

**Fifty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1503  
(Representative Monson)  
(Senator Erbele)  
(Approved by the Delayed Bills Committee)

AN ACT to create and enact a new section to chapter 36-11 of the North Dakota Century Code, relating to livestock; to amend and reenact sections 36-11-01, 36-11-07, 36-11-09, 36-11-10, 36-11-11, 36-11-12, 36-11-13, 36-11-14, 36-11-15, 36-11-16, 36-11-17, 36-11-18, 36-11-19, and 36-11-20 of the North Dakota Century Code, relating to livestock running at large; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 36-11 of the North Dakota Century Code is created and enacted as follows:

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

**SECTION 2. AMENDMENT.** Section 36-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-01. Stock Livestock running at large prohibited - Penalty.** No ~~cattle, horses, mules, swine, goats, or sheep~~ livestock may be permitted to run at large. Any owner or possessor of ~~any such animal~~ livestock who willfully permits ~~it~~ 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.

**SECTION 3. AMENDMENT.** Section 36-11-07 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-07. Liability of owners of horses, mules, cattle, sheep, goats, and swine livestock injuring persons or property of others.**

1. The owner or possessor of any ~~horse, mule, head of cattle, sheep, goat, or swine, which livestock that~~ inflicts any damage or injury to:
  - a. Motor vehicles or their occupants upon a public highway within a grazing area ~~wherein in which~~ proper signs, approved by the ~~state highway commissioner~~ director of the department of transportation, indicating limited liability are posted at a point adjacent to ~~such the~~ highway not less than two hundred feet [60.96 meters] nor more than four hundred feet [121.92 meters] from the entrance of ~~such the~~ highway into ~~such the~~ grazing area and so posted as to be plainly visible to ~~persons~~ individuals approaching ~~such the~~ entrance; or
  - b. The crops or other property of another or trespasses upon the lands or premises of another, where ~~such 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 ~~such~~ damages or injury.
2. For the purpose of this section, a "grazing area" means any area designated as ~~such a~~ grazing area by a majority of the board of county commissioners, either upon the motion of one of the ~~said~~ 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 ~~horse, mule, head of cattle, sheep, goat, or swine which~~ livestock that inflicts any damage to the crops or other property of another or which trespasses upon the lands of another, whether ~~such~~ 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 ~~him~~ by the owner, together with the statutory costs of the action to recover ~~such~~ such damages, and a reasonable attorney's fee ~~therein to be~~ allowed by the court.

**SECTION 4. AMENDMENT.** Section 36-11-09 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-09. Action permitted when livestock breaks through lawful fence.** Any person owning or having ~~in his charge~~ of any livestock ~~which that~~ goes through, over, or under any lawful fence is liable for all resulting damages. Any ~~animal which~~ livestock that goes through, over, or under a lawful fence is deemed a trespassing ~~animal~~ livestock for the purposes of this chapter.

**SECTION 5. AMENDMENT.** Section 36-11-10 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-10. Trespassing animals 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 ~~animal or animals~~ 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 ~~such animal or animals~~ 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 ~~such animal or animals~~ the livestock in that person's custody until:
  1. a. The damages sustained by reason of ~~such the~~ such the trespass and the costs in the action to recover ~~such the~~ such the damages have been paid; or
  2. b. Good and sufficient security for the payment of the damages and costs is given, ~~such provided the security to be~~ is approved by a district judge serving the county in which the livestock is taken up.
2. If the owner of the offending ~~animal or animals~~ 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 ~~such the~~ the security will be submitted to the district judge for approval. The notice must be given at least one day ~~prior to~~ 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 ~~such the~~ the livestock may apply to a court of competent jurisdiction for the return of the livestock. If the court finds that the livestock ~~have~~ 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.

**SECTION 6. AMENDMENT.** Section 36-11-11 of the North Dakota Century Code is amended and reenacted as follows:

**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 ~~stock~~ livestock to the person entitled ~~thereto~~ 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.

**SECTION 7. AMENDMENT.** Section 36-11-12 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-12. Notice of damages to owner of animal livestock before action is commenced.** Before commencing any action for damages caused by the trespass of any livestock, the ~~party~~ person sustaining ~~such~~ such damages, if ~~he~~ the person knows to whom ~~such~~ the livestock belongs and the owner is a resident of, and is present in, the county in which the trespass occurred, shall notify ~~such~~ the owner, or the person having the ~~animals~~ livestock in charge, of ~~such~~ the nature and extent of the damage and the probable amount thereof.

**SECTION 8. AMENDMENT.** Section 36-11-13 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-13. When action for trespass of livestock must be commenced.** A party claiming ~~damages~~ damage for trespass of livestock under ~~the provisions of~~ this chapter shall bring an action to recover the same within:

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

**SECTION 9. AMENDMENT.** Section 36-11-14 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-14. Procedure when keeper or owner of trespassing animals livestock is unknown.** If the person suffering damage because of the trespass of livestock which has been taken up under ~~the provisions of~~ this chapter does not know the name of the owner or keeper ~~thereof~~, he or the livestock, the person may bring an action against ~~a defendant~~ an unknown defendant. In such case, service must be made by publication of a copy of the summons, with a notice ~~annexed thereto~~ 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. ~~Such~~ The publication or posting, as the case may be, must be made ~~not less than~~ 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 ~~such~~ the action and upon whom the summons ~~therein~~ was served is not the owner or person in charge of the offending ~~animals~~ livestock, the action must be dismissed as to ~~him~~ 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 ~~animals~~ livestock is unknown.

**SECTION 10. AMENDMENT.** Section 36-11-15 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-15. Proof on trial of action for trespass of livestock.** Upon the trial of an action brought under ~~the provisions of~~ this chapter, the plaintiff shall prove:

1. The amount of ~~damages~~ damage sustained by ~~him~~ the plaintiff by reason of the trespass; and

2. If ~~he~~ the plaintiff has distrained the ~~animals~~ livestock committing the trespass, the amount of expense incurred in distraining and keeping the ~~same~~ livestock.

**SECTION 11. AMENDMENT.** Section 36-11-16 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-16. Judgment for plaintiff is lien on ~~offending animals~~ livestock.** Any judgment rendered for damages against the defendant in an action brought under ~~the provisions of~~ this chapter is a lien upon the ~~animals~~ livestock committing the trespass if ~~such animals~~ the livestock were distrained by the plaintiff, and ~~such animals~~ 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 ~~animals~~ livestock are not exempt from seizure and sale upon ~~such~~ execution.

**SECTION 12. AMENDMENT.** Section 36-11-17 of the North Dakota Century Code is amended and reenacted as follows:

**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 ~~offending animals~~ 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 ~~such~~ 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 ~~thereof~~, and if the owner does not appear and claim the ~~same~~ surplus within six months ~~thereafter~~, it must be paid into the ~~school~~ common schools trust fund for the use of the public schools ~~of the county~~.

**SECTION 13. AMENDMENT.** Section 36-11-18 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-18. When judgment of original court final - Right to trial by jury.** In all actions brought under ~~the provisions of~~ 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 ~~such~~ the action may have a jury trial upon a demand ~~therefor~~.

**SECTION 14. AMENDMENT.** Section 36-11-19 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-19. Taking ~~animals~~ livestock distrained - Penalty.** Every person who, except by due course of law, takes, ~~or~~ advises, or assists in the taking of; any ~~animal~~ livestock distrained and held by virtue of ~~any provision of~~ this chapter, from the possession of the person having the ~~same in his charge~~ livestock, without the consent of the person holding ~~such animal~~ the livestock, is guilty of a class B misdemeanor.

**SECTION 15. AMENDMENT.** Section 36-11-20 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-20. Sheriff to return or impound livestock running at large - Expenses to be paid by owner.** In the event of ~~any~~ 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 ~~the provisions of~~ section 36-11-01, the sheriff of the county ~~wherein such~~ in which the livestock may be found shall return the livestock to the owner or impound the livestock and dispose of them as ~~stray animals~~ estrays under ~~the procedure set forth in~~ chapter 36-13. The expenses incurred by the sheriff or ~~his~~ the sheriff's agents in performing the duties required ~~of him~~ 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 ~~such animals~~ the livestock as estrays.

**SECTION 16. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1503 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:      Yeas        94            Nays        0            Absent      0

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:      Yeas        47            Nays        0            Absent      0

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2003,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State