

Colorado Livestock Laws

**COLORADO REVISED STATUTES
TITLE 35. AGRICULTURE
AGRICULTURE III - LIVESTOCK
LIVESTOCK
ARTICLE 46. FENCE LAW**

35-46-101 Definitions.

As used in this article, unless the context otherwise requires: (1) "Lawful fence" is a well-constructed three barbed wire fence with substantial posts set at a distance of approximately twenty feet apart, and sufficient to turn ordinary horses and cattle, with all gates equally as good as the fence, or any other fence of like efficiency.

Railroad right-of-way fences constructed in compliance with the statute in force on the date of construction and maintained in good condition shall be considered legal fences. (2) "Livestock" includes horses, cattle, mules, asses, goats, sheep, swine, buffalo, and cattalo, but does not include "alternative livestock" as defined in section 35- 41.5-102 (1).

35-46-102. Owner may recover for trespass

(1) Any person maintaining in good repair a lawful fence, as described in section 35-46-101, may recover damages for trespass and injury to grass, garden or vegetable products, or other crops of such person from the owner of any livestock which break through such fence. No person shall recover damages for such a trespass or injury unless at the time thereof such grass, garden or vegetable products, or crops were protected by such a lawful fence. Even though such land, grass, garden or vegetable products, or other crops were not at such time protected on all sides by a lawful fence, if it is proved by clear and convincing evidence that livestock have broken through a lawful fence on one side of such land to reach such land, grass, products, or crops, recovery and the remedies under this section may be had the same as if such land, grass, products, or crops had been at such time protected on all sides by a lawful fence.

(2) Whenever any person stocks land, not enclosed by a lawful fence, on which such person has a lawful right to pasture or forage livestock, with a greater number of livestock than such land can properly support or water and any of such livestock pasture, forage, or water on the lands of another person, in order to obtain the proper amount of pasture, forage, or water or whenever any person stocks with livestock land on which such person has no lawful right to pasture or forage livestock and such livestock pasture, forage, or water on such land or on other land on which such person has no right to pasture or forage livestock, he shall be deemed a trespasser and shall be

liable in damages and subject to injunction.

(3) All damages sustained on account of the foregoing trespasses may be recovered, together with costs of court and arbitration, and the livestock so trespassing may be taken up by the person damaged and held as security for the payment of such damages and costs. A court of competent jurisdiction in any proper case may issue an injunction to prevent further trespasses. In any action for trespass where the injury complained of has been aggravated and attended by a willful or reckless disregard of the injured person's rights, the board of arbitration, court, or jury may in addition to awarding actual damages include reasonable exemplary damages. Recovery may be had under this section either in a court of law or by arbitration as provided in section 35-46-103.

35-46-103. Board of arbitration

When any person is trespassed upon or damaged by any livestock or takes into his custody any livestock under section 35-46-102, the claim for damages occasioned by said livestock may be arbitrated by a board of three arbitrators, at the option of the party aggrieved selecting one, the owner of the livestock selecting a second, and the two thus chosen selecting a third. Said arbitrators so chosen shall meet and act as a board of arbitration within five days after a written application is made therefor by either party and written notice given to the other party. It is the duty of the person so taking into custody such livestock to notify in writing within five days after the taking into custody thereof the owner or person in charge of such livestock. If the owner or person in charge of such livestock is not known to the person taking the livestock into custody or cannot be found after diligent search and inquiry, then the person so taking custody of such livestock shall publish within one week a notice containing a full description of such livestock, including all marks and brands as nearly as can be ascertained, in a paper published nearest the place where the alleged damage occurred. In the event the owner of such livestock cannot be found within ten days after the date of the publication of such notice, the livestock shall be an estray and the state board of stock inspection commissioners shall be entitled to said livestock subject to the lien for damage sustained and cost and care and feeding of the same by the person taking such livestock into custody. Such person shall deliver the same to the owner thereof whenever such owner furnishes the person so damaged by such livestock a bond in double the amount of the damage claimed, executed by two responsible persons, said bond to be satisfactory to such damaged party or approved by a county judge or district judge of such county, conditioned upon the payment to the person taking custody of such livestock all damages and costs, if any such damages or costs are awarded.

35-46-104. Finding of board - enforcement

The finding of said board of arbitration, when reduced to writing and signed by a majority of the members thereof, constitutes an obligation on the part of the person against whom the finding is made to pay to the aggrieved party the sum set forth in the finding of said board of arbitration. In the event the person against whom the finding of such board of arbitration is made fails, neglects,

or refuses to pay to the aggrieved party the sum set forth in the finding of said board of arbitration, within thirty days from the date of the written findings of such board, then the finding of said board of arbitration may be filed in any court of record within the jurisdiction where the damage was sustained. The finding of such board so filed shall be deemed for the purposes of sections 35-46-101 to 35-46-110 a judgment of said court and execution may issue thereon as by law provided in judgments of said court. The costs agreed upon to be incurred in said arbitration shall follow the findings as in suits at court. If the owner of any livestock makes a tender in money of all damages to the person claiming damages, the person claiming damages shall pay all costs and expenses thereafter accruing unless he is awarded a larger amount than was tendered by the owner of such livestock.

35-46-105. Grazing on roads and in municipalities - penalty

(1) It is unlawful for the owner or any person in charge of any livestock knowingly to cause or permit such livestock to graze or run at large in any incorporated or unincorporated municipality, lane, road, or public highway if the same is separated from the land or range of such owner or person in charge by a fence or other barrier sufficient to keep livestock from reaching such municipality, lane, road, or public highway. In case any such livestock so running at large is killed or injured by any vehicle, the owner, driver, or person in charge of such vehicle shall not be liable therefor if the killing or injury is not malicious, willful, or wanton. Nothing in this section shall be applicable to livestock having a person in charge when such livestock are being driven on or through such municipalities, lanes, roads, or public highways or when range livestock being ranged on their usual range or allotments have broken through maintained drift fences or cattle guards and are on the premises unknown to the owners.

(2) Any person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than two hundred dollars for each offense. It is the duty of every Colorado state patrolman, sheriff, or other peace officer to prefer charges against any person violating this section and take custody of such livestock and place them on feed and water. Such livestock may be placed by such officer in the custody of a responsible person who shall care for the same pending disposition of any court action under this section. The livestock may be held in case of conviction of the owner or other person in charge for the payment of any reasonable costs of handling, care, and feed and of court and for the payment of all fines which may be levied against said owner or other person in charge. In the event such costs and fine are not paid within ten days after the entry of judgment, such court, after reasonable notice to such owner and any known persons in interest as determined by the court, may order sufficient numbers of such livestock sold to pay such costs and fine.

(3) In cases where such livestock are horses, mules, or burros of inferior quality and of the apparent value of less than thirty-five dollars per head and the owner or any other person in interest cannot be found after reasonable search and inquiry, the state board of stock inspection commissioners, or

its duly authorized representative, after posting of notice at a conspicuous place at the courthouse of the county where such livestock are found for a period of ten days, may sell such livestock at private or public sale as stated in said notice, and the proceeds of such sale remaining after the payment of all reasonable costs shall be held for the owner or other person in interest when found as is provided by law for estray funds.

35-46-106. Care of stock taken into custody

It is the duty of any person who takes any animals into custody under the provisions of this article to feed and care for such animals in a reasonable, careful, and prudent manner and keep the same in as good order and condition as when so taken into custody by the said party, and he shall be liable for any damage occasioned by his failure to do so. For such feed and care such party shall be entitled to recover from the owner of such animals a reasonable compensation, to be recovered as provided for the recovery of damages sustained.

35-46-107. Unlawful to break fence or open gate

It is unlawful for any person to willfully break down or cause to be broken down any fence or gate or to leave open any gate in such fence. This section shall not apply to the owner or occupant unless such owner or occupant causes such fence or gate to be broken down or left open with malicious intent.

35-46-108. Lien for trespass and care

Any party taking into custody animals under the provisions of this article shall have a lien upon such animals for the damages occasioned by the trespass of such animals and for a reasonable compensation for their feed and care while in the possession of the party, if damages are recovered.

35-46-109. Taking into custody or release unlawful - penalty

It is unlawful for any person to take into his custody any livestock without complying with the provisions of sections 35-46-102 to 35-46-105 unless such taking be done in good faith. It is unlawful for any person, forcibly or by trickery, fraud, or deceit, or without the knowledge and consent of the person having possession of any livestock taken under such provisions, to remove the same from the possession of such person. Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

35-46-110. Public highways - railways excluded

"Public highways", as used in this article, shall not be construed to include railways of any kind or railway rights- of-way of any kind.

35-46-111. Right-of-way fences

(1) (a) Except as otherwise provided in paragraph (b) of this subsection (1) and subsection (4) of this section, it is the duty of the department of transportation to maintain right-of-way fences constructed as of June 1, 1994, by the department at or near the boundary of the department's highway property in agriculturally zoned areas along and adjacent to all federal aid highways where such highways are maintained by the department. The department shall make repairs to such right-of-way fences when necessary only upon actual notice to the department. Neither the department nor the landowner is liable for any damages caused by the failure to adequately construct, maintain, or repair the right-of-way fence unless actual notice is given to the department.

(b) If the department removes a right-of-way fence in an agriculturally zoned area during a construction project, the department shall replace and maintain said fence unless the landowner and the department agree that said fence shall not be replaced.

(2) In nonagriculturally zoned areas, the department may erect a right-of-way fence where the highway has been declared a freeway pursuant to section 43-3-101, C.R.S., or in areas that the landowner and the department agree that said fence be erected. If the department erects a right-of-way fence or has previously erected a right-of-way fence where the highway has been declared a freeway, the department shall maintain and repair said fence when necessary upon actual notice to the department. Neither the department nor the landowner is liable for any damages caused by the failure to adequately construct, maintain, or repair the right-of-way fence unless actual notice is given to the department.

(3) Upon actual notice, the department shall maintain right-of-way fences constructed by the department, where highways are maintained by the department, at or near the boundary of the department's highway property adjacent to properties owned by municipalities unless otherwise agreed to in writing by the department and the municipality.

(4) If, in both agriculturally and nonagriculturally zoned areas, the landowner adjacent to an existing right-of- way fence and the department agree that said fence shall be removed, the right-of-way fence shall be removed by the department at its expense. If the landowner removes or causes the removal of the right-of-way fence without agreement by the department, the department shall not be required to reimburse the landowner for such removal, and the landowner shall be liable for any and all damages caused by the unauthorized removal of the fence.

(5) If a right-of-way fence is either removed or not replaced pursuant to subsection (1) or (4) of this section and the landowner who agreed that the fence be removed or not replaced or any subsequent landowner of property adjacent to the right-of-way later desires to erect a right- of-way fence, said

fence may be erected by the landowner at the landowner's expense, but only upon prior agreement by the department. Such right-of-way fence shall be constructed in accordance with the standards applicable to the department at the time such fence is erected, and the department is required to make repairs to such right-of-way fence upon actual notice to the department. Liability for any damages caused by failure to adequately construct the right-of-way fence shall be borne by the landowner at the time the damages are incurred.

(6) All agreements required pursuant to subsections (1) to (5) of this section shall be in writing, be recorded by the department in the office of the county clerk and recorder of each county where the real property adjacent to the right-of-way is located, and be binding upon and notice to all persons or classes of persons claiming any interest in said property.

(7) If a landowner and the department agree to either remove or not replace a right-of-way fence pursuant to subsections (1) to (5) of this section and the landowner at the time of the agreement or any subsequent landowner does not maintain livestock, as defined in section 35-46-101 (2), on the land adjacent to a highway right-of-way, any livestock that enters the highway right-of-way through that land shall not be a dangerous condition pursuant to section 24-10-106 (d), C.R.S. Neither the landowner nor the department shall be liable for any damages caused by such livestock because of the absence of such right-of-way fence.

(8) If a person herds livestock along a highway adjacent to property from which a fence has been removed pursuant to this section and any of the livestock strays onto that property, the landowner may not recover damages for trespass and injury to grass, garden or vegetable products, or other crops from the owner of the livestock unless the landowner can prove the person herding the livestock allowed the livestock to enter the property without making an effort to remove the livestock. Nothing in this section is intended to change the status of open range law and statutes relating to fences in Colorado.

(9) Notwithstanding any other provision of this section, the department may erect and maintain a right-of-way fence in any area at the department's expense, in its sole discretion, but the department has no duty to erect and maintain any fence at its expense.

35-46-112. Partition fences

Where the agriculture or grazing lands of two or more persons adjoin, whether or not such lands are farmed or grazed, it is the duty of the owner of each tract to build one-half of the line fence, such fence to be a lawful fence as described in section 35-46-101. When the owner or tenant of any agricultural or grazing lands owns a previously erected lawful fence upon any line between such land and the agricultural or grazing lands of any other person, and such other person or anyone holding under such person, occupies the adjoining land, it is the duty of such owner to pay the person owning such fence one-half of its cash value.

35-46-113. Cost and repair - how recovered

Partition fences between agricultural and grazing land shall be erected and also kept in repair at the joint cost of the owners of the respective adjoining tracts, except as otherwise agreed by such owners. If after thirty days written notice, served personally or by registered mail by either the owner or tenant of one tract upon the owner or tenant of the other tract, such other owner neglects or refuses to erect or repair one-half of the partition fence, the person giving notice may proceed to erect or repair the entire partition fence and collect by a civil action at law one-half the entire cost thereof from the other owner. Any judgment obtained against the owner of any land for the value of his share of any such partition fence or the repair thereof shall be a lien upon such owner's land to which such fence is appurtenant, and a special execution may issue and be levied upon the land to which such fence is appurtenant as in the manner now prescribed for the levying of an execution under the foreclosure of a mortgage upon real property. Such land may be sold under sheriff's sale for the purpose of satisfying such special execution in the same manner as is now provided for the foreclosure of mortgages on real property.

35-46-114. Fence may be removed, when

When any person unwittingly, or by mistake, erects a fence upon the land of another and when, by a line legally determined, that fact is ascertained, such person may enter upon such premises and remove such fence at any time within one year after giving or receiving notice that the line has been run; but when the fence to be removed forms any part of a fence enclosing a field of the other party, having a crop thereon, such first person shall not remove such fence until such crop can, with reasonable diligence, be gathered and secured.

ARTICLE 47. LIVESTOCK - RUNNING AT LARGE

35-47-101. Horses and mules running at large

It is unlawful for any owner, or the agent, lessee, bailee, or employee of such owner of any horses or mules, to knowingly permit any of said animals to run at large, within a distance of ten miles from any city having one hundred thousand or more population; within a distance of five miles of any city having between five thousand and thirty thousand population; within a distance of one mile of all other cities or towns; and within a distance of one mile from the business area of any unincorporated town or village; but nothing in this article shall prevent anyone from driving any of said animals to market or from pasture to pasture or prevent the use of horses or mules for riding, driving, or drawing animal-propelled vehicles or machinery. This article shall not affect any common used solely for grazing purposes which has been established by land grant and ratified by treaty.

35-47-102. Duty of custodian - fees - recovery

Where said animals are in violation of section 35-47-101, it is the duty of every sheriff or other peace officer of the county, on complaint of any person, to take custody of such animals and place them on feed and water. He may appoint a custodian for such purpose and pay such custodian a fee of four dollars per day to be assessed as costs; and the owner or agent may give the sheriff or other officer a redelivery bond in sufficient sum for repossession of his stock, pending a court action. In cases where the owner or agent is known and has been convicted in court, the sheriff or other officer may dispose of such animals or sufficient numbers of them to pay for the fine and reasonable costs of feeding and other expenses in connection therewith, after giving ten days notice by posting three notices in public and conspicuous places. In cases where the owner of such animals is unknown, the animals shall be taken up and disposed of by the state board of stock inspection commissioners, or one of its duly authorized representatives, the same as other estrays as provided for by law.

35-47-103. Penalty

Any person who knowingly permits any of said animals to run at large is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars.

Reviewed by AAHS in December 2001.