

The Legal Strategist

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TEXAS ESOTERIC FACTS

The Texas summer of 2012 was the hottest June - August period ever in the United States since records began in 1895. Statewide tree-ring analysis indicates the Texas drought was the second worst since the year 1550, only 1789 was drier.

Living in Texas poses daily encounters with livestock. Unless you never leave a radius of less than 3 miles from downtown Houston or Dallas, you will most likely encounter livestock on a daily basis. What happens if livestock gets loose and you hit one with your car? Who is liable?

The following Feature Topic is a cursory review. The information contained in this newsletter is not, nor is it intended to be, legal advice, or does viewing this newsletter create an attorney-client relationship. You should consult an attorney for individual advice regarding your own situation. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of our web site, please contact our office to set up a consultation.

Scott Barrett

FEATURE TOPIC: **Livestock and Liability Laws -- What You Need to Know**



When cattle get out on the highway, it can be deadly - both for the livestock and the drivers on the road. Many law enforcement officers will tell you it happens fairly often, whether due to a bad storm that scares cattle through a fence, poor fences, or simply an open gate. If this happens to you, what are your rights? Are livestock owners liable to fix the drivers' vehicles? Are the drivers responsible for paying for the livestock?

In Texas "livestock" means cattle, bison, sheep, swine, goats, horses, mules, other equines, poultry, domestic rabbits, exotic animals, or domesticated game birds. In the early days of Texas, unregulated open and free range was common and livestock were given the right-of-way. Beginning between the 1910 and 1930, with increased population and more motorized traffic, Texas, on a county by county basis, started regulating the liability of livestock owners in the event that their animals wander onto a public road and collide with a motor vehicle.

Texas counties have both "Open Range" laws, which means property owners are required to build and maintain a fence that is sufficient to keep livestock off their property and "Closed Range" laws which means landowners are required to fence in their livestock. No matter if the county is Open Range or Closed Range, livestock owners are prohibited from allowing their livestock to roam unattended on U.S. or Texas State Highways.

If a Texas livestock owner exercises due care in fencing their livestock in, then they can not be held liable if livestock gets out. A reasonably prudent owner is typically not liable. Essentially the livestock owner must be found negligent and have a statutory duty to fence livestock in order to be held liable. If the fence is in poor repair, the livestock has a history of getting out, or if the owner has been provided notice of a defect in the fence, they might be considered negligent. Was the act foreseeable, could they have prevented it, and was there a statutory duty to fence are important questions in determining liability.

If the livestock owner is not liable, is the driver?

Most likely, no. Although the livestock owner may not be liable, the liability is not transferred to the individual who hits the animal on the highway. Texas Livestock Laws state that a person whose vehicle strikes, kills, injures or damages an unattended animal running at large is not liable unless there is gross negligence in the operation of the vehicle, or there is a willful intent to strike, kill, injure or damage the animal.

Basically, it's a no-fault situation.

If you would like more information on this topic or information contained in Chapters 142 through 146 of the [Texas Agriculture Code](#) which contain most of the laws pertinent to livestock, please contact [Scott Barrett](#) to set up a consultation.