

**HOUSE BILL NO. 1503**

Introduced by

Representative Monson

Senator Erbele

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to create and enact a new section to chapter 36-11 of the North Dakota  
2 Century Code, relating to livestock; and to amend and reenact sections 36-11-01, 36-11-07,  
3 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,  
4 36-11-18, 36-11-19, and 36-11-20 of the North Dakota Century Code, relating to livestock  
5 running at large.

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

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

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

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

13 **36-11-01. ~~Steek~~ Livestock running at large prohibited - Penalty.** ~~No cattle, horses,~~  
14 ~~mules, swine, goats, or sheep~~ livestock may be permitted to run at large. Any owner or  
15 possessor of ~~any such animal~~ livestock who willfully permits ~~it~~ the livestock to run at large  
16 through failure to maintain a lawful fence as provided in section 47-26-01, except in grazing  
17 area as provided in section 36-11-07, is guilty of a class B misdemeanor.

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

20 **36-11-07. Liability of owners of horses, mules, cattle, sheep, goats, and swine**  
21 **livestock injuring persons or property of others.**

22 1. The owner or possessor of any ~~horse, mule, head of cattle, sheep, goat, or swine,~~  
23 ~~which~~ livestock that inflicts ~~any~~ damage or injury to:

- 1 a. Motor vehicles or their occupants upon a public highway within a grazing area  
2 ~~wherein in which~~ proper signs, approved by the ~~state highway commissioner~~  
3 director of the department of transportation, indicating limited liability are  
4 posted at a point adjacent to ~~such the~~ highway not less than two hundred feet  
5 [60.96 meters] nor more than four hundred feet [121.92 meters] from the  
6 entrance of ~~such the~~ highway into ~~such the~~ grazing area and so posted as to  
7 be plainly visible to ~~persons~~ individuals approaching ~~such the~~ entrance; or  
8 b. The crops or other property of another or trespasses upon the lands or  
9 premises of another, where ~~such the~~ damaged or injured crops, property,  
10 lands, or premises are located within a grazing area, except as provided in  
11 section 36-11-09, is not liable to any person sustaining ~~such~~ damages or  
12 injury.
- 13 2. For the purpose of this section, a "grazing area" means any area designated as  
14 ~~such a grazing area~~ by a majority of the board of county commissioners, either  
15 upon the motion of one of the ~~said~~ commissioners or upon presentation to the  
16 board of a petition signed by a majority of the real property owners and tenants in  
17 the area in which it is proposed that a grazing area be established. A grazing area  
18 must be used primarily for the purpose of grazing livestock and enclosed by a  
19 fence or other suitable means.
- 20 3. Except as provided above, the owner or possessor of any ~~horse, mule, head of~~  
21 ~~cattle, sheep, goat, or swine which~~ livestock that inflicts ~~any~~ damage to the crops  
22 or other property of another or which trespasses upon the lands of another,  
23 whether ~~such the~~ lands are fenced or unfenced, is liable to the persons sustaining  
24 the injuries or to the owner of the lands for all damages suffered by ~~him~~ by the  
25 owner, together with the statutory costs of the action to recover ~~such~~ damages,  
26 and a reasonable attorney's fee ~~therein to be~~ allowed by the court.

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

29 **36-11-09. Action permitted when livestock breaks through lawful fence.** Any  
30 person owning or having ~~in his~~ charge of any livestock ~~which that~~ goes through, over, or under  
31 any lawful fence is liable for all resulting damages. Any ~~animal which~~ livestock that goes

1 through, over, or under a lawful fence is deemed a trespassing ~~animal~~ livestock for the  
2 purposes of this chapter.

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

5 **36-11-10. Trespassing ~~animals~~ livestock may be distrained - Notice to owner -**  
6 **Security for release.**

7 1. The person suffering damages by reason of the trespass of any livestock may take  
8 up the offending ~~animal or animals~~ livestock. The person suffering damages shall  
9 notify the owner, or the person in possession of the livestock at the time of the  
10 trespass, of the seizure of ~~such animal or animals~~ the livestock without  
11 unnecessary delay, if the owner or person in possession is known to the person  
12 suffering damages and is a resident of, and present within, the county in which the  
13 trespass occurred. The person suffering damages may retain ~~such animal or~~  
14 ~~animals~~ the livestock in that person's custody until:

15 ~~4.~~ a. The damages sustained by reason of ~~such~~ the trespass and the costs in the  
16 action to recover ~~such~~ the damages have been paid; or  
17 ~~2.~~ b. Good and sufficient security for the payment of the damages and costs is  
18 given, ~~such~~ provided the security ~~to be~~ is approved by a district judge serving  
19 the county in which the livestock is taken up.

20 2. If the owner of the offending ~~animal or animals~~ livestock elects to give security, the  
21 owner shall give to the person holding the livestock notice that security will be  
22 given and the date and hour when ~~such~~ the security will be submitted to the district  
23 judge for approval. The notice must be given at least one day ~~prior to~~ before the  
24 date set for the submission of the security to the judge. The cost of serving notices  
25 required under this section may be taxed as costs in the action.

26 3. Where applicable, the provisions of section 36-11-07 may be raised as an  
27 affirmative defense in any proceedings under this section, and the owner or person  
28 entitled to possession of ~~such~~ the livestock may apply to a court of competent  
29 jurisdiction for the return of the livestock. If the court finds that the livestock ~~have~~  
30 has been wrongfully distrained, the person who causes the livestock to be  
31 wrongfully distrained is liable for all damages suffered by the owner or person

1           entitled to possession of the livestock, together with the costs of the action and  
2           reasonable attorney's fees.

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

5           **36-11-11. Procedure when security given.** When security for the payment of  
6 damages and costs is approved by the district judge, the judge shall issue an order directed to  
7 the person holding the livestock to deliver the ~~steek~~ livestock to the person entitled ~~thereto~~ to  
8 the livestock, and the officer receiving the order shall take the livestock and deliver it to the  
9 person. The cost of the proceedings may be charged as a part of the costs in the action to  
10 determine the rights of the parties regarding the livestock distrained for the trespass.

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

13          **36-11-12. Notice of damages to owner of animal livestock before action is**  
14 **commenced.** Before commencing any action for damages caused by the trespass of any  
15 livestock, the ~~party~~ person sustaining ~~such~~ damages, if he ~~he~~ the person knows to whom ~~such~~ the  
16 livestock belongs and the owner is a resident of, and is present in, the county in which the  
17 trespass occurred, shall notify ~~such~~ the owner, or the person having the ~~animals~~ livestock in  
18 charge, of ~~such~~ the nature and extent of the damage ~~and the probable amount thereof.~~

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

21          **36-11-13. When action for trespass of livestock must be commenced.** A party  
22 claiming ~~damages~~ damage for trespass of livestock under ~~the provisions of~~ this chapter shall  
23 bring an action to recover the same within:

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

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

3           **36-11-14. Procedure when keeper or owner of trespassing ~~animals~~ livestock is**  
4 **unknown.** If the person suffering damage because of the trespass of livestock which has been  
5 taken up under ~~the provisions of~~ this chapter does not know the name of the owner or keeper  
6 thereof, ~~he~~ of the livestock, the person may bring an action against ~~a defendant~~ an unknown  
7 defendant. In such case, service must be made by publication of a copy of the summons, with  
8 a notice ~~annexed thereto~~ attached, stating the nature of the action, in at least one issue of a  
9 legal newspaper if one is published within the county, and if not, by posting copies of the  
10 summons and notice in three public places within the county. ~~Such~~ The publication or posting,  
11 ~~as the case may be,~~ must be made ~~not less than~~ at least ten days before the date of the trial. If  
12 it appears on the trial of any action brought to recover damages arising from the trespass of  
13 livestock that the person named in ~~such~~ the action and upon whom the summons ~~therein~~ was  
14 served is not the owner or person in charge of the offending ~~animals~~ livestock, the action must  
15 be dismissed as to ~~him~~ that person, and service must be made, and the action must proceed,  
16 as in a case in which the name of the owner or keeper of the offending ~~animals~~ livestock is  
17 unknown.

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

20           **36-11-15. Proof on trial of action for trespass of livestock.** Upon the trial of an  
21 action brought under ~~the provisions of~~ this chapter, the plaintiff shall prove:

- 22           1. The amount of ~~damages~~ damage sustained by ~~him~~ the plaintiff by reason of the  
23 trespass; and  
24           2. If ~~he~~ the plaintiff has distrained the ~~animals~~ livestock committing the trespass, the  
25 amount of expense incurred in distraining and keeping the ~~same~~ livestock.

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

28           **36-11-16. Judgment for plaintiff is lien on ~~offending animals~~ livestock.** Any  
29 judgment rendered for damages against the defendant in an action brought under ~~the~~  
30 ~~provisions of~~ this chapter is a lien upon the ~~animals~~ livestock committing the trespass if ~~such~~  
31 ~~animals~~ the livestock were distrained by the plaintiff, and ~~such animals~~ the livestock may be

1 sold as in other cases of sale of personal property on execution, and the proceeds of the sale  
2 applied to the satisfaction of the judgment, and the ~~animals~~ livestock are not exempt from  
3 seizure and sale upon ~~such~~ execution.

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

6 **36-11-17. Collection of judgment against unknown defendant - Disposition of**  
7 **surplus.** After a judgment has been rendered against an unknown defendant as provided in  
8 section 36-11-14, the ~~offending animals~~ livestock, or so many of them as may be necessary,  
9 must be sold in the same manner as personal property is sold upon execution. Any surplus  
10 remaining from ~~such~~ the sale after the judgment and the costs in the action have been paid  
11 must be paid to the county treasurer for the benefit of the owner ~~thereof~~, and if the owner does  
12 not appear and claim the ~~same~~ surplus within six months ~~thereafter~~, it must be paid into the  
13 ~~school~~ common schools trust fund for the use of the public schools ~~of the county~~.

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

16 **36-11-18. When judgment of original court final - Right to trial by jury.** In all  
17 actions brought under ~~the provisions~~ of this chapter, if the amount of damages claimed does  
18 not exceed twenty-five dollars, the judgment of the court having original jurisdiction is final.  
19 Either party to ~~such~~ the action may have a jury trial upon a demand ~~therefor~~.

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

22 **36-11-19. Taking ~~animals~~ livestock distrained - Penalty.** Every person who, except  
23 by due course of law, takes, ~~or~~ advises, or assists in the taking of, any ~~animal~~ livestock  
24 distrained and held by virtue of ~~any provision~~ of this chapter, from the possession of the person  
25 having the ~~same in his charge~~ livestock, without the consent of the person holding ~~such animal~~  
26 the livestock, is guilty of a class B misdemeanor.

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

29 **36-11-20. Sheriff to return or impound livestock running at large - Expenses to be**  
30 **paid by owner.** In the event of ~~any~~ a complaint by anyone suffering injury or damages or likely  
31 to suffer injury or damages as a result of livestock running at large contrary to ~~the provisions~~ of

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1 section 36-11-01, the sheriff of the county ~~wherein such~~ in which the livestock may be found  
2 shall return the livestock to the owner or impound the livestock and dispose of them as ~~stray~~  
3 ~~animals~~ estrays under ~~the procedure set forth in~~ chapter 36-13. The expenses incurred by the  
4 sheriff or ~~his~~ the sheriff's agents in performing the duties required of ~~him~~ in this section must be  
5 paid by the owner of the livestock. If the owner cannot be found the sheriff's expense must be  
6 recovered from proceeds remaining after the disposal of ~~such animals~~ the livestock as estrays.