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## States' Fence Statutes: *Kansas*



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# A National Agricultural Law Center Research Publication

## States' Fence Statutes: Kansas

**Kan. Stat. Ann. §§ 29-101 to 29-409, §§47-101 to 47-124, §§ 47- 229 to 47-239, §66-230, §§ 66-295 to 66-299, §§ 66-301 to 66-311**

*Statutes are current through laws enacted during the 2021 Regular Session of the Kansas Legislature effective on April 22, 2021.*

### **29-101. Enclosure of domestic animals with fence required.**

All domestic animals, other than cats and dogs, shall be enclosed with a fence sufficiently close, composed of posts and rails, posts and palings, posts and planks or palisades, posts and wire, rails alone, laid up in the manner commonly called a worm fence, or turf, with ditches on each side, of stone, or a hedge in existence on July 1, 1986, composed either of thorn or Osage orange.

### **29-102. Construction and composition of fences.**

All fences composed of posts and rails, posts and palings, posts and planks, or palisades, or of stone, or composed of posts and wires, or those composed of turf, shall be at least four feet high. Those composed of rails, commonly called a worm fence, shall be at least four and one-half feet high to the top of the rider, and shall be thoroughly staked and ridered, or if not staked and ridered shall have the corners locked with strong rails, stakes or posts. Those composed of stone shall be at least 18 inches wide at the bottom and 12 inches wide at the top. Those composed of turf shall be thoroughly staked and ridered, and shall have a ditch on the outside not less than two feet wide at the top and three feet deep. With respect to all fences composed of rails or lumber, the bottom rail, board or plank shall not be more than two feet from the ground. All such fences shall be substantially built and sufficiently close to prevent domestic animals, other than cats and dogs from going through. All hedge fences shall be of such height and thickness as will be sufficient to enclose domestic animals other than cats and dogs.

### **29-103. Fences composed of posts and wires.**

In fences composed of posts and wires, the posts shall be of ordinary size for fencing purposes, and set in the ground at least two feet deep and not more than twelve feet apart, with holes through the posts or staples on the side not more than fifteen inches apart, to admit four separate strands of fence wire not smaller than No. 9, and shall be provided with rollers and levers, at suitable distances, to strain and hold the wire straight and firm.

### **29-104. What deemed legal and sufficient fences.**

Fences of the material and of the height and sufficiency aforesaid, and all brooks, rivers, creeks, ditches and constructions which shall be equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, shall be deemed legal and sufficient fences.

### **29-105. Barbed-wire fence deemed legal fence; construction**



(a) Except as otherwise provided in subsection (b), and in addition to fence declared by law to be a legal fence, the following shall be a legal fence: A barbed-wire fence, of not less than three wires, with the third wire from the ground not less than 44 inches nor more than 48 inches from the ground, and the bottom wire not more than 24 inches nor less than 18 inches from the ground, with the center wire equidistant, or nearly so, between upper and lower wires. All such wires shall be well stretched and barbed, barbs to average not more than nine inches apart and such barbed wire shall be composed of two wires not smaller than No. 13, or one wire not smaller than No. 9, or wires having not less than 950 pounds breaking strength. All such wires shall be securely fastened to posts, which shall not be more than two rods apart and not less than 20 inches in the ground, and set in a workmanlike manner or the posts may be not more than 48 feet apart, with slats placed perpendicularly, not more than 12 feet apart, between the posts and fastened to the wires by staples, or with holes in the slats. Suspension fences shall not be subject to the requirements of this section.

(b) The board of county commissioners of any county, by resolution, may establish for a barbed-wire fence constructed after the effective date of such resolution construction requirements which are more stringent than the requirements under subsection (a). In those cases where a barbed-wire fence is located on a county line, the least restrictive requirements for construction of such fence shall apply.

#### **29-106. Fencing extensive tracts in certain counties; gates and hitching posts.**

That whenever any person, persons or corporations shall fence and enclose extensive tracts of land of one hundred acres or over in extent for grazing purposes in the counties of Barber, Pratt, and Russell, and all counties west of range 15, west of the sixth principal meridian, in the state of Kansas, such person, persons or corporation shall provide a suitable swinging or lifting gate, constructed in such manner that it may be easily opened or closed, whenever said fence or enclosure crosses any road established by custom and usage but not a legally established public highway. Said gate shall be so constructed as to meet conveniently the requirements of the traveling public; and in addition to said gate, shall set posts on each side of said gate, at suitable distances therefrom, and of not less than four inches in diameter and not less than seven feet in length, set not less than thirty inches in the ground, and for the purpose of tying any horse or team thereto, while any traveler is engaged in opening or closing said gate.

#### **29-107. Penalty for interfering with such fence or leaving gates open.**

Any person who shall willfully molest or interfere with said fence or enclosure described in K.S.A. 29-106, by cutting wires or otherwise mutilating or tearing down said fence, or who shall willfully leave open any gate of said fence or enclosure, shall be deemed to have committed a misdemeanor, and shall be liable to a fine not exceeding fifty dollars.

#### **29-108. Declaration of policy relating to domestic animal trespass; liability for damages.**

It is hereby declared that the policy of this state with respect to domestic animal trespass shall be that all such animals shall be enclosed by a lawful fence. It is further declared that, unless otherwise specifically provided by law, strict or absolute liability for damages for injury to any person or property resulting from domestic animal trespass shall not arise, and, in all such cases, the principles of ordinary negligence shall apply.

#### **29-109. Electric fence deemed legal fence; construction and composition.**



(a) In addition to fences otherwise declared by law to be a legal fence, an electrically charged wire fence with at least one 14-gauge wire or its equivalent not more than 48 inches from the ground and which is deemed by the fence viewers in whose jurisdiction such fence is located, to be equivalent to other legal fences, is hereby deemed a legal fence. The board of county commissioners of any county, by resolution, may elect to declare that such electrically charged wire fence shall not be a legal fence within the jurisdiction of such board. No electrically charged wire fence shall be erected or maintained in contact with public utility poles or lines or in any manner where there is danger or possibility of unreasonable interference with or damage to the equipment or service of a public utility without the permission of the public utility. No utility which furnishes electricity shall have or incur any liability to any person in the event of electric power failure to or for any electric fence.

(b) The board of county commissioners of any county, by resolution, may establish for an electrically charged wire fence constructed after the effective date of such resolution construction requirements which are more stringent than the requirements under subsection (a). In those cases where an electrically charged wire fence is located on a county line, the least restrictive requirements for construction of such fence shall apply.

### **29-201. County commissioners as fence viewers; designees.**

The board of county commissioners, in each county in this state, or their designees, shall be fence viewers in each township of such county. Any action taken by the board pursuant to 29-201 et seq., and amendments thereto, shall require a majority vote of the board of county commissioners. If the board appoints designees to act as fence viewers, any recommendation of such designees shall not be effective unless approved by a majority of the board of county commissioners.

### **29-202. Penalty for neglect of duty.**

Any fence viewer who shall, when requested, unreasonably neglect to view any fence or to perform any duty required of him in this act, shall forfeit and pay the sum of ten dollars, and shall also be liable to the party injured for all damages consequent upon such neglect.

### **29-203. Compensation and expenses.**

Each fence viewer shall be entitled to receive seven dollars and fifty cents (\$7.50) as full compensation for each fence viewed, to be paid in the first instance by the party or parties requiring the services; and all expenses of the view shall be borne equally between the parties interested, except in case of a view to appraise damages for neglect or refusal to make or maintain a just proportion of a division fence, in which case the costs of view shall be paid by the party in default, to be recovered as a part of the damages assessed.

### **29-301. Maintenance.**

The owners of adjoining lands shall keep up and maintain in good repair all partition fences between them in equal shares, so long as both parties continue to occupy or improve such lands, unless otherwise agreed.

### **29-302. Neglect to repair or rebuild.**

If any party neglect to repair or rebuild a partition fence, or the portion thereof which he ought to maintain, the aggrieved party may complain to the fence viewers, who, after due



notice to each party, shall examine the same, and if they determine that the fence is insufficient, shall signify it, in writing, to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they may judge reasonable.

**29-303. Complainant may repair or rebuild, when; recovery; attorney's fee.**

If such fence be not repaired or rebuilt accordingly, the complainant may repair or rebuild it, and the same being adjudged sufficient by the fence viewers, and the value thereof, with their fees, being ascertained by them and certified under their hands, the complainant may demand of the owner of the land where the fence was deficient, the sum so ascertained; and in case of neglect to pay the same for one month after written demand, may recover it, with interest at the rate of one percent per month, by action in any court of competent jurisdiction. In any such action the court shall allow the prevailing party a reasonable sum for attorney's fee.

**29-304. Controversies; settlement by fence viewers.**

When any controversy shall arise about the rights of the respective owners in partition fences, or their obligations to keep up and maintain the same in good repair, and if they cannot agree among themselves, either party may apply to the fence viewers of the township in which such fence may be situated, who, after a reasonable notice to the other party, shall proceed, on application as aforesaid, to view such fence, and assign to each party, in writing, his equal share or part of such partition fence, to be by him kept up and maintained in good repair; which assignment shall be recorded by the register of deeds of the county in a book to be provided for that purpose, and shall be final, conclusive and binding upon the parties, and upon all the succeeding occupants of the lands, and they shall be obliged thereafter to maintain their respective portions of said fence.

**29-305. Failure to erect or maintain assigned part; recovery of cost and attorney's fee.**

If a party neglect or refuse to erect or maintain the part of the fence assigned him by the fence viewers, it may be erected and maintained by the aggrieved party in the manner before provided, and he shall be entitled to recover the ascertained cost thereof, with interest at the rate of one percent per month and a reasonable attorney's fee to be fixed and allowed by the court, by action in any court of competent jurisdiction; and the amount recovered, with costs, shall be a lien against the land chargeable with the same.

**29-306. Assignment of viewers; agreement between owners of adjoining land; recordation.**

All assignments of the fence viewers shall be certified and signed by them and shall contain a certain description of the lands divided by such partition fence and the names of the owners thereof. Any agreement entered into prior to the effective date of this act between the owners of adjoining land in relation to the division of partition fences between them shall also contain a pertinent description of such lands, and such agreement, acknowledged or proved as conveyances of land, may be recorded in the office of the register of deeds of the proper county in the same manner as an assignment of fence viewers. Any agreement or modification of an existing agreement entered into on or after the effective date of this act between the owners of adjoining land in relation to the division of partition fences between them shall also contain a pertinent description of such lands, and such agreement, acknowledged or proved as conveyances of land, shall be recorded in the office of the register of deeds of the proper county in the same manner as an assignment of fence viewers. Any such assignment or



agreement, duly recorded as provided in this article, shall be binding upon the parties and all succeeding owners of the lands.

**29-307. Party building more than his share.**

When in any controversy between owners of adjoining lands as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the owners had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him to repair or maintain, the value of which shall be ascertained and recovered in the manner hereinbefore provided.

**29-308. Partition fences to be kept in good repair.**

All partition fences shall be kept in good repair throughout the year, unless the owners of the land on both sides otherwise agree.

**29-309. What occupants not required to contribute towards partition fence.**

No person not wishing his land enclosed, and not occupying or using it otherwise than in common, shall be compelled to contribute to erect or maintain any fence dividing between his land and that of an adjacent owner; but when he encloses or uses his land otherwise than in common, he shall contribute to the partition fence as in this act is provided.

**29-310. Proceedings when one common owner desires to occupy land in severalty.**

When lands owned in severalty have been enclosed in common without a partition fence, and one of the owners is desirous to occupy his land in severalty and the other refuses or neglects, on demand, to divide the line where the fence should be built, or to build a sufficient fence on his part of the line when divided, the party desiring it may notify the fence viewers who shall give written notice to both owners that unless said owners agree on the erection of said fence, the viewers will, in not less than twenty nor more than 40 days, divide and assign said line and, in writing, assign a reasonable time (having regard to the season of the year) for making the fence; and if either party neglect to comply with the decision of the viewers within the time assigned, the other party, after making his own part, may make the other part, and recover the ascertained value thereof, with interest at the rate of one percent per month, together with the fees of the fence viewers as above provided and a reasonable attorney's fee to be fixed and allowed by the court.

**29-311. Throwing land open.**

When one party shall desire to throw his land open and leave it unenclosed, he shall not take away any part of the partition fence belonging to him and adjoining the next enclosure, if the owner or occupant of such enclosure will, within two months after the same shall be ascertained, pay therefor such sum as the fence viewers shall, in writing, under their hands, determine to be the value of such partition fence belonging to such party.

**29-312. Rights of party not improving land adjoining partition fence.**

If any person shall determine not to improve any part of his land adjoining any partition fence that may have been divided according to the provisions of this act, and shall give six months' notice, in writing (provided such notice be served between the first day of July and the first of October), of such determination to all the adjoining owners or occupants of lands, he shall not be required to keep up or maintain any part of such fence during the time his



lands shall lie open and unimproved; and he may thereafter remove his portion thereof, if the owner or occupant of the adjoining land will not pay therefor as provided in the preceding section.

**29-313. Owner enclosing his unenclosed land shall pay for one half of partition fence.**

When land which has been unenclosed is enclosed, the owner thereof shall pay for one half of each partition fence between his land and the adjoining lands, the value to be ascertained and stated in writing, under their hands, by the fence viewers, in case the parties cannot agree; and if the owner enclosing as aforesaid shall neglect, for sixty days after the value has been so ascertained and demand made, to pay the same, the owners of such partition fences may recover, with interest, as hereinbefore provided; or the party enclosing may, at his election, rebuild and make half of each of such partition fences, and if he neglect so to do for sixty days after making such election, he shall be liable as before provided.

**29-314. Fence on boundary line between counties; viewers.**

If the line upon which a partition fence is to be made or to be divided is the boundary line between counties or if such line is partly in one county and partly in another, two of the fence viewers shall be the chairpersons of the board of county commissioners of the respective counties. If such commissioners cannot agree, they shall select a third commissioner from the county fence viewers in the two counties, and their assignment, in order to be binding and effectual, must be recorded, as hereinbefore provided, in each of such counties. A county commissioner may appoint a designee to serve as a fence viewer in place of such commissioner.

**29-315. Owner defined; notice; liability to tenant or occupant.**

The word "owner," under the provisions of this act, shall be held to include and apply to the occupant or tenant, when the owner does not reside within the county; and no proceedings under this act shall bind the owner, unless he shall be notified; but he shall be liable to the occupant or tenant for the cost and expense of erecting and maintaining, under the provisions of this chapter, any partition fence upon the line of his land, unless there in a special agreement to the contrary.

**29-316. Fence may be built on partition line; removal.**

A person building a fence may lay the same upon the line between his own land and the land adjacent, so that the fence may be partly on one side of such line and partly on the other; and the owner shall have the same right to remove it as if it were wholly on his own land.

**29-317. Partition fence wholly on one side of line.**

The foregoing provisions concerning partition fences shall apply to fences standing wholly upon one side of the division line, and used as a partition fence.

**29-318. Fence on line between townships where hogs prohibited from running at large in one and not the other; damages.**

In all cases where fences are built upon township lines, between townships in one of which hogs are prohibited from running at large and in the other of which they are not prohibited from running at large, such fence shall be built in the manner prescribed in the first article of this act for fences in townships where hogs are not prohibited from running at large:



*Provided*, That the owner of any hogs shall be liable for all damages sustained by any person in consequence of such hogs crossing such township lines by way of the highway.

#### **29-319. Making partition fence hog-tight.**

Whenever any owner of land enclosed in part by a partition fence desires to make hog-tight any part of the fence enclosing his premises, constructed or maintained by the owner of the adjoining land, he may attach to such partition fence, in a secure and workmanlike manner, woven wire at least two feet in height, so as to prevent hogs from getting through such fence.

#### **29-401. Liability for neglect to maintain or repair portion of partition fences.**

If any person liable to contribute to the erection of a partition fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall not be allowed to have and maintain any action for damages incurred, but shall be liable to pay to the party injured all such damages as shall accrue to his lands and the crops, fruit trees and shrubbery thereon, and fixtures connected with the said land, such damage to be assessed by the fence viewers, on application of the party injured, one day's notice in writing having been first given to the party liable, either by delivering to him personally or by copy left at his usual place of abode, that such application for assessment of damages had been made, and the time when the fence viewers would attend to make such assessment.

#### **29-402. Domestic animals breaking into enclosure.**

If any horse, mule or ass, or any neat cattle, hogs or sheep, or other domestic animals, shall break into any enclosure, and the owner or occupant thereof shall consider himself aggrieved thereby, such person may apply to the fence viewers of the township in which such enclosure may be situate, having first given at least one day's notice, in writing, to the owner or keeper of such trespassing animal, if known to him, or by leaving a written notice at the place of abode of such person, of his intended application, and also of the time when the fence viewers will attend to examine the fence and investigate the subject of damages; and the said fence viewers shall forthwith repair to the place where such injury shall have been done, and there diligently examine the fence over or through which such trespassing animal shall have broken or entered into any such enclosure.

#### **29-403. Assessment of damages by fence viewers.**

If in the opinion of said fence viewers such fence is a good and sufficient fence, according to the provisions of this act, they shall proceed, upon view and inquiry, to assess the damages sustained by such applicant from such trespassing animal or animals; which assessment, including the sum due for their services, they shall make out and certify, in writing, subscribe their names thereto, and deliver the same to the person sustaining such damage; and all expenses of the view shall be borne equally between the parties interested, except in case of a view to appraise damages for neglect or refusal to make or maintain a just proportion of a division fence, in which case the costs of view shall be paid by the party in default, to be recovered as a part of the damages assessed.

#### **29-404. Recovery by civil action of damages assessed; attorney's fee.**

If any party against whom damages shall be assessed by the fence viewers under the provisions of this act shall fail or refuse to pay the damages so assessed, after the same shall have been demanded, and after receiving a copy of such assessment made by the fence viewers as aforesaid, the same may be recovered by civil action in any court of



competent jurisdiction; and in all such actions the assessments of the fence viewers, subscribed by them, shall be received in all courts as prima facie evidence of the amount of damages actually sustained by the party in whose favor given and in all such actions the court shall fix and allow to the prevailing party a reasonable attorney's fee.

**29-405. Fence not of proper height or kind; costs.**

If the fence viewers shall be of opinion that such fence is not of the height and sufficiency required by this act, the person calling upon them to examine the same shall pay all the costs of such view and examination, to be recovered in a civil action in the name of the said fence viewers, with costs of suit, in the district court of the county in which the defendant may reside.

**29-406. Removal of fence built upon land of another by mistake; damages.**

When a person has made a fence on an enclosure which afterwards, on making division lines, is found to be on lands of another, and the same has occurred through mistake, such first person may enter upon the land of the other and remove his fence and material within six months after such line has been run, upon his first paying or offering to pay the other party for any damages to the soil which may be occasioned thereby; and when the parties cannot agree as to the damage, the fence viewers may determine it as in other cases.

**29-407. Limitations on removal.**

But such fence shall not be removed, if it was made of timber or other material taken from the land on which it is built, until the party pays to the owner of the land the value of the timber or other material, to be ascertained by the fence viewers; nor shall a fence be removed at a time when the removal will throw open or expose the crop of the other party, but it shall be removed within a reasonable time after the crop is secured, although the six months above specified have passed.

**29-408. Taking trespassing animals into possession.**

If any of the animals mentioned in this act break free of their lawful enclosure, and trespass on land owned by another person, the owner or occupant of the land may take into possession such animal trespassing, and keep the same until damages, with reasonable charges for feeding and keeping, and all costs of suit, be paid, to be recovered in any court of competent jurisdiction.

**29-409. Cruelty to domestic animals; damages.**

If any person or corporation shall hurt, wound, kill, lame or destroy, or cause to be hurt, wounded, killed, lamed or destroyed, by running over or against, shooting, worrying with dogs, or otherwise, any of the animals mentioned in this act, when such animals are upon premises which are not enclosed with a sufficient fence as prescribed in this act, or when any such animals are upon the unenclosed premises of any such person or corporation, such person or corporation so offending shall satisfy and pay the owner of any such animal or animals full damages therefor, with costs.

**47-104. Freighters and drovers liable for damages.**

All damages done by stock owned by freighters or drovers to crops adjacent to roads along which the trains or droves may be passing or herded shall be paid by the owners of the stock to the owners of the crops so damaged, without regard to fences.



#### **47-120. Driving swine along highway.**

(a) Nothing herein contained shall be so construed as to prevent drivers or other persons from driving livestock from one place to another along any public highway, the owner or owners being responsible for all damages that any person or persons may sustain in consequence of the driving of such livestock.

(b) For the purposes of K.S.A. 47-120 through 47-122, and amendments thereto, "livestock" shall mean any cattle, bison, swine, sheep, goats, horses, mules, domesticated deer, camelids, all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus and rheas, and any other animal as deemed necessary by the animal health commissioner established through rules and regulations.

#### **47-121. Penalty for unlawful driving of animals.**

That any person or persons other than the owner or such owner's authorized agent who shall willfully drive or cause to be driven any livestock further from their usual and customary range than the nearest corral obtainable without the written consent of the owner, or who shall neglect to return such livestock immediately to their accustomed range, shall in either case be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding ninety days, or by a fine of not less than \$100 nor more than \$1,000, or by both such fine and imprisonment, in the discretion of the court.

#### **47-122. Unlawful for certain animals to run at large.**

It shall be unlawful for any livestock to run at large.

#### **47-122a. Livestock running at large; taking up such livestock by county sheriff; notice; sale; disposition of proceeds of sale; consolidated law enforcement department.**

(a) Whenever the owner or the owner's authorized agent allows any livestock to run at large, in violation of K.S.A. 47-122, and amendments thereto, and such livestock remains on the property of another person, at the request of such person upon whose property the livestock are running at large, the sheriff of the county in which such livestock are running at large may take such livestock into custody and retain them in a secure holding area.

(b) The county sheriff shall give notice to the owner or the owner's authorized agent within 24 hours after taking such livestock into custody that the owner or the owner's authorized agent has 10 days within which to claim such livestock and to pay all actual costs for taking up, keeping and feeding of such livestock.

(c) If the owner or the owner's authorized agent fails to claim the livestock and to pay all actual costs within the ten-day period, the county sheriff shall cause the livestock to be delivered to a public livestock market or to a secure holding area approved by the animal health commissioner. If the livestock is delivered to the market, the county sheriff shall cause such livestock to be sold at such market to the highest bidder for cash. Livestock held in a secure holding area other than a livestock market shall be advertised by the county sheriff in the official county newspaper and sold to the highest bidder for cash.

(d) The county sheriff shall pay out of the proceeds from the sale of such livestock, all actual costs for taking up, keeping and feeding of such livestock. Any



proceeds remaining in the hands of the sheriff after payment of all actual costs, shall be paid to the owner of the livestock or the owner's authorized agent. If the owner or the owner's authorized agent is not known or cannot be located, the proceeds remaining after the payment of actual costs shall be paid to the county treasurer of the county in which the livestock were running at large. Such funds shall be deposited by the county treasurer in the county's special stray fund provided for in K.S.A. 47-239, and amendments thereto.

(e) In counties having a consolidated law enforcement department, the provisions of this section relating to sheriffs shall be deemed to refer to such department.

#### **47-123. Damages to person injured; lien.**

Any owner whose livestock shall run at large, in violation of K.S.A. 47-122 shall be liable to the person injured for all damages resulting therefrom, and the person so damaged shall have a lien on said livestock for the amount of such damages.

#### **47-124. Who may take animals into custody; procedure.**

Any person sustaining damages as provided in K.S.A. 47-123, may take the trespassing livestock into custody, and may retain the same until such damages and all reasonable charges are paid. It shall be the duty of the person taking the livestock into custody to notify the owner or the owner's authorized agent of such taking up within twenty-four (24) hours thereafter; and if such owner or authorized agent cannot be found or notified, then to proceed as provided by law in case of strays. Where notice of such taking up of such livestock is given, the person so taking up said livestock shall not retain the custody of the same for more than five days without commencing action against the owner thereof to recover such damages.

#### **47-229. Definitions.**

As used in this act:

- (a) "Domestic animals," shall include all domestic animals except dogs and cats.
- (b) "Stray" or "strays" shall mean any domestic animal which is found running at large, contrary to law, or which may be found in any enclosure other than that of its ownership, and whose owner is not known in the community or whose owner cannot be found.

#### **47-230. Taking up stray; notice, requirements; record of ownership and animal released, when; costs**

(a) Any person may take up any stray found upon such person's premises or upon any public thoroughfare adjoining thereto. Within 24 hours after taking up the stray, such person shall report the taking up to the sheriff of the county in which the stray is taken up. The report shall include a description of the stray, including the type of animal, color, weight, size, sex, age, marks, brands or other distinguishing features, the place where the animal is kept and the address of such person who took up the stray. The sheriff shall then notify the state animal health commissioner and the owners of all registered brands found on the stray. If the sheriff and the animal health commissioner, or the commissioner's duly authorized representatives find and establish the owner of the stray, a record to that effect shall be kept.



(b) Subject to the agreement of both the sheriff and the animal health commissioner, or the commissioner's duly authorized representative, the stray shall be released to the established owner upon payment of:

(1) All costs accrued in the stray proceeding, including the cost for any damage which the stray may have caused while in the sheriff's control; and

(2) reasonable compensation to the person taking up the stray for the costs of keeping and feeding such stray, including the cost for any damage which the stray may have caused.

**47-232. Certification to court where controversy between adverse claimants; affidavits; testimony; order determining ownership and disposition of sale proceeds.**

In the event that there are more than one claimant to any stray, and if a contest or controversy ensues as a result of adverse claimants, the sheriff shall certify the matter to the district court of the county in which the stray is taken up, and said court shall docket said matter in a proper docket supplied by the county. The claimants shall have ten (10) days following the date of the docketing of said matter to file affidavits in support of their several claims. The said court shall also have the right and authority to hear oral testimony at any reasonable time on notice to the claimants to determine the ownership of such stray. After any such hearing the said court shall enter a finding and order determining the ownership of said stray and directing the distribution of the proceeds from the sale of such stray animal.

**47-236. Care of strays.**

Any person taking up a stray as hereinbefore provided, shall feed and care for said stray and not injure or abuse it, and if any stray shall die while in the possession of the taker-up without fault of said taker-up, he shall not be responsible for said death or held liable for damages therefor.

**47-237. Penalties for unlawful acts**

If any person shall unlawfully take up any stray or fails to comply with the provisions of this act or uses or works such stray before giving notice or shall drive the same on any premises for the purpose of unlawfully taking up the same, or shall keep the same out of the county when taken up more than five days at one time before sale, such person shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding \$500, or by imprisonment for not exceeding 30 days, or by both such fine and imprisonment.

**47-238. Same; advertising stray by sheriff; delivery of animal to market; sale; conditions**

After the sheriff has received notice of the taking up of any stray, and the ownership not having been established, the sheriff shall advertise such stray in the area where taken up, and shall cause the stray to be delivered to a public livestock market and shall sell or cause such stray to be sold at such a market, to the highest bidder for cash. Such advertisement shall be at least seven days before sale date, and such sale date shall be at least 21 days after the date the stray was reported to the sheriff.

**47-239. Same; publication notice for sale; contents; disposition of proceeds of sale; special stray fund; establishing of ownership within six months of sale.**

(a) The notice for the sale of the stray shall be published for one issue in a publication or publications having general circulation in the area where such stray



was taken up. Such notice shall describe the stray by stating the kind of animal, sex, age and brands. The notice shall not contain any statement as to the color of the stray or as to any marks or other distinguishing features and it shall not contain the name or address of the person who took up such stray. Out of the proceeds from the sale of such stray, the sheriff shall pay the person who took up such stray, reasonable compensation for keeping and feeding the stray. The sheriff also shall pay all costs of the stray proceedings. Any proceeds remaining in the hands of the sheriff after payment of feeding and sale costs, shall be paid by the sheriff to the treasurer of the county in which the stray was taken up. Such funds shall be placed by the county treasurer in a special stray fund.

(b) At any time prior to the expiration to six months following the date of such deposit with the county treasurer, a claimant may appear before the sheriff and submit evidence of ownership of such stray. If such evidence is acceptable and satisfactory to the sheriff and to the state animal health commissioner or the commissioner's authorized representative, for purpose of establishing ownership of such stray, the sheriff shall direct the county treasurer to disburse the remainder of the proceeds from the sale of such stray to the claimant.

(c) Upon the expiration of a period of six months following the receipt of deposit of proceeds from the sale of any stray, without any such directive having been received from the sheriff, the county treasurer shall pay the remaining proceeds to the animal health commissioner to be remitted, deposited and credited as provided by K.S.A. 47-417a, and amendments thereto.

#### **66-230. Cattle guards at crossings; duties as to gates.**

When any railroad runs through any improved and fenced farm lands and between an occupied dwelling and other main farm buildings; or wherever at the time of the passage of this act, any railroad right of way lies alongside of and contiguous to a public highway through any improved and fenced farm land upon which is a dwelling actually occupied as a farm residence, and it is necessary for the occupants of such dwelling to pass across the right of way of the railroad in order to reach the main public highway or get to their farm lands to cross the railroad, then and in either case the railroad company shall, at the request in writing of the owner of such farm, make and maintain proper cattle guards on such railroad on both sides of the crossing so used for farm purposes. It shall not be necessary for the occupants of such land to keep the gates in the fences at such farm crossings closed where such cattle guards are installed except that the railroad company shall not be responsible for damage done to stock at such crossing described under this act when the gates at such crossing are open.

#### **66-295. Liability regardless of negligence.**

Every railway company or corporation in this state, and every assignee or lessee of such company or corporation, shall be liable to pay the owner the full value of each and every animal killed, and all damages to each and every animal wounded by the engine or cars on such railway, or in any other manner whatever in operating such railway, irrespective of the fact as to whether such killing or wounding was caused by the negligence of such railway company or corporation, or the assignee or lessee thereof, or not.

#### **66-296. Recovery upon failure to pay full value of animal upon demand.**



In case such railway company or corporation, or the assignee or lessee thereof, shall fail for thirty days after demand made therefor by the owner of such animal, or his agent or attorney, to pay such owner or his agent or attorney the full value of such animal if killed, or damages thereto if wounded, such owner may sue and recover from such railway company or corporation, or the assignee or lessee thereof, the full value of such animal or damages thereto, together with a reasonable attorney's fee for the prosecution of the suit, and all costs in any court of competent jurisdiction in the county in which such animal was killed or wounded.

**66-297. Persons upon whom demand may be made.**

The demand mentioned in K.S.A. 66-296 may be made of any ticket agent or station agent of such railway company or corporation, or the assignee or lessee thereof.

**66-298. Attorney's fee.**

In all actions prosecuted under this act it shall be the duty of the court if tried by the court, or jury if tried by a jury, if the judgment or verdict be for the plaintiff, to find in addition to their general findings for plaintiff the amount, if anything, allowed for an attorney's fee in the case.

**66-299. Railroad enclosed with fence.**

This act shall not apply to any railway company or corporation, or the assignee or lessee thereof, whose road is enclosed with a good and lawful fence to prevent such animal from being on such road.

**66-301. Construction of farm crossings.**

Whenever any railroad, either steam or electric, shall run through any farm so as to divide it, such railroad at the request of the owner of such farm, shall construct, keep and maintain, a crossing either on, over or under such railroad track, at some convenient place, which crossing shall be so constructed as to permit ready and free crossing thereon, by animals, farm implements and vehicles.

**66-302. Gates at crossings.**

Through the fences on either side of the right-of-way of such railroad, at such crossing, such railroad shall construct, keep and maintain gates so as to permit the passage of animals, farm implements and vehicles.

**66-303. Action to compel construction; owner may construct and collect costs.**

If upon such request being made, such railroad shall fail, neglect or refuse to construct such crossing and gates, or to keep the same in repair, then the owner of such farm may, by appropriate action, compel such railroad to so construct, keep and maintain such crossing and gates, or such owner may construct or repair such crossing and gates, and then collect from such railroad the cost thereof.

**66-308. Construction of fences; hog-tight fence defined.**

(a) Any person, persons or corporations owning land by or through which any railroad or any electric interurban line has been or may be constructed, who has enclosed or may enclose the same or any part thereof, and adjacent to the line of such railroad or interurban line, with either a lawful fence or a hog-tight fence, may demand of such railroad or interurban company that it enclose its line next thereto with a



lawful fence or hog-tight fence corresponding in class of fence to that maintained by the owner, and maintain the same except that the following shall constitute a hog-tight fence for the purpose of this act: A woven-wire fence not less than 26 inches high with not less than seven cables and meshes not to exceed six inches in length. The bottom mesh shall not be more than three inches wide; the second not more than three and one half inches wide, the third not more than four inches wide, the fourth not more than four and one half inches wide, the fifth not more than five inches wide, and the sixth not more than six inches wide. The bottom wire of the woven-wire fence shall be placed not to exceed two inches from the surface of the ground. And in addition to the woven wire already prescribed there shall be not less than three barbed wires placed above the woven wire. The first barbed wire above the woven wire shall be placed four inches above the top of the woven-wire fence. The second barbed wire shall be placed eight inches above the first barbed wire, and the third barbed wire to be placed eight inches above the second barbed wire; in all, 48 inches. The posts shall be of ordinary size for fence purposes and set in the ground at least two feet deep and not to exceed 16 feet apart. The barbs on the barbed wire shall not exceed six inches apart, such wire to be of not less than No. 13 standard gauge or wires having not less than 950 pounds breaking strength.

(b) For purposes of this section, an electrically charged wire fence described in K.S.A. 29-109 shall not be deemed a lawful fence.

#### **66-309. Notice to railroad upon failure to build fence.**

Whenever a railroad corporation, or the lessee, person, company or corporation operating any railroad, shall neglect or refuse to build such fence as provided in this act, the owner or occupant of the lands adjoining such railroad, or over or through where the railroad track is or may be laid, may give notice in writing to such corporation, or the lessee thereof, or the persons operating such railroad, to build such fence within sixty days, except during the months of December and January, after the service of such notice. Such notice shall describe the lands on which said fence is required to be built. Service of such notice may be made by delivering the same to any ticket or station agent of said corporation or the person, corporation or lessees operating such railroad.

#### **66-310. Landowner may build; recovery of value, interest and attorney's fee.**

If the party so notified shall refuse to build such fence in accordance with the provisions of this act, the owner or occupant of the land required to be fenced shall have the right to enter upon the land and track of said railroad company, and may build such fence; and the person so building such fence shall be entitled to the value thereof from such corporation or party operating or using such railroad, to be recovered with interest at the rate of one percent per month from the time such fence was built, together with a reasonable attorney's fee for the prosecution of any suit to recover the same.

#### **66-311. Making fence hog-tight.**

Any person owning or occupying land adjoining any railroad track of any railroad company shall have the right to attach to the fence constructed along the track or right-of-way of said railroad company any wires, boards or other materials so as to make the fence of said railroad company sufficient to prevent any hogs or pigs from getting upon the track of said railroad company.

