

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

435D0039

## HOUSE BILL NO. 1007

Introduced by: Representative Pummel

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to liability for trespass  
2 by certain animals.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 40-28-4 be amended to read as follows:

5 40-28-4. Except as in this chapter otherwise provided, any person owning or having ~~in his~~  
6 charge or possession of any horses, mules, cattle, goats, sheep, or swine, which such animals  
7 ~~shall~~ swine, buffalo, or any domestic or captive nondomestic animals that trespass upon the land,  
8 either fenced or unfenced, owned by ~~or,~~ in possession of ~~any person,~~ or being cropped by any  
9 person injured by ~~such~~ the trespass, ~~shall be~~ is liable to ~~any such~~ the person injured for all  
10 damages sustained by reason of ~~such trespassing~~ the trespass. No person ~~shall be~~ is liable under  
11 this chapter ~~where~~ if the person injured has maintained an inadequate partition fence and notice  
12 thereof has been given pursuant to § 43-23-5 or if ~~he~~ the person is not required to build such  
13 fence because of frozen earth pursuant to § 43-23-7.

14 Section 2. That § 40-28-5 be amended to read as follows:

15 40-28-5. No person ~~shall be~~ is liable for damages caused by horses, cattle, mules, goats, ~~or~~  
16 ~~sheep owned by him, which~~ sheep, swine, buffalo, or other domestic or captive nondomestic  
17 animals owned by the person, that trespass upon lands within the exterior boundaries of the

1 Black Hills and Harney national forests, which National Forest, if the lands were not at the time  
2 of the trespass ~~inclosed~~ enclosed by a legal fence, as defined in §§ 43-23-3 and 43-23-4.

3 Section 3. That § 40-28-6 be amended to read as follows:

4 40-28-6. The person claiming injury from trespass ~~of livestock~~ by any animal specified in  
5 § 40-28-4, before commencing action ~~thereon~~, shall notify the owner or person having in charge  
6 ~~such livestock~~ of the animal, of the injury and probable amount of the damages, ~~provided he~~  
7 ~~knows to whom such livestock belongs~~ if the person claiming injury knows to whom the animal  
8 belongs.

9 Section 4. That § 40-28-7 be amended to read as follows:

10 40-28-7. Any person suffering injury from trespass ~~of livestock~~ by any animal specified in  
11 § 40-28-4 may retain and keep in custody ~~such~~ any offending animal ~~or animals~~ until the damages  
12 and costs are paid, or until good and sufficient security ~~be is~~ is given ~~for the same~~.