



When the Hoof Meets the Road

Liabilities Involving Loose Livestock or Farm Animals under Michigan Law

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Thanks to increased urbanization, livestock facilities and agribusiness operations are closer than ever to highways and population centers, heightening the risk of accidents. It is important to understand liabilities under Michigan law if livestock or farm animals escape.

Michigan's Animal Running at Large Act

Michigan's Animal Running at Large Act, (MCL § 433.11, *et seq.*) provides for both civil *and* criminal liabilities when certain animals escape, but it limits civil liability to property damage only. This law imposes liability on the "owner" of cattle, horses, sheep, swine, mules, burros, or goats if the animals trespass onto the property of another and cause property damage.

Based on this statute, if you "own" or keep an animal that damaged property while roaming "at large," you will be liable for that property damage, even without proof of wrongdoing on your part. You might also be charged with a criminal misdemeanor for enabling your animal(s) to roam "at large." The Act sets forth, among other things, procedures for "[a] person who sustains any loss of, or damage to, property by an animal running at large" to "demand reasonable compensation from the owner of the animal ..."

Bodily Injury Claims Arising from Loose Livestock

Michigan's Animal Running at Large Act, as noted above, only applies to property damage. It does NOT address liability for personal injuries that loose animals may cause. Under Michigan law, if someone claims to be injured from your livestock or farm animals becoming loose, general principles of negligence would apply to his or her claims against you. To bring a negligence claim, the injured person must prove that you acted unreasonably, that your unreasonable act or omission caused the animal(s) to escape, that a person sustained damages, and that those damages were "proximately caused" by your

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negligence.

Even if you violated the Animal Running at Large Act, this does not automatically prove that you were negligent. As one Michigan court ruled, if your animal roamed at large in violation of the statute, a jury could potentially draw an inference that you were negligent, but the injured person would still be required to prove that you were negligent.

What kinds of circumstances have supported claims of negligence? Here are some examples:

- Inadequate fencing or enclosures from which the animal escaped.
- Facilities, fencing and/or enclosures that, although in good repair, were deficient in some way such as inadequate height, improper latches, or deficient enclosures that allowed the animal to escape.
- Improperly trained staff who failed to handle or restrain the animal in a proper manner, such as leaving open gates from which animals could escape.
- The owner or keeper knew of past escapes but failed to take appropriate corrective action.

Defenses

Owners and keepers of loose livestock and farm animals have a few possible defenses against personal injury claims, all of which will depend on the facts and law. They can include:

- The animal was properly restrained. Proving this defense often requires testimony from an "expert" knowledgeable of keeping and/or handling the particular type of animal.
- The owner or keeper played no role in the animal's escape because someone else, such as a vandal or a reckless driver, damaged or tampered with the fencing which allowed the animal to escape before corrective action could be taken.
- The injured person's own negligence caused, at least in part, the accident and/or resulting injuries.

Risk Management

Even well-run, well-maintained livestock facilities are at risk as accidents can, and do, occur. Here are a few suggestions:

- *Proper liability insurance.* If you are a business operation, make sure you have some form of commercial liability coverage in place at all times. Also, facilities that keep animals owned by others (such as cattle operations that take possession of cattle under lease or boarding facilities) can discuss with their insurance agents adding a "care, custody, or control" endorsement to their existing policies; this extra coverage responds to claims from animal owners for damage to or loss of their animals in your care. Most liability policies exclude coverage for these claims.
- *Fence inspections.* From time to time, check your fences, gates, latches, and enclosures.
- *Waivers/releases.* For facilities that allow people to enter the premises, well-drafted waivers/releases of liability could potentially offer powerful defenses (but keep in mind that, by law, some claims *cannot* be released away). Although these documents are most commonly utilized by horse farms, other farms can also require adult visitors to execute them before entering the property.



To learn more about livestock liabilities, you can visit our Equine Law Blog (www.equinelawblog.com). Author and Foster Swift shareholder, Julie Fershtman, has extensive experience with these matters. Contact her at 248.785.4731 or at jfershtman@fosterswift.com