



# The National Agricultural Law Center

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## States' Fence Statutes: *Arizona*



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# A National Agricultural Law Center Research Publication

## States' Fence Statutes: Arizona

### A.R.S. §3-1401 to 3-1429, 3-1701 to 1704.

*Current through legislation effective March 24, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).*

#### **§ 3-1401. Definition of stray animal.**

“Stray animal” as used in this article means livestock, bison or raptiles whose owner is unknown or cannot be located, or any such animal whose owner is known but permits the animal to roam at large on the streets, alleys, roads, range or premises of another without permission, except that this section does not apply to livestock where the principles of a federal permit, federal allotment or federal lease are in dispute.

#### **§ 3-1402. Holding and sale of stray animals; repossession before and after sale; nonliability of state.**

A. Any person who finds a stray animal may attempt to locate and, if located, notify the owner where the animal may be found. If the owner is unknown or cannot be located, or the person elects not to locate or notify the owner, the person shall notify the department and the department shall follow procedures pursuant to this section.

B. A livestock officer or inspector who finds or is notified of a stray animal shall attempt to locate the owner and, if located, notify the owner where the animal may be found. If the owner does not take immediate possession of the animal, or if the owner or claimant is unknown or cannot be located, the livestock officer or inspector shall hold the stray animal for at least seven days, but shall hold the stray animal up to fourteen days at the request of any person or organization, and sell it at public auction to the highest bidder for cash, after giving at least five days' notice of the sale.

C. The department shall cause notice to be posted in three public places in the justice precinct where the stray animal is held stating:

1. That the stray animal will be sold at public auction for cash to the highest bidder.

2. The location where the stray animal will be held and the location where the animal will be sold.

D. The owner of a stray animal may take possession of the animal at any time prior to sale by proving ownership and paying the inspection fee and all expenses incurred in keeping and caring for the animal.

E. If the owner of the stray does not claim the animal before the day of sale, or if the owner is unknown or cannot be located, the livestock officer or inspector shall



sell the animal pursuant to the notice, and shall deliver an invoice of sale or a livestock inspection certificate to the purchaser. The owner of an animal sold may take possession of it at any time before the purchaser sells it by paying to the purchaser the purchase price paid at the sale, together with the expense of keeping and caring for the animal from the date of sale to the time the owner takes possession of the animal.

F. Livestock that is received at auction markets without proper documentation but with no evidence of criminal intent by the shipper may be sold, but the director shall impound the proceeds of the sale in the livestock custody trust fund established by § 3-1377. On presentation of proper documentation of ownership, the director shall pay the proceeds, less any charges incurred, to the person who is entitled to the proceeds.

G. The director may contract with any person to handle, feed and care for stray animals taken into custody under this section. This state is not liable for the injury or death of any person or stray animal or damage to property due to performance of the contract.

**§ 3-1403. Report by livestock officer or inspector; preliminary disposition of proceeds of sale.**

A. On making the sale as provided by § 3-1402, the livestock officer or inspector shall notify the division of the name of the purchaser, the time and place of sale, the amount for which the animal was sold and a description of the animal showing the marks and brands, if any, or other identifying marks and shall pay to the department the net proceeds realized at the sale.

B. The department shall place the amount realized from the sale of stray animals in the livestock custody trust fund established by § 3-1377.

**§ 3-1404. Payment of proceeds of sale to owner of stray.**

Upon making satisfactory proof of ownership of any animal sold as a stray within one year after the sale, the department shall pay to the owner of the animal the net proceeds realized at the sale less any expenses incurred.

**§ 3-1421. Formation.**

A. A majority of all taxpayers, according to the last preceding tax assessment roll, residing on land in an irrigation district containing not less than thirty-five thousand acres of irrigable land for which water is available, or a majority of all taxpayers residing upon any portion of a compact body of land containing not less than twenty thousand acres and where at least seventy-five per cent of the area of such body of land is being successfully irrigated, or a majority of all taxpayers residing upon a body of land containing not less than one thousand acres when the land is contiguous to the limits of an incorporated city or town which had a population of not less than thirty thousand people as shown by the last preceding United States census, and such body of land extending not more than twelve miles in one direction beyond the limits of such incorporated town or city, may petition the board of supervisors of the county in which such district or land is situated that a no-fence district be formed and that no fence be required around the land in the no-fence district designated in the



petition.

B. Upon filing the petition, the board shall immediately enter the contents upon its records and order that the no-fence district be formed.

**§ 3-1422. Publication of order forming no-fence district.**

The order of the board of supervisors that a no-fence district be formed shall be published once each week in a newspaper published in the county for four successive weeks, and from and after completion of the publication, no fence shall be required around the lands in the no-fence district, and it shall be unlawful for livestock thereafter to run at large in the district.

**§ 3-1423. Designation of stock driveway.**

Upon application of a local livestock association, the board of supervisors of the county wherein the no-fence district is located shall select, designate and declare one or more roads over or across the district as a stock driveway and shall erect and maintain on both sides of such road a lawful fence between which livestock may be driven.

**§ 3-1424. Civil and criminal liability of person allowing stock to run at large within no-fence district.**

The owner or person in charge of livestock, who recklessly allows or permits livestock to run at large within a no-fence district is guilty of a class 2 misdemeanor, and in addition is liable for damages for any trespass as provided for the collection of damages by owners of land enclosed within lawful fences.

**§ 3-1425. Dissolution of district.**

A no-fence district may be dissolved at any time in the same manner as it was formed.

**§ 3-1426. Lawful fence defined.**

A. A fence shall be deemed a lawful fence when it is constructed and maintained with good and substantial posts firmly placed in the ground at intervals of not more than thirty feet, upon which posts are strung and fastened at least four barbed wires of the usual type tightly stretched and secured to the posts and spaced so that the top wire is fifty inches above the ground and the other wires at intervals below the top wire of twelve, twenty-two, and thirty-two inches. If the posts are set more than one rod apart, the wires shall be supported by stays placed not more than seven and one-half feet from each other or from the posts, extending from the top wire of the fence to the ground, and each wire of the fence securely fastened thereto.

B. All fences constructed other than as provided in subsection A, or of other materials equally as strong and otherwise effective to turn livestock as the fences described in subsection A, shall also be deemed lawful fences within the meaning of this section.

**§ 3-1427. Recovery for damage to unfenced lands; exception.**

An owner or occupant of land is not entitled to recover for damage resulting from the trespass of animals unless the land is enclosed within a lawful fence, but this section



shall not apply to owners or occupants of land in no-fence districts.

**§ 3-1428. Action to recover for damage done by livestock which break through lawful fence.**

A. The owner or occupant of land enclosed by a lawful fence upon which damage of less than two hundred dollars has been done by livestock which has broken through the fence may bring an action to recover damages before a justice of the peace of the precinct in which the land is located, regardless of the place of residence of the owner of the livestock or the person having charge of the livestock at the time of trespass. If the amount of damage is two hundred dollars or more, the action may be brought in the superior court in the county where the land is located, regardless of the place of residence of the owner of the livestock or of the person having charge of the livestock at the time of the trespass.

B. If the plaintiff has possession of the livestock causing the damage complained of, and recovers judgment, the court shall, in addition to the personal judgment impress a lien on the livestock for the amount of the judgment, and order a sale thereof to discharge the lien.

**§ 3-1429. Exemption of incorporated city or town from provisions of article.**

A. Nothing in this article shall affect any ordinance of an incorporated city or town relating to stock running at large in the incorporated city or town nor shall its provisions apply to any land that is located within an incorporated city or town.

B. Any penalties imposed by a municipal ordinance relating to stock running at large shall not apply to lands that are annexed or incorporated into the city or town for two years after the annexation or incorporation, regardless of whether the lands were previously in a no-fence district or open range.

**§ 3-1701. Report of killed or crippled livestock; inspection and removal; violation; classification; definition.**

A. Every railroad in this state, upon discovery of livestock killed or crippled upon a section of the railroad, shall immediately make a report thereof to a livestock officer or to any other person designated by the department for the purpose of receiving the report.

B. The report required by subsection A shall designate the place where the crippled or killed livestock is located. The department or a person designated by it shall promptly inspect the stock, notify the owner and make a report of the inspection including therein the age, color, sex, approximate weight, marks and brands of the stock. One copy of the report shall be transmitted by a livestock officer or inspector to the division, one to the owner of the stock and one to the railroad. The copy of the report transmitted to the railroad shall be posted by it on Monday of each week at the section house or station house nearest the scene of the accident and shall be kept posted for thirty days.

C. Dead livestock shall not be destroyed by the railroad until the inspection required by this section is made, but if the inspection is not made within twenty-four hours after transmittal of the report by the railroad, the railroad may bury the



dead stock and shall thereupon promptly notify the division or the person designated by it of the place of burial so that inspection may be made.

D. A railroad which fails to make and post any report required by this section is guilty of a petty offense.

E. The term "railroad" as used in this article includes any person, firm or corporation operating a railroad.

**§ 3-1702. Stock crossings required in fences enclosing rights of way; violation; classification.**

A. A railroad fencing its right of way shall leave an opening at least once every three miles in an accessible place for stock to pass through. The opening shall be at least sixty feet wide, with cattleguards at each end, and fences shall be run to the guards. Cattleguards and wing fences shall be placed on either side of the openings, sufficient to prevent cattle entering upon the right of way enclosed. Places where the railroad runs over trestles or bridges sufficiently high for cattle to go under shall be left unfenced.

B. A railroad violating any provision of this section is guilty of a class 2 misdemeanor.

**§ 3-1703. Liability for injury to livestock on unfenced railroad; contributory negligence.**

A. When livestock is injured or killed by a locomotive or cars on the line of a railroad unfenced by good and sufficient fence or other barrier sufficient to turn livestock, the railroad is liable in damage to the owner of the livestock unless it is shown that the owner or his agent or servant immediately contributed to the killing or injury of the livestock.

B. Livestock straying, or grazing unattended by a herder, upon unfenced parts of the railroad is not contributory negligence of the owner.

**§ 3-1704. Liability of railroad for negligent injury of certain animals; injury or death as prima facie evidence of negligence; liability of owner for intentional damage.**

A. A railroad which negligently injures or kills a horse, jack, jenny, mule, cow or other domestic animal, by running a locomotive or cars against the animal is liable to the owner of the animal for the damages sustained by the owner by reason thereof. The killing or injury of the animal is prima facie evidence of negligence on the part of the railroad.

B. If the owner or person in charge of the animals listed in subsection A drives them upon the railroad track or tracks with intent to thereby injure the animal or animals, the owner is liable for all damage occasioned thereby.

