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States' Fence Statutes: *Montana*



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Mont. Code Ann. §§ 7-14-2129 to 2130, 7-23-4101, 23-2-313, 27-1-724, 60-7-101 to -103, 60-7-201 to -205, 69-14-701 to -722, 70-16-201 to -210, 70-16-305 to -323, 77-1-809, 81-4-101 to -108, 81-4-201 to -220, 81-4-301 to -328, 81-4-401 to -410, 81-4-501 to -516, 81-4-601 to -621, 81-5-101 to -103, 87-4-406 to -419, 87-4-901 to -902, 87-4-914, 87-4-1001 to -1002.

Current through chapters effective April 26, 2021 of the 2021 Session.

§ 7-14-2129. Control of livestock in emergency area.

- (1) A person who owns or has custody of livestock may not permit the livestock to run upon the emergency area unless the livestock is under herd in transit across the emergency area in the custody of an attendant.
- (2) A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector of the department of livestock or a deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector, and the usual inspection fees and mileage shall be paid by the owner of such livestock.
- (3) A person who violates subsection (1) is guilty of a misdemeanor and shall be fined not less than \$10 or more than \$50 for each violation.

§ 7-14-2130. Control of the movement of livestock on or near county roads.

- (1) Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.
- (2) Where a county road connects with a state or federal highway which is fenced on both sides, the board of county commissioners may construct and maintain extensions of the fence across the right-of-way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.
- (3) Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefore no longer exists.

§ 7-23-4101. Control of animals running at large.

The city or town council has power to regulate, restrain, or prohibit the running at large of



horses, cattle, swine, sheep, goats, and dogs or other animals and to authorize the impounding and sale thereof if found at large contrary to ordinances.

§ 23-2-313. Fencing for livestock control and public passage -- negotiation -- costs.

(1) At county road bridges for which public access is authorized pursuant to 23-2-312, each fence attached to or abutting a county road bridge edge, guardrail, or abutment for livestock control or for property management pursuant to 7-14-2134(4) must provide for public passage to surface waters for recreational use pursuant to this section.

(2)

(a) If a dispute arises regarding public passage pursuant to subsection (1), the department, pursuant to the department's policy in 87-1-229 to work with private land managers to resolve and reduce user conflicts, shall negotiate with the affected landowner regarding the characteristics of an access feature of a legal fence for public passage and livestock control or property management.

Examples of an access feature of a legal fence that provides public passage and livestock control or property management may include:

(i) a stile;

(ii) a gate;

(iii) a roller;

(iv) a walkover;

(v) a wooden rail fence that provides for passage; or

(vi) any other method designed for public passage and livestock control or property management.

(b) One access feature, as described in subsection (2)(a), on each side of the stream is sufficient. When practicable, one access feature must be located on the downstream bridge edge, guardrail, or abutment. The department may waive these provisions when one access feature is sufficient.

(c) If the landowner and the department cannot reach agreement within 60 days after the department's initial contact with the landowner for negotiation, the department shall provide the landowner with options for methods to provide public passage while controlling livestock or managing property. If the landowner does not choose one of the method options within 30 days after the options are offered, the department shall choose and then may install one of the method options.

(3) The department, in cooperation with other interested parties, shall provide the materials, installation, and maintenance of any fence modifications necessary to provide public passage as required by this section.

§ 27-1-724. Limits on liability of livestock owner or property owner in accidents involving motor vehicles and livestock.

(1) Except as provided in Title 60, chapter 7, part 2, for the highways referred to in 60-7-201, a person owning, controlling, or in possession of livestock or a



person owning property has no duty to keep livestock from wandering on highways and is not subject to liability for damages to any property or for injury to a person caused by an accident involving a motor vehicle and livestock unless the owner of the livestock or property was grossly negligent or engaged in intentional misconduct.

(2) As used in this section, the following definitions apply:

- (a) "Highway" has the meaning provided in 60-1-103(17);
- (b) "Livestock" has the meaning provided in 15-1-101; and
- (c) "Person" means an individual, partnership, corporation, limited liability company, limited liability partnership, or association.

Part 1. Fencing of Open Range.

§ 60-7-101. Purpose.

It is the purpose of 60-7-101 through 60-7-103 to balance the tradition of the open range and the economic and geographic problems of raising livestock with the need for safer highways and the policy of taking all feasible measures to reduce the high incidence of traffic accidents and fatalities on Montana highways.

§ 60-7-102. Definitions.

As used in 60-2-208 and 60-7-101 through 60-7-103, the following definitions apply:

- (1) A "high-hazard area" is a segment of the primary or secondary highway system passing through open range where livestock move on or across the highway often enough, in enough numbers, and with enough ease of access that the animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by experience to evaluate the relative safety of road conditions, and the terrain around the road.
- (2) "Livestock" means cattle, sheep, swine, horses, mules, and goats.
- (3) A "low-hazard area" is a segment of the primary or secondary highway system passing through open range that is not a high-hazard area.
- (4) "Open range" means those areas of the state where livestock are raised and maintained in sufficient numbers to constitute a significant part of the local or county economy and where livestock graze and move about generally unrestrained by fences.

§ 60-7-103. Department to fence right-of-way through open range -- exception.

(1) Except as provided in subsection (3), the department shall fence the right-of-way of any part of a primary or secondary highway or a county road or bridge that is constructed or reconstructed after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist. When a fence is constructed, adequate stock gates or stock passes, as necessary, must be provided to make land on either side of the highway usable for livestock purposes.

(2) The department shall erect a right-of-way fence in the high-hazard areas where fencing is warranted as promptly as possible, and the cost of the fence construction is an expenditure for the enforcement of federal-aid highway safety programs. Even if a right-of-way fence is determined to be unwarranted pursuant to subsection (3), gates, stock underpasses, water facilities, and cattle guards may be installed where



necessary to enhance safety and to make the land on either side of the highway usable for livestock purposes or where a public right-of-way intersects the state highway.

(3) The department is not required to fence the right-of-way of a secondary highway through open range that passes through a county park, provided that:

(a) the department and the board of county commissioners:

(i) agree that the criteria listed in this subsection (3) have been adequately met; and

(ii) cooperate in developing an accident mitigation plan for the portion of the highway that will remain unfenced. The plan may include the speed limit established as provided in 61-8-309 or 61-8-310, how the criteria listed in this subsection (3) have been met, how the plan will be implemented, and any other issues related to minimizing accidents involving livestock and motor vehicles where a fence has not been erected.

(b) livestock grazing does not occur from Memorial Day to Labor Day;

(c) the speed limit established as provided in 61-8-309 or 61-8-310 is clearly posted and enforceable;

(d) warning signs indicating that livestock may be on the road are posted at regular intervals along the road and maintained during the months that livestock grazing occurs;

(e) livestock management practices, such as locating water and administering dietary supplements away from the road and developing grazing and herding plans that minimize the amount of time that livestock are on or near the road, are employed; and

(f) the unfenced portion of the road does not exceed 20 miles in length.

Part 2. Grazing of Livestock on Highways

§ 60-7-201. Grazing livestock on highway unlawful.

A person who owns or possesses livestock may not permit the livestock to graze, remain upon, or occupy a part of the right-of-way of:

(1) a state highway running through cultivated areas or a part of the fenced right-of-way of a state highway if in either case the highway has been designated by agreement between the transportation commission and the secretary of transportation as a part of the national system of interstate and defense highways; or

(2) a state highway designated by agreement between the transportation commission and the secretary of transportation as a part of the federal-aid primary system, except as provided in 60- 7-202.

§ 60-7-202. Exclusions.

Section 60-7-201 does not apply to the following:

(1) livestock on state highways under the charge of one or more herders;



(2) the parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock;

(3) the parts of a state highway or a part of the federal-aid primary system that the department of transportation designates as being impracticable to exclude livestock. These portions of the highway must be marked by proper signs in accordance with the department's manual and specifications for a uniform system of traffic control devices.

(4) the parts of the secondary highway system that pass-through county parks and that meet the criteria established in 60-7-103(3).

§ 60-7-203. Penalty.

A person who violates 60-7-201 is guilty of a misdemeanor and is subject to a fine of not less than \$5 or more than \$100 for each offense. In a civil action for damages caused by collision between a motor vehicle and a domestic animal or animals on a highway brought by the owner, driver, or occupant of a motor vehicle or by their personal representatives or assigns or by the owner of livestock, there is no presumption or inference that the collision was due to negligence on the part of the owner or the person in possession of the livestock or the driver or owner of the vehicle.

§ 60-7-204. Flag escorts -- prohibitions against nighttime herding on public highways.

A person who owns, controls, or possesses livestock may not herd or drive more than 10 livestock on an interstate or state primary highway unless the livestock is preceded and followed by flag person escorts for the purpose of warning other highway users. Livestock may not be herded or driven on an interstate or state primary highway during nighttime, as that term is defined in 1-1-301, except in a case of emergency. In the case of an emergency during the nighttime, the flag person escorts shall use adequate warning lights, such as but not limited to portable lamps, lanterns, or rotating beacons. This section does not apply during daytime at posted livestock crossings on highways.

§ 60-7-205. Violations.

A person who violates 60-7-204 is guilty of a misdemeanor.

§ 69-14-701. Maintenance of fences -- exception -- penalty.

(1) Railroad corporations shall build and maintain a legal fence on both sides of their track and property and maintain cattle guards at all crossings over which cattle or other domestic animals cannot pass, except that a fence is not required in places where water ditches, embankments, terrain, or other sufficient protection prevents domestic animals from straying onto the right-of-way. An affected landowner or lessee may construct, maintain, or repair a fence subject to approval and reimbursement by the railroad corporation.

(2) If a railroad corporation does not build and maintain the fence and guards and its engines or cars, because of the lack of a fence or maintenance of a fence, kill or maim cattle or other domestic animals upon its line of road, it must pay to the owner of the cattle or other domestic animals, in all cases, a fair market price for the animal, unless it occurred through the neglect or fault of the owner of the animal killed or maimed; however, nothing in this section may be construed to prevent a person from



recovering damages from a railroad corporation for its negligent killing or injury to cattle or other domestic animals at spurs, sidings, Ys, crossings, and turntables.

(3) An affected landowner or lessee may file a complaint with the public service commission when a fence is in disrepair or in need of maintenance. The public service commission shall certify that the fence is in need of repair and notify the railroad corporation responsible for the fence. The public service commission shall forward a copy of the complaint, a certification that the fence is in need of repair, and a verification that the railroad corporation was notified to the county attorney of the county within which the site of the fence in disrepair is located. Upon notice, the railroad corporation responsible for the fence shall repair the fence within 30 days, weather permitting. A railroad corporation failing to repair the fence within 30 days of notification shall pay a fine of \$100 plus \$50 a day each day after the 30th day of notification, for failure to repair the fence. The fine must be recovered in a civil action and deposited in the county general fund. It is the duty of the county attorney of the county within which the site of the fence in disrepair is located to prosecute the action.

§ 69-14-702. Crossings to be maintained.

(1) Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state which may fence its right-of-way shall make crossings through its fence and over its roadbed along its right-of-way every 4 miles thereof or as near thereat as may be practicable.

(2) Such openings shall not be less than 60 feet in width.

§ 69-14-703. Placement of cattle guards.

The railroad company or lessee, person, company, or corporation operating any railroad shall place cattle guards on either side of the openings required by 69-14-702, sufficient to prevent any cattle from entering upon the right-of-way enclosed.

§ 69-14-704. Openings under trestles.

The railroad company, lessee, person, or company operating any railroad, in addition to the openings required by 69-14-702, shall leave unfenced any places where the railroad runs over trestles that are sufficiently high for cattle to go underneath the same.

§ 69-14-705. Application of provisions dealing with crossings.

The provisions of 69-14-702 through 69-14-706 shall only apply to grazing country.

§ 69-14-706. Violation of crossing provisions.

Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state violating the provisions of 69-14-702 through 69-14-705 shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined in a sum not less than \$100 and not more than \$500.

§ 69-14-707. Liability for negligent destruction of domestic animals.

Every railroad corporation or company operating any railroad or branch thereof within the limits of this state which shall negligently injure or kill any horse, mare, gelding, filly, jack, jenny, mule, cow, heifer, bull, ox, steer, calf, or other domestic animal by running any



engine or car over or against any such animal shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof. The killing or injury shall be prima facie evidence of negligence on the part of such corporation or company.

§ 69-14-708. Records of accidents involving livestock.

(1) A railroad company must report to the department of livestock any livestock killed or injured by a train or railroad equipment on the railroad right-of-way within 30 days after the killing or injuring of any livestock.

(2) A railroad company failing to provide the notice provided for in subsection (1) is liable to the owner of the animal killed or injured, whether negligently done or not. The court or jury before whom an action is tried for the recovery of damages may in its discretion render a verdict and judgment for the amount of the value of the livestock killed or the amount of damages sustained by reason of injury.

§ 69-14-709. Allowance of attorney fees.

(1) Except as provided in subsection (2), whenever any of the livestock referred to in this part are injured or killed and the owner brings an action for the recovery of the loss or damage sustained, the court in which the action is brought shall impose, as a part of the costs, a reasonable sum to be fixed by the court as a fee to the attorney of the prevailing or successful party for conducting the action. The fee must be collected in the same manner as other costs.

(2) A fee may not be allowed by the court or collected from the defendant when it appears from the pleadings or proof in an action that the defendant prior to the institution of the action offered or agreed to pay to the plaintiff, in settlement of the loss or damages claimed, a sum equal to or in excess of the amount recovered as damages in the action or unless the plaintiff, at least 40 days prior to the commencement of the action, has made a demand, in writing, upon the defendant, the defendant's agent, or the defendant's attorney for the money claimed as indemnity for the killing of the livestock.

§ 69-14-710. Tender or deposit of value of animal.

If a corporation, association, company, or person owning, controlling, or operating a railroad or branch of a railroad kills or injures an animal as described in 69-14-707 and tenders to the owner or to the owner's agent the amount that the corporation, association, company, or person considers to be the value of the animal or the damage to the animal, or if the railroad, corporation, association, company, or person deposits with the department of livestock that amount for the owner of the animal and the owner or the owner's agent refuses to accept the amount in settlement, then the owner shall pay all costs incurred in any action instituted, after the tender or deposit, to recover the value or damage unless the owner recovers in the action more than the amount tendered.

§ 69-14-711. Payment of damages to department of livestock.

(1) If livestock are killed by railroad corporations in violation of 69-14-701 and if the owner of the livestock does not claim or assert a claim against the railroad or railroad corporation for the value of the livestock killed within 6 months from the date the animal is killed, the department of livestock shall demand from the railroad or railroad corporation payment in damages for livestock. The department shall institute and prosecute, in the name of the state, actions against the railroad or railroad



companies in a court of competent jurisdiction to recover damages if the railroad fails, neglects, or refuses to make payment of the amount of the claim filed by the department.

(2) The money recovered must be paid to the department and must be held by the department for a period of 2 years after the date of its receipt. If the lawful owner of the animal killed does not present and prove the owner's claim to the net proceeds received from the animal killed within the 2 years, the money must be paid to the state treasurer and credited to the stock estray fund. If the owner of the animal killed proves the owner's claim within the 2 years, the department may pay the claimant the amount of money to which the claimant is entitled for the animal killed by the railroad or railroad company, the damages for which have been collected by the department.

(3) In actions prosecuted under this section for the recovery of the value of livestock killed, the prevailing or successful party shall recover all costs. If the owner of an animal killed has not presented a claim against the railroad or railroad company that caused it to be killed, a settlement made by the department constitutes a bar against an action by the owner of the animal.

§ 69-14-713. Violation of provisions dealing with injury to livestock.

(1) Except as otherwise provided in this chapter, a person who violates any of the provisions of 69-14-701 through 69-14-711 relating to livestock killed or injured by railroads is guilty of a misdemeanor.

(2) A person violating any of the provisions of 69-14-711 shall upon conviction be punished by a fine of not less than \$10 or more than \$300, by imprisonment in the county jail for a period of not less than 10 days or more than 60 days, or both.

§ 69-14-714. Payment of claim -- penalty.

Upon determining liability for the amount of the value of an animal killed or maimed under the circumstances described in 69-14-701, the railroad corporation shall pay the plaintiff within 30 days. Upon failure to pay the plaintiff within 30 days, interest at a rate of 10% a year accrues on the amount due until the claim is paid.

§ 69-14-721. Control of fire hazard along right-of-way.

A railroad corporation or railroad company operating a railroad within this state shall keep its railroad track and either side of the track for a reasonable distance within its right-of-way, free from dead grass, weeds, or any dangerous or combustible material. A railroad corporation or company failing to keep its railroad track and each side of the track free of combustible material as specified in this section is liable for any damages on account of fire emanating from trains, track maintenance, or other railroad operations. A railroad corporation or company may not be required to keep free of combustible material, as specified in this section, land that is not a part of its right-of-way.

§ 69-14-722. Maintenance of fireguards.

(1) Every railroad corporation operating its lines of road or any part thereof within this state shall, between April 15 and July 1 in each year, plow in a good and workmanlike manner, covering the sod well, upon each side of its line of road, wherever it passes through a range or grazing country, a continuous strip of not less than 6 feet in width on each side of its track, as a fireguard. Said strip shall, as near as



practicable, run parallel with the line or lines of said railroad, and in addition to such plowing, said railroad company shall cause to be burned, between July 15 and September 15 of each year, all the grass and vegetation between the said plowed strips and a line of 50 feet inside said plowed strips. Said plowing shall be not less than 300 feet from the center of the railroad track on each side of same except in cases of cultivated fields, and then such plowing and burning shall be done closer to such railroad but not less than 70 feet from the center of the track.

(2) Such fireguard, so plowed and burned, need not be constructed within the limits of any town, village, or city; in private fields under cultivation; along the line of such railroad whenever the same runs through the mountains; or elsewhere where such plowing or burning would be impracticable. Said fireguard or portion thereof need not be plowed or burned on or through any lands which may be released from the operation of this section by the board of county commissioners of the county wherein such land is situated, by their written certificate of release filed in the office of the county clerk of the county.

(3) If any railroad company fails to comply with any of the provisions of this section, the board of county commissioners of the county wherein such violation occurs shall cause the neglected plowing, burning, or both to be done and may, in a suit to be brought in their name as said board in the district court having jurisdiction, recover double the amount of the cost of such plowing, burning, or both, with reasonable attorney fees to be fixed by the court. Such railroad company shall be liable further for all damages caused by its failure to comply with this section.

Part 2. Adjoining Landowners and Boundaries – Fences.

§ 70-16-201. Owner of land bounded by water.

Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

§ 70-16-202. Owner of land bounded by road.

An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.

§ 70-16-203. Adjoining owner's right to lateral and subjacent support -- excavations.

Each coterminous owner is entitled to the lateral and subjacent support that the owner's land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the adjoining land for the purposes of construction, on using ordinary care and skill and taking reasonable precautions to sustain the land of the other and giving previous reasonable notice to the other of the intention to make the excavations.

§ 70-16-204. Trees on or near boundary.

(1) Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

(2) Trees whose trunks stand wholly upon the land of one owner belong exclusively to that landowner, although their roots grow into the land of another.



§ 70-16-205. Monuments and fences -- mutual obligation of adjoining owners.

(1) Coterminous owners are mutually bound equally to maintain:

(a) the boundaries and monuments between them;

(b) the fences between them, unless one of them chooses to let that owner's land lie without fencing, in which case if that owner afterwards encloses it, that owner shall refund to the other owner a just proportion of the value, at that time, of any division fence made by the other owner. However, using land for grazing or pasturage of any kind must be considered a usage of the land, and the land may not be considered as lying idle under the provisions of this section.

(2) Except as provided by prescription, custom, or agreement between coterminous owners, each coterminous owner shall maintain all fencing to the right of the midpoint of the common boundary line as viewed from the owner's land. If the land of one owner is entirely surrounded by the land of another, each owner shall maintain all fencing to the right, as viewed from the owner's land, of the northeastern corner of the surrounded land or, if there is more than one northeastern corner, then from the northernmost northeastern corner to a point midway around the surrounded land. If there is a substantial difference in terrain or topographical features of the land between the coterminous owners, responsibility for maintaining the fence must be determined by mutual agreement with consideration given to factors such as cost and time.

§ 70-16-206. Partition fences required -- adjoining lands previously enclosed.

The occupants of adjoining lands enclosed with fences must build and maintain partition fences between their own and the next adjoining enclosure in equal shares so long as both continue to enclose the same, and such partition fence must be kept in good repair throughout the year unless the occupants otherwise mutually agree.

§ 70-16-207. Occupant of land adjoining enclosure of another -- when required to share expense of partition fence.

If any occupant of land adjoining the enclosure of another encloses the land, upon the enclosure of the other person, the occupant shall within 3 months build the occupant's proportion of the partition fence or refund to the owner of the fence an equal proportion of the value, at that time, of any partition fence of the adjoining occupant.

§ 70-16-208. Partition fence when common occupancy ceases.

Whenever any lands belonging to different persons in severalty have been enclosed and occupied in common or without a partition fence between them and one of the occupants desires to occupy that occupant's part in severalty, the other occupant shall, within 6 months after being notified in writing, build and maintain the other occupant's proportion of the partition fence as may be necessary for that purpose, and in case of neglect or refusal so to do, the person giving the notice may build the fence at the expense of the person neglecting or refusing. The amount expended may be recovered in an action, together with all damages that person may sustain on account of the neglect or refusal.

§ 70-16-209. Repair or rebuilding of partition fences.

If a person neglects or refuses to repair or rebuild any partition fence that by law the person ought to build or maintain, the occupant of the adjoining land may, after giving 60



days' notice that a new fence should be erected or 5 days' notice in writing that the repairing of the fence is necessary, build or repair the fence at the expense of the party neglecting or refusing. The amount expended may be recovered from the neglecting or refusing party after receipt of the notice, and the neglecting or refusing party is liable to the party injured for all damages sustained by the neglect or refusal.

§ 70-16-210. Removal of partition fence.

If the occupants of adjoining lands build their respective portions of a partition fence and either of them at any time desires to let the land occupied by that person lie open, that person may, after having given to the occupants of the adjoining land at least 6 months' notice of the intention so to do, remove that person's proportion of the partition fence unless the adjoining occupant pays or tenders to that person the value of the fence. If the fence is removed without notice or after payment or tender of the value, the person removing the fence is liable to the person injured for all damages the injured person may sustain.

Part 3. Organization, Administration, and Operation.

§ 76-16-305. Acquisition and disposal of property.

A state district may:

- (1) purchase or market livestock and livestock products and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.
- (2) acquire forage-producing lands, including agricultural lands when necessary to comply with the purposes and directives of this chapter, by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, or the county or counties in which the lands are located or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale, or otherwise;
- (3) acquire or construct fences, reservoirs, or other facilities for the care of livestock and lease or purchase lands for such purposes.

§ 76-16-306. Management of grazing lands.

A state district may:

- (1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.
- (2) undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandoned farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices;



(3) employ and discharge employees, riders, and other persons necessary to properly manage the state district.

§ 76-16-307. Leasing of state lands.

State land that is situated within the boundaries of a state district created under this chapter may be leased by one or more members of a state district if the lease is in accordance with existing laws and regulations of the department. The board of directors of a state district may assist members of a state district in acquiring and administering a state grazing lease. The commission shall require that all state districts comply with this section.

§ 76-16-308. Regulation of stock grazing in state district.

A state district may:

- (1) specify the breed, quality, and number of male breeding animals that each member must furnish when stock is grazing in common in the state district;
- (2) regulate the driving of stock over, across, into, or through the range and collect fees for driving stock.

§ 76-16-309. Knowledge of state district boundaries responsibility of livestock owner.

A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the state district.

§ 76-16-310. Permit required to run livestock in state district.

- (1) An owner or person in control of livestock may not permit livestock to run at large or under herd within the exterior boundaries of a state district unless the owner or person in control of the livestock first obtains a grazing permit from the state district.
- (2) The owner or person in control of livestock running at large or under herd within a state district without a permit from the state district or in excess of the permit is liable for all damages sustained by any member, permittee, or state district that are a result of the person's unpermitted use of the state district. If livestock wrongfully enter a state district, the owner or person in control of the trespassing livestock, who willfully or negligently permits livestock to run at large within the state district without first obtaining a permit from the state district, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine in an amount not less than \$10 or more than \$500. In addition to a fine, the owner or person is liable for all damages that are caused by the trespassing livestock.
- (3) This provision does not require any person to obtain a grazing permit to graze livestock on land that the person owns or controls within a state district if the stock being grazed are restrained from running at large within the state district and from grazing on any other lands within the state district.

§ 76-16-311. Control of trespassing livestock.

- (1) The state district or its duly authorized agent controlling the land upon which wrongful entry is made by trespassing livestock may take the livestock into its possession and shall reasonably care for the livestock while in its possession and may retain possession of the livestock and have a lien and claim on the livestock as security for payment



of damages and reasonable charges for the care of livestock while in its possession.

(2) The state district taking possession of trespassing livestock shall, within 72 hours after taking possession, notify the owner, owners, or person in charge of the livestock by a notice in writing describing the livestock by number of animals and brands on the livestock, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the livestock thereafter. Charges may not exceed \$2 per animal unit per day. The notice must generally describe the location where the livestock is held and require the owner or owners, within 10 days after receiving the notice, to take the livestock away after making full payment of all damages and costs.

(3) In case the parties do not agree as to the amount of damages, the state district taking possession of the livestock may at the expense of the owner retain a sufficient number of livestock to cover the amount of damages claimed by the state district. However, the owner may, upon furnishing a sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by the state district in a civil action to foreclose its lien, have returned to the owner all livestock held. The state district is liable to the owner for any loss or injury to the livestock accruing through the state district's lack of reasonable care.

(4) If the state district taking possession of the livestock fails to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the state district shall bear the expense of keeping and feeding the livestock while in its possession. Notice may be given by personal service on the owner, owners, or person in charge of the livestock by sending notice by prepaid registered or certified mail, addressed to that person's last-known place of residence. Service by registered or certified mail is considered complete upon the deposit of the notice in the post office.

§ 76-16-312. Impoundment of trespassing livestock.

The state district or the party taking up such trespassing livestock may cause same to be impounded at any suitable place within the state district or within 5 miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

§ 76-16-313. Release of livestock.

Upon demand, the state district or its authorized agent controlling the land or party in charge of such livestock shall release and deliver possession of such livestock to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or persons in control of such livestock, as hereinbefore provided.

§ 76-16-314. Recovery of excess charge for damages.

If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and reasonable costs, provided suit to recover same is filed in the district court within 60 days after payment.

§ 76-16-315. Procedure upon inability to locate person responsible for trespassing livestock.



If a state district takes possession of livestock after due diligence to discover the owner or possessor of the livestock and the owner or possessor cannot be found or the ownership of the livestock discovered or if a party takes possession of livestock and the owner or claimant refuses to pay the amount of damages or charges or to furnish bonds, as provided in 76-16-311, the state district or person shall, within 10 days from the time that the livestock was taken into possession, deliver to the sheriff of the county in which the livestock was taken into possession or to the nearest state livestock inspector a statement containing the information required to be given in the notice set out in 76-16-311.

§ 76-16-316. Sale of trespassing livestock.

- (1) Upon receipt of the statement referred to in 76-16-315, the sheriff shall proceed to advertise and sell at public auction the livestock taken up.
- (2) The livestock must be sold on 5 days' notice posted at the courthouse of each county in which any portion of the state district lies and in a newspaper of general circulation in the county. The sheriff may require from the state district a sufficient bond, conditioned upon the following:
 - (a) that the state district has used reasonable diligence to discover the owner of the stock and to notify the owner in the premises;
 - (b) that all requirements of law on the part of the state district to be performed in the premises have been performed; and
 - (c) that the sheriff is indemnified against all liability for the sale of the livestock except as to the sheriff's own failure to perform the things required by law.

§ 76-16-317. Disposition of sale proceeds.

- (1) The proceeds of the sale must be applied by the sheriff, after first deducting the sheriff's costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up the livestock. The remainder of the proceeds, if any, may be paid over to the owner of the livestock, if known. If the owner is not known, then the remainder must be deposited with the county treasurer, who shall keep the remainder of the proceeds in a public fund to be designated state district fund (giving the name of the state district). A separate fund, styled as above, must be kept by the county treasurer for each state district within that county. The county treasurer shall record the number, type, and brands, if any, of animals sold, the amount received for the animals, and the amount of deductions. The record must be open to public inspection.
- (2) A person claiming ownership of the livestock and submitting proof of ownership to the board of county commissioners within 1 year from date of sale is entitled to receive any excess received from the sale of the livestock, provided the claim is to the satisfaction of the board.
- (3) Any money received from the sale of the livestock that is not claimed within 1 year after the sale must be transferred to the general fund of the county.

§ 76-16-318. Unlawful recovery of trespassing livestock.

Any person taking or rescuing from the possession of a state district or an agent of a state district any animal taken up and impounded pursuant to 76-16-310 through 76-16-



317 is guilty of a misdemeanor and upon conviction shall be punishable by a fine not exceeding \$200.

§ 76-16-319. No liability for official acts.

An officer, the commission, an employee of an officer or the commission, or an employee of any county or of any state district is not liable for any act performed in good faith in discharging official duties under this chapter. All acts are presumed to have been in good faith and in conformity with this chapter.

§ 76-16-320. Maintenance of fences.

(1) The cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of the state district must be borne by the member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of the state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by the cost of construction and maintenance of fence, the state district's proportionate share of the costs and maintenance must be financed only by assessments levied by the state district against the permittee members of the state district and upon consent by 55% of the permittee members.

§ 76-16-321. Construction of trespass and fence provisions.

(1) Sections 76-16-310 through 76-16-320 shall not be interpreted to repeal or abolish any other legal remedies which a member, a permittee, or a state district may now have against trespassing livestock or the owner or persons in control thereof. The remedies provided by 76-16-310 through 76-16-320 are additional and supplemental to the remedies provided by any other laws of the state of Montana.

(2) Nothing contained in 76-16-310 through 76-16-320 shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

§ 76-16-322. Fence-out requirement.

Farming lands lying within the external boundaries of a state district must be protected by the owner or lessee to the extent of a legal fence as described in 81-4-101. The state district or its members are not liable for damages unless the farming lands are protected by a sufficient fence as described in this section.

§ 76-16-323. State district finances.

A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on a grazing preference basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;



(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the commission. This subsection does not confer power upon a state district to mortgage the property of the individual members of the state district.

Part 1. Fences.

§ 81-4-101. Legal fences defined.

Except as provided in subsections (2) and (7), a legal fence must be at least 42 inches but not more than 48 inches in height. The following are legal fences in Montana:

(1) fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which is not less than 15 inches or more than 18 inches from the ground, securely fastened as nearly equidistant as possible to substantial posts firmly set in the ground or to well-supported leaning posts not exceeding 20 feet apart or 33 feet apart where two or more stays or pickets are used equidistant between posts;

(2)

(a) corral fences that are used exclusively for the purposes of enclosing stacks situated outside of any lawful enclosure and that:

(i) are not less than 16 feet from the enclosed stack;

(ii) are substantially built with posts not more than 8 feet distant from each other; and

(iii) consist of at least five strands of well-stretched barbed wire not less than 5 or more than 6 feet high;

(b) a fence as effectual for the purpose of a corral fence as the type described in subsection (2)(a);

(3) fences constructed of any standard woven wire, securely fastened to substantial posts not more than 30 feet apart, with two equidistant barbed wires placed above the woven wire;

(4) other fences made of barbed wire, which must be as strong and as well calculated to protect enclosures as those in subsections (1) through (3);

(5) fences consisting of four boards, rails, or poles with standing or leaning posts not over 17 feet and 6 inches apart and, if leaning posts are used, a pole or wire fastened securely on the inside of the leg or support of each leaning post;

(6) electric fences that:

(a) consist of at least three tightly stretched strands of at least 12.5 gauge, high-tensile steel or its equivalent;

(b) are strung by sufficient posts set firmly in the ground not more than an average distance of 50 feet apart along the full span;

(c) are charged with a standard charger with an output of at least 0.5 joule and with sufficient energy for the entirety of the fence; and



- (d) are regularly maintained by the fence owner to ensure the fence is operable;
- (7) rivers, hedges, mountain ridges and bluffs, or other barriers over or through which it is impossible for stock to pass; and
- (8) any legal fence listed in subsections (1) through (5) or (7) that also includes at least one strand of electrified wire.

§ 81-4-102. Construction of auto pass not to deprive legal fence of character.

There may be maintained in a legal fence a pass so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across said opening without depriving such fence of the character of a legal fence under the laws of this state.

§ 81-4-103. Civil liability.

Any person constructing or maintaining any fence of any kind not described in 81-4-101 is liable in a civil action for all damages caused by reason of injury to stock resulting from such defective fence.

§ 81-4-104. Barbed wire fences to be kept in repair.

The owners of barbed wire fences shall keep the same in repair, and a person who receives notice in writing that the person's barbed wire fence or any part of the fence is down or in such condition as to be likely to injure any livestock and who fails or refuses to repair the fence is liable to pay damages in an amount equal to the value of any cattle, horses, mules, or other domestic animals that may be injured by coming into contact with the fence.

§ 81-4-105. Fallen wire fencing declared nuisance -- abatement.

All barbed wire and other wire fencing which has sagged or fallen to the ground so as to be ineffectual for the purpose of turning stock and a menace to any person riding or walking over the same is declared to be a public nuisance and subject to abatement in the manner hereinafter provided.

§ 81-4-106. Notice to owner to repair fence -- duty of county commissioners.

Upon ascertaining the existence in the county of any nuisance specified in 81-4-105, the board of county commissioners shall notify by registered or certified mail the owner of such wire, if such owner be known to said board and within the state, to remove same. If such owner shall fail to remove said wire or to rebuild said fence within 60 days following receipt of said notice, the board of county commissioners shall have authority to remove and dispose of said wire in the manner provided by 81-4-107.

§ 81-4-107. Procedure when owner unknown or not resident of state -- sale of wire removed.

If there is no known owner of such wire within the state or if such owner is unknown to the board of county commissioners, the board may collect and remove the wire at the expense of the county. All such wire or other fencing as in the opinion of the board of county commissioners can be sold at a price sufficient to cover at least the expense of removal and sale shall be sold by the county commissioners in the manner provided by law for the sale of county property, except that notice of such sale need be published only once and need be given only 10 days before such sale.



§ 81-4-108. Disposal of proceeds of sale of wire after payment of expense.

The proceeds of a sale under 81-4-107 must be used to defray the cost of collecting and selling the wire, and the balance, if any, must be placed by the county treasurer in a special fund and must be held subject to claim by any person establishing to the satisfaction of the board of county commissioners that the person was the lawful owner of the wire and entitled to the remaining proceeds of the sale. If a person does not claim the money within 1 year of the date of sale, the money must be deposited in the general fund of the county.

Part 2. Animals Unlawfully Running at Large.

§ 81-4-201. Animals running at large.

It is unlawful for an owner or person in control of swine, sheep, llamas, alpacas, bison, ostriches, rheas, emus, or goats to willfully permit the animals to run at large.

§81-4-202. Penalties.

(1) Any person violating 81-4-201 is guilty of a misdemeanor and upon conviction shall be fined not more than \$500 and is liable for damages to any party injured by the violation, in any court having competent jurisdiction.

(2) All fines collected under the provisions of this section, except those collected in a justice's court, must be paid into the county treasury for the use and benefit of the public schools.

§ 81-4-203. Open range defined.

In 81-4-204, 81-4-207, and 81-4-208, the term "open range" means all lands in the state of Montana not enclosed by a fence of not less than two wires in good repair. The term "open range" includes all highways outside of private enclosures and used by the public whether or not the same have been formally dedicated to the public.

§ 81-4-204. Male equine animals not to run on open range.

It shall be unlawful for any owner, person, firm, corporation, or association having the management or control of any stallion, ridgeling, unaltered male mule, or jackass over the age of 1 year to permit or suffer such animal to run at large on the open range.

§ 81-4-205. Male equine animals running at large as nuisance -- abatement.

Any such animal so running at large is a public nuisance, which, in addition to the means and proceedings prescribed by this part for its abatement and removal, may be abated and removed by the means and proceedings provided by law for the abatement or removal of public nuisances.

§ 81-4-206. Killing animal to prevent injury not prohibited.

Sections 81-4-203 through 81-4-209 are not intended and shall not be interpreted or understood to limit or deny the right now existing to destroy or kill any such animal to prevent injury by it to any person or property.

§ 81-4-207. Castration of animals running at large -- notice to owner -- expense and charges.



(1) Except as provided in subsection (3), a person may take up and secure any animal found running at large on the open range. After taking it up the person shall, without unnecessary delay, post at the United States post office or as near as may be to the place where the animal was taken up a notice truly dated and subscribed by the person or the person's agent to the effect that the animal, describing it by marks and brands, if any, color, and sex, was taken up on the day named while it was running at large on the open range in the county, naming the county, and that, unless claimed and removed within 5 days after the date of the posting, the animal will be castrated at the expense of the owner. If the owner, person, firm, corporation, or association having management or control of the animal is known to the person who took the animal up, personal service of the notice upon the owner, person, firm, corporation, or association having management or control of the animal is the equivalent to the posting. The notice, if personally served, may state that, unless the animal is claimed and removed within 2 days after the date of the notice served personally, the animal will be castrated at the expense of the owner.

(2) If the animal taken up is not claimed and removed within 5 days or 2 days, as the case may be, it may lawfully be castrated in the usual manner and doing no more harm than is necessary. The expense of castration must be paid by the owner. If the animal is claimed within the time prescribed, the claimant shall pay to the person who took the animal up the reasonable expense of keeping and feeding the animal since it was taken up and also the sum of \$5 for the taking up and giving of the notice. Upon making the payments, the claimant shall immediately remove and take away the animal.

(3) A person shall report a swine running at large on the open range to the board. The board shall determine if the swine is an animal running at large subject to this section or a feral swine subject to the provisions of Title 81, chapter 29, part 1.

§ 81-4-208. Killing of animal running at large -- notice -- posting and service.

(1) Except as provided in subsection (3), if an animal running at large cannot, by reasonable effort, be captured, taken up, or corralled, it may lawfully be killed unless the owner or person having the management or control of it takes the animal off the open range and restrains it from running at large within 10 days after notice is given as provided in this section. The notice must be signed by one or more taxpayers of the vicinity of the range on which the animal is at large and must be substantially as follows:

“To whom it may concern:

Take notice, that a certain (stallion, ridgeling, unaltered male mule, or jackass, as the case may be) is running at large on the open range (identify the range by general description) in County, Montana. Unless the animal is removed from the range and restrained from running at large on open range within 10 days after the date of this notice, it will be killed.

(Date) (Signature or signatures)”

(2) The notice must be posted at the post office nearest the place where the animal was last seen on the range and similar notices must be posted in two other of the most public places in the vicinity of the range, and the notice must at once be mailed to the owner or person having management or control of the animal if the owner's or person's name and address are known.



(3) A person shall report a swine running at large to the board. The board shall determine if the swine is an animal running at large subject to this section or a feral swine subject to the provisions of Title 81, chapter 29, part 1.

§ 81-4-209. Penalty for violations.

An owner, person, firm, corporation, or association violating any provisions of 81-4-203 through 81-4-209 shall be guilty of a misdemeanor punishable as provided in 46-18-212.

§ 81-4-210. Only purebred bulls to run at large -- limitation on time.

It shall be unlawful for any person or persons, firm, company, or corporation to turn upon or allow to run at large on the public highways, open range, or national forest reserve within the state of Montana any bull other than a purebred bull of a recognized beef type; and no bull shall be turned upon or allowed to run at large upon any such public highways, open range, or national forest reserve between December 1 and June 1 of each and every year.

§ 81-4-211. Female breeding cattle, purebred bull to accompany.

(1) Any person, persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon the range or national forest reserve one purebred graded bull of a recognized beef type, not less than 15 months or more than 8 years of age, for every 30 head of female breeding cattle pastured upon such range or national forest reserve. Any two or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two or more users thereof does not exceed 30 head.

(2) A purebred bull as contemplated by 81-4-210 through 81-4-213 must be a bull having a registration certificate from the breeding association of its particular breed. A graded bull, as defined in 81-4-210 through 81-4-213, shall be a purebred bull selected by a committee of permittees.

§ 81-4-212. Castration of violating bulls.

A bull found running at large on the open range or national forest reserve in violation of the provisions of 81-4-210 through 81-4-213 may be caught and castrated by any person finding the bull, provided that any purebred dairy bull found running at large may be taken up and the party holding the bull shall notify the owner in person. If the owner of the purebred bull does not take possession of the bull within 24 hours after being notified, the party holding the bull may castrate the bull.

§ 81-4-213. Penalty.

Any person or persons, firm, company, or corporation violating any of the provisions of 81-4-210 through 81-4-213 shall be guilty of a misdemeanor punishable as provided in 46-18-212.

§ 81-4-214. Branding animals running at large -- running irons prohibited.

Every person except an owner, and the owner only when branding on the owner's own premises and in the presence of two responsible citizens, who marks or brands any calf or cattle that are running at large between December 1 and May 10 of the next ensuing year and every person who shall at any time brand or cause to be branded or marked



any horse, mule, cattle or head of cattle, sheep, llama, alpaca, bison, swine, or other animal, 1 year old or older, with any piece of metal or implement, other than a branding iron, which branding iron must be of the same design as the brand or mark owned by the party using it, or who marks or brands or causes to be marked or branded any of the animals listed in this section with any piece or pieces of iron called "running irons", such as bars, rings, half or quarter circles, is punishable by imprisonment in the county jail for not exceeding 6 months or by a fine of not less than \$25 or more than \$500, or both.

§ 81-4-215. Liability of owners of stock for trespass.

If any cattle, horses, mules, asses, hogs, sheep, llamas, alpacas, bison, or other domestic animals break into any enclosure and the fence of the enclosure is legal, as provided in 81-4-101, the owner of the animals is liable for damages to the owner or occupant of the enclosure if the owner or person in control of the animals was negligent. This section may not be construed to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law. In the case of trespassing animals in a herd district, the liability and damage provisions of 81-4-307 apply.

§ 81-4-216. Damage to planted trees.

In case of any damage done to planted trees by animals, the owner of the trees may recover damages from the owner of the animals, if said trees are planted inside of a lawful fence or boxed to a height of not less than 5 feet.

§ 81-4-217. Retention of trespassing stock.

(1) If an animal breaks into an enclosure surrounded by a legal fence or is wrongfully on the premises of another, the owner or occupant of the enclosure or premises may take into possession the trespassing animal and keep the animal until all damages, together with reasonable charges for keeping and feeding the animal, are paid. The person who takes the animal into possession shall, within 24 hours after taking possession, give written notice to the owner or person in charge of the animal, stating that the animal has been taken. The notice must also give the date of the taking, the description of the animal taken, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the animal, and the description, either by legal subdivisions or other general description, of the location of the premises on which the animal is held.

(2) The notice must be given to the owner or person in charge only when the owner or person in charge of the animal is known to the person taking the animal and resides within 25 miles of the premises on which the animal was taken. If the owner or person in charge of the animal resides more than 25 miles from the place of the taking, the notice must be mailed to the owner. In this case or if the owner is unknown, a similar notice must be mailed to the department of livestock and the sheriff of the county in which the animal has been taken. On receipt of the notice, the sheriff shall post a copy of the notice at the courthouse and shall send by certified mail a copy of it to the owner of the stock, if known to the sheriff. If unknown, the sheriff shall send a copy of the notice to the nearest state livestock inspector.

(3) If the parties within 5 days after receipt of the notice do not agree to the amount of damages, the claimant shall within 10 days institute a civil action to collect the claim in a court of competent jurisdiction. Pending the outcome of the suit, the



person taking the stock may, at the expense of the owner, retain a sufficient number of animals to cover the amount of damages claimed by the person taking the stock. The owner or person in charge of the animal may, after the institution of the action, on filing a bond executed by two or more sureties and approved by the court in double the sum sued for, conditioned upon the payment to the claimant of all sums, including costs that may be recovered by the claimant, have all livestock returned. The claimant is liable to the owner for any loss or injury to the stock occurring through the claimant's fault or neglect. If the claimant fails to recover in the action a sum equal to that offered by the owner of the stock, the claimant bears the expense of keeping and feeding the stock while in the claimant's possession.

(4) A person who takes or rescues an animal from the possession of the person taking the animal, without the consent of the person taking the animal, is guilty of a misdemeanor punishable as provided in 46-18-212.

§ 81-4-218. Marking land and mining claims in national forest.

It shall be the duty of the owner or the person holding possessory right to all unfenced lands or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana or which lie on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

§ 81-4-219. Method of marking.

For the purposes of 81-4-218 through 81-4-220, it shall be prima facie evidence that such boundaries are properly marked if the same are defined; provided that such monuments or some tree, stump, or post adjacent thereto shall be conspicuously marked with the name of the owner or claimant of such ground and the name of the claim or the description of the land claimed.

§ 81-4-220. Marking -- right of action against trespassing stock.

A person owning or possessing agricultural or grazing land or patented or unpatented mining claims lying within the national forest reserves of this state or on the public range lying adjoining to any national forest reserve, the boundaries of which lands are not marked as required by the provisions of 81-4-218 through 81-4-220, may not have any claim or cause of action or right of action against the owner of sheep, cattle, or other livestock under the charge of a herder for trespass committed by the livestock upon that land, and this is the rule regardless of whether the trespassing livestock strayed on the land on their own inclination and without being driven or whether the livestock were herded or driven on the land. However, a person or persons may not claim exemption for trespassing under the provisions of this section if the person or persons have actual knowledge of the boundary lines of lands referred to in this section. Damages, other than nominal damages, may not be assessed against the trespass unless the landowner or the landowner's duly authorized agent, within 6 months after the trespass has been committed, gives the trespasser written notice demanding a sum certain for damages sustained by reason of the trespass.

Part 3. Herd Districts.

§ 81-4-301. Herd districts -- creation, size, and location.



- (1) Herd districts may be created in any county in the state of Montana:
 - (a) upon petition of owners or possessors of 55% of the land in the district and providing that 25% or more of the land in the district is in actual cultivation or being used for residential purposes; or
 - (b) upon petition of owners or possessors of 75% of the land in the district.
- (2) Herd districts must contain 12 square miles or more, lying not less than 1 mile in width, outside of the incorporated cities, except that herd districts may be created containing not less than 6 or more than 54 square miles, lying not less than 2 miles in width, when the territory joins and is contiguous with the boundaries of a city having a population of 10,000 or more and the territory to be created in a herd district has a suburban population of not less than 200 people.
- (3) In formation of a herd district the entire holding of any owner or lessee must be included unless the owner or lessee consents that less than the owner or lessee's entire contiguous holdings be included in the petition.
- (4) The petition must designate the months of the year when the herd district is effective, and upon presentation and filing of the petition, properly signed, giving the outside boundaries and description of the proposed district and the post-office address of the petition signers, with the clerk and recorder in the county in which the district is being created, the county commissioners of that county, upon receipt of the petition, shall set a date for hearing protests and verifying the petition signatures and shall give not less than 20 days' notice of the hearing by three publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to the notices, the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The commissioners may then establish the district, but the district shall be established only in a manner that the district will be reasonably regular and symmetrical in shape or practicable in relation to the geographical features of the district. It is not required that the boundaries of a district follow section lines to meet the requirement of reasonably regular and symmetrical boundaries.
- (5) Should it appear to the county commissioners after the hearing that the signatures attached to the petition were genuine, they shall immediately declare the herd district created and established. After making the declaration, the county commissioners shall give notice by four weekly publications in a newspaper nearest the district of the creation of the district, also stating the period that the district will be in effect. A district may not be in effect until 30 days have expired after the order.
- (6) If the signature of lessee appears on the petition creating or abolishing any herd district, the owner or owners of the land may appear either in person or by agent and enter their protest and the board of county commissioners shall remove the name of the lessee from the petition, and a person may not withdraw the person's name after the hour set for hearing the protest.

§ 81-4-302. Dissolution.

- (1) When a petition praying that any established herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been



established and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district and that less than 25% of the lands included in such district is in actual cultivation, the said county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week for 3 successive weeks in some newspaper of general circulation in the county.

(2) At the time fixed for hearing, the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved and that less than 25% of the lands included in such district are in actual cultivation, then the board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the herd district is thereby dissolved. Forthwith, upon the making and entry of any such order aforesaid, the herd district affected thereby shall be dissolved for all purposes thereafter.

§ 81-4-303. Exclusion of government land.

Any tract of land embraced within any established herd district and which contains 18 sections of government land or more, so located that at least one-fourth of the perimeter of such tract coincides with the existing boundaries of such herd district, may be excluded therefrom upon proceedings had before the board of county commissioners of the county wherein the said district has been established on a like petition, notice, and hearing and by a like order as in the case of proceedings for dissolving herd districts. When the exclusion of any such tract of land from an existing herd district is sought, the petition shall describe the tract to be excluded with common certainty and shall set forth that it is signed by the owners or possessors of 55% or more of the lands lying within the boundaries of the tract to be excluded and that less than 15% of the lands included in such tract is in actual cultivation. In any such case if the board of county commissioners at the conclusion of the hearing had shall find that the tract of land to be excluded conforms to the requirements of this section and that the allegations of the petition are true, its findings to that effect shall be spread upon the minutes and the board shall thereupon enter its order in terms that by reason of such findings and of the proceedings had upon such petition the tract of land described in the petition, which shall be further set forth with common certainty in the order, is thereby excluded from such herd district for all purposes thereafter. Forthwith upon the making and entry of any such order of exclusion the tract of land therein described shall be deemed for all purposes thereafter to be excluded from and to form no part of the herd district affected thereby.

§ 81-4-304. Joint herd districts.

Herd districts may be created jointly between any two or more counties of the state of Montana where the lands to be included in the district meet the requirements of this section and either extend across county boundaries under one ownership or are contiguous to the land of owners in the adjoining county wishing to participate in the herd district. The county commissioner boards of each county desiring to participate in a joint herd district shall



comply with all the provisions of this section dealing with single-county districts. A joint herd district shall be created only after approval by all county commissioner boards of participating counties as provided for single-county herd districts in this section. Joint herd districts may be dissolved in the same manner as single-county herd districts.

§ 81-4-305. Changing time when herd districts will be in effect -- petition -- notice -- hearing.

The time of year or period when any herd district heretofore or hereafter created under the provisions of the laws of this state is effective or will be in effect may be changed as herein provided, by the board of county commissioners of the county in which such herd district has been created, upon the presentation and filing with the clerk and recorder of such county a petition signed by the owners or possessors of 55% of the land in such district. Such petition shall designate the months of the year when such herd district is effective and designate the contemplated change. Upon receipt thereof, the county commissioners of such county shall set a date for hearing protests and verifying the signatures thereto and shall give not less than 20 days' notice of the same by posting five notices of hearing in five public places in the county, one of which shall be at the place such hearing is to be held and at least two of such notices to be posted within such herd district. Should it appear to the board of county commissioners after such hearing that the signatures attached to such petition are genuine, they shall immediately make an order changing the period of time such herd district will be in effect, as designated in such petition; after which the county commissioners must give notice by four weekly publications in some newspaper in the county nearest such district, stating the period such district will be in effect. The change of time shall not become effective until such notice has been published as herein provided. Upon the fourth publication of such notice, such change of time shall become effective and violation thereof shall be punished as provided under the laws of the state of Montana relative to herd districts.

§ 81-4-306. Penalty for permitting animals to run at large in herd districts.

(1) Any person who is the owner or entitled to the possession of any horses, mules, cattle, sheep, llamas, alpacas, bison, asses, hogs, or goats, who willfully permits the animals to run at large within any herd district, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$250 for each offense. Each day that each five head or less of horses, mules, cattle, sheep, llamas, alpacas, bison, asses, hogs, or goats are willfully permitted to run at large constitutes a separate offense.

(2) Any person who is the owner or entitled to the possession of any bull, stallion, or jackass over 1 year of age who willfully permits the animal to run at large within any herd district is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$250 for each offense. Each day that a bull is permitted to run at large constitutes a separate offense.

§ 81-4-307. Trespassing animals in herd district -- retention for damages and costs.

(1) If an animal referred to in 81-4-306 wrongfully enters the premises of a person within a herd district, the owner or person in control of the animal is liable for care and feeding of the animal and for any damages caused by the animal. The owner or occupant of the land upon which the wrongful entry is made may take into possession the animal, may reasonably care for the animal, may retain possession of the animal, and is entitled to a lien on the animal as security for the payment of damages caused by



the animal and costs incurred in caring for the animal. If the owner of the animal or the person entitled to possession of the animal can be found or is known to the person who takes possession of the animal for trespass, it is the duty of the person taking possession to notify the owner or person in charge of the animal within 48 hours after taking possession by a notice in writing, mailed as a certified letter, directed to the owner or person in charge at the owner's or person's post-office address or by serving the notice on the owner or person personally. The notice must give a particular description of the animal and state the amount of damages and costs claimed and demand that within 48 hours after receipt of the notice the damages and costs be paid and that the animal be taken away from the property of the complainant.

(2) Upon demand and upon payment of the damages and costs, the owner or occupant of the land shall release and deliver possession of the animal to the owner or person entitled to possession of the animal. If the parties cannot agree upon the amount, then the owner or person entitled to possession of the animal shall give a receipt to the owner or occupant of the land who has possession of the animal. The receipt must fully describe the animal so that the animal may at any time be easily identified. Upon receiving the receipt, the owner or occupant of the land shall give possession of the animal to the owner or person entitled to possession of the animal. The owner or person receiving possession of the animal may not dispose of the animal but shall retain and keep the animal in possession as the legal custodian of the animal in order to meet and pay the amount of the lien on the animal for damages and costs due in consequence of the trespass.

(3) The party entitled to damages or costs shall within 10 days after delivery of possession of the animal commence an action in any court having jurisdiction to recover the damages and costs, and the animal must be held for the payment of any judgment as though held under a writ of attachment. At any time after the action is commenced, the owner or person entitled to possession of the animal, to whom delivery was made, may furnish and file a bond conditioned to pay the damages and costs incurred in the action, and upon approval of the bond by the justice of the peace, if the action is commenced in a justice court, or by the judge or clerk of the district court, if the action is commenced in the district court, the lien and claim upon the animal must be discharged.

(4) If the owner or person entitled to possession of the animal does not furnish a bond within 10 days after the service of summons in the action, an order may be issued authorizing and directing the constable or sheriff to take possession and hold the animal to satisfy any judgment that may be recovered in the action. The animal, when taken possession of by the officer, must be held, treated, and sold under execution as though seized by writ of attachment.

(5) The owner or person entitled to possession of the animal may, in lieu of furnishing a bond, deposit an amount of money sufficient to pay any judgment that may be recovered in the action, the amount to be determined by the justice or judge of the court in which the action is pending. If the owner or person entitled to possession of the animal, after delivery of possession without payment of damages and costs provided for in this section, sells or disposes of the animal or any part of the animal, permits the animal to be taken from the person's possession, or in any manner prevents the seizure of the animal by the constable or sheriff before the lien on the animal is fully discharged, the owner or person entitled to possession of the animal is guilty of a misdemeanor and in addition is liable to the party entitled to damages and costs



in an amount that is double the value of the animal. At the time of delivery or possession of the animal to the owner or person entitled to possession of the animal, a written statement of the amount of the damages and costs must be furnished to the owner or person entitled to the possession of the animal by the person claiming the damages and costs.

(6) If the owner or claimant of the animal is not known to the person taking possession of the animal, the person shall give notice within 48 hours by posting a notice at the nearest post office and serving a similar notice on the stock inspector of the district. The notice must describe the animal and the brand on the animal and give a minute description of the animal, together with the date of the trespass.

§ 81-4-308. Retrieval of impounded animals -- misdemeanor -- penalty.

A person who takes or rescues an animal impounded as provided in 81-4-307 from the possession of the person with custody of the animal without the possessor's consent is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 or more than \$500 or be confined in the county jail for not more than 60 days, or both.

§ 81-4-309. Unlawful introduction of livestock into herd district a misdemeanor -- penalty.

Any person not the owner or person in charge of any livestock who causes any livestock to enter any herd district established under the provisions of 81-4-301 through 81-4-309 is guilty of a misdemeanor and upon conviction thereof is subject to a fine of not less than \$250 or more than \$500 or confinement in the county jail not less than 60 days or both such fine and imprisonment and is liable for all damages and costs occurring from such trespass. For the purposes of this section, each separate animal so moved constitutes a separate offense.

§ 81-4-310. Annexation into existing herd district.

(1) Owners or possessors of land that is contiguous to a herd district may petition to have their property annexed to that district. The petition must be properly signed by the owners or possessors of at least 55% of the affected land and must include the post-office address of all petition signers. The petition must state the outside boundaries and a description of the property to be annexed to the existing district. When the petition is filed with the clerk and recorder in the county in which the existing district lies, the county commissioners of that county shall set a date for hearing protests and verifying petition signatures. The county commissioners shall provide notice of the hearing by publishing the hearing date and a list of the properties proposed to be annexed, at least three times in a newspaper of general circulation in the county, not less than 20 days prior to the hearing date.

(2) At the hearing held pursuant to subsection (1), the county commissioners shall examine the petition and have a map drawn up in order to determine the shape and regularity of the boundaries of the property proposed for annexation. If the county commissioners determine that the boundaries are reasonably regular and symmetrical in shape in relation to the geographical features of the properties proposed for annexation, the county commissioners may declare that those properties are annexed into the existing herd district.

(3) If the county commissioners declare the properties annexed to the existing herd district, they shall give notice of the annexation by four weekly publications



in a newspaper of general circulation in the county. Annexation does not become effective until 30 days after the declaration of annexation is made, as provided in subsection (2).

§ 81-4-321. Definition.

The term "horses" when used in 81-4-321 through 81-4-328 shall include any mare, gelding, stallion, colt, foal, filly, mule, jack, and jenny.

§ 81-4-322. Horse herd districts -- size -- location -- petition -- notice and hearing -- abolishment.

(1) Horse herd districts may be created in any county in the state of Montana upon the petition of owners or possessors of 55% of the land of the district. The district must contain 12 square miles or more lying not less than 1 mile in width outside of incorporated cities or towns. The petition must designate the months of the year when horse herd district regulations are effective.

(2) Upon presentation and filing of a petition properly signed and reciting the outside boundaries and description of the proposed district, together with the post-office address of the signers, with the clerk and recorder in the county in which the the district is being created, the county commissioners of the county upon receipt of the petition shall set a date for hearing protests and verification of signatures and shall give not less than 20 days' notice of the hearing by three publications in a newspaper of general circulation in the county of the proposed district. If it appears to the county commissioners, after the hearing, that the signatures attached to the petition were genuine, they shall immediately make an order declaring the horse herd district created and established, after which the county commissioners shall give notice by two weekly publications in some newspaper in the county, nearest the district, stating the period when the horse herd district will be in effect and when the district is not in effect. The order may not be effective until 30 days have expired after the order.

(3) Herd districts may be abolished at any time upon proceedings as set forth for the establishment of a herd district.

(4) The estimated expense of all publications required by 81-4-321 through 81-4-328 must be paid by the petitioners, and no part of the expenses may be paid by the county.

(5) Upon petition of an owner or possessor of land lying contiguous and adjoining any horse herd district and upon like hearing and notice as provided in this section, the lands must be included in the horse herd district and become a part of the district.

(6) If the signature of a lessee appears on the petition creating or abolishing any horse herd district, the owner or owners of the land may appear either in person or by agent and enter their protest, and the board of county commissioners shall remove the name of the lessee from the petition. A person may not be permitted to withdraw the person's name after the hour set for hearing the petition.

§ 81-4-323. Petition to dissolve horse herd district -- hearing and notice -- order of county commissioners.

When a petition praying that any established horse herd district be dissolved is filed with



the county clerk and recorder of the county wherein such district has been established, and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district, the county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week, for 3 successive weeks in some newspaper of general circulation in the county. At the time fixed for hearing the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of the hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved, then the said board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the said horse herd district is thereby dissolved. Forthwith upon the making and entry of any such order aforesaid the horse herd district affected thereby shall be dissolved for all purposes thereafter.

§ 81-4-324. Horses running at large in herd district prohibited.

All horses are hereby prohibited from running at large within any horse herd district as defined in 81-4-322.

§ 81-4-325. Penalty and liability for horses wrongfully entering on premises in horse herd district.

If any such horse or horses wrongfully enter upon premises within such district of any person, the owner or person in control of such horse or horses shall be punished according to the provisions of 81-4-309 and in addition to said punishment shall be liable for all damages sustained thereby to the party entitled thereto.

§ 81-4-326. Retention and sale of horses for damages and care -- procedure.

(1) The owner or occupant of the land upon which wrongful entry is made under 81-4-325 may take into the owner's or occupant's possession the horse or horses and shall reasonably care for the horse or horses while in possession and may retain possession of the horse or horses and has a lien and claim on the horse or horses as security for payment of the damages and reasonable charges for the care of the horse or horses while in the owner's or occupant's possession. The person taking up the horse or horses shall within 48 hours after taking possession notify the owner, owners, or persons in charge of the horse or horses by a notice in writing, describing the horse or horses taken up, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the horse or horses, and, either by legal subdivisions or other general description, the location of the premises upon which the horse or horses are held and requiring that person within 48 hours after receiving the notice to take the horse or horses away after making full payment for all damages and costs of the horse or horses. The notice must be given by personal service on the owner, owners, or person in charge of the horse or horses or by leaving the notice at that person's usual place of residence with some member of that person's family over 14 years of age or by sending the notice by prepaid certified mail addressed to that



person's last-known place of residence. Service by certified mail is considered complete upon the deposit of the notice in the post office.

(2) Upon demand, the owner or occupant of the land shall release and deliver possession of the horse or horses to the owner or person entitled upon payment of damages and charges, but payment of damages and charges may not act as a bar to the prosecution of the person, owner, or person in control of the horse or horses as provided in subsection (1). If the owner or claimant of the horse or horses is not known to the person taking up the horse or horses or the owner or claimant refuses to pay the amount of damages and charges, the person taking up the horse or horses shall, within 72 hours from the time the horse or horses were taken up, deliver to the sheriff or a constable of the county in which the horse or horses were taken up a statement containing the information required to be given in the notice. In addition, the person shall mail by prepaid certified mail a copy of the statement addressed to the nearest state livestock inspector. Upon receipt of the statement, the sheriff or constable shall proceed to advertise and sell at public auction the horse or horses taken up.

§ 81-4-327. Sale of horses -- disposition of proceeds.

(1) Prior to a sale as authorized by 81-4-326, the sheriff shall have the horses classified as follows:

(a) Class 1 must include:

(i) horses not bearing a registered brand and that in the opinion of the stock inspector are of a value not to exceed \$10 per head; and

(ii) horses bearing a registered brand but that the owner has failed to redeem as provided in this part, after notice given, and that in the opinion of the stock inspector are of a value not to exceed \$10 per head.

(b) Class 2 must include horses bearing registered brands and that in the opinion of the stock inspector are of a value in excess of \$10 per head.

(2) Horses in class 1 must be sold on 10 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three other public places in the county, one of which must be in that portion of the district included in the county.

(3) Horses in class 2 must be sold on notice posted for 21 days and otherwise as notices are required to be posted for the sale of horses in class 1, and the notice must be published once a week for 2 successive weeks before the sale in some newspaper published in the county seat of each county that includes any part of the district, if there is a newspaper, and if there is no newspaper published in any county comprising a part of the district, the notice must be published in any newspaper of general circulation in the county or counties that include the district. The notice required to be published for the sale of horses in class 2 must describe each horse to be sold, giving the approximate age, description, and brands, if any. The proceeds of the sale must be applied by the sheriff to the discharge of the claim and the costs of the proceedings in selling the property and enforcing the claim, and the remainder, if any, must be deposited with the county treasurer who shall keep the same in a special fund to be designated as the "horse herd district fund", giving the number of district if there is more than one district.



(4) A separate fund of the type specified in subsection (3) must be kept by the county treasurer for each of the districts created in that county. The county treasurer shall make a record of the description of each horse, the amount received for the horse, and the amount of deductions. The record must be open to public inspection, and any person making claim of ownership of a horse to the board of county commissioners at any time within 1 year from the date of sale and submitting proof of ownership to the board with the claim to the satisfaction of the board is entitled to receive the excess received from the sale of that horse. Any money received from the sale of a horse that is not claimed within 1 year after the sale must at the expiration of that period be transferred to the general fund of the county.

§ 81-4-328. Liability of officers.

No officer, board, or employee of any county or any employee of such officer or board shall be liable for any act performed in good faith in discharging official duties under 81-4-321 through 81-4-327, and all such acts shall be presumed to have been in good faith and in conformity with 81-4-321 through 81-4-327.

Part 4. Impoundment of Livestock in Municipalities.

§ 81-4-401. Certain livestock not to run at large in municipalities.

Horses, cattle, mules, sheep, llamas, alpacas, bison, goats, or swine may not be allowed to run at large in any incorporated city or town.

§ 81-4-402. Punishment for permitting trespass of livestock.

Any person owning livestock or having in charge any horses, mules, cattle, sheep, llamas, alpacas, bison, goats, or swine who willfully and unlawfully permits the livestock to trespass in violation of any of the provisions of 81-4-401 is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

§ 81-4-403. Impounding animals -- duties of cities and towns.

When any livestock or domestic animals of any kind are impounded, seized, restrained, or held by any city or town or its officers or agents, it shall be the duty of such city or town, its officers or agents, to give notice to the owner of such livestock or domestic animals so impounded, seized, restrained, or held by such city or town, if the owner is known, in the manner hereinafter provided.

§ 81-4-404. Contents of notice.

Said notice shall be in writing and shall give:

- (1) the number, description, marks, and brands of such stock when impounded, seized, restrained, or held, with the reasons therefor;
- (2) the amount of charges, if any, which shall be reasonable and in no case exceed the actual cost of holding and costs in event of sale; and
- (3) what disposition will be made of said stock if such charges are not paid and when and where such disposition shall be made.

§ 81-4-405. Service upon owner.

If the owner of livestock described in this part is known and if the owner's post-office



address is known, the notice must be served upon the owner personally.

§ 81-4-406. Service on department of livestock.

If the owner of livestock described in this part is unknown or if the owner is known but the owner's post-office address is unknown, the notice must be served on the department.

§ 81-4-407. Service by mail.

Service of such notice may be made personally or by registered or certified mail, postage prepaid, properly addressed, and placed in the United States post office at least 8 days before the day fixed for the disposition of said stock.

§ 81-4-408. Duty of officers to ascertain brands.

It shall be the duty of such city or town and its officers or agents to use reasonable diligence to ascertain any and all marks and brands on such stock, and in case such animals are not branded or marked or the brand or marks are mutilated or undeterminable, such facts shall be noted in said notice.

§ 81-4-409. Department to ascertain owner -- notice.

When the notice is served, the department shall ascertain the owner of the stock, if possible, and when the owner is ascertained, immediately furnish the owner with the information contained in the notice. The department shall notify the city or town, its officers or agents, of the name and post-office address of the owner.

§ 81-4-410. Provisions mandatory.

The provisions of this part are mandatory, and the owner of livestock may not lose title or right of possession to the owner's stock unless the provisions of this part are strictly complied with.

Part 5. Roundup of Abandoned Horses.

§ 81-4-501. Definitions.

Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned horse" means a horse, mare, gelding, filly, jack, mule, or other animal of the genus *Equus*, 1 year of age or over and unbranded or, if branded, which has escaped assessment for taxation for the year immediately preceding its impounding as provided for in this part, and running at large on the open range of this state, including foals running with dams coming within the above definition. An animal not bearing a decipherable brand which is recorded with the department of livestock is considered unbranded.

(2) "Open range" means all lands in this state not enclosed by a fence. The term "open range" includes all highways outside of private enclosures and used by the public, whether the highways have been formally dedicated to the public or not.

(3) "Person" includes individuals, associations, persons, and corporations.

§ 81-4-502. Abandoned horses on public range declared public nuisance subject to condemnation -- right of owner.

It is unlawful for any person owning or having control of any horse to abandon the horse



upon the open range in the state of Montana, and such horses so running at large upon the open range in the state are a public nuisance and a public menace and are condemned, subject to the right of the owner of any such abandoned horse to reclaim the same under the conditions hereinafter provided.

§ 81-4-503. Roundup of abandoned horses -- petition -- expenses.

(1) For the purpose of speedily clearing abandoned horses from the open range in any county or in any district thereof, the board of county commissioners of any such county must, upon the petition of at least five responsible property owners, inhabitants of the proposed roundup district engaged in the livestock business and paying taxes upon livestock in such county, or upon the petition of a reputable local livestock association, authorize a roundup of abandoned horses in any district within such county.

(2) Upon the filing of such petition, the board shall make an order authorizing such roundup, which order shall describe generally such district with reasonable certainty. Said district shall not include more or less territory than that described in the petition. Such order shall also specify the date on or within 10 days after which the roundup shall begin and shall designate the place within the district at which the headquarters of such roundup shall be maintained. (3) Any such roundup shall be conducted in such manner as to cause as little disturbance as reasonably possible to horses running lawfully on the open range.

(4) All expense of any such roundup shall be paid by the petitioners at whose request the same is initiated, and no county officer or board shall have any power to expend any moneys of the county or incur any obligation on its behalf in connection with any such roundup. Such petitioners, however, shall be reimbursed for the expense of such roundup, as and when moneys may be available for that purpose in the abandoned horse fund, by warrants issued upon claims filed as in the case of other claims against the county.

§ 81-4-504. Notice of holding roundup -- publication -- form.

Notice of the roundup shall be given by the board of county commissioners at least 30 days before the date when the roundup begins. The notices shall be published at least once a week for 3 successive weeks in some newspaper of general circulation, printed and published in the county in which the roundup is to be held, if a newspaper of this type is printed and published in the county. The notice shall be posted in at least five public places outside of the county seat of the county on public highways in the county or district, as the case may be, in which the roundup is to be held. Three notices shall be posted in three public places in the county seat. One of the notices shall be posted at the front door of the courthouse. The notices posted outside of the county seat are to be posted not less than 2 miles apart, and all posted notices are to be posted at least 20 days before the date on which the roundup begins as stated in the notice. If no newspaper is printed and published in the county, publication in a newspaper is not required. At least 20 days before the date on which the roundup is to begin, a copy of the notice shall be filed with the department by the clerk of the board of county commissioners.

§ 81-4-505. Roundup supervisor -- duties -- bond.

(1) All roundups must be under the control and supervision of the board of county commissioners of the county in which the roundup is held. Roundup districts must be numbered in the order of their creation. Each roundup must be conducted by a



person designated or employed by the board of county commissioners, whose official designation must be "roundup supervisor, roundup district, County, state of Montana".

(2) The roundup supervisor shall maintain headquarters at the place designated by the board of county commissioners in its order as the headquarters of the roundup. The roundup supervisor has the power to administer oaths and affirmations in all matters coming within the scope of official duties.

(3) If the roundup supervisor is not employed by the board of county commissioners, the board shall require from the roundup supervisor an official bond, in an amount not less than \$2,500 and not to exceed \$5,000. The bond must be conditioned as official bonds of county officers and is subject to all provisions of law applicable to county officer bonds.

§ 81-4-506. Sale of abandoned horses.

All abandoned horses taken up in a roundup must be delivered to the roundup supervisor in charge of the roundup and must be offered by the supervisor for sale at public auction and sold to the highest bidder for cash, if there is any bidder, and any abandoned horses offered for sale and for which no bid is made must be destroyed or otherwise disposed of in the discretion of the board of county commissioners unless reclaimed as provided in this part.

§ 81-4-507. Gathering horses in roundup district before roundup unlawful -- rights of owner.

It is unlawful for a person or persons to round up from the range any horse or horses in a roundup district after the districts have been designated by the county commissioners until after the roundup. However, an owner of horses on which the taxes have been paid in this district may gather the horses by notifying the roundup supervisor and being accompanied by the supervisor or a representative of the supervisor in gathering the horses.

§ 81-4-508. Claim of owner -- cost of keeping and feeding horses.

A person claiming to be the owner of an abandoned horse or horses may serve written notice upon the roundup supervisor in charge of the roundup of the claim of ownership at any time before sale or other final disposition of the horse or horses. The claim of ownership must be verified by the oath of the claimant or someone on the claimant's behalf, and the sale or other final disposition of the horse or horses must be postponed from time to time as may be necessary to enable the claimant to make proof of the claim as provided in 81-4-509. The postponement may not be allowed unless the claimant pays to the roundup supervisor in charge of the roundup or delivers to the supervisor satisfactory security for the estimated cost of keeping and feeding the horse or horses until sale or other final disposition or delivery to the owner.

§ 81-4-509. Proof of ownership -- payment of taxes and penalties -- decision of commissioners on claim.

A person claiming an abandoned horse or horses as provided in 81-4-508 shall, within 5 days after serving the notice provided for in 81-4-508 or within a further time that the board of county commissioners allows, upon good cause shown, submit to the board proof of ownership and shall deposit with the board the amount of any unpaid taxes and penalties that may be assessed against the horse or horses, together with a \$100 roundup fee. The board



shall decide all cases in preference to all other matters coming before it and at the earliest possible moment. If the claim is allowed, the roundup supervisor in charge of the roundup must immediately be notified of the decision and the supervisor shall deliver the horse or horses to the owner upon payment of any amount due from the owner for the estimated cost of keeping and feeding the horse or horses. The deposit made by the owner of taxes, penalties, and the roundup fee must be delivered by the board to the county treasurer. If the board denies the claim of ownership, it shall notify the person in charge of the roundup of its decision and the horse or horses as to which the claim is denied must be offered for sale at the earliest convenient session of the sales being held under the roundup. If the horses are not sold, they must be destroyed or otherwise disposed of as though no claim had been presented.

§ 81-4-510. Notice of sale of abandoned horses -- form -- time of sale -- title.

(1) Before a sale may be held, at least 10 days' notice must be given by publication and posting in the manner specified in 81-4-504, except that publication, if made in a newspaper, must be once each week for 2 successive weeks, and posting must be done at least 5 days before the date of sale. The notice must be in substantially the following form:

NOTICE OF SALE OF ABANDONED HORSES

Notice is given that on day, the day of, 20..., at in the county of, state of Montana, beginning at the hours of m., the following described abandoned horses will be sold at public auction to the highest bidder for cash:

(Give general description of horses to be sold by brand, if any, color, approximate weight, and estimated age.)

Any horses not reclaimed before sale as provided by law and for which no bid is made at the sale will be destroyed or otherwise disposed of in the discretion of the board of county commissioners of County, state of Montana.

Dated the day of, 20...

By order of the board of county commissioners of County, Montana. By, clerk of the board.

(2) All sales must be held between the hours of 8 a.m. and 6 p.m. and may be continued from time to time until all abandoned horses taken in the roundup have been disposed of. On payment of the price bid for any horse sold, the delivery of the horse, with a bill of sale, vests the title to the horse in the purchaser.

§ 81-4-511. Assessment of horses taken in roundup.

Following a roundup held pursuant to this part, the department of revenue shall immediately assess all horses that have been taken up in a roundup and that may be sold or reclaimed before sale and not already assessed for the current year. The department of revenue shall transmit to the county treasurer a copy of each assessment made. Any horses that have escaped the assessment mentioned in 81-4-501 must be assessed as provided for in 15-8-306.

§ 81-4-512. Disposition of proceeds -- abandoned horse fund -- use of fund.

All money paid by reclaiming owners of any horse or horses must be paid to the county treasurer and kept in a fund to be designated as the "abandoned horse fund, roundup district No. (giving number of district in which the horse or horses were rounded up)".



A separate fund must be kept by the county treasurer for each roundup district created in that county. All money received from the sale of horses must be paid to the county treasurer, and if the sum received from the sale of any horse does not exceed the taxes, the penalties, and the roundup fee, the whole amount must be immediately deposited in the abandoned horse fund for the district in which the horse or horses were rounded up. If the sum received from the sale of a horse exceeds the taxes, the penalties, and the roundup fee, the amount of the taxes, the penalties, and the roundup fee must be deposited in the abandoned horse fund for the district and the excess must be kept by the treasurer in a separate fund. The treasurer shall make a record of the description of the horse, the amount received for the horse, and the amount of deductions for the taxes, the penalties, and the roundup fee. The record must be open to public inspection. A person making claim to the board of county commissioners, at any time within 6 months from the date of sale, of ownership of the horse and submitting proof of ownership to the board with the claim, to the satisfaction of the board, is entitled to receive the excess received from the sale of the horse. Any money received from the sale of a horse in excess of the taxes, the penalties, and the roundup fee that is not claimed within 6 months after the sale, at the expiration of that period, becomes the property of the county and must be transferred to the abandoned horse fund for the district in which the horse was rounded up.

§ 81-4-513. Report of roundup supervisor -- disposition of copies.

The roundup supervisor in charge of the roundup shall keep an accurate record of all proceedings under the order for the roundup. Within 30 days after the roundup is completed, the supervisor shall prepare in triplicate and verify by oath a full, true, and accurate report of all the proceedings under the order for the roundup. The report must include a complete financial statement, the number and description of horses impounded, and the manner of disposition of the horses. One copy of the report must be filed with the clerk of the board of county commissioners, and the filing is notice of the contents of the report and prima facie proof of the facts stated in the report. Copies of the report must be filed with the department of revenue and with the county treasurer for their information and appropriate action.

§ 81-4-514. Transfer of moneys of abandoned horse fund to general fund.

On November 30 of each year, the county treasurer shall, if all claims against any such abandoned horse fund are paid and a balance remains in such fund, transfer all moneys so remaining in such fund to the general fund of the county, subject to the usual division with the state as to any portion of such balance which shall consist of taxes collected on the abandoned horses. No part of the roundup fee of \$5 shall be paid to the state. Any portion of the taxes so collected which shall be used in paying claims against said fund is hereby declared to be a part of the cost of collection of such taxes.

§ 81-4-515. Liability of officers and employees.

No officer, board, or employee of any county or any employee of any such officer or board shall be liable for any act performed in good faith in discharging official duties under this part. All such acts shall be presumed to have been in good faith and in conformity with this part.

§ 81-4-516. Limitation of powers or duties of officers.

Except as provided in this part, this part may not be construed as limiting the powers or duties of the department of revenue, county treasurers, or other boards or officers.

Part 6. Estrays.



§ 81-4-601. Estray defined.

In this part, “estrays” means a horse, mule, mare, gelding, colt, llama, alpaca, bison, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb:

- (1) not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders;
- (2) bearing a recorded brand, the owner of which brand cannot be located at or through the post office designated on the records of the department or which owner cannot be located by the stock inspector of the district where the estray is found by inquiry among reputable resident stock owners or freeholders; or
- (3) which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders.

§ 81-4-602. Estrays -- department authorized to take possession.

The department and its appointed stock inspectors may take possession of estrays found running at large in this state and may dispose of the estrays, subject to the following restrictions.

§ 81-4-603. Taking up and disposition of estrays -- advertisement.

- (1) A stock inspector authorized by the department shall take into possession an estray found in the stock inspector's district and, except as provided in 81-2-120, shall either:
 - (a) ship or arrange for the shipment of the estray to a licensed livestock market for sale; or
 - (b) hold the estray and care for the estray in the cheapest and most practicable manner for at least 10 days and not more than 30 days after public notice is published as provided in subsection (2). During the holding period, the stock inspector shall advertise that the estray is being held and that unless the estray is claimed by the owner, the stock inspector will on a date specified in the notice sell the estray at a public auction to the highest bidder for cash.
- (2) The notice must be published in the newspaper doing the county printing of the county in which the estray is found and on the department's website and in each livestock market brand office and county sheriff's office in the state. This notice must be published in the newspaper at least one time and must contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.
- (3) Except as provided in 81-2-120, the proceeds from the sale must be disposed of under 81-4-605 and 81-4-606.
- (4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, upon payment to the department of the cost of caring for the estray as determined by the department.

§ 81-4-604. Sale at public auction -- branding.



On the date specified in the notice provided for in 81-4-603, the stock inspector shall sell the estray at a public auction to the highest bidder for cash. Before removal from the sale, the stock inspector shall brand the estray with the recorded estray brand of the department.

§ 81-4-605. Expenses, how paid -- disposition of proceeds of sale.

(1) Expenses for collecting, holding, advertising, and selling of the estray, including but not limited to labor, feed, supplies, and veterinary services, shall be paid out of the gross proceeds of the sale of the estray, and the balance of the proceeds of the sale shall be forwarded to the department to be advertised as estray funds in the manner provided by law. The proceeds are subject to claim by the owner of the animal for a period of 2 years from the date of the sale. If the owner of the estray claims the animal before the sale of the animal, the expense incurred by the stock inspector to that time shall be paid by the owner.

(2) The department may adopt rules and establish fees for the handling of estrays.

§ 81-4-606. Publication of description of estrays sold -- disposition of proceeds remaining in state treasury.

A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two consecutive weekly, semimonthly, or monthly issues after May 1 of each year in not more than four weekly, semimonthly, or monthly publications in this state. The publications shall be designated by the department, and when the publication has been made and the proceeds from the sale of the estrays has remained in the hands of the state treasurer for a period of 2 years, it shall be, by the treasurer, upon request of the department, immediately placed to the credit of the state special revenue fund for the use of the department.

§ 81-4-621. Penalties.

A person who, for that person's own use or benefit and without the owner's consent, takes into possession any estray shall be guilty of a misdemeanor punishable as provided in 46-18-212.

Part 1. Unlawful Driving of Animals.

§ 81-5-101. Moving livestock from customary range forbidden.

(1) A person who willfully moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, domestic bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding \$500, or both.

(2) A person who negligently moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, domestic bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by:

(a) a term of imprisonment in the county jail not to exceed 6 months;

(b) a fine not exceeding:

(i) \$25 for a first offense;

(ii) \$250 for a second offense; and

(iii) \$500 for a third or subsequent offense; or



(c) both imprisonment and the appropriate fine.

(3) Prior to the imposition of the penalty provided for in subsection (1) or (2), the owner of the livestock shall file a complaint with the department. The department shall conduct an investigation to determine the circumstances under which the livestock were moved.

§ 81-5-102. Driving animals upon railroad track.

If a person willfully drives an animal upon a railroad track with intent to injure the corporation or persons owning the railroad and such animal is killed or injured thereby, the person is punishable by a fine not exceeding \$50,000 or imprisonment in the state prison not exceeding 5 years, or both, and is liable for all injury or damage occasioned by reason of such act.

§ 81-5-103. Abandonment of sheep -- penalty.

A person who has, by virtue of employment as herder, driver, or otherwise, the charge or custody of sheep and who willfully abandons the sheep or allows them to stray from the person's charge or custody shall, upon conviction, be punished by a fine of not less than \$100, by imprisonment of not less than 3 months or more than 1 year, or by both. However, if the person who has charge or custody of the sheep gave the owner of the sheep or the owner's authorized agent at least 5 days' notice of the intention to quit employment, the person may not be considered to have abandoned the sheep, within the meaning of this section, by leaving the sheep after the expiration of the period.

Part 4. Alternative Livestock Ranches.

§ 87-4-406. Definitions.

As used in this part, the following definitions apply:

- (1) "Alternative livestock" means a privately-owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately-owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.
- (2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under this part.
- (3) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families suidae, camelidae, or hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.
- (4) "Department" means the department of fish, wildlife, and parks.
- (5) "Facilities" means perimeter fences and other enclosures that provide for the confinement, handling, and quarantine of alternative livestock.
- (6) "Game animals" means game animals, as defined in 87-2-101, that are not the lawful property of any private person.
- (7) "Person" means an individual, firm, corporation, association, or partnership.



§ 87-4-407. License required -- moratorium -- penalty -- seizure of illegally possessed animals.

(1) A person may not operate an alternative livestock ranch in this state without having first obtained an alternative livestock ranch license from the department prior to November 7, 2000. A person may not apply for or be granted a license after that date.

(2) A person who operates an alternative livestock ranch without a license or possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to 87-4-424 is subject to the penalties provided in 87-6-705.

(3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be immediately seized by the department and is subject to disposal by the department. Costs of seizure may be charged to the person in possession of the animal.

§ 87-4-408. Jurisdiction.

(1) The department has primary jurisdiction over alternative livestock ranches with regard to licensing, reports, recordkeeping, exterior fencing, classification of certain species under 87-4-424, unlawful capture under 87-4-418, inspection under 87-4-413, and enforcement of the functions listed in this subsection.

(2) The department of livestock has primary jurisdiction over alternative livestock ranches with regard to marking, inspection, transportation, importation, quarantine, hold orders, interior facilities, health, and enforcement of the functions listed in this subsection.

§ 87-4-411. License renewal fees -- deposit of fees.

(1) The department shall charge an annual renewal alternative livestock ranch license fee based on the following scale:

(a) an alternative livestock ranch with 1 to 20 alternative livestock, a fee of \$100;

(b) an alternative livestock ranch with 21 to 60 alternative livestock, a fee of \$200; and

(c) an alternative livestock ranch with more than 60 alternative livestock, a fee of \$400.

(2) The department of livestock shall assess a fee, not to exceed \$50, for each alternative livestock imported into the state.

(3)

(a) One-half of the fees collected pursuant to subsection (1) must be deposited in the state special revenue fund for the use of the department for purposes of this part.

(b) One-half of the fees collected pursuant to subsection (1) and all import fees collected pursuant to subsection (2) must be deposited in the state special revenue fund for the use of the department of livestock for purposes of this part.

§ 87-4-412. Term of license -- renewal -- transfer prohibited.

(1) An alternative livestock ranch license expires on March 1 of the year



succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license upon payment of the renewal fee if the licensee has complied with all recording and reporting requirements.

(2) An alternative livestock ranch license for a specific facility is not transferable.

§ 87-4-413. Inspection.

The department may inspect the alternative livestock ranch or the licensee's alternative livestock ranch records on a scheduled basis or on another reasonable basis as may be determined necessary.

§ 87-4-414. Alternative livestock as private property -- source -- marking -- fee shooting prohibited.

(1) All alternative livestock lawfully possessed on a licensed alternative livestock ranch are private property for which the licensee is responsible as provided by law.

(2) The licensee may acquire, breed, grow, keep, pursue, handle, harvest, use, sell, or dispose of the alternative livestock and their progeny in any quantity and at any time of year as long as the licensee complies with the requirements of this part, except that the licensee may not allow the shooting of game animals or alternative livestock, as defined in 87-2-101 or 87-4-406, or of any exotic big game species for a fee or other remuneration on an alternative livestock facility.

(3) A licensee shall mark alternative livestock in a manner approved by the department of livestock, as required under subsection (4), and that indicates ownership and provides individual identification of animals for inspection, transportation, reporting, and taxation purposes.

(4) The department of livestock is responsible for the control, tracking, and distribution of identification tags used for the marking of alternative livestock. The department of livestock shall require that all imported alternative livestock are marked within 30 days of importation and that all other alternative livestock are marked prior to January 1 of each year. Each alternative livestock must be marked with identification that:

(a) is unique to the animal;

(b) is nontransferable;

(c) has an emblem owned and registered by the department of livestock that is embossed on each identification tag; and

(d) allows for the identification of alternative livestock from a distance.

(5) Upon the request of a licensee, the department of livestock may grant a temporary waiver as to the time for identification and to the manner of identification if necessary to address a special circumstance.

(6) Alternative livestock must be lawfully acquired by the licensee. Alternative livestock may be kept only on a licensed alternative livestock ranch. A licensee who keeps alternative livestock owned by, leased to, or leased from another person shall comply with all of the requirements of this part as if the animal belonged to the licensee.

Records and reports submitted by the licensee pursuant to 87-4-417 must identify



any alternative livestock kept by the licensee during the reporting period and the name and address of the owner or lessee.

(7) Except as otherwise provided in this part, laws applicable to game animals do not apply to alternative livestock raised on a licensed alternative livestock ranch.

§ 87-4-415. Transportation, sale, and disposal of alternative livestock -- quarantine.

(1) Prior to selling, transferring, transporting, or disposing of one or more alternative livestock, the alternative livestock ranch licensee shall request an inspection of the alternative livestock, which inspection must be completed by a department of livestock designated agent. All dead alternative livestock must be reported to the department of livestock within 1 working day of the discovery of the death.

(2)

(a) Inspection under subsection (1) must be conducted pursuant to 81-3-203(1) through (3) and must include the number, species, age, sex, and individual identification numbers of alternative livestock transported or disposed of.

(b) A copy of the certificate of inspection must be provided by the department of livestock to the department within 10 days of inspection.

(3) The department of livestock may quarantine or issue a hold order on any alternative livestock pending inspection and health certification. The department shall notify the department of livestock regarding the importation or transportation of any alternative livestock that the department reasonably believes may be infected with a disease specific to wildlife.

§ 87-4-418. Unlawful capture.

A person may not capture, take, or otherwise acquire any game animal in this state for use on an alternative livestock ranch.

§ 87-4-419. Escape from alternative livestock ranch -- effect.

(1) If an alternative livestock animal escapes from an alternative livestock ranch, the alternative livestock licensee shall immediately notify the department of its escape and shall make every reasonable effort to recapture it. If the escaped animal cannot be recaptured within a reasonable time, the department may kill the animal. If recapture or killing of the animal is unsuccessful within a reasonable time, the animal becomes the property of the state.

(2) The department shall by rule adopt a definition of "reasonable time", as used in this section, taking into consideration specific seasonal issues related to breeding and disease.

Part 9. Game Bird Farms.

§ 87-4-901. Definitions.

For purposes of this part, the following definitions apply:



(1) "Game bird farm" means an enclosed area upon which game birds may be kept for purposes of obtaining, rearing in captivity, keeping, and selling game birds or parts of game birds as authorized under this part.

(2) "Game birds" means all birds defined as upland game birds in 87-2-101.

§ 87-4-902. Exemption.

This part does not apply to:

(1) a person who owns, controls, or propagates game birds for purposes other than sale or conveyance of game birds or parts of game birds and who notifies the department and receives its written authorization and exemption;

(2) the holder of a migratory game bird avicultural permit under 87-2-807; or

(3) the holder of a shooting preserve license under Title 87, chapter 4, part 5, who uses temporary holding pens pursuant to 87-4-530.

§ 87-4-914. Release of birds.

Game bird farm licensees may release birds into the wild only with the prior approval of the director.

Part 10. Fur Farms.

§ 87-4-1001. Definitions.

For purposes of this part, the following definitions apply:

(1) "Fur farm" means the enclosed land area upon which furbearers may be kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers as authorized under this part.

(2) "Furbearer" means a marten or sable, otter, muskrat, fisher, bobcat, lynx, wolverine, or beaver. The term does not include fox or mink.

§ 87-4-1002. Fur farm license required -- applicability.

(1) Except as provided in subsection (2), a person may not own, control, or propagate furbearers unless the person holds a current fur farm license from the department.

(2) This part does not apply to the ownership, control, or propagation of furbearers if the ownership, control, or propagation is not for the sale or conveyance of furbearers or parts of furbearers.

(3) A person who violates this section is subject to the penalties provided in 87-6-717.

