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States' Fence Statutes: *Kentucky*



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Ky. Rev. Stat. Ann. §§ 256.010 to 256.990, Ky. Rev. Stat. Ann. §§ 259.110 to 259.990, §277.330

Current through legislation effective April 12, 2021 of the 2021 Regular Session and the Nov. 3, 2020 election.

256.010. Definitions.

(1) "Lawful fence" means:

- (a) A strong and sound fence, four (4) feet high, so close that cattle cannot creep through, made of rails, or plank, or wire and plank, or iron, or hedge, or stone or brick; or
- (b) A ditch three (3) feet deep and three (3) feet broad, with a hedge two (2) feet high or a rail, plank, stone, smooth or barbed wire or brick fence two and one-half (2 1/2) feet high on the margin of the ditch, if the fence is so close that cattle cannot creep through; or
- (c) A well-constructed gate four (4) feet high so close that cattle cannot creep through, made of wood slats and wood framing or made of metal slats and framing either or both, forming a part of a fence otherwise lawful and entering upon a public road or highway or entering upon a private or public road or passway over the land of another adjacent owner; or
- (d) A cattle guard not less than eight (8) feet wide and not less than six (6) feet across with a pit not less than two (2) feet six (6) inches deep with iron pipes not less than two (2) nor more than six (6) inches in diameter, iron rails or wooden rails not less than two (2) nor more than four (4) inches across the surface exposed to traffic, and not less than five (5) inches apart, constituting a part of a fence otherwise lawful and entering upon a public road or highway or entering upon a private or public road or passway over the land of another adjacent landowner. Provided, however, the definition or description of a lawful fence or cattle guard in this paragraph (d) shall not apply to the term "cattle guard" as used in KRS 256.150.

(2) As used in this chapter, unless the context requires otherwise, "railroad" means the person who owns a right of way and owns or controls a railroad in this state that has been in operation for five (5) years.

256.020. Agreement for division fence; effect.

(1) Persons owning adjoining lands may agree to erect division fences between them and keep them in repair.



(2) If the agreement is reduced to writing, signed by the parties to it and acknowledged or proven, as deeds are required to be, it may be entered of record in the office of the county clerk of the county in which the land is situated, and shall have the same effect as a deed.

256.030. Adjoining owners to maintain fence; liability for trespassing cattle.

(1) When a division fence exists by agreement, acquiescence or compulsion, under this section or KRS 256.042, each party shall keep a lawful fence on his portion of the line. If one party fails to do so, the person failing shall be liable for all the damages to trees, grass, grain, crops, cattle or land the other party may sustain from the trespassing of cattle over the division fence at the point at which the party failing was bound to keep in repair.

(2) Either party to a division fence shall be liable for damages in case his cattle break through or pass over the fence at any point the other party is bound to keep in repair, only if the fence through which the cattle pass is a lawful fence.

(3) The party damaged shall have a lien on the cattle, as provided in KRS 256.080.

256.042. Action to require construction or replacement of a farm boundary line fence; apportionment of cost; enforcement of lien.

(1) The District Court shall have exclusive jurisdiction over all actions arising under this section or KRS 256.030.

(2) The owner of a parcel of real estate used for agricultural purposes may file an action in the District Court to require the initial construction or replacement of a boundary line fence or any portion thereof on the boundary between any parcel of real estate adjacent to the real estate of the plaintiff.

(3) The complaint shall describe the boundary line which is the subject of the action; the use of or the use to which the plaintiff's real estate is to be put; the specific reason that an initial or replacement fence is needed; the type of fence and fence construction that is proposed; whether an existing fence is to be removed; whether vegetation or growth must be removed in order to carry out the construction; the method proposed for removal; and the proposed disposition of the material that is removed.

(4) The court shall determine if the existing fence is adequate or if no fence exists. If the court finds the existing fence is inadequate or no fence exists, the court shall order the construction of a new fence and shall find and order:

(a) The type of fence to be constructed based upon the use or proposed use of the real estate. Any permanent type of fence construction commonly accepted in the area may be ordered;

(b) If necessary, the removal of vegetation and growth from the boundary line or fence row in order to efficiently construct the fence, and the method of removal, including mechanical means;

(c) Disposition or piling of the removed material;

(d) Apportionment of the cost of the removal of the existing fence, the removal of growth and vegetation and the cost of the construction of the



new fence, between the landowners, which shall be one-half (1/2) to each landowner unless the court determines such apportionment to be unconscionable.

(5) The court shall grant the defendant a reasonable time after its order in which to comply with its judgment by constructing a fence in accordance with its order on the defendant's portion of the common boundary. If the defendant fails to comply, the court shall authorize the plaintiff to carry out the terms of its order and the defendant's portion of the cost pursuant to the order shall constitute a lien on the defendant's property and shall bear interest at the legal rate.

(6) In all instances for purposes of maintenance of or construction of a fence on a common boundary line, the boundary line shall be divided between the parties and each landowner's portion shall be determined by assigning to him that portion of the boundary line which is on the right when facing the boundary from that landowner's real estate.

(7) The lien provided herein may be enforced in the Circuit Court according to law if the defendant fails to satisfy the costs of the fence within sixty (60) days of the District Court's order.

256.045. Short title.

KRS 256.030 and 256.042 shall be cited as the Kentucky Boundary Line Fence Act.

256.080. Liability when cattle enter through lawful fence; lien on cattle.

If any livestock enter into any land over or through a lawful fence, the owner or manager of the livestock shall for the first trespass be liable to the owner or occupant of that land for damages to his or her trees, grass, grain, crops, livestock or land as he or she may have sustained by the entry of the livestock, and for every subsequent trespass by the livestock of the same owner, double damages. After giving the owner or manager of the livestock at least five (5) days' notice, in writing, of the fact of two (2) previous breaches into the same enclosure by the livestock of the same owner, the owner or occupant of the enclosure shall have a lien on the livestock to indemnify him or her on account of any damages sustained by the third or any subsequent trespasses of those livestock and may enforce his or her lien by action as in cases of a mortgage lien.

256.090. Liability when cattle break owner's fence and enter uninclosed land.

If the owner or bailee of livestock has a lawful fence, and his or her livestock break through or over the fence and upon the premises of another which are not enclosed by a lawful fence, he or she shall not be responsible for the first trespass, but shall be liable for all subsequent trespasses.

256.100. Railroad treated as other landowners, in respect to fences.

A railroad shall be on equal terms and obligations with other landowners owning adjoining lands in this state.

256.110. Railroad and adjoining owner to maintain fence.

Except as otherwise provided in KRS 256.130, 256.160 and 256.170, every railroad shall construct and maintain a good lawful fence on one-half (1/2) of the distance of the division line between its right of way and the adjoining lands, and every owner of lands



adjoining the right of way of the railroad shall construct and maintain a good lawful fence on one-half (1/2) of the distance of the division between those lands and the right of way.

256.120. Railroad or adjoining owner may require other to erect portion of fence.

(1) When a railroad or the owner of lands adjoining the railroad right of way constructs a good lawful fence on the division line between the right-of-way and the lands adjoining the right of way for one-half (1/2) the length of the line, and the other party has not constructed the fence on the line for half the length, nor has paid a sum sufficient to construct the fence, or any sum by agreement in lieu of such a sum, the party who has constructed the fence shall, in writing, notify the party in default of the length of the division line between them, and that the party serving the notice has constructed a good lawful fence on the division line for one-half (1/2) the length.

(2) The party on whom the notice is served shall construct a good lawful fence on the other half of the distance of the division line, within four (4) months after the date of receiving the notice. Where the railroad is in default, notice may be served on the nearest station agent of the railroad.

(3) No person upon whom the notice has been served shall fail to construct the fence within the time prescribed.

256.130. Railroad to erect entire fence if given right of way.

When the owner of any lands, or any immediate or remote grantor or vendor of the owner, has given to a railroad, after February 25, 1893, a right of way through the lands free of charge, the entire fencing on the division lines between such lands and the right of way of the railroad shall be done by and at the cost of the railroad.

256.140. Owner who erected entire fence may remove half.

Any landowner who has already erected a lawful fence along the whole distance of the division line between his land and the right-of-way of a railroad may, in the absence of any agreement to the contrary, move one-half (1/2) of the fence, after giving three (3) months' notice to the railroad of his intention to move one-half (1/2) of the fence. Notice shall be served on the nearest station agent. The landowner shall not, in removing such part of his fence, cause the railroad to erect watergaps or erect fences at points where the grade of the roadbed is of such character as may render fencing unnecessary.

256.150. Railroad to erect cattle guards.

All railroads shall erect and maintain cattle guards at all terminal points of fences constructed along their lines, except at points where the lines are not required to be fenced on both sides, and at public crossings. Where there is a private passway across the railroad, the landowner for whose benefit the passway is kept open shall bear one-half (1/2) of the expense of cattle guards and gates, and shall erect the gates. The railroad shall erect the cattle guards.

256.160. Exemptions from KRS 256.100 to 256.170.

KRS 256.100 to 256.170 shall not:

(1) Apply in any case where any railroad has furnished the material to construct a fence or condemned its right of way, and paid the owner or his vendor damages, in the estimation of which the cost of fencing was taken into consideration;



- (2) Apply to land where the owner or his vendor has received compensation for fencing;
- (3) Require the railroad to build any fence along the line through any town or city or across any public or private passway; nor
- (4) Require the railroad to construct fences through unimproved lands until the owner of those lands has previously inclosed those lands on three (3) sides with sufficient fences or unless that land is so inclosed with fences and a river, creek, bluff or other natural barrier as to prevent the egress of stock.

256.170. Parallel railroads need not have fence between them.

Where the lands or rights of way of two (2) railroads adjoin and run parallel with no tillable or grazing lands between their rights of way, the railroad need not build any fence along its side next to the other railroad, unless the other railroad has first built its half along the division line.

256.990. Penalties.

Any person who violates subsection (3) of KRS 256.120 shall be fined one dollar (\$1) for each day, after the expiration of the time in which the fence should have been constructed, until the fence is constructed.

259.105. Definitions for chapter.

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Local government" means any city, county, urban-county, charter county, consolidated local government, or unified local government;
- (2) "Stray cattle" means any animal of the bovine, ovine, porcine, or caprine species for which the owner is no longer claiming ownership or for which the owner cannot be determined, but not including any member of the equine species; and
- (3) "Stray equine" means any animal of the equine species for which the owner is no longer claiming ownership or for which the owner cannot be determined.

259.110. Stray cattle may be taken up; by whom; when.

A stray equine may be taken up and posted by any person or entity if it is found running at large outside of its enclosure or if it can be determined from the circumstances that its owner has abandoned it. Stray cattle may be taken up and posted by any freeholder by legal or equitable title or by a tenant of an unexpired lease for not less than three (3) years when found on his place of residence.

259.120. Method of posting strays; fees.

Stray equines and stray cattle shall be taken up and posted in the following manner:

- (1)
 - (a) Documentation of stray equines shall be taken before a county judge/executive of the district, who shall administer to the taker-up an oath, in substance, that the equine was taken up by him as a stray and that he has not defaced or altered the marks, brands, or other identifiers, including but not limited to microchips or freeze brands, of the equine.



(b) Documentation of stray cattle shall be taken before a county judge/executive of the district, who shall administer to the taker-up an oath, in substance that the cattle were taken by him as strays on his premises within the preceding ten (10) days and that he has not defaced or altered the marks or brands of the cattle.

(c) Duties of the county judge/executive pertaining to stray equines shall be to:

1. Contract with a licensed veterinarian, who shall document the stray equine's breed, color, sex, marks, brands, scars, and other distinguishing features, perform a microchip scan, and identify the existence of lip tattoos, freeze brands, or microchips;
2. Record the veterinarian's findings, the name and residence of the taker-up, and the location of the stray equine in a book to be kept by him for that purpose;
3. Maintain documentation in electronic and paper format; and
4. Send a copy of the documentation of the stray equine to the Office of the State Veterinarian, who shall post notification on the Office of the State Veterinarian's Web site. The Office of the State Veterinarian shall post one (1) photograph of the stray equine's front view, including its head and feet, and one (1) photograph of the stray equine's side view from muzzle to tail;

(2) The county judge/executive shall give to the taker-up a copy of the documentation for the record and immediately deliver to the county clerk a certified copy of the same record;

(3) The clerk shall immediately record the stray certificate of the county judge/executive as provided by the taker-up in a book to be kept by him for that purpose;

(4) The taker-up shall immediately post a copy of the county judge/executive's certificate in the sheriff's office with jurisdiction over the area where the stray cattle or stray equine was taken up after he has posted the stray. Hold time for stray equines shall begin after all documentation has been properly filed and posted by the county judge/executive and taker-up; and

(5)

(a) If ownership is found from identifiers of the stray equine such as lip tattoos, freeze brands, or microchips, efforts shall be made by the county/judge executive or his designee to ascertain the owner by investigatory due diligence in locating the owner and providing notice before holding time expires. The owner/claimants of the stray equine shall reimburse the county judge/executive for the cost of the veterinarian's assessment per the contracted agreement.

(b) The taker-up shall be paid by the owner of the stray, if and when he claims the stray or its value, the actual itemized costs incurred by the taker-up for keeping the stray equine or cattle. In the event that a dispute arises relating to ownership, adverse claimants, third-party claims or liens, value of the equine, or actual itemized expenses incurred, the parties may file an action in a court of competent jurisdiction of the county in which the stray equine was taken



up. The filing of an action under this paragraph shall toll holding time as to vesting of ownership interests.

(c) The taker-up may have the stray equine sterilized only after the fifteen (15) day holding period has expired and ownership vested pursuant to KRS 259.130, and any pending court cases pertaining to the stray equine have been resolved.

259.130. Property vests in taker-up, when.

The absolute ownership of a stray equine shall vest in the taker-up at the expiration of fifteen (15) days after the county judge/executive has received the evidence of the required documentation, administered the oath to the taker-up, and the county judge/executive and taker-up have filed and posted the required documentation pursuant to KRS 259.120. The absolute ownership of stray cattle shall vest in the taker-up after the expiration of twelve (12) months from the day on which the cattle have been posted.

259.140. Taker-up to pay owner value of stray, when.

(1) If cattle taken up under KRS 259.120 are sold for a profit before absolute ownership of the stray cattle has vested in the taker-up as provided by KRS 259.130, then the taker-up shall pay to the owner upon demand and proof of ownership the amount received for the stray cattle less the amount owed by the owner to the taker-up under KRS 259.120. The owner shall not be entitled to any payment from the taker-up under this section if demand for payment is made more than fifteen (15) days after the posting of the stray equine and vesting of ownership pursuant to KRS 259.130 or more than twelve (12) months after the posting of the stray cattle under KRS 259.120.

(2) County judges/executive or participating state agency, county clerks, and all other local government employees acting in good faith in the discharge of the duties imposed by KRS 259.105, 259.110, 259.120, 259.130, and this section shall be immune from criminal and civil liability for any act related to the taking up and posting of stray equines or stray cattle.

259.200. Trespassing on park, camp grounds or floodwalls prohibited.

No person shall permit any cattle to run or trespass upon any state or national parks, encampment grounds, scout camps, grounds dedicated to religious, educational or recreational purposes or floodwalls erected at public expense.

259.210. Cattle not to run at large; damages; lien, impounding; powers of cities.

(1) No person shall permit any cattle owned by him or under his control or in his custody, to run at large.

(2) If any damage is committed by cattle permitted to run at large, the owner of the cattle shall be liable for all damages, whether the place where the damages occurred is inclosed by lawful fence or not. The person damaged shall have a lien on the cattle committing the damage for the amount of the damage and cost of suit.

(3) The sheriff or any other peace officer shall impound any cattle found running at large in the county, and the owner or bailee of the cattle shall pay to the officer impounding, for each head impounded, one dollar (\$1) and the cost of feeding and taking care of the cattle, but the cost of impounding any number of cattle shall not exceed three dollars (\$3) and the cost of feeding. The sheriff or any other peace officer



shall have a lien on the cattle impounded for his fees and expenses, which he may enforce in the same manner in which mortgage liens are enforced.

(4) Nothing in this section shall be construed as limiting any powers possessed by cities to regulate cattle running at large.

259.990. Penalties.

(1) Any person who violates KRS 259.200 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100), and each head of cattle trespassing shall constitute a separate offense.

(2) Any person who violates KRS 259.210 shall be fined not less than five dollars (\$5) nor more than twenty-five dollars (\$25).

277.330. Liability of railroads for killing or injuring cattle; how damages divided.

If cattle are killed or injured by the locomotive or cars of any railroad company on a track adjoining the lands belonging to or occupied by the owner of the cattle, and the owner has not received compensation for fencing his land along the railroad right-of-way, the loss shall be divided between the railroad company and the owner of the cattle, unless the cattle were killed or injured by the negligence of the agents or servants of the railroad company, in which case the company shall pay full damages.

