

## **CHAPTER 36-12 HERDING AND DRIVING**

**36-12-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Drover" means any person having charge or control of any herd of neat cattle, horses, or mules numbering five or more, or any flock of sheep numbering twenty-five or more, as owner, agent, or employee, while the same are being driven from one place to another not within the same range or neighborhood.
2. "Herder" means any person having charge or control of any herd or flock as provided in subsection 1, while such herd or flock is subsisting on any public or other rangeland to which the person has no right of possession, whether or not such person is personally present with such herd.
3. "Stock grower" means any person who keeps neat cattle, horses, mules, sheep, swine, or goats for their growth or increase within this state.

**36-12-02. Enticing or driving animals away prohibited - Duties of drover or herder.**

No drover or herder, or assistant of either, may drive or entice away, without the consent of the owner thereof, any animal from the premises of such owner or from the range or other place usually frequented by such animal, nor may such a person suffer any such animal to be driven or enticed away, or to follow, join, or remain with that person's herd or flock. In order to prevent any animal belonging to another person from being driven or enticed away or from following, joining, or remaining with such herd, the drover or herder shall deliver such animal without delay to the owner thereof, if known, or if the owner is unknown, to a resident of the neighborhood or to a peace officer of the county, who shall return it to the owner or dispose of it as an estray as provided in this title.

**36-12-03. Animals of drover to be branded - Requirements governing.**

Every drover shall have all animals in the drover's charge or control branded or marked with one uniform brand or mark. Each horse, mule, and head of cattle in the drover's charge or custody must be branded in a conspicuous place with one distinct ranch or road brand of the owner. All sheep in a drover's charge or custody must be marked distinctly with a mark or device sufficient to distinguish the same readily from other sheep.

**36-12-04. Finding of animal of another in herd or flock as presumptive evidence.**

Whenever it is shown that any animal of a kind mentioned in this chapter:

1. Has been found in a herd or flock of the same kind of animals;
2. Is not a part of such herd or flock; and
3. Is in such herd or flock without the consent of the owner of such animal,

such facts are presumptive evidence of a violation of the provisions of section 36-12-02 by each drover, herder, or assistant drover or herder having charge or control of such herd or flock at the time of the finding of such animal. Evidence of such facts is admissible in any action brought under the provisions of this chapter.

**36-12-05. Damages for violation of provisions - Judgment and costs to constitute a lien.**

Every person violating any of the restrictions or requirements prescribed in section 36-12-02 is responsible to each person injured thereby to the extent of the injured person's damages, which damages include the reasonable expenses incurred in searching for and recovering the animal found in the herd or flock. If judgment is recovered for such damages, such judgment and costs are enforceable as a lien upon the interest of the defendant in the animals constituting such herd or flock.

**36-12-06. Penalty.** Any person who violates any provision of this chapter is guilty of an infraction.