

TITLE 25
ANIMALS

CHAPTER 24
HERD DISTRICTS

25-2401. COMMISSIONERS MAY CREATE HERD DISTRICTS. (1) The board of county commissioners of each county in the state shall have power to create, modify or eliminate herd districts within such county as hereinafter provided; and when such district is so created, modified or eliminated, the provisions of this chapter shall apply and be enforceable therein. On and after January 1, 1990, no county shall regulate or otherwise control the running at large of horses, mules, asses, cattle, sheep or goats within the unincorporated areas of the county unless such regulation or control is provided by the creation of a herd district pursuant to the provisions of this chapter, except as provided by subsection (2) of this section. The provisions of this chapter shall not apply to any herd district or herd ordinance in full force and effect prior to January 1, 1990, but shall apply to any modification thereof.

(2) A panel of five (5) members may be created in a county, the members of which shall be appointed as follows: two (2) members by appointment of the board of county commissioners; two (2) members by appointment of a local, county or state livestock association or associations; and the fifth member, by concurrent appointment of the first four (4) appointees. Only if a majority of said panel, after a public hearing held with notice as prescribed by law, concludes that the creation, modification or elimination of a herd district is insufficient to control or otherwise regulate the movement of livestock in an area, the board of county commissioners shall have power to establish such control by ordinance, provided that the cost of construction and maintenance of any fencing or cattle guards required by said ordinance shall be paid by the county current expense fund. Notwithstanding any provision of law to the contrary, a county shall have the authority to levy an annual property tax of not to exceed two hundredths percent (.02%) of market value for assessment purposes on taxable real property within the county, and the revenues derived therefrom shall not be used for any other purpose.

[(25-2401) 1907, p. 126, sec. 1; reen. R.C. & C.L., sec. 1302; C.S., sec. 2011; I.C.A., sec. 24-2101; am. 1990, ch. 222, sec. 1, p. 589; am. 1996, ch. 322, sec. 4, p. 1033.]

25-2402. PETITION AND REQUIREMENTS FOR DISTRICT. (1) A majority of the owners of taxable real property, including corporations, in any area or district described by metes and bounds and who are also domiciled and resident in the state of Idaho, may petition the board of county commissioners in writing to create, modify or eliminate a herd district in such area; provided, that in the case of a petition for the purpose of eliminating an existing district or any portion thereof, said area must be contiguous to open range. Such petition shall describe the boundaries of the said proposed herd district, and shall designate what animals of the species of horses, mules, asses, cattle, swine, sheep and goats it is desired to prohibit from running at large, also prohibiting said animals from being herded upon the public highways in such district; and shall designate that the herd district shall not apply to nor cover livestock, excepting swine, which shall roam, drift or stray from open range into the district unless the district shall be

inclosed by lawful fences and cattle guards as needed in roads penetrating the district so as to prevent livestock, excepting swine, from roaming, drifting or straying from open range into the district; and may designate the period of the year during which it is desired to prohibit such animals from running at large, or being herded on the highways. Such petition may also state the conditions and location(s), if any, for the construction of legal fences and cattle guards which may be required to prohibit the running at large of livestock within the interior of the proposed district; provided, that if such petition does not address the issue of interior fencing and cattle guards, the board of county commissioners shall have the power to establish such internal fencing requirements upon their approval of a proposed district. Provided, any herd district heretofore established shall retain its identity, geographic definition, and remain in full force and effect, until vacated or modified hereafter as provided by section [25-2404](#), Idaho Code.

(2) Notwithstanding any other provision of law to the contrary, no herd district shall:

(a) Contain any lands owned by the United States of America or the state of Idaho, upon which the grazing of livestock has historically been permitted.

(b) Result in the state, a county, a city or a highway district being held liable for personal injury, wrongful death or property damage resulting from livestock within the public right-of-way.

(c) Prohibit trailing or driving of livestock from one location to another on public roads or recognized livestock trails.

(3) Open range means all uninclosed lands outside cities and villages upon which by custom, license or otherwise, livestock, excepting swine, are grazed or permitted to roam.

(4) The owners of taxable real property within the herd district shall:

(a) Pay the costs, including on private land, of constructing and maintaining legal fences as required on the district's border with open range so as to prevent livestock, excepting swine, from roaming, drifting or straying from open range into the district.

(b) Pay the costs, including on private land, of constructing and maintaining cattle guards as required on the district's border with open range so as to prevent livestock, excepting swine, from roaming, drifting or straying from open range into the district; except that the costs of maintaining a cattle guard located on a public right-of-way shall thereafter be paid by the state, county, city or highway district responsible for maintaining said right-of-way.

(c) Pay seventy-five percent (75%) of the costs, including on private land, of constructing legal fences required, at the time of the creation or modification of the district only, to control livestock within the interior of the district; provided that (i) the costs of maintaining such fences shall thereafter be paid by the owner(s) of the land on which the fencing is constructed as prescribed by [chapter 1, title 35](#), Idaho Code, and that (ii) the costs of constructing and maintaining fences on livestock operations which come into existence after the creation or modification of the district shall be paid by owner(s) of the land on which the fencing is constructed as prescribed by [chapter 1, title 35](#), Idaho Code.

(d) Pay seventy-five percent (75%) of the costs, including on private land, of constructing legal cattle guards required, at the time of the

creation or modification of the district only, to control livestock within the interior of the district; provided that (i) the costs of maintaining a cattle guard located on a public right-of-way shall thereafter be paid by the state, county, city or highway district responsible for maintaining the public right-of-way on which the cattle guard is located, or, in the case of a cattle guard located on private land, by the owner(s) of the land on which the cattle guard is constructed as prescribed by [chapter 1, title 35](#), Idaho Code, and that (ii) the costs of constructing and maintaining cattle guards on livestock operations which come into existence after the creation or modification of the district shall be paid by the owner(s) of the land on which the cattle guard is constructed as prescribed by [chapter 1, title 35](#), Idaho Code.

(e) In the case of a new herd district created contiguous to an existing herd district, there shall be no obligation to maintain a legal fence or cattle guards on the border between the new district and the existing district, except to the extent that said fence or cattle guards, or any portion thereof, may be required to control movement of livestock on the interior of the district. In the case of a modification of an existing herd district which alters its borders with open range, there shall be no obligation to maintain a legal fence or cattle guards on its previous border with open range, except to the extent that said fence or cattle guards, or any portion thereof, may be required to control movement of livestock on the interior of the district.

(5) In the case of interior fencing and cattle guards as described in subsections (4) (c) and (d), the owner(s) of private land on which such fencing or cattle guards are constructed shall pay twenty-five percent (25%) of the total cost of their construction, provided that the share of that total cost to be paid by each individual landowner shall be as prescribed by [chapter 1, title 35](#), Idaho Code.

(6) Notwithstanding any provision of law to the contrary, a county shall have the authority to and shall levy an annual property tax not to exceed six hundredths percent (.06%) of market value for assessment purposes on taxable real property within the district for the costs of constructing and maintaining the legal fencing and cattle guards required by the creation or modification of such a herd district; provided that a herd district created on or after January 1, 1990, shall have no force and effect unless and until such a levy is approved, and provided that the revenues derived therefrom may not be used for any other purpose. In the case of a new herd district contiguous to an existing herd district, said levy shall apply, for purposes of constructing legal fences and cattle guards required by the new district, only to owners of taxable real property residing within the new district; but for purposes of maintaining thereafter fences as required on the district's border with open range, shall apply to owners of taxable real property residing within both the new district and the existing district to which it is contiguous.

[(25-2402) 1907, p. 126, sec. 2, reen. R.C. & C.L., sec. 1303; am. 1919, ch. 184, sec. 1, p. 565; C.S., sec. 2012; I.C.A., sec. 24-2102; am. 1935, ch. 90, sec. 1, p. 171; am. 1947, ch. 75, sec. 1, p. 120; am. 1953, ch. 118, sec. 1, p. 172; am. 1963, ch. 264, sec. 1, p. 674; am. 1983, ch. 120, sec. 1, p. 313; am. 1985, ch. 56, sec. 1, p. 109; am. 1990, ch. 222, sec. 2, p. 590; am. 1996, ch. 322, sec. 5, p. 1033.]

25-2403. NOTICE OF HEARING PETITION. It shall be the duty of the board of county commissioners, after such petition has been filed, to set a date for hearing said petition, notice of which hearing shall be given by posting notices thereof in three (3) conspicuous places in the proposed herd district, and by publication for two (2) weeks previous to said hearing in a newspaper published in the county nearest the proposed herd district.

[(25-2403) 1907, p. 126, sec. 3; reen. R.C. & C.L., sec. 1304; C.S., sec. 2013; I.C.A., sec. 24-2103.]

25-2404. ORDER CREATING DISTRICT. At such hearing, if satisfied that a majority of the landowners owning more than fifty percent (50%) of the land in said proposed herd district who are resident in, and qualified electors of, the state of Idaho are in favor of the enforcement of the herd law therein, and that it would be beneficial to such district, the board of commissioners shall make an order creating such herd district, in accordance with the prayer of the petition, or with such modifications as it may choose to make. Such order shall specify a certain time at which it shall take effect, which time shall be at least thirty (30) days after the making of said order; and said order shall continue in force, according to the terms thereof, until the same shall be vacated or modified by the board of commissioners, upon the petition of a majority of the landowners owning more than fifty percent (50%) of the land in said district who are resident in, and qualified electors of, the state of Idaho.

[(25-2404) 1907, p. 126, sec. 4; reen. R.C. & C.L., sec. 1305; C.S., sec. 2014; I.C.A., sec. 24-2104; am. 1947, ch. 75, sec. 2, p. 120; am. 1953, ch. 118, sec. 2, p. 172.]

25-2405. FENCES ON AGRICULTURAL LANDS ADJACENT TO PUBLIC DOMAIN -- CATTLE GUARDS. The board of county commissioners may provide as a condition in any order creating a herd district which may hereafter be made that any agricultural lands in the proximity of public domain where cattle, horses or mules are grazed, shall be inclosed by a lawful fence and that any road extending from agricultural area to such public domain shall contain cattle guards or gates at such places and of such nature as the board shall prescribe. The board of county commissioners may make its herd district orders inapplicable to cattle, horses or mules straying from such public domain or along roads leading to such public domain until such agricultural lands are inclosed by lawful fence and such cattle guards or gates are installed.

[(25-2405) I.C.A., sec. 24-2104A, as added by 1947, ch. 74, sec. 1, p. 119.]

25-2406. LIMITATION ON POWERS OF COMMISSIONERS. The provisions of sections [25-2401](#) and [25-2405](#)[, Idaho Code,] shall not be construed to confer upon the board of county commissioners any jurisdiction over animals otherwise prohibited from running at large under existing laws.

[(25-2406) 1907, p. 126, sec. 5; reen. R.C. & C.L., sec. 1306; C.S., sec. 2015; I.C.A., sec. 24-2105.]

25-2407. VIOLATION OF COMMISSIONERS' ORDER -- CIVIL LIABILITY. Any person who shall, in violation of any order made pursuant to the provisions

of section [25-2404](#), Idaho Code, permit or allow any of the animals designated in such order, owned by him or under his control, to run at large in such herd district, or to be herded on the said highway, shall be deemed guilty of a civil offense, for which, within a period of one (1) year, law enforcement officials shall issue a warning on at least the first and second such offense, and thereafter, for which a civil penalty of not to exceed fifty dollars (\$50.00) may be imposed per animal unit in violation, the aggregate of which shall not exceed five hundred dollars (\$500), plus restitution to the owner for any damage to property. The pendency of any such action shall not prevent nor prejudice the bringing of another action against the same party for a violation of such order committed after the commencement of such pending action. For purposes of this section, an animal unit shall be as defined, at the time of such violation, by federal and state agencies which administer the grazing of livestock on public lands.

[(25-2407) 1907, p. 126, sec. 6; reen. R.C. & C.L., sec. 1307; am. 1919, ch. 184, sec. 1, p. 565; C.S., sec. 2016; I.C.A., sec. 24-2106; am. 1990, ch. 222, sec. 3, p. 593.]

25-2408. CIVIL LIABILITY. The owner of animals permitted or allowed to run at large, or herded in violation of any order made in accordance with the provisions of section [25-2404](#), shall be liable to any person who shall suffer damage from the depredations or trespasses of such animals, without regard to the condition of his fence; and the person so damaged shall have a lien upon said animals for the amount of damage done, and the cost of the proceedings to recover the same, and may take the animals into custody until all such damages are paid: provided, that the person so taking said animals into custody shall not have the right to retain the same for more than five (5) days without commencing an action against the owner thereof for such damages. Said damages may be recovered by a civil action before any court of competent jurisdiction, and no such action shall be defeated or affected by reason of any criminal action commenced or prosecuted against the same party under the provisions of the preceding section.

[(25-2408) 1907, p. 126, sec. 7; reen. R.C. & C.L., sec. 1308; am. 1919, ch. 184, sec. 1, p. 566; C.S., sec. 2017; I.C.A., sec. 24-2107.]

25-2409. TRESPASSING ANIMALS MAY BE TAKEN UP. Any person may take into custody any of the animals specified in the said order of the board of commissioners that may be about to commit a trespass upon the premises owned, occupied or in charge of such person, and retain the same until all reasonable charges for keeping said animals are paid: provided, that it shall be the duty of the person so taking said animals into custody to notify the owner or person in charge of the same within five (5) days thereafter, and if the owner or person in charge of them shall not be known to the person so taking said animals into custody, and cannot be found after diligent search and inquiry, he may proceed in the manner provided for the taking up and disposal of estrays.

[(25-2409) 1907, p. 126, sec. 8; reen. R.C. & C.L., sec. 1309; C.S., sec. 2018; I.C.A., sec. 24-2108.]