

# Report of the Agricultural Law Committee

1 *To the Council of Delegates:*

2 The Agricultural Law Committee respectfully requests your favorable review of the  
3 following proposal to amend R.C. 951.01 and R.C. 951.02 pertaining to liability for  
4 animals running at large. The proposal is attached as Exhibit A.

5  
6 Respectfully submitted,  
7 **Peggy K. Hall**, *Columbus*  
8 Chair

## 8 **EXHIBIT A**

### 9 **951.01 Prohibition against animals running at large.**

10 No person, who is the owner or keeper of a stallion, jackass, bull, boar, ram, or buck,  
11 shall negligently permit it to go or be at large out of its own enclosure.

### 12 **951.02 Animals running at large on public roads - grazing on another's land.**

13 (A) No person, who is the owner or keeper of horses, mules, cattle, sheep, goats, swine,  
14 llama, alpaca, or geese, shall negligently permit them to run at large in the public road,  
15 highway, street, lane, or alley, or upon unenclosed land, or negligently cause such  
16 animals to be herded, kept, or detained for the purpose of grazing on premises other than  
17 those owned or lawfully occupied by the owner or keeper of such animals.

18 (B) For purposes of R.C. 951.99, no person, who is the owner or keeper of horses, mules,  
19 cattle, sheep, goats, swine, llama, alpaca, or geese, shall recklessly permit them to run at large  
20 in the public road, highway, street, lane, or alley, or upon unenclosed land, or recklessly  
21 cause such animals to be herded, kept, or detained for the purpose of grazing on premises  
22 other than those owned or lawfully occupied by the owner or keeper of such animals.

23 ~~The running at large of any such animal in or upon any of the places mentioned in this~~  
24 ~~section is prima facie evidence that it is running at large in violation of this section.~~

### 25 **951.10 Damages.**

26 The owner or keeper of an animal described in section 951.01 to 951.02 of the Revised  
27 Code, who permits it to run at large in violation of either of such sections, is liable for all  
28 damages caused by such animal upon the premises of another without reference to the  
29 fence which may enclose such premises.

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31 **951.99 Penalty.**

32 Whoever violates section 951.02(B) of the Revised Code is guilty of a misdemeanor of  
33 the fourth degree.

34 **Rationale for Proposal:**

35 The Committee recommends that existing Chapter 951 of the Revised Code be amended.  
36 Chapter 951 deals with civil and criminal liability from a failure by the owner or keeper  
37 of certain defined livestock to keep the animals from running at large. The purpose of the  
38 amendment is to make it clear that the statutes are not intended to be “strict liability”  
39 statutes and to state the applicable standard of care or mens rea. The current case law  
40 with respect to Chapter 951, while somewhat inconsistent, generally holds that the  
41 applicable standard of care in a civil action under Chapter 951 is ordinary care.  
42 Unfortunately, a number of cases have been brought in various Ohio courts charging  
43 criminal violation of the statutes based on a strict liability standard. Strict liability is not  
44 an appropriate standard of care for Chapter 951. Under a strict liability standard, a  
45 livestock owner would have criminal liability even if the livestock were intentionally let  
46 out by someone opening a gate or cutting a fence. Liability would also result in the event  
47 of natural disasters or other events beyond the control of the livestock owner. The strict  
48 liability theory ignores common sense, ignores the history of livestock ownership in Ohio  
49 and is contrary to the interpretation of the statutory language made by the Supreme Court  
50 of Ohio.

51 Ohio Revised Code § 951.01 and §951.02 impose liability on livestock owners for  
52 animals that are found to be running at large. Further, §951.99 provides that anyone in  
53 violation of §951.01 or §951.02 is guilty of a fourth degree misdemeanor. Despite Ohio  
54 case law interpreting the language of §951.01 and §951.02 as imposing only an ordinary  
55 standard of care, some Ohio counties continue to impose strict liability on livestock  
56 owners. The proposed amendments to §951.01 and §951.02 would clarify the applicable  
57 standard for criminal liability that livestock owners will be held to and prevent further  
58 misapplication of the statute.

59 The Ohio Supreme Court in *Burnett v. Rice* (1988), 39 Ohio St.3d 44 found that the  
60 language in §951.01 only imposes “a duty to exercise ordinary care in preventing such  
61 animals from running at large on public roads.” The imposition of a strict liability  
62 standard was rejected by the Court. *Burnett v. Rice*, at 46. The Fifth Appellate District in  
63 the *State v. Bartok* (5<sup>th</sup> Dist. July 3, 2007), 2007 Ohio 3425, 2007 Ohio App. LEXIS  
64 3136, reaffirmed the interpretation of the standard for criminal liability imposed upon  
65 livestock owners in *Burnett v. Rice* and found that the statute did not impose strict  
66 liability upon livestock owners.

67 Reading § 951.01 and § 951.02 as requiring something other than “recklessly” for  
68 criminal liability not only disregards relevant case law, it also goes against common  
69 sense. Whenever counties interpret § 951.01 and § 951.02 as imposing strict liability  
70 upon livestock owners, then regardless of how responsible an owner is, the owner will be  
71 held criminally liable even if his or her fences are destroyed by a natural disaster or cut

72 by vandals. Therefore, no matter how responsible a livestock owner is, he or she can still  
73 be held criminally liable for actions beyond the owner's control. Counties that continue to  
74 read § 951.01 and § 951.02 as imposing strict liability are ignoring relevant case law and  
75 contributing to illogical consequences in the application of this statute. Thus, the  
76 language of § 951.01 and § 951.02 should be amended to clearly reflect the actual  
77 standard that livestock owners will be held to for criminal liability.

78 This recommendation is being made by the Legislative subcommittee of the Ohio State  
79 Bar Association Agricultural Law Committee. The issue was initially raised by several  
80 members of the Agricultural Law Committee who have been asked to counsel clients on  
81 whom strict criminal liability was sought to be imposed.

82 The applicable standard of care should be made a part of the language of Chapter 951.  
83 The applicable standard for civil law should be ordinary care or ordinary negligence. The  
84 applicable standard of care for criminal violation purposes should be reckless. The  
85 proposed amendments to Chapter 951 will clarify the applicable standard of care for both  
86 civil and criminal law purposes and should prevent the attempts to enact criminal liability  
87 on a strict liability basis among Ohio counties.