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States' Fence Statutes: *Massachusetts*



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States' Fence Statutes: Massachusetts

Mass. Gen. Laws ch. 45, § 13; Mass. Gen. Laws ch. 49, §§ 1 to 41; Mass. Gen. Laws ch. 81, §§ 22; Mass. Gen. Laws ch. 86, § 5; Mass. Gen. Laws ch. 134, §§ 2 to 7; Mass. Gen. Laws ch. 160, §§ 90 to 94; Mass. Gen. Laws ch. 247, § 1;

Current through Chapter 8 of the 2021 1st Annual Session.

CHAPTER 45. PUBLIC PARKS, PLAYGROUNDS AND THE PUBLIC DOMAIN.

§ 13. Trespassing in parks; destruction of park property; penalty.

Any person who wilfully or maliciously drives cattle, horses or other animals, or any vehicle, on or across such grounds or ways, or destroys or removes any fence or railing on such grounds or ways, or plays games thereon, or otherwise interferes with or injures the work of the corporation having the care of the property so injured, shall be punished by a fine of not more than twenty dollars, which shall be paid over to such corporation.

CHAPTER 49. FENCES, FENCE VIEWERS, POUNDS AND FIELD DRIVERS.

§ 1. Fence viewers; appointment; tenure.

The mayor of each city, subject to confirmation by the city council, and the selectmen of each town shall annually appoint two or more fence viewers, to hold office for one year and until their successors are qualified.

§ 2. Definition of fences.

Fences four feet high, in good repair, constructed of rails, timber, boards, iron or stone, and brooks, rivers, ponds, creeks, ditches and hedges, or other things which the fence viewers consider equivalent thereto, shall be deemed legal and sufficient fences.

§ 3. Maintenance of partition fences.

The occupants of adjoining lands enclosed with fences shall, so long as both of them improve the same, maintain partition fences in equal shares between their enclosures, unless they otherwise agree.

§ 4. Failure to maintain partition fence; proceedings by adjoining occupant.

If a person refuses or neglects to repair or rebuild the part of a partition fence which under this chapter he is required to maintain, any person aggrieved may complain to the fence viewers, who, after notice to each party, shall view the fence; and if they determine that it is insufficient and that a partition fence is required, they shall so state in writing to the delinquent occupant, and direct him to repair or rebuild his part within such time as the fence viewers may determine; and if the fence is not so repaired or rebuilt, the complainant, after having repaired or rebuilt his part of said fence, may repair or rebuild the part of such occupant.

§ 5. Remedy for repair of deficient fence.



If a deficient fence which has been built up or repaired by a complainant is, after due notice to each party, adjudged sufficient by the fence viewers, and the value of the part of the delinquent occupant, together with the fees of the fence viewers, has been ascertained by a certificate under their hands, the complainant may demand either of the owner or of the occupant of the land where the fence was deficient double the amount so ascertained; and upon the neglect or refusal to pay the same for one month after demand, he may recover the same, with interest at one per cent a month, in an action of contract.

§ 6. Disputes regarding repairs; arbitration.

When a dispute arises concerning the part of a partition fence which under this chapter each party is required to build or maintain, either party may apply to the fence viewers, who, after notice to each party and a hearing, may in writing assign to each his share thereof, and may direct the time within which each party shall erect or repair his share; which assignment, being recorded in the office of the city or town clerk upon the payment by the party so applying of the fee provided by clause (33) of section thirty-four of chapter two hundred and sixty-two, shall be binding upon the parties and upon the succeeding occupants of the land.

§ 7. Remedy for repair of deficient fence assigned by fence viewers.

If a person refuses or neglects to erect and maintain the part of a fence assigned to him by the fence viewers, it may be erected and maintained by the adjoining occupant, and if adjudged sufficient by the fence viewers, he shall be entitled to double the value thereof, which shall be ascertained and recovered in the manner aforesaid.

§ 8. Remedy for repairing more than just share of partition fence.

If a partition fence is required under this chapter between the lands of adjoining occupants, and either of them has, before complaint made, voluntarily erected the whole fence or more than his just share thereof, or has otherwise become proprietor thereof, the fence viewers may order the other occupant to pay the value of so much thereof as may be assigned to him to repair or maintain, to be ascertained and recovered as provided in this chapter.

§ 9. Construction and maintenance of fences between lands divided by a river.

If lands of different persons, required under this chapter to be fenced, are divided by a river, brook, pond or creek, and one of the occupants refuses or neglects to join in making a partition fence, or they disagree respecting the same, the fence viewers shall, upon application, forthwith view such river, brook, pond or creek; and if they determine that it is not sufficient as a fence, that it is impracticable to fence on the true boundary line without unreasonable expense, and that a partition fence is required, they shall, after notice to the parties, determine how or on which side the fence shall be set up and maintained, or whether partly on the one side and partly on the other, as to them may appear just, and shall reduce their determination to writing; and if either party refuses or neglects to make and maintain his part of the fence according to such determination, it may be made and maintained as before provided, and the delinquent party shall be subject to the same costs and charges, and they shall be recovered in like manner.

§ 10. Fences on lands owned in severalty and occupied in common; construction.

If land belonging to two persons in severalty has been occupied in common without a partition fence, and one of the occupants desires to occupy his part in severalty, and both occupants are in possession of beasts which would be restrained by the erection of a



fence dividing the parts of each occupant, and the other occupant refuses or neglects on demand to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, the party desiring it may have the same divided and assigned by the fence viewers in the manner provided in this chapter; and the fence viewers may in writing assign a reasonable time, having regard to the season, for making the fence; and if the occupant complained of does not make his part of the fence within the time so assigned, the other party may, after having made up his part of the fence, make up the part of such occupant, and recover therefor double the sum total of the expense thereof and fees, as provided in section five.

§ 11. Maintenance of fences surrounding land laying common.

If a division of fence between the owners of improved land has been made either by fence viewers or under an agreement in writing between the parties which has been recorded in the office of the clerk of the town, the several occupants of such land and their heirs and assigns shall erect and maintain said fences agreeably to such division; but if a person lays his land common and determines not to improve any part adjoining the fence so divided, and gives six months' notice of his determination to all the occupants of adjoining land, he shall not be required to keep up or maintain said fence during the time that his land lies common and unimproved.

§ 12. Purchase of rights in fence.

If one person ceases to improve his land or lays open his enclosure, he shall not take away any part of the partition fence belonging to him and adjoining the next enclosure if the occupant or owner pays the reasonable value thereof, as determined in writing by the fence viewers.

§ 13. Enclosing of formerly unenclosed land; liability of owner; exception.

If unenclosed land is afterward enclosed or used for depasturing, the occupant or owner shall pay for one half of each partition fence standing upon the line between it and the enclosed land of any other occupant or owner, the value thereof, as determined in writing by the fence viewers; and if thereupon such occupant or owner neglects or refuses, for thirty days after demand, to pay one half of the value, the proprietor thereof may maintain an action of contract therefor and for the costs of ascertaining the same; but the occupant or owner of unenclosed land on the island of Nantucket used only for depasturing shall not be subject to this section.

§ 14. Boundary disputes.

If the division line between lands of respective occupants is in dispute or unknown, the fence viewers may designate a line on which the fence shall be built, and may employ a surveyor therefor; and such line shall, for the purpose of maintaining a fence, be deemed the division line between such lands until it is determined that the true line is in another place, and until so determined all laws relative to the erection, maintenance and protection of fences shall be applicable to the fence erected or to be erected on such line.

§ 15. Rebuilding of fence on true boundary; duties of adjoining owners.

If it is determined that the true division line is in another place, each occupant shall remove his part of the fence to, and rebuild the same on such line; and in case of neglect or refusal by either to remove and rebuild his share thereof, the other may apply to the fence viewers, who shall view the premises and assign a time within which the fence shall be removed and rebuilt, and shall give the delinquent party notice thereof; and if such party does not



remove and rebuild the fence within the time so assigned, the other party may remove and rebuild the same and recover double the expense thereof, with the fees of the fence viewers, to be ascertained and recovered in the manner provided in section five.

§ 16. Fence viewers; jurisdiction where fence is on town boundary.

If the line upon which a partition fence is to be made or divided is a boundary line of a town or is partly in one and partly in another town, a fence viewer shall be taken from each place.

§ 17. Water fences.

A water fence, or fence running into the water, shall, unless otherwise agreed by the parties, be built by them in equal shares; and they shall have like remedies as in case of partition fences.

§ 18. Fence viewers; powers.

Fence viewers, when called upon to act under any section of this chapter, may determine whether a partition fence is required.

§ 19. Penalty for misfeasance.

A fence viewer who, when requested, unreasonably neglects to perform any duty required of him in this chapter shall forfeit five dollars to be recovered in tort to the use of the town, or on complaint to the use of the commonwealth, and shall also be liable for all damages to the party injured.

§ 20. Fees.

Each fence viewer shall be paid at the rate of five dollars a day for the time during which he is employed, but his fee for services in any one case shall not be less than one dollar. Such payment shall be made by all or by such of the parties in dispute, and in such proportions, as shall be determined by a certificate in writing under the hands of the fence viewers acting in each case. If any person required to pay the whole or any portion of said fees neglects to pay the fence viewers within thirty days after the certificate has been delivered, they may recover in tort double the amount of the fees due from such delinquent person.

§ 21. Definition; remedy of injured occupant.

A fence or other structure in the nature of a fence which unnecessarily exceeds six feet in height and is maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property shall be deemed a private nuisance. Any such owner or occupant injured in the comfort or enjoyment of his estate thereby may have an action of tort for damages under chapter two hundred and forty-three.

§ 41. Rights of owner in distress proceedings.

The defendant in an action for rescuing beasts distrained or impounded shall not be allowed to allege or give in evidence the insufficiency of the fences or any other fact or circumstance to show that the distress or impounding was illegal, but if there is such ground of objections to the proceedings he may avail himself thereof in an action of replevin.

CHAPTER 81. STATE HIGHWAYS.

§ 22. Prescriptive rights of adjoining owners.

No length of possession, or occupancy of land within the limits of a state highway by an



owner or occupant of adjoining land shall give him any title thereto, and any fences, buildings or other objects encroaching upon a state highway shall, upon written notice by the department, be removed within fourteen days by the owner or occupant of adjoining land, and if not so removed, the department may either remove the same to such adjoining land or such encroaching objects, other than a building used for residential purposes, may be removed by the department forces and shall be placed in the nearest maintenance area of the department. Notice by certified mail, return receipt requested shall be given to the owner stating where such encroaching object is located and further stating that if not claimed within three weeks said object may be destroyed.

CHAPTER 86. BOUNDARIES OF HIGHWAYS AND OTHER PUBLIC PLACES, AND ENCROACHMENTS THEREON.

§ 5. Removal of gates, rails, bars or fences upon or across ways.

Any person may remove gates, rails, bars or fences which are upon or across a public or private way legally laid out, unless they have been placed there to prevent the spread of disease dangerous to the public health, or unless they have been erected or continued by the license of the county commissioners or of the selectmen or road commissioners or of the person for whose use such private way was laid out. A person aggrieved by such removal may apply to the county commissioners, selectmen or road commissioners, respectively, and if upon examination it appears that such gates, rails, bars or fences were erected or continued by such license, they shall order them replaced.

CHAPTER 134. LOST GOODS AND STRAY BEASTS.

§ 2. Stray beasts; report of finding.

Except as otherwise provided in chapter one hundred and thirty-three, any person who takes up a stray beast shall report, post or advertise the finding thereof, in the manner provided in the preceding section, giving a description of the color and the natural and artificial marks of such beast; otherwise he shall not be entitled to compensation for any expenses which he may incur relative thereto.

§ 3. Restitution of property.

If, within three months after the finding of stray beasts, or within one year after the finding of lost money or goods, the owner appears and, except as otherwise provided in section two, pays all reasonable expenses incurred by the finder in keeping such goods or beasts and in complying with this chapter, he shall have restitution of the money, goods or beasts.

§ 5. Auction of stray beasts; notice.

If the owner of stray beasts does not appear within three months after the finding thereof and prove title thereto, the finder may sell them by public auction, first giving notice of such sale, at least four days before the time of sale, in two public places in the town where the beasts were found.

§ 6. Rights of owner and finder of stray beasts.

If the owner of stray beasts appears within one year after the finding thereof, and proves title thereto, he shall, if they have not been sold under the preceding section, have restitution thereof upon payment, except as provided in section two, of all reasonable expenses incurred by the finder in keeping such beasts and in complying with this chapter; but if they have



been sold he shall be entitled to receive the proceeds of the sale after deducting the expenses aforesaid. If no such owner appears within said year the beasts, or the proceeds, shall enure to the finder, provided he has complied with this chapter.

§ 7. Taking away stray beasts without paying lawful charges.

Any person who takes away a beast taken up as a stray, without paying all lawful charges in relation thereto, shall forfeit to the finder double the amount of such charges, but not more than the value of the beast at the time of such taking away.

CHAPTER 160. RAILROADS.

§ 90. Fencing of railroad property.

After a railroad corporation has taken land in the manner hereinbefore authorized, it shall, before constructing the railroad, and, upon request of the owner or occupant, fence it.

§ 93. Fences and gates along length of railroad.

Every railroad corporation shall erect and maintain suitable fences, with convenient bars, gates or openings therein, upon both sides of the entire length of its railroad, except at the crossings of a public way or in places where the convenient use of the railroad would be thereby obstructed, and except at places where, and so long as, it is specially exempted from so doing by the department. Such an exemption granted prior to August first, eighteen hundred and eighty-two shall not be revoked except upon new proceedings had under this section, notice of which shall be given to the corporation, and published once in each of three successive weeks in a newspaper published in each county where the land lies. The corporation shall also construct and maintain sufficient barriers, where necessary and practicable so to do, to prevent the entrance of cattle upon the railroad. A corporation which unreasonably neglects to comply with this and the following section shall, for every such neglect, forfeit not more than two hundred dollars for every month during which the neglect continues, and upon such neglect the supreme judicial court may restrain and prohibit it from crossing a public way, or from using any land until said sections are complied with.

§ 94. Recovery by railroad from person required to fence.

If a person other than a railroad corporation is required by law or contract to erect or maintain fences along a part of the line of the railroad, the corporation shall erect such fences or keep them in repair as provided in the preceding section, and may recover in contract the reasonable cost thereof from such person. If he is an owner of land adjoining such line, the corporation shall also have a lien upon said land for labor performed and furnished and all materials furnished and used by it in erecting and repairing such fences upon such land, and for the costs which may arise in enforcing it; and it shall be enforced in the manner provided for enforcing liens for labor in chapter two hundred and fifty-four.

CHAPTER 247. REPLEVIN.

§ 1. Distrained or impounded beasts.

A person whose beasts have been distrained or impounded in order to recover a penalty or forfeiture supposed to have been incurred by their going at large or to obtain satisfaction for damages alleged to have been done by them may cause them to be replevied.

