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States' Fence Statutes: *New Jersey*



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N.J. Stat. Ann. §§ 4:20-1 to 4:20-32, N.J. Stat. Ann. §§ 4:21-1 to 4:21-13, N.J. Stat. Ann. §§ 48:12- 46 to 48:12-48

Current with laws through L.2021, c. 62, 64-67 and J.R. No. 1.

Fencing and Relation Thereof to Damages by or to Animals.

Article 1. Lawful Fence.

4:20-1. Sufficiency of fences in general.

A fence shall be deemed lawful, subject to the provisions of section 4:20-2 of this title, if four feet and two inches high measuring from the level or surface of the earth, and close, strong and sufficient to prevent horses and cattle from going through or under it.

4:20-2. Sufficiency of partition fences.

A fence set in the line of partition between persons either of whom shall improve his adjoining lands shall, in addition to compliance with section 4:20-1 of this title, be so close, strong and sufficient as to prevent sheep from going through or under it, except that owners of adjoining lands lying upon streams or rivers subject to overflow, commonly known as lowland meadow, shall be exempt from fencing against sheep unless by mutual agreement.

4:20-3. Partition fences of barbed wire.

Fences between the lands of adjoining landowners constructed of barbed wire or wire on which barbs or points are strung or fastened shall not be deemed lawful fences unless their erection is consented to by the adjoining owner, and such fences are hereby prohibited without such consent.

4:20-4. Gates as part of partition fence.

Swinging gates erected as a part of a partition fence between adjoining lands shall be considered a lawful fence if they are four feet six inches high, and so close and strong as to prevent horses, cattle and sheep from going through or under them.

4:20-5. Sufficiency of ditches as fences in meadows.

Ditches and drains made in or through salt marshes and meadows for fencing and draining them, which are five feet wide and three feet deep, and ditches and drains in or through other meadows, which are nine feet wide at the surface of the meadow, four feet and a half wide at bottom, and three feet deep, and lie on a mud or miry bottom, shall be deemed lawful fences.

4:20-6. Sufficiency as fences of things equivalent thereto.



Brooks, rivers, ponds, creeks and hedges, or other matter or thing equivalent to a fence as provided in this article, may be adjudged lawful fences in the discretion of those who may be called upon as prescribed in this chapter to view such things.

Article 2. Partition Fences.

4:20-7. Duty to make and maintain portion of partition fence.

Where the lands of any 2 or more persons shall join each other and 1 or more of them are using said lands for the pasturage or keeping of animals, each of them so using said lands shall make or amend and maintain a just proportion of the partition fence between said lands except when all of said persons shall choose to let their adjoining lands lie vacant and open, but no such adjoining owner shall be required to make, amend or maintain any portion of any such partition fence, unless he is using his adjoining lands for said purposes.

4:20-8. Failure to make and maintain portion of partition fence.

When a person after due notice shall fail to make or amend and maintain his part or proportion of a partition fence as required by section 4:20-7 of this Title, the other person may make or amend and maintain the same wholly, in which event he shall be entitled to receive, from the person so failing, the entire expense thereof, if he is not using his adjoining lands for the pasturage or keeping of animals, or if he is so using his adjoining lands, he shall be entitled to receive 1/2 of the expenses thereof, if the other person is using his adjoining lands for said purposes, as appraised and certified in writing by 2 disinterested members of the township committee where the lands lie, together with the legal fees of such committee for their services as ascertained in writing. Upon nonpayment by the delinquent person of the sum so found and the fees certified to be due, the other person may recover such sums, with costs of suit, in a civil action in any court of competent jurisdiction.

4:20-9. Apportioning of partition fence for erection and maintenance.

The place where a partition fence is or shall be made, between adjoining lands both used for the pasturage or the keeping of animals, shall be equally divided, regard being had to the quantity of fence necessary and other conveniences of fencing and each party shall take an equal share of such fence to make or amend and maintain, so that it may be known which part thereof is his own.

When the parties cannot agree in making the division, then any 2 members of the township committee of the township where the lands lie or any 2 members of the board or body having control of the streets in any other municipality, who are disinterested, shall, upon application of either party and in the presence of the parties if they will attend, make such division. Such determination shall be delivered to each of the parties in writing and be binding upon them and the succeeding owners and tenants of the lands.

4:20-10. Specification of time for making partition fence.

When two of the township committee shall determine the parts or shares of any partition fence to be made under the provisions of this article, they shall specify in writing the time within which such fence shall be made by the parties, respectively, to whom such parts or shares have been assigned.

4:20-11. Placing partition fence where parties disagree.



To avoid the difficulty that may arise touching the placing of a partition fence when the parties cannot agree thereupon, the persons proposing to make the fence may apply to any two members of the township committee of the township where the lands lie or any two members of the board or body having control of the streets in any other municipality, who are disinterested, who, upon hearing the allegations and proofs of the parties shall fix, by writing under their hands to be delivered to each of the parties, the place where the fence shall be made. When the fence has been made in the place so fixed and one party has failed to make his just part or proportion thereof, the party making it may recover such part or proportion of the charges in the manner provided in section 4:20-8 of this title, although it may not happen to be exactly in the division line.

The fixing of the place for the fence as provided in this section shall not deprive either party of a lawful claim to a greater quantity of land and either party may maintain an action therefor as though such determination had never been made.

4:20-12. Placing and apportioning partition fence when line is private road or watercourse.

When lands belonging to or occupied by different persons and subject to be fenced, are bounded upon or divided from each other by a private road, or by any creek, brook, stream, pond or run of water which is not navigable for boats or flats and is not of itself a sufficient fence, and the owner or possessor of the land on 1 side, who is required by this article to make or amend and maintain a sufficient fence or to contribute to the making, amending and maintaining thereof, shall refuse to do so or to join with the owner or possessor of the land on the other side in making a partition fence on 1 side or the other, or cannot agree respecting the fence, then either of the owners or possessors may apply to any 2 of the township committee of the township where the lands lie, who are disinterested. If such committee on examination is of the opinion that the private road or creek, brook, stream, pond or run of water does not constitute a sufficient fence and that it is impracticable or inconvenient without unreasonable expense for the partition fence to be made in the middle or other part of the private road or water which is the true division line between the parties, such committee, in the presence of the parties, if they will attend, shall determine, fix and ascertain, as to it shall appear just and reasonable, how or on which side thereof the fence shall be set up and maintained, or whether partly on 1 side and partly on the other, and the part or share of the fence, if any, which each person shall make and maintain, and reduce its decision to writing delivering a part thereof to each party.

If either party shall fail to make and maintain his part or proportion of the fence as determined by the committee, the other party may make and maintain the same wholly in which event the other party shall be liable as provided in section 4:20-8 of this Title.

4:20-13. Placing and apportioning partition fence when line is township boundary.

When lands belonging to different persons are bounded on the division line between 2 townships, 1 person shall be taken from the township committee of each of the townships, to determine, as provided in sections 4:20-8, 4:20-11 and 4:20-12 of this Title, the place where a partition fence shall be set up and maintained, and the part or share thereof, if any, which each person shall make and maintain.

4:20-14. Failure of members of township committee to agree.



When two of the township committee, called as provided in this chapter to determine any matter in difference, cannot agree in their determination, they may call upon a disinterested freeholder of the neighborhood to join with them, and the determination of any two of them, made and certified in writing in the manner provided in this chapter, shall be binding and conclusive between the parties.

4:20-15. Failure of member of township committee to act; penalty.

A member of a township committee who upon due notice, and the request of any person interested to perform any of the duties assigned to him by this chapter, shall refuse or neglect forthwith to attend accordingly, shall forfeit and pay the sum of four dollars and costs to any person who shall sue therefor in an action at law within thirty days after such neglect or refusal.

4:20-16. Fees of township committee members.

A member of a township committee shall be allowed, for the time he is engaged in the performance of duties under this chapter, one dollar per day and fifty cents for a half day, to be paid by the person or persons employing him.

When such person or persons shall fail to pay the members of the committee their legal fees within thirty days after the service done, they may severally recover double the amount of such fees, with costs of suit, by action at law. Each one of the committee may be a witness for or against his companion in any such action.

4:20-17. Notice as prerequisite to removal of partition fence.

When a partition fence is made between 2 persons as directed in this chapter and either of them shall cease to use his adjoining lands for the pasturage or keeping of animals and shall desire to give up his improvement and leave the same open and common, he shall not take up or remove the fence without giving 1 year's notice in writing to the person in possession of the adjoining lands.

A person who shall remove such fence without giving the notice or before the expiration of the year, shall be liable to make good all damages sustained by the other person thereby, to be recovered, with costs of suit, in any court of competent jurisdiction.

4:20-18. Agreements respecting partition fences.

Nothing contained in this chapter shall render void a written agreement respecting the making or maintenance of partition fences.

4:20-19. Registration of agreements and certificates; fee.

The clerk of a township shall provide, at the expense of the township, a book for the purpose of registering written agreements of persons relative to a division of the fence or fences of their adjoining lands.

Such agreements and the certificates in writing of any two of the township committee who may make a division of any fence or fences under the provisions of this chapter shall be recorded by the clerk or clerks of the township or townships in which the fences are located, and the clerk or clerks shall be entitled to a fee of twenty-five cents for such service.

Before any such agreement or certificate is recorded it shall be acknowledged by the parties or said township committeemen, or the execution thereof proved as deeds of



conveyance of lands are required to be acknowledged or proved before the recording thereof.

4:20-21. Failure of clerk to register; penalty.

A township clerk who shall fail to enter or register an agreement or certificate such as is referred to in section 4:20-19 of this Title, within two weeks after it is made and delivered to him with a tender of the fees, shall forfeit five dollars (\$5.00) to be recovered, with costs of action, by a civil action by any person who shall sue for it.

Article 3. Damages by and to Animals.

4:20-22. Damages by animals breaking through lawful fences.

When horses, cattle or sheep shall get over, creep through or break down any fence declared lawful by this chapter, the owner of the animals shall pay to the person injured all damages occasioned thereby, to be appraised and certified in writing by two substantial and indifferent men of the neighborhood mutually chosen by the parties, which men, unless otherwise agreed upon by the parties, shall be owners of a class of property similar to that damaged. If the owner of the animals shall neglect or refuse to choose one of the appraisers then the injured party may choose both such appraisers himself. When the appraisers cannot agree upon the damages they may choose a freeholder of the neighborhood to join them, whereupon the appraisal by any two of them, made and certified in writing, shall be binding and conclusive upon the parties.

4:20-23. Impounding and sale of such animals.

The person injured as provided in section 4:20-22 of this title may take and impound the animals found trespassing or doing damage, as therein provided, in his field or other inclosure for twenty-four hours and shall give notice thereof to the owner of the animals, if known and easily to be found.

If the animals are not redeemed within the twenty-four hours by payment of or satisfaction for the damages certified as provided in said section 4:20-22, the person damaged shall take them to the public pound of the township, where the poundkeeper shall receive and keep them until the damages so certified and the charges of conveying and pounding are paid.

The person damaged shall have twenty-five cents per head for horses and cattle and fifteen cents for sheep, for taking the animals to the pound, and the poundkeeper shall have the same fees for letting in and out of the pound, and forty cents per head for horses and cattle and twenty-five cents for sheep for every twenty-four hours they shall remain in the pound.

If the owner of the impounded animals does not pay the damages and charges of impounding within four days after the animals are impounded, or replevy them, the poundkeeper shall set up advertisements in at least three of the most public places in the township to which the pound belongs, and in one or more of the most public places in the two next adjoining townships, particularly describing the animals and giving at least thirty days' notice of an intended day and place of sale, and stating that if the owner does not appear and redeem the animals before the time so notified, they will be sold at public sale.

If the owner, or another for him, does not appear and redeem the animals at the time and place of the sale, the poundkeeper shall sell them accordingly, and out of the money arising therefrom shall pay the damages and charges of conveying to the pound, retain his fees for pounding, keeping and feeding the animals and the further sum of one dollar for each



animal for setting up the advertisements and notice of sale and selling such animal, and return the surplus to the owner.

If the owner does not appear and claim the surplus within twelve calendar months after the sale, it shall be paid to the clerk of the township where the animals were impounded, for the use of the township.

4:20-24. Impounding and sale where no public pound.

Where there is no public pound kept within the township, the person damaged by animals trespassing as provided in section 4:20-22 of this title may impound them in his own field or inclosure until redeemed as provided in section 4:20-23 of this title, and he shall act in all respects, and be entitled to the same fees as the poundkeeper.

4:20-25. Molestation of gate in partition fence; penalty; damages and impounding of animals.

A person who shall stake, shore or leave open or insecure, or cut, break, pull down or destroy or in any way leave a gate, erected as a part of a partition fence as authorized in section 4:20-24 of this Title, so that the horses or cattle of the owner of the adjoining lands may pass through it, shall, for every such offense, be liable to a penalty of five dollars (\$5.00), to be recovered with costs by a civil action by any person who shall sue for it.

The offender shall also pay to the owner or tenant of the lands trespassed upon all damages which he or they may have sustained thereby, to be appraised as provided in section 4:20-22 of this Title, which damages shall be recovered by a civil action.

The owner of the trespassing horses, cattle or sheep shall be entitled to protection from injury to such animals as provided in section 4:20-28 of this Title, and shall not be liable to have his animals impounded, or be liable to an action for damages accruing thereby.

4:20-26. Effect of failure to maintain fences on damages and impounding.

An owner or possessor of land who shall fail to make and keep in good repair the fence or fences about his own land as directed by this chapter, shall not have a cause of action for damages caused by animals of another person which by reason of such failure shall break in or enter into or upon such land, over or through such fence, nor shall such animals be impounded. This section shall not apply to partition fences.

4:20-27. Effect of failure to maintain portion of partition fence.

A person to whom a part or share of a partition fence is assigned to make or amend and maintain as provided in this chapter, who shall neglect or refuse, after due notice, to make and repair such part or share, shall be liable to make good all damages, to be ascertained according to the directions of this chapter, caused by his own or the animals of a third person which by reason of such neglect or refusal shall break in, enter into or upon his neighbor's land, over or through such fence and his animals may be impounded and held in pound until he shall pay the damages and all charges occasioned thereby as provided in this chapter.

When the animals of a third person only have trespassed upon the neighbor's land by reason of such neglect or refusal, the neighbor may sue for and recover his damages, with costs, from the person so neglecting or refusing, in an action at law in any court of competent jurisdiction.



When the animals of the neighbor who has made and maintained the part or share of the partition fence assigned to him according to the directions of this chapter, or the animals of a third person, shall trespass on the land of a person through that part of the partition fence which he has neglected or refused to make or maintain, such neighbor or a third person shall not be liable to have their animals impounded or be liable to an action to recover damages accruing thereby.

4:20-28. Injuring animals trespassing for want of sufficient fence.

An owner or possessor of land who is damaged for want of a lawful and sufficient fence and who shall hurt or cause any horses, cattle or sheep to be hurt, wounded, lamed, killed or destroyed, shall be liable to pay full damages to the owner of such animals, to be recovered, with costs, in an action at law in any court of competent jurisdiction.

4:20-29. Damages to animals by barbed wire partition fences.

A person who, without the consent of the adjoining landowner, shall erect a partition fence of barbed wire or wire on which barbs or points are strung or fastened shall be liable for all damages which may be caused thereby to the animals of the adjoining landowner.

Article 4. Hedges for Fencing.

4:20-30. Fences in highway for preservation of hedges.

A person who shall plant a hedge for fencing upon the line of a public highway three rods or more wide, may erect and keep up, for the preservation of such hedge for a period not exceeding six years from the planting thereof, a fence of the kind he may choose, out into the public highway at a distance of four feet from the hedge; and neither the officer, board or body having control of the highways nor any other person shall, within the six-year period, remove, destroy or in any manner injure the fence.

4:20-31. Ploughing or digging close to hedge prohibited.

Neither the officer, board or body having control of the highways nor any other person shall plough, dig or otherwise turn up or remove any earth or soil within four feet of a hedge planted upon the line of a public highway, whether the fence authorized in section 4:20-30 of this title is put up or not.

4:20-32. Violations of sections 4:20-30 and 4:20-31; penalty; damages.

Any person who shall offend against the provisions of sections 4:20-30 and 4:20-31 of this Title, or shall willfully injure, dig up, or otherwise deface or destroy any hedge sets, hedges or fence erected for their protection, shall for each offense be liable to a penalty of thirty dollars (\$30.00), to be recovered, with costs, in a court of competent jurisdiction, by a civil action by and in the name of the person injured, and in addition thereto shall be liable for all damages to the person injured.

Stray and Trespassing Animals in General.

Article 1. Animals Running at Large or Trespassing in Townships.

4:21-1. Right to impound animals running at large.

A person may drive or convey to the public pound in a township, horses, cattle, sheep or



swine found running at large in the streets or highways of the township, and impound them.

4:21-2. Right to impound trespassing animals.

A person who shall discover stray horses, cattle, sheep or swine upon his improved lands in a township may drive or convey them to the public pound in the township.

4:21-3. Interference with impounding of animals; penalty.

A person, having charge of horses, cattle, sheep or swine found running at large in the streets or highways or trespassing upon the improved lands of another, who shall attempt to hinder or take away such animals from a person taking or driving or attempting to take or drive them to the pound; or a person who shall unlawfully drive from a public pound in the township horses, cattle, sheep or swine which are therein impounded, shall be liable to a penalty of fifteen dollars (\$15.00) to be recovered in a civil action in a court of competent jurisdiction by and for the use of any person prosecuting the suit.

4:21-4. Right to drive animals over streets and highways.

Nothing in this article shall debar a person from driving horses, cattle, sheep or swine along or over the streets or highways of a township to or from pasture, or from using the streets or highways for the purpose of driving over them in any lawful way.

4:21-5. Fee for taking stray or trespassing animals to pound.

For bringing horses, cattle, sheep or swine to the pound as authorized by sections 4:21-1 and 4:21-2 of this title, the person bringing them shall receive two dollars and fifty cents per head from the poundkeeper to be by him collected from the owner as provided in section 4:21-7 of this title.

4:21-6. Poundkeeper's fees.

The poundkeeper shall have two dollars and fifty cents per head for letting in, two dollars and fifty cents per head for letting out and fifty cents per day or part thereof for feeding and keeping while in the pound.

4:21-7. Sale of impounded animals and disposition of proceeds.

If the owner of cattle, horses, sheep or swine impounded as provided in sections 4:21-1 and 4:21-2 of this title, shall not pay the charges for impounding and keeping such animals within five days after they are impounded, and take them away, the poundkeeper shall give at least five days' notice of the intended sale of such animals by setting up notices in five or more public places in the township.

If the owner shall not redeem the animals before the time so notified, the poundkeeper shall sell them accordingly, either on the day so advertised or on the day to which the sale may be publicly adjourned.

Out of the money arising from the sale the poundkeeper shall pay the charges of conveying to and letting into the pound, keeping and feeding the animals and two dollars for advertising and one dollar per head for selling them, and pay the surplus to the owner of the animals if he shall appear and claim it within three months after the sale.

If the owner shall not appear within three months, the surplus shall be paid to the overseer of the poor of the township for the use of the poor thereof.



Fences, Gates and Cattle Guards.

48:12-46. Duty to erect and maintain; liability.

Every railroad company shall erect and maintain fences on the sides of its road of the height and strength of division fences required by law, with gates or barways at farm crossings. Every such company shall also construct and maintain cattle guards at road crossings sufficient to prevent cattle and other animals from getting on the railroad.

Until such fences and guards are erected the company shall be liable for damages done by its trains to cattle or other animals straying on its railroad. Where such fences and guards have been duly erected and maintained the company shall not be liable for such damages unless negligently or willfully done.

48:12-47. Penalty for driving animals on tracks.

Any person who shall ride, lead or drive any cattle, horses or other animals upon any railroad protected by fences and guards as required by section 48:12-46 of this title and within such fences and guards elsewhere than at farm crossings, without the consent of the company, shall, for every such offense, forfeit ten dollars and pay all damages sustained thereby to the company, to be recovered in an action at law.

48:12-48. Speed of trains through cities where fence, embankment or cut is maintained.

Where any railroad company in any city shall maintain along its roadway where the same adjoins a public highway, a fence or embankment four feet high and sufficiently close and strong to prevent children and horses from going through the same, or where its tracks shall be laid in a cut at least four feet deep, and shall provide on each side of the track at any highway crossing in such city a gate of like height and sufficiency, and cause the same to be closed at least half a minute before any train crosses such highway and until the train shall have passed by, the company may run its trains in said city over the portion of its railroad thus protected and over the portions not adjoining or crossing any highway at such rate of speed it deems proper.

In the absence of such protection and safeguard the company shall be bound by lawful and reasonable municipal ordinances regulating the speed of its trains along streets.

