

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 527

(By Senators Williams and Miller)

[Originating in the Committee on the Judiciary;
reported February 14, 2012.]

A BILL to repeal §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8, §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-18-1, §19-18-2 and §19-18-3 of said code, all relating to providing for general livestock trespass law; prohibiting livestock from trespassing; clarifying damages that may be recovered; permitting containment of livestock; requiring owner of trespassing livestock be notified; requiring containment costs be negotiated; permitting containment costs to be recovered in court; permitting the sheriff to take possession of unclaimed livestock; permitting unclaimed livestock be sold at

auction; setting forth how the proceeds of a livestock sale shall be distributed; and establishing misdemeanor penalties.

Be it enacted by the Legislature of West Virginia:

That §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8, §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of the Code of West Virginia, 1931, as amended, be repealed; and that §19-18-1, §19-18-2 and §19-18-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 18. GENERAL LIVESTOCK TRESPASS LAW.

§19-18-1. Livestock trespassing on property of another; damages for injuries to person or property; notice to livestock owner; containment of livestock; costs for containment.

1 (a) If livestock enters the property of another landowner
2 without that landowner's consent, the owner or manager of
3 the livestock is liable for damages for personal injury or
4 property loss in a civil action in magistrate or circuit court.

5 (b) The affected landowner must attempt to contact the
6 owner or manager of the trespassing livestock within forty-
7 eight hours of the trespass. If the owner or manager cannot
8 be contacted within forty-eight hours, the landowner shall
9 notify the county sheriff.

10 (c) The landowner may contain the trespassing livestock
11 on his or her property, but is not required to do so. If the
12 landowner is able to contact the owner or manager of the
13 trespassing livestock pursuant to subsection (a) of this
14 section, he or she shall also inform the owner or manager of
15 the costs of containment.

16 (d) The owner or manager of the trespassing livestock
17 and the landowner shall attempt to mutually agree on a fair
18 cost for any containment. A fair cost for containment is an
19 amount which would be allowed for the sheriff for contain-
20 ing similar livestock. If the negotiation fails, or if the
21 landowner is not otherwise reimbursed for the costs for
22 containment, the landowner may seek monetary damages in
23 a civil action for these costs.

**§19-18-2. Unclaimed livestock; containment by sheriff; sheriff's
sale at public auction.**

1 (a) If the owner or manager of trespassing livestock
2 cannot be determined, or if the trespassing livestock has not
3 been recovered within ten days of notifying the owner or
4 manager, the county sheriff shall take possession of the
5 trespassing livestock.

6 (b) The county sheriff may return the livestock to its
7 owner or manager and seek reimbursement for containment
8 costs. If attempts to return the livestock to the owner or
9 manager fail the sheriff may, after publishing notice as a
10 Class I legal advertisement, sell the livestock to the highest
11 bidder at a public livestock auction.

12 (c) The proceeds of the livestock sale shall be distributed
13 in the following order: (1) costs incident to the sale; (2) costs
14 of containment by the sheriff and the landowner; (3) any
15 remaining amount to the owner of the trespassing livestock;
16 and (4) if the owner is unknown or does not claim the amount
17 remaining within ninety days, that amount shall be depos-
18 ited into the county treasury.

**§19-18-3. Criminal penalties for trespassing livestock;
restitution.**

1 (a) While livestock may escape enclosures due to accident
2 or unforeseen circumstances, it is unlawful for the owner or
3 manager of livestock to negligently permit livestock to run at
4 large and trespass on the property of other landowners.

5 (b) If livestock injures a person or destroys the property
6 of another person while negligently trespassing, the owner or
7 manager of the livestock shall be given an oral or written

8 warning for the first offense. For a second offense within six
9 months of the first, the owner or manager is guilty of a
10 misdemeanor and, upon conviction thereof, shall be fined not
11 less than \$50 nor more than \$100. For a third or subsequent
12 offense within six months of the second or subsequent
13 offense, the owner or manager is guilty of a misdemeanor
14 and, upon conviction thereof, shall be fined not less than
15 \$100 nor more than \$1,000.

(NOTE: §19-18-1, §19-18-2 and §19-18-3 have been completely rewritten;
therefore, strike-throughs and underscoring have been omitted.)