

CHAPTER 169C

TRESPASSING OR STRAY LIVESTOCK

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169C.1 Definitions.

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

1. “*Aggrieved party*” means a landowner or a local authority.
2. “*County system*” means the same as defined in section 445.1.
3. “*Fence*” means a fence as described in chapter 359A which is lawful and tight as provided in that chapter, including but not limited to a partition fence. For purposes of this chapter, “*fence*” includes a fence bordering a public road.
4. “*Landowner*” means a person who holds an interest in land, including a titleholder or tenant.
5. “*Livestock*” means an animal belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 170.1; or poultry.
6. “*Livestock care provider*” means a person designated by a local authority to provide care to livestock which is distrained by a local authority.
7. “*Livestock owner*” means the person who holds title to livestock or who is primarily responsible for the care and feeding of the livestock as provided by the titleholder.
8. “*Local authority*” means a city as defined in section 362.2 or a county as provided in chapter 331.
9. “*Maintenance*” means the provision of shelter, food, water, or a nutritional formulation as required pursuant to chapter 717.
10. “*Public road*” means a thoroughfare and its right-of-way, whether reserved by public ownership or easement, for use by the traveling public.

97 Acts, ch 57, §1; 2003 Acts, ch 149, §3, 23; 2007 Acts, ch 64, §1; 2010 Acts, ch 1118, §1

[P] Further definitions, see §159.1

[T] NEW subsection 2 and former subsections 2 – 9 renumbered as 3 – 10

169C.2 Custody.

A landowner may take custody of livestock if the livestock trespasses upon the landowner’s land or strays from the livestock owner’s control on a public road which adjoins the landowner’s land. A local authority may take custody of the livestock as provided by the local authority. The landowner shall not transfer custody of the livestock to a person other than the livestock owner or a local authority, unless the livestock owner approves of the transfer. A local authority shall not transfer custody of the livestock to a person other than the livestock owner or a livestock care provider.

97 Acts, ch 57, §2

169C.3 Notice to livestock owner.

1. *a.* If livestock trespasses upon a landowner’s land or the landowner takes custody of the livestock, the landowner shall deliver notice of the trespass or custody to the livestock owner within forty-eight hours following discovery of the trespass or taking custody of livestock which has not trespassed. If a local authority takes custody of the livestock, the local authority shall deliver notice of the custody to the livestock owner within forty-eight hours after taking custody of the livestock. The forty-eight-hour period shall exclude any time that falls on a Sunday or a holiday recognized by the state or the United States. The notice shall be made in writing and delivered by certified mail or personal service to the last known mailing address of the livestock owner.

b. If the aggrieved party does not know the name and address of the livestock owner, the aggrieved party shall make reasonable efforts to determine the identity of the livestock owner. The reasonable efforts shall include obtaining the name and address of the owner of the brand appearing on the livestock from the department of agriculture and land stewardship

under chapter 169A. If the name and address of the livestock owner cannot be determined, the aggrieved party shall publish the notice as soon as possible at least once each week for two consecutive weeks in a newspaper having general circulation in the county where the livestock is located.

2. A notice required under this section shall at least provide all of the following:
 - a. The name and address of the landowner or local authority.
 - b. A description of the livestock and where it trespassed or strayed.
 - c. An estimate of the amount of the livestock owner's liability.
- 97 Acts, ch 57, §3

169C.4 Liability.

1. A livestock owner shall be liable to the following persons:
 - a. To a landowner for damages caused by the livestock owner's livestock which have trespassed on the landowner's land, including but not limited to property damage and costs incurred by the landowner's custody of the livestock including maintenance costs. A livestock owner's liability is not affected by the failure of a landowner to take custody of the livestock. A livestock owner shall not be liable for damages incurred by a landowner if the livestock trespassed through a fence that was not maintained by the landowner as required pursuant to chapter 359A.
 - b. To a landowner who takes custody of livestock on a public road as provided in section 169C.2 for costs incurred by the landowner in taking custody of the livestock, including maintenance costs.
 - c. To a local authority which takes custody of livestock for costs incurred by the local authority in taking custody of the livestock, including maintenance costs.
 2. An aggrieved party who fails to provide timely notice of a livestock's trespass or custody as required by section 169C.3 shall not be entitled to compensation for damages for the period of time during which the aggrieved party fails to provide timely notice.
 3. A landowner is not liable for an injury or death suffered by the livestock in the landowner's custody, unless the landowner caused the injury or death. The landowner is not liable for livestock that strays from the landowner's land. An aggrieved party is not liable for livestock that strays from the control of the aggrieved party.
- 97 Acts, ch 57, §4; 98 Acts, ch 1100, §21, 22

169C.5 Satisfaction for damages.

1.
 - a. After receiving notice by an aggrieved party as required by section 169C.3, the livestock owner shall pay all damages to the aggrieved party for which the livestock owner is liable.
 - b. The aggrieved party or the livestock owner may bring a civil action in order to determine the livestock owner's liability and the amount of any claim for damages. The aggrieved party or livestock owner must bring the action within thirty days following receipt or publication of the notice as required by section 169C.3. The court may join all other claims arising out of the same facts that are alleged in the claim for damages. The civil action may be heard by a district judge or a district associate judge. The civil action may be heard by the district court sitting in small claims as provided in chapter 631.
 - c. If the livestock is in the custody of an aggrieved party or livestock care provider, a rebuttable presumption arises that the livestock has trespassed or strayed from the control of the livestock owner. The rebuttable presumption shall not apply if a criminal charge has been filed involving the removal or transfer of the livestock. The burden of proof regarding all other matters of dispute shall be on the aggrieved party.
 - d. The failure of an aggrieved party to provide notice as required by section 169C.3 shall not bar the aggrieved party from being awarded a judgment, if the court determines that the livestock owner had actual knowledge that the livestock had trespassed or strayed and the name and address of the aggrieved party.
2. If a civil action is brought by the livestock owner or aggrieved party, the matter shall be heard by a court on an expedited basis. The aggrieved party shall provide for the transfer of the livestock to the livestock owner, if the livestock owner posts a bond or other security with

the court in the amount of the aggrieved party's claim. If a bond or security is not posted, the aggrieved party or livestock care provider shall keep custody of and provide maintenance to the livestock. However, the livestock owner shall post the bond or other security if the matter is set for hearing more than thirty days from the date that the petition bringing the civil action is filed. The court shall order the immediate disposition of the livestock as provided in chapter 717, if the livestock is permanently distressed by disease or injury to a degree that would result in severe or prolonged suffering.

3. If a civil action is not timely brought as provided in this section, title to the livestock shall transfer to the aggrieved party thirty days following receipt of the notice by the livestock owner or the first date of the notice's publication as required pursuant to section 169C.3, if the parties fail to agree to the amount, terms, or conditions of payment or if the identity of the livestock owner cannot be determined. Title to the livestock shall transfer subject to any applicable security interests or liens.

4. A landowner is liable to the livestock owner for twice the fair market value of livestock that the landowner transfers to a person other than a local authority in violation of section 169C.2.

5. If the aggrieved party is a local authority, the local authority shall reimburse the landowner for the landowner's damages from proceeds received from the sale of the livestock, after satisfying any superior security interests or liens.

97 Acts, ch 57, §5

169C.6 Habitual trespass.

A habitual trespass occurs when livestock trespasses from the land where the livestock are kept onto the land of a neighboring landowner or strays from the land where the livestock are kept onto a public road, and on three or more separate occasions within the prior twelve-month period the same or different livestock kept on that land have trespassed onto the land of the same neighboring landowner or strayed from the land where the livestock are kept onto the same public road.

1. The local authority upon its own initiative or upon receipt of a complaint shall determine whether livestock are trespassing or straying from the land where the livestock are kept onto a public road, and make a record of its findings.

2. *a.* Once a habitual trespass occurs, a neighboring landowner may request that the responsible landowner of the land where the trespassing or stray livestock are kept erect or maintain a fence on the land. The neighboring landowner shall make the request to the responsible landowner in writing. The responsible landowner may compel an adjacent landowner to contribute to the erection or maintenance of the fence as provided in chapter 359A.

b. If the responsible landowner does not erect or maintain a fence within thirty days after receiving the request, the neighboring landowner may apply to the fence viewers as provided in chapter 359A as if the matter were a controversy between the responsible landowner and an adjacent landowner, and the matter shall be resolved by an order issued by the fence viewers, subject to appeal, as provided in chapter 359A. The neighboring landowner shall be a party to the controversy as if the neighboring party were an adjacent landowner. The neighboring landowner is not liable for erecting or maintaining the fence, unless the neighboring landowner is an adjacent landowner who is otherwise required to make a contribution under chapter 359A.

3. If the fence is not erected or maintained as required in section 359A.6, and upon the written request of the board of township trustees, the board of supervisors of the county where the fence is to be erected or maintained shall act in the same manner as the board of township trustees under that section, including by erecting or maintaining the fence, ordering payment from a defaulted party, and certifying an amount due to the county treasurer in the same manner as in section 359A.6. The amount due shall include the total costs required to erect or maintain the fence and a penalty equal to five percent of the total costs. The amount shall be placed upon the county system and collected in the same manner as ordinary taxes.

Upon certification to the county treasurer, the amount assessed shall be a lien on the parcel until paid.

2007 Acts, ch 64, §2; 2010 Acts, ch 1118, §2

[T] Subsection 3 amended