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States' Fence Statutes: *North Dakota*



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N.D. Cent. Code §§ 24-10-01 to 24-10-08; §§ 36-11-01 to 36-11-20; §§ 47-26-01 to 47-26-20; §§ 47-27-01 to 47-27-03; §§ 49-11-24 to 49-11-30

Current with emergency effective laws from the 2021 Regular Session of the 67th Legislative Assembly effective through May 10, 2021.

Cattle Guards and Gateways.

§ 24-10-01. Cattle guards--How permitted.

Whenever the erection of cattle guards is necessary to complete an enclosure which includes land on both sides of any highway in the state, except a highway which has been designated as part of the state highway system, or to cross a section line pursuant to section 24-06-28, the board of county commissioners, if the cattle guard is to be erected across a county road or a section line subject to jurisdiction of the board of county commissioners, or the board of township supervisors, if the cattle guard is to be erected across a township road or a section line subject to jurisdiction of the board of township supervisors, may issue permission to any person, firm, or corporation to erect a cattle guard and gateway across the highway or section line upon the conditions hereinafter prescribed.

§ 24-10-02. Cattle guards--Construction--Maintenance—Effect.

Before any cattle guard and gateway may be erected across any highway or section line as authorized in section 24-10-01, the board of county commissioners or board of township supervisors, as the case may be, shall approve written specifications of the cattle guard and gateway. Specifications approved by the board of county commissioners must be filed with the county auditor and specifications approved by the board of township supervisors must be filed with the township clerk. The specifications must include requirements for warning signs to be placed approximately three hundred feet [91.44 meters] from and plainly visible to persons approaching the cattle guard upon the highway or section line. A cattle guard must be so constructed as to permit the passage of motor vehicles through and over the same. No cattle guard may be erected upon any highway or section line unless there also is provided adjacent thereto an ample gateway in which must be erected a gate which may be opened easily and closed by the public. The person who applied for permission to erect the cattle guard shall maintain the cattle guard and gateway, unless application is otherwise assigned. Within the limits of an enclosure so completed by authorized cattle guards erected in accordance with such specifications, livestock must be permitted to run at large without liability for being upon the highway or section line.

§ 24-10-03. Leaving gates open—Penalty.

Any person who opens and fails to close promptly any gate provided for in this chapter is guilty of an infraction.

§ 24-10-04. Cattle guards may be ordered removed.



The board having authority to permit the erection of a cattle guard and gateway across any highway or section line also has authority to cause the same to be removed, if the same is not kept in repair, or if in the judgment of said board, it becomes necessary to remove the cattle guard and gateway for the purpose of improving the highway or section line. If the board determines any cattle guard and gateway should be removed under this section, written notice by registered or certified mail must be sent to the occupant of the enclosure, notifying the occupant to effect such removal within thirty days from the date of mailing. If the notice is not complied with, the board, upon expiration of the period, is authorized to remove or destroy the cattle guard and gateway.

§ 24-10-05. County and townships exercise joint authority.

If the cattle guard and gateway provided for in section 24-10-01 are sought to be erected upon any township or county line, the governing boards of the adjacent territory shall exercise joint authority and jurisdiction and the proceedings required in section 24-10-02 must be taken in both jurisdictions.

§ 24-10-06. Cattle ways under highways.

Upon application to the board of county commissioners of any county or the board of township supervisors of any organized township, by any person, for permission to construct a cattle way under any public road, such board may grant the same upon condition that the cattle way may not interfere with the public travel, that the grade of the road over the cattle way may not exceed one foot [.30 meter] in ten feet [3.05 meters], and that it may not obstruct watering at any running stream. The applicant shall construct the same at the applicant's own expense and is responsible for all damages that may arise from its construction or from failure to keep the same in repair.

§ 24-10-07. Failure to keep cattle way in repair.

If the person on whose land a cattle way is constructed fails to keep the cattle way in repair, the overseer of highways shall make all necessary repairs and shall charge the expenses to the person who requested the way be constructed or to that person's assignee. Upon refusal by that person to pay, the county or township board in which the cattle way is situated shall recover the expenses in an action brought in the name of the county or township and the state's attorney shall prosecute the action. The money, when collected, must be expended in improving or repairing the public roads in the road district where the cattle way is constructed.

§ 24-10-08. Board may prescribe regulations.

The board granting an application to construct a cattle way may prescribe such further regulations and specifications in the construction of such way as it may deem proper, not inconsistent with the provisions of sections 24-10-06 and 24-10-07.

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.

§ 36-11-06. 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.

§ 36-11-09. 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 36-13. 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.

Partition Fences.

§ 47-26-01. Definition of legal fence.

The following shall constitute a legal fence:

1. Any fence four and one-half feet [1.37 meters] high, in good repair, consisting of rails, timber, boards, stone walls, or any combination thereof.
2. All brooks, rivers, ponds, creeks, ditches, or hedges.
3. All things which, in the judgment of the fence viewers within whose jurisdiction the fence may be, are equivalent to the things specified in subsections 1 and 2.
4. Any fence upon which the interested parties may agree.
5. A barbed wire fence consisting of at least three barbed wires with at least number twelve and one-half gauge wire, the wire to be fastened firmly to posts which shall be not more than twenty feet [6.10 meters] or not more than forty feet [12.19 meters] and three stays apart. The top wire shall be not less than forty inches [101.6 centimeters] high, the bottom wire shall be not more than sixteen inches [40.64 centimeters] above the ground, and no two adjacent wires shall be separated by more than sixteen inches [40.64 centimeters].
6. A wire fence consisting of five smooth wires with posts not more than two rods [10.06 meters] apart and with good stays not more than eight feet [2.44 meters] apart, the top wire being not less than forty-eight inches [121.92 centimeters] nor more than fifty-six inches [142.24 centimeters] and the bottom wire being not less than sixteen inches [40.64 centimeters] nor more than twenty inches [50.8 centimeters] above the ground.
7. An electrified fence consisting of:
 - a. One smooth wire located twenty-six inches to thirty-two inches [66.04 centimeters to 81.28 centimeters] above the ground and posts no more



than one hundred feet [30.48 meters] apart;

b. Two smooth wires, with the top wire located at least twenty-six inches [66.04 centimeters] above the ground, the bottom wire located eight inches to ten inches [20.32 centimeters to 25.40 centimeters] below the top wire, and posts no more than one hundred feet [30.48 meters] apart; or

c. Three smooth wires, with the top wire located at least twenty-six inches [66.04 centimeters] above the ground, the middle and bottom wires located eight inches to twelve inches [20.32 centimeters to 30.48 centimeters] apart, and posts no more than seventy-five feet [22.86 meters] apart.

§ 47-26-02. Fence viewers.

In an organized township, the members of the board of township supervisors shall act as fence viewers.

§ 47-26-03. Fence viewers taken from each township when a fence is on line between two townships.

When the line upon which a partition fence is to be made or divided is the boundary line between civil townships or is partly in one civil township and partly in another, a township supervisor shall be taken from each township affected when the services of fence viewers are required.

§ 47-26-04. Fees of fence viewers.

Each township supervisor may be paid by the employing person at the rate of no more than fifteen dollars per day for the time employed as a fence viewer. If such person neglects to pay such fees within thirty days after the service is performed, the township supervisor may recover the amount thereof in a civil action.

§ 47-26-05. Partition fences--Maintained by occupants and owners of land--Partition fence exceeding legal fence.

The occupants and the coterminous owners of lands enclosed with fences are mutually and equally bound to maintain the partition fences between their own and the next adjoining enclosures unless one of such owners chooses to let that owner's land lie open. If one of such occupants or owners shall require a partition fence which shall exceed the requirements for a legal fence, the occupant or owner who shall require such a fence shall bear the entire cost of erecting and maintaining such a fence unless both such occupants or owners shall otherwise agree.

§ 47-26-06. Fences to be kept in repair throughout the year.

All partition fences shall be kept in good repair throughout the year unless the occupants of the lands on both sides thereof mutually agree otherwise.

§ 47-26-07. Fence viewers may order partition fence maintained

If any party neglects to repair or rebuild any partition fence which it is that party's duty to maintain, the aggrieved party may complain to the proper fence viewers, or a majority of them, who, after due notice to each party, shall proceed to examine the fence. If they determine that the fence is insufficient, they shall signify the determination in writing to the



delinquent party, and direct that party to repair or rebuild the fence within such time as they deemed reasonable. If the fence is not repaired or rebuilt accordingly, the complainant may repair or rebuild the same.

§ 47-26-08. Person rebuilding or repairing fence may recover expenses.

A complainant who has rebuilt or repaired a deficient fence as provided in section 47-26-07 may recover, from either the owner or the occupant of the land where the fence was deficient, the value of repairing or rebuilding the same and the fees of the fence viewers after:

1. The rebuilt or repaired fence has been adjudged sufficient by two or more of the township supervisors; and
2. The fence viewers have executed a certificate stating the value of repairing or rebuilding the fence and the amount of their fees.

Before bringing suit for such sum, however, the complainant shall make demand upon the owner or occupant who shall have one month after such demand within which to make such payment. If suit is commenced to recover such amount, the claimant shall recover interest upon the total sum stated in the certificate at the rate of one percent per month.

§ 47-26-09. Fence viewers to settle controversy as to rights in fence and duty to maintain.

When a controversy arises relative to rights in a partition fence or the obligation to maintain the same, either party may apply to a majority of the proper fence viewers who, after notice to each party, may assign in writing to each person that person's share of the fence and direct the time within which each party shall erect or repair that party's share of the fence. If a party refuses or neglects to erect or maintain the part of a fence assigned to that party, the aggrieved party may erect or repair the fence and the value thereof shall be ascertained and recovered in the manner provided in section 47-26-08.

§ 47-26-10. Party erecting all or more than just share of partition fence may recover.

If, in a controversy which has arisen between the occupants of adjoining lands as to their rights in a partition fence, it shall appear to the proper fence viewers that either of the occupants, before the making of a complaint, had voluntarily erected all, or more than that occupant's just share, of the fence or otherwise had become proprietor thereof, the other occupant shall pay for as much of the fence as shall be assigned to that occupant to repair and maintain. The amount that shall be paid to the aggrieved party shall be ascertained and recovered as provided in section 47-26-08.

§ 47-26-11. Application to fence viewers to settle controversy when land is bounded by river or pond.

When lands of different persons which are required to be fenced are bounded or divided by a river, brook, pond, or creek and the occupant of the land on one side of the river, brook, pond, or creek refuses or neglects to join with the occupant of the land on the other side in making a partition fence on one side or the other of the river, brook, pond, or creek or if the occupants of the lands disagree respecting the fence, the parties may apply to two or more of the proper fence viewers to adjust the controversy.

§ 47-26-12. Determination of fence viewers when land bounded by water--Notice--Liability of delinquent party.



The fence viewers to whom an application is made under section 47-26-11 shall proceed to view the premises described in the application forthwith. If such supervisors shall determine that the river, brook, pond, or creek is not, of itself, a sufficient fence and that it is impracticable, without unreasonable expense, to build a fence in the waters upon the true boundary line, they, after giving notice to the parties, shall determine whether the fence shall be erected and maintained on one side, or partially on one side and partially on the other side, of the river, brook, pond, or creek, and shall reduce to writing and sign their determination. If either party refuses to erect or maintain that part of the fence assigned to that party in the determination, the other party may erect and maintain the same and may recover the expense and costs in connection therewith ascertained in the manner provided in section 47-26-08.

§ 47-26-13. Partition fence erected in body of water erected in equal shares.

When it is necessary to erect a partition fence in a body of water, such fence shall be built in equal shares unless it is agreed otherwise by the parties. If either party refuses or neglects to build or maintain that party's share of the fence, the other party may build or maintain the same and recover therefor in the manner provided in section 47-26-08.

§ 47-26-14. Fencing of lands owned by different persons in severalty but occupied in common.

When lands belonging to different persons in severalty have been occupied in common by such persons without a partition fence between their respective lands and one of the occupants desires to occupy that occupant's part in severalty, that occupant may apply to a majority of the proper fence viewers:

1. If the other occupant or occupants shall refuse or neglect, upon demand, to divide with the applicant the line where the partition fence ought to be built, to divide such line and assign to the parties the parts thereof upon which each party shall build the fence; or
2. If the other occupant or occupants, when the line has been divided, shall refuse or neglect, upon demand, to build a sufficient fence upon the line assigned, to order such fence built.

Upon a division or assignment as provided in subsection 1, the fence viewers, in writing over their signatures, may assign a reasonable time for building the fence, having regard to the season of the year. If either party shall not build that party's part of the fence within the time assigned, the other party, after having completed that party's part thereof, may build the part assigned to the other party or parties and recover therefor the ascertained expense thereof, together with the fees of the fence viewers.

§ 47-26-15. When partition fence removable.

When one party ceases to improve that party's land or opens that party's enclosure, that party may take away any part of the partition fence belonging to that party and adjoining the next enclosure unless the owner or occupant of the adjoining enclosure shall pay the sum determined by a majority of the proper fence viewers to be the value of the part of the partition fence belonging to the party who has ceased to improve that party's land or who has opened that party's enclosure. The determination shall be in writing and signed by at least two fence viewers and the payment shall be made within two months after the value of the fence is ascertained.



§ 47-26-16. Owner of unenclosed lands to pay value of fence when land is enclosed.

When unenclosed ground is enclosed, the owner or occupant thereof shall pay one-half of the value of each partition fence standing upon the line between that person's land and the enclosure of any other owner or occupant. If the parties do not agree on the value of the fence, it shall be ascertained by a majority of the proper fence viewers. Such determination shall be in writing and shall be signed by a majority of the fence viewers. If the owner of the unenclosed land refuses or neglects to pay for one-half of the value of the partition fence within sixty days after the value of the fence has been ascertained and demand made, the proprietor of the fence may maintain a civil action for such value and the cost of ascertaining the same.

§ 47-26-17. If owner determines not to fence land, notice to adjacent landowners-- Removal of partition fence.

If a person shall determine not to fence any of that person's lands adjoining a partition fence that has been divided according to the provisions of this chapter and shall give six months' notice of such determination to all the adjoining occupants of the lands, that person shall not be required to maintain any part of the fence during the time that person's lands are open, and that person thereafter may remove that person's portion of the fence if the owner or occupant of the adjoining enclosure will not pay the sum determined by the fence viewers to be the value of the fence in the manner provided in section 47-26-15.

§ 47-26-18. Division of fences valid against parties to agreement and their heirs and assigns.

All divisions of fences or of the lines upon which partition fences are to be erected between unfenced land, which are made by the fence viewers in the manner provided in this chapter and recorded in the office of the recorder, and all such divisions which are made by the owners of adjoining lands in writing, witnessed by two witnesses, and signed and acknowledged by the parties making the division, and recorded in the office of the recorder, shall be valid against and binding upon the parties thereto and upon their heirs and assigns and all the succeeding occupants of the land, and they shall be obliged always thereafter to maintain their respective portions of the fence.

§ 47-26-19. Fence viewers neglecting to perform duty--Penalty

A township supervisor who unreasonably neglects to view a fence after having been requested to do so, or who refuses to perform any other duty required under the provisions of this chapter, shall forfeit the sum of five dollars and shall be liable to the party injured for all damages consequent upon such neglect.

§ 47-26-20. Duty to maintain partition fence when lands enclosed for pasturage or grazing.

The provisions of this chapter shall apply to the respective occupants of lands which have been enclosed with fences for pasturage or grazing purposes.

Closing Fence Gates.

§ 47-27-01. Fence gates to be closed.

A person who opens a gate or bars in a fence enclosing farm premises shall not leave such gate or bars open unless that person is in lawful possession of the premises.

§ 47-27-02. Private road not changed to public road.



Nothing contained in this chapter shall in any way change a private road through enclosed farm premises into a public road, nor take from a person in lawful possession of any premises the right to close any private road through such premises.

§ 47-27-03. Violations—Penalty.

Anyone who shall violate the provisions of this chapter shall be guilty of a class B misdemeanor and, in addition, shall be civilly liable for any damages that may result, directly or indirectly.

Railroad Bridges, Crossings, Intersections, and Fences.

§ 49-11-24. Railroad right of way--Fences

1. Every owner or lessee of land abutting any operating railroad's right of way who has a legal fence, as defined in section 47-26-01, along all sides of the land except the side abutting the right of way may make a written request of the owners or operators of the railroad to construct a fence along the right of way. Upon receipt of the request, the owners or operators shall erect, within a reasonable time, a legal fence along the right of way to confine livestock as required by section 36-11-01. The owners or operators shall maintain the fence so long as the owner or lessee maintains the fence around the other sides of the enclosure.
2. Where the railroad has a fence along its right of way, the owners or operators of the railroad shall maintain the fence without necessity of a request by the owner or lessee so long as the owner or lessee maintains a fence around the other sides of the enclosure.
3. Except for the penalty and liability imposed by sections 49-11-29 and 49-11-30, the failure to comply with the requirements of this section is not, in itself, evidence of negligence and the fact that this section has been violated is not admissible in any other action.

§ 49-11-25. How fence on railroad right of way to be constructed.

A fence required under the provisions of section 49-11-24 shall be constructed as follows:

1. Good posts shall be set in the ground firmly, and such posts shall be not more than twenty feet [6.10 meters] apart.
2. There shall be securely fastened to such posts not less than four strands of barbed wire. The top wire shall be not less than fifty-four inches [137.16 centimeters] above the ground, the bottom wire shall be approximately sixteen inches [40.64 centimeters] above the ground, and the two center wires shall equally divide the distance between the top and bottom wires.
3. Instead of the barbed wire described in subsection 2, woven wire which is not less than forty- eight inches [121.92 centimeters] wide may be used.

§ 49-11-26. Landowner may require railroad to build hog-tight fence.

Every owner or lessee of a tract of land abutting upon any railroad or railway, or through which any railroad or railway has been or may be constructed, who has built a hog-tight fence along all sides of such land, except the side abutting against the railroad right of way, may demand of the owners or operators of such railroad or railway that the right of way adjacent to such tract of land be enclosed with a hog-tight fence. Upon such demand, such owners or operators shall erect the hog-tight fence and maintain the same in good repair so long as



the owner of such tract of land shall continue to maintain a hog-tight fence around the other sides of the enclosure.

§ 49-11-27. Requirements of hog-tight fence built by railroad on right of way.

A fence built pursuant to a demand made under section 49-11-26 shall be constructed as follows:

1. The fence shall be not less than twenty-six inches [66.04 centimeters] high.
2. The woven wire shall have not less than seven cables and the meshes therein shall not exceed six inches [15.24 centimeters] in length.
3. The bottom mesh shall be not more than three inches [7.62 centimeters] wide; the second mesh shall be not more than three and one-half inches [8.89 centimeters] wide; the third mesh shall be not more than four inches [10.16 centimeters] wide; the fourth mesh shall be not more than four and one-half inches [11.43 centimeters] wide; the fifth mesh shall be not more than five inches [12.7 centimeters] wide; and the sixth mesh shall be not more than six inches [15.24 centimeters] wide.
4. The bottom wire of the fence shall be placed not to exceed two inches [5.08 centimeters] from the surface of the ground.
5. Not less than three barbed wires of not less than no. 13 standard gauge with barbs not exceeding six inches [15.24 centimeters] apart shall be placed above the woven wires. The first barbed wire shall be placed four inches [10.16 centimeters] above the woven wire; the second barbed wire shall be placed eight inches [20.32 centimeters] above the first barbed wire; and the third barbed wire shall be placed eight inches [20.32 centimeters] above the second barbed wire.
6. The posts used in such fence shall be of ordinary size for fence purposes, shall be set in the ground to a depth of at least two feet [.61 meters], and shall be not to exceed sixteen feet [4.88 meters] apart.

§ 49-11-28. Swinging gates--When railroad required to maintain.

Upon the written request of the owner or lessee of land abutting the railroad's right of way, the owners or operators of a railroad shall construct and maintain suitable and safe swinging gates on any side of a private crossing enclosed by the railroad under section 49-11-24. The request must be made at the same time a request is made under subsection 1 of section 49-11-24.

§ 49-11-29. Failure to construct fence or swinging gate—Penalty.

Any person owning or operating any line of railroad within this state and refusing or neglecting to comply with sections 49-11-24 through 49-11-28 is guilty of a class A misdemeanor. A prosecution or conviction under sections 49-11-24 through 49-11-28 does not relieve such person from liability for the maiming or killing of livestock on the right of way by reason of that person's negligence.

§ 49-11-30. Failure of railroad to fence--Damage to owner of stock--How collected.

Any corporation operating a railroad and failing to fence the same against livestock running at large where the duty to fence exists is liable to the owner of any stock killed or injured by reason of the want of such fence for the full amount of the damages sustained by the



owner, unless the injury was occasioned by the grossly negligent act of the owner of the stock or the owner's agent. To recover, the owner of the stock must prove only the loss of or injury to the owner's property. Notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, must be served upon an officer of the corporation or upon a station or ticket agent employed by the corporation in the county where the loss or injury occurred. If the corporation fails or neglects to pay the damages within ninety days after the notice is served on it, the owner is entitled to recover from the corporation double the amount of damages actually sustained by the owner, and a reasonable attorney's fee when it is adjudged by a court of competent jurisdiction that the claimant is entitled to the amount claimed.

