

Senate Study Bill 137

Bill Text

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1 1 Section 1. NEW SECTION. 169C.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Aggrieved party" means a landowner or a local
1 5 authority
1 6 2. "Landowner" means a person who holds an interest in
1 7 land, including a titleholder or tenant.
1 8 3. "Livestock" means an animal belonging to the bovine,
1 9 caprine, equine, ovine, or porcine species; ostriches, rheas,
1 10 or emus; farm deer as defined in section 481A.1; or poultry.
1 11 4. "Livestock care provider" means a person designated by
1 12 a local authority to provide care to livestock which is
1 13 distrained by a local authority.
1 14 5. "Livestock owner" means the person who holds title to
1 15 livestock or who is primarily responsible for the care and
1 16 feeding of the livestock as provided by the titleholder.
1 17 6. "Local authority" means a city as defined in section
1 18 362.2 or a county as provided in chapter 331.
1 19 7. "Maintenance" means the provision of shelter, food,
1 20 water, or a nutritional formulation as required pursuant to
1 21 chapter 717.
1 22 Sec. 2. NEW SECTION. 169C.2 CUSTODY AND MAINTENANCE.
1 23 A landowner may take custody of livestock if the livestock
1 24 trespasses upon the landowner's land or strays from the
1 25 livestock owner's control on a public road which adjoins the
1 26 landowner's land. A local authority may take custody of the
1 27 livestock as provided by the local authority. The landowner
1 28 shall not transfer custody of the livestock to a person other
1 29 than the livestock owner or a local authority, unless the
1 30 livestock owner approves of the transfer. A local authority
1 31 shall not transfer custody of the livestock to a person other
1 32 than the livestock owner or a livestock care provider.
1 33 Sec. 3. NEW SECTION. 169C.3 NOTICE TO LIVESTOCK OWNER.
1 34 1. a. If livestock trespasses upon a landowner's land or
1 35 the landowner takes custody of the livestock, the landowner
2 1 shall deliver notice of the trespass or custody to the
2 2 livestock owner within forty-eight hours following discovery
2 3 of the trespass or taking custody of livestock which has not
2 4 trespassed. If a local authority takes custody of the
2 5 livestock, the local authority shall deliver notice of the
2 6 custody to the livestock owner within forty-eight hours after
2 7 taking custody of the livestock. The forty-eight-hour period
2 8 shall exclude any time that falls on a Sunday or a holiday
2 9 recognized by the state or the United States. The notice
2 10 shall be made in writing and delivered by certified mail or
2 11 personal service to the last known mailing address of the
2 12 livestock owner.
2 13 b. If the aggrieved party does not know the name and
2 14 address of the livestock owner, the aggrieved party shall make
2 15 reasonable efforts to determine the identity of the livestock
2 16 owner. The reasonable efforts shall include obtaining the
2 17 name and address of the owner of the brand appearing on the
2 18 livestock from the department of agriculture and land
2 19 stewardship under chapter 169A. If the name and address of
2 20 the livestock owner cannot be determined, the aggrieved party
2 21 shall publish the notice as soon as possible at least once

2 22 each week for two consecutive weeks in a newspaper having
2 23 general circulation in the county where the livestock is
2 24 located.

2 25 2. A notice required under this section shall at least
2 26 provide all of the following:

2 27 a. The name and address of the landowner or local
2 28 authority.

2 29 b. A description of the livestock and where it trespassed
2 30 or strayed.

2 31 c. An estimate of the amount of the livestock owner's
2 32 liability.

2 33 Sec. 4. NEW SECTION. 169C.4 LIABILITY.

2 34 1. A livestock owner shall be liable to the following
2 35 persons:

3 1 a. To a landowner for damages caused by the livestock
3 2 owner's livestock which have trespassed on the landowner's
3 3 land, including but not limited to property damage and costs
3 4 incurred by a landowner's custody of the livestock including
3 5 maintenance costs. A livestock owner's liability is not
3 6 affected by the failure of a landowner to take custody of the
3 7 livestock. A livestock owner shall not be liable for damages
3 8 incurred by the landowner if the livestock trespassed through
3 9 a fence that was not maintained by the landowner as required
3 10 pursuant to chapter 359A.

3 11 b. To a landowner who takes custody of livestock on a
3 12 public road as provided in section 169C.3 for costs incurred
3 13 by the landowner in taking custody of the livestock, including
3 14 maintenance costs.

3 15 c. To a local authority which takes custody of livestock
3 16 for costs incurred by the local authority in taking custody of
3 17 the livestock, including maintenance costs.

3 18 2. An aggrieved party who fails to provide timely notice
3 19 of a livestock's trespass or custody as required by section
3 20 169C.3 shall not be entitled to compensation for damages for
3 21 the period of time during which the aggrieved party fails to
3 22 provide timely notice.

3 23 3. An aggrieved party is not liable for an injury or death
3 24 suffered by the livestock in the landowner's custody, unless
3 25 the landowner caused the injury or death. The landowner is
3 26 not liable for livestock that strays from the landowner's
3 27 land. An aggrieved party is not liable for livestock that
3 28 strays from the control of the aggrieved party.

3 29 Sec. 5. NEW SECTION. 169C.5 SATISFACTION FOR DAMAGES.

3 30 1. a. After receiving notice by an aggrieved party as
3 31 required by section 169C.3, the livestock owner shall pay all
3 32 damages to the aggrieved party for which the livestock owner
3 33 is liable.

3 34 b. The aggrieved party or the livestock owner may bring a
3 35 civil action in order to determine the livestock owner's
4 1 liability and the amount of any claim for damages. The
4 2 aggrieved party or livestock owner must bring the action
4 3 within thirty days following receipt or publication of the
4 4 notice as required by section 169C.3. The court may join all
4 5 other claims arising out of the same facts that are alleged in
4 6 the claim for damages. The civil action may be heard by a
4 7 district judge or a district associate judge. The civil
4 8 action may be heard by the district court sitting in small
4 9 claims as provided in chapter 631.

4 10 c. If the livestock is in the custody of an aggrieved
4 11 party or livestock care provider, a rebuttable presumption
4 12 arises that the livestock has trespassed or strayed from the
4 13 control of the livestock owner. The rebuttable presumption
4 14 shall not apply if a criminal charge has been filed involving
4 15 the removal or transfer of the livestock. The burden of proof
4 16 regarding all other matters of dispute shall be on the
4 17 aggrieved party.

4 18 d. The failure of an aggrieved party to provide notice as

4 19 required by section 169C.3 shall not bar the aggrieved party
4 20 from being awarded a judgment, if the court determines that
4 21 the livestock owner had actual knowledge that the livestock
4 22 had trespassed or strayed and the name and address of the
4 23 aggrieved party.

4 24 2. The matter shall be heard by the court within thirty
4 25 days from the filing of a petition by the livestock owner or
4 26 aggrieved party. The aggrieved party or livestock care
4 27 provider shall keep custody of and provide maintenance to the
4 28 livestock during the proceedings, unless the court orders
4 29 otherwise. However, the livestock shall be returned to the
4 30 livestock owner, if the livestock owner posts a bond or other
4 31 security with the court in an amount determined by the court,
4 32 which shall be not more than the amount of the aggrieved
4 33 party's claim. The court may continue the hearing for up to
4 34 forty days upon motion by the livestock owner. However, the
4 35 livestock owner must post the bond or other security with the
5 1 court. The court may grant a subsequent continuance by the
5 2 livestock owner for the same length of time. The court shall
5 3 order the immediate disposition of the livestock as provided
5 4 in chapter 717, if the livestock is permanently distressed by
5 5 disease or injury to a degree that would result in severe or
5 6 prolonged suffering.

5 7 3. a. If a petition is not timely brought in district
5 8 court contesting the livestock owner's liability as provided
5 9 in this section, the livestock owner shall pay the aggrieved
5 10 party the amount in damages incurred by the aggrieved party as
5 11 established in the notice. The agreement shall be enforceable
5 12 in a civil action.

5 13 b. If a civil action is not timely brought as provided in
5 14 this section, title to the livestock shall transfer to the
5 15 aggrieved party thirty days following receipt of the notice by
5 16 the livestock owner or the first date of the notice's
5 17 publication as required pursuant to section 169C.3, if the
5 18 parties fail to agree to the amount, terms, or conditions of
5 19 payment or if the identity of the livestock owner cannot be
5 20 determined. Title to the livestock shall transfer subject to
5 21 any applicable security interests or liens.

5 22 4. A landowner is liable to the livestock owner for twice
5 23 the fair market value of livestock that the landowner
5 24 transfers to a person other than a local authority in
5 25 violation of section 169C.2.

5 26 5. A landowner is liable to a livestock owner for an
5 27 amount equaling the difference between the fair market value
5 28 of livestock and damages incurred by the aggrieved party
5 29 including maintenance costs prior to transfer of the
5 30 livestock's title pursuant to section 169C.5. If the
5 31 aggrieved party is a local authority, the local authority
5 32 shall reimburse the landowner for the landowner's damages from
5 33 proceeds received from the sale of the livestock, after
5 34 satisfying any superior security interests or liens.

5 35 Sec. 6. EFFECTIVE DATE. This Act, being deemed of
6 1 immediate importance, takes effect upon enactment.

6 2 EXPLANATION

6 3 This bill provides a cause of action to a landowner or a
6 4 county or city, referred to as a local authority, when the
6 5 livestock is trespassing, or is taken into custody when it has
6 6 strayed from its owners control. The bill provides that a
6 7 landowner may take custody of livestock if the livestock
6 8 trespasses upon the landowner's land or is on a public road
6 9 which adjoins the landowner's land. The bill also provides
6 10 that a local authority may take custody of the livestock. The
6 11 bill provides that the landowner or the local authority must
6 12 provide notice to the livestock owner. The livestock owner is
6 13 liable for damages caused by the livestock, including property
6 14 damage and costs associated with the trespass or custody,
6 15 including livestock maintenance costs during a period of

6 16 custody. After receiving notice, the livestock owner is
6 17 required to pay damages to the landowner or local authority.
6 18 Either party may bring an action in district court to
6 19 determine liability. The court case must be heard on an
6 20 expedited basis. If the case is not brought to court, title
6 21 to the livestock transfers to the landowner or local
6 22 authority, if the livestock owner fails to pay the damages or
6 23 the identity of the livestock owner cannot be determined. The
6 24 landowner or local authority must reimburse the livestock
6 25 owner for the difference between the value of the livestock
6 26 and the amount incurred in damages. If the local authority
6 27 takes custody of the livestock, the local authority must
6 28 reimburse the landowner for the landowner's damages from
6 29 proceeds received from the sale of the livestock.
6 30 The bill takes effect upon enactment.
6 31 LSB 1547SC 77
6 32 da/jj/8.1