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States' Fence Statutes: *Oklahoma*



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States' Fence Statutes: Oklahoma

OK ST T. 4 §§ 85.1 to 99, OK ST T. 4 §§ 132 to 156, OK ST T. 66 §§ 141 to 147. OK ST T. 21 § 1791

Current with emergency effective legislation through Chapter 584 of the First Regular Session of the 58th Legislature (2021).

Chapter 4. Estrays.

§ 85.1. Definitions.

A. As used in this act, “domestic animals” shall include all domestic animals including, but not limited to, cattle, bison, hogs, sheep, goats, equidae, chickens or other poultry and exotic livestock. The term “domestic animals” shall not include dogs and cats.

B. As used in this section, “exotic livestock” means commercially raised exotic livestock including animals of the families bovidae, cervidae and antilocapridae or birds of the ratite group.

§ 85.2. Estrays.

Any domestic animal found running at large upon public or private lands in the State of Oklahoma, whose owner is unknown in the vicinity of the premises where found, shall be known as an “estrays”, and it shall be unlawful for any person, company or corporation or either of their employees or agents to take up an estray and retain possession of same, except as provided in this act.

§ 85.3. Taking up by landowner or lessee--Investigation--Reports .

Any landowner or lessee of land may take up any domestic animal that strays upon his premises or any public thoroughfare adjoining the same. When any person shall take up any stray animal, he shall make a reasonable investigation immediately to ascertain the owner of such animal and, within seven (7) days, he shall report such taking up to the county sheriff of the county in which the animal was taken up, giving a description of the animal, setting forth the brand, sex, and approximate age of such animal. When the identity of the owner of any stray animal is known to the taker-up he shall communicate to the said owner that the animal has strayed and that he has taken it up. The taker-up may require the owner of any strayed animal he has taken up to pay the actual cost of its keep while so taken up plus all damages that the strayed animal caused to the premises. When one who has taken up a strayed animal is unable, after investigation, to ascertain by whom the animal is owned, or when an owner of a strayed animal is identified and known to be such but neglects or fails to pay the cost of the animal's keep while taken up plus all damages it caused to the premises of the taker-up and remove the animal from the possession of the taker-up the latter shall report all facts relative to the matter to the sheriff of the county in which the animal was taken up.

§ 85.4. Rights and duties of taker-up.



Upon taking up an estray animal or animals, and after sending a description to the county sheriff, the taker-up shall be entitled to hold the same lawfully until relieved of its custody by the sheriff. Should a claimant for said animal apply to the taker-up for possession of this animal, the taker-up shall at once notify the sheriff, and should the sheriff be satisfied that said applicant is the rightful owner, he shall issue an order authorizing the taker-up to grant possession of the estray to the rightful owner. The owner shall be required to pay to the taker-up the actual cost for keeping the estray, together with the actual amount of any damages suffered by the taker-up as a result of the estray being upon his premises and such costs and damages shall be approved by the district judge and shall be entered on the order by the sheriff.

§ 85.5. Duties of peace officer.

A.

1. Upon receiving notice of the taking up of any strayed animal, it shall be the duty of any peace officer, unless the owner thereof is identified and known by the peace officer to be the owner, to make or cause to be made an examination of the brand records and reports of lost, strayed and stolen livestock.
2. If from these records the name of the owner or probable owner can be determined, the owner shall be notified forthwith of the taking up of the strayed animal.
3. If the name of the owner or probable owner cannot be determined, the officer shall arrange for the housing of the animal as provided by subsection B of this section.

B. The Department of Public Safety and any municipality, county, or other political subdivision of this state may establish a list of facilities, including, but not limited to, livestock sales facilities or veterinary clinics, for an official rotation log for the keeping of strayed animals pursuant to the request of or at the direction of any officer of the Department or a municipality, county, or other political subdivision. The Department of Public Safety may promulgate rules for the implementation and administration of this section.

C. Upon the owner's proving to the satisfaction of the peace officer that the animal is lawfully the owner's, the peace officer shall allow the animal to be taken by the owner, upon payment of the actual cost for keeping it together with the amount of any damages suffered by the taker-up as a result of the strayed animal being upon the premises of the taker-up.

D. If the owner fails to pay the charges, the animal shall be sold according to provisions of Section 85.6 of this title.

E. After all costs and expenses incurred for the care, transportation, and sale of such animal have been deducted from the gross sale proceeds, the net amount shall be paid to the owner.

§ 85.6. Sale of unclaimed animals.

A. If a peace officer is unable to determine the owner or probable owner of any strayed animal from brand records and other reports of lost, strayed and stolen livestock, the sheriff shall cause to be published in a newspaper having general circulation in the county in which the strayed animal has been taken up, a description of the



animal which shall contain sex, age and brand or brands but shall not contain color, or marks or other descriptive information. The notice shall be published for two (2) consecutive weekly issues. If after such publication the sheriff is still unable to determine the owner, the animal shall be sold by the sheriff, at either the nearest approved and licensed slaughter facility or the nearest approved and licensed or federally inspected livestock auction market from where taken up, inside the State of Oklahoma.

B. The approved selling firm shall forward by mail to the sheriff a check for the proceeds and other sales information, listing a description, sex, weight, selling price per pound and total sales price less normal and customary marketing fees.

C. The sheriff shall pay to the taker-up of an unclaimed stray animal the actual cost for keeping it, together with the actual amount of any damages suffered by the taker-up as a result of the strayed animal being upon the premises.

D. All remaining money, if any, shall be deposited with the county treasurer to be held by the treasurer in a special fund from which payment may be made to a claimant who has been determined by the district court to be the owner of the stray animal. If not expended pursuant to court order within one (1) year the funds so deposited shall be credited to the County General Fund.

§ 85.7. Adverse claimants.

In the event that there is more than one (1) claimant to any estray after the publication of the notice, as provided by this act, and if a contest or controversy ensues as a result of adverse claimants, then after the publication the sheriff shall certify the matter to the district court of the county in which the estray is taken up, and the small claims division of the district court shall docket said matter in a proper docket supplied by the county for such purpose, and the claimants shall have ten (10) days from the date of such docketing of said matter to file affidavits in support of their several claims. The district 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 estray, and after said hearing the district court shall enter a finding determining the ownership of said estray. Such finding shall have the same effect and force as a judgment and shall be appealable as other matters from the district court but such appeals shall be taken within ten (10) days. In the event two (2) or more claimants are found to be the owners of such estrays, the expenses incurred by the taker-up shall be assessed pro rata to the owners. They shall jointly pay for the keeping of such estrays as is customary in the community for pasturing, feed and keeping of such animals, together with the cost of the proceeding including publication costs.

§ 85.10. Duty to feed and care for estrays.

Any person taking up an estray as hereinbefore provided shall feed and care for said estray.

§ 85.11. Penalties.

If any person unlawfully takes up or conceals an estray, or fails to comply with the provisions of this act, such person so offending shall be guilty of the felony of larceny of domestic animals and shall be punished according to the provisions of Section 1716 of Title 21 of the Oklahoma Statutes.

§ 85.12. Jurisdiction to settle disputes and claims.



In event the taker-up and the owner and/or claimant cannot agree as to the amount of damages or expenses involved, the small claims division of the district court in the county where estray is located shall have jurisdiction to adjudicate the matter, as well as determine claims between more than one person who claim ownership of the estray.

§ 85.13. Claim to ownership of exotic livestock under this chapter—Conditions.

- A. A person may claim to be the owner of exotic livestock under this chapter only if:
1. The exotic livestock is tagged, branded, banded, or marked in another manner that identifies the exotic livestock as being the property of the claimant; or
 2. The person acquired the exotic livestock by purchase, gift, devise, inheritance, or other lawful transfer or the exotic livestock was born or hatched on property owned or leased by the claimant or on other property under an agreement with the claimant in which the claimant may assert ownership of the exotic livestock and:
 - a. the exotic livestock, when normally in the possession of the owner, is impounded within a fence or by another restraining device that is generally appropriate to prevent the escape of the type of animal claimed, or
 - b. the animal claimed is of such rarity or has such genetic marking or other attributes as to identify the exotic livestock as having come from the claimant's stock having the same rarity or attributes.
- B. Under subsection A of this section, a lawful transfer does not include the live taking of an exotic livestock in this state on property that is owned or leased by a person other than the claimant.

§ 98. Restraint of all domestic animals--Damages for trespass.

All domestic animals shall be restrained by the owner thereof at all times and seasons of the year from running at large in the State of Oklahoma. Damages caused by the domestic animals trespassing upon lands of another shall be recovered in a manner provided by law. For the purpose of this act, domestic animals shall include cattle, horses, swine, sheep, goats, exotic livestock and all other animals not considered wild. The term "domestic animals" shall not include domestic house pets.

§ 99. Failure to keep domestic animals enclosed—Penalties.

- A. Any person who:
1. Willfully omits to keep a domestic animal such person owns or has charge of within a suitable enclosure;
 2. Allows the animal to be unrestrained or to run at large, with notice, actual or constructive, that the enclosure within which the animal is kept is open; or
 3. Knowingly causes a domestic animal to escape confinement shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Fifty Dollars (\$50.00) for each offense, or not more than thirty (30) days' imprisonment in the county jail for each offense, or by both fine and imprisonment.



B. For the purpose of this act, the term “domestic animals” shall not include domestic house pets.

Chapter 5. Restraint and Enclosure.

§ 132. Removal of stock from distraint without leave of possessor--Penalty--Civil liability.

If any person, by force or otherwise, without leave of the person having the stock under distraint remove the stock from such distraint, he shall be guilty of a misdemeanor, and shall pay a fine of not less than ten (10) nor more than one hundred dollars (\$100.00), or be imprisoned in the county jail not less than ten (10) nor more than thirty (30) days, and shall in addition thereto, be liable in a civil action for the recovery of the stock so relieved from distraint, or for damages and costs, as the party distraining may elect.

§ 133. Stock “owner” defined.

The word “owner” as used in this article shall include the person entitled to the immediate possession of the animal, and also the person having charge or care of the same, and also the person having the legal title thereto.

§ 134. Land “owner” defined.

For the purposes of this article, the owner, homesteader, tenant, or other person in the possession of, or cultivating the land trespassed upon, shall be deemed to be the owner thereof.

§ 135. Proceedings after distraint--Assessment of damages--Notices--Sale--Surplus

A. Within forty-eight (48) hours after stock has been distrained, Sunday not being included, the party distraining, or such party's agent, shall notify the owner of the stock when known, or, if unknown, the party having them in charge. If the owner fails to satisfy the person whose lands are trespassed upon, the party injured shall, within twenty-four (24) hours thereafter, notify in writing the county sheriff to come upon the premises to view and assess the damages.

B. The county sheriff shall, within forty-eight (48) hours after receiving such notice, Sundays and holidays excepted, proceed to view and assess the damages, and determine a reasonable amount to be paid for seizing and keeping said stock. If the person owning the distrained stock fails to pay the damages as assessed, the sheriff shall provide for the public notice and sale of the distrained stock as provided by Section 85.6 of this title.

C. Any money or stock left after satisfying such claims shall be returned to the owner of the stock sold.

§ 136. Assessment of damages--Filing--Review--Bond--Supersedeas--Delivery of stock to owner appealing--Certification of papers.

The county sheriff shall make his assessment in writing and file the same with the county clerk, to be kept in his office. Any person aggrieved by the action of the county sheriff under this article, may appeal therefrom, to the district court. The person appealing shall file with the county sheriff a bond, in a penalty double the value of the property distrained, or if the value of the property exceeds the amount of damage claimed, then in double the amount of damages, with good and sufficient sureties, to be approved by the county sheriff, and from and after the filing of the appeal bond, the same shall operate as a supersedeas. In case the owner of



such stock be the appellant, the same shall be delivered to him. The county sheriff shall, after the appeal is taken, certify all the original papers in the case to the district court.

§ 139. Controversy over partition fence--Application to fence viewers--Notice--Authority of viewers.

When a controversy arises between the respective owners about the obligation to erect or maintain a partition fence, either party may apply to the fence viewers, who, after due notice to each party, may inquire into the matter and assign to each his share thereof, and direct the time in which each shall erect or repair his share in the manner provided above.

§ 140. Repair or reconstruction of fence by complainant--Recovery of value and viewers' fees from landowner—Interest.

If such fence be not repaired or built 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 (1) month after demand, may recover it by civil action together with one percent (1%) a month interest thereon.

§ 141. Fence viewers--Number--Qualifications--Appointment—Compensation.

Fence viewers herein designated shall consist of three (3) disinterested freeholders, one to be chosen by each of the interested parties, and the two so chosen shall choose the third person, and the three so chosen shall proceed to discharge the duties of fence viewers as herein provided. Such fence viewers to be allowed One Dollar (\$1.00) per day each, to be paid by the interested parties: Provided, that if either party shall fail or refuse to appoint such fence viewers, as herein provided, within three (3) days after so requested to do by the other interested party, then the county sheriff shall, on application of the party making the request for fence viewers, appoint such fence viewer for such party so failing or refusing to appoint.

§ 142. Fence repair.

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

§ 143. Commons--Owners not required to fence--Lands enclosed or used otherwise than as commons--Duty to fence.

Any person not wishing his land enclosed, and not occupying or using it otherwise than as commons, shall not be compelled to contribute to erect or maintain any fence between him and an adjacent owner; but when he encloses or uses his land otherwise than as a commons, he shall contribute to the partition fences as in this article provided.

§ 144. Severalty owned lands enclosed in common without partition fence--Division of fence line-- Construction of fence.

When lands owned in severalty have been enclosed in common without a partition fence, and one of the owners is desirous of occupying his in severalty and the other refuses or neglects to divide the line where the fence shall be built, or refuses 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, who may, in writing, assign a reasonable time within six (6) months, having regard for the season of the year, for making the fence, and if either party



neglects to comply with the decision of the viewers the other, after making his own part, may make the other part and recover as hereinbefore provided.

§ 145. Opening field for use as commons—Notice.

In the case mentioned in the preceding section, when one of the owners desires to throw open any portion of his field not less than sixteen (16) feet in width and leave it unenclosed to be used as a commons by the public, he shall first give the other party six (6) months' notice thereof.

§ 146. Joinder to partition fence--Payment for or rebuilding of half of fence.

When land which has lain unenclosed is enclosed the owner thereof, before he join to any partition fence, already erected, shall pay for one-half (1/2) of each partition fence between his lands and the adjoining lands, the value to be ascertained by the fence viewers, and if he neglects for thirty (30) days after notice and demand to pay the same, the party to whose fence he joins may recover as before provided, or such person, enclosing such land, may, at his election, rebuild and make one-half (1/2) of the fence, and if he neglects so to do for two (2) months after making such election, he shall be liable as above provided.

§ 147. Recorded fence division--Effect on owners and successors.

When a division of fence between the owners of improved land shall have been made, either by fence viewers or agreement in writing, and is recorded in the office of the county clerk of the county where the lands are, the owners and their heirs and assigns shall be bound thereby, and shall support them accordingly.

§ 148. Application of term “owner”.

In the provisions of this article relating to fences the term “owner” shall apply to the occupant or tenant where the owner does not reside in the county, but these proceedings will not bind the owner unless notified.

§ 149. Fence or improvements on land of another--Removal--Damages--Notice to remove--Effect of nonremoval.

When a person has made a fence or other improvements on land, which, on afterwards making division lines, is found to be on the land of another, such person shall not remove such fence or other improvements, until he shall have paid to the owner of such land all damages by reason of such improvements or fence being so located, and if the person making such fence or other improvements fail to pay such damages and remove the said improvements within six (6) months after such division line has been established, and after having thirty (30) days' notice from the owner of said land to remove such fence or improvements, then said fence or improvements shall become a part of the real estate and belong to the owner thereof: Provided, that when the parties interested in such land and such fence and improvements cannot agree as to the amount of such damages, by reason of such improvements being upon the land of another, the fence viewers may determine the amount of such damages as in other cases.

§ 150. Fence or improvements on land of another--When not removable.

But such fence or other improvement, except substantial buildings, shall not be removed if they were made of timber or other material taken from the land on which they lie, until the party pays the owner the value of the timber, or other material, to be ascertained by fence viewers, nor shall a fence be removed at any time when the removal will throw open or expose the



crop of the other party, but it shall be removed in a reasonable time after the crop is secured, although six (6) months has passed.

§ 150.1. Property line across an existing boundary or division line fence, notice to adjacent owner--Cause of action--Attorney fees.

A. If a survey obtained by a property owner reflects a property line across an existing boundary or division line fence, said property owner shall not damage or remove the existing fence or authorize the establishment, locating or relocating of any improvements, including utility installation on such property, until the adjacent property owner has been given notice. The notice shall include a copy of the survey, the nature of the relief requested, and notice that the court may award attorney fees and costs to the prevailing party if an action to establish title is filed by the requestor against the recipient. The notice shall be served in the same manner as provided for service of process in Section 2004 of Title 12 of the Oklahoma Statutes.

B. If no agreement has been reached by the adjoining property owners within thirty (30) days from receipt of the notice sent pursuant to subsection A of this section, the property owner may cause an action to be filed against the adjacent property owner in the district court in the county where the property is located to establish title to the parcel of property at issue. The district court shall enter such temporary relief as may be necessary to maintain the status quo during the pendency of the action.

C. The prevailing party shall be entitled to an award of attorney fees and costs.

§ 151. Additional powers of fence viewers.

When any question arises between parties other than those stated, concerning their rights in fences or their duties in relation to building or maintaining or removing them, such question may be determined by the fence viewers.

§ 152. Erection and removal of line fence.

A person building a fence may erect the same upon the line between him and the adjacent owners, so that the fence may be partly on one side and partly on the other, and the owner of such fence shall have the same right to remove it as if it were wholly on his land: Provided, that such fence is not more than five (5) feet from such line.

§ 153. Legal proceedings or agreement not barred.

The foregoing provisions of this article, shall not bar any other legal proceedings, for the determination of the title of land, or dividing the line between contending owners, nor do they preclude agreement by the parties.

§ 154. Lawful fence--Construction--Material--Height—Tightening.

A fence made of three rails of good substantial material, or three boards not less than six (6) inches wide and three-quarters ($\frac{3}{4}$) of an inch thick, such rails or boards to be fastened in or to good substantial posts not more than ten (10) feet apart where rails are used, and not more than eight (8) feet apart where boards are used, where either wholly or in part substantially built and kept in good repair, or any other kind of fence, which, in the opinion of the fence viewers shall be equivalent thereto, shall be declared a lawful fence: Provided, that the lowest or bottom rail, wire or board shall not be more than twenty (20) or less than sixteen (16) inches from the ground, and that such fence shall be fifty-four (54) inches in height, except that a barb wire fence may consist of three barb wires, or four wires, two of which shall be



barbed, the wires to be firmly fastened to the posts not more than two (2) rods apart, with two stays between the posts, or with posts not more than one rod apart without such stays, the top wire to be not less than fifty-four (54) nor more than fifty-eight (58) inches in height, and the bottom wire to be not more than twenty (20) or less than sixteen (16) inches from the ground: Provided, further, that all partition fences may be made tight at the expense of the party desiring it, and such party may take from such fence the material by him added thereto whenever he may elect: And provided, further, that when the owner or occupants of adjoining lands both use the fence for the purpose of restraining swine, goats or sheep, each of said owners or occupants shall keep their respective share of the partition fence sufficiently tight to restrain such sheep, goats or swine.

§ 155. Damages by animals breaking fences—Seizure.

In districts where fences are required, as in this article, provided, the owner of stock shall be liable for all damages done by animals breaking through or over lawful fences and trespassing upon the enclosed lands of another, and the animals so breaking through or over such fence may be seized as trespassing animals and proceeded with as provided in this article.

§ 156. Lien of judgment for damages on trespassing stock—Execution.

In all cases where the plaintiff may recover judgment for damages caused by the trespassing of animals of another the judgment shall be a lien upon the stock so trespassing and the plaintiff may have special execution for the sale of such stock to satisfy the judgment and costs or general execution as he may elect.

Title 66. Railroads.

§ 141. Duty to fence.

It shall be the duty of every person or corporation owning or operating any railroad in the State of Oklahoma to fence its road, except at public highways and station grounds, with a good and lawful fence.

§ 142. Lawful fence defined.

A lawful fence, under the provisions of the preceding section, shall be composed of posts and barb wires, four wires to be firmly fastened to the posts, such posts to be not more than one (1) rod apart, the top wire to be not less than fifty-four (54) nor more than fifty-eight (58) inches from the ground, and the bottom wire to be not more than twenty (20) nor less than fourteen (14) inches from the ground.

§ 143. Attachment of hog fence.

Any person owning or occupying land adjacent to any railroad track 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 material, 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.

§ 144. Failure to fence—Penalty.

Whenever any railroad corporation or the lessee, person, company or corporation operating any railroad, shall neglect to build and maintain such lawful fence, such railroad corporation, lessee, person, company or corporation operating the same, shall be liable for all animals killed by reason of the failure to construct such fence.



§ 145. Fencing right-of-way with hog wire.

Whenever the owner or occupant of any tract of land abutting on any line of railroad within this state shall desire to enclose any such tract of land for the purpose of making a hog, sheep or goat pasture, and shall construct a fence for said purpose about said tract of land on all sides except along the side abutting on such railroad, it shall be the duty of such railroad company to construct a good and sufficient fence not less than four and one-half (4 1/2) feet high, one barbed wire at bottom of such fence immediately above which shall be attached heavy woven wire not less than twenty-eight (28) inches high, and sufficient for the purpose of restraining swine, sheep and goats, with three barbed wires above the same, on the side of such tract, so far as the same extends along the line of such railroad, and maintain the same in good condition, so long as such owner or occupant of such tract may desire to maintain such pasture.

§ 146. Notice to railroads.

Whenever the owner or occupant of any tract of land desires to construct a fence as provided in the preceding section, he shall give written notice of his intention to the railroad company upon whose line such tract is situated, by personal service upon the agent of said company at the station within this state, nearest to such tract of land, giving in said notice a description of said land, and it shall be the duty of the railroad company to construct and complete its portion of such fence within sixty (60) days after the service of such notice: Provided, that if such owner or occupant fails to construct his portion of such fence, then the railroad company shall not be required to construct such fence.

§ 147. Construction by owner on railroad's refusal--Recovery of cost.

If any railroad company shall neglect or refuse to comply with the provisions of the two preceding sections, it shall be lawful for the owner or occupant of such tract of land to construct or repair the fence along the line of such railroad, and the owner or occupant of such tract of land, shall be entitled to recover from such railroad company the cost of the material and labor used in constructing the railroad company's portion of such fence.

§ 1791. Damage to fence--Punishment—Exceptions.

A. Any person who, without good cause, maliciously and knowingly cuts or damages a fence used for the production or containment of cattle, bison, horses, sheep, swine, goats, domestic fowl, exotic livestock, exotic poultry or any game animals or domesticated game such that there is a loss or damage to the property is guilty of a misdemeanor. Any person convicted of a second or subsequent offense pursuant to this section shall be guilty of a felony punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the custody of the Department of Corrections not exceeding two (2) years, or by both such fine and imprisonment.

B. The provisions of subsection A of this section shall not apply to any activities:

1. Performed pursuant to the Seismic Exploration Regulation Act;
2. Performed pursuant to Sections 318.2 through 318.9 of Title 52 of the Oklahoma Statutes; or
3. That are subject to the regulation of the Oklahoma Corporation Commission or the Federal Energy Regulatory Commission.

