrub seed —

A test to determine the percentage of germination has been performed within nine months, exclusive of the month such seed is tested, of the date the seed is offered for sale, and the date of such test appears on the label;

(iii) For hermetically sealed agricultural, vegetable, flower, or tree and shrub seed —

A test to determine the percentage of germination has been performed within 36 months, exclusive of the month such seed is tested, of the date the seed is offered for sale; provided, that hermetically sealed seeds may be offered or exposed for sale after 36 months if they have been retested for germination within nine months, exclusive of the month such seed is retested, of the date the seeds are offered or exposed for sale, and the date of such test appears on the label;

(b) Its package or other container is truthfully labeled and in accordance with Section 4-16-4; or

(c) It is free of noxious weed seed, subject to such tolerance as may be prescribed by the department through regulation.

(2) The label on any package or other container of an agricultural, vegetable, flower, or tree and shrub seed which has been treated and for which a claim is made on account of such treatment, in addition to the labeling requirements specified in Section 4-16-4, shall:

(a) state that the seeds have been treated;

(b) state the commonly accepted name, or chemical (generic) name, or abbreviated chemical name of the substance used for treatment;

(c) if the seed is treated with an inoculant, state the date beyond which the inoculant is not considered effective; and

(d) a caution statement, consistent with regulations of the department, if the treatment substance remains with the seed in an amount which is harmful to vertebrate animals; provided, that the caution statement for mercurials and similarly toxic substances, as defined by regulation of the department, shall state the seed has been treated with "POISON" in red letters on a background of distinctly contrasting color together with a representation of the skull and crossbones.

(3) No person in this state shall:

(a) use the word "trace" as a substitute for a statement required under this chapter;

(b) disseminate any false or misleading advertisement about agricultural, vegetable, flower, or tree and shrub seed; or

(c) detach, alter, or destroy any label, or substitute any seed in a manner which defeats the purpose of this chapter.

History: C. 1953, 4-16-5, enacted by L. 1979, ch. 2, § 17.

4-16-6. Chapter inapplicable to seed not intended for sowing, to seed at seed processing plant, or to seed transported or delivered for transportation in the ordinary course of business.

This chapter is inapplicable to:

(1) seed or grain not intended for sowing;

(2) seed at, or consigned to, a seed processing or cleaning plant; provided, that any label or any other representation which is made with respect to the uncleaned or unprocessed seed is subject to this chapter;

(3) to any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier; provided, the carrier is not engaged in producing, processing, or marketing agricultural, vegetable, flower, or tree and shrub seeds.

History: C. 1953, 4-16-6, enacted by L. 1979, ch. 2, § 17.

4-16-7. Inspection — Samples — Analysis — Seed testing facilities to be maintained — Regulations to control offensive seeds — Notice of offending seeds — Warrants.

(1) The department shall periodically enter public or private premises from which seeds are distributed, offered, or exposed for sale to sample, inspect, analyze, and test agricultural, vegetable, flower, or tree and shrub seeds distributed within this state to determine compliance with this chapter. For this purpose, the department shall establish and maintain facilities for testing the purity and germination of such seeds and shall prescribe, by regulation,

uniform methods for sampling and testing such seeds and establish fees for rendering such service.

(2) The department shall also prescribe, by regulation, weed seeds and noxious weed seeds and fix the tolerances permitted for such offensive seeds.

(3) If a seed sample, upon analysis, fails to comply with this chapter, the department shall give written notice to that effect to any person who is distributing, offering, or exposing such seeds for sale. Nothing in this chapter, however, shall be construed as requiring the department to refer minor violations for criminal prosecution or for the institution of condemnation proceedings if it believes the public interest will best be served through informal action.

(4) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and obtaining samples.

History: C. 1953, 4-16-7, enacted by L. 1979, ch. 2, § 17.

Cross-References. — Enforcement of Agricultural Code, § 4-1-4.

4-16-8. Enforcement — Stop sale, use, or removal authorized — Court action — Procedures — Costs.

(1) The department may issue a "stop sale, use, or removal order" to the distributor, owner, or person in possession of any designated agricultural, vegetable, flower, or tree and shrub seed or lot of such seed which it finds or has reason to believe violates this chapter. The order shall be in writing and no seed subject to it shall be moved, offered, or exposed for sale, except upon subsequent written release by the department. Before a release is issued, the department may require the distributor or owner of the "stopped" seed or lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(2) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of any seed which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent violation of this chapter. No bond shall be required of the department in an injunctive proceeding brought under this section.

(3) If condemnation is ordered, the seed shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the claimant of the seed an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the seed into conformance, or for permission to remove it from the state.

(4) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the seed.

History: C. 1953, 4-16-8, enacted by L. 1979, ch. 2, § 17.

4-16-9. Designation of official testing agency for certification of seed.

The agricultural experiment station at Utah State University is designated as the official state agency responsible for the production, approval, and testing

of foundation seeds in this state. This agency shall perform all functions necessary for seed certification including the determination of the adaptability of established and new crop varieties for planting in this state, whether produced in this state or elsewhere and the determination of eligibility of crop varieties for registration and certification in the state. In performing its responsibility, the experiment station may contract, subject to available funds, upon such terms and conditions as it deems appropriate with a private seed certifying agency.

History: C. 1953, 4-16-9, enacted by L. 1979, ch. 2, § 17.

Cross-References. — Agricultural experiment station, §§ 53B-18-101 to 53B-18-104.

4-16-10. False or misleading advertising with respect to seed quality prohibited.

No person shall use orally or in writing, relative to any agricultural, vegetable, flower, or tree and shrub seed, sold, advertised, exposed or offered for sale in this state for propagation or planting, the term "foundation," "registered," or "certified" seed along with other words, or shall use any other term or form of words which suggests that the seed has been certified or registered by an inspection agency duly authorized by any state, or that there has been registration or certification, or either, or shall use any tags similar to registration or certification tags, unless such seeds have been registered or certified by an officially recognized seed certifying agency approved and accredited in this state.

History: C. 1953, 4-16-10, enacted by L. 1979, ch. 2, § 17.

4-16-11. Distributors of seed to keep record of each lot of seed distributed.

Each person whose name appears on the label of agricultural, vegetable, flower, or tree and shrub seeds shall keep a complete record of each lot of agricultural, vegetable, flower, tree and shrub seed distributed in this state for a period of two years and a file sample of each such lot of seed for a period of one year after final disposition of the lot. All such records and samples pertaining to the distribution of such seeds shall be available to the department for inspection during regular business hours.

History: C. 1953, 4-16-11, enacted by L. 1979, ch. 2, § 17.

4-16-12. Repealed.

Repeals. — Section 4-16-12, as enacted by Laws 1979, ch. 2, § 17, making violations of the chapter class "B" misdemeanors, was repealed by Laws 1985, ch. 104, § 8.

CHAPTER 17
UTAH NOXIOUS WEED ACT

Section
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4-17-8.5. Hearing before county weed control board — Appeal of decision to the county legislative body — Judicial review.
4-17-9. Repealed.
4-17-10. Jurisdiction of state and local agencies to control weeds.
4-17-11. County noxious weed control fund authorized.
4-17-12. Repealed.

4-17-1. Short title.

This chapter shall be known and may be cited as the "Utah Noxious Weed Act."

History: C. 1953, 4-17-1, enacted by L. 1979, ch. 2, § 18.

Cross-References. — Cities, abatement of weeds in, §§ 10-8-23, 10-11-1 to 10-11-4.

Counties may provide for destruction of weeds, § 17-5-223.

COLLATERAL REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d Agriculture § 51.

C.J.S. — 3 C.J.S. Agriculture §§ 69 to 73.

A.L.R. — Liability of private landowner for vegetation obscuring view at highway or street intersection, 69 A.L.R.4th 1092.

Key Numbers. — Agriculture ⚬= 8.

4-17-2. Definitions.

As used in this chapter:

(1) "Commission" means the county legislative body of the counties of this state;

(2) "Commissioner" means the commissioner of agriculture or the commissioner's representative;

(3) "County noxious weed" means any plant which is not on the state noxious weed list, is especially troublesome in a particular county, and is declared by the county legislative body to be a noxious weed within its county;

(4) "Noxious weed" means any plant the commissioner determines to be especially injurious to public health, crops, livestock, land, or other property.

History: C. 1953, 4-17-2, enacted by L. 1979, ch. 2, § 18; 1985, ch. 18, § 1; 1993, ch. 227, § 3.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, substituted "county legislative body" for "board of county commissioners" and made a minor stylistic change in Subsection (1) and substituted "county legislative body" for "county commission" in Subsection (3).

4-17-3. Commissioner — Functions, powers, and duties.

The commissioner has the following powers and duties:

(1) investigates and designates noxious weeds on a statewide basis;

(2) compiles and publishes annually a list of statewide noxious weeds;

(3) coordinates and assists in inter-county noxious weed enforcement activities;

(4) determines whether each county complies with this chapter;

(5) assists a county which fails to carry out the provisions of this chapter in its implementation of a weed control program;

(6) prescribes the form and general substantive content of notices to the public and to individuals concerning the prevention and control of noxious weeds;

(7) compiles and publishes a list of articles capable of disseminating noxious weeds or seeds and designate treatment to prevent dissemination; and

(8) regulates the flow of contaminated articles into the state and between counties to prevent the dissemination of noxious weeds or seeds.

History: C. 1953, 4-17-3, enacted by L. 1979, ch. 2, § 18; 1985, ch. 18, § 2.

4-17-3.5. Creation of State Weed Committee — Membership — Powers and duties.

(1) There is created a State Weed Committee composed of five members, one member representing each of the following:

(a) the Utah Department of Agriculture;

(b) the Utah State University Agricultural Experiment Station;

(c) the Utah State University Extension Service;

(d) the Utah Association of Counties; and

(e) private agricultural industry.

(2) The commissioner shall select the members of the committee from those nominated by each of the respective groups or agencies following approval by the Agricultural Advisory Board.

(3) Members of the committee shall serve for an indeterminate time, or until they are no longer associated with or represent the group or agency. Members may be removed by the commissioner for cause and any vacancy shall be filled by appointment.

(4) The State Weed Committee shall:

(a) confer and advise on matters pertaining to the planning, implementation, and administration of the state noxious weed program;

(b) recommend names for membership on the committee; and

(c) serve as members of the executive committee of the Utah Weed Control Association.

History: C. 1953, 4-17-3.5, enacted by L. 1989, ch. 71, § 1.

4-17-4. County Weed Control Board — Appointment — Composition — Terms — Removal — Compensation.

(1) Each county executive of the counties may, with the advice and consent of the county legislative body, appoint a county weed control board comprised of not less than three nor more than five appointed members.

(2) (a) If the county legislative body is the county commission, the chair of the county legislative body shall appoint one member of the county legislative body who shall act as a coordinator between the county and the weed board.

(b) If the county legislative body is a county council, the county executive shall serve on the county weed control board and act as coordinator between the county and the weed board.

(3) Two members of the board shall be farmers or ranchers whose primary source of income is derived from production agriculture.

(4) Members are appointed to four year terms of office and serve with or without compensation as determined by each county legislative body.

(5) Members may be removed for cause and any vacancy which occurs on a county weed control board shall be filled by appointment for the unexpired term of the vacated member.

History: C. 1953, 4-17-4, enacted by L. 1979, ch. 2, § 18; 1985, ch. 18, § 3; 1993, ch. 227, § 4.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, added the subsection designations; in Subsection (1), substituted "county executive" for "board of county commissioners" and "may, with the advice and consent of the county legislative body, appoint" for "appoints"; in Subsection (2)(a), inserted the language before "one member," substituted "county legislative body" for "county commission appointed by the chairman of the board of county commissioners," and substituted the last "county" for "commission"; added Subsection (2)(b); substituted "county legislative body" for "commission" in Subsection (4); and made several stylistic changes.

4-17-4.5. Commissioner may require county weed control board to justify failure to enforce provisions.

If the commissioner determines that the weed control board of any county has failed to perform its duties under this chapter, the commissioner may require the board to justify, in writing, its failure to enforce these provisions within its county.

History: C. 1953, 4-17-4.5, enacted by L. 1985, ch. 18, § 4.

4-17-5. County weed control board responsible for control of noxious weeds — Cooperation with other county boards — Authority to designate noxious weed — Public hearing before removal of noxious weed from state list.

(1) A county weed control board is responsible, under the general direction of the county executive, for the formulation and implementation of a county-wide coordinated noxious weed control program designed to prevent and control noxious weeds within its county.

(2) A county weed control board is required, under the general direction of its commission, to cooperate with other county weed control boards to prevent and control the spread of noxious weeds.

(3) A county legislative body may declare a particular weed or competitive plant, not appearing on the state noxious weed list, a county noxious weed within its county, or the county executive, with the approval of the county legislative body, may petition the commissioner for removal of a particular noxious weed from the state noxious weed list. The county legislative body may not approve a petition of the county executive to the commissioner to remove a noxious weed unless it has first conducted a public hearing after due notice.

History: C. 1953, 4-17-5, enacted by L. 1979, ch. 2, § 18; 1985, ch. 18, § 5; 1993, ch. 227, § 5.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, substituted "the county executive" for "its commission" in Subsection (1) and in Subsection (3) substituted "county legislative body" for "county commission" and "the county executive, with the approval of the county legislative body" for "it" in the first sentence and rewrote the second sentence, which read "A noxious weed shall not be removed by petition without a public hearing conducted by the commissioner after due notice."

4-17-6. Weed control supervisor — Qualification — Appointment — Duties.

Each commission may employ one or more weed control supervisors qualified to detect and treat noxious weeds and to direct the weed control program for the county weed board. A person may be a weed control supervisor for more than one county weed board. Terms and conditions of employment shall be prescribed by the commission.

It is the duty of every supervisor, under the direction of the local county weed control board, to examine all land under the jurisdiction of the county weed control board to determine whether this chapter and the regulations of the commissioner have been met, to compile data on infested areas, to consult and advise upon matters pertaining to the best and most practical method of noxious weed control and prevention, to render assistance and direction for the most effective control and prevention, to investigate violations of this chapter, to enforce noxious weed controls within the county, and to perform any other duties required by the county weed control board.

History: C. 1953, 4-17-6, enacted by L. 1979, ch. 2, § 18.

4-17-7. Notice of noxious weeds to be published annually in county — Notice to particular property owners to control noxious weeds — Methods of prevention or control specified — Failure to control noxious weeds considered public nuisance.

(1) Each county weed control board before May 1 of each year shall post a general notice of the noxious weeds within the county in at least three public places within the county and publish the same notice on at least three occasions in a newspaper or other publication of general circulation within the county.

(2) If the county weed control board determines that particular property within the county requires prompt and definite attention to prevent or control noxious weeds, it shall serve the owner or the person in possession of the property, personally or by certified mail, a notice specifying when and what action should be taken on the property. Methods of prevention or control may include definite systems of tillage, cropping, use of chemicals, and use of livestock.

(3) An owner or person in possession of property who fails to take action to control or prevent the spread of noxious weeds as specified in the notice is maintaining a public nuisance.

History: C. 1953, 4-17-7, enacted by L. 1979, ch. 2, § 18; 1985, ch. 18, § 6.

4-17-8. Noxious weeds — Failure to control after notice a nuisance — Notice and hearing — Control at county expense — Owner liable for county costs — Charges lien against property.

(1) If the owner or person in possession of the property fails to take action to control or prevent the spread of noxious weeds within five working days after the property is declared a public nuisance, the county may, after reasonable notification, enter the property, without the consent of the owner or the person in possession, and perform any work necessary, consistent with sound weed prevention and control practices, to control the weeds.

(2) Any expense incurred by the county in controlling the noxious weeds is paid by the property owner of record or the person in possession of the property, as the case may be, within 90 days after receipt of the charges incurred by the county. If not paid within 90 days after notice of the charges, the charges become a lien against the property and are collectible by the county treasurer at the time general property taxes are collected.

History: C. 1953, 4-17-8, enacted by L. 1979, ch. 2, § 18; 1985, ch. 18, § 7.

Cross-References. — Abatement of nuisances, §§ 76-10-806, 78-38-1.

Criminal penalties for maintaining public nuisance, § 76-10-804.

COLLATERAL REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d Agriculture §§ 49 to 51.

4-17-8.5. Hearing before county weed control board — Appeal of decision to the county legislative body — Judicial review.

(1) Any person served with notice to control noxious weeds may request a hearing to appeal the terms of the notice before the county weed control board within 10 days of receipt of such notice and may appeal the decision of the county weed control board to the county legislative body.

(2) Any person served with notice to control noxious weeds who has had a hearing before both the county weed control board and the county legislative body may further appeal the decision of the county legislative body by filing written notice of appeal with a court of competent jurisdiction.

History: C. 1953, 4-17-8.5, enacted by L. 1985, ch. 18, § 8; 1993, ch. 227, § 6.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, substituted "county legislative body" for "board of county commissioners" throughout the section.

4-17-9. Repealed.

Repeals. — Section 4-17-9, as enacted by Laws 1979, ch. 2, § 18, relating to enforcement of the chapter, was repealed by Laws 1985, ch. 18, § 10.

4-17-10. Jurisdiction of state and local agencies to control weeds.

The departments or agencies of state and local governments shall develop, implement, and pursue an effective program for the control and containment of noxious weeds on all lands under their control or jurisdiction, including highways, roadways, rights-of-way, easements, game management areas, and state parks and recreation areas.

History: C. 1953, 4-17-10, enacted by L. 1985, ch. 18, § 9.

Repeals and Reenactments. — Laws 1985, ch. 18, § 9 repealed former § 4-17-10, as enacted by Laws 1979, ch. 2, § 18, relating to state's responsibility for weeds on state-owned land, and enacted the present section.

4-17-11. County noxious weed control fund authorized.

Authority is hereby granted commissions to establish and maintain a noxious weed control fund in each county for use in the administration of this chapter.

History: C. 1953, 4-17-11, enacted by L. 1979, ch. 2, § 18.

4-17-12. Repealed.

Repeals. — Section 4-17-12, as enacted by Laws 1979, ch. 2, § 18, making violations of the chapter class "C" misdemeanors, was repealed by Laws 1985, ch. 104, § 8.

CHAPTER 18

SOIL CONSERVATION COMMISSION ACT

Section
4-18-1. Short title.
4-18-2. Purpose declaration.
4-18-3. Definitions.
4-18-4. Soil Conservation Commission created — Composition — Appointment — Terms — Compensation — Attorney general to provide legal assistance.
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4-18-14. Adoption of resolution implementing conservation corps.

Section
4-18-15. Utah Conservation Corps — Establishment — Responsibilities.
4-18-16. Definitions.
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4-18-18. Nature of projects.
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4-18-21. Powers of director.
4-18-22. Retirement benefits.
4-18-23. Nonresidential programs.
4-18-24. Contracts with nonprofit agencies.
4-18-25. Educational component.
4-18-26. Employment and training.
4-18-27. Corps member bill of rights.

4-18-1. Short title.

This chapter shall be known and may be cited as the "Soil Conservation Commission Act."

History: C. 1953, 4-18-1, enacted by L. 1979, ch. 2, § 19; 1992, ch. 122, § 2.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, substituted "Soil Conservation Commission" for "Soil Conservation Districts."

4-18-2. Purpose declaration.

The Legislature finds and declares that the soil and water resources of this state constitute one of its basic assets and that the preservation of these resources requires planning and programs to ensure the development and utilization of these resources and to protect them from the adverse effects of wind and water erosion, sediment, and sediment related pollutants.

History: C. 1953, 4-18-2, enacted by L. 1979, ch. 2, § 19.

4-18-3. Definitions.

As used in this chapter:

(1) "Alternate" means a substitute for a district supervisor if the district supervisor cannot attend a meeting.

(2) "Commission" means the Soil Conservation Commission created by this chapter.

(3) "District" or "soil conservation district" means a governmental subdivision of this state organized under Section 17A-3-801.

History: C. 1953, 4-18-3, enacted by L. 1979, ch. 2, § 19; 1992, ch. 122, § 3.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, inserted Subsection (1), redesignated former Subsections (1) and (2) as Subsections (2) and (3), and deleted former Subsections (3) and (4), defining "land occupier" and "notice," respectively; in Subsection (2), deleted "state" before "Soil" and deleted "and established under" following "created by"; and substituted "Section 17A-3-801" for "this chapter" in Subsection (3).

4-18-4. Soil Conservation Commission created — Composition — Appointment — Terms — Compensation — Attorney general to provide legal assistance.

(1) There is established, to serve as an agency of the state and functioning within the Department of Agriculture the Soil Conservation Commission to perform the functions specified in this chapter.

(2) The Soil Conservation Commission shall be comprised of 12 members as follows:

(a) the director of the Extension Service at Utah State University, or his designee;

(b) the president of the Association of Soil Conservation Districts, or his designee;

(c) the commissioner, or his designee;

(d) the executive director of the Department of Natural Resources, or his designee;

(e) the executive director of the Department of Environmental Quality, or his designee; and

(f) seven district supervisors who provide district representation on the commission on a multicounty basis.

(3) If a district supervisor is unable to attend a meeting, an alternate may serve in his place.

(4) The members of the commission specified in Subsection (2)(f) shall:

(a) be recommended by the commission to the governor;

(b) be appointed by the governor with the advice and consent of the Senate; and

(c) serve three-year terms of office.

(5) The commissioner is chairman of the commission.

(6) Attendance of a majority of the commission members at a meeting constitutes a quorum.

(7) If a vacancy occurs among appointed members, the governor shall appoint a replacement to fill the unexpired term of the vacated member.

(8) The following are entitled to per diem and expenses incurred in the performance of the member's official duties at the rates established by the director of the Division of Finance under Sections 63A-3-106 and 63A-3-107:

(a) an appointed member or his alternate; and

(b) the president of the Association of Soil Conservation Districts, or his designee.

(9) The commission shall keep a record of its actions.

(10) The attorney general shall provide legal services to the commission upon request.

History: C. 1953, 4-18-4, enacted by L. 1979, ch. 2, § 19; 1986, ch. 18, § 1; 1991, ch. 112, § 2; 1992, ch. 122, § 4; 1993, ch. 212, § 3; 1993, ch. 244, § 1.

Amendment Notes. — The 1991 amendment, effective July 1, 1991, divided and redesignated former Subsections (1) to (4) as Subsections (1) to (8); in Subsection (1), added the Subsection (a) through (f) designations, added "or his designee" throughout, substituted "Department of Environmental Quality" for "Department of Health" in Subsection (1)(e), and added the language beginning with "to provide" in Subsection (1)(f); in Subsection (2), substituted "serve" for "be appointed to" and deleted "by the governor and shall be selected to provide district representation on the commission on a multi-county basis" following "office"; in Subsection (6), substituted the phrase beginning "at the same rate" for "in accordance with § 63-2-15"; and made stylistic changes throughout.

The 1992 amendment, effective April 27, 1992, in Subsection (6), substituted "An appointed member or his alternate is" for "Appointed members are" and substituted "the member's official duties" for "their official functions"; and deleted "all" before "its" in Subsection (7).

The 1993 amendment by ch. 212, effective May 3, 1993, substituted "rates established by the director of the Division of Finance under Sections 63A-3-106 and 63A-3-107" for "same rate provided in Sections 63-1-14.5 and 63-1-15" in Subsection (6).

The 1993 amendment by ch. 244, effective May 3, 1993, rewrote this section to such an extent that a detailed comparison would be impracticable.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Sunset Act. — See Section 63-55-204 for the repeal date of the Soil Conservation Commission.

4-18-5. Soil conservation commission — Functions and duties.

(1) The commission shall:

(a) facilitate the development and implementation of the strategies and programs necessary to protect, conserve, utilize, and develop the soil and water resources of the state;

(b) disseminate information regarding districts' activities and programs;

(c) supervise the formation, reorganization, or dissolution of districts pursuant to the requirements of Title 17A, Chapter 3, Part 8;

(d) prescribe uniform accounting and recordkeeping procedures for districts and require each district to submit annually an audit of its funds to the commission;

(e) approve and make loans for agricultural purposes, from the Agriculture Resource Development Fund for the following:

(i) nonfederal rangeland improvement and management projects;

(ii) watershed protection and flood prevention projects;

(iii) agricultural cropland soil and water conservation projects; and

(iv) programs designed to promote energy efficient farming practices;

(f) administer federal or state funds in accordance with applicable federal or state guidelines and make loans or grants from those funds to land occupiers for the conservation of soil or water resources;

(g) seek to coordinate soil and water protection, conservation, and development activities and programs of state agencies, local governmental units, other states, special interest groups, and federal agencies; and

(h) plan watershed and flood control projects in cooperation with appropriate local, state, and federal authorities and coordinate flood control projects in the state.

(2) The commission may:

(a) employ, with the approval of the department, an administrator and necessary technical experts and employees;

(b) execute contracts or other instruments necessary to exercise its powers;

(c) sue and be sued; and

(d) adopt rules, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, necessary to carry out the powers and duties specified in Subsections (1)(d), (e), (f), and (2)(b).

History: C. 1953, 4-18-5, enacted by L. 1979, ch. 2, § 19; 1981, ch. 284, § 5; 1983, ch. 6, § 1; 1993, ch. 244, § 2.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, rewrote this section to such an extent that a detailed description would be impracticable.

4-18-5.5. Repealed.

Repeals. — Laws 1993, ch. 244, § 5 repeals § 4-18-5.5, as enacted by Laws 1981, ch. 284, § 6, relating to flood control projects, effective May 3, 1993.

4-18-6. Agriculture Resource Development Fund — Source of funding.

There is hereby created a nonlapsing restricted fund account within the General Fund to be known as the "Agriculture Resource Development Fund." The Agriculture Resource Development Fund shall consist of all money appropriated to it by the Legislature, deposits made to the Mineral Lease Account prescribed by Section 65-1-64.5, and all money made available to the state for agriculture resource development from any source together with interest that may be earned on such account.

History: C. 1953, 4-18-6, enacted by L. 1979, ch. 2, § 19; 1983, ch. 6, § 2.

Cross-References. — Mineral Lease Account, § 59-21-1.

Standards and procedures for revolving loan funds, § 63A-3-205.

4-18-7 to 4-18-13. Renumbered.

Renumbered. — Laws 1990, ch. 186, §§ 928 to 934 renumbered §§ 4-18-7 to 4-18-13 as Title 17A, Chapter 3, Part 8, effective April 23, 1990.

4-18-14. Adoption of resolution implementing conservation corps.

Any soil conservation district organized under Title 17A, Chapter 3, Part 8, may adopt a resolution implementing a Utah Conservation Corps Program as set forth in Sections 4-18-15 through 4-18-27.

History: C. 1953, 4-18-14, enacted by L. 1990, ch. 205, § 1; 1993, ch. 244, § 3.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, substituted "under Title 17A, Chapter 3, Part 8" for "under this chapter" near the beginning of the section.

4-18-15. Utah Conservation Corps — Establishment — Responsibilities.

The Utah Conservation Corps shall be responsible for carrying out the following purposes:

(1) conserving and developing the state's natural resources;

(2) enhancing and maintaining environmentally important lands and waters;

(3) providing educational work opportunities for youth; and

(4) enhancing the educational opportunities and employability of youth.

History: C. 1953, 4-18-15, enacted by L. 1990, ch. 205, § 2.

4-18-16. Definitions.

As used in this chapter:

(1) "Corps" means the Utah Conservation Corps.

(2) "Director" means the director of a Utah Conservation Corps.

History: C. 1953, 4-18-16, enacted by L. 1990, ch. 205, § 3.

4-18-17. Utah Conservation Corps director.

(1) The governing body of any soil conservation district which implements a Utah Conservation Corps shall assign the duties of director to an employee designated to administer the same. Said employee shall be designated with the title director.

(2) The director may employ staff to implement this chapter.

History: C. 1953, 4-18-17, enacted by L. 1990, ch. 205, § 4.

4-18-18. Nature of projects.

Young women and men participating in the corps shall be engaged in projects which do the following:

(1) preserve, maintain, and enhance environmentally important lands and waters;

(2) accomplish useful and needed public works projects in both urban and rural areas;

(3) conserve, maintain, improve, and develop natural resources in both urban and rural areas;

(4) provide opportunities for public use of the areas, projects, and resources described in Subsections (1), (2), and (3);

(5) assist in emergency operations, such as natural disaster relief, and the rescue of lost and injured persons;

(6) assist in fire prevention and suppression;

(7) directly contribute to the conservation of energy;

(8) contribute toward making public facilities accessible to persons with disabilities; and

(9) assist in:

(a) developing, rehabilitating, and restoring parklands, recreational facilities, and historical resources;

(b) restoring and preserving wildlife habitat;

(c) providing for the propagation of fish and wildlife; and

(d) providing for the reforestation of both urban and rural areas.

History: C. 1953, 4-18-18, enacted by L. 1990, ch. 205, § 5.

4-18-19. Project areas — Benefits and opportunities.

Projects shall be undertaken in both urban and rural areas and shall be selected with consideration given to the following factors:

(1) environmental and natural resources benefits of the project;

(2) opportunities for public use offered by the project;

(3) opportunities for personal development of corps members; and

(4) the value of the on-the-job training.

History: C. 1953, 4-18-19, enacted by L. 1990, ch. 205, § 6.

4-18-20. Selection criteria.

(1) Young men and women shall be selected for the corps on the basis of their interest in hard work, personal development, and public service, without regard to their prior employment or educational background. Participation shall be for a period of up to one year and may be extended at the discretion of the director.

(2) The corps shall place an emphasis on the development and execution of plans to assist corps members in obtaining employment following their participation in the corps.

History: C. 1953, 4-18-20, enacted by L. 1990, ch. 205, § 7.

4-18-21. Powers of director.

To implement the provisions of this chapter, the director may:

(1) recruit and employ corps members as authorized by the district;

(2) employ special corps members without regard to age who will provide the corps with skills necessary for the attainment of the corps' objectives;

(3) adopt criteria for selecting applicants for employment in the corps;

(4) execute contracts for the employment of corps members;

(5) authorize utilization of the corps for emergency projects occasioned by natural disasters, fire prevention and suppression, rescue of lost or injured persons, or any other activity or project necessary or desirable to carry out the purposes of this chapter;

(6) execute contracts:

(a) for furnishing the services of the corps to any agency, organization, or person concerned with the objectives of the corps;

(b) with any agency, organization, or person to provide services to the corps; and

(c) with universities, colleges, and private institutions for the creation of special admission and tuition credit programs for corps members;

(7) be reimbursed by any federal, state, or local government agency or any private organization for actual expenses incurred by the corps for any project undertaken;

(8) apply for and accept grants or contributions of funds from any public or private source;

(9) purchase, rent, or otherwise acquire necessary property and equipment; and

(10) procure insurance.

History: C. 1953, 4-18-21, enacted by L. 1990, ch. 205, § 8.

4-18-22. Retirement benefits.

Corps members and special corps members, other than staff officers and employees, may not receive state retirement benefits.

History: C. 1953, 4-18-22, enacted by L. 1990, ch. 205, § 9.

4-18-23. Nonresidential programs.

The corps may develop nonresidential programs in:

(1) urban communities; or

(2) nonurban communities which have:

(a) high concentrations of ethnic-minority youths or high levels of youth unemployment; and

(b) a need for conservation work.

History: C. 1953, 4-18-23, enacted by L. 1990, ch. 205, § 10.

4-18-24. Contracts with nonprofit agencies.

The corps may contract with public or private nonprofit agencies to provide services for a nonresidential program. The public or private nonprofit agency shall:

(1) submit a proposal which demonstrates that its program is consistent with the policies of the corps and with this chapter;

(2) to the extent possible, secure funding or services from the local service delivery area for necessary employment and training services;

(3) secure reimbursement for a significant portion of the work performed;

(4) secure a commitment from local educational institutions that appropriate education services will be provided; and

(5) maintain, to the extent possible, the funding from foundations and other public and private organizations for a nonresidential program.

History: C. 1953, 4-18-24, enacted by L. 1990, ch. 205, § 11.

4-18-25. Educational component.

(1) The corps shall give priority to providing an educational component for corps members who have not completed high school. The component shall be equal in content to a high school curriculum and provide course credits leading to a high school diploma or its equivalent. The work of the corps shall be structured to accommodate the educational component without significantly reducing the productivity of the corps.

(2) Corps members who desire to return to school shall be assisted by the corps in developing plans to accomplish this goal.

History: C. 1953, 4-18-25, enacted by L. 1990, ch. 205, § 12.

4-18-26. Employment and training.

(1) The corps shall cooperate with the local service delivery area, designated pursuant to the federal Job Training Partnership Act, to secure employment and training services for corps members.

(2) Employment and training services may include job search assistance, skills training, transitional employment, or any other services provided under the federal Job Training Partnership Act which would lead to employment for corps members.

(3) Employment and training services may be provided to corps members as a component of their work with the corps or upon their termination from the corps.

History: C. 1953, 4-18-26, enacted by L. 1990, ch. 205, § 13.

Federal Law. — The Job Training Partnership Act, cited in Subsections (1) and (2), is primarily compiled as 29 U.S.C. § 1501 et seq.

4-18-27. Corps member bill of rights.

(1) In order to protect the rights of corps members individually and the corps as a community, the director shall adopt a corps member bill of rights, corps member grievance procedures, and search and seizure guidelines.

(2) The adopted rights, procedures, and guidelines shall serve to assist the director and corps staff in identifying problems and conflicts and resolving them with a minimal disruption of work and training, and shall be used by corps supervisors to interpret and consistently enforce policies and procedures of the corps.

History: C. 1953, 4-18-27, enacted by L. 1990, ch. 205, § 14.

CHAPTER 19
RURAL REHABILITATION

Section
4-19-1. Department responsible for conduct and administration of rural rehabilitation program.
4-19-2. Department authorized to approve and make loans, acquire property, or lease or operate property.
4-19-3. Loans — Not to exceed period of ten years — Agricultural Advisory Board to approve loans and renewals, methods of payments, and interest rates — Guidelines in fixing interest rates declared.
4-19-4. Utah Rural Rehabilitation Fund created — State treasurer to maintain fund — Income from rural rehabilitation program to be deposited in fund.

4-19-1. Department responsible for conduct and administration of rural rehabilitation program.

The department through its Agricultural Development Division is responsible for the conduct and administration of the rural rehabilitation program within the state in accordance with that certain use agreement entered into January 1975, between the United States of America through its Farm Home Administration and the state of Utah through its commissioner of agriculture.

History: C. 1953, 4-19-1, enacted by L. 1979, ch. 2, § 20.

COLLATERAL REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d Agriculture § 28.

C.J.S. — 3 C.J.S. Agriculture § 58.

4-19-2. Department authorized to approve and make loans, acquire property, or lease or operate property.

The Division of Agricultural Development in conjunction with the administration of the rural rehabilitation program is authorized to:

(1) approve and make farm loans subject to Section 4-19-3, take security for such loans through mortgages, trust deeds, pledges, or other security devices; purchase promissory notes, real estate contracts, mortgages, trust deeds, or other instruments or evidences of indebtedness; and collect, compromise, cancel, or adjust claims and obligations arising out of the administration of the rural rehabilitation program;

(2) purchase or otherwise obtain property in which the division has acquired an interest on account of any mortgage, trust deed, lien, pledge, assignment, judgment, or other means at any execution or foreclosure sale;

(3) operate or lease, if necessary to protect its investment, any property in which it has an interest or sell or otherwise dispose of such property.

History: C. 1953, 4-19-2, enacted by L. 1979, ch. 2, § 20.

4-19-3. Loans — Not to exceed period of ten years — Agricultural Advisory Board to approve loans and renewals, methods of payments, and interest rates — Guidelines in fixing interest rates declared.

No loan shall be made under this chapter for a period to exceed ten years but any such a loan is renewable. The Agricultural Advisory Board shall approve all loans and renewals, the methods of repayment, and the interest rates charged. In fixing interest rates, the Agricultural Advisory Board shall consider the current applicable interest rate or rates being charged by the Farm Home Administration on similar loans, the current prime rate charged by leading lending institutions, and any other pertinent economic data. The interest rates established shall be compatible with guidelines stated in this section.

History: C. 1953, 4-19-3, enacted by L. 1979, ch. 2, § 20.

4-19-4. Utah Rural Rehabilitation Fund created — State treasurer to maintain fund — Income from rural rehabilitation program to be deposited in fund.

All income generated from the administration of the rural rehabilitation program shall be deposited in a separate fund known as the "Utah Rural Rehabilitation Fund." The state treasurer shall maintain the Utah Rural Rehabilitation Fund and record all debits and credits made to the fund by the division.

History: C. 1953, 4-19-4, enacted by L. 1979, ch. 2, § 20.

CHAPTER 20

TAYLOR GRAZING ACT

Section
4-20-1. Definitions.
4-20-2. Revenue collected from fees or from sales or leases to be deposited with state treasurer.
4-20-3. Revenue from sale or lease of public lands to be distributed pro rata to school districts — Basis for distribution.
4-20-4. Revenue from grazing fees to be distributed pro rata to grazing districts — Basis for distribution.
4-20-5. Grazing districts to distribute funds received pro rata to counties within district — Basis for distribution — Advisory board to direct expenditure of funds.

Section
4-20-6. Advisory board treasurer to file surety bond with state treasurer — Bond premium payment.
4-20-7. State treasurer to distribute revenue to grazing districts.
4-20-8. Audit of grazing districts — State auditor to coordinate with Department of Interior in conduct of audit.
4-20-9. Commission to supervise distribution of undistributed funds if United States alters or discontinues funding leaving funds or resources available.

4-20-1. Definitions.

As used in this chapter:

(1) "Advisory board" means a group of stockmen duly elected by the owners of livestock within a particular grazing district and appointed by the Secretary of Interior to act under oath in an advisory capacity within that district in the administration of the Taylor Grazing Act;

(2) "Fees" mean the revenue collected by the Secretary of Interior from assessments on livestock using public lands;

(3) "Grazing district" means a convenient administrative unit of public land designated by the Secretary of Interior as being valuable for grazing and for raising forage crops;

(4) "Public lands" mean vacant unappropriated and unreserved federal lands; and

(5) "Sales" or "leases" mean the sale or lease, respectively, of isolated or disconnected tracts of public lands by the Secretary of Interior.

History: C. 1953, 4-20-1, enacted by L. 1979, ch. 2, § 21.

Federal Law. — The Taylor Grazing Act is 43 U.S.C. § 315 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d Public Land §§ 22, 30.

C.J.S. — 73A C.J.S. Public Lands §§ 19 to 23.

Key Numbers. — Public Lands ⚿ 17.

4-20-2. Revenue collected from fees or from sales or leases to be deposited with state treasurer.

All funds received by the state from fees or from sales or leases collected by the Secretary of Interior under the Taylor Grazing Act, 43 U.S.C. Section 315 et seq., shall be deposited with the state treasurer. The state treasurer shall determine from the Department of Interior the receipts collected from fees in each grazing district and the receipts collected from the sale or lease of public lands.

History: C. 1953, 4-20-2, enacted by L. 1979, ch. 2, § 21; 1992, ch. 30, § 4.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, corrected the U.S.C. citation in the first sentence.

4-20-3. Revenue from sale or lease of public lands to be distributed pro rata to school districts — Basis for distribution.

The funds received by the state from the sale or lease of public lands shall be distributed pro rata to each school district based upon the amount of revenue generated from the sale or lease of public lands within such district. All revenue generated within a particular school district shall be credited and deposited to the general school fund of that school district.

History: C. 1953, 4-20-3, enacted by L. 1979, ch. 2, § 21.

4-20-4. Revenue from grazing fees to be distributed pro rata to grazing districts — Basis for distribution.

The funds received from fees shall be distributed pro rata to each grazing district based upon the amount of revenue generated from the imposition of fees within that district.

History: C. 1953, 4-20-4, enacted by L. 1979, ch. 2, § 21.

4-20-5. Grazing districts to distribute funds received pro rata to counties within district — Basis for distribution — Advisory board to direct expenditure of funds.

The funds received from fees by each grazing district shall be distributed pro rata to each county within its boundaries in proportion to the amount of public land located within the county. The advisory board of each district shall direct the expenditure of the funds for the following purposes:

(1) range improvement and maintenance;
(2) control of predatory and depredating animals;
(3) control and extermination of poisonous and noxious weeds;
(4) purchase or lease of lands for the benefit of the grazing district; and
(5) the general welfare of livestock grazing within the grazing district.

History: C. 1953, 4-20-5, enacted by L. 1979, ch. 2, § 21.

4-20-6. Advisory board treasurer to file surety bond with state treasurer — Bond premium payment.

Each advisory board treasurer shall file with the state treasurer, either a corporate surety bond in the amount of $5,000 or a personal surety bond in the amount of $10,000, for the faithful performance of such treasurer's official duties. Bond premiums shall be paid by the advisory board from the grazing district's allotment.

History: C. 1953, 4-20-6, enacted by L. 1979, ch. 2, § 21.

4-20-7. State treasurer to distribute revenue to grazing districts.

As soon as the state treasurer has ascertained the amount of money available, and has approved the bonds of the treasurers of the several advisory boards, the treasurer shall direct the auditor to draw warrants on the state treasury for the amount to be distributed to each grazing district, and shall deliver the warrants for deposit to the respective treasurers of each grazing district.

History: C. 1953, 4-20-7, enacted by L. 1979, ch. 2, § 21.

4-20-8. Audit of grazing districts — State auditor to coordinate with Department of Interior in conduct of audit.

The state auditor is authorized to coordinate with the Department of Interior in auditing the books of the several advisory boards.

History: C. 1953, 4-20-8, enacted by L. 1979, ch. 2, § 21.

4-20-9. Commission to supervise distribution of undistributed funds if United States alters or discontinues funding leaving funds or resources available.

If the United States alters or discontinues funding under the Taylor Grazing Act or the operation of advisory boards, leaving funds or other resources undistributed or otherwise without means for continuation, the commissioner shall supervise and control the distribution of such undistributed funds or other resources.

History: C. 1953, 4-20-9, enacted by L. 1979, ch. 2, § 21.

Federal Law. — The Taylor Grazing Act is 43 U.S.C. § 315 et seq.

CHAPTER 21

BEEF PROMOTION

Section
4-21-1. Purpose declaration.
4-21-2. Definitions.
4-21-3. Beef promotion fee — Deposit of revenue — Fee set by referendum — Reduction for amounts paid under federal law.
4-21-4. Refund of fees allowed — Claim for refund to be filed with department — Payment of refunds.
4-21-5. Revenue from fees to be used to promote beef industry — Payment of revenue monthly to Utah Beef Council — Deduction of costs of administration and processing funds — Annual audit of books, records, and accounts — Financial statement of audit published.

4-21-1. Purpose declaration.

The Legislature recognizes that production of beef is important to the economy of the state, and that its promotion is both necessary and desirable. The purpose of this chapter is to further the production and promotion of beef.

History: C. 1953, 4-21-1, enacted by L. 1979, ch. 2, § 22.

4-21-2. Definitions.

As used in this chapter:

(1) "Marketing agency" means any transaction in which the seller is represented by a person who acts as an agent of the seller in the sale of

cattle in that such person issues payment to the seller and is entitled to a commission based upon the sale;

(2) "Producer" means any person who raises or feeds cattle;

(3) "Purchaser" means any person who buys cattle;

(4) "Seller" means any person who offers cattle for sale.

History: C. 1953, 4-21-2, enacted by L. 1979, ch. 2, § 22.

4-21-3. Beef promotion fee — Deposit of revenue — Fee set by referendum — Reduction for amounts paid under federal law.

(1) The department shall collect a fee on all fee brand inspected cattle upon change of ownership or slaughter. The amount of the fee is set by the department as provided in Subsection (2), but shall not exceed $1 or be less than 25 cents. The fee is collected by the local brand inspector at the time of inspection of cattle, or deducted and collected by the marketing agency or the purchaser.

All revenue collected under this section shall be paid to the department which shall deposit the revenue in a trust and agency fund account that is hereby created and shall be known as the "Beef Promotion Account."

(2) Before a fee assessed under Subsection (1) becomes effective, the department shall give notice of the proposed fee to all known beef and dairy cattle producers in the state, invite all beef and dairy cattle producers to register to vote in a referendum, conduct a hearing on the proposed fee change, and conduct a referendum where at least 50% of the registered producers cast a vote with a majority of those voting casting an affirmative vote on the proposed fee level. The fee shall not exceed $1 or be less than 25 cents as provided in Subsection (1).

(3) Any fee currently assessed by the department continues in effect until modified by the department under Subsections (1) and (2).

(4) The fee assessed under this section shall be reduced by the amount of any assessment required to be paid pursuant to the Beef Promotion and Research Act of 1985, 7 U.S.C. Sec. 2901 et seq.

History: C. 1953, 4-21-3, enacted by L. 1979, ch. 2, § 22; 1981, ch. 7, § 1; 1981, ch. 11, § 2; 1985, ch. 134, § 1; 1986 (2nd S.S.), ch. 10, § 1.

4-21-4. Refund of fees allowed — Claim for refund to be filed with department — Payment of refunds.

A person who objects to payment of the assessed fee may file a claim with the department within 60 days after the fee is collected. No claim for refund, however, is allowed if it is filed more than 60 days after the date the fee is collected. Each claim for refund shall be certified by the department to the state treasurer for payment from the beef promotion account, subject to any applicable provisions of the Beef Promotion and Research Act of 1985, 7 U.S.C. Sec. 2901 et seq.

History: C. 1953, 4-21-4, enacted by L. 1979, ch. 2, § 22; 1985, ch. 134, § 2; 1986 (2nd S.S.), ch. 10, § 2.

4-21-5. Revenue from fees to be used to promote beef industry — Payment of revenue monthly to Utah Beef Council — Deduction of costs of administration and processing funds — Annual audit of books, records, and accounts — Financial statement of audit published.

All revenue derived from the collection of fees authorized by this chapter is used to promote the beef industry of the state with the revenue generated paid to the Utah Beef Council, a Utah non-profit corporation organized for the purpose of promoting Utah beef, or to an agency acceptable to the department with the concurrence of the Utah Cattlemen's Association, on a monthly basis as requested by the council or appointed agency, with a deduction of actual costs of administration of processing the funds.

The books, records, and accounts of the Utah Beef Council or appointed agency are audited at least once annually by a licensed accountant selected by the commissioner and approved by the state auditor. The results of the audit are submitted to the commissioner, and a financial statement of the audit and a general statement of operations and promotional and advertising activities shall be published by the council or appointed agency in a major livestock publication having general circulation in Utah.

History: C. 1953, 4-21-5, enacted by L. 1979, ch. 2, § 22; 1985, ch. 134, § 3.

CHAPTER 22

DAIRY PROMOTION ACT

Section

4-22-1. Definitions.

4-22-2. Utah Dairy Commission created — Composition — Elected members — Terms of elected members — Qualifications for election.

4-22-3. Commission — Organization — Quorum to transact business — Vacancies — Ineligibility to serve — Compensation.

4-22-4. Commission powers, duties, and functions.

4-22-4.5. Exemption from certain operational requirements.

4-22-5. Commission may require surety bond — Payment of premium.

4-22-6. Commission to conduct elections — Nomination of candidates — Expenses of election paid by commission.

4-22-7. Assessment imposed on sale of milk or cream produced, sold, or contracted for sale in state — Time of assessment — Collection by producer or producer-handler — Penalty for delinquent payment or collection — Statement to be given producer — Transfer of assessment.

4-22-8. Revenue from assessment used to promote dairy industry — Deposit of funds — Annual audit of books, records and accounts — Annual financial report to producers.

4-22-8.5. Additional assessment for government liaison and industry relations programs — Refund of the assessment.

4-22-9. State disclaimer of liability.

4-22-9.5. Commission not eligible for cover-

Section
age under Risk Management Fund.
4-22-10. Enforcement — Inspection of books and records of dealer or producer-handler.

4-22-1. Definitions.

As used in this chapter:

(1) "Commission" means the Utah Dairy Commission;

(2) "Dealer" means any person who buys and processes raw milk or milk fat, or who acts as agent in the sale or purchase of raw milk or milk fat, or who acts as a broker or factor with respect to raw milk or milk fat or any product derived from either;

(3) "Producer" means a person who produces milk or milk fat from cows and who sells it for human or animal consumption, or for medicinal or industrial uses; and

(4) "Producer-handler" means any producer who processes raw milk or milk fat.

History: C. 1953, 4-22-1, enacted by L. 1979, ch. 2, § 23.

Cross-References. — Regulation of dairies and dairy products, Chapter 3 of this title.

4-22-2. Utah Dairy Commission created — Composition — Elected members — Terms of elected members — Qualifications for election.

(1) There is created an independent state agency known as the Utah Dairy Commission.

(2) The Utah Dairy Commission consists of 14 members as follows:

(a) the commissioner of the Department of Agriculture, or his representative;

(b) the dean of the College of Agriculture at Utah State University, or his representative;

(c) the president of the Utah Dairy Wives Association;

(d) a member from District 1, northern Cache County, which member shall have a Cornish, Lewiston, Richmond/Cove, or Trenton mailing address;

(e) a member from District 2, central Cache County and Rich County, which member shall have a Newton, Clarkston, Amalga, Smithfield, Benson, Hyde Park, Mendon, or Petersboro mailing address;

(f) a member from District 3, southern Cache County, which member shall have a Logan, Providence, Nibley, Hyrum, Paradise, Wellsville, College Ward, Young Ward, or Millville mailing address;

(g) a member from District 4, Box Elder County;

(h) a member from District 5, Weber and Morgan Counties;

(i) a member from District 6, Salt Lake, Davis, and Tooele Counties;

(j) a member from District 7, Utah County;

(k) a member from District 8, Wasatch, Summit, Duchesne, Uintah, and Daggett Counties;

(l) a member from District 9, Millard, Beaver, Iron, and Washington Counties;

(m) a member from District 10, Sanpete, Carbon, Emery, Grand, Juab, and San Juan Counties; and

(n) a member from District 11, Piute, Wayne, Kane, Garfield, and Sevier Counties.

(3) The ex officio members listed in Subsections (2)(a) and (b) shall serve without a vote.

(4) (a) The members listed in Subsections (2)(d) through (n):

(i) shall be elected to three-year terms of office as provided in Section 4-22-6; and

(ii) may serve no more than three terms.

(b) The limitation on the number of terms served as provided in Subsection (a) shall apply to any person who has served or will serve on the commission before, on, or after May 2, 1994, the effective date of this act.

(5) Members shall enter office on July 1 of the year in which they are elected.

(6) The commission, by two-thirds vote, may periodically alter the boundaries comprising the districts established in this section to maintain equitable representation of active milk producers on the commission.

(7) Each member shall be:

(a) a citizen of the United States;

(b) 26 years of age or older;

(c) an active milk producer with five consecutive years experience in milk production within this state immediately preceding election; and

(d) a resident of Utah and the district represented.

History: C. 1953, 4-22-2, enacted by L. 1979, ch. 2, § 23; 1982, ch. 1, § 1; 1992, ch. 139, § 1; 1994, ch. 253, § 1.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, rewrote the section.

The 1994 amendment, effective May 2, 1994, added Subsection (4)(b) and made related changes.

Sunset Act. — See Section 63-55-204 for the repeal date of the Utah Dairy Commission.

Meaning of "this act." — The phrase "this act" in Subsection (4)(b) means Laws 1994, ch. 253, which amended this section and § 4-22-8 and enacted § 4-22-8.5.

4-22-3. Commission — Organization — Quorum to transact business — Vacancies — Ineligibility to serve — Compensation.

(1) The members of the commission shall elect a chairman, vice-chairman, and secretary from among their number.

(2) Attendance of a simple majority of the commission members at a called meeting shall constitute a quorum for the transaction of official business.

(3) The commission shall meet:

(a) at the time and place designated by the chairman; and

(b) no less often than once every three months.

(4) Vacancies which occur on the commission for any reason shall be filled for the unexpired term of the vacated member by appointment of a majority of the remaining members.

(5) If a member moves from the district that he represents or ceases to act as a producer during his term of office, he must resign from the commission within 30 days after moving from the district or ceasing production.

(6) (a) The commission shall determine any per diem rates and travel expenses to which members are entitled for their service on the commission.

(b) The per diem rates and travel expenses may not exceed the rates established by the Division of Finance for state employees under Sections 63A-3-106 and 63A-3-107.

History: C. 1953, 4-22-3, enacted by L. 1979, ch. 2, § 23; 1992, ch. 139, § 2; 1994, ch. 12, § 3.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, assigned the subsection designations; inserted "and secretary" in Subsection (1); inserted "members" and deleted "duly" before "called" in Subsection (2); added Subsection (3)(a), deleting similar language at the end of the introductory language in Subsection (3); rewrote Subsection (5) to make numerous stylistic changes; added Subsection (6); and made stylistic changes throughout the section.

The 1994 amendment, effective May 2, 1994, corrected the references at the end of Subsection (6)(b).

4-22-4. Commission powers, duties, and functions.

The commission has and shall exercise the following functions, powers, and duties:

(1) to employ and fix the salary of a full-time administrator, not a member of the commission, to administer the policies adopted, and perform the duties assigned, by the commission;

(2) to conduct a campaign of research, nutritional education, and publicity, showing the value of milk, cream, and dairy products;

(3) to encourage local, national, and international use of Utah dairy products and by-products, through advertising or otherwise;

(4) to investigate and participate in studies of problems peculiar to producers in Utah and to take all actions consistent with this chapter to promote, protect, and stabilize the state dairy industry;

(5) to sue and be sued, prosecute actions in the name of the state for the collection of the assessment imposed by Section 4-22-7, enter into contracts, and incur indebtedness in furtherance of its business activities;

(6) to cooperate with any local, state, or national organization engaged in activities similar to those of the commission;

(7) to accept grants, donations, or gifts for use consistent with this chapter; and

(8) to do all other things necessary for the efficient and effective management and operation of its business.

History: C. 1953, 4-22-4, enacted by L. 1979, ch. 2, § 23; 1981, ch. 4, § 1.

4-22-4.5. Exemption from certain operational requirements.

The commission is exempt from:

(1) Title 51, Chapter 5, Funds Consolidation Act;

(2) Title 51, Chapter 7, State Money Management Act of 1974;

(3) Title 63, Chapter 1, Utah Administrative Services Act;

(4) Title 63, Chapter 38, Budgetary Procedures Act; and

(5) Title 67, Chapter 19, Utah State Personnel Management Act.

History: C. 1953, 4-22-4.5, enacted by L. 1992, ch. 139, § 3.

Effective Dates. — Laws 1992, ch. 139 became effective on April 27, 1992, pursuant to Utah Const., Art. VI, Sec. 25.

4-22-5. Commission may require surety bond — Payment of premium.

The commission may require the administrator, or any of its employees, to post a surety bond conditioned for the faithful performance of their official duties. The amount, form, and kind of such a bond shall be fixed by the commission and each bond premium shall be paid by the commission.

History: C. 1953, 4-22-5, enacted by L. 1979, ch. 2, § 23.

4-22-6. Commission to conduct elections — Nomination of candidates — Expenses of election paid by commission.

The commissioner shall administer all commission elections. Not later than May 15 of each election year, the commissioner shall mail a ballot to each producer within the district in which an election is to be held. The candidate who receives the highest number of votes cast in the candidate's district is deemed elected. The commissioner shall determine all questions of eligibility. No ballot postmarked later than May 31 of an election year is valid. All ballots received by the commissioner shall be counted and tallied by the commission on the first working day after June 10; provided, that no member of the commission whose name appears on any ballot being counted or tallied by the commission shall participate in counting or tallying the ballots.

Candidates for election to the commission shall be nominated, not later than April 15, by a petition signed by 15 or more producers who are residents of the district in which the election is to be held; provided, that if two or more candidates are not nominated by petition, the commission shall select a nominating committee composed of three persons who are residents of the district which shall select one or two candidates depending upon the number nominated by petition.

The names of all nominees, whether nominated by petition or by a nominating committee shall be submitted to the commissioner on or before May 1 of each year in which an election is held.

All expenses incurred by the commissioner in the conduct of elections shall be paid by the commission.

History: C. 1953, 4-22-6, enacted by L. 1979, ch. 2, § 23.

4-22-7. Assessment imposed on sale of milk or cream produced, sold, or contracted for sale in state — Time of assessment — Collection by producer or producer-handler — Penalty for delinquent payment or collection — Statement to be given producer — Transfer of assessment.

(1) An assessment of ten cents is imposed upon each 100 pounds of milk or cream produced and sold or contracted for sale through commercial channels in this state.

(2) The assessment, based upon daily or monthly settlements, is due at a time prescribed by the commission, but not later than the last day of the month next succeeding the month of sale.

(3) (a) The assessment is assessed against the producer at the time the milk or milk fat is delivered for sale and shall be deducted and collected from the sales price by the dealer or producer-handler.

(b) The proceeds of the assessment shall be paid directly to the commission which shall evidence receipt of the assessment through a receipt issued to the dealer or producer-handler.

(c) If a dealer or producer-handler fails to timely remit the proceeds of the assessment or fails to deduct the assessment, a penalty equal to 10% of the assessment due shall be added to the assessment.

(4) At the time of payment of the assessment, the dealer or producer-handler, as the case may be, shall deliver a statement to the producer which contains:

(a) the name and address of the producer;

(b) the name and address of the purchaser, or if applicable, the name and address of the producer-handler;

(c) the dollar value of the milk or cream sold and the amount of assessment deducted;

(d) the date of the purchase; and

(e) any other information the commission may require.

(5) (a) A producer who objects to having the Utah Dairy Commission receive the assessment imposed under this section may by January 31 submit a written request to the commission to transfer to the National Dairy Board an amount equal to the assessment the producer paid during the previous year.

(b) Unless the request for transfer is withdrawn, the transfer shall be made on or before May 30 of the year it is requested.

(c) If the mandatory assessment required by the Dairy and Tobacco Adjustment Act of 1983, Pub. L. No. 98-180, 97 Stat. 1128 (1150.152), is abolished, a producer who objects to payment of the assessment imposed under Subsection (a), may by January 31 submit a written request to the commission for a refund of the amount of the assessment the producer paid during the previous year.

History: C. 1953, 4-22-7, enacted by L. 1979, ch. 2, § 23; 1981, ch. 4, § 2; 1986, ch. 98, § 1; 1992, ch. 139, § 4.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, divided former Subsection (1) into present Subsections (1) and (2) and redesignated the succeeding subsections accordingly; substituted "or" for "and" after "milk" and made stylistic changes in Subsection (1); substituted "last day" for "25th" in Subsection (2); subdivided Subsection (3) and substituted "The" for "All" in Subsection (3)(b); substituted "or" for "and" after "milk" and made a related punctuation change in Subsection (4)(c); and rewrote Subsection (5), adding Subsection (5)(c).

Federal Law. — The Dairy and Tobacco Adjustment Act of 1983, cited in Subsection (5)(c), is codified throughout Title 7 U.S.C.

4-22-8. Revenue from assessment used to promote dairy industry — Deposit of funds — Annual audit of books, records and accounts — Annual financial report to producers.

(1) The revenue derived from the assessment imposed by Section 4-22-7 shall be used exclusively for the:

(a) administration of this chapter; and

(b) promotion of the state's dairy industry.

(2) (a) A voucher, receipt, or other written record for each withdrawal from the Utah Dairy Commission Fund shall be kept by the commission.

(b) No funds shall be withdrawn from the fund except upon order of the commission.

(3) The commission may deposit the proceeds of the assessment in one or more accounts in one or more banks approved by the state as depositories.

(4) The books, records, and accounts of the commission's activities are public records.

(5) (a) The accounts of the commission shall be audited once annually by a licensed accountant selected by the commissioner and approved by the state auditor.

(b) The results of the audit shall be submitted to the:

(i) commissioner;

(ii) commission; and

(iii) Division of Finance.

(c) It is the responsibility of the commission to mail annually a financial report to each producer.

History: C. 1953, 4-22-8, enacted by L. 1979, ch. 2, § 23; 1981, ch. 4, § 3; 1992, ch. 139, § 5; 1994, ch. 253, § 2.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, added the subsection designations; added Subsection (5)(b)(iii); and made stylistic changes throughout the section.

The 1994 amendment, effective May 2, 1994, substituted "Section 4-22-7" for "this section" in Subsection (1).

Cross-References. — Division of Finance, § 63A-3-101 et seq.

4-22-8.5. Additional assessment for government liaison and industry relations programs — Refund of the assessment.

(1) In addition to the assessment provided in Section 4-22-7, an assessment of one cent is imposed upon each 100 pounds of milk or cream produced and sold or contracted for sale through commercial channels in this state for the purposes specified in Subsection (3).

(2) The one-cent assessment shall be paid in the same manner as the assessment required by Section 4-22-7.

(3) The commission shall use the revenue derived from the one-cent assessment imposed by this section to contract out for services and expenses of government liaison and industry relations programs created to stabilize and protect the state's dairy industry and the health and welfare of the public.

(4) A producer who objects to payment of the assessment imposed by this section may by January 31 submit a written request to the commission to be

exempted from payment of the assessment for that year. By January 1 each year, the commission shall send a postage-paid, self-addressed postcard to each person subject to the assessment which may be returned to request an exemption.

(5) In 1994, a producer who objects to payment of the assessment may by June 1 submit a written request for exemption to the commission. The commission shall by May 2, 1994, send a postage-paid, self-addressed postcard to each person subject to the assessment which may be returned to request an exemption.

History: C. 1953, 4-22-8.5, enacted by L. 1994, ch. 253, § 3.

Effective Dates. — Laws 1994, ch. 253 became effective on May 2, 1994, pursuant to Utah Const., Art. VI, Sec. 25.

4-22-9. State disclaimer of liability.

The state is not liable for the acts or omissions of the commission, its officers, agents, or employees.

History: C. 1953, 4-22-9, enacted by L. 1979, ch. 2, § 23.

4-22-9.5. Commission not eligible for coverage under Risk Management Fund.

The commission is not eligible to receive coverage under the Risk Management Fund created under Section 63-1-47 [63A-4-201].

History: C. 1953, 4-22-9.5, enacted by L. 1992, ch. 139, § 6.

Compiler's Notes. — Section 63-1-47, cited above, was renumbered in 1993 as § 63A-4-201.

Effective Dates. — Laws 1992, ch. 139 became effective on April 27, 1992, pursuant to Utah Const., Art. VI, Sec. 25.

4-22-10. Enforcement — Inspection of books and records of dealer or producer-handler.

The commission at reasonable times may enter upon the premises and inspect the records of any dealer or producer-handler for the purpose of enforcing this chapter.

History: C. 1953, 4-22-10, enacted by L. 1979, ch. 2, § 23.