

# West Virginia Livestock Laws

## WEST VIRGINIA CODE ANNOTATED

### CHAPTER 19. AGRICULTURE

#### ARTICLE 17. FENCES

##### s 19-17-1. Definition of lawful fence

Every fence of the height and description hereinafter mentioned shall be deemed a lawful fence as to any horses, mules, asses, jennets, cattle, sheep, swine, or goats, which could not creep through the same, that is to say:

- (a) If built of common rails, known as the worm fence, four and one half feet high;
- (b) If built with posts and rails, or posts and plank, or pickets, four feet high;
- (c) If built with stone, two feet wide at base, and three and one half feet high;
- (d) If a hedge fence, four feet high. If any hedge fence be built upon a mound, the same from the bottom of the ditch shall be included in estimating the height of such fence;
- (e) If built with posts and wire, or pickets and wire, four feet high, and shall consist of not less than six strands, the first strand five inches, the second strand ten inches, the third strand seventeen inches, the fourth strand twenty-five inches, the fifth strand thirty-six inches, and the sixth strand forty-eight inches from the ground; and if with more than six strands, the space between the strands shall in no case be greater than hereinbefore provided. The space between the posts shall, in no case, be greater than sixteen feet;
- (f) If built with posts and high tensile galvanized wire, forty-six inches high, and shall consist of not less than eight strands, the first strand four inches, the second strand nine inches, the third strand fourteen inches, the fourth strand nineteen inches, the fifth strand twenty-five inches, the sixth strand thirty-one inches, the seventh strand thirty-eight inches, and the eighth strand forty-six inches from the ground. The wire shall be maintained at no less than a two hundred pound tension at all times. The space between posts shall, in no case, be greater than thirty feet, provided that pressure-treated one and one-fourth inch by one and one-half inch by forty-eight inch slotted hardwood or one and one-half inch by two inch by forty-eight inch softwood battens are used between posts at a distance no greater than ten feet; and
- (g) If built with posts and high tensile galvanized wire and electrified, thirty-eight inches high and shall consist of not less than five strands, the first strand five inches, the second strand ten inches, the third strand seventeen inches, the fourth strand twenty-seven inches, and the fifth strand thirty-eight inches from the ground. The wire shall be maintained at no less than a two-hundred pound tension at all times. The space between posts shall, in no case, be greater than one hundred fifty feet, provided that pressure-treated one and one-fourth inch by one and one-half inch slotted hardwood or one and one-half inch by two inch softwood battens are used between posts at a distance no greater than thirty-five feet: Provided, That if said fence is constructed to confine only horses, mules, asses, jennets, or cattle, it shall be deemed a legal fence if it is not less than three strands, the first strand seventeen inches, the

second strand twenty-seven inches and the third strand thirty-eight inches from the ground. The space between posts shall, in no case, be greater than one hundred fifty feet, provided that pressure-treated one and one-fourth inch by one and one-half inch slotted hardwood or one and one-half inch by two inch softwood battens are used between posts at a distance no greater than thirty-five feet. Only highpowered low impedance fence controllers which comply with international safety standards shall be used to electrify fence.

All fences heretofore built under the existing law and in compliance therewith shall be and remain and may be kept up as lawful fences.

#### s 19-17-2. Rivers and streams as lawful fences; establishment or discontinuance

All rivers and streams, and parts thereof, within this State, which are lawful fences at the time this Code takes effect, under existing laws, shall continue such until otherwise ordered by the county court [county commission] of the county. The county court [county commission] of any county, upon the written application of any owner or tenant of lands on any river or stream in such county, or which constitutes a boundary line thereof, may, in its discretion, by order entered of record, declare and establish such river or stream, or any part of either, a lawful fence as to any stock named in section one [s 19-17-1] of this article. Notice of the application shall be given by publishing the same as a Class II legal advertisement in compliance with the provisions of article three [s 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the county. Any person interested may appear and oppose such application.

The county court [county commission] may, upon like application and notice of any person, annul or amend any order made by said court establishing any river or stream, or any part of either, as a lawful fence; but such order shall not be made within one year from the date of the order sought to be annulled or amended, and shall not take effect until six months after it is made.

#### s 19-17-3. Hedge fence

All hedge fences along public roads, or division hedge fences between farms or on any land or premises, shall be kept trimmed so that their branches shall not extend into the public road, or upon the lands of an adjoining owner, more than eighteen inches over the dividing line. For failure to keep the hedge fence so trimmed, after ten days' notice in writing by the county engineer or supervisor of roads, or by parties owning the adjoining land or premises, the owner shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one dollar for each day such fence shall remain untrimmed after the ten days' notice expires.

#### s 19-17-4. Partition fence; liability for trespass of animals

All partition fences shall be lawful fences, unless otherwise agreed upon by the adjoining owners by a writing executed in duplicate and duly acknowledged, in which case, if such fence be kept in good repair, there shall be the same liability for damages occasioned by trespass of animals owned by said adjoining owners as if such fence were a lawful fence.

#### s 19-17-5. Apportionment of construction and maintenance of partition fence

Persons owning adjoining lands, both of which are used for agricultural, horticultural, grazing or livestock purposes, shall bear a just proportion of the cost of the constructing, repairing and

maintaining a partition fence between such lands.

s 19-17-6. Sharing cost of constructed fences

Where a person has chosen to let his land lie open, if he shall afterwards enclose or use such land, or portion thereof, for agricultural, horticultural, grazing or livestock purposes, he shall refund to the adjoining owner a just proportion of the value of the partition fence adjoining such lands, or portion thereof, enclosed or so used that shall have been made by such adjoining owner, regardless of whether or not such fence at the time is a lawful fence.

s 19-17-7. Notice of intention to build or repair partition fence; answer

Any person desiring to build or to repair a partition fence may give notice in writing to the owner of any adjoining lands, or to his agent, of his intention to build or repair such fence and requiring him to build or repair his just portion thereof, which notice shall state the description and kind of the fence proposed to be built or such repairs as are proposed to be made. The person so served with such notice shall, within ten days thereafter make answer in writing and serve the same upon the person desiring to build or repair such fence, which answer shall state any objections to such notice, and upon failure to do so he shall be liable to the person building or repairing such partition fence for his just proportion of the cost thereof if he shall fail to build or repair his proportion of the same.

s 19-17-8. Disputes relating to partition fences

If a dispute arises between the owners of adjoining lands concerning the proportion or particular part of a fence to be built or maintained by either of them, or the amount to be paid by one party to the other for any fence already built or maintained, either party may proceed by civil action in a magistrate or circuit court, as shall have jurisdiction of the amount or value in controversy, within the county in which any portion of the partition built or to be built, is or is to be located, to determine the amount to be paid by one party to the other for the just proportion of the costs of any construction, repair or maintenance of the partition fence. The person who is required to share in the cost of the construction, repair or maintenance of the partition fence shall not be liable for more than one half of the cost of the construction, repair or maintenance of a fence which meets the standards of subdivision (e), section one [s 19-17-1(e)] of this article.

s 19-17-10. Liability of owner for refusal to repair fence

When each of the adjoining owners of a partition fence has been allotted a particular part thereof to maintain, and either owner fails or refuses to keep in good repair the part of such fence so allotted to him, he shall be liable in damages to the adjoining owner for all damages occasioned by animals kept by him trespassing on such adjoining premises as the result of such failure or refusal to repair. The adjoining owner may serve written notice on the owner whose duty it is to keep his part of such fence in repair, requiring him to repair the same, and if such owner fails or refuses so to do within ten days after the service of such notice, the adjoining owner may repair such part of the fence, and the owner whose duty it is to keep the same in repair shall be liable to him for all the expenses of such repair.

s 19-17-11. Presumptions as to sufficiency offence

In any controversy in which the sufficiency of a fence under the provisions of this chapter shall come in question, it shall be presumed that the same was, at the time to which such controversy relates, a

lawful fence and in good condition and repair, unless the contrary be proven.

#### ARTICLE 18. GENERAL STOCK LAW

##### s 19-18-1. Stock trespassing on grounds of another; damages

If any horse, mule, ass, jennet, cattle, sheep, swine, or goat shall enter into any grounds, the owner or manager of any such stock shall be liable to the owner or tenant of such grounds for any damage he may sustain thereby, and the party so injured may, if he find such stock on his premises, impound them, or a sufficient number thereof, subject to the provisions of sections eight, nine and ten [ss 19-18-8 to 19-18-10] of this article, until such damages and costs of keeping have been paid.

##### s 19-18-2. Unlawful running at large of stock on road or railroad right-of-way

It shall be unlawful for the owner or manager of any horse, mule, ass, jennet, cattle, sheep, goat or hog, to negligently permit it to run at large on any public road or highway or railroad right-of-way, and should any such stock, while so negligently allowed to run at large, injure or destroy the property of another while so running at large, the owner or manager thereof shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than ten dollars.

##### s 19-18-3. Unlawful running at large of certain male animals and swine

It shall be unlawful for any stallion, jack or bull over one year old, buck sheep over four months old, buck goat over six months old, or swine, to run at large, and the owner or manager of any such stock running at large shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five nor more than ten dollars.

##### s 19-18-4. Unlawful running at large of stock of nonresidents

It shall be unlawful for any horse, mule, ass, jennet, cattle, sheep, swine, or goat owned by any person not a citizen of this State to run at large in this State.

##### s 19-18-5. Liability of owner for damage by stock unlawfully running at large

Should any stock, while running at large contrary to the provisions of sections one, two, three or four [ss 19-18-1, 19-18-2, 19-18-3 or 19-18-4] of this article, injure or destroy the property of another, the owner or manager of any such stock shall, notwithstanding any penalty imposed by said sections, be liable to the party whose property shall have been injured or destroyed for the amount of damage sustained by him by reason of such injury or destruction. And the party so injured may, if he find such stock on his premises, impound them, or a sufficient number thereof, subject to the provisions of sections eight, nine and ten [ss 19-18-8 to 19-18-10] of this article, until such damages and costs of keeping be paid.

##### s 19-18-6. Impounding stock unlawfully running at large

It shall be lawful for any person finding any stock running at large contrary to the provisions of sections two, three or four [ss 19-18-2, 19-18-3 or 19-18-4] of this article, to impound such stock, subject to the provisions of sections eight, nine and ten [ss 19-18-8 to 19-18-10] of this article, until the costs of keeping such stock be paid.

s 19-18-7. Forcible retaking of impounded stock; penalty

Any person who shall forcibly take possession of any stock impounded under the provisions of sections one, five or six [ss 19-18-1, 19-18-5 or 19-18-6] of this article, or section one of article nineteen of this chapter, without paying the amount therein allowed the person so impounding such stock, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than fifty dollars.

s 19-18-8. Impounding stock when owner is known resident of State; arbitration of damages; right to sell impounded stock

If the owner of any stock impounded under the provisions of this article, or article nineteen of this chapter, be a resident of this State and known to the person impounding the stock, such person shall, within three days from the date thereof, serve written notice on such owner stating therein, (a) the stock impounded, setting forth the number of each kind and the natural or artificial marks of each one of every kind, (b) the date such stock was taken up, (c) the place where impounded, (d) the cause for impounding the stock, and (e) the amount claimed as damages, if any, by reason of the injury or destruction of property by such stock and the costs for keeping the same, for which such person shall be entitled to an amount not to exceed that allowed a sheriff for keeping similar stock. If the owner considers the amount claimed excessive, he shall forthwith serve written notice on the person impounding the stock that he has appointed one freeholder, naming him, to ascertain the injury and damages sustained and the costs for keeping the stock. The person impounding the stock shall forthwith appoint one freeholder, and the two thus appointed shall appoint a third. Should either party fail or refuse to make such appointment within twenty-four hours after being notified so to do, any justice [magistrate] of the county may do so on application of either party. The freeholders appointed shall act as arbitrators and, after being duly sworn, shall ascertain the injury and damages sustained, if any, and the costs for keeping such stock. The decision of any two of the arbitrators shall be final and shall be reduced to writing and a copy thereof furnished to each of the parties. Each arbitrator shall be allowed a fee of two dollars for his services, which shall be paid by the party against whom the decision is made. Within three days after the arbitrators have rendered their decision, or, in case no arbitration is demanded by the owner, within three days from the service of the first notice required by this section, the person impounding the stock shall advertise and sell the same as provided in section ten [s 19-18-10] of this article, unless the damages and costs be sooner paid.

s 19-18-9. Impounding stock when owner is unknown or a nonresident

If the owner of any stock impounded under the provisions of this article, or article nineteen of this chapter, be a nonresident of this State, or unknown to the person impounding such stock, such person shall, within three days from the date thereof, appear before a justice of the peace [magistrate] of the county wherein the stock was taken up and make and file his affidavit, setting forth therein the facts required in the first notice provided in section eight [s 19-18-8] of this article and that the owner of the impounded stock is a nonresident of this State, or is unknown to the affiant, and within twenty-four hours thereafter shall advertise the impounded stock for sale and sell the same as provided in section ten [s 19-18-10] of this article, unless the damages and all costs be sooner paid. Any person claiming right or ownership to such stock may appear before such justice [magistrate] and file his affidavit showing that he is the lawful owner of the stock or entitled to possession thereof, and, at any time before sale, upon presentation of a certificate of such justice [magistrate] of the filing of such affidavit and payment of the amount claimed as damages and all costs, shall be entitled to repossess his stock. If

such person considers the amount claimed excessive, he shall, after filing such affidavit, forthwith serve written notice on the person impounding the stock that he has appointed one freeholder, naming him, to ascertain the injury and damages sustained and the costs for keeping the stock, the service of which notice shall stay any sale which may have been advertised prior thereto. Two other arbitrators shall then be appointed and the injury and damages and costs of keeping ascertained as provided in section eight [s 19-18-8] of this article and the impounded stock readvertised for sale within the time prescribed in said section, unless the damages and costs be sooner paid: Provided, That in all cases where a citizen of this State may claim right or ownership to stock impounded under section four [s 19-18-4] of this article, the person so claiming shall file with such justice [magistrate] his affidavit showing that he is a citizen of this State, that the stock impounded is bona fide his property, and that he did not acquire right thereto for the purpose of defeating the provisions of said section four, and, upon presentation of a certificate of such justice [magistrate] of the filing of such affidavit and the payment of all costs other than that for the keeping of the stock, at any time before sale, shall be entitled to repossess his stock, but such repossession shall in nowise affect any right of action against the owner for damages sustained by reason of the trespass of his stock.

#### s 19-18-10. Sale of impounded stock; disposition of proceeds

The sale of stock impounded under the provisions of this article, or article nineteen of this chapter, shall be at public auction to the highest bidder for cash, and shall be advertised by posting notices thereof in three public places in the district wherein the stock is impounded at least ten days preceding the day of sale, and a copy of the first notice required by section eight [s 19-18-8] of this article, or, in case the owner of the stock to be sold is unknown or a nonresident of the State, a copy of the first affidavit required by section nine [s 19-18-9] of this article shall be attached to and posted with each sale notice. The proceeds of the sale shall be applied; first, to the payment of all costs incident to the sale; second, to the payment of any damages sustained and costs of keeping the impounded stock; and third, the residue, if any, shall be paid to the owner of the stock sold; if the owner be unknown and application therefor be not made within ninety days from the day of sale, the same shall be paid into the county treasury.

#### s 19-18-11. Entry of stock of nonresidents without consent of landowner prohibited

It shall be unlawful for any person who is not a resident of this State to drive, or cause, or suffer, or permit to be driven, any of his cattle, horses, hogs or sheep on any of the lands of any citizen of this State, whether such lands be inclosed or not, without permission of the owner or owners for that purpose first had and obtained.

#### s 19-18-12. Entry of stock of nonresidents deemed trespass; damages

Every entry of any such cattle, horses, hogs or sheep contrary to the provisions of section eleven [s 19-18-11] shall be deemed in law a trespass by the owner, person or persons having the charge or care of such cattle, horses, hogs or sheep, and the owner of all such cattle, horses, hogs or sheep shall be liable in damages to the person or persons aggrieved, in a sum not exceeding twenty cents on each head of horses and cattle and ten cents on each head of hogs or sheep thus trespassing, for each and every day that they shall be and remain on the lands or premises of any citizen in this State, to be recovered before any justice of the peace [magistrate] of the county in which such trespasses may have been committed.