

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK AND IRRIGATION
MONTANA STATE SENATE

February 2, 1987

The meeting of the Agriculture, Livestock and Irrigation Committee was called to order by Senator Galt, Vice-Chairman, on February 2, 1987, in room 415 of the Capitol.

ROLL CALL: All members were present, and Senator Boylan took over the chair.

CONSIDERATION OF HOUSE BILL 108: Representative Simon, District 91, was chief sponsor of House Bill 108. He said this bill is the result of an audit performed by the Legislative Audit Committee. A law was passed in the 1959 legislature that mandated the Department of Agriculture prepare rules for fighting Dutch Elm Disease and to prepare a report annually. They have done neither. The fact is there is very little the Department of Agriculture can do about the Dutch Elm Disease, a disease that kills the elm trees in our state. To leave a statute on the books that is not being complied with violates the requirements of the audit, and the recommendation was made to either fund the law or repeal it. The Audit Committee has recommended repealing the law.

PROPOSERS: Ralph Peck, Department of Agriculture, spoke in favor of House Bill 108. He said they would prefer that if a disease program were required, there be funding for the bill.

OPPOSERS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: There were none.

DISPOSITION OF HOUSE BILL 108: Senator Bengtson moved that House Bill 108 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY. Senator Bengtson will carry the bill.

CONSIDERATION OF HOUSE BILL 59: Representative Marian Hanson, House District 100, chief sponsor of this bill, said it deals with whose responsibility it is to maintain the fence between two adjacent landowners. The way the situation is now, each adjacent landowner is coterminously bound to equally maintain the fence. There is an old

unwritten code of the west that says the part to the right is maintained by you. Committee members were handed a printout prepared by Tom Gomez, the committee researcher, which is attached as Exhibit 1.

PROPOSERS: Darrel Hanson, Ashland, said this situation had arisen at his place. He said several old-time ranchers had said the part to the right is yours to maintain, but it isn't a law. He felt this would give the guy that fixes his half of the fence the visual proof. He said this bill will help establish responsibility.

Les Graham, Department of Livestock, said they become involved when they get called because of livestock trespass. This is costly because the inspectors have to identify the livestock involved, sometimes over and over. Various attorneys have stated the solution is not always easy to determine, as indicated by the number of lawsuits that have occurred. Mr. Graham said he would appreciate it if there were some way to settle this so at least the people would know who was responsible. See Exhibit 2.

Frank Thompson, Wolf Creek, rose in support of the bill.

Mons Teigen, Montana Stockgrowers Association, supports this legislation. He knew there were a lot of problems dealing with fence law, but did not think this would answer all of them. He felt the old tried and true custom of the fence on the right belonging to the person facing it was a good custom and probably should be imprinted to words in law. He urged a do pass.

OPPOSERS: There were no opposers.

QUESTIONS FROM THE COMMITTEE: Senator Lybeck asked Representative Hanson, in regard to page 1, line 25, where is the midpoint, and who would determine this. Representative Hanson said one usually knows whether you have a half mile or 5 miles between you and your neighbor and when you are on your own property, and the midpoint between you and your adjacent landowner would be the middle.

Senator Lybeck asked if this would actually be the job of a surveyor to determine. He was told if you and your adjacent landowner have a mile common boundary, you go half way down the fence; beyond this would be your responsibility to maintain.

Senator Lybeck said in the Flathead area, we have some fences that have been proven time and again they are not on the line. People come in and buy a one acre tract and will have been informed either rightly or wrongly, that the fence is 20 feet in on their property. If we are going to build a fence, we are going to have to have a survey and surveyors are expensive. In cases where one is completely surrounded by subdivisions, you could be dealing with 20 different landowners in a half mile.

Senator Story said there is another problem with this bill. Equal work doesn't necessarily mean maintaining half the fence. In the mountains, half that fence might be where there are fields, but the other half might go up the creek. He said the work doesn't necessarily mean half the fence, or in a case where it is all swampy ground, it requires extra work. You have to come up with some means other than saying equal distance.

Representative Hanson pointed out the exception on line 22, "except as provided by prescription, custom, or agreement". Senator Story said this would not work.

Senator Kolstad asked Rep. Hanson where the penalty clause was in this bill. Rep. Hanson said there was no penalty clause, it just defines who will maintain which part.

Senator Kolstad said the statute itself would serve as a basis for a possible law suit. Rep. Hanson said the maintenance is already addressed in other statutes.

Senator Jergeson said low landers have some ups and downs also. The question he had was if mid-point was going to be determined by looking at the map, the ups and downs not shown on the map might give one person twice as many miles of fence as his neighbor where it may be flatter.

Senator Beck asked if there is a possibility there could be language in the bill stating if it is a quarter of a mile of fence or longer. He realized there was a problem with subdivisions. He did not think anyone would want to go in and build 100 feet of fence and maintain half. There might be some adjustment that could be made. He asked if this would give the right to bill the Forest Service for maintenance. Rep. Hanson said the holders of a Forest Service Permit are responsible for maintaining the fence. You get the permit for half the fence.

Senator Story said this was a real concern to him because it could make a substantial difference in work. You could have half the fence along a road and the other half on a mountain. He felt half the work rather than half the fence might be fair and asked Rep. Hanson if she would object to having amendments that took this into consideration. Rep. Hanson said probably not.

Senator Lybeck asked what happens if you border up against the county or the state highway. Rep. Hanson said this was addressed. The railroad maintains all of their fence and the highways maintain theirs also. Senator Lybeck asked about the counties. Rep. Hanson said the county just has an easement in most cases and doesn't do any fencing.

Senator Lybeck asked about abandoned roads and Rep. Hanson said she did not know. She said Tom Gomez had spent a week and a half doing research.

Craig Winterburn, Helena, said he could see two issues he would like to address. One regards the small acreage claim. It seems to him that one would want an agreement between the small acreage holder and the rancher next to him when the rancher takes over the responsibility of the actual work. The small acreage holder might say he has no need for a fence and the rancher says he will build the fence, but the small acreage holder should pay for half of it. There should be some way of addressing this between the two parties involved.

Senator Beck asked Mr. Cogley if the law in the state says you fence livestock out of your property. Dave Cogley, Legislative Council, said this is the general rule. There are exceptions in statute that require, in certain instances, that a particular party do the fencing, but the general range law is that if you want to keep livestock out, it is your obligation to do the fencing. This is a situation where you have two adjoining ranchers and each neighbor has an obligation to fence because each one wants to fence the other person's livestock out.

Senator Beck said he had encountered a situation in Deer Lodge valley with a farmer who grazes his cattle on the county road. He wanted to leave his gate open and the cattle kept getting through the gate. He thought he had some legal grounds, but found he did not. If he wanted the cattle off his grounds, he had to keep the gate closed.

Rep. Hanson said in closing that she would like to point out if it is your custom to maintain the left half and the other fellow maintains the right, then this law would not pertain to you. It would simply give visual proof that you have maintained half of the fence.

The hearing was closed on House Bill 59.

CONSIDERATION OF SENATE BILL 207: Senator Lybeck, District 4, Kalispell, is chief sponsor of Senate Bill 207, which deals with revising the requirement for use of the Montana Quality Label, the certification of certain products bearing the label and amending certain sections of the law.

PROPOSERS: Mons Teigen, Montana Stock Growers Association, spoke in favor of Senate Bill 207. He said there have been two beef marketing studies that have been funded jointly by the Dept. of Agriculture, the Montana Beef Council and the Montana Economic Development Board, studying the possibility of developing markets for beef. One study was precipitated due to the fact the Midland Packing plant in Billings went out of business. They had to change the direction of the study to see about getting a plant going again in the Yellowstone valley. One result that came out of the study was the fact that if Montana was going to do anything to assist its producers, it was going to have to figure out a way of adding value to their products. One way was to use the advantage of identifying the product with the Big Sky Country, the mountains, clean air, clean way of life, etc., and the fact that we have a former senator from our state who is an ambassador in Japan at the present time. They came up with the idea that a Montana certified beef label should be developed. The idea would be for the Board of Livestock, in cooperation with the Montana Beef Council, to come up with a set of standards to meet for people who want to use the label.

Craig Winterburn, Helena livestock producer, stated he was a member of the committee that formulated the idea and said this proposal would assure the customer the product meets certain Montana standards. He told of the market in Japan, the organization and planning that is already in process for marketing Montana beef, and of the potential he felt was there. He said they would like the Department of Livestock to be the inspecting agency to assure quality to the Montana beef industry. It would be on a fee basis. He would like to suggest one amendment to the bill on page 1, line 18, where it says "in consultation" to insert "and agreement" with the Montana Beef Council.

Ralph Peck, Department of Agriculture, gave testimony on behalf of Director Kelly. His testimony is attached as Exhibit 3.

Connie Townsend, Information and Education Coordinator for Montana Beef Council, said she would urge support of Senate Bill 207. She said she was involved in the meeting held in Billings, and the result was very positive for Montana beef products that were certified. This came from farmers and ranchers and also from retailers and people in the hotel and restaurant and food service industry.

Lisa Bay, representing Cattlelean Inc., a company that has been marketing lean beef both in Montana and nationwide, rose in support of this bill, but questioned the need for legislation. At present, every facet of their business is conducted in Montana, from raising the beef to processing it. They feel this bill may hinder their marketing effort as well as the certified beef program. She stated finding USDA packing facilities in Montana had been a problem, and could be a potential problem for this program. They also found in trying to market their beef in California, every cent per pound that was added onto their meat took away the competitive edge. Entire royalties are shifted between companies over less than a cent per pound. She said the cost of entering into a certification program would have to be added to the cost of the product.

Lisa Bay said language of the bill on line 20, section 1, was questionable because only the person who slaughtered the animal would know the origin. Another concern was in Section 2, line 12, regarding the standards established relating to all aspects of feeding, raising and processing of the product. She wondered if on page 2, line 18, "consultations on rules promulgated", should be expanded to include other interested producers or exporters besides the Montana Beef Council.

Bill Yager, Montana Livestock Exporters, spoke as a proponent, and his testimony is attached as Exhibit 4.

Les Graham, Department of Livestock rose in support of the bill. His testimony is attached as Exhibit 5.

OPPONENTS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Galt asked Senator Lybeck how the statement "continuously examines the commodity" would be handled, as it seemed to him you would have to have an inspector at every calving shed and stay there for 18 months. Senator Lybeck said he agreed it does say "regularly and continuously" examine the product that is being packed. Senator Galt said the bill also says you have to have knowledge of the origin of the product, and origin is in the calving shed. Senator Lybeck said it could probably be carried to that point, but perhaps Mons Tiegen or Les Graham could answer this.

Mons Tiegen stated there was very little consideration given to the idea of live cattle shipment. It was oriented toward beef itself. He said Colorado was selling Colorado Beef, and just because it was packed in Greeley, Colorado, it carried the designation of being Colorado Beef but it actually came from other places and lost its credibility that way. The idea was if a rancher wanted to avail himself of this program, he would have to submit to a certain amount of scrutiny so that the cattle on his ranch were not cattle that were purchased in Canada or Idaho and sent up here. They did contemplate some surveillance of the entire operation.

Senator Galt asked about the Montana label not being used on a brand not of number 1 quality. He asked how you can promote a number 1 quality when you take the standard out. Senator Lybeck said the reason they took it out was because there is no official number 1 quality, and if we don't have a grade for that designation, we should remove it.

Senator Galt asked Mons Tiegen if a producer did not get into this program, if it would destroy their business. Mons Tiegen answered that originally this was going to be a beef exporting arrangement, and not live animals. If this would be a problem, he felt the bill should be amended to remove any reference to live animals.

Senator Bengtson said she was concerned about how many entrepreneurs this would affect. She also wondered if there had been abuses in the use of the 'Made in Montana' label.

Craig Winterburn said their general concept was not to take anything away from anybody that was doing something. Senator Bengtson asked who is concerned. Craig Winterburn answered, Cattlelean, Lisa Bay and Gary Murphy and various others are working on marketing with a brand name product, etc. He noted there is a national group of Angus producers that market a certified Angus product. He said one individual

rancher would have a difficult time establishing any secure marketplace if he could not continually supply that marketplace. This concept was envisioned to address the Montana beef industry, not the individual.

Senator Bengtson asked how the Japanese market would dictate the standards. Craig Winterburn said this is just a suggestion, everyone involved would be setting standards. Senator Bengtson asked what this would do to 'value added'. Could this be done without putting added requirements into law. She said we all agree we do need packing plants, but to put this in place before we have made headway seems to be jumping the gun. Craig Winterburn answered that presently the only thing in place is the fact that a particular Japanese entity has made an investment in a Billings plant with a special freezing process that will probably allow that plant to go. There are other interests in Montana that are ready to come on line if they have assurance they are merchandising a Montana certified product.

Les Graham added he had written a letter to the Montana Beef Council telling them the Department's cooperation hinged on a variety of reasons, one of which was certification not be denied to any Montana producer who meets the various requirements.

Senator Jergeson said the whole act pertains to agricultural food products, and lists dairy, livestock, pork, poultry and beef. In subsection 3, it discusses beef in particular. He asked why, if they promulgated rules certifying pork as being a Montana product, there wouldn't be consultation with a pork producer organization. He asked why we are spelling out a private organization on only one of our agricultural products.

Senator Lybeck answered one of the reasons was that the Pork Producers have their own program going through the national organization. He said all of the dairy products sold in the state are sold after inspection by the Department of Livestock.

Senator Jergeson said his last question was whether the Montana Beef Council was a state agency, a semi-state agency or a private organization, and if you could list a private organization in a statute book. Dave Cogley responded the Beef Council is a private organization and it was discussed in drafting of the bill. Because of the role of the national and state beef council under the Federal Beef Checkoff program, he felt there was not a problem. Senator Jergeson

asked if there was any objection to changing the bill to have to promulgate those rules in consultation with those organizations that represent the commodities questioned. Mr. Graham said he had no problem with this.

Senator Boylan said it appeared to him as though they would have to have a bonafide slaughtering plant in the state of Montana, federally inspected, which was a long way down the road.

Senator Beck asked if he was correct in assuming the live-stock and dairy are the only ones contributing to the Montana Beef Council as he felt the others were not contributing.

Senator Lybeck said he could not speak for all organizations, but he felt sure the Farmers Union and the Farm Bureau must have other members besides beef producers in their organization who are represented. He noted they receive no remuneration from the Beef Council for attending meetings, rooms, meals, etc.

Senator Beck asked what the \$1 a head is that producers are contributing to right now. Senator Lybeck said the way the Beef Council is set up now, 80 cents of that dollar goes back to the National Beef Council to be used in advertising promotion of beef products. About 20% of that Beef Council dollar is used in state to fund the workings of the Beef Council.

Senator Beck asked if establishing standards and requirements to the aspects of feeding, raising and processing beef was going to conflict.

Senator Lybeck answered he felt they were establishing a broad framework for certification such as we have for seed potatoes. If we are going to establish a Montana brand and Montana rating, you will have to have to require some sort of ongoing inspection.

Senator Galt asked if the bill required a fiscal note. Senator Lybeck answered there will be no fiscal impact. There will be a fee paid by the members.

Senator Thayer asked if this meant someone from the Montana Beef Council was going to stay in the plant and do the work for nothing. Senator Lybeck said if you would refer to page 1, line 17, it says continued official inspection means an employee and licensed representative of the Department of

Agriculture or the Department of Livestock of the United States Department of Agriculture, and it would vary as to who would do the inspecting.

Senator Thayer said that was why he questioned this. He couldn't believe the fiscal note would say no impact. Senator Lybeck said he would point out that in the beef slaughter houses now, the cost is built in.


Senator Jergeson said the Board of Livestock collects the \$1 a head now under the check-off program. You contract with the Montana Beef Council and send 80% to the federal and keep 20%, so there is a budget to pay for the cost of this.

Les Graham said there are 2 aspects to consider. One is the collection of the \$1 a head, which goes into the Montana Beef Council. By Montana law, 1/2 of that amount must go to the federal program. It has been a tradition of the Montana Beef Council to send 80% of the remaining. In reality, only 10% of that dollar stays in the state. The fiscal note reflects no impact to state government. The Beef Council made it very clear that the program is funded with a user fee. This fiscal note was prepared by the Department of Livestock. It will be up to the user if he wants it to pay for the inspection. He added that there are about 25 federally inspected packing plants in the state of Montana now.

Senator Boylan asked if one could ship to Japan. Mr. Graham answered yes, Yellowstone Beef Products is shipping to Japan right now under a contract.

Senator Lybeck closed the hearing by saying there appears to be some conflict. He felt Mr. Graham and Mr. Tiegen should meet to work out some mutual agreement that would be acceptable.

The meeting was adjourned.


SENATOR PAUL BOYLAN, Chairman

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ROLL CALL

AGRICULTURE

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2-2-87

NAME	PRESENT	ABSENT	EXCUSED
ABRAMS, Hubert J.	✓		
BENGTSON, Esther G.	✓		
BECK, Tom	✓		
JERGESON, Greg	✓		
KOLSTAD, ALLEN C.	✓		
LYBECK, Ray	✓		
STORY, Peter R.	✓		
THAYER, Gene	✓		
GALT, Jack VICE CHAIRMAN	✓		
BOYLAN, Paul CHAIRMAN	✓		

Each day attach to minutes.

DATE 2-2-87

COMMITTEE ON SENATE AGRICULTURE

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

RIGHTS AND OBLIGATIONS OF ADJOINING LANDOWNERS
TO BUILD OR MAINTAIN A FENCE

Prepared for the House Agriculture, Livestock,
and Irrigation Committee

By Tom Gomez
Staff Researcher

Montana Legislative Council

January 18, 1987

I. INTRODUCTION

This paper presents a general overview of the rights, duties, and obligations of owners and occupants of land to erect or maintain a fence, including a division fence, and fences intended to prevent animals from trespassing onto adjoining property. ✓

This paper has been written to meet the general information needs of the House Committee on Agriculture, Livestock, and Irrigation. It is not in any way intended to provide an authoritative statement of the fencing laws in Montana, nor is it meant to be a complete treatment of the subject involved.

II. DIVISION FENCES

Rights and Duties Generally

As a general rule, an adjoining landowner has the inherent right to fence his land or to leave the land unfenced, in the absence of a valid statute or contractual restriction to the contrary.¹

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With respect to a division fence, which is erected on the dividing line or boundary line between the land of adjoining owners, the right to erect a fence may be unilateral. A landowner may build a division line fence on a boundary line without the consent of the adjoining landowner, although the other party, if he decides to enclose his land, is obligated to pay his share of the cost of building and maintaining the fence.² The adjoining landowner, if he pays for the fence in its entirety, has the right to build the fence on the boundary line though it would straddle one-half upon the neighboring property.³

At common law, a landowner is not bound to establish or maintain a division fence, except by prescription or agreement,⁴ and in the absence of an agreement, an adjoining landowner has no right to build his fence beyond his own land.⁵

State statutes relating to legal fences, which prescribe what such fences are, and defining the duty to maintain and repair a division fence, do not affect the right of an adjoining landowner to build a division fence.⁶

Establishment of Duty by Prescription or Custom

An adjoining landowner may acquire a duty to maintain a division fence by prescription or by custom⁷. Thus, where for a period of 20 years, the owner of adjoining land has continuously and without interruption repaired and maintained the whole of a division fence, a presumption exists that the owner or those from whom he derived title were bound perpetually to make and

maintain the fence, and the existence of a former agreement may also be inferred.⁸

Similarly, where a line fence is built in separate portions by adjoining owners and maintained by them for more than 25 years, some original grant or agreement between the parties by which a legal division of the fence was established will be presumed.⁹

If a partition or division fence is maintained only occasionally, and not continually during the period of prescription, no prescriptive obligation to maintain the fence has been created.¹⁰

State statutes relating to the establishment and maintenance of division fences do not affect a prescriptive obligation of an adjoining landowner to maintain such fence.¹¹

Establishment of Duty by Agreement

Adjoining landowners may make a valid agreement relating to the construction and maintenance of a partition or division fence. The fact that there is a statute governing the building and maintenance of division fences will not preclude the parties from controlling the matter by private agreement.¹²

Hence, when adjoining landowners enter into an agreement concerning the building and maintenance of a division fence, the rights and obligations of each owner are determined by the agreement, and not by the fence statutes or by common-law rules.

Establishment of Duty under Statutes

An adjoining landowner has no obligation to build or maintain a fence absent a duty to do so.¹⁴ However, under Montana law, an adjoining landowner or occupant of land may acquire such duty.

Under section 70-16-205, MCA, the adjoining owners of land "are mutually bound equally to maintain" a division fence between them, and each must contribute his share of the land, material, and labor for its erection and maintenance.¹⁵

However, an adjoining landowner may be relieved of the duty to share or contribute to the construction or maintenance of a division fence if he chooses to let his land lie without fencing, but if such owner afterward encloses his land, he must then provide to his neighbor a just proportion of the value of the division fence at that time.¹⁶

As interpreted by the Supreme Court, the statutory duty to "maintain" a division fence includes the duty to erect such fence, because when a division fence is built, it is for the mutual and equal benefit of adjoining owners, and, therefore, upon the plainest principle of equity the cost and responsibility of building, as well as maintaining the fence, must be borne by each adjoining owner.¹⁷

Sections 70-16-206 and 70-16-207, MCA, impose upon occupants of adjoining land a duty similar to that of coterminous owners. According to the statutes, the occupants of adjoining lands previously enclosed by a division fence must build and maintain such fence in

equal shares so long as each continues to enclose his part of the land. Unless the occupants of adjoining land agree otherwise, a previously established division fence must be kept in good repair.¹⁸

If an occupant of land adjoining the enclosure of another builds a division fence, the other party must within 3 months build his proportion of such fence or pay to the owner of the fence an equal proportion of the value of the division fence.¹⁹

Enforcement of Statutory Duty

Under Montana law, if an owner or occupant of adjoining land neglects or refuses to repair or build a division fence which by law he ought to build and maintain, the owner or occupant of the adjoining land may build or repair the fence, and the party who refuses or fails to participate in building or repairing the fence, after receiving timely notice, is liable for the entire expense of the fence and is also liable for all damages that may be sustained by his neighbor.²⁰

III. FENCING LAWS

Duty to Fence under Common Law

Under common law, the owner or tenant of land is not obligated to fence it, but is bound at his own peril to keep his animals from trespassing onto the land of his adjoining neighbor, or otherwise be held strictly liable for damages caused by his animals to his neighbor's property.²¹

The common law had its origin in the legal principle that every man's land which is not enclosed and set apart from another's land by visible and material fences is encircled by an ideal invisible boundary over which it is as unlawful for beasts of a neighbor to cross as it would be for the neighbor to overleap or tear down a material fence.²²

As a result, under common law, a landowner is not required to fence animals out to prevent their damage to his property; instead, the owner of stock must fence his animals in lest they trespass on his neighbor's property.

Duty under Range Law

In Montana and other western states, the common law rule has been largely abrogated by enactment of range laws. Where under common law livestock has to be fenced in, under range law, livestock has to be fenced out.²³

Under the range law in Montana, one releasing his livestock onto lands where he has a right to do so is under no duty to restrain livestock from entering upon another's unenclosed land. Such livestock owner is not responsible for damage occasioned by the entry of his livestock on such unfenced land, they having been led onto the land by their own natural instincts. The exception is when the owner of stock willfully or intentionally herds or drives livestock onto another's unfenced land or places them so near the adjoining boundary that trespass is bound to occur.²⁴

Under range law, a lawful fence entirely surrounding his land is a condition precedent to the right of a landowner to recover damages from owners of livestock trespassing on his land, except in the case of willful herding or driving of livestock.²⁵

Duty under Laws Relating to Grazing Districts

Under state statute, an owner or lessee of farming lands lying within a grazing district must fence out livestock allowed to run at large or under herd. The state district or its members may not be held liable unless such farming lands are protected by a legal fence.²⁶

Duty under Herd Laws

In Montana, an owner or person in possession of livestock has a duty to keep such livestock from running at large in a herd district.²⁷

If any livestock or other domestic animal breaks into an enclosure protected by a legal fence, the owner of such animal is liable for all damages to the owner or occupant of the enclosure. However, a legal fence is not required in order to maintain an action for injury done by animals running at large contrary to law.²⁸

The adoption of the herd law eliminates the effect of the range or grazing laws and restores common law by cancelling the requirement that the neighbor fence out animals and makes stock owners liable for damage caused by their animals on adjoining property.

STATE OF MONTANA

SENATE NO. 1
DATE 2-2-87
BILL NO. HB 59

Duty on Land Bordering Highway

Section 60-7-103, MCA, requires the Department of Highways to fence the right-of-way of any part of the state highway system that is constructed through open range where livestock present a hazard to the safety of motorists.

Under section 60-7-201, MCA, the duty of a person owning or possessing livestock is not to permit his livestock to graze, remain upon, or occupy a part of the fenced right-of-way of a federal-aid highway.²⁹

Generally, an open range designation implies that an owner is not liable for his wandering livestock. Prior to 1974, a stock owner was liable only for willful failure to keep livestock off a federal-aid primary highway. However, with the 1974 amendment of section 60-7-201, MCA, stock owners are now liable for negligent conduct that results in the presence of their livestock in the right-of-way of a federal-aid highway.³⁰

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NOTES

1. Green v. Mutual Steel Co., 268 Ala. 648, 108 So.2d 837, (1959). This right seems to have its origin in the principle of law that guarantees every owner of real property free and undisturbed possession to use the land according to his pleasure.

2. Montgomery v. Gehring, 145 Mont. 278, 400 P.2d 403 (1965).

3. Hoar v. Hennessy, 29 Mont. 253, 74 P. 452 (1903).

4. Osgood v. Names, 191 Iowa 1227, 184 N.W. 331 (1921).

5. Hoar v. Hennessy, supra.

6. Id.

7. McAfee v. Walker, 82 Kan. 182, 107 P. 637 (1910). Knox v. Artman, 37 S.C.L. 283.

With reference to real property, "prescription" is a term given to a mode of acquiring title to incorporeal hereditaments by immemorial or long-continued enjoyment, such as when a certain man and his ancestors immemorially exercise a right of pasture. "Prescription" has its origin in a grant, evidenced by usage. "Custom" is a usage or practice which, by common adoption or acquiescence and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the subject to which it relates. Black's Law Dictionary, 4th ed. (1968).

8. Titus v. Pennsylvania Railroad Co., 87 N.J.L. 157, 92 A. 944 (1915).

9. Knox v. Tucker, 48 Me. 373.

10. Carpenter v. Cook, 71 Vt. 110, 41 A. 1038 (1898).

11. Osgood v. Names, supra.

12. D'Arcy v. Miller, 86 Ill. 102.

SENATE AGRICULTURE

EXHIBIT NO. 1DATE 2-2-87BILL NO. HB 59

13. Id.
14. Montgomery v. Gehring, supra.
15. Schmuck v. Beck, 72 Mont. 606, 234 P. 477 (1925).
16. Hoar v. Hennessy, supra.
17. Id.
18. Section 70-16-206, MCA.
19. Section 70-16-207, MCA.
20. Hidden Hollow Ranch v. Collins, 146 Mont. 321, 406 P.2d 365 (1965). See also Section 70-16-209, MCA.
21. See Valerie Scott, The Range Cattle Industry: Its Effect on Western Land Law, 28 Mont. L. Rev. 155 (1967).
22. Monroe v. Cannon, 24 Mont. 316, 61 P. 863 (1900).
23. Thompson v. Mattuschek, 134 Mont. 500, 333 P.2d 1022 (1959).
24. Montgomery v. Gehring, supra.
25. Schreiner v. Deep Creek Stock Assn., 68 Mont. 104, 217 P. 663.
26. Section 76-16-322, MCA.
27. Section 81-4-306, MCA.
28. Section 81-4-215, MCA.
29. Section 60-7-201, MCA.
30. Ambrogini v. Todd, 197 Mont. 111, 642 P.2d 1013 (1982).

DEPARTMENT OF LIVESTOCK

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 2-2-87

BILL NO. HB 59

CAPITOL STATION

TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

(406) 444-2023

HELENA, MONTANA 59620



January 9, 1987
House Bill 59
Testimony by Les Graham

- 1.) Our involvement stems from the fact that we get called into these situations because of the trespass of livestock.

We find it costly because our investigators must identify all these livestock.

It always appears that there is no solution and the parties involved are frustrated.

We end up recommending civil action, but attorneys tell us the solution is not always easy to determine.

- 2.) Just finished a tremendous problem here in Lewis & Clark County - Wolf Creek Area. Costly to both the parties involved and the county government.

Call Montana Livestock Crimestoppers 800-647-7464



TED SCHWINDEN
GOVERNOR

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.

CAPITOL STATION

HELENA, MONTANA 59620-0201

SENATE AGRICULTURE
EXHIBIT NO. 3
DATE 2-2-87
BILL NO. _____
TELEPHONE: _____
AREA CODE 406 HB 20
444-3144

KEITH KELLY
DIRECTOR

TESTIMONY OF MONTANA DEPARTMENT OF AGRICULTURE
KEITH KELLY DIRECTOR
FOR THE SENATE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE
ON SENATE BILL 207
MONDAY, FEBRUARY 2, 1987
HELENA, MONTANA

Chairman Boylan and members of the committee. The Montana Department of Agriculture, charged by statute of promoting all agricultural products, supports Senate Bill 207 to revise the requirements for use of the Montana Quality Label to provide for certification of products bearing the label.

Very similar in concept, the department administers a certified seed potato program which insures the Washington and Idaho markets of certain quality criteria as verified by an independent third party.

Perhaps more relevant is the very successful market promotion campaign of Idaho potatoes, Idaho Mountain Trout, and Washington Apples. By ensuring the delivery of a consistently quality product, the consumers have demonstrated a preference for those products.

It is my belief that the same success can be accomplished with a "Montana Certified Beef" program in our domestic market.

It was less than a year ago that the sales manager of the Sheraton Hotel in Billings commented, "you can sit on our 20th floor dinning room and almost see the feedlots, but we can't even

get a steak from Montana to serve our customers." Tourist and resort areas in Montana frequented by travelers, conventioners, and tourists that lend themselves to the promotion of a high quality meat product raised in a natural environment of the "Big Sky Country." It certainly is an image that can be promoted and sold both domestically and in foreign markets.

I recently returned from a Beef Trade Mission to Japan where our primary purpose was to expand markets for Montana processed beef. Japanese buyers, processors, and Government officials felt that a Montana beef product, coming from a "Certified Montana Beef" program, if properly promoted, could enhance the demand for and the value of the beef product in the Japanese consumer's eyes. Pressure to increase beef quota under the auspices of the upcoming beef agreement that expires in March of 1988 and increasing demand for lower priced beef, add a great deal to the relevance of a certified beef program.

A Montana identified/certified quality labeling program can be used as an effective marketing tool to create more recognition and market demand for Montana beef and other products in the domestic, as well as, in Japan and other foreign markets. The recognition factor provided through Senate Bill 207 will provide an effective marketing tool and support the efforts of the private sector by making it possible for Montana producers and processors to more easily preserve the identity and differentiate their beef and other products from those of other states.

SENATE JOURNAL

EXHIBIT NO. 3

DATE 2-2-87

BILL NO. SB 207

Amendments to S.B. 207 (introduced bill)

1. Page 2, line 21.

Following: "council."

Insert: "Beef or beef products certified under this section may carry a separate certification mark of the Montana beef council."

SENATE AGRICULTURE

EXHIBIT NO. 4

DATE 2-2-87

BILL NO. SB 207

TESTIMONY OF BILL YAGER
MONTANA LIVESTOCK EXPORTERS
BEFORE THE SENATE AGRICULTURE COMMITTEE
FEBRUARY 2, 1987

Members of the Committee:

My name is Bill Yager. I am a farmer and livestock producer from Edgar, MT.

For the past year I have also been working with Montana Livestock Exporters. This company is trying to develop new markets for Montana agricultural products, primarily in Japan.

During the past year we have shipped almost 600 head of live beef steers to Japan by air. Not only have we opened a new market for Montana cattle, we are adding value to the cattle we ship. Last week we paid a cattle feeder \$935 a head for a set of steers that would have brought \$650 if they had been sold at an average weight and price.

Our customers are slaughtering the steers in Japan and selling the meat as Montana beef. The Montana beef industry has done a good job in Japan, and our Japanese buyers feel that they can develop customer loyalty for Montana beef. I'm going to pass around some pictures which show how our customers are making extensive use of the Made in Montana label.

2

We applaud the effort of the Montana Beef Council to certify Montana beef. We think that it is important for customers throughout the world to be able to trust the quality and integrity of Montana beef. And we think that the benefits of our marketing efforts should be reflected back to Montana producers.

But we want to make sure that any legislation passed by this committee does what it is intended to do: that is, help expand markets for Montana beef products and improve profits for Montana producers.

We want to impress on you the importance of the "Montana Quality Label." If this amendment is approved, the Montana Quality Label is likely to acquire the same status as the USDA choice stamp, at least for Japanese customers. It will be hard to sell meat without the label.

However, as the bill is written it is going to present some problems for Montana Livestock Exporters. Other producers trying to develop new markets for Montana beef might run into similar problems.

SENATE AGRICULTURE

EXHIBIT NO. 4

DATE 2-2-87

BILL NO. SB 207

The bill states that the Montana Quality Label "may not be used.....unless the product is produced and packed... ..under continuous official inspection."

Because quarantine space is scarce in Japan, and cannot be reserved far in advance, we never have more than about 60 days notice when our Japanese buyers want a shipment of live cattle.

At that point I start looking for cattle that will meet the Japanese requirements. First, the cattle all have to be steers. They all have to be black Angus or black baldies. They have to be the right quality. And they have to meet our weight and health requirements.

This is a tall order, especially when cattle numbers are down. We have had trouble at times finding cattle to fill our orders.

SB 207 would add the additional requirement that the cattle have been raised under continuous official inspection. I'm afraid it means we would have to be inspecting cattle from their moment of birth.

In order to get one finished two-year old steer that meets our quality and health requirements, we might have to continuously inspect ten calves. And what would happen if our buyers called up and said "this month we want Hereford steers instead of Angus." We would have to say "sorry, we can't do it this month, but if I call the Inspector right now I can have you some certified Montana Herefords in two years." Chances are our buyers would start thinking about promoting Hereford steers.

A second problem that SB 207 presents for us is the requirement that cattle be packed in Montana. As I stated earlier, our buyers are presently packing in Japan. As SB 207 is written, they would be precluded from using the Montana Quality Label.

We are presently working on a proposal with some Japanese partners under which Montana-raised cattle will be slaughtered in the United States and the meat shipped to Japan. There it will be advertised and sold as Montana beef.

We would like to slaughter these cattle in Montana if possible. Unfortunately, Montana doesn't have a single operating slaughter plant that can handle the required volume of cattle.

So we are faced with the necessity of using out-of-state packers, at least temporarily. But again, under SB 207, we could not certify our product as Montana Beef.

LEGISLATIVE CIRCULAR

EXHIBIT NO. 4

DATE 2-2-87

BILL NO. SB 207

I am working on another proposal that would involve shipping live cattle to Mexico. Again, the Montana name is important to the buyers. But their financial resources are limited. With the freight costs involved, we simply cannot fill this order with cattle shipped from Montana.

But we do have access to cattle which were born and bred in Montana, and which are owned by Montana ranchers. These cattle are in feedlots in Nebraska. Again, under SB 207, these could not be certified as Montana cattle.

We are concerned not only about the impact of this certification program on our efforts to sell Montana beef, but also about its cost. The beef industry is very competitive, and this legislation might price us out of some markets.

While I support the intention of SB 207, I hope that the Committee will not prematurely enact legislation that ends up hurting the beef industry.

DEPARTMENT OF LIVESTOCK

SENATE AGRICULTURE

EXHIBIT NO. 5

DATE 2-2-87

BILL NO. SB 207

CAPITOL STATION



TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

(406) 444-2023

HELENA, MONTANA 59620

Testimony
Senate Bill 207

The Department has been working closely with the Montana Beef Council on this matter and are prepared to adopt the rules required to inact S.B. 207.

Call Montana Livestock Crimestoppers 800-647-7464

STANDING COMMITTEE REPORT

FEBRUARY 2

37

19.....

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK & IRRIGATION

having had under consideration..... HB No. 103

third reading copy (blue)
color

Simon (Bengtson)

REPEALING LAWS RELATING TO THE CONTROL OF DUTCH ELM DISEASE

Respectfully report as follows: That..... HB No. 103

~~XXXXXXXXXX~~

~~XXXXXX~~

~~XXXXXXXXXX~~

BE CONCURRED IN

.....
PAUL P. BOYLAN,

Chairman.