Chapter 608

1971 REPLACEMENT PART

(1973 reprint)

Fences to Prevent Damage by or to Animals

CIVIL LIABILITY

608.015 Civil liability for animals trespassing on adequately fenced land situated on open range

FENCES AND CROSSINGS ON RAILROAD RIGHT OF WAY; RAILROAD'S LIABILITY

608.310 Erecting and maintaining fences, crossings, gates and cattle guards

608.320 Railroad refusing or failing to maintain fences, gates and guards

608.330 Leaving gate open

608.340 Liability of railroad for killing or injuring stock

608.350 Fences sufficient to relieve railroad of liability

608.360 When railroad's negligence is presumed; contributory negligence and wilful intent as defense

608.370 Service of process on agent

608.380 Notice of stock injured or killed

608.390 Notifying brand inspector

608.400 Inspection of injured livestock and notice to owner

FENCING AGAINST HOGS

608.510 Fencing against hogs

PENALTIES

608.990 Penalties

CROSS REFERENCES

Fencing land taken by condemnation, 376.525, 376.530

Line and partition fences, Ch. 96

Stock running at large, Ch. 607

CIVIL LIABILITY

608.010 [Repealed by 1957 c.476 §4]

608.015 Civil liability for animals trespassing on adequately fenced land situated on open range. (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 inclosed by an adequate fence and situated on open range shall be liable to the owner or lawful possessor of the inclosed land for damage done by the animal. The person seeking to recover the damages shall plead and prove that his fence 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.

[1957 c.476 §§1, 2]

608.020 [Repealed by 1957 c.476 §4]
608.030 [Repealed by 1957 c.476 §4]
608.040 [Repealed by 1957 c.476 §4]
608.050 [Repealed by 1957 c.476 §4]
608.060 [Repealed by 1957 c.476 §4]
608.070 [Repealed by 1957 c.476 §4]
608.080 [Repealed by 1957 c.476 §4]
608.210 [Repealed by 1957 c.476 §4]
608.220 [Repealed by 1957 c.476 §4]
608.230 [Repealed by 1957 c.476 §4]
608.240 [Repealed by 1957 c.476 §4]
608.250 [Repealed by 1957 c.476 §4]
608.260 [Repealed by 1957 c.476 §4]
608.270 [Repealed by 1957 c.476 §4]

FENCES AND CROSSINGS ON RAILROAD RIGHT OF WAY; RAILROAD'S LIABILITY

608.310 Erecting and maintaining fences, crossings, gates and cattle guards. (1) Every person, or his lessee or agent, owning or operating any railroad, shall erect and maintain good and sufficient lawful fences on both sides of his 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 Public Utility Commissioner, upon complaint or upon his own motion in the manner provided by ORS 756.500 to 756.610, may prescribe 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 decree in condemnation relative to such crossings.

(3) Upon complaint or upon his own motion and after hearing, as provided in ORS 756.500 to 756.610, the Public Utility Commissioner may, by order, 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 order, and may provide for the apportionment of the costs of reconstruction necessitated thereby as between the parties interested.

(4) The Public Utility Commissioner, for good cause shown, upon complaint, or upon his own motion, and after notice and hearing as provided in ORS 756.500 to 756.610, may suspend the operation of this section as to any particular portion of any line of railroad.

[Amended by 1971 c.655 §248]

608.320 Railroad refusing or failing to maintain fences, 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 he 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, prosecuting attorney of the proper county or Public Utility Commissioner 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 Leaving gate 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 Liability of railroad for killing or injuring stock. Any person, or his lessee or agent, 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 Fences sufficient to relieve railroad of liability. 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 When railroad's negligence is presumed; contributory negligence and wilful intent as defense. 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 his lessees or agents, 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 inclosed land owned or in possession of the owner of such stock shall not be deemed contributory negligence. In any such action, proof of wilful 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 Service of process 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 his lessees or agents, 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 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 his 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 Notifying 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 him.

608.400 Inspection of injured livestock and notice to owner. 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.

608.520 [Repealed by 1957 c.476 §4]

608.530 [Repealed by 1957 c.476 §4]

608.540 [Repealed by 1957 c.476 §4]

PENALTIES

608.990 Penalties. (1) Violation of ORS 608.330 is punishable, upon conviction, by a fine not exceeding $50 or by imprisonment in the county jail not exceeding 10 days, or both.

(2) Violation of ORS 608.380 is punishable, upon conviction, by a fine not exceeding $500.

(3) Violation of ORS 608.510 is punishable, upon conviction, by a fine of not more than $25.

[Amended by 1957 c.476 §3]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1971.

Robert W. Lundy
Legislative Counsel