



# The National Agricultural Law Center

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## States' Fence Statutes: *Idaho*



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# A National Agricultural Law Center Research Publication

## States' Fence Statutes: Idaho

**Idaho Code Ann. §§ 25-2101 to 25-2409, §§ 35-101 to 35-305, §§ 40-2310 to 40-2317, §§ 62-405 to 62-1207.**

*Statutes and Constitution are current with effective legislation through Chapter 144 of the First Regular Session of the 66th Idaho Legislature, which convened on Monday, January 11, 2021.*

### **§ 25-2101. Hogs need not be fenced against.**

The owner or occupant of premises is not required to fence against hogs.

### **§ 25-2107. Ranging hogs or goats in towns or settlement unlawful.**

Any person who willfully or negligently permits any hog or goat owned by him, or in his care or custody, to be or run at large without a drover within the limits of any city, town, or village, or in the vicinity of any farm, ranch, dwelling house, or cultivated lands of another, or who willfully or negligently fails, neglects or refuses to keep any such hog or goat securely penned within the limits of any city, town, village or in the vicinity of any farm ranch, dwelling house, or cultivated lands of another, shall be guilty of a misdemeanor.

### **§ 25-2108. Stallions not permitted to run at large.**

The owner of any stallion over the age of eighteen (18) months must not allow the same to run at large, unless it is of the market cash value of \$250, or more, and is at such value assessed.

### **§ 25-2109. Stallions running at large--Penalty for violation.**

If any stallion of less than \$250 market cash and assessed value, ridgeling, or any unaltered male mule or jackass over the age of eighteen (18) months be found running at large, the owner must be fined for the first offense twenty dollars (\$20.00), and for each subsequent offense not more than \$100, nor less than forty dollars (\$40.00), to be recovered before a justice of the peace in the name of any person who will prosecute the same, one-half ( 1/2 ) to his own use and the other half to the use of the county school fund.

### **§ 25-2110. Stallion may be taken up.**

Any person may take up and safely keep any such stallion, mule, ridgeling or jackass found running at large or in his inclosures; and, when so found, must give the owner thereof five (5) days' notice that such animal is in his possession; and if, at the expiration of the aforesaid time, the owner neglects to remove such animal and pay all reasonable charges for keeping the same, then the taker-up must notify the sheriff or any constable, whose duty it is to sell such animal at public auction, on the premises where taken up, after first giving five (5) days' notice of such sale; and the proceeds of such sale must be applied, first, to the fees of the officer making such sale, which are the same as on execution; second, to the payment of the charges of the taker-up of such animal; and the remainder, if there be any, must be paid to the owner of such animal.

### **§ 25-2111. Stallions taken up--Notice and sale.**



If the owner or claimant of any stallion, ridgeling, unaltered male mule or jackass be unknown, the taker-up must give ten (10) days' notice, with the description of the animal or animals, its marks or brands, by posting up at least three (3) written or printed notices in at least three (3) conspicuous places in the county, calling upon the owner to claim the property; and if, at the expiration of the ten (10) days, the owner neglects to remove such animal or animals and pay all costs, then the taker-up shall call on the sheriff or any constable of the county to sell such animal or animals; and after deducting the fees of the officer making such sale and the reasonable charges of the taker-up, the balance, if any there be, shall be paid into the county treasury, to be applied to the county school fund.

#### **§ 25-2112. Ranging stock in towns unlawful.**

It shall be unlawful for any person or persons owning livestock, or the agent or employee of such person or persons, to allow any cattle, horses, sheep or hogs to range or graze within the platted limits of any incorporated town or village of more than five hundred (500) inhabitants, between the first day of September and the first day of April, without a herder.

#### **§ 25-2113. Penalty for ranging stock in towns.**

Any person or persons, or the agent or employee of such person or persons, violating the provisions of the last section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00).

#### **§ 25-2114. Ranging stock in towns--Duties of officers.**

It is hereby made the duty of any sheriff, deputy sheriff, or constable, to complain against and prosecute any person or persons violating the above sections.

#### **§ 25-2115. Ranging sheep in unincorporated municipalities unlawful.**

Any person who willfully or negligently permits any sheep owned by him, or in his care or custody, to be or run at large without a drover within the limits of any unincorporated city, town or village, or who willfully or negligently fails, neglects or refuses to keep any such sheep controlled within the limits of any unincorporated city, town, or village, shall be guilty of a misdemeanor.

#### **§ 25-2116. Registered bulls--Failure to provide on range—Penalty.**

During the breeding season every user of the public range shall place upon the range used by him a registered bull of beef breed not less than fifteen (15) months of age nor more than eight (8) years of age for every twenty-five (25) head or fraction thereof of female breeding cattle pastured by him on such range, and no person shall permit any bull to run on the same range at any other time than during three (3) successive breeding seasons: provided, the term "female breeding cattle" shall not apply to female cattle under twelve (12) months of age: provided, that any two (2) or more persons may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range by any such two (2) or more persons does not exceed the number of twenty-five (25) head; provided further, that the owner or owners of female dairy cattle may pasture them on the public range without a bull, as above provided, if such female dairy cattle are taken up each night to be milked and the owner or owners keep for the breeding of every fifty (50) head of such cattle a registered bull of dairy breed, but no person shall allow a bull of dairy breed to run at large.



Any person or persons violating any of the foregoing provisions shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than twenty-five dollars (\$25.00) and not exceeding \$100.

**§ 25-2117. Breeding season defined.**

The term “breeding season,” as used in the preceding section, shall be construed according to the local custom upon that range.

**§ 25-2118. Animals on open range--No duty to keep from highway.**

No person owning, or controlling the possession of, any domestic animal running on open range, shall have the duty to keep such animal off any highway on such range, and shall not be liable for damage to any vehicle or for injury to any person riding therein, caused by a collision between the vehicle and the animal. “Open range” means all uninclosed lands outside of cities, villages and herd districts, upon which cattle by custom, license, lease, or permit, are grazed or permitted to roam.

**§ 25-2119. Owner or possessor of animal not liable for animal on highway.**

No person owning, or controlling the possession of, any domestic animal lawfully on any highway, shall be deemed guilty of negligence by reason thereof.

**§ 25-2201. Special lien on trespassing animals.**

Any person having a field of [or] enclosure with a “lawful fence” as described in chapter 1, title 35, Idaho Code, entirely surrounding the field or enclosure shall have a special lien upon, and may take up any domestic livestock such as cattle, horses, mules, donkeys, sheep, goats or other domestic livestock which break into the enclosure. The lien will include the care and feeding of the livestock and other charges as provided for in chapter 23, title 25, Idaho Code, in relation to estrays. The lien is not dependent upon possession. It may be perfected by following the provisions of this chapter which are required of the lien claimant.

**§ 25-2202. Perfecting lien.**

In order to perfect such a lien the person claiming it shall within twenty-four (24) hours of taking up the livestock, notify the owner, if known, and the county sheriff and local state brand inspector by the best means available. The sheriff and brand inspector shall make information concerning this lien available to the person claiming the lien and they shall attempt to notify the owner of the livestock of the lien and of this chapter by the best available means. The sheriff or state brand inspector shall identify the livestock and provide for the care and feeding of the livestock. They may, if they choose to do so, return such animals to the owner thereof until the viewers have made their decision.

**§ 25-2203. Appointment of viewers.**

Within two (2) days after taking up the livestock the person claiming the lien shall appoint one (1) viewer. The owner of the livestock, if known, or if the owner is unknown or cannot be found, or refuses to make such appointment within three (3) days after the livestock have been taken up, then the sheriff, shall appoint another viewer. These two (2) viewers shall appoint a third viewer. If within two (2) days after their appointment the first two (2) viewers cannot agree upon a third viewer, the state brand inspector shall appoint the third viewer.

**§ 25-2204. Determinations of viewers.**



It shall be the duty of the viewers by majority vote to determine within three (3) days after the appointment of the third viewer whether the person claiming the lien has a “legal fence” within the provisions of chapter 1, title 35, Idaho Code, entirely surrounding the enclosure. Any award of the viewers shall be itemized and made in writing, shall be signed by the viewers agreeing to it, and shall be made within the same three (3) day period within which they are to determine whether or not the enclosure has a “legal fence” surrounding it.

If it is determined that there is a “legal fence” the viewers shall then assess the lienholder's damages and the costs of care and feeding the livestock and the other charges which are to be assessed as within the terms of the estray law, chapter 23, title 25, Idaho Code. Also, the viewers are entitled to receive mileage at the current rates then in effect for state employees.

#### **§ 25-2205. Findings of amount due.**

The viewers may either determine the amount due to the lienholder as above provided for or refuse to make such a finding if the enclosure does not have a “legal fence” surrounding it, or award a nominal amount if it appears that there are minimal damages. If the enclosure does not have a “legal fence” surrounding it, the viewers may make a finding of costs against the person claiming the lien (as above provided), and the livestock shall at once be surrendered to the owner of the livestock, if known, without charge or further delay.

#### **§ 25-2206. Enforcement of finding.**

If the viewers make any finding under this chapter, enforcement of that finding may be either by a sale as provided under the estray law, chapter 23, title 25, Idaho Code, where the finding is against the livestock owner, or by court action.

#### **§ 25-2207. Sale and distribution of proceeds.**

If the owner of the livestock cannot be found or is unknown, or if the owner of the livestock fails or refuses to pay any amount found against him within thirty (30) days after the viewers make such finding, such livestock may be sold in accordance with the estray law, chapter 23, title 25, Idaho Code. The state brand inspector or sheriff may pay the lienholder the amount of damages found for him, if such a finding has been made from the proceeds of any sale under the Idaho estray law, or may pay the costs of any proceedings under this act from the proceeds of such sale. Any balance remaining after the sale shall be paid to the owner of the livestock if known, or held as provided for by the Idaho estray law, chapter 23, title 25, Idaho Code.

#### **§ 25-2208. Livestock not to be moved.**

The livestock shall not be moved out of the county where the enclosure is to be found without the written approval of all three (3) viewers or upon court order.

#### **§ 25-2209. Court proceedings.**

If either the person claiming the lien or the person owning the livestock commence any civil action in court in regard to the seizure of the livestock, the “viewer” proceedings taken under this chapter may be terminated by the court or the court may require an oral or written report from the viewers, if it chooses to do so, and may either accept the report and act upon it or take the matter on to trial de novo as the court determines.

#### **§ 25-2210. Penalties.**



Removal of the livestock from the custody of the sheriff, brand inspector or any person holding the livestock for the sheriff or brand inspector without payment in full of all charges or costs that have been incurred under this chapter shall be a misdemeanor and the livestock may be recovered to be disposed of as provided for by this chapter by the sheriff, brand inspector, or person authorized by either of them to hold the livestock.

**§ 25-2211. Viewers' qualifications.**

The viewers provided for by this chapter shall not be related to the person appointing that viewer by consanguinity [consanguinity] or affinity within the second degree under the civil system of determining relationship.

**§ 25-2301. Stray or estray defined.**

Stray or estray means any livestock whose owner is unknown or cannot be located, or any livestock whose owner is known but who permits livestock to roam at large on public or private lands contrary to law or regulation and without permission.

**§ 25-2302. Duty of sheriff or brand inspector.**

When a sheriff or brand inspector finds stray livestock or stray livestock are reported to him, he shall attempt to locate the owner and to notify the owner where the livestock may be found. If the owner refuses to, or does not take possession of the livestock within five (5) days after being notified of the location of the livestock, or if the owner is unknown or cannot be located, the sheriff or brand inspector shall seize the livestock or have some person hold and care for the livestock on behalf of the sheriff or brand inspector and the sheriff or brand inspector shall proceed to sell the livestock at a local public livestock market as provided for by law to the highest bidder for cash, after giving at least fifteen (15) days public notice of the sale.

**§ 25-2303. Notification.**

If a recognized brand or mark is found on stray livestock, the owner shall be notified by the best method available. If an unrecognized brand or brands or other marks are found on stray livestock, the local brand inspector or the state brand board shall be notified by the best method available.

**§ 25-2304. Notice of sale.**

Notice of the sale shall be given by advertising the stray livestock for sale at least twice in a daily newspaper of general circulation in the area where the livestock was found and is being held. The notice shall describe the livestock by giving number, marks, brands, approximate age, sex and any other distinguishing characteristics, and the notice shall describe when and where the livestock will be sold.

**§ 25-2305. Notice of sale to owner.**

If the owner of the stray livestock is known and can be located, a copy of the notice of sale shall be served upon the owner at least fifteen (15) days before the date of the sale. Service of the notice may be made by certified or registered mail.

**§ 25-2306. Claiming of stray livestock.**

The owner of the stray livestock may take possession of the livestock at any time prior to sale by proving ownership and paying the costs relative to taking up and caring for the



animal or animals and the costs of advertising, inspection, etc., as set forth in section 25-2309, Idaho Code.

**§ 25-2307. Removal without payment prohibited.**

Removal of the estray livestock from the custody of the sheriff, brand inspector or any person holding the estray livestock for the sheriff or brand inspector without payment in full of all charges or costs that have been incurred under this chapter shall be a misdemeanor and the livestock may be recovered to be disposed of as provided for by this chapter by the sheriff, brand inspector or person authorized by either of them to hold the estray livestock.

**§ 25-2308. Sale of unclaimed animals.**

If the owner of stray livestock does not claim the animals before the day of sale or if the owner is unknown or cannot be located, the sheriff or brand inspector shall have the livestock sold pursuant to the notice of sale and shall execute and deliver a brand inspection certificate to the purchaser, stating that the livestock has been sold as estray to the purchaser, which certificate may thereafter be used by the purchaser to show ownership of the livestock sold.

**§ 25-2309. Charges for care, advertising and sale.**

The sheriff, brand inspector or person authorized by either of them to feed and care for stray livestock shall receive all actual expenses incurred; but food and care shall not be charged at a rate to exceed two dollars (\$2.00) per head per day for cattle and horses nor more than seventy-five cents (75¢) per head per day for other animals from the time that the sheriff or brand inspector is notified that the livestock has been taken up as estray. The sheriff or brand inspector or livestock market shall receive like costs for any time during which the livestock are in their possession. The sheriff or brand inspector may also charge and receive mileage and inspection fees for inspecting any estray livestock for the purpose of determining ownership of the livestock at the rates provided for by law or regulation. Also, standard fees shall be payable for sale by the livestock market and for health and brand inspection and assessments or taxes for sale of livestock as provided for by law.

**§ 25-2310. Disposition of worthless estrays.**

If in the judgment of a sheriff or brand inspector estray livestock is of no value or its value would be less than the cost of feed, care and sale of the livestock under this chapter, the sheriff or brand inspector may dispose of the livestock by private sale or by slaughter. If the owner of such livestock is known, he shall be personally notified of the proposed disposition of the livestock at least three (3) days before the livestock is privately sold or slaughtered. The owner may claim such livestock by paying the expenses incurred against it.

**§ 25-2311. Sale by brand inspector.**

If the estray livestock is sold by a brand inspector, he shall immediately advise the state brand inspector of all the particulars of the matter and account for the proceeds and forward the net proceeds of the sale to the state brand inspector to be placed in the unclaimed livestock account, to be handled as provided for by sections 25-1173 and 25-1174, Idaho Code, and the rules and regulations of the state brand board. The previous owner of the animal may make claim for the net proceeds as provided for by sections 25-1173 and 25-1174, Idaho Code.

**§ 25-2312. Sale by sheriff--Subsequent claims.**



If the stray livestock is sold by a sheriff, after deducting the costs provided for by this chapter, particularly by section 25-2309, Idaho Code, the net proceeds of the sale shall be forwarded to the county treasurer and the county treasurer shall hold the proceeds of the sale for six (6) months. At any time within the six (6) month period, any person claiming to be the owner of the animal sold may recover the net funds of the sale from the county treasurer by producing proof that the animal or animals were his property. Said proof shall be made before the sheriff who made the sale or his successor in office and for such purpose the sheriff is empowered to administer oaths to the claimant or his witnesses. Upon making such proof, the sheriff shall give the claimant an order on the county treasurer, which order shall be retained until the six (6) month period has expired. If such claimant is the only person claiming the livestock, the county treasurer shall turn over such moneys to the claimant. If, however, there be more than one claimant for said moneys, then such contesting claimants must bring an action within three (3) months to determine who is the owner of the livestock sold. The action shall be brought in the magistrate or district court having jurisdiction of the matter. The claimant receiving judgment in his favor shall be entitled to said moneys. In case the ownership of the livestock be not proved, or there are no claims as to the ownership of such livestock within the time provided, then the moneys in the hands of the county treasurer shall be forfeited to the school district where said animal or animals were taken up and shall, by the county treasurer, be turned over to such school district for the use of the school district.

#### **§ 25-2401. Commissioners may create herd districts.**

(1) The board of county commissioners of each county in the state shall have power to create, modify or eliminate herd districts within such county as hereinafter provided; and when such district is so created, modified or eliminated, the provisions of this chapter shall apply and be enforceable therein. On and after January 1, 1990, no county shall regulate or otherwise control the running at large of horses, mules, asses, cattle, sheep or goats within the unincorporated areas of the county unless such regulation or control is provided by the creation of a herd district pursuant to the provisions of this chapter, except as provided by subsection (2) of this section. The provisions of this chapter shall not apply to any herd district or herd ordinance in full force and effect prior to January 1, 1990, but shall apply to any modification thereof.

(2) A panel of five (5) members may be created in a county, the members of which shall be appointed as follows: two (2) members by appointment of the board of county commissioners; two (2) members by appointment of a local, county or state livestock association or associations; and the fifth member, by concurrent appointment of the first four (4) appointees. Only if a majority of said panel, after a public hearing held with notice as prescribed by law, concludes that the creation, modification or elimination of a herd district is insufficient to control or otherwise regulate the movement of livestock in an area, the board of county commissioners shall have power to establish such control by ordinance, provided that the cost of construction and maintenance of any fencing or cattle guards required by said ordinance shall be paid by the county current expense fund. Notwithstanding any provision of law to the contrary, a county shall have the authority to levy an annual property tax of not to exceed two hundredths percent (.02%) of market value for assessment purposes on taxable real property within the county, and the revenues derived therefrom shall not be used for any other purpose.

#### **§ 25-2402. Petition and requirements for district.**

(1) A majority of the owners of taxable real property, including corporations, in



any area or district described by metes and bounds and who are also domiciled and resident in the state of Idaho, may petition the board of county commissioners in writing to create, modify or eliminate a herd district in such area; provided, that in the case of a petition for the purpose of eliminating an existing district or any portion thereof, said area must be contiguous to open range. Such petition shall describe the boundaries of the said proposed herd district, and shall designate what animals of the species of horses, mules, asses, cattle, swine, sheep and goats it is desired to prohibit from running at large, also prohibiting said animals from being herded upon the public highways in such district; and shall designate that the herd district shall not apply to nor cover livestock, excepting swine, which shall roam, drift or stray from open range into the district unless the district shall be inclosed by lawful fences and cattle guards as needed in roads penetrating the district so as to prevent livestock, excepting swine, from roaming, drifting or straying from open range into the district; and may designate the period of the year during which it is desired to prohibit such animals from running at large, or being herded on the highways. Such petition may also state the conditions and location(s), if any, for the construction of legal fences and cattle guards which may be required to prohibit the running at large of livestock within the interior of the proposed district; provided, that if such petition does not address the issue of interior fencing and cattle guards, the board of county commissioners shall have the power to establish such internal fencing requirements upon their approval of a proposed district. Provided, any herd district heretofore established shall retain its identity, geographic definition, and remain in full force and effect, until vacated or modified hereafter as provided by section 25-2404, Idaho Code.

(2) Notwithstanding any other provision of law to the contrary, no herd district shall:

(a) Contain any lands owned by the United States of America or the state of Idaho, upon which the grazing of livestock has historically been permitted.

(b) Result in the state, a county, a city or a highway district being held liable for personal injury, wrongful death or property damage resulting from livestock within the public right-of- way.

(c) Prohibit trailing or driving of livestock from one location to another on public roads or recognized livestock trails.

(3) Open range means all uninclosed lands outside cities and villages upon which by custom, license or otherwise, livestock, excepting swine, are grazed or permitted to roam.

(4) The owners of taxable real property within the herd district shall:

(a) Pay the costs, including on private land, of constructing and maintaining legal fences as required on the district's border with open range so as to prevent livestock, excepting swine, from roaming, drifting or straying from open range into the district.

(b) Pay the costs, including on private land, of constructing and maintaining cattle guards as required on the district's border with open range so as to prevent livestock, excepting swine, from roaming, drifting or straying from open range into the district; except that the costs of maintaining a cattle guard located on a



public right-of-way shall thereafter be paid by the state, county, city or highway district responsible for maintaining said right-of-way.

(c) Pay seventy-five percent (75%) of the costs, including on private land, of constructing legal fences required, at the time of the creation or modification of the district only, to control livestock within the interior of the district; provided that

(i) the costs of maintaining such fences shall thereafter be paid by the owner(s) of the land on which the fencing is constructed as prescribed by chapter 1, title 35, Idaho Code, and that

(ii) the costs of constructing and maintaining fences on livestock operations which come into existence after the creation or modification of the district shall be paid by owner(s) of the land on which the fencing is constructed as prescribed by chapter 1, title 35, Idaho Code.

(d) Pay seventy-five percent (75%) of the costs, including on private land, of constructing legal cattle guards required, at the time of the creation or modification of the district only, to control livestock within the interior of the district; provided that

(i) the costs of maintaining a cattle guard located on a public right-of-way shall thereafter be paid by the state, county, city or highway district responsible for maintaining the public right-of-way on which the cattle guard is located, or, in the case of a cattle guard located on private land, by the owner(s) of the land on which the cattle guard is constructed as prescribed by chapter 1, title 35, Idaho Code, and that

(ii) the costs of constructing and maintaining cattle guards on livestock operations which come into existence after the creation or modification of the district shall be paid by the owner(s) of the land on which the cattle guard is constructed as prescribed by chapter 1, title 35, Idaho Code.

(e) In the case of a new herd district created contiguous to an existing herd district, there shall be no obligation to maintain a legal fence or cattle guards on the border between the new district and the existing district, except to the extent that said fence or cattle guards, or any portion thereof, may be required to control movement of livestock on the interior of the district. In the case of a modification of an existing herd district which alters its borders with open range, there shall be no obligation to maintain a legal fence or cattle guards on its previous border with open range, except to the extent that said fence or cattle guards, or any portion thereof, may be required to control movement of livestock on the interior of the district.

(5) In the case of interior fencing and cattle guards as described in subsections (4)(c) and (d), the owner(s) of private land on which such fencing or cattle guards are constructed shall pay twenty-five percent (25%) of the total cost of their construction, provided that the share of that total cost to be paid by each individual landowner shall be as prescribed by chapter 1, title 35, Idaho Code.

(6) Notwithstanding any provision of law to the contrary, a county shall have the authority to and shall levy an annual property tax not to exceed six hundredths



percent (.06%) of market value for assessment purposes on taxable real property within the district for the costs of constructing and maintaining the legal fencing and cattle guards required by the creation or modification of such a herd district; provided that a herd district created on or after January 1, 1990, shall have no force and effect unless and until such a levy is approved, and provided that the revenues derived therefrom may not be used for any other purpose. In the case of a new herd district contiguous to an existing herd district, said levy shall apply, for purposes of constructing legal fences and cattle guards required by the new district, only to owners of taxable real property residing within the new district; but for purposes of maintaining thereafter fences as required on the district's border with open range, shall apply to owners of taxable real property residing within both the new district and the existing district to which it is contiguous.

#### **§ 25-2403. Notice of hearing petition.**

It shall be the duty of the board of county commissioners, after such petition has been filed, to set a date for hearing said petition, notice of which hearing shall be given by posting notices thereof in three (3) conspicuous places in the proposed herd district, and by publication for two (2) weeks previous to said hearing in a newspaper published in the county nearest the proposed herd district.

#### **§ 25-2404. Order creating district.**

At such hearing, if satisfied that a majority of the landowners owning more than fifty percent (50%) of the land in said proposed herd district who are resident in, and qualified electors of, the state of Idaho are in favor of the enforcement of the herd law therein, and that it would be beneficial to such district, the board of commissioners shall make an order creating such herd district, in accordance with the prayer of the petition, or with such modifications as it may choose to make. Such order shall specify a certain time at which it shall take effect, which time shall be at least thirty (30) days after the making of said order; and said order shall continue in force, according to the terms thereof, until the same shall be vacated or modified by the board of commissioners, upon the petition of a majority of the landowners owning more than fifty percent (50%) of the land in said district who are resident in, and qualified electors of, the state of Idaho.

#### **§ 25-2405. Fences on agricultural lands adjacent to public domain--Cattle guards.**

The board of county commissioners may provide as a condition in any order creating a herd district which may hereafter be made that any agricultural lands in the proximity of public domain where cattle, horses or mules are grazed, shall be inclosed by a lawful fence and that any road extending from agricultural area to such public domain shall contain cattle guards or gates at such places and of such nature as the board shall prescribe. The board of county commissioners may make its herd district orders inapplicable to cattle, horses or mules straying from such public domain or along roads leading to such public domain until such agricultural lands are inclosed by lawful fence and such cattle guards or gates are installed.

#### **§ 25-2406. Limitation on powers of commissioners.**

The provisions of sections 25-2401 and 25-2405[, Idaho Code,] shall not be construed to confer upon the board of county commissioners any jurisdiction over animals otherwise prohibited from running at large under existing laws.

#### **§ 25-2407. Violation of commissioners' order--Civil liability.**

Any person who shall, in violation of any order made pursuant to the provisions of section



25-2404, Idaho Code, permit or allow any of the animals designated in such order, owned by him or under his control, to run at large in such herd district, or to be herded on the said highway, shall be deemed guilty of a civil offense, for which, within a period of one (1) year, law enforcement officials shall issue a warning on at least the first and second such offense, and thereafter, for which a civil penalty of not to exceed fifty dollars (\$50.00) may be imposed per animal unit in violation, the aggregate of which shall not exceed five hundred dollars (\$500), plus restitution to the owner for any damage to property. The pendency of any such action shall not prevent nor prejudice the bringing of another action against the same party for a violation of such order committed after the commencement of such pending action. For purposes of this section, an animal unit shall be as defined, at the time of such violation, by federal and state agencies which administer the grazing of livestock on public lands.

#### **§ 25-2408. Civil liability.**

The owner of animals permitted or allowed to run at large, or herded in violation of any order made in accordance with the provisions of section 25-2404, shall be liable to any person who shall suffer damage from the depredations or trespasses of such animals, without regard to the condition of his fence; and the person so damaged shall have a lien upon said animals for the amount of damage done, and the cost of the proceedings to recover the same, and may take the animals into custody until all such damages are paid: provided, that the person so taking said animals into custody shall not have the right to retain the same for more than five (5) days without commencing an action against the owner thereof for such damages. Said damages may be recovered by a civil action before any court of competent jurisdiction, and no such action shall be defeated or affected by reason of any criminal action commenced or prosecuted against the same party under the provisions of the preceding section.

#### **§ 25-2409. Trespassing animals may be taken up.**

Any person may take into custody any of the animals specified in the said order of the board of commissioners that may be about to commit a trespass upon the premises owned, occupied or in charge of such person, and retain the same until all reasonable charges for keeping said animals are paid: provided, that it shall be the duty of the person so taking said animals into custody to notify the owner or person in charge of the same within five (5) days thereafter, and if the owner or person in charge of them shall not be known to the person so taking said animals into custody, and cannot be found after diligent search and inquiry, he may proceed in the manner provided for the taking up and disposal of estrays.

#### **§ 35-101. Lawful fences in general.**

A lawful fence, except as hereinafter provided, must be not less than four and one[-]half (4 1/2) feet high, and the bottom board, rail, pole or wire must not be more than twenty (20") inches above the ground, and the space between the top and bottom board, rail, pole or wire must be well divided.

#### **§ 35-102. Lawful fences described.**

Lawful fences are described as follows:

1. If made of stone, four feet (4') high, two feet (2') base, and one foot (1') thick on top.
2. If it be a worm fence, the rails must be well laid and at least four feet (4') high.



3. If made of posts, with boards, rails or poles, the posts must be well set in the ground and not more than eight feet (8') apart, with not less than three (3) six-inch (6") boards, or rails, or poles not less than two and one-half inches (2 1/2 ") in diameter at the small end; if four (4) poles are used, they must not be less than two inches (2") in diameter at the small end. The top board, rail or pole must not be less than four feet (4') from the ground, the spaces well divided, and the boards, rails or poles securely fastened to the posts; if poles not less than three inches (3") in diameter at the small end are used, the posts may be set twelve feet (12') apart.

4. If wire be used in the construction of fences, the posts must not be more than twenty-four feet (24') apart, set substantially in the ground, and three (3) substantial stays must be placed at equal distances between the posts, and all wires must be securely fastened to each post and stay with not less than three (3) barbed wires, or four (4) coiled spring wires of not less than number nine (9) gauge. The bottom wire shall be not more than twenty-one inches (21") from the ground, and the other wires a proper distance apart. The wires must be well stretched and the fence not less than forty-seven inches (47") high. If all woven wire fencing is used, the top and bottom wire must be not less than number nine (9) gauge, or two (2) number thirteen (13) gauge wires twisted together, with intermediate bars not less than twelve inches (12") apart and of not less than number fourteen (14) gauge wire, and the stay wires not more than twelve inches (12") apart, and the top wire not less than forty-seven inches (47") from the ground. If woven wireless in height is used, it must be brought to the height of forty-seven inches (47") by additional barbed wires, or coiled spring wire of not less than number nine (9) gauge, and not more than twelve inches (12") between the wires: provided, that if barbed wire only is used, and the posts are not more than sixteen feet (16') apart, no stays need be used. Provided further that the minimum forty-seven-inch (47") fence height specified above may be reduced to forty-two inches (42") for right-of-way fences on the state highway system when mutually agreed by the Idaho director of department of transportation and the director of the Idaho fish and game department as necessary to accommodate big game animals at major migration crossings.

5. If made in whole or in part of brush, ditch, pickets, hedge, or any other materials, the fence, to be lawful, must be equal in strength and capacity to turn stock, to the fence above described.

6. All fences in good repair, of suitable material and of every description, and all creeks, brooks, rivers, sloughs, ponds, bluffs, hills or mountains, that present a suitable obstruction to stock are deemed lawful fences.

### **§ 35-103. Erection of partition fences.**

When two or more persons own land adjoining which is inclosed by one (1) fence, and it becomes necessary for the protection of the rights and interests of one (1) party that a partition fence be made between them, the other or others, when notified, must proceed to erect, or cause to be erected, one[-]half ( 1/2 ) of such partition fence; said fence to be erected on, or as near as practicable to, the line of said land. And if, after notice given in writing, either party fails to erect and complete, within six (6) months' time thereafter, one [-] half (1/2) of such fence, the party giving the notice may proceed to erect the entire partition fence and collect by law one [-] half the costs of such fence from the other party, and he has a lien upon the land thus partitioned.



### **§ 35-104. Care of fences by adjoining owners.**

Each adjoining land owner, unless both otherwise agree, or unless other arrangements have heretofore been made, must construct and keep in repair that half of the line fence between their respective tracts of land which is to his left when he is standing on his own land facing the other; unless the owner of one (1) of said tracts choose to allow his land to be uninclosed: provided, that one (1) party may, for his own convenience, strengthen, or render hog-tight, the whole or any part of said fence by stretching one (1) or more additional wires thereon or otherwise; in which event the other shall not be liable for his proportion of the additional cost: provided further, if one (1) of the parties shall render such fence hog-tight and the other shall at any time use his field for the pasture of hogs, sheep or goats, without a herder, such other shall become liable as a joint user or owner, and shall, upon demand of the party building the hog-tight fence, pay his just proportion thereof. In case viewers are appointed, as provided in section 35-106, [Idaho Code,] the report of such viewers must be in conformity with this section.

### **§ 35-105. Use of division fence in making inclosure.**

When one (1) of such adjoining proprietors has allowed his land to lie uninclosed, and afterward incloses it, he owes and is indebted to such adjoining owner one[-]half (  $\frac{1}{2}$  ) the value of any division fence owned by the other, used by him in forming such inclosure; and each must thereafter keep one[-]half (  $\frac{1}{2}$  ) of such fence in repair.

### **§ 35-106. Disagreement between owners—Viewers.**

If adjoining proprietors cannot agree as to the proportion or the particular part of a division fence to be made, maintained or kept in repair by each respectively, either party may apply, on five (5) days' notice, to a magistrate judge, for the appointment of three (3) viewers, who may examine witnesses on oath, and view the premises and must determine:

1. If the fence is owned by one (1) proprietor, how much the other must pay as his proportion of the value.
2. If the fence or the whole thereof is not built, which part thereof must afterward be built and kept in repair by each.

The determination of the viewers must be reduced to writing and signed by them, and filed in the office of the county recorder, and such determination is conclusive upon the parties. If any part of such determination consists in fixing the value of a fence for which one (1) party is to pay the other a proportion also fixed, such proportion must be paid within thirty (30) days after notice of such determination, and if not so paid, may be recovered by action in any court of competent jurisdiction. The viewers are entitled to a fee of three dollars (\$3.00) each, one-half (  $\frac{1}{2}$  ) to be paid by each proprietor.

### **§ 35-107. Prohibition against removal.**

When one (1) party ceases to improve his land, or open his inclosure, he must not take away any part of the partition fence belonging to him and adjoining the next inclosure, if the owner or occupant of such adjoining inclosure will, within two (2) months, after the same is ascertained, pay therefor such sum as is agreed upon by the parties, or, if failing to agree, then such sum as may be adjudged by viewers as provided in the last section; nor must such partition fence be removed when by so doing it will expose to destruction any crops in such inclosures.

### **§ 35-108. Removal of fence built by mistake.**



When any person has built, by mistake and in good faith, a fence on the land of another, such person or his successor in interest may, within one (1) year from the time of discovering such mistake, go upon the land of such other person and remove such fence, doing no unnecessary damage thereby.

**§ 35-109. Restrictions on occupant's right to remove fence.**

The occupant or owner of land whereon a fence has been built by mistake, must not throw down or in any manner disturb such fence during the period which the person who built it is authorized by section 35-108 to remove it, when by so doing he will expose any crop to destruction.

**§ 35-110. Survey of line.**

The person building such fence, or the occupant or owner of the land whereon the same is built, may, upon notice to the other party, whenever doubts arise about the location of such fence, procure the services of a professional land surveyor to establish the boundary line between their respective lands, and the line so established is sufficient notice to the party making the mistake, so as to require him to remove such fence within one (1) year thereafter.

**§ 35-111. Removal of partition fence.**

In all cases where the inclosures of two (2) or more persons are divided by a partition fence of any kind, and either of the parties thinks proper to vacate his part of such inclosure, or to make a lane of passage between such adjoining inclosures, such person is at liberty to remove his share or part of such partition fence, on giving six (6) months' notice in writing of such intention to the party owning or occupying the adjoining inclosure, or to his agent, if such party is not a resident of the county.

**§ 35-112. Establishment of gates.**

In all cases where a partition fence exists between parties, and a gate is established for passage through their lands, any other person may pass through such gate free, doing no unnecessary damage, and if any such person leave any such gate open, or does other damage to the premises, he is liable to the party aggrieved in double damages.

**§ 35-301. Careless exposure of barbed wire unlawful.**

It shall be unlawful for any person, firm or corporation, who, having barbed wire or barbed wire fences, to allow the same to be left down or strewn around on the ground in such a manner that livestock are liable to be injured thereby: provided, however, that no person, firm or corporation shall be liable for barbed wires left down or strewn about where the same are not so exposed that there is danger of injury to animals running at large.

**§ 35-302. Notice to owner.**

It shall be the duty of any person, sheriff, deputy sheriff, constable or policeman having knowledge by written notice or otherwise that any said barbed wire or barbed wire fence is so down or strewn on the ground to give notice either verbally or otherwise to such person, firm or corporation that said barbed wire or barbed wire fence is so down or strewn on the ground.

**§ 35-303. Owner's liability after notice.**

Any person, firm or corporation who, after knowing by his own knowledge or by receiving such notice as provided in section 35-302 shall fail to remove same within ten [10] days



after such notice, shall be subject to the fines contained herein.

**§ 35-304. Procedure in case of unknown owner.**

It shall be the duty of any sheriff, deputy sheriff or constable who by personal knowledge or otherwise knowing of any barbed wire or barbed wire fence being so strewn or down as provided in section 35-301 on any ranch or fence which has been abandoned, and the owner of such fence or ranch is unknown or has left the state so that notice cannot be served on such person, firm or corporation to take or cause to be taken up, such barbed wire or barbed wire fence, and sell the same at public auction to the highest bidder and the proceeds shall go to cover the expense of the removal of said barbed wire or barbed wire fence, and if there be any money left over from such sale, it shall be turned in to the county treasurer of the county wherein such fence or ranch is located.

**§ 35-305. Penalty.**

Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than five dollars (\$5.00) or more than twenty-five dollars (\$25.00), in the discretion of the court.

**§ 40-2310. Cattle guards across roads--Landowner's right to construct—Gates.**

(1) The owner, or lessee of any land crossed by any highway, except highways maintained by the department, who encloses the land with a lawful fence, shall, with the consent of the commissioners, highway district commissioners, or other governing body having jurisdiction over the highway, have the right to enclose the land, by erecting or constructing cattle guards across the highway. Cattle guards shall be constructed in accordance with plans and specifications as the respective commissioners or other governing body having jurisdiction of the highway shall prescribe.

(2) Any owner or lessee of land constructing a cattle guard across a highway under the provisions of subsection (1) above, shall cause a gate not less than twelve (12) feet long to be constructed and maintained in the fence connected to the cattle guard. The gate shall not be more than thirty-three (33) feet from the highway. The surface of the guard adjoining the highway and gate shall be so leveled and maintained that a vehicle can pass from the highway through the gate on either side of the fence, and the gate shall be unlocked at all times.

**§ 40-2313. Trails for livestock--Laying out--Rules concerning use—Penalty.**

(1) County or highway commissioners are authorized to lay out highways or designate existing highways, within their respective jurisdictions, to be used as trails for livestock. These highways may be of a width as determined by the respective commissioners, and they may lay out, alter, establish and secure lands for those highways in the same manner and under the same provisions as the laying out, or establishing, or securing rights-of-way for regular highways. A regular highway not established or designated as a livestock trail under the provisions of this section may be used for trailing livestock in a number and at a time as may be indicated in rules and regulations made for that purpose by the respective commissioners.

(2) Rules and regulations shall be entered on the minutes of the respective commissioners. When highways are provided by counties or districts and are available for use as livestock trails, the respective commissioners may by rule or



regulation prohibit the use of any regular highway, or portion of it, in their respective jurisdictions, for trails over which to drive livestock.

(3) Any person driving livestock over a regular public highway in violation of rules or regulations prohibiting the use of the highway, or portion of it shall, in addition to any other penalties provided by law, be deemed guilty of a misdemeanor.

#### **§ 40-2314. Passageways for stock.**

Passageways for stock passing beneath any highway must be bridged with suitable plank not less than eighteen (18) feet in length, and it shall be lawful for the fences of either side to converge to the bridge over the passageway. The passageway must be kept securely bridged and in good repair by the person who owns the adjoining lands. The bridge shall not be placed more than one (1) foot above the level of the passageway. Approaches to the bridge over the passageway shall be kept in good repair by the owner.

#### **§ 40-2315. Damage to highways or ditches by livestock.**

(1) Any person owning livestock or an employee or agent of the owner of livestock, who shall drive, range or graze the livestock along or across the public highways or ditches, or who shall permit them to range or graze along or across public highways or ditches, and thereby obstruct or partially obstruct the highway, by rolling rocks, brush or other debris on it, or destroy or injure any grades, ditches, bridges or approaches to bridges, shall immediately repair the damage done to the highway or ditch at their own expense. Any person owning livestock who shall refuse or neglect to repair any and all damage done to highways or ditches, within twenty- four (24) hours, shall be deemed guilty of a misdemeanor.

(2) All commissioners, directors of highways, highway district commissioners, and the board and their deputies, are directed to supervise the enforcement of this section.

#### **§ 40-2317. Removal of fences.**

When the alteration of an old or the opening of a new highway makes it necessary to remove fences on land given, purchased or condemned by order of a court for highway purposes, notice to remove the fences shall be given by the director of highways to the owner, his occupant, or agent, or by posting the notice on the fence. If removal is not accomplished within ten (10) days, or commenced and prosecuted as speedily as possible, the director of highways may cause it to be carefully removed at the expense of the owner, and recover from him the cost of removal. The fence material may be sold to satisfy the judgment.

#### **§ 62-406. Erection and maintenance of fences--Liability for damages.**

Every railroad company or corporation operating any steam or electric railroad in this state shall erect and maintain lawful fences, not less than four feet (4') high, on each side of its road, where the same passes through or along inclosed or adjoining cultivated fields or inclosed lands, with proper and necessary openings and gates therein and farm crossings; and also construct and maintain cattle guards suitable and sufficient to prevent horses, cattle, mules or other animals from getting on such railroads, at all highway crossings where such railroad is fenced up to such highway crossing: provided, however, that in lieu of the necessary openings and gates therein at farm crossings, cattle guards suitable and sufficient to prevent horses, cattle, mules or other animals from getting on such railroads may be installed at the expense of the adjoining landowner or landowners.



Until such fences, openings, gates, farm crossings and cattle guards shall be duly and properly made, installed and maintained, such railroad company or corporation shall be liable in a civil action to any and all person or persons who may sustain any loss, injury or damage by the wounding, maiming or killing of any horse, mare, gelding, filly, jack, jenny or mule, or any cow, heifer, bull, ox, steer or calf, or any other domestic animal which shall be done by such railroad company or corporation, or its agents or servants, in the operation and management of engines, cars, or other rolling stock, upon or over such railroad, whether such person or persons operating or in charge of such engine, cars or other rolling stock were guilty of negligence or not; and such railroad company or corporation shall also be liable in a civil action to any and all persons who may sustain any loss, injury or damage by the wounding, maiming or killing of any horse, mare, gelding, filly, jack, jenny or mule, or any cow, heifer, bull, ox, steer or calf, or any other domestic animal which shall be done by such railroad company or corporation, or its agents or servants in the operation or management of engines, cars, or other rolling stock upon or over such railroad, if any such animal or animals escape from adjoining lands and come upon the right of way or railroad tracks of such railroad company or corporation, occasioned by the failure of such railroad company or corporation to construct and maintain such fences, gates, farm crossings or cattle guards, whether the person or persons operating or in charge of such engine, cars or other rolling stock were guilty of negligence or not; but after such fences, gates, farm crossings and cattle guards shall have been duly made, installed and maintained, such railroad company or corporation shall not be liable for any such damages, unless negligently or willfully done, and in all actions for the recovery of damages under this section, proof of the wounding, maiming or killing of such animal or animals by such railroad company or corporation, shall be prima facie evidence of negligence or willfulness on the part of such railroad company or corporation.

If any railroad company or corporation, aforesaid, fail, neglect or refuse for and during a period of three (3) months after the completion of its road through or along the fields or enclosures hereinbefore mentioned, to erect, install and maintain any fences, openings, gates, farm crossings, or cattle guards as herein required, after having received not less than thirty (30) days' notice requiring them to erect, install and maintain such fences, openings, gates, farm crossings or cattle guards, then the owner of such field or enclosure may erect and maintain such fences, openings, gates, farm crossings and cattle guards, and shall thereupon have a right to recover from such railroad or corporation, the full value of the work so done, by a civil action in any court of competent jurisdiction.

#### **§ 62-407. Crossings and cattle guards.**

It shall be the duty of every railroad company whose line runs through or across any desert or other unoccupied territory, to keep and maintain suitable crossings and cattle guards, wherever any public highway or publicly traveled road crosses the same, and to place gates at convenient intervals not exceeding four (4) miles apart, for the crossing of the same wherever there are no roads within such distances.

#### **§ 62-1201. Public utilities commission may require fence along railroads.**

The public utilities commission shall have the jurisdiction and authority to require every railroad company or corporation operating any steam or electric railroad in this state to erect and maintain lawful fences on each or either side of such railroad where such railroad is not now required by law to erect and maintain fences, at such places as the public utilities commission shall determine such fences to be necessary to protect cattle, horses or mules or any other domestic animal being ranged or grazed upon land adjacent to such railroad from



being wounded, maimed or killed by the operation or management of engines, cars or other rolling stock upon or over such railroad, with necessary openings and gates in such fences, and crossings and cattle guards for such openings and gates.

**§ 62-1202. Authority exercised upon verified application.**

Such jurisdiction and authority shall be exercised in each instance only when verified application shall be filed with such commission by not less than fifteen (15) persons owning cattle, horses or mules with the right to range or graze the same upon the lands adjacent to the portion of the railroad sought to be fenced.

**§ 62-1203. Contents of application.**

Such application shall set forth sufficient description of such lands to identify the same, and the name and address of the owner or owners of such lands, and if any such lands are lands of the United States or the state of Idaho shall designate the agency or department of government administering such lands, and shall also set forth the nature of the right of each petitioner to range or graze cattle, horses, mules or other domestic animals thereon. Such application shall also specify the ownership of the railroad sought to be fenced.

**§ 62-1204. Notice of hearing.**

Upon the filing of such application notice thereof and of any hearing by the commission thereon shall be given by mail by the commission to the owner or owners of such lands and if any such land is land of the United States or the state of Idaho, to the agency or department of government administering such land, and to the railroad company or corporation owning or operating the railroad and such owners, agency or department and such railroad shall have the right to protest the granting of such application and be heard thereon.

**§ 62-1205. Determination of necessity--Time allowance for construction.**

Upon such hearing the public utilities commission shall determine whether or not any fence or fences shall be necessary to protect cattle, horses or mules or any other domestic animals being ranged or grazed upon the land designated in such application, from being wounded, maimed or killed by the operation or management of engines, cars or other rolling stock upon such railroad and may then order that fence or fences be constructed and maintained by the railroad company or corporation at such place or places along such railroad adjacent to the lands designated in such petition as the commission in its discretion shall determine and may fix the time within which such fence or fences shall be constructed and may designate the place or places for necessary openings and gates therein and crossings and cattle guards in connection therewith.

**§ 62-1206. Modification or revocation of orders.**

Such commission shall also have the jurisdiction and authority to modify or revoke any such order when upon its determination the necessity for any such fence shall cease to exist.

**§ 62-1207. Penalty for violation of order.**

The failure of any railroad company or corporation to comply with any order of the commission authorized by this act shall not subject such noncomplying railroad company or corporation, or any of its officers, agents or employees, to any of the penalties prescribed in sections 61-706 to 61-709[, Idaho Code], both inclusive, but shall subject such company or corporation to the liability prescribed by section 61-702 of the Idaho Code.

