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States' Fence Statutes: *Colorado*



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Colo. Rev. Stat. Ann. §35-34-125, §§35-44-101 to 35-44-114, §§35-46-101 to 35-46-114, §§ 35-47-101 to 35-47-103, §§ 40-27-101 to 40-27-115.

Current through legislation effective April 7, 2021 of the First Regular Session of the 73rd General Assembly (2021).

§ 35-43-125. No hogs to run at large.

No hog or swine shall be permitted to run at large, and the owner of any hog or swine trespassing on the property of any person is liable in treble the damages occasioned by such trespass and a fine of not less than five dollars nor more than ten dollars for each offense.

§ 35-44-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Estray" means any bovine animal, horse, mule, ass, or alternative livestock as defined in section 35-41.5-102(1) found running at large upon public or private lands in the state of Colorado whose owner is either known or unknown in the section where found or which is outside the limits of its usual range or pasture. It is unlawful for any person, corporation, or company, or any of its employees or agents, to take into its custody any such estray and retain possession of the same, except as provided in this article.

§ 35-44-102. Taking up estrays—notice.

No person shall take into his custody an estray animal unless the same is found trespassing upon lands owned, leased, or otherwise controlled by him. The state board of stock inspection commissioners or an authorized brand inspector representing said board has authority to move such estray animal to a safe and practical place within the immediate vicinity to be held during the legal advertising period. When any person takes into his custody an estray, within five days thereafter he shall make out a written description of such animal, setting forth all marks or brands appearing upon such animal and other marks of identity, such as color, age, size, sex, and possible owner, and forward the same by mail to the state board of stock inspection commissioners in Denver or notify the nearest authorized brand inspector. Any person having knowledge of any estray animal upon the public range may notify the state board of stock inspection commissioners, or any authorized brand inspector of said board, giving a description of said estray, and upon instructions from the board of stock inspection commissioners, or from an authorized inspector of the board, said estray shall be held by such person to be turned over to a duly authorized inspector of said board for disposition as the board may direct according to law.

§ 35-44-103. When estray returned to owner.



Upon receiving notice that any person has taken into his custody any estray animal, it is the duty of the state board of stock inspection commissioners to make or cause to be made an examination of the state brand records, and if from this record the name of the owner or probable owner can be determined, it shall forthwith notify him of the taking into custody of such estray. Upon the owner proving to the satisfaction of the state board of stock inspection commissioners that the estray animal is rightfully his, the state board shall issue to him an order to receive the same upon payment of any reasonable charges which may have been incurred in the care of said animal.

§ 35-44-104. Owner not found—advertisement.

If the brand commissioner appointed by the state board of stock inspection commissioners is unable to determine from the brand records and description who is the owner or probable owner of any reported estrays, he shall cause notice showing a facsimile of the brand and other identifying characteristics carried by the estray to be posted in the offices of all county clerk and recorders, and licensed livestock markets and in other conspicuous places in the area where said estray was found. Said livestock notice shall state when and where the estray animal was taken into custody. In addition the brand commissioner shall cause a notice giving a general description of the estray to be placed in a local newspaper within the county where the estray is held, and said notice shall be carried in one regular issue only. Both notices shall state that unless the animal is claimed by the legal owner within ten days after the publication or posting of the notice, whichever is later, then the same shall be sold by the state board of stock inspection commissioners for the benefit of the owner when found.

§ 35-44-105. Sale of estrays.

If said estray animal is not claimed within ten days after the posting of estray notice, it shall be sold by the state board of stock inspection commissioners, through an authorized brand inspector of the board, in such manner as the board may direct. It is the duty of the brand inspector making such sale to give a bill of sale to the purchaser from the state board of stock inspection commissioners, signed by himself as inspector for the board, which bill of sale shall be legal evidence of the ownership of said animal by the purchaser thereof and shall be a legal and valid title to said animal.

§ 35-44-106. Proceeds of sale—rules.

The brand inspector making the sale of such estray shall return the proceeds of such sale to the state board of stock inspection commissioners, who shall pay the expenses incurred in taking into custody, holding, advertising, and selling such animal, and place the balance in the estray fund of said board, making a record of the same, showing the marks and brands and other means of identification of said animal, and giving the amount realized from the sale of same, which record shall be open to the inspection of the public. Should the owner of any estray that has been sold be found within three years after the sale of such animal, the net amount received from the sale of said estray, less a sum determined by the board by rule, for each estray, to be retained by the board, shall be paid to said owner upon the owner proving ownership to the satisfaction of the board.

§ 35-44-107. Custody of estray—claimant.



When any person takes into his custody any estray animal and sends a description of the same to the state board of stock inspection commissioners, said person shall be entitled to hold same lawfully until relieved of its custody by the state board of stock inspection commissioners. Should a claimant for said animal apply to the person who has custody of the estray for possession of the same, the said person shall at once notify the state board of stock inspection commissioners in writing of such application, and should the said board be satisfied that said applicant is the rightful owner, it shall forthwith issue an order authorizing said person in custody to deliver the estray to the owner, who may be required to pay any reasonable charges made by said person in custody. In case of a controversy as to what constitutes a reasonable charge, the state board of stock inspection commissioners shall fix the amount. The time of service for which said person may claim remuneration commences upon the date of notification made by the said person to the state board of stock inspection commissioners.

§ 35-44-108. Who may take up estrays.

It is unlawful for any person other than an authorized inspector of the state board of stock inspection commissioners to take into custody or retain possession of any estray, except as provided in section 35-44-107. Any person who takes into custody and retains possession of any estray without notifying the state board of stock inspection commissioners within the time as provided in this article is guilty of a class 6 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S.

§ 35-44-109. Official state livestock paper.

It is the duty of the state board of stock inspection commissioners to designate a livestock newspaper, of general circulation among the cattle and horse owners of the state, as the official state livestock paper, wherein all estray notices and advertisements of estrays may be legally made. In case of a change being made in the selection of such paper, the paper then publishing these notices shall publish a notice of said change for at least thirty days.

§ 35-44-110. Application as to municipalities.

Nothing in this article shall be construed to repeal any of the laws now in effect in regard to the impounding of estray animals by municipalities.

§ 35-44-111. Concealing estray—penalty.

Any person who conceals any estray found or taken into his or her custody, or effaces or changes any mark or brand thereon, or carries the same beyond the limits of the county where found, or knowingly permits the same to be done, or neglects to notify or give information of estrays to the state board of stock inspection commissioners is guilty of a class 6 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S.

§ 35-44-112. Abandoned livestock.

(1) The state board of stock inspection commissioners shall have the charge and control of all livestock abandoned or neglected by the owners thereof, and any officer or agent of the state board of stock inspection commissioners may take charge of any such stock or animals found abandoned or neglected.



(2) The state board of stock inspection commissioners, upon taking charge of any such stock or animals, shall forthwith give notice to the owners thereof, if known, and shall care and provide for such stock or animals for a period of ten days from and after the mailing or giving of such notice to the owners of said animals or until the owners take charge of the same within said ten days. The expense of such care and provision shall be a lien upon such stock or animals and shall be paid by the owners to the said state board of stock inspection commissioners before the owners shall be entitled to the possession of the animals.

(3) Upon the owner's failure to pay said expense charges, said stock or animals or such a number thereof as may be necessary shall be sold to the best advantage by the state board of stock inspection commissioners in its discretion at public or private sale, and the proceeds of such sale shall be paid to the owners, after all expenses incurred for the care and provision of said animals and all costs of said sale are deducted. The purchaser at such sale shall be entitled to a bill of sale from the state board of stock inspection commissioners, by virtue of which the purchaser shall acquire a good and valid title; but no sale shall be made previous to the expiration of ten days from and after the date of said notice to the owners.

§ 35-44-113. Publication of notice--sale—rules.

If the owners of any animals or livestock found abandoned or neglected, as provided for in section 35-44-112, are unknown to the state board of stock inspection commissioners, its officers, or agents, the notice required by section 35-44-112 shall be given by publishing the same as provided for in the case of animals or livestock taken up as estrays. If the owner is not found in ten days after the date of the first publication of the notice, the animals or livestock may be sold. The proceeds, after deducting all expenses of such care, provision, and sale, less a sum determined by the board by rule, for each animal sold, to be retained by the board, shall be credited to the stray fund of the board, subject to the provisions of the law controlling the distribution of the fund. The amount determined by the board retained for each animal sold shall be credited to the brand inspection fund, subject to the provisions of the law controlling the distribution of the brand inspection fund.

§ 35-44-114. Disputed ownership--animal deemed not alternative livestock

In any instance where the board determines that an animal is not an alternative livestock, any dispute as to ownership shall be decided by the parks and wildlife commission created in section 33-9-101, C.R.S.

§ 35-46-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Lawful fence" is a well-constructed three barbed wire fence with substantial posts set at a distance of approximately twenty feet apart, and sufficient to turn ordinary horses and cattle, with all gates equally as good as the fence, or any other fence of like efficiency. Railroad right-of-way fences constructed in compliance with the statute in force on the date of construction and maintained in good condition shall be considered legal fences.



(2) “Livestock” includes horses, cattle, mules, asses, goats, sheep, swine, buffalo, and cattalo, but does not include “alternative livestock” as defined in section 35-41.5-102(1).

§ 35-46-102. Owner may recover for trespass.

(1) Any person maintaining in good repair a lawful fence, as described in section 35-46-101, may recover damages for trespass and injury to grass, garden or vegetable products, or other crops of such person from the owner of any livestock which break through such fence. No person shall recover damages for such a trespass or injury unless at the time thereof such grass, garden or vegetable products, or crops were protected by such a lawful fence. Even though such land, grass, garden or vegetable products, or other crops were not at such time protected on all sides by a lawful fence, if it is proved by clear and convincing evidence that livestock have broken through a lawful fence on one side of such land to reach such land, grass, products, or crops, recovery and the remedies under this section may be had the same as if such land, grass, products, or crops had been at such time protected on all sides by a lawful fence.

(2) Whenever any person stocks land, not enclosed by a lawful fence, on which such person has a lawful right to pasture or forage livestock, with a greater number of livestock than such land can properly support or water and any of such livestock pasture, forage, or water on the lands of another person, in order to obtain the proper amount of pasture, forage, or water or whenever any person stocks with livestock land on which such person has no lawful right to pasture or forage livestock and such livestock pasture, forage, or water on such land or on other land on which such person has no right to pasture or forage livestock, he shall be deemed a trespasser and shall be liable in damages and subject to injunction.

(3) All damages sustained on account of the foregoing trespasses may be recovered, together with costs of court and arbitration, and the livestock so trespassing may be taken up by the person damaged and held as security for the payment of such damages and costs. A court of competent jurisdiction in any proper case may issue an injunction to prevent further trespasses. In any action for trespass where the injury complained of has been aggravated and attended by a willful or reckless disregard of the injured person's rights, the board of arbitration, court, or jury may in addition to awarding actual damages include reasonable exemplary damages. Recovery may be had under this section either in a court of law or by arbitration as provided in section 35-46-103.

§ 35-46-103. Board of arbitration.

When any person is trespassed upon or damaged by any livestock or takes into his custody any livestock under section 35-46-102, the claim for damages occasioned by said livestock may be arbitrated by a board of three arbitrators, at the option of the party aggrieved selecting one, the owner of the livestock selecting a second, and the two thus chosen selecting a third. Said arbitrators so chosen shall meet and act as a board of arbitration within five days after a written application is made therefor by either party and written notice given to the other party. It is the duty of the person so taking into custody such livestock to notify in writing within five days after the taking into custody thereof the owner or person in charge of such livestock. If the owner or person in charge of such livestock is not known to the person taking the



livestock into custody or cannot be found after diligent search and inquiry, then the person so taking custody of such livestock shall publish within one week a notice containing a full description of such livestock, including all marks and brands as nearly as can be ascertained, in a paper published nearest the place where the alleged damage occurred. In the event the owner of such livestock cannot be found within ten days after the date of the publication of such notice, the livestock shall be an estray and the state board of stock inspection commissioners shall be entitled to said livestock subject to the lien for damage sustained and cost and care and feeding of the same by the person taking such livestock into custody. Such person shall deliver the same to the owner thereof whenever such owner furnishes the person so damaged by such livestock a bond in double the amount of the damage claimed, executed by two responsible persons, said bond to be satisfactory to such damaged party or approved by a county judge or district judge of such county, conditioned upon the payment to the person taking custody of such livestock all damages and costs, if any such damages or costs are awarded.

§ 35-46-104. Finding of board—enforcement.

The finding of said board of arbitration, when reduced to writing and signed by a majority of the members thereof, constitutes an obligation on the part of the person against whom the finding is made to pay to the aggrieved party the sum set forth in the finding of said board of arbitration. In the event the person against whom the finding of such board of arbitration is made fails, neglects, or refuses to pay to the aggrieved party the sum set forth in the finding of said board of arbitration, within thirty days from the date of the written findings of such board, then the finding of said board of arbitration may be filed in any court of record within the jurisdiction where the damage was sustained. The finding of such board so filed shall be deemed for the purposes of sections 35-46-101 to 35-46-110 a judgment of said court and execution may issue thereon as by law provided in judgments of said court. The costs agreed upon to be incurred in said arbitration shall follow the findings as in suits at court. If the owner of any livestock makes a tender in money of all damages to the person claiming damages, the person claiming damages shall pay all costs and expenses thereafter accruing unless he is awarded a larger amount than was tendered by the owner of such livestock.

§ 35-46-105. Grazing on roads and in municipalities—penalty.

(1) It is unlawful for the owner or any person in charge of any livestock knowingly to cause or permit such livestock to graze or run at large in any incorporated or unincorporated municipality, lane, road, or public highway if the same is separated from the land or range of such owner or person in charge by a fence or other barrier sufficient to keep livestock from reaching such municipality, lane, road, or public highway. In case any such livestock so running at large is killed or injured by any vehicle, the owner, driver, or person in charge of such vehicle shall not be liable therefor if the killing or injury is not malicious, willful, or wanton. Nothing in this section shall be applicable to livestock having a person in charge when such livestock are being driven on or through such municipalities, lanes, roads, or public highways or when range livestock being ranged on their usual range or allotments have broken through maintained drift fences or cattle guards and are on the premises unknown to the owners.

(2) Any person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor



more than two hundred dollars for each offense. It is the duty of every Colorado state patrolman, sheriff, or other peace officer to prefer charges against any person violating this section and take custody of such livestock and place them on feed and water. Such livestock may be placed by such officer in the custody of a responsible person who shall care for the same pending disposition of any court action under this section. The livestock may be held in case of conviction of the owner or other person in charge for the payment of any reasonable costs of handling, care, and feed and of court and for the payment of all fines which may be levied against said owner or other person in charge. In the event such costs and fine are not paid within ten days after the entry of judgment, such court, after reasonable notice to such owner and any known persons in interest as determined by the court, may order sufficient numbers of such livestock sold to pay such costs and fine.

(3) In cases where such livestock are horses, mules, or burros of inferior quality and of the apparent value of less than thirty-five dollars per head and the owner or any other person in interest cannot be found after reasonable search and inquiry, the state board of stock inspection commissioners, or its duly authorized representative, after posting of notice at a conspicuous place at the courthouse of the county where such livestock are found for a period of ten days, may sell such livestock at private or public sale as stated in said notice, and the proceeds of such sale remaining after the payment of all reasonable costs shall be held for the owner or other person in interest when found as is provided by law for estray funds.

§ 35-46-106. Care of stock taken into custody.

It is the duty of any person who takes any animals into custody under the provisions of this article to feed and care for such animals in a reasonable, careful, and prudent manner and keep the same in as good order and condition as when so taken into custody by the said party, and he shall be liable for any damage occasioned by his failure to do so. For such feed and care such party shall be entitled to recover from the owner of such animals a reasonable compensation, to be recovered as provided for the recovery of damages sustained.

§ 35-46-107. Unlawful to break fence or open gate.

It is unlawful for any person to willfully break down or cause to be broken down any fence or gate or to leave open any gate in such fence. This section shall not apply to the owner or occupant unless such owner or occupant causes such fence or gate to be broken down or left open with malicious intent.

§ 35-46-108. Lien for trespass and care.

Any party taking into custody animals under the provisions of this article shall have a lien upon such animals for the damages occasioned by the trespass of such animals and for a reasonable compensation for their feed and care while in the possession of the party, if damages are recovered.

§ 35-46-109. Taking into custody or release unlawful—penalty.



It is unlawful for any person to take into his custody any livestock without complying with the provisions of sections 35-46-102 to 35-46-105 unless such taking be done in good faith. It is unlawful for any person, forcibly or by trickery, fraud, or deceit, or without the knowledge and consent of the person having possession of any livestock taken under such provisions, to remove the same from the possession of such person. Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

§ 35-46-110. Public highways--railways excluded.

“Public highways”, as used in this article, shall not be construed to include railways of any kind or railway rights-of-way of any kind.

§ 35-46-111. Right-of-way fences.

(1)

(a) Except as otherwise provided in paragraph (b) of this subsection (1) and subsection (4) of this section, it is the duty of the department of transportation to maintain right-of-way fences constructed as of June 1, 1994, by the department at or near the boundary of the department's highway property in agriculturally zoned areas along and adjacent to all federal aid highways where such highways are maintained by the department. The department shall make repairs to such right-of-way fences when necessary only upon actual notice to the department. Neither the department nor the landowner is liable for any damages caused by the failure to adequately construct, maintain, or repair the right-of-way fence unless actual notice is given to the department.

(b) If the department removes a right-of-way fence in an agriculturally zoned area during a construction project, the department shall replace and maintain said fence unless the landowner and the department agree that said fence shall not be replaced.

(2) In nonagriculturally zoned areas, the department may erect a right-of-way fence where the highway has been declared a freeway pursuant to section 43-3-101, C.R.S., or in areas that the landowner and the department agree that said fence be erected. If the department erects a right-of-way fence or has previously erected a right-of-way fence where the highway has been declared a freeway, the department shall maintain and repair said fence when necessary upon actual notice to the department. Neither the department nor the landowner is liable for any damages caused by the failure to adequately construct, maintain, or repair the right-of-way fence unless actual notice is given to the department.

(3) Upon actual notice, the department shall maintain right-of-way fences constructed by the department, where highways are maintained by the department, at or near the boundary of the department's highway property adjacent to properties owned by municipalities unless otherwise agreed to in writing by the department and the municipality.



(4) If, in both agriculturally and nonagriculturally zoned areas, the landowner adjacent to an existing right-of-way fence and the department agree that said fence shall be removed, the right-of-way fence shall be removed by the department at its expense. If the landowner removes or causes the removal of the right-of-way fence without agreement by the department, the department shall not be required to reimburse the landowner for such removal, and the landowner shall be liable for any and all damages caused by the unauthorized removal of the fence.

(5) If a right-of-way fence is either removed or not replaced pursuant to subsection (1) or (4) of this section and the landowner who agreed that the fence be removed or not replaced or any subsequent landowner of property adjacent to the right-of-way later desires to erect a right-of-way fence, said fence may be erected by the landowner at the landowner's expense, but only upon prior agreement by the department. Such right-of-way fence shall be constructed in accordance with the standards applicable to the department at the time such fence is erected, and the department is required to make repairs to such right-of-way fence upon actual notice to the department. Liability for any damages caused by failure to adequately construct the right-of-way fence shall be borne by the landowner at the time the damages are incurred.

(6) All agreements required pursuant to subsections (1) to (5) of this section shall be in writing, be recorded by the department in the office of the county clerk and recorder of each county where the real property adjacent to the right-of-way is located, and be binding upon and notice to all persons or classes of persons claiming any interest in said property.

(7) If a landowner and the department agree to either remove or not replace a right-of-way fence pursuant to subsections (1) to (5) of this section and the landowner at the time of the agreement or any subsequent landowner does not maintain livestock, as defined in section 35-46-101(2), on the land adjacent to a highway right-of-way, any livestock that enters the highway right-of-way through that land shall not be a dangerous condition pursuant to section 24-10-106(1)(d), C.R.S. Neither the landowner nor the department shall be liable for any damages caused by such livestock because of the absence of such right-of-way fence.

(8) If a person herds livestock along a highway adjacent to property from which a fence has been removed pursuant to this section and any of the livestock strays onto that property, the landowner may not recover damages for trespass and injury to grass, garden or vegetable products, or other crops from the owner of the livestock unless the landowner can prove the person herding the livestock allowed the livestock to enter the property without making an effort to remove the livestock. Nothing in this section is intended to change the status of open range law and statutes relating to fences in Colorado.

(9) Notwithstanding any other provision of this section, the department may erect and maintain a right-of-way fence in any area at the department's expense, in its sole discretion, but the department has no duty to erect and maintain any fence at its expense.



§ 35-46-112. Partition fences.

Where the agriculture or grazing lands of two or more persons adjoin, whether or not such lands are farmed or grazed, it is the duty of the owner of each tract to build one-half of the line fence, such fence to be a lawful fence as described in section 35-46-101. When the owner or tenant of any agricultural or grazing lands owns a previously erected lawful fence upon any line between such land and the agricultural or grazing lands of any other person, and such other person or anyone holding under such person, occupies the adjoining land, it is the duty of such owner to pay the person owning such fence one-half of its cash value.

§ 35-46-113. Cost and repair--how recovered.

Partition fences between agricultural and grazing land shall be erected and also kept in repair at the joint cost of the owners of the respective adjoining tracts, except as otherwise agreed by such owners. If after thirty days written notice, served personally or by registered mail by either the owner or tenant of one tract upon the owner or tenant of the other tract, such other owner neglects or refuses to erect or repair one-half of the partition fence, the person giving notice may proceed to erect or repair the entire partition fence and collect by a civil action at law one-half the entire cost thereof from the other owner. Any judgment obtained against the owner of any land for the value of his share of any such partition fence or the repair thereof shall be a lien upon such owner's land to which such fence is appurtenant, and a special execution may issue and be levied upon the land to which such fence is appurtenant as in the manner now prescribed for the levying of an execution under the foreclosure of a mortgage upon real property. Such land may be sold under sheriff's sale for the purpose of satisfying such special execution in the same manner as is now provided for the foreclosure of mortgages on real property.

§ 35-46-114. Fence may be removed—when.

When any person unwittingly, or by mistake, erects a fence upon the land of another and when, by a line legally determined, that fact is ascertained, such person may enter upon such premises and remove such fence at any time within one year after giving or receiving notice that the line has been run; but when the fence to be removed forms any part of a fence enclosing a field of the other party, having a crop thereon, such first person shall not remove such fence until such crop can, with reasonable diligence, be gathered and secured.

§ 35-47-101. Horses and mules running at large

It is unlawful for any owner, or the agent, lessee, bailee, or employee of such owner of any horses or mules, to knowingly permit any of said animals to run at large, within a distance of ten miles from any city having one hundred thousand or more population; within a distance of five miles of any city having between five thousand and thirty thousand population; within a distance of one mile of all other cities or towns; and within a distance of one mile from the business area of any unincorporated town or village; but nothing in this article shall prevent anyone from driving any of said animals to market or from pasture to pasture or prevent the use of horses or mules for riding, driving, or drawing animal-propelled vehicles or machinery. This article



shall not affect any common used solely for grazing purposes which has been established by land grant and ratified by treaty.

§ 35-47-102. Duty of custodian--fees—recovery.

Where said animals are in violation of section 35-47-101, it is the duty of every sheriff or other peace officer of the county, on complaint of any person, to take custody of such animals and place them on feed and water. He may appoint a custodian for such purpose and pay such custodian a fee of four dollars per day to be assessed as costs; and the owner or agent may give the sheriff or other officer a redelivery bond in sufficient sum for repossession of his stock, pending a court action. In cases where the owner or agent is known and has been convicted in court, the sheriff or other officer may dispose of such animals or sufficient numbers of them to pay for the fine and reasonable costs of feeding and other expenses in connection therewith, after giving ten days notice by posting three notices in public and conspicuous places. In cases where the owner of such animals is unknown, the animals shall be taken up and disposed of by the state board of stock inspection commissioners, or one of its duly authorized representatives, the same as other estrays as provided for by law.

§ 35-47-103. Penalty.

Any person who knowingly permits any of said animals to run at large is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars.

§ 40-27-101. Owner driving stock on track.

If the owner of any stock drives any stock on the line of the track of any railway company or corporation, with intent to injure such company or corporation, and if said stock is killed or injured, the owner shall not receive any damages from the railroad company or corporation therefor, and shall be liable to such company or corporation for all damage such company or corporation may suffer in consequence of said act, and commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.; but nothing in this section shall be construed to prevent any person from allowing his or her stock to pasture on the lands adjacent to the line of such railroads or to drive his or her stock over or across any such track at suitable times and places.

§ 40-27-102. Fence right-of-way--cattle guards.

(1) Every railway company or corporation whose lines or roads, or any part thereof, are open for use, within six months after the lines of such railways or any part thereof are open, except at the crossings of public roads and highways and within the limits of incorporated towns and cities or the yard limits of established stations, shall erect and thereafter maintain fences on the sides of their roads, or the part thereof open to use, where the same pass through, along, or adjoining enclosed or cultivated fields or unenclosed lands, with openings and gates therein to be hung and have latches and hinges, so that they may be opened and shut at all necessary farm crossings of the road, for the use of the proprietors or owners of the land adjoining such railroad, and shall construct and maintain at all public road crossings good and sufficient cattle guards.



(2) Such fences, gates, and cattle guards for the protection of livestock shall be constructed as defined in section 35-46-101(1), C.R.S., and shall be amply sufficient to prevent horses, mules, asses, and cattle from getting on said railroads; and, so long as such fences and guards, or any part thereof, are not sufficient or not in sufficiently good repair to accomplish the objective for which they are intended, such railroad corporation shall be liable for any and all damages which are done by the agent, employees, engines, trains, or cars of any other corporation permitted and running over and upon their said railroad to any such cattle, horses, asses, or mules thereon. When such fences, gates, and guards have been built and duly made and are kept in good and sufficient repair, such railroad corporation shall not be liable for any such damages unless the same were occasioned by the negligence or carelessness of such railway company or corporation or the assignee or lessee thereof.

(3) Where gates are constructed and maintained at farm crossings, opening into enclosed pastures or cultivated fields, it is the duty of the owner or occupant of such fields or pastures so provided with gates to see that such gates are kept closed at all times when not actually in use, and where it is shown that any such gate has been left open, the owner or occupant of such lands shall be held responsible for any stock killed or damaged because of such open gate.

§ 40-27-103. Liability for injury to stock.

Any railroad company running or operating its roads in this state and failing to fence on both sides thereof against livestock running at large at all points shall be absolutely liable to the owners of any such livestock killed, injured, or damaged by their agents, employees, engines, or cars or by the agents, employees, engines, or cars belonging to any other railroad company or corporation running over and upon such road.

§ 40-27-104. Compliance prima facie defense.

Any railway company or corporation or the assignee or lessee thereof whose road is enclosed with good and sufficient fences, gates, and cattle guards, as provided in section 40-27-102, capable of keeping such animals from being upon such road may plead and prove the same as a defense to any action under sections 40-27-102 to 40-27-113 for any killing, damaging, or injury to such animals occurring within such enclosure; but such plea or fact shall not be held to preclude the owner or his agent from showing that such killing, damage, or injury was caused by the negligence or carelessness of such railway company or corporation or the assignee or lessee thereof, for the purpose of showing liability notwithstanding such fencing.

§ 40-27-105. Burden of proof.

The killing or injury of any animal by a railway company or corporation shall be prima facie evidence of the negligence of said railway company or corporation, and every railway company or corporation in this state and every assignee or lessee thereof shall be liable to pay to the owner the full value of each animal killed and all damages to each animal injured by the engines or cars of such railway company or corporation in this state or the assignee or lessee thereof unless the railway company or corporation, by competent evidence, shall affirmatively show that such killing or wounding was not caused by the negligence of such railway



company or corporation or the assignee or lessee thereof. On the trial of all actions for damages arising under this article, in order to admit evidence of absence of negligence, the defendants shall first be held to show a compliance with sections 40-27-102 to 40-27-113 in relation to the erection and maintenance of fences, gates, and cattle guards.

§ 40-27-106. Engineer to notify agent—inspection.

(1) Whenever any cattle, sheep, horses, mules, or asses are killed or injured by any train, engine, or car upon any railway in this state, it is the duty of the engineer operating the engine, train, or car to notify the station agent at the first station at which the train stops after the killing or wounding or the superintendent or other proper official at the end of the division where the engineer's run ends. Should none of the employees of the train be aware of such killing or wounding, then it is the duty of any employee of the railway who becomes aware of such accident to notify the station agent at the nearest station to the point where the accident occurred.

(2) It is the duty of the railroad company, through its station agent or such other official as may be designated, upon receipt of the information of the killing or wounding of any such livestock by any engine, train, or car, as soon as may be, to notify the section foreman upon whose section the accident occurred and also the nearest inspector of the state board of stock inspection commissioners.

(3) It is the duty of the section foreman upon receiving the information to go to the point where the animal was killed or injured as soon as may be and there inspect the same, securing a full description of the animal together with any brands or marks that are upon the same and such other details as may serve to determine the ownership of such animal.

(4) It is the duty of said stock inspector, as soon as may be after receiving said notice, to go to the point where the animal was killed or injured and there inspect the same, securing a full description of the animal together with any brands or marks that may be on the same and such other details as may serve to determine ownership of such animal. It is also the duty of the inspector to estimate as nearly as possible the probable value of said animal if killed or the amount of damages if injured.

(5) Should the animal be so badly injured that it is in great suffering and cannot live or recover, it is the duty of either the stock inspector or the section foreman upon inspection to immediately kill the animal. If through any cause such an authorized inspector does not appear to inspect such animal so killed within thirty-six hours after such killing, it is the duty of the section foreman to remove the hide of said animal and preserve the same until it has been inspected by such inspector, and thereafter the carcass of such animal shall be disposed of by the railroad company, without prejudice to its rights, in such manner as it may determine.

§ 40-27-107. Reports of inspector and foreman.

After making such examination it is the duty of the stock inspector to immediately forward a report to the secretary of the state board of stock inspection commissioners showing all the facts in regard to the killing or wounding of said animal, together with a full



description and the estimated value of same, and it is the duty of the foreman of the section to likewise make a similar report to the claim agent of said railroad company or corporation or the assignee or lessee thereof.

§ 40-27-108. Notification of owner and claim agent.

(1) Upon receipt of the information from any authorized stock inspector of the killing or wounding of any animal by any railroad company or by its engine, cars, or trains, it is the duty of the secretary of the state board of stock inspection commissioners to notify the owner of said animal so killed or injured, informing him of the facts and the estimated value placed upon said animal by the stock inspector, and he shall also send a copy of this report to the claim agent or other authorized official of the railway company responsible for said killing or injuring.

(2) Should the secretary be unable to determine from the description furnished by the stock inspector the owner or probable owner of such animal so killed or injured, he shall cause an advertisement to be placed in a newspaper published in the county where said killing or wounding occurred, describing the animal so killed or injured, giving the marks or brands appearing on said animal, if any, and notifying the owner to appear within six months of the date of such killing or injuring and make claim for said animal. Said advertisement shall appear for two consecutive weeks. The cost of such advertisement shall be paid out of the brand inspection fund of the state board of stock inspection commissioners and shall be deducted from the amount of damages that may be awarded against the railway company or corporation. Should no claim be made for any animal so advertised, the cost of such advertising shall be paid by the railroad company responsible for such killing or injuring and shall be deposited in the brand inspection fund of said board.

§ 40-27-109. Proof of ownership and value.

(1) The owner or duly authorized agent of the owner of any animal so killed or injured by any railway company within this state, within thirty days after notice of such killing or injuring, shall make proof that he was the owner or authorized agent of the owner of the animal so killed or injured or that he is the owner of the recorded brand found upon the animal so killed or damaged at the time of such killing or damaging, and said proof may be delivered to the secretary of the state board of stock inspection commissioners who shall notify said railway company or corporation or the assignee or lessee thereof and make demand that said railway company pay to the said state board of stock inspection commissioners for the benefit of the owner the estimated value of said animal if killed or the estimated amount of damages if injured, which shall be settlement in full of all claim for such damage. The secretary of the state board of stock inspection commissioners shall give a receipt in full of said money when received and shall deposit the same in the brand inspection fund of said board, and after paying any advertising charges that may be due against said amount, the balance shall be paid out on voucher to the owner or authorized agent of the owner entitled to receive same.

(2) Should the owner or authorized agent of the owner of any such animal so killed or injured be dissatisfied with the estimated value placed upon such animal



by the stock inspector, he may file with the said state board of stock inspection commissioners a claim for such amount of damage he thinks is justly due, and he has the right to produce such evidence in support of his claim as he may think necessary at any regular meeting of said board. Should the railroad company or corporation against whom such claim is made be dissatisfied with the estimated value placed upon any animal so killed or injured, it also has the right, through its claim agent or other authorized officer, to appear before the said state board of stock inspection commissioners at any regular meeting of said board and present such evidence as it may desire in support of its contention.

§ 40-27-110. Value of animal--finding of board.

Whenever any owner of any animal so killed or wounded or any railroad company or corporation or the assignee or lessee thereof submits any such claim for killing or damaging of livestock to the state board of stock inspection commissioners for determination as to what damage if any shall be paid by said railroad company, the finding of said state board of stock inspection commissioners in regard thereto shall be considered as an arbitration thereof. The finding of said board shall be final and shall also be so accepted by the said owner or his authorized agent or by said railroad company or corporation, and the state board of stock inspection commissioners shall have the right to make such investigation, through its inspectors or otherwise, as it may think necessary in order to determine the just and equitable amount that should be paid as damages or it may determine that no damages shall be paid, as the facts may warrant.

§ 40-27-111. Owner declining estimate.

Should any owner of any animal so killed or wounded by any railroad company decline to accept the estimated value of such animal or the estimated amount of such damage as fixed by the stock inspector or to submit the same to the arbitration of the said board, within six months he shall file sworn proof and affidavit of his claim with the station agent of such railroad company or corporation, and the railway company or corporation or the assignee or lessee thereof shall pay to such person delivering such demand the actual value of said animal if killed or the actual amount of damage if injured. If such claim for damages and such proof of ownership is not presented to the station agent of said railway company or corporation within six months of the date of such killing or injuring, it shall thereafter be forever barred.

§ 40-27-112. Time for payment and suit.

In case such railway company or corporation or the assignee or lessee thereof fails for thirty days after demand made therefor by the owner of any animal or his agent or attorney to pay such owner or his agent or attorney the value of said animal as claimed, then such owner, within six months from date of filing claim, may sue and recover the same from such railroad company or corporation or the assignee or lessee thereof in any court of competent jurisdiction in the county in which said animal was killed or injured, together with the legal interest thereon from the date such animal was killed or injured. Any person having a claim arising under the provisions of sections 40-27-102 to 40-27-113 may assign same in writing to any other claimant or person for value or for the purpose of suit, who shall thereupon have all the rights and remedies of the assignor; but, in case it becomes necessary on the part of any owner to



establish claim for any animal so killed or injured in a court of competent jurisdiction, he shall have the right to establish the actual and market value of such animal or the actual damage so sustained.

§ 40-27-113. Evidence destroyed—penalty.

Any person who in any way conceals the evidence of the killing or wounding of any animal by any railroad train, engine, or cars on any railroad in this state or who in any way destroys or covers up the evidence that may lead to the identification of any animal so killed or injured is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars for each offense, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

§ 40-27-114. Care of animals injured.

Whenever any horse, cow, or other animal is injured by a train or otherwise on the right-of-way of any railroad company, it is the duty of trackwalkers, section men, brakemen, conductors, firefighters, engineers, and other employees of said company to care for such animal at once and report the facts to the nearest station agent and then notify the state board of stock inspection commissioners. It is the duty of the agent to give immediate notice, when possible, of the condition of such animal to the owner or the owner's agent whose duty it is forthwith upon receipt of notice to have such animal properly cared for. When immediate notice to the owner is not possible, it is the duty of the station agent to have such injured animal properly cared for without delay.

§ 40-27-115. Admission of liability--waiver of claim.

No act of the said railroad company, its employees or agent, or the owner of such injured animal shall be held to be an admission of liability or responsibility on the part of the said company for the injury of the said animal nor a waiver or relinquishment by said owner of any right or claim to damages from said company.

