

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 341

(By Senators Miller, Williams, Laird, Nohe and D. Hall)

[Originating in the Committee on the Judiciary;
reported March 19, 2013.]

A BILL to repeal §19-17-5, §19-17-6, §19-17-7, §19-17-8, §19-17-10 and §19-17-11 of the Code of West Virginia, 1931, as amended; 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 said code; to amend and reenact §19-17-1, §19-17-2, §19-17-3 and §19-17-4 of said code; and to amend and reenact §19-18-1, §19-18-2 and §19-18-3 of said code, all relating generally to livestock; requiring livestock be enclosed by a fence; stating that fences are for grazing and livestock purposes; clarifying

procedures to build, maintain and repair partition fences; requiring an adjoining landowner to pay portion of the cost of partition fence; requiring notice; providing an exception for emergency repairs; providing dispute resolution; authorizing the Commissioner of Agriculture to promulgate rules and emergency rules for fences; prohibiting livestock from trespassing; clarifying damages that may be recovered; permitting containment of livestock; requiring owner of trespassing livestock be notified; stating that containment costs may be negotiated and recovered in court; permitting the sheriff to contain unclaimed livestock; permitting unclaimed livestock be sold at auction and proceeds distributed; and establishing misdemeanor penalties.

Be it enacted by the Legislature of West Virginia:

That §19-17-5, §19-17-6, §19-17-7, §19-17-8, §19-17-10 and §19-17-11 of the Code of West Virginia, 1931, as amended, be repealed; that §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8, §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of said code be repealed; that §19-17-1, §19-17-2, §19-17-3 and §19-17-4 of said

code be amended and reenacted; 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 17. FENCES.

§19-17-1. Fencing of livestock required.

1 Livestock shall be enclosed by a fence, including gates
2 and gates, that is built to reasonably prevent livestock from
3 escaping the enclosure.

§19-17-2. Partition fences.

1 (a) Adjoining landowners of property used for grazing or
2 livestock purposes shall each pay for or perform a just
3 proportion of the construction, repairs and maintenance of the
4 partition fence between the properties.

5 (b) The owner of real property who converts land to
6 grazing or other livestock purposes after an adjoining
7 landowner constructs a partition fence shall pay a just
8 proportion of the depreciation of the original cost of
9 constructing the fence, and shall pay for or perform a just
10 proportion of the repairs and maintenance of the partition
11 fence in the future.

§19-17-3. Building, maintaining and repairing partition fences.

1 (a) Adjoining landowners are encouraged to
2 communicate and have written agreements with one another
3 concerning the type of fence to be built, the just
4 apportionment of the cost of the fence or repairs, the portion
5 of the partition fence each person shall maintain and any
6 other agreements between the parties.

7 (b) A person desiring to build or repair a partition fence
8 shall give written notice to the adjoining landowner of his or
9 her intention to build or repair a partition fence. The notice
10 shall state the description and type of fence to be built or the
11 necessary repairs to be made. Within fourteen days, the
12 adjoining landowner provided with the notice shall provide
13 a written response agreeing to the proposal or responding
14 with objections and counter proposals and requesting a
15 meeting to resolve the dispute. Failure to respond makes the
16 adjoining landowner liable for a just proportion of the cost of
17 the new fence or repair.

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18 (c) Emergency repairs to partition fences necessitated by
19 storms, accidents or other unforeseen circumstances are
20 exempt from the notice requirements of subsection (b) of this
21 section. However, the adjoining landowner shall be notified
22 of the repairs and costs as soon as possible.

23 (d) If a dispute arises between adjoining landowners
24 regarding building, maintaining or repairing a partition fence,
25 and the parties have met and attempted to resolve the dispute
26 and failed, either party may proceed with a civil action in
27 magistrate or circuit court for relief.

§19-17-4. Rule-making authority.

1 The Commissioner of Agriculture may propose rules for
2 legislative approval in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code to regulate
4 livestock fences, partition fences and disputes. The
5 commissioner may promulgate emergency rules pursuant to
6 section fifteen, article three, chapter twenty-nine of this code.

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 a landowner without
2 that landowner's consent, the owner of the livestock is liable
3 for damages for personal injury or property damage in a civil
4 action in magistrate or circuit court.

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

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

14 (d) The owner of the trespassing livestock and the
15 landowner shall attempt to mutually agree upon a fair cost for
16 any containment. A fair cost for containment is an amount

17 which would be allowed for the sheriff for containing similar
18 livestock. If the negotiation fails, or if the landowner is not
19 otherwise reimbursed for the costs for containment, the
20 landowner may seek monetary damages in a civil action for
21 these costs.

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

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

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

11 (c) The proceeds of the livestock sale shall be distributed
12 in the following order:

13 (1) Costs incident to the sale;

14 (2) Costs of containment incurred by the sheriff and the
15 landowner;

16 (3) Any remaining amount to the owner of the trespassing
17 livestock; and

18 (4) If the owner is unknown or does not claim the amount
19 remaining within ninety days, that amount shall be deposited
20 into the county treasury.

§19-18-3. Criminal penalties for trespassing livestock.

1 (a) While livestock may escape enclosures due to
2 accident or unforeseen circumstances, it is unlawful for the
3 owner 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 of
7 the livestock shall be given an oral or written warning for the
8 first offense. For a second offense within six months of the
9 first, the owner is guilty of a misdemeanor and, upon
10 conviction thereof, shall be fined not less than \$50 nor more

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

(NOTE: This bill requires livestock be enclosed by a fence. The bill requires adjoining landowners to pay for a just proportion of partition fences. The bill requires notice to adjoining landowners before a fence may be constructed or repaired. The bill provides when a landowner does not respond he or she is responsible for a portion of the costs. The bill permits civil actions. The bill authorizes promulgation of rules and emergency rules.

The bill also revises the antiquated livestock trespassing laws of West Virginia. The bill clarifies damages for injury or loss to person or property from trespassing livestock and permits costs to be reimbursed for containment of livestock. The bill requires notification to the owner of trespassing livestock within forty-eight hours. The bill requires negotiating the costs of containment. The bill requires unclaimed livestock to be given to the sheriff for sale at a public livestock auction and the proceeds of the sale are distributed in a particular order. The bill creates misdemeanor penalties and fines for livestock that negligently trespass and injure persons or property.

The bill repeals §19-17-5, §19-17-6, §19-17-7, §19-17-8, §19-17-10 and §19-17-11.

§19-17-1, §19-17-2, §19-17-3 and §19-17-4 have been completely rewritten; therefore, strike-throughs and underscoring have been omitted.

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