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States' Fence Statutes: *Texas*



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States' Fence Statutes: Texas

TX AGRIC §§ 143.001- 143.123, TX NAT RES §§ 11.072-11.076, TX TRANSP §§ 251.009- 251.010.

Current through legislation effective June 3, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session.

Chapter 143. Fences; Range Restrictions.
Subchapter A. Fencing of Cultivated Land.
§ 143.001. Sufficient Fence Required.

Except as provided by this chapter for an area in which a local option stock law has been adopted, each gardener or farmer shall make a sufficient fence around cleared land in cultivation that is at least five feet high and will prevent hogs from passing through.

§ 143.002. Gate.

A person may not build, join, or maintain around cleared land in cultivation more than three miles lineal measure of fence running the same general direction without a gate that is at least 10 feet wide and is unlocked.

§ 143.003. Cattle on County Road with Cattle Guard.

Cattle on a county road are not considered to be running at large if the county road:

- (1) separates two tracts of land under common ownership or lease; and
- (2) contains a cattle guard constructed as authorized under Section 251.009, Transportation Code, that serves as part of the fencing of the two tracts.

Subchapter B. Local Option to Prevent Certain Animals from Running at Large.
§ 143.021. Petition for Election.

(a) In accordance with this section, the freeholders of a county or an area within a county may petition the commissioners court to conduct an election for the purpose of determining if horses, mules, jacks, jennets, donkeys, hogs, sheep, or goats are to be permitted to run at large in the county or area.

(b) A petition for a countywide election must be signed by at least 50 freeholders. Except as otherwise provided by Subsection (c) of this section, a petition for an election in an area within a county must be signed by at least 20 freeholders.

(c) A petition for an election in an area may be signed by a majority of the freeholders in the area if the area has fewer than 50 freeholders and is between two areas of the county that have previously adopted this subchapter or is adjacent to another area, in that county or another county, that has adopted this subchapter. If the petitioning area is adjacent to an



area in another county, the freeholders shall petition the commissioners court of the county in which the petitioning area is located.

(d) The petition must:

- (1) clearly state each class of animal that the petitioners seek to prohibit from running at large; and
- (2) describe the boundaries of the area in which the election is to be held, if the election is to be less than countywide.

§ 143.022. Election Orders.

(a) After receiving a petition under this subchapter, the commissioners court at its next regular term shall order that an election be held throughout the county or in the petitioning area, as determined by the petition. The order shall designate a date for the election that is not less than 30 days after the date of the order.

(b) Immediately after passage of a commissioners court order for an election, the county judge shall issue an order for the election that specifies:

- (1) the petition and the action of the commissioners court;
- (2) each class of animal that is not to be permitted to run at large;
- (3) the territorial limits of the area to be affected;
- (4) the date of the election; and
- (5) the location of the polls.

(c) The county judge shall give public notice of the election by publishing the order under Subsection (b) of this section in a newspaper published in the county. If no newspaper is published in the county, a copy of the order shall be posted at the courthouse door and at a public place in each justice precinct for a countywide election or at three public places in the petitioning area for an election to be held in an area of the county. Notice must be given for at least 30 days before the date of the election.

§ 143.023. Election.

(a) If the election is not countywide, the county judge at the time the election order is issued shall appoint election officers for the election. In order to serve as an election officer, a person must be a freeholder of the county and a qualified voter. The election officers may appoint their own clerks.

(b) If the election is countywide, it shall be held at the usual voting places in the election precincts. If the election is not countywide, the county judge shall designate the particular places in the petitioning area at which the polls are to be open.

(c) In order to vote at an election, a person must be a freeholder and a qualified voter.

(d) Ballots for the election shall be printed to provide for voting for or against the proposition, "Letting _____ run at large," with the blank space printed with the name of each animal designated in the election order.



(e) The election officers shall make returns to the county judge of all votes cast for each proposition not later than the 10th day after the day of the election. The commissioners court shall open, tabulate, and count the returns in the manner provided for general elections in this state. The county judge shall immediately issue a proclamation declaring the result and post the proclamation at the courthouse door.

§ 143.024. Effect of Election; Adoption of Subchapter.

(a) If a majority of the votes in an election are cast against the proposition, this subchapter is adopted and, after the 30th day following the date on which the proclamation of results is issued, a person may not permit any animal of the class mentioned in the proclamation to run at large in the county or area in which the election was held.

(b) Sections 143.028-143.034 of this code apply only in the county or area in which this subchapter has been adopted.

§ 143.025. Subsequent Elections to Adopt Subchapter.

(a) Except as provided by Subsection (b) of this section, if this subchapter is not adopted at an election, another election for that purpose may not be held in the county or area in which the election was held earlier than one year after the date of the election.

(b) Defeat of adoption of this subchapter at a countywide election does not prevent another election for that purpose from being held immediately thereafter for an area within the county. Defeat of adoption of this subchapter at an election held in an area within a county does not prevent a countywide election for that purpose from being held immediately thereafter.

§ 143.026. Repeal.

(a) The freeholders of a county or an area in which this subchapter has been adopted may petition the commissioners court to conduct an election for repeal of that adoption. The petition must be signed by a majority of the freeholders who are qualified voters in the county or area subject to this subchapter.

(b) An election under this section shall be ordered and conducted, the returns shall be made, and the results shall be declared in the same manner provided by this subchapter for an election to adopt this subchapter.

(c) An election under this section may not be held earlier than two years after the date of the last election under this subchapter in the applicable county or area.

(d) If at an election under this section a majority of the votes are cast for allowing the named animals to run at large, after the expiration of 180 days after the date of the proclamation of results a person may permit an animal of the class mentioned in the proclamation to run at large in the county or area in which the election was held. If a majority of the votes are cast against letting the named animals run at large, the operation of this subchapter in the county or area is not affected.

§ 143.027. Extension of Subchapter to Adjoining Area by Order

A commissioners court by order shall extend application of this subchapter to territory that is between two areas of the county that have adopted this subchapter or is adjacent to an area, in that county or in another county, that has adopted this subchapter if:



- (1) there are fewer than 20 freeholders in the territory and a majority of the owners of the land in the territory petition the court to extend application of this subchapter to that area;
- (2) there are no freeholders in the territory and the owners of the land petition the commissioners court to extend application of this subchapter to that territory; or
- (3) a person who owns land that is adjacent to land to which this subchapter has been extended petitions the court to extend application of this subchapter to that person's land.

§ 143.028. Fences.

- (a) A person is not required to fence against animals that are not permitted to run at large. Except as otherwise provided by this section, a fence is sufficient for purposes of this chapter if it is sufficient to keep out ordinary livestock permitted to run at large.
- (b) In order to be sufficient, a fence must be at least four feet high and comply with the following requirements:
 - (1) a barbed wire fence must consist of three wires on posts no more than 30 feet apart, with one or more stays between every two posts;
 - (2) a picket fence must consist of pickets that are not more than six inches apart;
 - (3) a board fence must consist of three boards not less than five inches wide and one inch thick; and
 - (4) a rail fence must consist of four rails.
- (c) The freeholders of the county or area may petition the commissioners court for an election to determine whether three barbed wires without a board are to constitute a sufficient fence in the county or area. The election shall be conducted in the same manner and is governed by the same provisions of this subchapter provided for elections on the adoption of this subchapter.

§ 143.033. Injury to Trespassing Animal.

If a person whose fence is insufficient under this subchapter maims, wounds, or kills a head of cattle or a horse, mule, jack, jennet, sheep, or goat, or procures the maiming, wounding, or killing of one of those animals, by any means, including a gun or a dog, the person is liable to the owner of the animal for damages. This section does not authorize a person to maim, wound, or kill any horse, mule, jack, jennet, sheep, goat, or head of cattle of another person.

§ 143.034. Penalty.

- (a) A person commits an offense if the person knowingly:
 - (1) turns out or causes to be turned out on land that does not belong to or is not under the control of the person an animal that is prohibited from running at large under this subchapter;
 - (2) fails or refuses to keep up an animal that is prohibited from running at large under this subchapter;
 - (3) allows an animal to trespass on the land of another in an area or county in which the animal is prohibited from running at large under this subchapter; or



(4) as owner, agent, or person in control of the animal, permits an animal to run at large in an area or county in which the animal is prohibited from running at large under this subchapter.

(b) An offense under this section is a Class C misdemeanor.

Subchapter C. Local Option Limited Free Range for Hogs.

§ 143.051. Petition for Election.

(a) The freeholders of a county or an area that has adopted Subchapter B of this chapter or the freeholders of an area that is between two areas of a county that have adopted Subchapter B of this chapter may petition the commissioners court to conduct an election for the purpose of determining whether hogs are to be permitted to run at large in the county or area for a period beginning on November 15 of each year and ending on February 15 of the following year.

(b) A petition for a countywide election must be signed by at least 50 freeholders. A petition for an election in an area of a county that has adopted Subchapter B of this chapter must be signed by at least 20 freeholders. A petition for an election in an area that is between two areas that have adopted Subchapter B of this chapter and in which there are fewer than 50 freeholders must be signed by a majority of the freeholders in the area.

(c) If the election is to be less than countywide, the petition must describe the boundaries of the area in which the election is to be held in the same manner as the description provided for the election on adoption of Subchapter B of this chapter.

§ 143.052. Election Orders.

(a) After receiving a petition under this subchapter, the commissioners court shall order an election to be held throughout the county or in the petitioning area, as determined by the petition. The order may be entered at a regular or special meeting of the court and shall designate a date for the election that is not less than 30 days after the date of the order.

(b) Immediately after passage of a commissioners court order for an election, the county judge shall issue an order for the election that specifies:

- (1) the petition and action of the commissioners court;
- (2) the classes of animals that are to be allowed a limited period of free range;
- (3) the period in which the animals are to have free range;
- (4) the territorial limits of the area to be affected;
- (5) the day of the election; and
- (6) the location of the polls.

(c) The county judge shall give public notice of the election in the manner provided by Section 143.022 of this code for an election on the adoption of Subchapter B of this chapter.

§ 143.053. Election.

(a) Except as provided by this section, the election shall be conducted, the returns made, and the results declared in accordance with Section 143.023 of this code and the laws regulating general elections. (b) The ballots for the election shall be printed to provide for



voting for or against the proposition, “The limited period of free range for hogs.”

§ 143.054. Effect of Election.

If a majority of the votes cast are for the limited period of free range for hogs, after the 10th day following the date on which the proclamation is issued a person may permit hogs to run at large in the county or area in which the election was held during the period beginning on November 15 of each year and ending on February 15 of the following year.

§ 143.055. Subsequent Elections to Adopt or Repeal Free Range.

(a) Except as provided by Subsection (b) of this section, if an election is held under this subchapter another election for the purpose of adopting or repealing the limited period of free range may not be held in that county or area within two years after the date of the election.

(b) If the limited period of free range is defeated at a countywide election, this section does not prohibit another election on the proposition from being held immediately thereafter for an area within the county. If the limited period of free range is defeated at an election in an area within a county, no other election covering that area may be held except an election in the same area, which must be held at least one year after the prior election.

(c) If at a subsequent election in a county or area that has adopted the limited period of free range the majority of votes are cast against the proposition, the limited period of free range is repealed and a person may not permit hogs to run at large in that county or area effective on the 11th day following the day on which the proclamation is issued. If the majority of the votes are cast for the proposition, the operation of the limited period of free range is not affected.

§ 143.056. Combined Elections.

An election under this subchapter may be held at the same time as an election under Subchapter B of this chapter, but the propositions must be submitted and voted on as separate issues and the returns and proclamations of results must be separate for each proposition.

Subchapter D. Local Option to Prevent Cattle or Domestic Turkeys from Running at Large.

§ 143.071. Petition for Election.

(a) In accordance with this section, the freeholders of a county or an area within a county may petition commissioners court to conduct an election for the purpose of determining if cattle are to be permitted to run at large in the county or area.

(b) The freeholders of any political subdivision of Bastrop, Blanco, Clay, Collin, DeWitt, Gonzales, Gillespie, Guadalupe, Parker, or Wise County may petition the commissioners court to conduct an election in the subdivision for the purpose of determining if domestic turkeys are to be permitted to run at large in the subdivision.

(c) A petition for a countywide election on the running at large of cattle must be signed by at least 35 freeholders. Except as provided by Subsection (d) of this section, a petition for an election on the running at large of cattle in an area within a county must be signed by at least 15 freeholders. A petition for an election on the running at large of domestic turkeys must be signed by at least 25 freeholders.

(d) A petition for an election in an area may be signed by a majority of the freeholders in the area if the area has fewer than 50 freeholders and is between two areas of the



county that have previously adopted this subchapter.

(e) A petition must:

- (1) clearly state each class of animal that the petitioners seek to prohibit from running at large; and
- (2) describe the boundaries of the area in which the election is to be held, if the election is to be less than countywide.

§ 143.072. Exceptions; Countywide Elections.

The following counties may not conduct a countywide election on the running at large of cattle: Andrews, Coke, Culberson, Hardin, Hemphill, Hudspeth, Jasper, Jefferson, Kenedy, Kinney, LaSalle, Loving, Motley, Newton, Presidio, Roberts, Schleicher, Terry, Tyler, Upton, Wharton, or Yoakum.

§ 143.073. Election.

(a) Except as provided by this section, the election is governed by Sections 143.022 and 143.023 of this code.

(b) The ballot shall be printed to provide for voting for or against the proposition: "Adoption of the stock law."

(c) The county judge shall open, tabulate, and count the returns in the presence of the county clerk and at least one justice of the peace of the county or in the presence of at least two respectable freeholders of the county. Following that, an order showing the results of the election shall be recorded in the minutes of the commissioners court. The order is prima facie evidence that the requirements of this chapter have been complied with in relation to presenting the petition, ordering the election by the commissioners court, giving notice, holding the election, counting and returning votes, and declaring the results. If the result is in favor of the proposition, after the expiration of 30 days after the date of the order, the order is prima facie evidence that the proclamation required by law has been made and published.

§ 143.074. Effect of Election; Adoption of Subchapter.

(a) If a majority of the votes cast in an election are for the proposition, this subchapter is adopted and, after the 30th day following the date on which the proclamation of results is issued, a person may not permit any animal of the class mentioned in the proclamation to run at large in the county or area in which the election was held.

(b) Sections 143.077--143.082 of this code apply only in a county or area in which this subchapter has been adopted.

§ 143.075. Subsequent Elections to Adopt Subchapter.

(a) Except as provided by Subsection (b) of this section, if this subchapter is not adopted at an election, no other election for that purpose may be held in the county or area in which the election was held within one year after the date of the election.

(b) If adoption of this subchapter is defeated at a countywide election, this section does not prohibit another election on the proposition from being held immediately thereafter for an area within the county. If adoption of this subchapter is defeated at an election in an area



within a county, no other election covering that area may be held except an election in the same area, which must be held at least one year after the prior election.

§ 143.076. Repeal.

(a) In accordance with this section, the freeholders of a county or an area in which this subchapter has been adopted may petition the commissioners court to conduct an election for repeal of that adoption.

(b) A petition for a countywide election must be signed by at least 200 freeholders of the county, including 24 freeholders from each justice precinct. A petition for an election in an area within a county must be signed by at least 50 freeholders of the area.

(c) Except as provided by this section, the election is governed by the provisions of this subchapter relating to the original election.

(d) If this subchapter has been adopted for the entire county, it may not be repealed for an area within the county unless two-thirds of the votes cast at a countywide election favor repeal for that area.

§ 143.077. Fences.

A fence is sufficient for purposes of this chapter if it is sufficient to keep out the classes of animals not affected by this subchapter.

§ 143.082. Penalty.

(a) A person commits an offense if the person knowingly permits a head of cattle or a domestic turkey to run at large in a county or area that has adopted this subchapter.

(b) An offense under this section is a Class C misdemeanor.

Subchapter E. Animals Running at Large on Highways.

§ 143.101. Definition.

In this subchapter, "highway" means a U.S. highway or a state highway in this state, but does not include a numbered farm-to-market road. The term includes the portion of Recreation Road Number 255 that is located in Newton County between State Highway Number 87 and the boundary line with Jasper County.

§ 143.102. Running at Large on Highway Prohibited.

A person who owns or has responsibility for the control of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not knowingly permit the animal to traverse or roam at large, unattended, on the right-of-way of a highway.

§ 143.103. Immunity From Liability.

A person whose vehicle strikes, kills, injures, or damages an unattended animal running at large on a highway is not liable for damages to the animal except as a finding of:

- (1) gross negligence in the operation of the vehicle; or
- (2) willful intent to strike, kill, injure, or damage the animal.

§ 143.104. Herding of Livestock Along Highway.



This subchapter does not prevent the movement of livestock from one location to another by herding, leading, or driving the livestock on, along, or across a highway.

§ 143.106. Enforcement.

Each state highway patrolman or county or local law enforcement officer shall enforce this subchapter and may enforce it without the use of a written warrant.

§ 143.107. Conflict with Other Law.

This subchapter prevails to the extent of any conflict with another provision of this chapter.

§ 143.108. Penalty.

(a) A person commits an offense if the person violates Section 143.102 of this code. (b) An offense under this section is a Class C misdemeanor.

(c) A person commits a separate offense for each day that an animal is permitted to roam at large in violation of Section 143.102 of this code.

Subchapter F. Removal of Adjoining Fences.

§ 143.121. Prohibition.

Except as provided by this subchapter or by mutual consent of the parties, a person may not remove a fence that is:

- (1) a separating or dividing fence in which the person is a joint owner; or
- (2) attached to a fence owned or controlled by another person.

§ 143.122. Removal of Fence by Owner.

A person who owns an interest in a fence attached to a fence owned in whole or in part by another person is entitled to withdraw his or her fence from the other fence after giving six months' notice of the intended separation. The notice must be in writing and given to the owner of the attached fence or to that person's agent, attorney, or lessee.

§ 143.123. Requiring Removal of Fence by Another Person.

A person who is the owner of a fence that is wholly on that person's land may require the owner of an attached fence to disconnect and withdraw the attached fence by giving six months' notice of the required disconnection. The notice must be in writing and given to the owner of the attached fence or that person's agent, attorney, or lessee.

Chapter 11. Provisions Generally Applicable to the Public Domain.

§ 11.072. Fences with and Without Gates.

(a) A person who has used any of the pasture land by joining fences or otherwise and who builds or maintains more than three miles lineal measure of fences running in the same general direction without a gate in it shall be fined not less than \$200 nor more than \$1,000.

(b) The gate in the fence described in Subsection (a) of this section shall be at least 10 feet wide and shall not be locked or kept closed so that it obstructs free ingress or egress.

(c) The provisions of this section do not apply to persons who have previously settled on land not their own, if the enclosure is 200 acres or less and if the principal pursuit of the



person on the land is agriculture.

§ 11.073. Definition of Fencing.

In Sections 11.074 and 11.075 of this code, “fencing” means the erection of any structure of wood, wire, wood and wire, or any other material, whether it encloses land on all sides or only one or more sides, which is intended to prevent the passage of cattle, horses, mules, sheep, goats, or hogs.

§ 11.074. Herding and Line-Riding.

(a) No owner of stock, manager, agent, employee, or servant may fence, use, occupy, or appropriate by herding or line-riding any portion of the public land of the state or land which belongs to the public schools or asylums unless he obtains a lease for the land from the proper authority.

(b) Any owner of stock or his manager, agent, employee, or servant who fences, uses, occupies, or appropriates by herding or line-riding any portion of the land covered by Subsection (a) of this section without a lease for the land, on conviction, shall be fined not less than \$100 nor more than \$1,000 and confined in the county jail for not less than three months nor more than two years. Each day for which a violation continues constitutes a separate offense.

(c) Prosecution under this section may take place in the county in which a portion of the land is located or to which the county may be attached for judicial purposes or in Travis County.

§ 11.075. Appropriation of Land by Fencing.

(a) Unless a lease for the land is obtained, any appropriation of public land of the state or land which belongs to the public schools and asylums by fencing or by enclosures consisting partly of fencing and partly of natural obstacles or impediments to the passage of livestock is an unlawful appropriation of land which is punishable by the penalty provided in Subsection (b) of Section 11.074 of this code.

(b) Each day that the violation continues constitutes a separate offense.

§ 11.076. Unlawful Enclosure

(a) If the governor is credibly informed that any portion of the public land or the land which belongs to any of the special land funds has been enclosed or that fences have been erected on the land in violation of law, he may direct the attorney general to institute suit in the name of the state for the recovery of the land, damages, and fees.

(b) The fee for the attorney general may not be less than \$10 if the amount recovered is less than \$100, but if the amount of recovery is over \$100, the fee shall be 10 percent paid by the defendant for the use and occupancy of the land and the removal of the enclosure and fences.

(c) The damages may not be less than five cents an acre a year for the period of occupancy.

(d) In a suit brought under this section, the court shall issue a writ of sequestration directed to any sheriff in the state requiring him to take into actual custody the land and any property on the land which belongs to the person who is unlawfully occupying the land and to hold the land and other property until the court issues further orders. The writ may be executed by the sheriff to whom it is delivered, and he shall proceed to execute the writ.

(e) The defendant in the suit may replevy the property as provided in other cases by



executing the bond required by law.

(f) An appeal from a suit brought under this section has precedence over other cases.

(g) If judgment is recovered by the state in the suit, the court shall order the enclosure or fences removed and shall charge the costs of the suit to the defendant. Property on the land which belongs to the defendant and which is not exempt from execution may be used to pay costs and damages in addition to the personal liability of the defendant.

Chapter 251. General County Authority Relating to Roads and Bridges.

§ 251.009. Construction of Cattle Guards on County Roads; Offense.

(a) The commissioners court of a county may authorize the construction of cattle guards on a county road of any class. A cattle guard authorized under this section is not an obstruction of the road.

(b) The commissioners court shall establish plans and specifications for a standard cattle guard to be used on the county roads. The plans and specifications must be plainly written and supplemented by drawings as necessary and must be available for inspection by the residents of the county.

(c) A person who constructs a cattle guard on a county road that does not conform to the plans and specifications established under Subsection (b) commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$5 or more than \$100.

(d) The commissioners court may construct a cattle guard on a county road of any class and may pay for its construction from the county road and bridge fund if the court finds that the construction of the cattle guard is in the best interest of the residents of the county.

§ 251.0095. Replacement and Repair of Existing Cattle Guards on County Roads.

(a) The commissioners court of a county may authorize the replacement or repair of an existing cattle guard on a county road of any class.

(b) The commissioners court may replace or repair a cattle guard on a county road of any class and may pay for its replacement or repair from the county road and bridge fund if the court finds that the replacement or repair of the cattle guard is in the best interest of the residents of the county.

§ 251.0096. Removal of Cattle Guards from County Roads.

(a) The commissioners court of a county may remove a cattle guard from a county road of any class if the commissioners court notifies each person who owns land adjacent to the cattle guard by certified mail not less than 90 days before the proposed removal of the cattle guard.

(b) The commissioners court is not required to hold a public hearing on a proposed cattle guard removal. If a resident of the county requests a public hearing, the commissioners court shall hold a public hearing on the removal of the cattle guard. To be valid, a request for a public hearing must be in writing and be made before the 75th day after the date the notice required by Subsection (a) is mailed.

§ 251.010. Gates on Third-Class and Neighborhood Roads; Offenses.

(a) A person, including a neighborhood association, who owns or controls real property on which a third-class road or a neighborhood road established under Section 251.053 is



located for which the right-of-way was obtained without cost to the county may erect a gate across the road when necessary. The person shall place a permanent hitching post and stile block on each side of the gate within 60 feet of the gate. The gate must be:

- (1) at least 10 feet wide;
- (2) free of obstructions above the gate;
- (3) constructed so that opening and shutting the gate will not cause unnecessary delay to persons, including emergency personnel, using the road; and
- (4) constructed with a fastening to hold the gate open until a person using the gate passes through it.

(b) The property owner shall keep the gate and the approaches to the gate in good order.

(c) A person who erects a gate across a road specified by Subsection (a) and who willfully or negligently fails to comply with a requirement of this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$5 or more than \$20. Each week that the person fails to comply with this section constitutes a separate offense.

(d) A person who willfully or negligently leaves open a gate on a road specified by Subsection (a) commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$5 or more than \$20.

(e) A person may not erect a gate under this section unless the gate is approved by the commissioners court of the county.

