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States' Fence Statutes: *South Dakota*



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States' Fence Statutes: South Dakota

S.D. Codified Laws §§ 31-25-1 to 31-25-12, S.D. Codified Laws §§ 40-23-1 to 40-23-30, S.D. Codified Laws §§ 40-28-1 to 40-28-26, S.D. Codified Laws §§ 43-17-35 to 43-17-41, S.D. Codified Laws §§ 43-23-1 to 43-23-10, S.D. Codified Laws §§ 43-24-1 to 43-24-10, S.D. Codified Laws § 45- 4-14, S.D. Codified Laws §§ 49-16A-91 to 49-16A-111, S.D. Codified Laws § 9-35-9

Current through 2021 Session Laws, Executive Order 2021-05 and Supreme Court Rule 21-06.

Chapter 31-25. Fences, Cattle Ways, and Livestock Guards.

31-25-1. Fences across highways--Petition by adjacent landowners--Notice and hearing--Gates or grates required.

The board of county commissioners of any county having within its boundaries, any county, township, or section-line highway not included in § 31-25-1.1 extending or running through or across grazing land, may, upon petition, signed by a majority of the adjacent landowners along the portion of such highway involved, and after a hearing is had, on notice mailed by the county auditor to all of said landowners, not less than ten days before such hearing, authorize such landowners to erect and maintain fences across such highway. However, the board of county commissioners shall require the erection of gates or grates, or both, in such fences at points designated by the board, so that the public may have access to the highway.

31-25-1.1. Fences erected across unimproved section-line highways--Gates--Access to highways protected--Violation as misdemeanor.

A landowner may erect a fence across an unimproved county, township, or section-line highway. For the purposes of this section an unimproved county, township, or section-line highway is any county, township, or section line not commonly used as a public right-of-way and never altered from its natural state in any way for the purpose of facilitating vehicular passage. At any point where a fence crosses such highway, the landowner shall erect and maintain an unlocked gate which may be opened easily or provide other suitable access to the highway. If the gate or other access is not large enough or if the gate does not open easily enough to satisfy the needs of those using the highway, the landowner shall erect a larger gate or a gate that can be more easily opened or provide other suitable access to the highway. The landowner shall erect the larger gate or the gate which opens easily or provide the other suitable access upon a request filed with the sheriff of the county in which the land is located by an adversely affected person. If a request is filed, the sheriff shall notify the landowner. The landowner shall comply with the provisions of this section within seven days of notice. A landowner who violates any of the provisions of this section is guilty of a Class 2 misdemeanor.

31-25-2. Cattle ways authorized--Application to highway authority--Designation of construction particulars--Maintenance by landowner.

Upon application to the Department of Transportation, board of county commissioners, or board of township supervisors, by any person for permission to construct a cattle way



across or under any public road, such highway authority maintaining the highway described in the application may in its discretion grant the application upon condition that such way shall be constructed in all particulars as directed by such department or board and shall not interfere with public travel. The grade of the road over the cattle way shall not at any point exceed one foot in ten feet. Applicant must construct and agree to keep the same in repair at his own expense.

31-25-3. Failure of landowner to maintain cattle way--Repair by highway authorities--Recovery of cost.

If any person on whose land a cattle way is constructed pursuant to § 31-25-2 fails to keep the same in repair, the proper board shall cause the same to be repaired and charge the cost thereof to the owner of such cattle way and such cost shall be recovered by a civil action by the state, county, or township against the owner of such land and cattle way.

31-25-4. Livestock guards across county or secondary highways authorized--Guards not considered highway obstruction.

The construction and maintenance of livestock guards over or across county or secondary highways so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across such livestock guards is hereby authorized. The construction and maintenance of such livestock guards shall not be considered as creating a barrier or obstruction on such highways.

31-25-5. Dimensions of livestock guard--Passage for wider vehicles.

All livestock guards shall be at least ten feet wide on the ground. In addition, at one side of such livestock guard there shall be provided or constructed a gate, at least twenty feet wide to accommodate the passage of teams, and wider vehicles.

31-25-6. Authority of governing body required--Removal of livestock guard on order of governing body.

No livestock guards shall be constructed under § 31-25-4, unless constructed by or under the express authorization of the governing body having jurisdiction over such highways, provided that such livestock guards may be removed or ordered removed by such governing bodies whenever such livestock guards shall be deemed no longer necessary.

31-25-7. Appeal from order authorizing or forbidding livestock guard--Procedure for appeal-- Trial de novo.

Whenever any interested person shall feel aggrieved by reason of the action of the governing body in authorizing or refusing to authorize the construction, erection, and maintenance of livestock guards, or ordering removal of said livestock guard, such person may within sixty days after the decision of such governing body, appeal to the circuit court for the county wherein such governing body is situated. Such appeal shall be in writing, and signed by the person feeling aggrieved or by his attorney. Upon the serving of such appeal and the filing of the same with the clerk of the circuit court, the same may be brought on for trial de novo in said circuit court upon ten days' notice. The circuit court shall hear all relevant evidence and shall make and enter such findings, conclusions, and judgment as it deems proper.

31-25-8. Appeal upon failure of governing body to act on request for authorization.



If any person shall file a request for authorization to construct a livestock guard, with the governing body having jurisdiction over such highway, and the governing body shall fail or neglect to act upon such request at its next regular meeting, such failure or neglect to take any action shall be deemed to be a refusal of such authorization, and the person filing such request may appeal the same as provided in § 31-25-7.

31-25-9. Livestock guards constructed prior to enactment of statute.

Sections 31-25-4 to 31-25-8, inclusive, shall not apply to livestock guards which had been constructed and maintained and were in existence on February 20, 1959.

31-25-10. Regulatory signs for unfenced roads in livestock grazing area--Application for erection.

Any person grazing livestock in an area where there are no fences along a road may apply to the governing body that has the responsibility to maintain that road to erect a regulatory sign that livestock will be at large along the road. If the governing body permits the erection of such signs, it shall erect at least one sign where the road enters the grazing area which shall state how far the grazing area continues and one sign where the road leaves the grazing area.

31-25-11. Uniform signs.

The Transportation Commission shall design, produce, and make available a uniform sign pursuant to § 31-25-10.

31-25-12. Cost of signs.

The cost of the sign shall be arranged between the governing body and the person applying for it. The sign shall be erected by the governing body.

Chapter 40-23. Cooperative Grazing Districts.

40-23-1. Definition and purposes of grazing district.

A cooperative corporation organized for the purpose of aiding in the conservation of natural forage resources within a designated area to be jointly used by its members, and for aiding in the restoration and improvement of lands which may be acquired by lease or purchase from a political subdivision or from others, shall be known in this chapter as a "cooperative grazing district." "Cooperative grazing district" includes the land area within which the district operates.

40-23-2. Number of incorporators--Filing of articles.

Whenever three or more qualified persons shall desire to incorporate a cooperative grazing district, having for its object the utilization, conservation, restoration, and improvement of forage resources on their land or upon lands to be acquired by such association by purchase or lease, they shall prepare and file articles of incorporation to that effect in the Office of the Secretary of State in the manner in this chapter specified.

40-23-3. Execution and contents of articles of incorporation.

The articles of incorporation of a cooperative grazing district shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate, and shall include the following:

- (1) The name of the association;



- (2) The purpose for which it is formed;
- (3) The county or counties in which such district is located and the principal office or place of business in the state;
- (4) The membership fee, which shall in no case be greater than five dollars;
- (5) The term for which such association is incorporated, not exceeding forty years;
- (6) The names and residences of the persons who subscribed to and acknowledged such articles of incorporation, together with the legal description of the lands owned by them;
- (7) Names and residences of those who have subscribed for membership with a description of the lands of each.

40-23-4. Filing of map showing boundaries--Revision on change of boundaries--Revocation of lease for failure to file.

Cooperative grazing associations organized under this chapter shall, upon completion of organization and incorporation, file with the register of deeds in the county or counties in which any such lands lie, a map or plat clearly showing the boundaries of the district proposed to be created and the name of such district. Whenever any incorporated grazing district shall enlarge or reduce the area included within its district, or change or modify its boundaries, it shall file copies of a revised map or plat as provided above for the original map or plat. Failure to file maps or plats as above provided shall be sufficient cause for a revocation, by the county commissioners, of any lease of county land which shall have been made to said district.

40-23-5. Arbitration of overlapping district boundaries.

When any cooperative grazing districts shall have overlapping boundaries, their boundaries shall be determined by arbitration. Each district shall appoint an arbitrator, and such arbitrators shall appoint a third. The decision of any two of such three arbitrators shall be binding on both districts.

40-23-6. Power to lease, acquire, and dispose of land.

Each association organized under this chapter shall have the power to lease or acquire, by purchase or otherwise, lands for grazing purposes or for raising forage crops and to dispose of such lands purchased by trade, sale, or otherwise.

40-23-7. Power to lease county land.

Each association organized under this chapter shall have the power to lease from the county or counties in which the cooperative grazing district is located, land acquired by such county or counties through tax sale or otherwise, which is located in or contiguous thereto and not already under lease.

40-23-8. Fences, reservoirs, and facilities for care of livestock.

Each association organized under this chapter shall have the power to construct or acquire fences, reservoirs, or other facilities for the care of livestock.

40-23-9. Power to apportion grazing rights among members.



Each association organized under this chapter shall have the power to apportion to members grazing rights within the cooperative grazing district on such terms, conditions, and limitations as may be specified by the directors thereof, or in accordance with the terms and limitations imposed for the purpose of conservation, restoration, and improvement of forage resources in the leasing of county, state, or federal land.

40-23-10. Adoption of bylaws—Amendment.

Each association incorporated under this chapter shall within thirty days after its incorporation, adopt, by majority vote of its members, for its government and management, a code of bylaws, not inconsistent with the powers granted under this chapter. Such bylaws may be altered or amended by any meeting of the members, regularly called, by a two-thirds vote of the members present.

40-23-11. Contents of bylaws.

Each association incorporated under this chapter may under its bylaws provide for any or all of the following:

- (1) The time, place, and manner of calling its meetings;
- (2) That in voting at meetings, no proxies shall be allowed;
- (3) The number of directors of the association, their tenure of office, and the time and manner of their election; the officers, their tenure of office, the manner of their election, and their duties;
- (4) The number of members constituting a quorum;
- (5) The manner of filling vacancies in the board of directors or of any office;
- (6) Penalties for violation of these bylaws or of any regulation, limitations, or restrictions imposed for the conservation of forage within the district.

40-23-12. Right to membership in district--Compliance with requirements.

Any person, partnership, limited liability company, association, corporation, or legally authorized agent of either thereof, owning or leasing forage producing land within or contiguous to the boundaries of the cooperative grazing district or proposed district may become a member upon payment of the membership fee, and complying with the bylaws, and complying with the regulations and limitations determined by the board of directors and by the terms of the lease of leased land within the area.

40-23-13. Voting by members.

Each member of a cooperative grazing district shall have but one vote. Voting by proxy shall not be allowed.

40-23-14. Membership rights on transfer of land.

When any member of a cooperative grazing district shall dispose of all or a part of the lands owned or leased by him so that another individual or other individuals shall by the purchase and ownership or lease of such lands acquire right to membership, then the rights and interests involved shall be determined by the bylaws.



40-23-15. Directors to exercise corporate power.

The directors shall have power to exercise the full corporate power as authorized in this chapter.

40-23-16. Directors' power to lease land.

The directors may enter into leases on behalf of the association with persons, corporations, limited liability companies, partnerships, or with the county or counties in which the district is located or with the state or the federal government for tracts of land within, contiguous to, or adjacent to such districts.

40-23-17. Directors' regulations--Manner of utilizing grazing.

The directors shall have power to make regulations for the management and control of the affairs of the association and of the manner of utilization of grazing within their district not inconsistent with the terms, conditions, and limitations of leases of land contained therein.

40-23-18. Directors' apportionment of grazing rights among members.

The directors shall have power to apportion grazing rights within their districts to members on a commensurate basis.

40-23-19. Fencing and assignment of exclusive use of areas.

Cooperative grazing associations may cross-fence any part or all of the area and assign to each member a unit so fenced for his exclusive use, provided he follows the conservation practices outlined in the bylaws.

40-23-20. Grazing permits to nonmembers.

The directors shall have power to grant to nonmembers grazing permits within such districts when the amount of forage within the district is greater than the need of the members, but no such permits shall be granted when such use shall be inconsistent with the terms of leases of county, state, or federal land within the district or with a safe policy of forage conservation within such district.

40-23-21. Fees and assessments determined by directors.

The directors shall have power to determine grazing fees to be imposed on members or nonmembers on a per head basis for grazing rights or to determine assessments on members on a per head grazing basis for the purchase of lands situated within, contiguous to, or adjacent to such districts.

40-23-22. Requirements as to male animals.

The directors shall have power to specify the breed, quality, and number of male breeding animals which each member must furnish when stock are grazed in a common pasture within the grazing district. The association may also prescribe the breed and quality of bulls that are to run in the area.

40-23-23. Reserves established by directors.

The directors shall have power to set up such reserves as in their judgment may be advisable, after all costs, expenses, rentals, and other legal charges against the association have been provided for.



40-23-24. Purchase or lease of county lands.

Any incorporated grazing association may purchase or lease any and all lands owned by the county not already leased, and located within the proposed district.

40-23-25. Exemption of county land from usual leasing requirements--Leased tax deed lands not subject to sale--Option for purchase by district.

A lease pursuant to § 40-23-24 shall not be subject to the provisions of chapter 7-30, and such lease may be for a period of not more than ten years, with the lands thus leased not subject to sale to other parties. The lease may contain a provision for the privilege of purchase by the incorporated grazing district at any time during the term of the lease at such appraised price as shall be determined at or prior to the origination of the lease.

40-23-26. Regulatory powers retained by county commissioners on leased land.

No lease shall be entered into pursuant to § 40-23-24 until the board of county commissioners, in order to conserve and protect the existing forage resources of such county land and to restore the maximum carrying capacity of such land shall reserve the right to regulate and limit the amount of grazing thereon and the limitations and restrictions imposed shall be made a part of such lease.

40-23-27. Rentals for county lands--Variable scale.

Rentals for county lands leased under § 40-23-24 shall be payable annually.

The county commissioners may provide for a variable scale of rental charges, based on market prices for livestock, or livestock products, or the number and character of stock, or the carrying capacity of the land, or on any combination of these factors.

40-23-28. Noncompliance with requirements as ground for forfeiture of county lease.

Failure to comply with regulations prescribed in a lease pursuant to § 40-23-24 relating to protection, administrations, or improvement of such grazing districts or to make payments of annual rentals within the time prescribed, shall be grounds for forfeiture and cancellation of such lease.

40-23-29. Exchange of county land for private land within grazing district

The board of county commissioners may exchange county lands outside a grazing district for privately owned land of approximately equal value within a grazing district.

40-23-30. Distribution of property on dissolution of grazing district.

Whenever any cooperative grazing district is dissolved by act of its board of directors or otherwise, then the rights and interests therein shall be distributed among the members in proportion to the amounts paid in by the various members as assessments, as nearly as the board of directors may determine.

Chapter 40-28. Damage by Animals Trespassing or Running at Large.

40-28-1. Permitting adult male animal to run at large as petty offense.

It is a petty offense for the owner or person in charge of any stallion over the age of eighteen months, or any bull over the age of ten months, or any ram or boar over the age of eight months to permit the same to run at large.



40-28-2. Castration lawful for adult male animal running at large--Liability for unauthorized castration.

It shall be lawful for any person to castrate or cause to be castrated any animal described in § 40-28-1 found running at large; but if any person shall castrate any stallion, bull, ram, or boar, and it shall be proved that such animal was not of a class of stock prohibited from running at large by § 40-28-1, such person shall be liable for damages to the amount of the value of such animal so castrated.

40-28-3. Running at large defined.

For the purpose of §§ 40-28-1 and 40-28-2 the term “running at large” shall mean intentionally left outside of the enclosure of a legal fence, and off of the lands owned or controlled by the owner of such animal.

40-28-4. Liability for trespass by livestock--Exception where fence inadequate.

Except as in this chapter otherwise provided, any person owning or having charge or possession of any buffalo, horses, mules, cattle, goats, sheep, or swine that trespass upon the land, either fenced or unfenced, owned by or in possession of any person, or being cropped by any person injured by such trespass, is liable to any such person injured for all damages sustained by reason of the trespass. No person is liable under this chapter if the person injured has maintained an inadequate partition fence and notice thereof has been given pursuant to § 43-23-5 or if the person is not required to build the fence because of frozen earth pursuant to § 43-23-7.

40-28-5. Trespass liability not applicable to unfenced lands within national forests.

No person is liable for damages caused by buffalo, horses, cattle, mules, goats, or sheep owned by the person, that trespass upon lands within the exterior boundaries of the Black Hills and Harney National Forests, if the lands were not at the time of the trespass enclosed by a legal fence, as defined in §§ 43-23-3 and 43-23-4.

40-28-6. Notice to livestock owner of injury from trespass.

The person claiming injury from trespass of livestock, before commencing action thereon shall notify the owner or person having in charge such livestock, of the injury and probable amount of the damages, provided he knows to whom such livestock belongs.

40-28-7. Retention of trespassing livestock until damages paid.

Any person suffering injury from trespass of livestock may retain and keep in custody such offending animal or animals until the damages and costs are paid, or until good and sufficient security be given for the same.

40-28-8. Notice to owner of seizure of trespassing animals.

Whenever any animal or animals are restrained under § 40-28-7, the person restraining the same shall forthwith notify the owner or person in whose custody the same were at the time the trespass was committed, of the seizure thereof, providing the owner or person who had the same in charge is known to the person making said seizure.

40-28-9. Security given by owner for release of trespassing animals held for damages.



The security required by § 40-28-7 shall be in the form of a bond or other undertaking, signed by the owner of the trespassing animal or animals and shall run to the person claiming damages. The bond or other undertaking shall be for twice the amount of damages claimed and in no case less than one hundred dollars.

40-28-10. Livestock owner's bond to be approved by sheriff--Release of animals--Sheriff's fee.

If the person aggrieved is not satisfied with the sufficiency of the bond and the parties cannot agree, a bond shall be furnished and shall be approved by the sheriff and after his approval the person holding the trespassing animal or animals is required to turn them over to the owner. Failure to do so makes him a trespasser. The owner of the trespassing animal or animals shall pay the sheriff five dollars for approving the bond and the owner shall be taxed with the costs if a suit is instituted later.

40-28-11. Notice to sheriff when livestock owner fails to take up trespassing animals--Sheriff to take possession and care for animals.

If the owner or person who formerly had the animals in charge is unknown, or if he neglects or refuses for three days after receiving notice as provided in § 40-28-8 to take up the animals or to furnish the bond provided for in § 40-28-9, then the person restraining the animals may, instead of retaining them in his own custody, notify the sheriff of the county in which the animals were taken. It is the duty of the sheriff, within three days after receiving notice, to take the offending animals into his possession and to handle them in the same manner as stray animals under the provisions of chapter 40-29.

40-28-12. Sheriff's lien for expenses.

The sheriff has a lien upon animals taken into his possession pursuant to § 40-28-11 for the expenses incurred by him as outlined in chapter 40-29.

40-28-13. Unauthorized taking of animal from person with lawful possession as misdemeanor.

Every person who takes or attempts to take any animal, restrained under the provisions of this chapter, from the possession of the person having the same in charge, without the consent of such person, except by due course of law, is guilty of a Class 2 misdemeanor.

40-28-14. Recovery of animals from sheriff by giving bond and paying costs.

The owner or person having in charge animals taken into the sheriff's possession pursuant to § 40-28-11 may recover the same from the sheriff at any time before the sale by paying all damages and costs or by furnishing to the sheriff the bond provided for in § 40-28-9 and at the time of furnishing such bond, paying to the sheriff the costs and disbursements already incurred.

40-28-15. Foreclosure of lien by sheriff's sale of animals--Service of notice on parties.

If possession of animals taken into the sheriff's possession pursuant to § 40-28-11 shall not be recovered from the sheriff by the owner or person who had the same in charge as provided in § 40-28-14, within three days after such taking, then the sheriff shall forthwith proceed to foreclose the lien provided by § 40-28-12 by a sale of the animals taken, upon the notice and in the manner provided by law for the foreclosure of chattel mortgages. If the owner or person having such animals in charge is known, such sale may be had upon three days' notice to be given by the sheriff to such owner or person having such animals in charge



and to any person or persons holding a lien of record against such animals, such notices to be served in the same manner as provided for service of summons in civil actions.

40-28-16. County reimbursement of sheriff for costs not recovered from sale--Recovery from owner of animals.

If the proceeds of a sale pursuant to § 40-28-15 shall be insufficient to reimburse the sheriff for his costs and disbursements as provided in § 40-28-12, then the county shall reimburse the sheriff for such costs and disbursements as he may have expended in the taking, caring for, and sale of the animals in excess of the amount received from such sale, and the county may recover in a civil action, any amount so expended by it from the owner or person having such animals in charge at the time of such taking.

40-28-17. Actions by county and landowner for costs and damages--Application of proceeds of sale.

The county and the person suffering damage from such trespass may sue jointly or severally for their several costs, expenses, and damages; provided that the receipts of the sale shall be applied in the following manner: first, in payment of costs, expenses, and disbursements of the sheriff and any remainder shall be paid to the clerk of the circuit court to be applied upon the payment of any judgment thereafter secured by the person suffering damage, provided that such action shall be brought in the proper court within sixty days from the date of such sale.

40-28-18. Civil action for damages from trespassing animals--Venue—Procedure.

Damages under § 40-28-4 may be recovered in a civil action, in any court having jurisdiction thereof in the county where such damage may have occurred, and the proceedings shall be the same as in other civil actions, except as modified in this chapter.

40-28-20. Limitation of actions for damages.

Any person seeking to recover damages pursuant to § 40-28-18 shall file suit no later than one year after the trespass occurred or six months after he knew or should have known of the injury resulting from the trespass.

40-28-21. Surplus proceeds of sale—Disposition.

If the person suffering damage fails to bring an action within the time required or if there is a surplus remaining after the satisfaction of the judgment, the proceeds of a sale pursuant to § 40-28-15 shall be paid by the clerk of courts to the owner of the animals. If the owner of the animals fails to claim the proceeds within six months, the money shall be paid over to the county treasurer and credited to the school fund of the county and shall be accounted for and expended as other school money.

40-28-22. Dismissal of action when defendant is not owner or person in charge of animals-- Treatment as estrays.

If upon the trial of an action brought under § 40-28-18 it appears that the defendant is not the owner or person in charge of such offending animal or animals, the action shall be dismissed, and such animal or animals shall be held and considered as estrays and the person claiming damage shall be governed by the provisions of this code relating to estrays.

40-28-23. Damages and expenses recovered by landowner.



Upon the trial of an action under the provisions of this chapter, the plaintiff shall recover the amount of damages sustained and the expenses of keeping the trespassing animal or animals during the time he has restrained and retained the custody thereof.

40-28-24. Judgment against plaintiff when no damage sustained

If it shall appear upon the trial of an action under the provisions of this chapter that no damage was sustained, judgment shall be rendered against the plaintiff for cost of suit and damage sustained by defendant.

40-28-25. Judgment as lien on trespassing animals.

Any judgment rendered in an action under the provisions of this chapter shall be a lien upon such animals and the same may be sold and the proceeds applied to the satisfaction of the judgment as in other cases of sale of personal property on execution.

40-28-26. Exemptions limited to absolute exemptions.

No property shall be exempt from seizure and sale under executions issued upon any judgment obtained under or by virtue of this chapter except such as is absolutely exempt.

Chapter 43-17. Water Boundaries and Riparian Lands.

43-17-35. Fencing certain land on both sides of navigable stream permitted--Violation as misdemeanor.

Any person who owns any tract of agricultural land on both sides of a navigable stream may, individually, fence such tract, or any persons who collectively own any tract of agricultural land on both sides of a navigable stream may, collectively, fence such tract:

- (1) If livestock are annually pastured on such tract;
- (2) If the fence is reasonably necessary to prevent the livestock from straying from such tract;
- (3) If the fence is so constructed and so marked that it does not, under daytime and nighttime conditions, constitute a danger to the public; and
- (4) If the fence is so constructed that the right of the public to utilize the navigable stream is not prohibited or unduly restricted.

This section does not apply to any river or stream or portion of any river or stream that has been determined to be navigable pursuant to federal law. Construction of a fence in violation of this section is a Class 2 misdemeanor.

43-17-38. Gate or opening required in fence constructed across certain streams-- Federally- navigable portions--Public access.

A gate or opening constructed pursuant to § 43-17-36 is required in any fence that crosses any stream or portion of any stream that is navigable pursuant to § 43-17-34 and that has been designated by the Water Management Board as requiring a gate or opening pursuant to § 43-17-39. A gate or opening constructed pursuant to § 43-17-36 is required in any fence that may be constructed across any of the following streams or portions of such streams:

- (1) Big Sioux River from the Grant-Codington County boundary to a point five miles north of the Missouri River in Union County;



- (2) Turtle creek, from Highway 26 to the James River, located in Spink County;
- (3) Elm River, from Elm Lake to the James River, located in Brown County;
- (4) Moccasin Creek, from 18th Avenue southwest to 8th Avenue northwest in the City of Aberdeen, located in Brown County;
- (5) North fork of Whetstone River, from Highway 15 near Wilmot to the Minnesota state boundary, located in Roberts and Grant Counties;
- (6) Flandreau Creek, from the Minnesota state boundary to the Big Sioux River, located in Moody County;
- (7) Vermillion River, from Lake Vermillion to the Missouri River;
- (8) East fork of the Vermillion River, from Interstate 90 to Lake Vermillion, located in McCook County;
- (9) Splitrock Creek, from the Minnesota state boundary to the Big Sioux River, located in Minnehaha County;
- (10) Firesteel Creek, that portion located in Davison County;
- (11) Little White River, from the Bennett-Todd County boundary to the White River, located in Todd and Mellette Counties;
- (12) White River, from the Nebraska state boundary to the Missouri River;
- (13) Bad River, from the Stanley-Jones County boundary to the Missouri River, located in Stanley County;
- (14) Cheyenne River, from the Wyoming state boundary to the Missouri River;
- (15) Moreau River, from Highway 63 to the Missouri River;
- (16) Grand River, from Shadehill Reservoir to the Missouri River;
- (17) Little Missouri River, from the Montana state boundary to the North Dakota state boundary, located in Harding County;
- (18) Belle Fourche River, from the Wyoming state boundary to the Belle Fourche irrigation project diversion dam and from Highway 79 to the Cheyenne River;
- (19) Little Minnesota River, from Highway 10 to Lake Traverse, located in Roberts County; and (20) Redwater River, from Highway 85 to the Belle Fourche River, located in Butte County.

Because the Missouri River, James River, Boise des Sioux River, and the lower five miles of the Big Sioux River have been designated as navigable pursuant to federal law, this chapter does not permit fencing, with or without gates, across the federally-navigable portions of these rivers.

The extent of the public's use shall be the determining factor in designating a stream or portion of a stream pursuant to this section or § 43-17-39. The public's right to the use of such designated streams as public highways pursuant to § 43-17-2 may be impaired if a gate or opening is not provided in each fence across the streams. Construction of a fence in violation of this section is a Class 2 misdemeanor.



The public's interest in or right to use other streams navigable pursuant to § 43-17-34 but not designated pursuant to this section or § 43-17-39 is not impaired or unduly restricted if fences crossing such other navigable streams are not provided with a gate or opening. This section and § 43-17-39 do not diminish the public's interest in or right to use streams that are navigable pursuant to § 43-17-34 but that are not designated pursuant to this section or § 43-17-39.

43-17-40. Responsibility for construction and maintenance of gate or opening.

The responsibility for construction and maintenance of any gate or opening required pursuant to §§ 43-17-35 and 43-17-36 in a fence across a stream that is navigable pursuant to § 43-17-34 shall be shared equally among those persons who caused the fence to be constructed. Any liability arising from the construction of a fence across a stream that is navigable pursuant to § 43-17-34 shall be borne by those persons who caused the fence to be constructed.

43-17-41. Liability for damage from fencing on both sides of navigable streams.

No cause of action may arise against the owners, tenants, or lessees of any real estate for any injury to any person or death resulting therefrom or damage to property of the person in connection with the fencing of agricultural land on both sides of navigable streams if such fencing is in accordance with the provisions of § 43-17-35.

This section does not affect the doctrine of attractive nuisance or other legal doctrines relating to the liability arising from artificial conditions highly dangerous to children.

Chapter 43-23. Partition Fences.

43-23-1. Erection and maintenance of partition fence--Liability of owners of adjoining land.

Unless adjoining landowners otherwise agree, every owner of land shall be liable for one-half of the expense of erecting and maintaining a partition fence between his own and adjoining lands. However, no owner of land is liable for such expense if neither keeps livestock on the affected tract of land and neither derives any other substantial benefit from the fence for a period of five years from the date of erection or repair of the fence.

43-23-2. Duty of adjoining owner of land to build half of partition fence.

Unless otherwise agreed upon, if adjoining landowners are liable for one-half of the expense of erecting and maintaining a partition fence pursuant to § 43-23-1, each owner of adjoining lands shall build that half of the fence which shall be upon his right hand when he stands upon his own land and faces the line upon which the proposed fence is to be built.

43-23-3. Fence agreed to by owners of adjoining land is legal fence.

Any fence upon which owners of such adjoining lands may agree, shall be a legal fence.

43-23-4. Description and specifications for legal partition fence--Wire spacing.

Where such owners do not agree upon a different sort of fence, a legal partition fence shall consist of sound wood posts at least six and one-half feet long and four inches in diameter, and firmly set at least two feet in the earth and not over thirty feet apart, or concrete posts six feet or more in length, having a diameter of not less than four inches and having a reinforcing rod not less than one-fourth inch in diameter throughout the full length thereof, firmly set and spaced as in the case of wood posts, or of steel posts not less than five and one-half feet in length, firmly set at least seventeen inches in the earth and not over twenty feet apart,



or a combination of steel and concrete or wood posts in a ratio of not more than three steel posts to one of wood or concrete as above specified, firmly set as aforesaid according to the type of post and not over twenty-five feet apart. Such posts shall be firmly braced at ends, corners, and gateways or openings, to prevent sagging, and upon them shall be firmly stretched and securely attached to each at least four strands of ordinary commercial barbed fencing wire, the lower strand to be eighteen inches, the next twenty-eight inches, the third thirty-eight inches, and the fourth forty-eight inches from the earth. A deviation of not more than two inches in the wire spacing shall be considered to be in compliance with this section.

43-23-4.1. Legal fences for buffalo.

A legal fence for buffalo is the same as provided in § 43-23-4, except as provided in this section. A legal fence for buffalo may use smooth wire rather than barbed wire. All posts shall be of sufficient length to provide for fifty-four inches above the surface, and one additional strand of wire shall be included at fifty-four inches above the earth. The additional cost and maintenance of the legal fence for buffalo, other than as provided in § 43-23-4, shall be borne by the owner or caretaker of the buffalo if only one of the parties partitioned possesses the buffalo.

43-23-5. Neglect or refusal to erect and maintain half of legal fence--Enforcement by adjoining landowner--Service of notice and demand.

If any owner of any land who is liable for one-half of the expense of erecting and maintaining a partition fence pursuant to § 43-23-1 neglects or refuses to so erect and maintain one-half of a legal fence on the lines separating his land from adjoining land, the owner of the adjoining land may serve upon the delinquent owner a notice in writing demanding that the delinquent owner shall erect or repair, as the case may be, a legal fence along one-half of such line, describing it, within thirty days from the date of the service of the notice and demand upon him.

43-23-6. Aggrieved owner of adjoining land--Erection or repair of fence after notice and demand on delinquent owner--Recovery of costs and damages.

If a delinquent owner neglects or refuses to erect or repair a partition fence within the time specified in § 43-23-5, the aggrieved owner may erect or repair the partition fence. The aggrieved owner may recover the cost of erecting or repairing the partition fence in a civil action and, in addition, recover an amount to be determined by the court as compensation for the time spent by the aggrieved owner.

43-23-7. Erection of partition fence not required when earth is frozen.

The delinquent owner shall not be required to build such partition fence at any season when the earth is frozen.

43-23-8. Judgment for construction or repair of partition fence is lien upon land of delinquent owner.

The judgment entered for construction or repair of a partition fence shall be a lien upon the land of the delinquent owner for which it was constructed, superior to all other liens thereon except taxes.

43-23-9. Removal of partition fence restricted to repair or construction of new fence.

If adjoining owners of land have shared the expense of erecting and maintaining a partition fence pursuant to the provisions of this chapter, neither owner shall have the



right as against the owner of the adjoining lands to remove the same or any part thereof, except for the purpose of making immediate repairs or constructing a new fence.

43-23-9.1. Privileges and obligations of persons in physical possession--Contract with owner-- Rights and liabilities of parties absent contract.

For the purposes of §§ 43-23-1 to 43-23-9, inclusive, any person who is in physical possession of real property, whether by fee, lease, conveyance, or other lawful means, has the same privileges and obligations as the owner of such property. If the person in physical possession of real property is different from the owner of such property, they may provide for the disposition of rights and responsibilities pursuant to §§ 43-23-1 to 43-23-9, inclusive, by contract. In the absence of such a contract, both the person in physical possession of real property and the owner of such property may, individually or jointly, exercise such rights and be held liable for such responsibilities as are provided for in §§ 43-23-1 to 43-23-9, inclusive.

43-23-10. Opening or injuring fence or gate as misdemeanor.

Any person who shall intentionally open, or leave open, let down, throw down, tear down, or prostrate any fence, gate, or bars, legally constructed, located, and lawfully maintained, which encloses a meadow, pasture, livestock range, or private other inclosure, is guilty of a Class 2 misdemeanor.

Chapter 43-24. Local Option Woven-Wire Fences.

43-24-1. Townships covered by chapter--Assessed value of farmland--Petition for township election to make chapter applicable--Form of ballot--Effect of majority vote.

This chapter shall not take effect and be in force in any township in this state where the average assessed valuation of agricultural or farmlands is less than thirty dollars per acre, unless a petition signed by at least ten percent of the legal freeholders of said civil township on or before February first, in any year, shall be submitted to the township board of supervisors by filing the same in the office of the town clerk, requesting such supervisors to submit to the voters of such civil township at the next township election on a separate ballot, the question whether or not this chapter shall be of force and effect in such civil township. Such ballot shall be in the following form: "Yes ____ No ____ for division and partition fence law." If a majority of voters of such township voting on such proposition shall vote in favor of the division and partition fence law, then this chapter shall be in force and effect in such township.

43-24-2. Adoption of chapter by civil township supersedes partition fence law.

So long as this chapter is operative in any civil township, its provisions shall supersede the provisions of §§ 43-23-1 to 43-23-9, inclusive.

43-24-3. Owners of adjoining land--Liability for expenses of erecting and maintaining local option partition fence.

Every owner of land is bound to bear one-half of the expense of erecting and maintaining partition fences between his own and adjoining lands.

43-24-4. Duty of owner of adjoining land to build half of local option partition fence.

Unless otherwise agreed upon each owner of adjoining lands shall build that half of the fence which shall be upon his right hand when he stands upon his own land and faces the line upon which the proposed fence is to be built.



43-24-5. Fence upon which owners of adjoining lands agree is a legal fence.

Any fence upon which the owners of such adjoining lands may agree, shall be a legal fence.

43-24-6. Legal local option partition fence--Disagreement of owners of adjoining lands as to sort of fence—Definition.

When such owners do not agree upon a different sort of fence, a legal partition fence shall consist of sound posts at least six and one-half feet long and four inches in diameter, or standard steel posts, and firmly set at least two feet in the earth and not over twenty feet apart. Such posts shall be firmly braced at ends, corners, and gateways or openings, to prevent sagging, and upon them shall be firmly stretched and securely attached to each a woven-wire fence thirty-two inches high, the bottom of which shall be firmly stretched even with the ground, which woven-wire fence shall be of eight bars, with six inch stays, and wire to be not smaller than number ten or number thirteen wire; above such woven-wire fence shall be firmly stretched and securely attached to each post at least two strands of ordinary commercial barbed fencing wire, the lowest strand to be four inches from the top of such woven-wire fence and the upper strand to be sixteen inches from the top of such woven-wire fence.

43-24-7. Neglect or refusal to erect half of local option partition fence--Enforcement by adjoining landowner--Service of notice and demand.

If any owner of any land neglects or refuses to so erect and maintain one-half of a legal fence on the lines separating his land from adjoining land, the owner of the adjoining land may serve upon such delinquent owner a notice in writing, demanding that the delinquent owner shall erect or repair, as the case may be, a legal fence along one-half of such line, describing it, within thirty days from the date of the service of the notice and demand upon him.

43-24-8. Aggrieved owner of adjoining land--Erection or repair of local option fence after notice and demand on delinquent owner--Recovery of costs and damages.

If the delinquent owner so served with notice fails or refuses to erect or repair such partition fence within the time specified in § 43-24-7, the aggrieved owner of such adjoining land may erect or repair such partition fence, and may recover the cost of erecting or repairing the partition fence in a civil action and, in addition, recover an amount to be determined by the court as compensation for the time spent by the aggrieved owner.

43-24-9. Erection of local option partition fence not required when earth is frozen.

Such delinquent owner shall not be required to erect such partition fence at any season when the earth is frozen.

43-24-10. Judgment for construction or repair of local option partition fence is lien upon land of delinquent owner.

The judgment entered for construction or repair of a partition fence shall be a lien upon the land of the delinquent owner for which it was constructed, superior to all other liens thereupon except taxes.

Chapter 45-4. Location and Working of Mining Claims.

45-4-14. Fencing of mining claim or mineral property for protection of livestock--Duties on abandonment--Liability for damages--Violation as misdemeanor.



Any person, firm, association, or corporation who makes or sinks discovery shafts, open cuts, adits, or equivalents on a mining claim or on mineral property, ground, or premises shall immediately, while using the discovery shafts, open cuts, adits, or equivalents, make them secure and safe, either by means of a substantial fence or otherwise, to guard against the possibility of livestock falling into or becoming injured or destroyed by reason of the openings. Before abandoning the discovery shafts, open cuts, adits, or equivalents, the person, firm, association, or corporation shall fill in or slope such openings, as a further precaution. Any person, firm, association, or corporation that fails or refuses to fully comply with this section is liable in damages for injury to or destruction of livestock caused thereby to the owner of the livestock and is guilty of a Class 2 misdemeanor.

Chapter 49-16A. Intrastate Railroad Regulation.

49-16A-91. Fenced lands--Duty of railroad to fence along right-of-way--Type of fence--Maintenance.

If the owner of a tract of land abutting on a road within this state plans to inclose the tract and constructs a good and sufficient fence about the tract on all sides except along the side abutting the road, the railroad shall supply the landowner with the materials needed to construct a fence not less than four and one-half feet high. If the owner incloses a tract of land with a woven wire fence with wires crossing each other close enough to keep sheep and hogs confined, the railroad shall supply the landowner with the materials needed to construct a like fence along its right-of-way on the side of the tract so far as it extends along the road. The railroad shall maintain or supply the materials to maintain the fence in good repair and condition until released by the owner of the tract, or until the owner of the tract ceases to maintain his portion of the fence in good repair and condition for one year.

49-16A-92. Notice to railroad to erect fence--Contents of notice--Time for compliance.

If the owner of a tract of land has completed his portion of the fence around the proposed inclosure, he shall give written notice of its completion to the railroad on whose road the tract is situated, by service on the railroad describing in the notice the situation of the tract and the appropriate number of acres to be inclosed and the length of the fence required along the line of the railroad to complete the proposed inclosure.

The railroad shall supply the materials needed to construct and complete its portion of the fence within forty-five days after the service of the notice.

49-16A-93. Fencing right-of-way--Noncompliance by railroad--Construction by owner--Liability of railroad.

If a railroad neglects or refuses to comply with the requirements of §§ 49-16A-91 and 49-16A-92, the owner of the tract may construct or repair the fence along the road, and the railroad is liable to the owner for an amount not exceeding the actual cost of all materials used in the construction or repair of the fence of like construction but excluding all cost of labor, which may be recovered in a civil action. The railroad is also liable for all damages accruing by reason of its neglect or refusal. However, a railroad is not required to build fences nor be liable for any damages for refusal to build fences when the earth is frozen.

49-16A-111. Legislation relating to restraint of domestic animals or fences--Applicability to tracks.

No law of this state or resolution or ordinance of any county, township, or municipality



relating to the restraint of domestic animals or to the fences of farmers or landowners, is applicable to railway tracks unless specifically so stated in such laws, resolutions, or ordinances.

Chapter 9-35. Carrier and Utility Franchises and Regulation.

9-35-9. Maintenance by railroads of safety devices at crossings--Grade changes--Fencing of right- of-way.

Every first or second class municipality shall have power to require railroad companies to keep flagmen and maintain lights at railroad crossings of streets and provide for the safety of persons and property; to compel them to construct, maintain, and operate gates at railroad crossings of streets when the keeping of a flagman is not sufficient protection; to compel them to raise or lower their tracks to conform to any grade which may be established by the municipality and to keep such tracks on the level with the street or highway surface, so that such tracks may be crossed at any place on such street or highway; to require them to fence heir railroads and construct and repair cattle guards, viaducts, or overhead crossings, and to provide for and change the location, grade, and crossing of any railroad; all subject to the powers vested in the Public Utilities Commission.

