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States' Fence Statutes: *Delaware*



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Del. Code Ann. Tit. 25 §§ 1301 to 1307, Del. Code Ann. Tit. 2 § 1811, and Del. Code Ann. Tit. 3, §§ 7700 to 7707.

Current through ch. 10 of the 151st General Assembly (2021-2022).

§ 1301. Lawful fences; height; barbed wire.

A good fence of wood, iron, wood and iron rods or wire, stone, or well set thorn, 4 1/2 feet high or 4 feet high and having a ditch within 2 feet of it, shall be deemed a lawful fence in New Castle and Kent Counties, and in Sussex County 4 feet shall be the height of lawful fences. Barbed wire shall not be used for division fences except by the mutual consent of the owners of the properties divided by such fences. No fence of any kind which is composed in whole or in part of, or to which there is or has been added, barbed wire, razor wire or any barbed wire type of fencing material shall be permitted in any residential district without prior approval of the county or municipal zoning board or its board of adjustment, unless the property being enclosed by such fence is being used for farming or educational purposes.

§ 1302. Liability for trespasses; fence-viewers to assess damages.

If any horse, cattle, goat, sheep or hog trespasses on any grounds enclosed with lawful fence, the owner of the animal so trespassing shall pay such damages as shall be awarded by the fence-viewers. Any person having unruly horses, goats, sheep, hogs or cattle, which break through lawful fences, shall, after notice thereof, be liable for double damages for any trespass committed by such animal, after such notice, to be awarded by the fence-viewers.

§ 1303. Fence-viewers; appointment; powers; quorum; compensation.

(a) The Superior Court shall annually appoint not more than 8 nor less than 5 persons in each hundred to be fence-viewers. The fence-viewers shall be the sole judges of the sufficiency of any fences, of the charges of making or repairing partition or other fences, and how borne, and of damages by animals trespassing.

(b) Any 3 of the fence-viewers may act, and the majority of those acting may decide any pertinent matter.

(c) The person whose name heads the list of fence-viewers in the respective hundreds shall act as chairman, and in his absence the second person so listed shall be chairman, and in his absence the chairman shall be the next in order of the names listed. The chairman shall make a record of the terms of settlement in each dispute and shall keep such records available until all terms of settlement have been complied with. One month before the date of appointing fence-viewers for the ensuing year, the chairman shall submit to the prothonotary of the respective counties the names of any present members who desire their names to be removed from the list of fence-viewers, stating the reasons therefor.



(d) The fence-viewers shall be allowed \$8.00 per day and 7 cents per mile for travel to and from the point of dispute. The chairman shall receive in addition to fees received by other members the further sum of \$1.00 for each day as stated. The fees and mileage allowances shall be paid for each necessary trip made in connection with a dispute.

(e) The chairman shall submit and certify to the Levy Court or County Council of the county in which services as fence-viewers have been performed a list of the names of those fence-viewers who have acted in each case specifying the amount of fees due to each fence-viewer. The Levy Court or County Council of the county in which such list is submitted, properly certified to as aforesaid, shall make payment of the amount of money shown to be due thereon to each fence-viewer out of any moneys in the county treasury not otherwise appropriated.

§ 1304. Maintenance of partition fences; liability for enclosure of another's lands.

(a) The respective occupants of lands enclosed by fences shall maintain partition fences between them in equal shares, as long as both parties continue to improve the same.

(b) Where any person encloses land adjoining another's enclosed land, so that any part of the fence, or fence and ditch, or hedge and ditch, or wall, already made, becomes a partition fence, the fence-viewers shall determine what sum shall be paid by the one to the other, and the fence shall then be maintained by the parties equally.

§ 1305. Judgment of fence-viewers; enforcement and penalty for noncompliance.

If the fence-viewers judge any fence to be insufficient, they shall give notice thereof to the person bound to maintain the fence. If 1 of several persons so bound, upon such notice and request, neglects, for 5 days, to make his part of the fence good, or pay his share of the same or of any partition fence before made, any justice of the peace may, on complaint, direct the party aggrieved to repair the fence, and he shall be reimbursed double the cost which the person, so neglecting to repair the same, was bound to pay or contribute.

§ 1306. Division ditches and fences; remedy for neglect to maintain; allowance to guardian or lessee; special marsh laws.

(a) The adjoining owners or possessors of embanked marshes or meadows shall be obliged to join in cutting division ditches at least 8 feet wide and 2 1/2 feet deep, and in making fences at least 2 feet high within 1 foot of the edge of the ditches, at their common cost. The division ditches shall be well cleansed at least once a year and the fences kept in good repair, and they shall be deemed lawful fences.

(b) If any owner or possessor refuses or neglects to join in making the ditch and fence, or to keep the ditch in good order and repair, the adjoining owner or possessor may make or cleanse and repair the same, and may recover the proportion of the cost thereof as the fence-viewers determine the party neglecting ought to pay.

(c) A guardian shall be allowed any sum so expended or paid for his ward, and a lessee or tenant may deduct the same from his rent, unless otherwise stipulated by the contract. This section shall not be construed to repeal any special law respecting the improvement of marsh or meadow whereby any other provision is made concerning dividing ditches or fences.

§ 1307. Recovery of awards by fence-viewers.



All sums awarded by fence-viewers, or directed by them to be paid, may be recovered as other debts of like amount are recoverable.

§ 1811. Fences and cattle guards; liability for damages; trespass with animals; walking on tracks; penalties.

Every railroad corporation shall erect and maintain fences on both sides of its road, of the height and strength of a fence required by law, with openings, gates or bars therein at farm crossings or the roads for the use of proprietors of lands adjoining such railroad. Every such corporation shall also construct and maintain cattle guards at all the road crossings suitable and sufficient to prevent cattle and other animals from getting on the railroad. Until such fences and cattle guards have been duly made the corporation shall be liable for all damages which are done by their engines and cars to cattle, horses or other animals thereon.

After such fences and guards are duly made and maintained the corporation shall not be liable for any such damages, unless negligently or wilfully done. If any person rides, leads or drives any horse or other animal upon such railroad and within such fences and guards other than at farm crossings without the consent of the corporation, such person shall for every such offense forfeit not more than \$10 and shall also pay all damages which are sustained thereby to the party aggrieved. No person other than those connected with or employed upon the railroad shall walk along the tracks of any such railroad, except when the same are laid along public roads or streets.

§ 7700. Definitions.

As used in this chapter:

- (1) "Agent of the department" means a person who acts on behalf of the Department to carry out its activities.
- (2) "At large" means livestock that strays from confinement or restraint and from the property of the owner including livestock that strays into a confined area that is owned by a person other than the owner of the livestock.
- (3) "Department" means the Department of Agriculture.
- (4) "Livestock" means domesticated species including: bovine, camelid, cervid, equine, swine, ruminants, ratites, rabbits, poultry, and other animals harvested for food, fiber, fur, or leather.
- (5) "Unenclosed lands" means lands, other than the livestock owner's property, where the livestock would be able to run loose, free of confinement, or otherwise unrestrained by the livestock owner.

§ 7701. Permitting livestock to run at large; penalty.

- (a) It is unlawful to allow livestock to run at large on the public highways or on unenclosed lands within the State.
- (b) The Secretary of Agriculture may impose a civil penalty of not less than \$50 or more than \$500 for each offense on any person owning livestock found to have run at large, on the public highways, or on unenclosed land within the State. For each subsequent offense occurring within 12 months of a prior offense, the person is



subject to a civil penalty not less than \$500 or more than \$1000 for each offense. The minimum civil penalty for a subsequent offense may not be subject to suspension.

(c) No civil penalty shall be assessed unless the person charged has been given notice and opportunity for a hearing on each charge under Chapter 101 of Title 29.

(d) All civil penalties collected under this chapter must be remitted to the Department or other assigned agency.

(e) An administrative order that has become final imposing any civil penalties from the Department under this chapter shall be enforceable as a judgment and the Department may collect on such order as a judgment when such order is filed in the Office of the Prothonotary or other appropriate court. Any finding of fact or conclusion of law made by the Department in an administrative order that has become final shall be conclusive on all parties to an action under this chapter and not subject to judicial review. For purposes of this section, a finding or conclusion is final if it has been fully determined on appeal to the appropriate court or if the time for filing such appeal with respect to the finding or conclusion has expired.

§ 7702. Taking up and impounding stray livestock.

(a) Any person or agent of the Department may take up any livestock found running at large, upon the public highways, or on unenclosed lands within this State and impound the same. Such person or agent of the Department may demand and receive a reasonable sum for the impoundment, care, and feeding of the livestock while in such person's care. The care and shelter provided shall be humane and shall be adequate for the size and class of livestock impounded. The State Veterinarian will be responsible for determining if the livestock are being housed and fed properly as well as determining a fair and reasonable cost for impoundment, care, and feeding per day.

(b) The person or agent of the Department taking up and impounding the livestock shall forthwith give written notice of the taking up and impounding to the owner thereof, if known, or by leaving the notice with an adult person at the owner's or their usual place of abode; or, if unknown, shall place a notice of 3 days' duration in at least 2 forms of media, including 1 print, adequately describing the livestock and giving an accurate location where the livestock was found, and the name, address, and telephone number of the person holding the livestock.

(c) Any person or agent of the Department taking up and impounding livestock under this chapter who refuses or neglects to give notice as provided in this section, shall be liable to the owner of such livestock in civil damages, to be recovered in a civil action before a Justice of the Peace Court or the Court of Common Pleas of the county in which the livestock was taken up.

§ 7703. Damage by stray livestock.

(a) Upon the application of any person, or the person's agent, sustaining any damage by reason of the livestock running at large contrary to this chapter, the person or person's agent may seek restitution from a Justice of the Peace Court or the Court of Common Pleas of the county in which damage was incurred by livestock, which may or may not have been taken up and impounded.



(b) If the owner of livestock cannot be located or identified and the livestock is taken up by the State, the State shall be held harmless for damages committed by the livestock.

§ 7704. Sale of strays.

(a) If the livestock is not claimed and all legal charges satisfied in accordance with this chapter within 7 days, the person having the livestock in charge shall have the option to turn over ownership for adoption or advertise the livestock to be sold at public sale.

(b) Notice of the livestock sale under subsection (a) of this section must be provided as follows:

(1) If the owner is unknown, by placing a notice giving the particulars of the sale in at least 2 forms of media, including 1 print, for a duration of 3 days.

(2) If the owner is known, by giving a copy of the notice to the owner of the livestock or by leaving the same with an adult person at his or her usual place of abode.

(c) At the time fixed in the advertisement, the person having the livestock in charge shall proceed to sell the livestock, but may postpone the sale for good and sufficient cause. The proceeds of the sale, after deducting all legal charges, must be turned over to the Department.

(d) The State and the Department make no representation as to the health of any livestock sold or adopted under this chapter and may not be held liable for any damages pursuant to the sale or adoption of livestock sold or adopted under this chapter.

§ 7705. Exceptions.

This chapter shall not apply to livestock in the care of a drover using due diligence in the control thereof, or to livestock which accidentally escapes from the care of the drover. Proof of these circumstances shall always be admitted so that no injustice to the owners be inflicted in consequence thereof.

§ 7706. Accidental escape of livestock; liability of owners.

An owner, or other person in charge of livestock, who receives 25% or more of the person's annual gross income from the sale of agricultural products or the resale of animals grown, raised, or produced for food, fiber, fur or leather is not responsible in any action by reason of livestock accidentally escaping and straying at large, on any public highway, or on unenclosed lands within this State unless the owner or other person in charge thereof has negligently allowed the livestock to escape or unless he or she is guilty of negligence in the care of the livestock.

§ 7707. Enforcement; disposition of fines.

The Department has the authority for administering and enforcing this chapter and may promulgate regulations to administer and enforce this chapter. The Delaware State Police, local police officers of the community in which the offense took place, and Department of Health and Social Services' Office of Animal Welfare shall assist the Department, at the request of the Department. All civil penalties imposed for violations of this chapter shall be paid to the Department. Any civil penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this section.

