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States' Fence Statutes: *Virginia*



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States' Fence Statutes: Virginia

VA. Code Ann. §§ 33.2-110 to 33.2-112, §33.2-264, VA. Code Ann. §§ 55.1-2800 to 55.1-2834, VA. Code Ann. §§ 56-429 to 56-440

The statutes and Constitution are current through the End of 2021 Regular Session and include Special Session I cc. 5, 34, 55, 56, 61, 78, 82, 85, 110, 117, 118, 171, 216, 220, 243, 272, 530, 531, 536.

§ 33.2-110. Gates across private roads; leaving gates open; gates across private roads leading to forestlands; penalties

A. Any person owning land over which another or others have a private road or right-of-way may, except when it is otherwise provided by contract, erect and maintain gates across such roads or right-of-way at all points at which fences extend to such roads on each side thereof. A court of competent jurisdiction may, upon petition, require the landowner to make such changes as may be necessary and reasonable in the use of such roads for both the landowner and the petitioner. Nothing herein shall prohibit the replacement of a gate with a cattle guard as authorized in § 55.1-2809.

B. If any person without permission of the owners of such gate or of the land on which the gate is located leaves the gate open, he is guilty of a Class 1 misdemeanor.

C. The owners of forest and timberlands may substantially obstruct or close private and seldom used roads leading to or into such forest or timberlands from the public highways of the Commonwealth at points at or near which the private roads enter their property or forestlands; and, in all cases where any such private road is subject to an easement for travel for the benefit of other lands not regularly and continuously inhabited, the owner of such forest or timberlands may obstruct the road with a gate, chain, cable, or other removable obstruction, lock the obstruction, and after furnishing a key to the lock to the owner or owners of the land or lands to which the forestlands are servient, require those entitled to the easement to unlock and relock such obstruction upon making use of the road.

There shall be no penalty upon the owner of such forest or timberlands for failure to erect such obstructions, but if such obstruction is erected, any person without the permission of the owner who destroys, removes, or leaves the obstruction open or unlocked, in cases where the obstruction is locked by the owner and the keys are furnished as provided in this subsection, is guilty of a misdemeanor punishable by a fine of not less than \$25 nor more than \$500, provided that in all cases of forest fires upon the owner's lands or those adjacent or near thereto, the expressed permission of the owner shall be deemed given to all persons aiding in extinguishing or preventing the spreading of the fire to remove the obstructions, including the breaking of locks.

§ 33.2-264. Livestock on right-of-way of any system of state highways

No person, firm, or corporation shall pasture or graze, or cause to be pastured or grazed,



or otherwise permit to be on any right-of-way of any highway in the systems of state highways, except as otherwise provided in this section, any livestock, unless such animal or animals be securely tied or held by chain or rope so as to prevent such animal from getting on the traveled portion of the highway, provided that this section shall not apply when such livestock are being driven along such highway while under the control of a responsible drover or drovers.

Nothing in this section shall prevent the owners of abutting parcels of land from grazing livestock unsecured by chain or rope on secondary roads that (i) have been taken into the system as gated roads and (ii) carry fewer than 50 vehicles per day.

On gated roads carrying 50 or more vehicles per day, the Department shall, upon the request of the local governing body and upon the recordation of a deed of gift or donation by such landowner of not less than a 40-foot right-of-way, reimburse abutting landowners a sum equal to \$1 per foot of fencing that must be installed to keep cattle from entering the right-of-way from such abutting land. Where such fencing separates pasture land from a water source used by the owner of such pasture land to water his livestock, the Department shall construct or have constructed a means of access by which stock may reach the water source from the pasture land. Moneys for such fencing and construction of access to water shall be taken from highway construction funds. For purposes of this section, a "gated" road is a road on which, prior to July 1, 1986, abutting landowners have maintained a gate or cattle guard.

Any person, firm, or corporation who violates any of the provisions of this article shall be fined not less than \$10 nor more than \$50 for such offense.

Nothing in this section shall be construed to transfer the liability for injuries or property damage caused by such grazing livestock.

Article 1. Electric Fences.

§ 55.1-2800. Definition.

As used in this article, "electric fence" means a fence designed to conduct electric current along one or more wires of such fence so that a person or animal touching any such wire or wires will receive an electric shock.

§ 55.1-2801. Unlawful to sell, distribute, construct, install, maintain, or use certain electric fences upon agricultural land.

A. It is unlawful for any person to sell, distribute, construct, install, maintain, or use upon any land used for agricultural purposes or, for any person exercising supervision or control over any such land, to permit any other person to construct, install, maintain, or use any electric fence energized with an electric charge unless the charge is regulated by a controlling device. Except as otherwise provided in this article, such controlling device shall display the approved label of and shall conform to the safety standards promulgated by the Underwriters Laboratories, Inc., in its publication number UL69, dated June 30, 2009, and entitled "Standard for Safety for Electric-Fence Controllers," as the same may from time to time be supplemented, or shall display the approved label of and meet the safety standards promulgated by the International Electrotechnical Commission in its publication IEC 60335-2-76, second edition (BS EN 69335-2-76), as the same may from time to time be supplemented.

B. No metallicly continuous fence or set of electrically connected fences shall be supplied by more than one controlling device.



C. Any controlling device shall be suitably grounded when placed in service.

§ 55.1-2802. Unlawful to sell other controlling devices unless they meet certain standards.

A. A controlling device that does not conform to the requirements of [§ 55.1-2801](#) shall not be sold, distributed, constructed, installed, maintained, or used unless it meets the following standards:

1. A peak-discharge-output type controlling device that delivers intermittent current of a value not in excess of four milliamperere-seconds for a maximum “on” period of two-tenths second and a minimum “off” period of three-quarters second. The mean value of the peak output from such device shall progressively decrease from four milliamperere-seconds at maximum “on” periods of both two-tenths and one-tenth second to three and two-tenths milliamperere-seconds at six-hundredths second, one and nine-tenths milliamperere-seconds at three-hundredths second, and consequently to shorter “on” periods as output current increases.
2. A sinusoidal-output type controlling device that delivers an intermittent current of a value not in excess of five milliamperes for a maximum “on” period of two-tenths second and a minimum “off” period of nine-tenths second. The effective value of the output from such device may increase as the “on” period decreases, increasing from 40 milliamperes for one-tenth second to 57 milliamperes for five-hundredths second, and 65 milliamperes for twenty-seven thousandths second.
3. Any other type of controlling device that delivers a maximum intermittent current output of a value not in excess of four milliamperere-seconds for a maximum “on” period of two-tenths second and a minimum “off” period of nine-tenths second.

B. Notwithstanding the provisions of subsection A, no electric fence controlling device shall be sold, distributed, constructed, installed, maintained, or used that will permit for longer than one second an uninterrupted electric current on the fence with an effective value in excess of five milliamperes when the load, including the measuring device, is not less than 450 ohms nor more than 550 ohms.

§ 55.1-2803. Penalty.

Any person who violates any provision of this article is guilty of a Class 1 misdemeanor.

Article 2. What Constitutes Lawful Fence.

§ 55.1-2804. Description of lawful fence.

Every fence shall be deemed a lawful fence as to any domesticated livestock that could not creep through such fence, if it is:

1. At least five feet high, including, if the fence is on a mound, the mound to the bottom of the ditch;
2. Made of barbed wire, at least 42 inches high, consisting of at least four strands of barbed wire, firmly fixed to posts, trees, or other supports substantially set in the ground, spaced no farther than 12 feet apart unless a substantial stay or



brace is installed halfway between such posts, trees, or other supports to which such wires are also fixed;

3. Made of boards, planks, or rails, at least 42 inches high, consisting of at least three boards firmly attached to posts, trees, or other supports substantially set in the ground;
4. At least three feet high, if such fence is within the limits of any town whose charter neither prescribes, nor gives to the town council power to prescribe, what shall constitute a lawful fence within such corporate limits; or
5. Any other fence, except as otherwise described in this section, if it is:
 - a. At least 42 inches high;
 - b. Constructed from materials sold for fencing or consisting of systems or devices based on technology generally accepted as appropriate for the confinement or restriction of domesticated livestock; and
 - c. Installed pursuant to generally acceptable standards so that applicable domesticated livestock cannot creep through the same.

A cattle guard reasonably sufficient to turn all kinds of livestock shall also be deemed a lawful fence as to any domesticated livestock.

Nothing contained in this section shall affect the right of any such town to regulate or forbid the running at large of cattle and other domestic animals within its corporate limits.

The Board of Agriculture and Consumer Services may adopt regulations regarding lawful fencing consistent with this section to provide greater specificity as to the requirements of lawful fencing. The absence of any such regulation shall not affect the validity or applicability of this section as it relates to what constitutes lawful fencing.

§ 55.1-2805. Proceeding to declare stream of water or canal a lawful fence.

A. The circuit court of any county, upon a petition of any owner or tenant of lands on any stream of water or canal, may declare and establish such stream or canal, or any part of either within the limits and jurisdiction of the county, a lawful fence as to any domesticated livestock. Notice of the application shall be given by posting a copy of the petition at the front door of the courthouse and at two or more public places at or near the stream or canal to which the petition applies, for 30 days, and by publishing such notice once a week for four successive weeks in a newspaper of general circulation in such county. At or before the trial of the cause, any person interested may enter himself a defendant.

B. The court may, upon petition and notice of any person interested, revoke or alter any order made under subsection A, but such order shall not be made within one year from the date of the original and shall not take effect until six months after it is made.

§ 55.1-2806. Boundary lines of certain low grounds on James River a lawful fence.

The owners and occupants of low grounds on either side of the James River in Albemarle, Buckingham, and Goochland Counties, enclosed by lawful fences on the back and hill lands, need not keep up any fence on the boundary lines running across the low grounds to the



river, and such boundary lines shall be deemed a lawful fence, except where public roads cross the river or run parallel with its banks.

§ 55.1-2807. Statutes declaring watercourses lawful fences continued.

All acts declaring any river, stream, or watercourse, or any part thereof, or any boundary in any county, a lawful fence, or authorizing any court so to declare the same, or enacting a special fence law for any county or any part thereof, and all acts relating to the making or repairing of division fences in any county or in any part thereof that may be in force on the day before the Code of 1887 took effect, shall continue in force.

Article 3. Cattle Guards and Gates Across Rights-Of-Way

§ 55.1-2808. Property owner may place cattle guards or gates across right-of-way.

Any owner of property on which there is a road or way, not a public road, a highway, a street, or an alley, over which an easement exists for ingress and egress of others may place cattle guards or gates across such way when required for the protection of livestock.

§ 55.1-2809. Persons having easement may replace gate with cattle guard; maintenance and use thereof; deemed lawful gate.

Any person having an easement of right-of-way across the lands of another may, at his own expense, replace any gate thereon with a substantial cattle guard sufficient to turn livestock. Such cattle guards shall be maintained by the owner of the easement, who shall be responsible for keeping such cattle guards at all times in sufficient condition to turn livestock. If a cattle guard is rendered inoperative by inclement weather, the easement owner shall utilize and maintain any reasonable alternative method sufficient to turn livestock from the inoperative cattle guard until such cattle guard is rendered operative again. If the gate to be replaced is needed or used for the orderly ingress and egress of equipment or animals thereover, then such persons acting under the authority of this section shall construct such cattle guards so as to allow such ingress and egress or, if such easement is of sufficient width, may place such cattle guard adjacent to such gate.

Such a cattle guard shall be deemed a lawful gate and not an interference with such easement.

Article 4. Trespass in Crossing Lawful Fence.

§ 55.1-2810. Damages for trespass by animals; punitive and double damages.

- A. If any domesticated livestock enters into any grounds enclosed by a lawful fence, as defined in §§ 55.1-2804 through 55.1-2807, the owner or manager of any such animal shall be liable for the actual damages sustained.
- B. Punitive damages may be awarded but shall not exceed \$20 in any case.
- C. For every second and subsequent trespass, the owner or manager of such animal shall be liable for double damages, both actual and punitive.

§ 55.1-2811. Lien on animals.

If the court enters judgment for the owner or tenant of the grounds enclosed by a lawful fence pursuant to § 55.1-2810, the landowner shall have a lien upon such animal. Upon entry of the judgment, the court shall issue a writ of fieri facias pursuant to § 8.01-478, and the animal found to have trespassed shall be levied upon by the officer to whom such execution was issued, who shall sell such animal, as provided in Chapter 18 (§ 8.01-466



et seq.) of Title 8.01.

§ 55.1-2812. Impounding animals.

Whenever any animal is found trespassing upon any grounds enclosed by a lawful fence, the owner or tenant of such enclosed grounds shall have the right to take up and impound such animal until the damages provided for pursuant to this article have been paid, or until such animal is taken under execution by the officer as provided by § 55.1-2811. The costs of taking up and impounding such animal shall be estimated as a part of the actual damage.

§ 55.1-2813. Duty to issue warrant when animal impounded.

An owner or tenant of lands trespassed upon by any domesticated livestock, within three days after the taking up and impounding such animal unless the damages are otherwise settled, shall apply to a person authorized to issue warrants of the county or city in which such land is situated for a warrant for the amount of damages claimed by him. The court, or the clerk thereof, shall issue such warrant, to be made returnable at as early a date, but not less than three days after such issuance, as shall be deemed best by him; and upon the hearing of the case the judge shall give such judgment as is deemed just and right.

Article 5. No-Fence Law.

§ 55.1-2814. How governing body of county may make local fence law.

The board of supervisors or other governing body in any county, after publishing notice as required by subsection F of § 15.2-1427, may, by ordinance, declare the boundary line of each lot or tract of land or any stream in such county, any magisterial district of such county, or any selected portion of such county, to be a lawful fence as to any or all domesticated livestock, or may declare any other kind of fence for such county, magisterial district, or selected portion of the county than as prescribed by § 55.1-2804 to be a lawful fence, as to any or all of such animals.

§ 55.1-2815. Effect of such law on certain fences.

A declaration made by ordinance adopted pursuant to § 55.1-2814 shall not apply to relieve the adjoining landowners from making and maintaining their division fences, as defined by § 55.1-2804; however, Article 6 (§ 55.1-2821 et seq.) shall apply to such division fences.

§ 55.1-2816. Application to railroad companies.

No action taken under the provisions of § 55.1-2814 shall relieve any railroad company of any duty or obligation imposed on every such company by § 56-429, or imposed by any other statute now in force, in reference to fencing their lines of railway and rights-of-way.

§ 55.1-2817. No authority to adopt more stringent fence laws.

Nothing in § 55.1-2814 shall authorize or require the boards of supervisors or other governing bodies of counties to declare a more stringent fence as a lawful fence for any county, magisterial district, or selected portion of any county than as prescribed by § 55.1-2804.

§ 55.1-2818. Effect on existing fence laws or no-fence laws.

Nothing in § 55.1-2814 shall repeal the existing fence laws in any county, magisterial district, or selected portion of any county, until changed by the board of supervisors or other governing body, by ordinance and in accordance with the provisions thereof, nor shall the



provisions of § 55.1-2814 apply to any county, magisterial district, or selected portion of any county in which the no-fence law is now in force, if such no-fence law exists otherwise than in an ordinance adopted by the board of supervisors or other governing body of such county entered pursuant to § 55.1-2814.

§ 55.1-2819. Lands under quarantine.

The boundary line of each lot or tract of land in any county in the Commonwealth that is under quarantine shall be a lawful fence as to any and all domesticated livestock.

§ 55.1-2820. When unlawful for animals to run at large.

It is unlawful for the owner or manager of any domesticated livestock to permit any such animal, as to which the boundaries of lots or tracts of land have been or may be constituted a lawful fence, to run at large beyond the limits of his own lands within the county, magisterial district, or portion of such county in which such boundaries have been constituted and are a lawful fence.

Article 6. Division Fences.

§ 55.1-2821. Obligation to provide division fences.

Adjoining landowners shall build and maintain, at their joint and equal expense, division fences between their lands, unless one of them chooses to let his land lie open or unless they agree otherwise.

§ 55.1-2822. When no division fence has been built.

If no division fence has been built, either one of the adjoining landowners may give notice in writing of his desire and intention to build such fence to the landowner of the adjoining land, or to his agent, and require him to build his half of such fence. The landowner so notified may, within 10 days after receiving such notice, give notice in writing to the person so desiring to build such fence, or to his agent, of his intention to let his land lie open. If the landowner giving the original notice subsequently builds such division fence and the landowner who has so chosen to let his land lie open, or his successors in title, subsequently encloses his land, he, or his successors, shall be liable to the landowner who built such fence, or to his successors in title, for one-half of the value of such fence at the time such land was so enclosed, and such fence shall thereafter be deemed a division fence between such lands.

If, however, the person so notified fails to give notice of his intention to let his land lie open, and fails to agree, within 30 days after being so notified, to build his half of such fence, he shall be liable to the person who builds the fence for one-half of the expense, and such fence shall thereafter be deemed a division fence between such lands.

Notwithstanding the provisions of this section, no successor in title shall be liable for any amount prior to the recordation and proper recordation of the notice in the clerk's office of the county in which the land is located.

§ 55.1-2823. When division fence already built.

When any fence

- (i) that has been built and used by adjoining landowners as a division fence, or any fence that has been built by one landowner and the other landowner is afterwards required to pay half of the value or expense of such fence under the provisions contained in this article, and



(ii) that has thereby become a division fence between such lands, becomes out of repair to the extent that it is no longer a lawful fence, either one of such adjoining landowners may give written notice to the other, or to his agent, of his desire and intention to repair such fence and require him to repair his half of such fence. If the landowner receiving written notice fails to repair his half within 30 days after being so notified, the one giving such notice may then repair the entire fence so as to make it a lawful fence, and the other shall be liable to him for one-half of the expense of such repairs.

§ 55.1-2824. Recovery of amount due in connection with division fence.

Any sum that may be due and payable by one adjoining landowner to another in pursuance of any of the provisions of §§ 55.1-2822 and 55.1-2823 may be recovered by action or warrant in debt, according to the jurisdictional amount.

§ 55.1-2825. Requirements for agreement to bind successors in title; subsequent owners.

No agreement made between adjoining landowners, with respect to the construction or maintenance of the division fence between their lands, shall be binding on their successors in title unless it (i) is in writing and specifically so state, (ii) is recorded in the deed book in the clerk's office of the county in which the land is located, and (iii) is properly indexed as deeds are required by law to be indexed.

If any notice, as required by § 55.1-2822 or 55.1-2823 is recorded in the deed book in the clerk's office of the county in which the land is located and is properly indexed as deeds are required by law to be indexed, then any subsequent owners of such land shall be liable for any sum that may be due pursuant to § 55.1-2824.

§ 55.1-2826. How notice given.

Any notice required to be given pursuant to this article shall be given to the landowner, if he resides in the county in which the land lies; otherwise, it may be given to such person as, under the laws of the Commonwealth, would be his agent or to any person occupying such land as tenant of the landowner, who shall, for the purposes of this article, be deemed the agent of such landowner.

Article 7. Special Provisions for Unincorporated Communities.

§ 55.1-2827. Courts to fix boundaries of villages to prevent animals from running at large.

The circuit court of any county in which is situated any village or unincorporated community having within defined boundaries a population of 300 or more shall have jurisdiction to fix the boundaries of such village or unincorporated community for the purpose of preventing domesticated livestock from running at large within such boundaries.

§ 55.1-2828. Petition for action to fix boundaries of village or unincorporated community.

Twenty or more landowners residing within the boundaries referred to in § 55.1-2827 may file a petition signed by them requesting that the boundaries of such village or unincorporated community be fixed for the purposes of § 55.1-2827. Notice of the intention to file such petition, stating the date on which the petition will be filed, and such notice shall be (i) posted at the front door of the courthouse of such county, and at three or more conspicuous places within such boundaries and (ii) published once a week for two successive weeks in a newspaper having a general circulation in the county where the village or unincorporated community is located, at least 10 days before the day on which such petition is to be presented. Such



petition shall state with reasonable certainty the boundaries within which it is desired to prohibit such animals from running at large, that at least 300 persons reside within such boundaries, and that a majority of the landowners residing therein are in favor of prohibiting such animals from running at large.

§ 55.1-2829. Entry of order if petition not contested.

A petition filed pursuant to § 55.1-2828, if verified by the oath of one or more of the petitioners, shall be prima facie evidence of the facts stated therein, and the court without further evidence shall proceed to enter the order fixing the boundaries of the village or unincorporated community unless such petition is contested.

§ 55.1-2830. Procedure in case of contest.

Any person having a lawful interest in any land within the boundaries referred to in any petition to fix the boundaries of a village or unincorporated community who wishes to contest such petition may intervene in such action as a defendant. In case of such contest, the judge shall hear the evidence and, if in doubt as to the facts, may appoint one or more persons to canvass such community and report to the court the number of persons residing within such boundaries, the names of all the landowners residing therein, and whether such landowners are for or against the petition.

§ 55.1-2831. Order of court.

If it appears from the evidence or from such report, if any be made, that as many as three hundred persons reside within such boundaries and that a majority of the freeholders residing therein are in favor of prohibiting those animals specified in § 55-306 from running at large; and, in case of an uncontested petition, without other evidence than the petition itself, such court shall enter an order fixing such boundaries as aforesaid.

§ 55.1-2832. Animals shall not run at large after entry of order.

After the expiration of 10 days from the date of entering an order pursuant to § 55.1-2831, it is unlawful for any domesticated livestock to run at large within such boundaries, and any person owning or having charge of any such animal who permits such livestock to run at large within such boundaries is guilty of a Class 4 misdemeanor. Each day such animal is permitted to run at large constitutes a separate offense, and any such animal found running at large upon any street, alley, road, or other public ground within such boundaries may be taken up and impounded by any person who may retain such animal in his custody until the expense of keeping such animal is paid.

§ 55.1-2833. Costs.

If the petition is uncontested, the costs shall be borne by the petitioner; if it is contested, costs shall be awarded to the prevailing party.

§ 55.1-2834. Owner of domesticated livestock liable for trespasses

If any domesticated livestock, as to which the boundaries of the lots or tracts of land in any county, magisterial district, or selected portion of such county constitute a lawful fence, are found going at large within such county, district, or portion of such county, or upon the lands of any person other than the owner, the owner or manager of such animals shall be liable for all damage or injury done by such animals to the owner of the crops or lands upon which they trespass, whether the animals wander from the premises of their owner in the



county in which the trespass was committed or from another county, provided that when the boundaries of lots or tracts of land in only one of two adjoining counties constitutes a lawful fence, and any of such animals escapes across the line or boundary of the two counties, the owner of such animal shall not be liable to the fine imposed by subsection B of § 55.1-2810, nor for any trespass committed by such animal upon the lands lying next to such line or boundary, nor to a forfeiture of the animal, unless the land upon which the trespass is alleged to have been committed is enclosed, as provided in § 55.1-2804.

Article 8. Rights-Of-Way; Fires; Fences; Cattle Guards, Etc.

§ 56-429. Company to erect fences along roadbed; cattle guards, etc.

Upon the written request by certified mail to the registered agent of the railroad in question of any landowner whose land adjoins the railroad and whose land is otherwise enclosed for the purpose of maintaining livestock, every railroad company shall cause fences to be erected along its line and on both sides of its roadbed and shall keep such fences in proper repair. Such fence shall be adequate to enclose livestock. The owners of adjoining lands may connect their fences with such fences at such places as they may deem proper. In erecting such fences the company shall, at the termini of those portions of the roadbed which it is required to fence, and on each side of all public and private crossings, construct across its roadbed and keep in good repair cattle guards reasonably sufficient to turn all kinds of livestock, with which its fences shall be connected. Such cattle guards at private crossings may be dispensed with if the company erects sufficient gates and maintains them in good order.

Such fences shall be constructed on the request of the landowner, in writing, by certified mail, to the registered agent of such railroad. If the company refuses or fails, for 180 days after such request, to construct or maintain the fences at the place designated, the owner, having given ten days' notice in writing to such registered agent, may apply to the circuit court of the county or city in which any such point is located for the appointment of three disinterested freeholders, whose duty it shall be to go on the land and determine whether the proposed fence shall be constructed. Their decision shall be in writing, and shall be forthwith returned to and filed in the office of the clerk of such court. If such decision is that the fence ought to be constructed, the company shall, within sixty days thereafter, construct the same. Upon its failure so to do, it shall pay to the landowner fifty dollars for every day of such failure. Any style of fence approved by the State Corporation Commission shall, if properly constructed and maintained, be deemed a sufficient fence within the meaning of this chapter. Any delay in construction or maintenance caused by inclement weather, war, strikes, acts of God, national emergencies or failure of any local, state, or federal governmental agencies to grant permits shall extend the aforesaid period.

Any such company may erect gates or bars instead of the cattle guards required by this section, if, in the judgment of the company, the hazard to trains at such crossings requires gates or bars as a safeguard to life and property on the trains. If such fence, cattle guard or gate is destroyed or damaged due to the negligence of the landowner, the landowner shall be solely responsible for restoring or repairing such fence, cattle guard or gate.

The circuit court of the county or city wherein any such fence or cattle guard, or any portion thereof, is to be erected or built pursuant to this section shall have jurisdiction through its power to grant equitable relief to compel the erection of any such fence, or building of any such cattle guards along or adjoining lands or lots actually enclosed.

§ 56-430. Construction of § 56-429; burden of proof.

Section 56-429, so far as it relates to fencing, shall not apply to any part of a railroad



located within the corporate limits of a city or town, or between the terminals of switches, or spur tracks, not exceeding 350 yards from the depot, either way, nor to any part of a railroad at a place where there is a cut or embankment with sides sufficiently steep to prevent the passage of stock at such place; nor in an action by an adjacent owner to recover for stock killed or injured on the track shall it apply to a company which has compensated the owner for making and keeping in repair the necessary fencing, but the burden of proving the fact of such compensation shall be on the company, and no report of any commissioners shall be received as proof thereof, unless it shall plainly appear on the face of the report, or from other evidence in connection therewith, that an estimate was made by such commissioners for the fencing, and the expense for the same entered into, and constituted a part of the damages reported and actually paid.

§ 56-431. When company not liable for injury on enclosed track.

No railroad company shall be liable for any injury to any person or property on such part of its track as may be enclosed according to the provisions of this chapter, unless it be made to appear that the person or property was thereon by express permission of the company, or through the negligence of its employees, agents or servants, or unless the injury was willful or the result of gross negligence on the part of the company, its servants, agents, or employees.

§ 56-432. Liability for injury on track not enclosed.

In any action or suit against a railroad company for an injury to any property on any part of its tracks not enclosed according to the provisions of this chapter it shall not be necessary for the claimant to show that the injury was caused by the negligence of the company, its employees, agents, or servants.

§ 56-433. Cattle guards; remedy of aggrieved landowner; penalty.

Every railroad company whose road passes through any enclosed lands in this Commonwealth shall construct and keep in good order cattle guards reasonably sufficient to prevent the passage of livestock of every kind over such land, at any point where a fence may be necessary or proper, whether it is a division fence between contiguous farms or between different parcels or tracts belonging to the same person, or a fence along a public highway. Such cattle guards shall be constructed on the request of the landowner, in writing, by certified mail, to the registered agent of such railroad. If the company refuses or fails, for ninety days after such request, to construct or maintain the cattle guards at the place designated, the owner, having given ten days' notice in writing to the registered agent, may apply to the circuit court of the county or city in which any such point is located for the appointment of three disinterested freeholders, whose duty it shall be to go on the land and determine whether the proposed cattle guard shall be constructed. Their decision shall be in writing, and shall be forthwith returned to and filed in the office of the clerk of such court. If such decision is that the cattle guard ought to be constructed, the company shall, within ninety days thereafter, construct the same. Upon its failure so to do, it shall pay to the landowner fifty dollars for every day of such failure. Any style of cattle guard approved by the State Corporation Commission shall, if properly constructed and maintained, be deemed a sufficient cattle guard within the meaning of this chapter. Any delay in construction or maintenance caused by inclement weather, war, strikes, acts of God, national emergencies or failure of any local, state, or federal governmental agencies to grant permits shall extend the aforesaid period.

§ 56-434. When cattle guards may be discontinued.



Every railroad company, after erecting the fences mentioned in § 56-429, may discontinue all cattle guards enclosed by such fences, except such as are provided for at public or private crossings, and in lieu thereof the owners of contiguous lands may connect their fences with those of the company at such place or places as they may desire.

§ 56-435. Appeal from general district court to circuit court in cattle-guard cases.

In all suits brought before the general district court against railroad companies to recover penalties for failure to construct cattle guards as required by law, either party shall have the right of appeal to the circuit court of the county where such suit is brought, from the judgment of the general district court, without regard to the amount in controversy.

§ 56-436. Board of appraisers to appraise injured or killed livestock; duty of appraisers.

Whenever any horses, cattle, or other livestock are killed or injured, or other property damaged, by the cars or locomotives upon any railroad, it shall be lawful for the owner thereof or for the railroad company to have the property examined and the damages assessed by a board of appraisers in the following manner:

Either party, his agent or attorney, may appoint one person as the appraiser in his behalf, and notify the other party; such notice, when intended for the railroad company, shall be sufficient if given by certified mail to the registered agent of such railroad. Then the party so notified shall appoint an appraiser on his behalf, and the two appraisers shall select a third appraiser. These three persons shall constitute a board of appraisers to examine and appraise the property so injured or damaged, and shall examine the horses or other livestock so killed, or injured, or the other property so damaged, and affix a value upon the same if killed, or assess the damages to the same if injured, and make a written report, carefully describing the horses, cattle, or other livestock or property, stating whether killed or injured, and also setting out the valuation or assessment of damages made by them. Such report shall be returned to the office of the clerk of the circuit court of the county or city in which such livestock was killed or injured, who shall file and preserve the same.

§ 56-437. Effect of appraisal in case of suit; costs.

If the railroad company fails, for sixty days after such report is so returned to such clerk, to pay to the owner the full amount assessed by the board of appraisers under § 56-436, and the cost attending the assessment, the owner shall have the right to institute suit on the original cause of action. If, upon the trial, he recovers a verdict for an amount equal to or greater than the amount assessed in his favor by the board of appraisers, it shall be the duty of the court to render judgment in his favor for the amount of such verdict, and costs of suit and, of such appraisement, and ten percent damages in addition thereto. If the owner recovers less than the amount so assessed, judgment shall be rendered in his favor for the amount of the verdict and costs of suit and appraisement; but if the company has offered to pay the award, and the owner has refused to accept the same, and he recovers a verdict for an amount less than such assessment, judgment shall be rendered in his favor for the amount of his recovery, but the cost of the appraisement and action shall be taxed against him.

§ 56-438. Fee of appraisers.

Appraisers appointed pursuant to the provisions of § 56-436 shall receive for their services each the sum of one dollar.

§ 56-439. Application of §§ 56-436 through 56-438.



The provisions of §§ 56-436 through 56-438 shall not apply to any railroad company which has its line of road enclosed with fences and cattle guards, as required by law.

§ 56-439.1. Notice of injury or death of certain livestock; penalty.

Whenever any horses, cattle, or other livestock are injured or killed by the cars or locomotives operating on a railroad, the section master or employee of the railroad having charge of the road at the place where the injury or death occurred shall, if he knows of the incident or should have known of it, within seventy-two hours, notify the owner of the animal or animals or the local law-enforcement agency of the injury or death and the location of the incident in relationship to state routes as well as railroad mile posts. Disposal of any such animal or animals without proper notification shall constitute a Class 1 misdemeanor.

§ 56-440. Penalty for failure to remove cause of complaint in cities or towns.

If any railroad, when directed so to do by a valid order of the State Corporation Commission, shall refuse or fail to remove the cause of complaint of the authorities of any incorporated city or town in which such railroad is located, as to the physical condition or operation of such railroad, it shall, in the discretion of the Commission, be fined not less than \$10 nor more than \$1,000.

