

## Kolman, Joe

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**From:** Kolman, Joe  
**Sent:** Tuesday, June 26, 2007 3:28 PM  
**To:** 'Bob Story (robertstory727@msn.com)'  
**Subject:** brucellosis

**Contacts:** Bob Story  
**Attachments:** MCA brucellosis indemnify.doc

Sen. Story,

As you might have seen, there is brucellosis update added to the EQC agenda for Friday at 10 a.m. I have confirmed that Christian MacKay from the Department of Livestock will be there. I also talked by phone and emailed Dr. Lennis Knight from APHIS, but I don't know if he will attend.

Attached are some pertinent sections from MCA regarding the power of DOL to order a herd slaughtered and indemnify the owner. It would appear that, in addition to any federal indemnification, the state may not pay in excess of \$100 for a registered purebred animal or \$50 for a grade animal.

You also mentioned the Environmental Contingency Account referenced in 75-1-1101. Regarding expenditures of those funds, the law states:

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development;

(d) to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

(e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

As I said, Mr. MacKay will be available Friday to answer questions. Let me know if there is anything else I can do before then.

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81-2-102. Powers of department. (1) The department may:

(i) slaughter or cause to be slaughtered any livestock in this state known to be affected with or that has been exposed to an infectious, contagious, communicable, or dangerous disease, when the slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(j) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under 81-20-101, 81-21-102, 81-21-103, or part 1, 2, or 3 of this chapter;

81-2-201. Classification of animals as to compensation for slaughter. Animals slaughtered under the direction of the department by order of the board are divided into two classes for the purposes of compensation:

(1) Animals determined by the department to be affected with an incurable disease, which are destroyed by order of the board, are designated as animals of class 1, and unless otherwise provided each of the animals shall be paid for on the basis of 75% of its appraised value. The county in which the animal was owned at the time it was determined to be affected with an incurable disease is liable in part, as later provided, for an indemnity to be paid for the animal. The ownership and county are determined by an affidavit of the owner of the animal or his agent. Each animal directed to be destroyed shall be appraised by a representative or an authorized agent of the department with the owner agreeing in writing as to the value of the animal. When appraised, due consideration shall be given to its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present and probable effect of the disease on the animal. In the absence of an agreement, there shall be appointed three competent, disinterested parties, one appointed by the department, one by the owner, and a third by the first two, to appraise each animal, taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority is the judgment of the appraisers and is binding on both parties as the final determination of indemnity to be paid for each animal. The total compensation of each group of appraisers is limited to \$5 for the group appraisal, one-half of which shall be paid by the department. The total amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class, and the total combined amount of indemnity paid for the animal by the state and a county may not exceed the sum of \$100 for a registered purebred animal or the sum of \$50 for a grade animal. Animals presented for appraisal as purebreds shall be accompanied by their registration papers at the time of appraisal or they shall be appraised as grades. If purebreds are less than 3 years old and not registered, the department may grant a reasonable time for their registration and presentation of their registration papers to the appraiser. Registration papers shall accompany the claim for indemnity.

(2) Animals of class 1 shall be paid for on the basis of their full appraised value as determined in this section if no evidence of incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings. The total combined amount of indemnity paid by the state and a county for an animal may not exceed the actual sound

value of an animal of its class. The total combined amount of indemnity paid by the state and a county for the animal may not exceed \$100 for a registered purebred animal or \$50 for a grade animal.

(3) Animals which are determined by the department to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, or other infectious, contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, and are destroyed by order of the department as a sanitary safeguard, are designated as animals of class 2 and each animal shall be paid for on the basis of its full appraised value. The appraised value shall be determined in the manner set out in subsection (1) of this section. The appraisal of the animals shall be based on the meat, dairy, or breeding value of the animal, but where appraisal is based on breeding value of the animal, no appraisal may exceed three times its meat or dairy value. The total amount of indemnity paid by the state for an animal may not exceed the actual sound value of an animal in its class. No indemnity for a class 2 animal may be paid by a county. **In the case of destruction of an animal afflicted with brucellosis (Bang's disease), no indemnity shall be paid for the animal unless the board, in its discretion, determines the best interests of this state will be served by payment of an indemnity. In this event, the board shall set out standards of indemnity by rules and may not pay in excess of \$100 for a registered purebred animal or \$50 for a grade animal. In all cases where the federal government or agency other than the state compensates the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state shall be determined under 81-2-210.**

(4) Animals which are injured or killed while they are being inspected or tested under an order of the department or its agent, which do not come within either class 1 or class 2, may be paid for at their full appraised value if the claim for the animal is recommended for payment at a meeting of the board. Where it is shown that the injury or death of the animal was not proximately due to the negligence of the owner or his agent, the whole claim, when approved, shall be paid out of department funds. The limit of indemnity for an animal paid for by the state may not exceed that fixed by this section for animals of class 2.

81-2-202. Payment for other personal property. Personal property other than livestock destroyed by order of the department shall be paid for on the basis of its appraised value. The appraised value is determined in the manner specified in 81-2-201 for the determination of the appraised value of animals.

81-2-203. Indemnity -- from what funds paid. In payment for animals or property destroyed by order of the department, the state shall pay one-half of the indemnity out of the money at the disposal of the department. The county liable in part for the indemnity shall pay one-half of the total indemnity out of the general fund of the county.

81-2-204. Presentation of claims for indemnity. Claims against the state and county which arise from the destruction of animals or property by order of the department shall be made on forms provided by the department. They must contain an affidavit by the owner or his agent with knowledge of the animal or property, certifying to the ownership of the animal or property, the county in which they are owned, and that the animal or property has been destroyed under the law and the rules of the department. These claims must be accompanied by a certificate from the department that the animal or property was ordered destroyed. The claims shall also be accompanied by a certificate

of appraisal as appraisal is determined under 81-2-201, together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal.

81-2-205. Indemnity for class two animals in state less than one hundred twenty days. Indemnity for animals of class 2 shall be paid out of department funds when the animals have not been in this state for at least 120 days and the payment is authorized by the department under 81-2-209(1)(e).

81-2-206. Verification and payment of claims. (1) All claims against the department must be verified by oath of the claimant or his agent with knowledge of the facts.

(2) Claims against the state arising under this part, if found correct, shall be processed and paid from funds of the department.

81-2-207. Payment from county funds. The board of county commissioners of the county liable in part for the indemnity for any such animal or property destroyed shall cause to be paid the amount due from said county out of the general funds of the county.

81-2-208. Sale of condemned carcasses -- disposition of proceeds. Where the carcass of an animal ordered destroyed under this chapter is found on official postmortem inspection to be fit for human consumption, the owner shall receive the net proceeds from the sale of the carcass. The proceeds shall be deducted from his claim against the state and county for the slaughter. A representative of the department may, when considered advisable or necessary or when it is desired by the owner, sell the carcass on terms he considers to be in the best interests of this state, and the net proceeds obtained from the sale shall be paid to the owner. This procedure does not invalidate the owner's claim for indemnity for any balance due him.

81-2-209. When no indemnity. (1) The owner of an animal or property destroyed under this chapter is entitled to indemnity, except in the following cases:

- (a) animals belonging to the United States;
- (b) animals brought into this state which violate this chapter or rules of the department;
- (c) animals which the owner or claimant knew to be diseased or had notice of the disease at the time they came into his possession;
- (d) animals which had the disease for which they were slaughtered or which were destroyed because of exposure to the disease at the time of their arrival in this state. However, a class 2 animal shipped into this state under department rules and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when payment is authorized by the department.
- (e) animals which have not been in this state for at least 120 days before the discovery of the disease; however, class 2 animals which have not been in the state 120 days may be paid for when payment is authorized by the department;
- (f) when the owner or agent has not used reasonable diligence to prevent disease or exposure to disease;
- (g) when the owner or agent has not complied with the rules of the department with respect to animals condemned;

(h) when animals condemned are not destroyed within 60 days after they are determined to be affected with or exposed to a disease which requires them to be destroyed by order of the department.

(2) No compensation or indemnity will be paid for the destruction of livestock affected with tuberculosis or other infectious, contagious, communicable, or dangerous disease unless the entire herd or band of affected livestock is under the supervision of the department for the eradication of the disease.

81-2-210. Compensation from federal government or other agency. (1) If the federal government or an agency other than the state or county compensates the owner for livestock or property destroyed by order of the department, the amount of the compensation from the federal government or other agency shall be deducted from the owner's claim as filed against the state and county, that is, from the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.

(2) If the owner or agent of the livestock or property destroyed by order of the department forfeits an indemnity, which the owner would otherwise be entitled to from the federal government or compensating agency other than the state or county, by violation of the rules of the federal government or other agency, an amount equal to the indemnity which would have been paid by the federal government or other indemnifying agency but for the forfeiture shall also be deducted from the owner's claim; that is, the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.