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[nationalaglawcenter.org](http://nationalaglawcenter.org) | [nataglaw@uark.edu](mailto:nataglaw@uark.edu) | [@nataglaw](https://twitter.com/nataglaw)

## States' Fence Statutes: *Oregon*



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# A National Agricultural Law Center Research Publication

## States' Fence Statutes: Oregon

**OR Rev. Stat §§ 96.010 to 96.060, OR Rev. Stat §§ 607.005 to 607.992, OR Rev. Stat §§ 608.015 to 608.990**

*Current through Chapters 3, 13, and 14 enacted in the 2021 Regular Session of the 81st Legislative Assembly, which convened January 22, 2021, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160.*

### **Chapter 96. Line and Partition Fences.**

#### **96.010. Partition fence expense sharing.**

Whenever there is a fence that is in all respects such as a good husbandman ought to keep on the line of any land, and the person owning or holding a lease for one or more years of the land adjoining thereto makes or has an enclosure on the opposite side of such fence, so that such fence answers the purpose of enclosing the latter's field, meadow, lot or other enclosure, the latter shall pay the owner of such fence already erected, one-half of the value of so much thereof as serves as a partition fence, such value to be determined by the parties. If they cannot agree, the party aggrieved and entitled to compensation for constructing or repairing the partition fence shall be entitled to recover from the other in a civil action the value of one-half of such fence or half of the value of repairing it before any court having competent jurisdiction in the name of and for the use of the owner or lessee of such fence, together with disbursements and costs of action. The prevailing party shall also recover attorney fees at trial and on appeal, to be adjudged by the court.

#### **96.020. Partition fence repair failures.**

If any party neglects to repair or rebuild such partition fence as is mentioned in ORS 96.010 or the portion thereof which the party ought to maintain, the aggrieved party may complain to a justice of the peace, who, after due notice to each party, shall examine the fence and if the justice of the peace determines it to be insufficient the justice of the peace shall so signify in writing to the delinquent party and direct the latter to repair or rebuild it within such time as the justice of the peace adjudges to be reasonable.

#### **96.030. Complainant repairs.**

If a partition fence is not repaired or rebuilt according to the directive mentioned in ORS 96.020, the complainant may repair or rebuild it and recover the value thereof from the delinquent party before any court of competent jurisdiction. The court may award reasonable attorney fees to the prevailing party in an action under this section.

#### **96.040. Partition fence removal.**

(1) In all cases where the enclosures of two or more persons are divided by a partition fence of any kind and either of the parties thinks it proper to vacate the part of the enclosure of that party or to make a lane or passage between the adjoining



enclosures, that party is at liberty to remove the share of that party or part of the partition fence on giving six months' notice in writing of such intention to the party owning or occupying the adjoining enclosure, or to the agent of the party, if such party is not a resident of the county.

(2) When one party ceases to improve the land of the party or opens the enclosure, the party shall not take away any part of the partition fence belonging to the party and adjoining the next enclosure if the owner or occupant of the adjoining enclosure, within two months after it is ascertained, pays therefor such sum as is agreed upon by the parties or, if they fail to agree, such sum as is adjudged by two disinterested persons, selected by the parties, which two persons, if they fail to agree, may select a third person, and the three persons shall determine such sum. Such partition fence shall not be removed when by so doing it will expose to destruction any crops in such enclosures.

#### **96.050. Partition fence gates.**

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

#### **96.060. Limitations and conduct for removing fence built on another's land.**

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

(2) The occupant or owner of land whereon a fence has been built by mistake shall not throw down or in any manner disturb such fence during the period which the person who built it is authorized by subsection (1) of this section to remove it.

### **Chapter 607. Livestock Districts; Stock Running at Large.**

#### **607.005. Definitions.**

As used in this chapter:

(1) "Class of livestock" means a class, species, genus or sex of livestock, including a class, species or genus of neutered livestock.

(2) "Department" means the State Department of Agriculture.

(3) "Federal land" means a tract of land containing 25,000 acres or more owned or administered by, or under the jurisdiction of, the United States and not subject to the laws of this state.

(4) "Livestock" means animals of the bovine species, horses, mules, asses, sheep, goats and swine.

(5) "Livestock district" means an area wherein it is unlawful for livestock or a class of livestock to run at large.

(6) "Open range" means an area wherein livestock may lawfully be permitted to run at large.



### **607.007. “Estray”; “adequate fence”; “taking up” defined.**

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

(1) “Adequate fence” means a continuous barrier consisting of natural barriers, structures, masonry, rails, poles, planks, wire or the combination thereof, installed and maintained in a condition so as to form a continuous guard and defense against the ingress or egress of cattle or equines into or from the lands enclosed by the barrier. Natural barriers may include hedges, ditches, rivers, streams, ponds or lakes.

(2) “Estray animal” means:

(a) Cattle, bison or equines that are unlawfully running at large or being permitted to do so; or

(b) Cattle or equines that are found to be trespassing on land enclosed by an adequate fence.

(3) “Taking up” means the intentional exertion of control over an estray animal, including but not limited to the restriction of movement, holding under herd, feeding, pasturing or sheltering of the animal.

### **Livestock Districts.**

#### **607.008. Incorporated cities are livestock districts.**

All incorporated cities are livestock districts.

#### **607.044. Liability for livestock running-at-large.**

A person shall be liable to the owner or lawful possessor of land if the person permits an animal of a class of livestock to run at large upon such land and the land is located in a livestock district in which it is unlawful for such class of livestock to be permitted to run at large.

#### **607.045. Livestock running-at-large.**

(1) No person owning or having the custody, possession or control of an animal of a class of livestock shall permit the animal to run at large or to be herded, pastured or to go upon the land of another in a livestock district in which it is unlawful for such class of livestock to be permitted to run at large.

(2) This section is not intended to prohibit a person from driving livestock along a public road.

(3) Justice and circuit courts have concurrent jurisdiction of actions for the prosecution of violations of this section.

#### **607.051. Applicability of ORS 607.005 to 607.045 to livestock districts**

The livestock districts designated by order of the State Department of Agriculture under section 33, chapter 604, Oregon Laws 1957, shall be subject in all respects to the provisions of ORS 607.005 to 607.045.



### **607.055. Applicability of livestock confinement laws to federal lands**

To the extent permitted by federal law, lands owned or administered by or under the jurisdiction of the United States, other than federal land as defined in ORS 607.005, shall be treated in the same manner as private lands for purposes of ORS chapter 607 and ORS 608.015, 608.310 to 608.400, 608.510 and 608.990.

### **Stock Running at Large on Open Range.**

#### **607.261. Livestock running at large on open range.**

(1) No person shall turn upon, or allow to run upon, the open range, any bull other than a purebred bull of a recognized beef breed. The State Department of Agriculture shall by regulation define "purebred bull of a recognized beef breed." No person shall turn upon, or allow to run upon, the open range, any female breeding cattle unless the person turns with such female breeding cattle one purebred bull of a recognized beef breed for every 25 females or fraction thereof of 10 or over.

(2) No owner of any stallion or jackass, of the age of 18 months or more, shall permit it to run upon the open range during the period April 1 to October 31 of each year. No owner of any ram shall permit it to run at large upon the open range during the period July 1 to October 31 of each year.

### **Estray Animals; Interfering with Animals.**

#### **607.300. Adequacy of fences.**

If cattle or equines break through a fence on the open range and a determination of the adequacy of the fence is necessary in order to determine whether the cattle or equines are estray animals, the State Department of Agriculture shall make the determination of the adequacy of the fence and shall consider, among other things, the customs and practices of good animal husbandry in the particular area with reference to fences. The department may adopt rules establishing fees for determining the adequacy of a fence. Fees must be reasonably calculated to compensate the department for the costs of the determination.

#### **607.303. Taking up livestock unlawfully permitted to run at large; notice to owner and department; contents of notice.**

(1) A person who finds an estray animal unlawfully being permitted to run at large upon the premises of the person, or premises of which the person has lawful possession or control, may take up the animal if the owner of the animal is known to the person.

(2) A person taking up an animal shall within five days give notice of the taking up by certified or registered mail addressed to the owner or person having control of the animal. The notice shall:

(a) Contain a concise description of the animal, including marks and brands, if any.

(b) State that the animal will be released to and sold by the State Department of Agriculture as an estray animal unless redeemed before sale.

(c) State the date of taking up the animal and that the department may sell an unclaimed animal not less than 30 days and not more than 45 days after the date of taking up the animal.



(3) A person taking up an animal shall, no later than five days after giving the notice provided in subsection (2) of this section, forward a copy of the notice to the department or give a copy of the notice to a brand inspector or other agent of the department.

**607.304. Delivery of livestock to department or owner; payment of costs by owner; arbitration; fees.**

(1) If the owner of an estray animal does not appear in response to the notice given under ORS 607.303 (2), the person taking up the animal shall deliver the animal to the State Department of Agriculture, at a place designated by the department, at least 48 hours in advance of the date of sale. The time of sale may not be less than 30 days and not more than 45 days after the date of taking up the animal. The State Department of Agriculture shall sell the animal in accordance with ORS 607.328.

(2) If the owner of the animal does appear, the person taking up the animal shall deliver the animal to the owner or agent if the owner pays to the person, before the date of sale:

- (a) The cost of taking up the animal;
- (b) The cost of giving notice;
- (c) The cost of keeping the animal; and
- (d) The cost of repairing any damage done by the animal to the property of the person.

(3) The person taking up the animal, upon delivering the animal to the owner, shall notify the department of the delivery.

(4) If the owner is unable to agree with the person taking up the animal as to the amount of the costs payable to the person, no later than five days after the owner is advised of the amount of the payable costs, the owner shall:

- (a) Pay an arbitration fee of \$150 to the department; and
- (b) Give written notice to the department and the person taking up the animal that the owner disagrees with the amount of the costs, desires arbitration of the disagreement and desires that the department furnish a list of arbitrators.

(5) Upon receiving the notice of the owner described in subsection (4) of this section, the department shall furnish to the owner and the person taking up the animal the names of five arbitrators selected from the list of qualified persons maintained in accordance with subsection (10) of this section. No later than five days after receiving the list of arbitrators, the owner shall give written notice to the department and the person taking up the animal of the name of the arbitrator appointed by the owner from the list. No later than five days after receiving the list of arbitrators, the person taking up the animal shall give written notice to the department and to the owner of the name of the arbitrator appointed by the person from the list.

(6) Upon receiving the notices of appointment of arbitrators, as provided in subsection (5) of this section, the department shall give written notice to each appointed arbitrator of the arbitrator's appointment.

(7) Upon receiving notice as provided in subsection (6) of this section, each of the



two arbitrators shall notify the department in writing whether the arbitrator accepts the appointment. Upon acceptance of appointment by an arbitrator appointed by the owner and an arbitrator appointed by the person taking up the animal, the department shall appoint a third arbitrator. An acceptance of appointment by the third arbitrator must be in writing. The department shall pay each appointed arbitrator \$50 from the money paid to the department under subsection (4) of this section for arbitration services. The three arbitrators shall act as a board of arbitration and may hear witnesses, take testimony, inspect documents, the animal and premises and may issue a decision as to the amount allowable as costs. The decision shall be by majority vote and conclusive as to the owner and person taking up the animal upon receipt of the decision by the department. Written notice of the decision shall be given to the department, the owner and the person taking up the animal no later than 30 days after the appointment of the third arbitrator.

(8)

(a) If the owner gives the notice to the department and the person taking up the animal that the owner disagrees with the amount of the costs, but does not indicate in the notice a desire to arbitrate or a desire to have a list of arbitrators furnished to the owner, the owner's right to arbitration is waived and the person taking up the animal shall deliver the animal to the department at a place designated by the department. The department shall then sell the animal in accordance with ORS 607.328.

(b) If the person taking up the animal fails to give a notice of appointment required under subsection (5) of this section, the person waives the right to arbitration and the animal may not be sold. The owner shall be entitled to the immediate possession of the animal without payment of any of the costs described in subsection (2) of this section.

(9) At any time during the arbitration provided for in this section, the owner of the animal may give written notice to the department and the person taking up the animal of the owner's desire to regain immediate possession and custody of the animal. If the owner gives such notice, and at the same time deposits with the department a cash deposit in an amount equal to the accrued costs claimed by the person taking up the animal as of the date the notice is given, the animal shall be released to the owner or agent within 48 hours after the giving of notice and cash deposit. The department is authorized to pay the costs determined by the arbitrators under subsection (7) of this section to the person taking up the animal and return the balance, if any, to the owner.

(10) The department shall establish and maintain a list of persons qualified by experience and knowledge to act as arbitrators in accordance with subsection (7) of this section. In furnishing the names of five arbitrators, as provided in subsection (5) of this section, the department shall first determine that none of the listed persons:

(a) Is related to either the owner or person taking up the animal;

(b) Is, or has been, an agent, employee or business associate of the owner or the person taking up the animal; or

(c) Has for any reason bias or prejudice toward the owner or the person taking up the animal.

(11) If the owner or the person taking up the animal intentionally fails to disclose





to the department that any of the five arbitrators on the list provided under subsection (5) of this section does not meet the criteria described in subsection (10) of this section, the department shall upon determining an intentional failure to disclose:

- (a) Declare the arbitrator disqualified and any arbitration decision previously rendered void and of no effect;
- (b) Select a person from the department's list to replace the disqualified arbitrator; and
- (c) Direct that the arbitration be undertaken with the newly appointed arbitrator as a member of the board of arbitration.

#### **607.308. Alternative procedure for taking up livestock.**

A person taking up an estray animal of a known owner, instead of following the procedure established by ORS 607.303 and 607.304, may, within five days after taking up the animal, deliver the animal and the notice described in ORS 607.313 (1) to the State Department of Agriculture at a place designated by the department. The department shall dispose of the animal in accordance with ORS 607.321 or 607.328.

#### **607.311. Notice required for taking up estrays.**

- (1) A person who finds an estray animal upon the premises of the person or premises of which the person has lawful possession or control may take up the animal.
- (2) A person may not knowingly take up or retain possession, custody or control of an estray animal without giving the notice required by ORS 607.313.

#### **607.313. Time to give notice to department by persons taking up estrays; costs.**

- (1) Any person taking up an estray animal shall, within five days, give written notice of the taking up to the State Department of Agriculture. The notice shall include:
  - (a) A statement of the description of the animal, including marks and brands or other identifying characteristics.
  - (b) The date of the taking up.
  - (c) The location of the taking up and present location of the animal.
- (2) If a person gives the notice required by subsection (1) of this section but fails to do so within the time allowed, the person may recover only those costs verified by the department of taking up the animal, of giving notice and of keeping the animal, as provided in ORS 607.304 (2), 607.332 and 607.338, that were incurred within five days immediately preceding the giving of the notice.

#### **607.321. Department investigation upon receipt of notice to determine owner; procedure if department determines owner.**

- (1) The State Department of Agriculture, upon receiving a notice as described in ORS 607.313, shall attempt to determine the owner of the estray animal from the recorded brand, marks, other identifying characteristics and other relevant information tending to establish ownership.





(2) A record of the findings of the department supporting a determination of ownership shall be made and retained by the department for three years.

(3) The department shall have 20 days after receiving a notice described in ORS 607.313 to determine the owner of an estray animal. If the department determines the owner of the animal within 20 days, the department shall send written notice to the owner and the person taking up the animal, at their last- known addresses. The notice shall contain the matters described in ORS 607.328 (2)(b). If the owner does not appear and claim the animal prior to sale, in accordance with ORS 607.332, the sale shall be carried out as provided in ORS 607.328.

#### **607.328. Sale of estrays; notice of public sale.**

(1) The State Department of Agriculture shall cause an estray animal to be sold at public sale if:

(a) The department is unable to determine in a timely manner the owner of the animal under ORS 607.321;

(b) The estray animal of a known owner is delivered to the department under ORS 607.304 (1) or (8); or

(c) The estray animal of a known owner is delivered to the department under ORS 607.308, and sale of the animal is required because of the owner's failure to appear and claim the animal as provided in ORS 607.332.

(2) Prior to the holding of any public sale, as provided in subsection (1) of this section, the department shall:

(a) Designate a time and place of public sale. Subject to any other sale date restrictions, the sale shall be held not less than five days after the department receives the notice of taking up.

(b) Cause a notice of the public sale to be given by posting a written or printed notice of the time and place of sale, a description of the animal and that such sale shall take place if the animal is not claimed by the owner prior to the sale. The posting shall be in two public places of the county where the animal was taken up for not less than 48 hours prior to the date of sale. If the department is satisfied that adequate notice has been given an owner pursuant to ORS 607.303 (2), notice need not be posted.

#### **607.332. Estrays claimed prior to sale; costs.**

(1) If the owner of an estray animal appears and claims the animal prior to sale, the owner shall pay to the State Department of Agriculture all costs described in ORS 607.337 (1) and, except as limited by ORS 607.313 (2), shall pay to the person taking up the animal all accrued costs described in ORS 607.304 (2). Upon such payment, the department shall release the animal to the owner or the agent of the owner. Except as provided in subsection (2) of this section, if the owner fails to pay the costs, the sale shall be carried out in accordance with ORS 607.328.

(2) If the owner is unable to agree with the person taking up the animal as to the amount of the costs payable to the person, the owner and the person shall proceed with arbitration of the disagreement as provided by ORS 607.304 (4) to



(10).

**607.336. Title of purchaser.**

The purchaser of an animal sold in accordance with ORS 607.328 shall have clear and absolute title to the animal.

**607.337. Use of sale proceeds.**

(1) All costs incurred by the State Department of Agriculture in the taking up and sale of an estray animal shall be paid from the sale proceeds in the following priority:

- (a) Cost of publication of notice. (b) Cost of the sale.
- (c) Cost of transportation of the animal to the point of sale.
- (d) Reasonable cost of feed and care prior to sale.
- (e) All other costs including the time and mileage of the employees of the department.

(2) If the proceeds of the sale are inadequate to pay all of the costs mentioned in subsection (1) of this section, the department shall pay the deficiency.

(3) Subject to ORS 607.338 (1) and (3), any balance remaining from the proceeds of sale shall be transmitted to the department. The department shall deposit the proceeds balance in the Department of Agriculture Account in the General Fund. Proceeds so deposited shall be held in such account for a period of one year subject to claim by the owner.

(4) If the owner fails to establish the right of the owner to the proceeds of sale within one year, all right, title and claim thereto shall be transferred to the department to expend and use in carrying out this chapter and ORS chapter 604.

**607.338. Use of sale proceeds where private person has taken up livestock; arbitration of costs; fee.**

(1) If the State Department of Agriculture sells an estray animal under ORS 607.328, the department shall first recover from the proceeds of the sale the costs described in ORS 607.337 (1), and from any balance remaining pay to the person taking up the animal the costs described in ORS 607.304 (2), except as limited by ORS 607.308, 607.313 (2) and subsection (2) of this section.

(2) If the department sells under ORS 607.328 an estray animal that was delivered to the department under ORS 607.304 (1), the department shall allow to the person taking up the animal only reasonable costs. The department's determination of reasonable costs shall be final. However, the department may, upon written request of the person taking up the animal, submit the question of the amount of reasonable costs to arbitration. If the question is submitted to arbitration, the department shall furnish to the person taking up the animal the names of five arbitrators selected from the list of qualified persons maintained in accordance with ORS 607.304 (10), and the person taking up the animal shall appoint one arbitrator from the list within five days of receiving the list. The department shall then appoint one arbitrator and the two arbitrators shall jointly appoint a third arbitrator from the list. The two arbitrators shall give written notice



of the appointment of the third arbitrator to the department and the person taking up the animal no later than five days after receiving the list. The three arbitrators shall act as a board of arbitration and may hear witnesses, take testimony, inspect documents, the animal and the premises and issue a decision as to the amount of reasonable costs. The decision of the arbitrators shall be final. Written notice of the decision shall be given to the department and the person taking up the animal no later than 30 days after the appointment of the third arbitrator. The person taking up the animal shall pay an arbitration fee of \$150 to the department at the time of submitting the written request for arbitration, from which the department shall pay each appointed arbitrator \$50 for arbitration services.

(3) Any balance remaining from the proceeds of the sale after the department has reimbursed itself and has paid the costs of the person taking up the animal shall be paid to the owner of the animal. If the owner fails to establish the right to the remaining proceeds within one year after the sale, all rights to the proceeds shall vest in the department to use in carrying out the provisions of this chapter and ORS chapter 604.

(4) This section does not require the department to pay the costs of the person taking up the animal if the proceeds of the sale of the animal are not sufficient to pay those costs.

#### **607.339. Department liability.**

Except for gross negligence the State Department of Agriculture is not liable for the payment of the proceeds of sale or return of custody of an estray animal to a person claiming to be the true owner of the animal.

#### **607.341. Court jurisdiction.**

Justice courts shall have concurrent jurisdiction with circuit courts of proceedings brought on violations of ORS 607.303 to 607.341.

#### **607.344. “Freshly branded” defined.**

As used in ORS 607.345 to 607.360, “freshly branded” means any animal on which there is a brand that has not been peeled off or entirely healed.

#### **607.345. Interfering with calves, neat cattle or colts; selling freshly branded neat cattle or horses.**

No person shall:

(1) Hold under herd, confine in any pasture, building, corral or other enclosure, or picket out, hobble or tie together, or in any manner interfere with the freedom of calves or neat cattle or colts of horses, on the open range, which are less than seven months old, unless such animals are accompanied by their mothers.

(2) Sell or offer to sell any freshly branded neat cattle or horses.

#### **607.350. Production of mothers of calves or colts.**

The person, separating calves or colts from their mothers shall, upon demand of the sheriff, inspector or other officer, produce, within a reasonable time, the mother of each such animal, so that the interested parties may ascertain if the animal, so produced as the mother thereof, does or does not claim or suckle such calf or colt.



**607.355. Disposal of animals held in violation of ORS 607.245 or 607.350.**

All animals held in violation of ORS 607.345 or 607.350 shall be considered estray animals. The nearest stock inspector, upon learning of the violation, shall cause the animals to be disposed of as estray animals under the laws in force in the stock inspector's county or district.

**607.360. Applicability of ORS 607.345 to 607.355 to certain animals.**

ORS 607.345 to 607.355 do not apply to:

- (1) The calves of milch cows where such cows are actually used to furnish milk for household purposes or for carrying on a dairy.
- (2) Any freshly branded animal which has been branded previously with an older and duly recorded brand, and for which animal the claimant has a legally executed bill of sale from the owner of the older brand on such animal.
- (3) Young animals under the age of 10 months which are accompanied by their mothers.
- (4) Animals other than cattle or horses, or the offspring thereof, which during some period of the year run at large upon the public range.

**607.365. Driving lawfully located domestic animals from range.**

- (1) No person, who is not the owner of such animal, shall take or drive, cause to be taken or driven, or assist in driving or taking away any horse, gelding, mare, foal, mule, ass, jenny, bull, cow, heifer, steer, calf, sheep, hog or any other domestic animal from the range or place where it is lawfully grazing, pasturing or ranging, or in the habit of ranging, or where it has been herded or placed by the owner thereof, for a distance of more than 10 miles from such place.
- (2) Persons violating this section shall be liable to the owner of such animal for all damages sustained by reason of such driving or taking away of such domestic animal.

**Regulation of Stock on Certain Highways.**

**607.505. Klamath Falls-Malin Highway regulation of livestock running at large or grazing.**

- (1) No person shall permit cattle, horses, mules, sheep, goats or hogs to run at large, be pastured, staked or tethered upon the state highway extending from the easterly boundary of the incorporated City of Klamath Falls to the westerly boundary of the incorporated City of Malin.
- (2) As used in this section, "state highway" includes only those highways over which the Department of Transportation has control.

**607.510. Certain state highways regulation or livestock running at large or grazing**

No person shall allow cattle, horses, mules, sheep, goats, swine or other livestock of any kind, to run at large, be pastured, staked or tethered upon the following state highways:

- (1) That part of the Oregon Coast Highway, State Highway No. 9, extending from the north boundary of Tillamook County to the south boundary of Lane County.
- (2) That part of the Alsea Highway, State Highway No. 27, from its junction with the Corvallis- Newport Highway in Benton County to Waldport in Lincoln County.



(3) That part of the Corvallis-Newport Highway, State Highway No. 33, from Corvallis in Benton County to Newport in Lincoln County.

(4) That part of the Salmon River Highway, State Highway No. 39, from Valley Junction in Polk County to a connection with the Oregon Coast Highway at or near Otis in Lincoln County.

(5) That part of the Wilson River Highway, State Highway No. 37, from the east boundary of Tillamook County to the intersection of the Wilson River Highway with the Oregon Coast Highway, which is State Highway No. 9.

**607.515. Highway from Canyonville to Umpqua National Forest regulation of livestock at large or grazing.**

No person shall permit any cattle, horses, mules, sheep, goats, hogs or other livestock, to run at large, be pastured, staked or tethered upon the state highway extending from the easterly boundary of the incorporated City of Canyonville easterly to the west boundary of the Umpqua National Forest.

**607.520. Washington County highway regulation of livestock running at large.**

No person, either as owner or in possession or control of any horses, mules, cattle, swine, sheep or goats shall permit them to run at large on any highway or public road in Washington County.

**607.527. Interstate and defense highway regulation of livestock herded or grazed.**

(1) Notwithstanding ORS 366.460, 366.465, 374.340 and 607.045 (2) and notwithstanding the existence of an open range area, except as provided by subsection (2) of this section, no person, except in case of emergency, shall drive, herd, pasture, graze, range, tether or stake any livestock, as defined by ORS 607.005, within the boundaries of the right of way for a state highway that is part of the national system of interstate and defense highways, to wit: Interstate 5, Interstate 84, or Interstate 82. This section is not intended to prohibit the hauling of livestock, in vehicles, on a highway or the use of structures or undercrossings, constructed and approved as provided by law, as stock ways, nor to abrogate a duty provided under ORS 607.303 to 607.341.

(2) Upon application by an owner or person in charge of livestock, the Director of Transportation or duly authorized local representative may issue written permits, on such terms as the person finds proper, authorizing the owner or person in charge of livestock to herd or drive the livestock on a single trip across or within the boundaries of a right of way for a highway as described in subsection (1) of this section.

**607.992. Penalties**

(1) A person that intentionally, knowingly or recklessly violates a provision of this chapter is guilty of a Class A misdemeanor.

(2) Except as provided in subsection (3) of this section, a person that violates a provision of this chapter, but does not act intentionally, knowingly or recklessly, commits a Class B violation.

(3)



(a) A person that violates ORS 607.045, but does not act intentionally, knowingly or recklessly, commits a Class D violation if the person does not have a previous conviction for a violation of ORS 607.045. As used in this paragraph, “previous conviction” means a conviction entered before the commission of the current violation of ORS 607.045.

(b) Notwithstanding ORS 153.019 or any other requirement pertaining to Class D violation fine amounts, the presumptive fine for a violation described in this subsection is \$60.

## **Chapter 608. Fences to Prevent Damage by or to Animals.**

### **608.015. Liability for trespassing animals.**

(1) As used in this section, “open range” means an area wherein livestock may lawfully be permitted to run at large.

(2) A person who permits a horse, mule, ass, sheep, goat or animal of the bovine species to trespass on land enclosed by an adequate fence and situated on open range shall be liable to the owner or lawful possessor of the enclosed land for damage done by the animal. The person seeking to recover the damages shall plead and prove that the fence of the person consisted of structures, masonry, hedges, ditches, rails, poles, planks, rivers, streams, ponds, lakes, wire fences, natural or artificial barriers of any kind or any combination thereof. The adequacy of the fence shall be determined by reference to the customs and practices of good husbandmen in the particular area with reference to fences. The question of the existence of the fence and the adequacy thereof are questions of fact.

(3) Nothing contained in subsection (2) of this section is intended to modify the provisions of ORS 608.310 to 608.400.

## **Fences and Crossings on Railroad Right of Way; Railroad Liability.**

### **608.310. Erecting and maintaining fences, crossings, gates and cattle guards; rules.**

(1) Every person, or the lessee or agent of the person, owning or operating any railroad, shall erect and maintain good and sufficient lawful fences on both sides of the railroad line, except at the crossings of and upon public roads and highways, within such portions of cities as are or may be laid out and platted in lots and blocks and at railroad station grounds. Such person shall also at the same time erect and maintain necessary farm crossings and gates and sufficient cattle guards at all public crossings.

(2) Railroad lines shall be so fenced and farm crossings, gates and cattle guards installed, within three months from the time such lines are put in operation. However, the Department of Transportation may prescribe by rule the number, location and character of farm crossings which may be necessary and the manner in which they shall be constructed so that they are reasonably adequate, safe, sufficient and convenient, but not so as to impair the terms of any contract between the landowner and the railroad or judgment in condemnation relative to such crossings.

(3) The Department of Transportation may, by rule, determine and prescribe any other description of fence than that designated as a lawful fence, which shall be constructed and maintained by any such railroad company between the points which are





designated in such rule, and may provide for the apportionment of the costs of reconstruction necessitated thereby as between the parties interested.

(4) The Department of Transportation by rule may suspend the operation of this section as to any particular portion of any line of railroad.

#### **608.320. Penalties for refusal or failure to maintain fences, crossings, gates and guards.**

(1) Any person shall forfeit and pay into the State Treasury the sum of \$100 for each mile of fence on either side of a railroad, or for each farm crossing, gate or cattle guard which the person fails, neglects or refuses to erect and maintain in violation of ORS 608.310. This shall be recovered as other penalties are recovered and paid into the State Treasury.

(2) If a person neglects or refuses to comply with ORS 608.310 to 608.330, the Attorney General or prosecuting attorney of the proper county may, by mandamus, compel compliance with such sections.

(3) The provisions of ORS 608.310 to 608.330 are cumulative to existing remedies.

#### **608.330. Prohibition against leaving gates open.**

(1) No person shall intentionally or negligently leave open or unfastened any farm crossing gate, or let down and leave down any bars of any railroad fence.

(2) Justices of the peace have original jurisdiction for violations of this section.

#### **608.340. Railroad liability for killing or injuring stock.**

Any person, or the lessee or agent of the person, owning or operating any railroad, is liable for the value of any horses, mules, colts, cows, bulls, calves, hogs or sheep killed, and for reasonable damages for any injury to any such livestock upon or near any unfenced track of any railroad in this state, whenever the killing or injury is caused by any moving train, engine or cars upon such track.

#### **608.350. Lawful fences.**

No railroad track shall be deemed to be fenced within the meaning of ORS 608.340 unless it is guarded by such fence against the entrance thereon of any livestock on either side of the track, and not more than 100 feet from the track. Whatever is a lawful fence in the county where the killing or injury occurs, and no other, shall be deemed a lawful fence under ORS 608.340. However, complete natural defenses against the entrance of stock upon the track, such as natural walls or deep ditches, shall be deemed to be a fence under such section, when it, in connection with other and ordinary lawful fences, forms a continuous guard and defense against the entrance of such livestock upon the track.

#### **608.360. Presumption of railroad negligence; defenses of contributory negligence and willful intent.**

In every action for the recovery of the value of any livestock killed, or for damages for injury to any livestock, under ORS 608.340, proof of such killing or injury shall of itself be deemed conclusive evidence in any court of this state of negligence upon the part of the person, or the lessees or agents of the person, owning or operating such railroad. Contributory negligence on the part of the plaintiff in such action may be set up as a defense, but





allowing stock to run at large upon common unfenced range or upon enclosed land owned or in possession of the owner of such stock shall not be deemed contributory negligence. In any such action, proof of willful intent on the part of the plaintiff to procure the killing or injury of such stock shall defeat the recovery of any damages for such killing or injury.

**608.370. Process service on agent.**

In any action authorized by ORS 608.340, service of summons or any other necessary process may be made upon any person, or the lessees or agents of the person, owning or operating any railroad, by personal service upon any authorized agent thereof, residing or stationed in the county where such action is brought.

**608.380. Notice by railroad to county sheriff of stock injured or killed.**

Whenever any livestock mentioned in ORS 608.340 is killed or injured by a moving train or engine upon the unfenced railroad track of any railroad in this state, the owner, operator, lessee or agent of the railroad shall immediately notify or cause notice to be given to the sheriff of the county where the accident occurred, and within a reasonable time shall deliver to the sheriff a written description of the livestock so killed or injured, including brands, earmarks and any marks of ownership, and a statement of the condition of or extent and nature of injuries to the livestock.

**608.390. Notification of brand inspector.**

Upon receipt of the information mentioned in ORS 608.380, the sheriff shall immediately notify the nearest brand inspector and deliver the written statement to the inspector.

**608.400. Inspection of injured livestock by brand inspector or sheriff and notification to owner; notice by publication.**

When notified of the killing or injury of livestock under the circumstances described in ORS 608.380, the brand inspector or sheriff shall go to the scene of the accident, examine any identifying marks and, if the ownership of the livestock is determined, notify the owner. If the owner remains unknown, the sheriff shall cause publication in a county newspaper of a description of the livestock and the facts of the accident.

**Fencing Against Hogs.**

**608.510. Fencing against hogs.**

The owner or occupant of premises is not required to fence against hogs. No owner or person entitled to the possession of a hog shall permit it to run at large or upon the property of another person.

**608.990. Penalties.**

- (1) Violation of ORS 608.330 is a Class C misdemeanor.
- (2) Violation of ORS 608.380 is a Class A violation.
- (3) Violation of ORS 608.510 is a Class D violation.

