An Agricultural Law Research Project

States’ Fence Laws

State of Kentucky

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Fdences

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 cattle enter into any land over or through a lawful fence, the owner or manager of the cattle shall for the first trespass be liable to the owner or occupant of that land for such damages to his trees, grass, grain, crops, cattle or land as he may have sustained by the entry of the cattle, and for every subsequent trespass by the cattle of the same owner, double damages. After giving the owner or manager of the cattle at least five (5) days' notice, in writing, of the fact of two (2) previous breaches into the same inclosure by the cattle of the same owner, the owner or occupant of the inclosure shall have a lien on the cattle to indemnify him on account of any damages sustained by the third or any subsequent trespasses of those cattle and may enforce his 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 cattle has a lawful fence, and his cattle break through or over his fence and upon the premises of another which are not inclosed by a lawful fence, he 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.

Strays and Animals Running at Large

259.110 Stray cattle may be taken up; by whom; when
(1) 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.

(2) Stray horses, mules, jacks or jennets may be posted at any time of the year. Other stray cattle shall not be taken up or posted between April 1 and November 1 unless they are taken within the inclosure of the taker-up, after they have broken into it.

259.120 Method of posting strays; fees

Strays shall be taken up and posted in the following manner:

(1) If a stray over two (2) years old is taken up, it shall be taken before a justice of the peace of the district, who shall administer to the taker-up an oath, in substance, that the animal was taken up by him as a stray on his premises within the preceding ten (10) days and that he has not defaced or altered the marks or brands of the animal. The justice shall then value the stray himself and take a correct description of the flesh-marks, age and brands of the same, all of which, together with the name and residence of the taker-up, he shall record in a book to be kept by him for that purpose. He shall give to the taker-up a copy of the record and deliver to the county clerk a certified copy of the same record within thirty (30) days, for the whole of which service he shall be paid by the taker-up fifty cents ($0.50).

(2) The clerk shall immediately record the stray certificate of the justice in a book to be kept by him for that purpose, and he shall cause a true copy of the certificate to be posted at the door of the courthouse at the next two (2) succeeding court days of his county. His fee for this service shall be seventy-five cents ($0.75) to be paid by the taker-up.

(3) The taker-up shall, within one (1) month after he has posted the stray, cause to be published pursuant to KRS Chapter 424, a copy of the justice's certificate.

(4) If the stray is under two (2) years old the justice shall, in addition to the oath required by subsection (1), take, on the oath of the taker-up, a description of the stray and also the oath of some honest housekeeper of the value of the stray, and proceed as directed by subsection (1) when the stray is over two (2) years old.

(5) The taker-up shall be paid by the owner of the stray, if and when he claims the stray or its value, the fees paid the justice and clerk, the cost of advertising and also a reasonable sum for keeping the stray, where the animal has not been used. The owner shall also pay the taker-up a fee of one dollar ($1) for each horse, mule, jack or jennet, and twenty-five cents ($0.25) for any other stray posted.

259.130 Property vests in taker-up, when

The absolute ownership of a stray horse, mule, jack or jennet shall vest in the taker-up at the expiration of two (2) years after the justice has received the evidence of the valuation and administered the oath to the taker-up. The absolute ownership of other 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

The taker-up of any stray cattle shall pay to the owner the valuation of the stray, if it is a horse, jack, jennet or mule, upon proof of his right to payment, at any time within three (3) years from the day the right of property in the stray vests in the taker-up. The valuation of all other stray cattle shall be paid in the same manner, upon proof of ownership, at any time within one (1) year after the right of property is vested in the taker-up. If the stray dies or escapes from the possession of the taker-up before the owner claims the same, he need not pay the valuation or account for the stray. The proof of death or escape shall rest upon the taker-up.

259.150 Altering marks, removal and destruction of strays prohibited

No taker-up of any cattle shall alter the marks or brands of, trade, sell, remove from the state or destroy any stray horse, mule, jack or jennet, taken up by him, within two (2) years after posting, or any other cattle taken up by him, within twelve (12) months after posting.

259.160 Horse, jack or bull running at large may be taken up; notice when owner known

If any ungelded horse or jack over one (1) year old, or any bull known to be mischievous and breachy, is permitted by its owner to run at large outside of his inclosure, it may be taken up and confined by any person. If the owner of the animal is known, notice in writing of the confinement shall be given him, and he shall forthwith take the animal into his possession, and pay two dollars ($2) to the taker-up. The owner shall be allowed one (1) day for each twenty-five (25) miles he may have to travel after notice has been served on him.

259.170 Animal taken up to be gelded

If the animal taken up under KRS 259.160 is not called for within the time allowed, the taker-up shall, at the expiration of such time, take it before a justice of the peace within the district where he resides. Upon proof of the facts, the justice of the peace shall order the animal to be gelded by someone skilled in the art. The fee for gelding shall be one dollar ($1).

259.180 Owner of animal unknown; notice; gelding

When the owner of an animal taken up under KRS 259.160 is unknown to the taker-up, and the taker-up swears that the owner is unknown to him, he shall take the animal before a justice of the peace within his district, who shall cause it to be appraised and dealt with as a stray, except that a notice in writing of the description of the animal and residence of the taker-up, shall be posted at the door of the courthouse and at one or more public places in the county. If the animal is not called for by the owner and proved to be his property within two (2) weeks, the taker-up shall again take it before the justice of the peace, who shall cause it to be gelded, as provided in KRS 259.170.

259.190 Fees of taker-up; property vests in taker-up, when; recovery by owner
(1) The taker-up, besides the fee for gelding, shall be allowed two dollars ($2) for his trouble, twenty cents ($0.20) per day for each day he keeps the animal, and all reasonable charges paid by him, to be paid by the owner. The taker-up may retain the possession of, and shall have a lien on, the animal until the fees are paid. If the animal dies or escapes, the owner shall nevertheless be liable for the expenses.

(2) If the animal is not proven and taken up by the owner within one (1) year he shall become the absolute property of the taker-up.

(3) The owner may at any time within three (3) years, by proving his property, recover the valuation of the animal.

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 any of the provisions of KRS 259.110 to 259.140 shall be fined ten dollars ($10).

(2) Any person who violates KRS 259.150 shall be fined fifty dollars ($50).
(3) 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.

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