

## **CHAPTER 36-11 TRESPASS OF LIVESTOCK**

### **36-11-01. Livestock running at large prohibited - Penalty.**

No livestock may be permitted to run at large. Any owner or possessor of livestock who willfully permits the livestock to run at large through failure to maintain a lawful fence as provided in section 47-26-01, except in grazing area as provided in section 36-11-07, is guilty of a class B misdemeanor.

#### **36-11-01.1. Livestock - Definition.**

As used in this chapter, "livestock" includes bison, cattle, goats, horses, mules, sheep, and swine.

#### **36-11-02. Owner defined.**

In any action brought under the provisions of this chapter, any person occupying or cultivating lands is considered the owner thereof.

#### **36-11-03. Establishment of stock district - Petition.**

Repealed by S.L. 1953, ch. 219, § 1.

#### **36-11-04. Duty of board of county commissioners when petition is filed - Territory within cities, villages, and irrigation districts excluded.**

Repealed by S.L. 1953, ch. 219, § 1.

#### **36-11-05. Revocation of resolution establishing stock district - Petition required - When stock district may be re-established.**

Repealed by omission from this code.

#### **36-11-05.1. Stock district termination.**

Repealed by omission from this code.

#### **36-11-06. Certain animals not to be permitted to run at large at any time - Penalty.**

The owner or person in charge of any stallion, jack, boar, ram, bull, or any animal known to be vicious who negligently permits such animal to run at large is liable in a civil action to any person who is damaged, either directly or indirectly, by such violation for all damages resulting therefrom and is guilty of an infraction. The provisions of this section, however, do not prevent the keeping of any stallion, jack, bull, or ram with any herd or flock which is attended by a herder if such stallion, jack, bull, or ram is kept with such herd or flock by the herder.

#### **36-11-07. Liability of owners of livestock injuring persons or property of others.**

1. The owner or possessor of any livestock that inflicts damage or injury to:
  - a. Motor vehicles or their occupants upon a public highway within a grazing area in which proper signs, approved by the director of the department of transportation, indicating limited liability are posted at a point adjacent to the highway not less than two hundred feet [60.96 meters] nor more than four hundred feet [121.92 meters] from the entrance of the highway into the grazing area and so posted as to be plainly visible to individuals approaching the entrance; or
  - b. The crops or other property of another or trespasses upon the lands or premises of another, where the damaged or injured crops, property, lands, or premises are located within a grazing area, except as provided in section 36-11-09, is not liable to any person sustaining damages or injury.
2. For the purpose of this section, a "grazing area" means any area designated as a grazing area by a majority of the board of county commissioners, either upon the motion of one of the commissioners or upon presentation to the board of a petition signed by a majority of the real property owners and tenants in the area in which it is

proposed that a grazing area be established. A grazing area must be used primarily for the purpose of grazing livestock and enclosed by a fence or other suitable means.

3. Except as provided above, the owner or possessor of any livestock that inflicts damage to the crops or other property of another or which trespasses upon the lands of another, whether the lands are fenced or unfenced, is liable to the persons sustaining the injuries or to the owner of the lands for all damages suffered by the owner, together with the statutory costs of the action to recover damages, and a reasonable attorney's fee allowed by the court.

**36-11-08. Trespass and injury to property - Liability of owner of trespassing goats, sheep, and swine.**

Repealed by S.L. 1977, ch. 310, § 3.

**36-11-09. Action permitted when livestock breaks through lawful fence.**

Any person owning or having charge of any livestock that goes through, over, or under any lawful fence is liable for all resulting damages. Any livestock that goes through, over, or under a lawful fence is deemed trespassing livestock for the purposes of this chapter.

**36-11-10. Trespassing livestock may be distrained - Notice to owner - Security for release.**

1. The person suffering damages by reason of the trespass of any livestock may take up the offending livestock. The person suffering damages shall notify the owner, or the person in possession of the livestock at the time of the trespass, of the seizure of the livestock without unnecessary delay, if the owner or person in possession is known to the person suffering damages and is a resident of, and present within, the county in which the trespass occurred. The person suffering damages may retain the livestock in that person's custody until:
  - a. The damages sustained by reason of the trespass and the costs in the action to recover the damages have been paid; or
  - b. Good and sufficient security for the payment of the damages and costs is given, provided the security is approved by a district judge serving the county in which the livestock is taken up.
2. If the owner of the offending livestock elects to give security, the owner shall give to the person holding the livestock notice that security will be given and the date and hour when the security will be submitted to the district judge for approval. The notice must be given at least one day before the date set for the submission of the security to the judge. The cost of serving notices required under this section may be taxed as costs in the action.
3. Where applicable, the provisions of section 36-11-07 may be raised as an affirmative defense in any proceedings under this section, and the owner or person entitled to possession of the livestock may apply to a court of competent jurisdiction for the return of the livestock. If the court finds that the livestock has been wrongfully distrained, the person who causes the livestock to be wrongfully distrained is liable for all damages suffered by the owner or person entitled to possession of the livestock, together with the costs of the action and reasonable attorney's fees.

**36-11-11. Procedure when security given.**

When security for the payment of damages and costs is approved by the district judge, the judge shall issue an order directed to the person holding the livestock to deliver the livestock to the person entitled to the livestock, and the officer receiving the order shall take the livestock and deliver it to the person. The cost of the proceedings may be charged as a part of the costs in the action to determine the rights of the parties regarding the livestock distrained for the trespass.

**36-11-12. Notice of damages to owner of livestock before action is commenced.**

Before commencing any action for damages caused by the trespass of any livestock, the person sustaining damages, if the person knows to whom the livestock belongs and the owner is a resident of, and is present in, the county in which the trespass occurred, shall notify the owner, or the person having the livestock in charge, of the nature and extent of the damage.

**36-11-13. When action for trespass of livestock must be commenced.**

A party claiming damage for trespass of livestock under this chapter shall bring an action to recover the same within:

1. Sixty days after the infliction of the damage if the offending livestock have been distrained by the person who has been damaged and a lien is sought to be impressed upon livestock for the amount of damages.
2. Six years after the infliction of the damage if the offending livestock have not been distrained by the person who has been damaged and no lien is sought to be impressed upon the livestock for the amount of damages.

**36-11-14. Procedure when keeper or owner of trespassing livestock is unknown.**

If the person suffering damage because of the trespass of livestock which has been taken up under this chapter does not know the name of the owner or keeper of the livestock, the person may bring an action against an unknown defendant. In such case, service must be made by publication of a copy of the summons, with a notice attached, stating the nature of the action, in at least one issue of a legal newspaper if one is published within the county, and if not, by posting copies of the summons and notice in three public places within the county. The publication or posting must be made at least ten days before the date of the trial. If it appears on the trial of any action brought to recover damages arising from the trespass of livestock that the person named in the action and upon whom the summons was served is not the owner or person in charge of the offending livestock, the action must be dismissed as to that person, and service must be made, and the action must proceed, as in a case in which the name of the owner or keeper of the offending livestock is unknown.

**36-11-15. Proof on trial of action for trespass of livestock.**

Upon the trial of an action brought under this chapter, the plaintiff shall prove:

1. The amount of damage sustained by the plaintiff by reason of the trespass; and
2. If the plaintiff has distrained the livestock committing the trespass, the amount of expense incurred in distraining and keeping the livestock.

**36-11-16. Judgment for plaintiff is lien on livestock.**

Any judgment rendered for damages against the defendant in an action brought under this chapter is a lien upon the livestock committing the trespass if the livestock were distrained by the plaintiff, and the livestock may be sold as in other cases of sale of personal property on execution, and the proceeds of the sale applied to the satisfaction of the judgment, and the livestock are not exempt from seizure and sale upon execution.

**36-11-17. Collection of judgment against unknown defendant - Disposition of surplus.**

After a judgment has been rendered against an unknown defendant as provided in section 36-11-14, the livestock, or so many of them as may be necessary, must be sold in the same manner as personal property is sold upon execution. Any surplus remaining from the sale after the judgment and the costs in the action have been paid must be paid to the county treasurer for the benefit of the owner, and if the owner does not appear and claim the surplus within six months, it must be paid into the common schools trust fund for the use of the public schools.

**36-11-18. When judgment of original court final - Right to trial by jury.**

In all actions brought under this chapter, if the amount of damages claimed does not exceed twenty-five dollars, the judgment of the court having original jurisdiction is final. Either party to the action may have a jury trial upon demand.

**36-11-19. Taking livestock distrained - Penalty.**

Every person who, except by due course of law, takes, advises, or assists in the taking of any livestock distrained and held by virtue of this chapter, from the possession of the person having the livestock, without the consent of the person holding the livestock, is guilty of a class B misdemeanor.

**36-11-20. Sheriff to return or impound livestock running at large - Expenses to be paid by owner.**

In the event of a complaint by anyone suffering injury or damages or likely to suffer injury or damages as a result of livestock running at large contrary to section 36-11-01, the sheriff of the county in which the livestock may be found shall return the livestock to the owner or impound the livestock and dispose of them as estrays under chapter 4.1-75. The expenses incurred by the sheriff or the sheriff's agents in performing the duties required in this section must be paid by the owner of the livestock. If the owner cannot be found, the sheriff's expense must be recovered from proceeds remaining after the disposal of the livestock as estrays.