



# The National Agricultural Law Center

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## States' Fence Statutes: *Washington*



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# A National Agricultural Law Center Research Publication

## States' Fence Statutes: Washington

**Wash. Rev. Code §§ 16.04.010-16.04.100, 16.08.050, 16.24.010-16.24.230, 16.57.280-16.57.350, 16.60.010-16.60.095, 78.12.010, 78.12.060, 81.52.050-81.52.070, 90.28.160;**

*Current with effective legislation through Chapter 331 of the 2021 Regular Session of the Washington Legislature.*

### **16.04.010 Trespassing animals -- Restraint -- Damages and costs.**

Any person suffering damage done by any horses, mules, donkeys, cattle, goats, sheep, swine, or any such animals, which shall either trespass upon any land enclosed by lawful fence as provided in chapter 16.60 or trespass while running at large in violation of chapter 16.24 may retain and keep in custody such offending animals until the owner or person having possession of such animals shall pay such damage and costs, or until good and sufficient security be given for the same.

### **16.04.015 Damages, liability.**

Except as provided under 16.04.100, whenever any animals trespass as provided in 16.04.010, the owner or person having possession of such animal shall be liable for all damages the owner or occupant may sustain by reason of such trespass.

### **16.04.020 Notice of restraint -- Owner known.**

Whenever any animals are restrained as provided in 16.04.010, the person restraining such animals shall within twenty-four hours thereafter notify in writing the owner, or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, and the probable amount of the damages sustained: PROVIDED, He knows to whom such animals belong.

### **16.04.025 Owner of animals unknown -- Procedure.**

If the owner or the person having in charge or possession such animals is unknown to the person sustaining the damage, the person retaining such animals shall, within twenty-four hours, notify the county sheriff or the nearest state brand inspector as to the number, description, and location of the animals. The county sheriff or brand inspector shall examine the animals by brand, tattoo, or other identifying characteristics and attempt to ascertain ownership. If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector or county sheriff shall furnish this information and other pertinent information to the person holding the animals who in turn shall send the notice required in 16.04.020 to the animals' owner of record by certified mail.

If the county sheriff or the brand inspector determines that there is no apparent damage to the property of the person retaining the animals, or if the person sustaining the damage contacts the county sheriff or brand inspector to have the animals removed from his or her property, such animals shall be removed in accordance with chapter 16.24 RCW.



Such removal shall not prejudice the property owner's ability to recover damages through civil suit.

#### **16.04.030 Actions for damages.**

If the owner or person having such animals in charge fails or refuses to pay the damages done by such animals, and the costs, or give satisfactory security for the same within twenty-four hours from the time the notice was served, if served personally, or in case of horses, mares, mules and asses, within twenty-four hours from the time such notice was posted, if served by posting the same, and in case of cattle, goats, sheep and swine within ten days from the time of such posting, the person damaged may commence a suit, before any court having jurisdiction thereof, against the owner of such animals, or against the persons having the same in charge, or possession, when the trespass was committed, if known; and if unknown the defendant shall be designated as John Doe, and the proceedings shall be the same in all respects as in other civil actions, except as modified in 16.04.010 through 16.04.070. If such suit is commenced in superior court the summons shall require the defendant to appear within five days from the date of service of such summons, if served personally.

#### **16.04.040 Jurisdiction -- Appeal.**

District judges shall have exclusive jurisdiction of all actions and proceedings under 16.04.010 through 16.04.070 when the damages claimed do not exceed one hundred dollars: PROVIDED, HOWEVER, that any party considering himself or herself aggrieved shall have the right of appeal to the superior court as in other cases.

#### **16.04.045 Continuance.**

If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, the case shall be continued, and proceedings had as in 16.04.050 provided, if the proper defendant be unknown to plaintiff.

#### **16.04.050 Substituted service.**

If the owner or keeper of such offending animals is unknown to plaintiff at the commencement of the action, or if on the trial it appears that the defendant is not the proper party, defendant, and the proper party is unknown, service of the summons or notice shall be made by publication, by publishing a copy of the summons or notice, with a notice attached, stating the object of the action and giving a description of the animals seized, in a newspaper of general circulation in the area where the plaintiff resides less than ten days previous to the day of trial.

#### **16.04.060 Sale -- When costs may be charged to plaintiff.**

Upon the trial of an action as herein provided [16.04.010 through 16.04.070] the plaintiff shall prove the amount of damages sustained and the amount of expenses incurred for keeping the offending animals, and any judgment rendered for damages, costs, and expenses against the defendant shall be a lien upon such animals committing the damage, and the same may be sold and the proceeds shall be applied in full satisfaction of the judgment as in other cases of sale of personal property on execution: PROVIDED, That no judgment shall be continued against the defendant for any deficiency over the amount realized on the sale of such animals, if it shall appear upon the trial that no damage was sustained, or that a tender was made and paid into court of an amount equal to the damage and costs, then judgment shall be rendered against the plaintiff for costs of suit and damage sustained by defendant.



#### **16.04.070 Surplus -- Disposition.**

If when such animals are sold, there remains a surplus of money, over the amount of the judgment and costs, it shall be deposited with the county treasurer, by the officer making the sale, and if the owner of such animals does not appear and call for the same, within six months from the day of sale, it shall be paid into the school fund, for the use of the public schools of said county.

#### **16.04.080 Stock on United States military reservation.**

It shall be unlawful for the owner of any livestock to allow such livestock to run at large or be upon any United States military reservation upon which field artillery firing or other target practice with military weapons is conducted. Any owner who permits livestock to run at large or be upon any such reservation shall do so at the risk of such owner and such owner shall have no claim for damages if such livestock is injured or destroyed while so running at large on such reservation: PROVIDED, HOWEVER, That the commanding officer of any such United States military reservation may issue permits for specific areas and for specific periods of time when firing will not be conducted thereon authorizing the owner of such livestock to permit the same to run at large or be upon any such military reservation.

#### **16.04.100 Trespass via fence damaged by wildlife.**

If damages are caused by a trespassing animal, neither the state nor the owner of the animal shall be liable if the owner of the animal can prove that the trespass is due to damage caused by wildlife to a lawful fence and, in a stock restricted area, the owner of the animal did not have a reasonable opportunity to repair the fence. The state shall pay all costs of transportation, advertising, legal proceedings, and keep of an animal that has been restrained pursuant to 16.04.010. Claims filed under this section shall be processed according to the procedures under chapter 4.92 RCW.

#### **16.08.050 Entrance on private property, when lawful.**

A person is lawfully upon the private property of such owner within the meaning of 16.08.040 when such person is upon the property of the owner with the express or implied consent of the owner: PROVIDED, that said consent shall not be presumed when the property of the owner is fenced or reasonably posted.

#### **16.24.010 Restricted areas -- Range areas.**

The county legislative authority of any county of this state shall have the power to designate by an order made and published, as provided in 16.24.030, certain territory as stock restricted area within such county in which it shall be unlawful to permit livestock of any kind to run at large. No territory so designated shall be less than two square miles in area. 16.24.010 through 16.24.065 shall not affect counties having adopted township organization. All territory not so designated shall be range area, in which it shall be lawful to permit cattle, horses, mules, or donkeys to run at large: PROVIDED, That the county legislative authority may designate areas where it shall be unlawful to permit any livestock other than cattle to run at large.

#### **16.24.020 Hearing -- Notice.**

\*Within sixty days after the taking effect of 16.24.010 through 16.24.065, the county legislative authority of each of the several counties of the state may make an order fixing a time and place when a hearing will be had, notice of which shall be published at least once each



week for two successive weeks in some newspaper having a general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, or at the time to which such hearing may be adjourned, to hear all persons interested in the establishment of range areas or stock restricted areas as defined in 16.24.010 through 16.24.065.

#### **16.24.030 Order establishing area -- Publication.**

Within thirty days after the conclusion of any such hearing the county legislative authority shall make an order describing the stock restricted areas within the county where livestock may not run at large, which order shall be entered upon the records of the county and published in a newspaper having general circulation in such county at least once each week for four successive weeks.

#### **16.24.040 Penalty.**

Any person, or any agent, employee or representative of a corporation, violating any of the provisions of such order after the same shall have been published or posted as provided in 16.24.030 or, violating any provision of this chapter, shall be guilty of a misdemeanor.

#### **16.24.050 Change of boundaries.**

When the county legislative authority of any county deem[s] it advisable to change the boundary or boundaries of any stock restricted area, a hearing shall be held in the same manner as provided in 16.24.020. If the county legislative authority decides to change the boundary or boundaries of any stock restricted area or areas, it shall within thirty days after the conclusion of such hearing make an order describing said change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in such county once each week for four successive weeks.

#### **16.24.060 Road signs in range areas.**

At the point where a public road enters a range area, and at such other points thereon within such area as the county legislative authority shall designate, there shall be erected a road sign bearing the words: "RANGE AREA. WATCH OUT FOR LIVESTOCK."

#### **16.24.065 Stock at large in restricted areas -- Running at large on state or federal land.**

(1) No person owning or in control of any livestock shall willfully or negligently allow such livestock to run at large in any stock restricted area or to wander or stray upon the right-of-way of any public highway lying within a stock restricted area when not in the charge of some person.

(2) Livestock may run at large upon lands belonging to the state of Washington or the United States only when the owner of the livestock has been granted grazing privileges in writing.

#### **16.24.070 Stock on highway right-of-way -- Limitations.**

It shall be unlawful for any person to herd or move any livestock over, along or across the right-of-way of any public highway, or portion thereof, within any stock restricted area, without having in attendance a sufficient number of persons to control the movement of such livestock and to warn or otherwise protect vehicles traveling upon such public highway from any danger by reason of such livestock being herded or moved thereon.



#### **16.24.090 Animals at large -- Limitations -- Defense.**

Except as provided in chapter 16.24 RCW, a person who owns or has possession, charge, or control of horses, mules, donkeys, cattle, goats, sheep or swine shall not negligently allow them to run at large at any time or within any territory. It shall not be necessary for any person to fence against such animals, and it shall be no defense to any action or proceedings brought pursuant to this chapter or chapter 16.04 that the party injured by or restraining such animals did not have his or her lands enclosed by a lawful fence: PROVIDED, That such animals may be driven upon the highways while in charge of sufficient attendants.

#### **16.24.100 Prosecution -- Proof of ownership.**

In any prosecution under chapter 16.24 proof that the animal running at large is branded with the registered or known brand of the defendant shall be prima facie evidence that the defendant is the owner of said animal.

#### **16.24.110 Public nuisance -- Impounding.**

Any horses, mules, donkeys, or cattle of any age running at large or trespassing in violation of chapter 16.24 as now or hereafter amended, which are not restrained as provided by 16.04.010, are declared to be a public nuisance. The sheriff of the county where found and the nearest brand inspector shall have authority to impound such animals which are not restrained as provided by 16.04.010.

#### **16.24.120 Impounding -- Procedure.**

Upon taking possession of any livestock at large contrary to the provisions of this chapter, or any unclaimed livestock submitted or impounded, by any person, at any public livestock market or any other facility approved by the director, the sheriff or brand inspector shall cause it to be transported to and impounded at the nearest public livestock market licensed under chapter 16.65 RCW or at such place as approved by the director. If the sheriff has impounded an animal in accordance with this section, he or she shall forthwith notify the nearest brand inspector of the department of agriculture, who shall examine the animal and, by brand, tattoo, or other identifying characteristic, shall attempt to ascertain the ownership thereof.

#### **16.24.130 Impounding -- Notice -- Copy to owner.**

The brand inspector shall cause to be published once in a newspaper published in the county where the animal was found, a notice of the impounding.

The notice shall state:

- (1) A description of the animal, including brand, tattoo or other identifying characteristics;
- (2) When and where found;
- (3) Where impounded; and
- (4) That if unclaimed, the animal will be sold at a public livestock market sale or other public sale, and the date of such sale: PROVIDED, that if no newspaper shall be published in such county, copies of the notice shall be posted at four commonly frequented places therein.

If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector, on or before the date of publication or posting, shall



send a copy of the notice to the owner of record by registered mail.

**16.24.140 Impounding -- Owner to pay costs.**

Upon claiming any animal impounded under this chapter, the owner shall pay all costs of transportation, advertising, legal proceedings, and keep of the animal, except as provided under 16.04.100.

**16.24.150 Sale of impounded animal -- Retroactive effect.**

If no person shall claim the animal within ten days after the date of publication or posting of the notice, it shall be sold at the next succeeding public livestock market sale to be held at the sales yard where impounded, provided that in the director's discretion the department of agriculture may otherwise cause the animal to be sold at public sale.

The legislature intends this to be a clarification of existing law; therefore, this section shall have retroactive effect as of December 1, 1994.

**16.24.160 Conduct of sale -- Disposition of proceeds.**

The proceeds of the sale of animals impounded under this chapter, after deducting the costs of sale, shall be impounded in the estray fund of the department of agriculture, and if no valid claim is made within one year from the date of sale, the director of the department of agriculture shall transfer the proceeds of sale to the brand fund of the department to be used for the enforcement of this chapter.

**16.24.170 Purchase of animal, restrictions.**

No law enforcement officer shall, directly or indirectly, purchase any animal sold under the provisions of this chapter, or any interest therein.

**16.24.180 Castration or gelding of stock at large.**

It shall be lawful for any person having cows or heifers running at large in this state to take up or capture and castrate, at the risk of the owner, at any time between the first day of March and the fifteenth day of May, any bull above the age of ten months found running at large out of the enclosed grounds of the owner or keeper. It shall be lawful for any person to take up or capture and geld, at the risk of the owner, between April 1 and September 30 of any year, any stud horse or jackass or any male mule above the age of eighteen months found running at large out of the enclosed grounds of the owner or keeper. If the said animal shall die, as a result of such castration, the owner shall have no recourse against the person who shall have taken up or captured and castrated, or caused to be castrated, the said animal: PROVIDED, Such act of castration shall have been skillfully done by a person accustomed to doing the same: AND PROVIDED FURTHER, That if the person so taking up or capturing such animal, or causing it to be so taken up or captured, shall know the owner or keeper of such animal, and shall know that said animal is being kept for breeding purposes, it shall be his duty forthwith to notify such owner or keeper of the taking up of said animal, and if such owner or keeper shall not within two days after being so notified pay for the reasonable costs of keeping of said animal, and take and safely keep said animal thereafter within his own enclosures, then it shall be lawful for the taker-up of said animal to castrate the same, and the owner thereof shall pay a reasonable sum for such act of castration, if done skillfully, as hereinbefore required, and shall also pay for the keeping of said animal as above provided, and the amount for which he may be liable therefor may be recovered in an action at law in any court having jurisdiction thereof:



AND PROVIDED FURTHER, That if said animal should be found running at large a third time within the same year, and within the prohibited dates hereinbefore mentioned, it shall be lawful for any person to capture and castrate the animal without giving any notice to the owner or keeper whatever. For purposes of this section, geld and castrate shall have the same meaning.

#### **16.24.190 Bull breed restrictions.**

It shall be unlawful for any person, firm, association or corporation to turn upon or allow to run at large on any range area in this state any bull other than a registered bull of a recognized beef breed. All persons running cattle in common on any range area may, however, agree to run any purebred or crossbred bull of any breed, registered or unregistered, as they may deem appropriate for their area.

#### **16.24.200 Bull ratio restrictions.**

Before any person, firm, association or corporation turns upon a range area in this state any female cattle of breeding age of more than fifteen in number, they shall procure and turn with said female breeding cattle one registered bull of recognized beef breed for every forty females or fraction thereof of twenty-five or over. All persons running cattle in common on any range area may, however, agree to any other proportion of bulls to female cattle of breeding age as they may deem appropriate for their area.

#### **16.24.210 Bull breed and ratio restrictions not applicable to counties west of Cascades.**

16.24.190 and 16.24.200 shall not apply to counties lying west of the summit of the Cascade mountains.

#### **16.24.220 Separating estrays from herd.**

It shall be the duty of any and all persons searching or hunting for stray horses, mules or cattle, to drive the band or herd in which they may find their stray horses, mules or cattle, into the nearest corral before separating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said stray shall drive them out of and away from the corral in which they may be driven before setting the herd at large.

#### **16.24.230 Moving another's livestock from range.**

No person shall remove any livestock belonging to another from the range on which they are permitted to run at large, without the prior consent of the owner thereof. The owner of any livestock may move his or her own livestock, together with such other livestock as cannot be separated from his or her own, to the nearest corral, or other facility in order to separate his or her own livestock, if the other livestock are returned to the same location from which they were moved within twenty-four hours.

#### **16.60.010 Lawful fence defined.**

A lawful fence shall be of at least four barbed, horizontal, well-stretched wires, spaced so that the top wire is forty-eight inches, plus or minus four inches, above the ground and the other wires at intervals below the top wire of twelve, twenty-two, and thirty-two inches. These wires shall be securely fastened to substantial posts set firmly in the ground as nearly equidistant as possible, but not more than twenty-four feet apart. If the posts are set more than sixteen feet apart, the wires shall be supported by stays placed no more than eight feet from each other or from the posts.



### **16.60.011 Other lawful fences.**

All other fences as strong and as well calculated as the fence described in RCW 16.60.010 shall be lawful fences.

### **16.57.280 Possession of cattle or horse marked with another's brand -- Penalty.**

(1) No person shall knowingly have possession of any cattle or horse marked with a recorded brand of another person unless the:

- (a) Cattle or horse lawfully bears the person's own healed recorded brand;
- (b) Cattle or horse is accompanied by a certificate of permit from the owner of the recorded brand;
- (c) Cattle or horse is accompanied by an inspection certificate;
- (d) Cattle are accompanied by a self-inspection certificate meeting the requirements of 16.57.010;
- (e) Horse is accompanied by a bill of sale from the previous owner; or
- (f) Cattle or horse is accompanied by other satisfactory proof of ownership as designated in rule.

(2) A violation of this section constitutes a gross misdemeanor.

### **16.57.290 Impounding cattle and horses -- No certificate or proof of ownership when offered for sale -- Disposition.**

All cattle and horses that are not accompanied by a certificate of permit, inspection certificate, self-inspection certificate meeting the requirements of 16.57.160, or other satisfactory proof of ownership when offered for sale and presented for inspection by the director, shall be impounded. If theft is suspected, the director shall immediately initiate an investigation. If theft is not suspected, the animal shall be sold and the proceeds retained by the director. Upon the sale of the cattle or horses, the director shall give the purchasers an inspection certificate for the cattle or horses documenting their ownership.

### **16.57.300 Proceeds from sale of impounded cattle and horses -- Paid to director -- Exception.**

Except under 16.57.303, the proceeds from the sale of cattle and horses when impounded under 16.57.290, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of the cattle or horses at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell the cattle or horses. If the consignor fails to establish legal ownership or the right to sell the cattle or horses, the proceeds shall be paid to the director to be disposed of as any other stray proceeds.

### **16.57.303 Proceeds from sale of impounded dairy breed cattle -- Paid to seller.**

The proceeds from the sale of dairy breed cattle when impounded under 16.57.290, and after paying the cost thereof, shall be paid to the seller if:



- (1) The cattle bears a brand that is not recorded in this state or any state where a reciprocal agreement is in place as provided under 16.57.340;
- (2) There is no evidence of theft;
- (3) The director has posted the brand for at least ninety days at each licensed public livestock market in this state and any other state where the director provides for livestock inspection; and
- (4) No other person has established legal ownership of the cattle with the director.

The proceeds from the sale shall be held by the director until paid to the seller or other person as specified by the director. However, the proceeds from a sale of the cattle at a licensed public livestock market shall be held by the licensee.

#### **16.57.310 Notice of sale -- Claim on proceeds.**

When a person has been notified by registered mail that animals bearing the person's recorded brand have been sold by the director, the person shall present to the director a claim on the proceeds within thirty days from the receipt of the notice or the director may decide that no claim exists.

#### **16.57.320 Disposition of proceeds of sale when no proof of ownership -- Penalty for accepting proceeds after sale, barter, trade.**

If, after the expiration of one year from the date of sale, the person presenting the animals for inspection has not provided the director with satisfactory proof of ownership, the proceeds from the sale shall be paid on the claim of the owner of the recorded brand. However, it shall be a gross misdemeanor for the owner of the recorded brand to knowingly accept such funds after he or she has sold, bartered or traded such animals to the claimant or any other person.

#### **16.57.330 Disposition of proceeds of sale -- No claim made -- No proof of ownership provided.**

If, after the expiration of one year from the date of sale, no claim under 16.57.310 is made or no satisfactory proof of ownership is provided under 16.57.320, the money shall be credited to the department to be expended in carrying out the provisions of this chapter.

#### **16.57.340 Reciprocal agreements -- When livestock from another state an estray, sale.**

The director has the authority to enter into reciprocal agreements with any or all states to prevent the theft, misappropriation, or loss of identification of livestock. The director may declare any livestock which is shipped or moved into this state from those states estrays if the livestock is not accompanied by the proper inspection certificate or other certificates required by the law of the state of origin of the livestock. The director may hold the livestock subject to all costs of holding or sell the livestock and send the funds, after the deduction of the cost of the sale, to the proper authority in the state of origin of the livestock.

#### **16.60.011 Other lawful fences.**

All other fences as strong and as well calculated as the fence described in 16.60.010 shall be lawful fences.

#### **16.60.015 Liability for damages -- Restraint -- Notice.**



Any person making and maintaining in good repair around his or her enclosure or enclosures, any fence such as is described in 16.60.010 and 16.60.011, may recover in a suit for trespass before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damages sustained on account of such trespass, together with the costs of suits; and the animal or animals, so trespassing, may be taken and held as security for the payment of such damages and costs: PROVIDED, That such person shall provide notice as required under 16.04.020 and 16.04.025: PROVIDED FURTHER, That such person shall have such fences examined and the damages assessed by three reliable, disinterested parties and practical farmers, within five days next after the trespass has been committed: AND, PROVIDED FURTHER, That if, before trial, the owner of such trespassing animal or animals, shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs and receive only the damages awarded.

#### **16.60.020 Partition fence -- Reimbursement.**

When any fence has been, or shall hereafter be, erected by any person on the boundary line of his land and the person owning land adjoining thereto shall make, or cause to be made, an inclosure, so that such fence may also answer the purpose of inclosing his ground, he shall pay the owner of such fence already erected one-half of the value of so much thereof as serves for a partition fence between them: PROVIDED, That in case such fence has woven wire or other material known as hog fencing, then the adjoining owner shall not be required to pay the extra cost of such hog fencing over and above the cost of erecting a lawful fence, as by law defined, unless such adjoining owner has his land fenced with hog fencing and uses the partition fence to make a hog enclosure of his land, then he shall pay to the one who owns said hog fence one-half of the value thereof.

#### **16.60.030 Partition fence -- Erection -- Notice.**

When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary for the protection of the interest of one party said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable, the line of said land.

#### **16.60.040 Partition fence -- Failure to build -- Recovery of half of cost.**

If, after notice has been given by either party and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected, the one-half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party.

#### **16.60.050 Partition fence -- Hog fencing.**

The respective owners of adjoining inclosures [enclosures] shall keep up and maintain in good repair all partition fences between such inclosures [enclosures] in equal shares, so long as they shall continue to occupy or improve the same; and in case either of the parties shall desire to make such fence capable of turning hogs and the other party does not desire to use it for such purpose, then the party desiring to use it shall have the right to attach hog-fencing material to the posts of such fence, which hog fencing shall remain the property of the



party who put it up, and he or she may remove it at any time he or she desires: PROVIDED, That he or she leaves the fence in as good condition as it was when the hog fencing was by him or her attached, the natural decay of the posts excepted. The attaching of such hog fencing shall not relieve the other party from the duty of keeping in repair his or her part of such fence, as to all materials used in said fence additional to said hog fencing.

#### **16.60.055 Fence on the land of another by mistake -- Removal.**

When any person shall unwittingly or by mistake, erect any fence on the land of another, and when by a line legally determined that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months after such line has been run as aforesaid: PROVIDED, That when the fence to be removed forms any part of a fence enclosing a field of the other party having a crop thereon, such first person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since such division line was run.

#### **16.60.060 Partition fence -- Discontinuance.**

When any party shall wish to lay open his inclosure, he shall notify any person owning adjoining inclosures, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such enclosures, within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence, as provided in 16.60.055.

#### **16.60.062 Assessing value of partition fence.**

In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages in 16.60.020.

#### **16.60.064 Impeachment of assessment -- Damages.**

Upon the trial of any cause occurring under the provisions of 16.60.010 through 16.60.076, the defendant may impeach any such assessment, and in that case the court or the jury shall determine the damages.

#### **16.60.075 Damages by breachy animals.**

The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he or she shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals, that may be in company with such animal.

#### **16.60.076 Proof.**

In case of actions for damages under 16.60.010 through 16.60.076, it shall be sufficient to prove that the fence was lawful when the break was made.

#### **16.60.080 Temporary gate across highway.**

Whenever any inhabitant of this state shall have his fences removed by floods or destroyed by fire, the county commissioners of the county in which he resides shall have power to grant a license or permit for him or her to put a convenient gate or gates across any highway for a limited period of time, to be named in their order, in order to secure him from depredations upon his crops until he can repair his fences, and they shall grant such



license or permit for no longer period than they may think absolutely necessary.

**16.60.085 Temporary gate across highway -- Auditor may grant permit.**

It shall be lawful for the auditor of any county to grant such permit in vacation, but his or her license shall not extend past the next meeting of the commissioner's court.

**16.60.090 Failure to remove gate -- Penalty.**

Any person retaining a gate across the highway after his or her license shall expire, shall be subject to a fine of one dollar for the first day and fifty cents for each subsequent day he or she shall retain the same, and it may be removed by the road supervisor, as an obstruction, at the cost of the person placing or keeping it upon the highway.

**16.60.095 Fees.**

The fees of the auditor under 16.60.080 through 16.60.095 shall be paid by the applicant.

**78.12.010 Shafts, excavations to be fenced.**

Any person or persons, company, or corporation who shall hereafter dig, sink or excavate, or cause the same to be done, or being the owner or owners, or in the possession, under any lease or contract, of any shaft, excavation or hole, whether used for mining or otherwise, or whether dug, sunk or excavated for the purpose of mining, to obtain water, or for any other purpose, within this state, shall, during the time they may be employed in digging, sinking or excavating, or after they have ceased work upon or abandoned the same, erect, or cause to be erected, good and substantial fences or other safeguards, and keep the same in good repair around such works or shafts sufficient to securely guard against danger to persons and animals from falling into such shafts or excavations.

**78.12.060 Procedure when shaft unclaimed.**

If the notice filed with the district or municipal court, as aforesaid, shall state that the excavation, shaft or hole has been abandoned, and no person claims the ownership thereof, the court shall notify the county legislative authority of the location of the same, and they shall, as soon as possible thereafter, cause the same to be so fenced, or otherwise guarded, as to prevent accidents to persons or animals; and all expenses thus incurred shall be paid as other county expenses: PROVIDED, That nothing herein contained shall be so construed as to compel the county commissioners to fill up, fence or otherwise guard any shaft, excavation or hole, unless in their discretion, the same may be considered dangerous to persons or animals.

**81.52.050 Fences -- Crossings -- Cattle guards.**

Every person, company or corporation having the control or management of any railroad shall, outside of any corporate city or town, and outside the limits of any sidetrack or switch, cause to be constructed and maintained in good repair on each side of said railroad, along the line of said right-of-way of such person, company or corporation operating the same, a substantial fence, and at every point where any roadway or other public highway shall cross said railroad, a safe and sufficient crossing must be built and maintained, and on each side of such crossing and at each end of such sidetrack or switch, outside of any incorporated city or town, a sufficient cattle guard: PROVIDED, That any person holding land on both sides of said right-of-way shall have the right to put in gates for his own use at such places as may be convenient.

**81.52.060 Fences -- Liability for injury to stock.**



Every such person, company or corporation owning or operating such railroad shall be liable for all damages sustained in the injury or killing of stock in any manner by reason of the failure of such person, company or corporation, to construct and maintain such fence or such crossing or cattle guard; but when such fences, crossings and guards have been duly made, and shall be kept in good repair, such person, company or corporation shall not be liable for any such damages, unless negligently or unlawfully done.

**81.52.070 Fences -- Negligence -- Evidence.**

In all actions against persons, companies or corporations, operating steam or electric railroads in the state of Washington, for injury to stock by collision with moving trains, it is prima facie evidence of negligence on the part of such person, company or corporation, to show that the railroad track was not fenced with a substantial fence or protected by a sufficient cattle guard at the place where the stock was injured or killed.

**90.28.160 Fencing across streams.**

Owners of land or their agents shall have the right to fence across all unmeandered streams at any time when such streams are not used for a public highway, or by making a fence that will not be an obstruction.

