

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 47

(By Senators Williams, Miller, Sypolt and Beach)

[Originating in the Committee on the Judiciary;
reported February 28, 2013.]

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 a 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§19-18-7, §19-18-8, §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of the Code of West Virginia, 1931, as amended, be repealed; and that §19-18-1, §19-18-2 and §19-18-3 of said code be amended and reenacted, all to read as follows: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 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 owner
6 and seek reimbursement for containment costs. If attempts to
7 return the livestock to the owner fail, the sheriff may, after
8 publishing notice as a Class I legal advertisement, sell the
9 livestock to the highest bidder at a public livestock auction.

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

12 (1) Costs incident to the sale;

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

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

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

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

1 (a) While livestock may escape enclosures due to accident
2 or unforeseen circumstances, it is unlawful for the owner of

3 livestock to negligently permit livestock to run at large and
4 trespass on the property of other landowners.

5 (b) If livestock injures a person or destroys the property of
6 another person while negligently trespassing, the owner of the
7 livestock shall be given an oral or written warning for the first
8 offense. For a second offense within six months of the first,
9 the owner is guilty of a misdemeanor and, upon conviction
10 thereof, shall be fined not less than \$50 nor more than \$100.
11 For a third or subsequent offense within six months of the
12 second or subsequent offense, the owner is guilty of a
13 misdemeanor and, upon conviction thereof, shall be fined not
14 less than \$100 nor more than \$1,000.

(NOTE: The purpose of this bill is to revise the antiquated stock laws of West Virginia. The name has been updated to "General Livestock Trespass Law." 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 clarifies misdemeanor penalties and fines for livestock that negligently trespass and injure persons or property. The bill also permits restitution.)

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