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States' Fence Statutes: *Ohio*



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States' Fence Statutes: Ohio

Ohio Rev. Code Ann. §§ 951, 971, and 4959.02 to 4959.10

Current through File 22 of the 134th General Assembly (2021-2022).

Chapter 951. Animals Running at Large.

Strays 951.02 Animals not to be permitted to run at large.

No person, who is the owner or keeper of horses, mules, cattle, bison, sheep, goats, swine, llamas, alpacas, or poultry, shall permit them to run at large in the public road, highway, street, lane, or alley, or upon unenclosed land, or cause the animals to be herded, kept, or detained for the purpose of grazing on premises other than those owned or lawfully occupied by the owner or keeper of the animals.

951.10 Damages; prima facie evidence of negligence.

(A) The owner or keeper of an animal described in section 951.02 of the Revised Code, who negligently permits it to run at large in violation of that section, is liable for all damages resulting from injury, death, or loss to person or property caused by the animal in any of the places specified in section 951.02 of the Revised Code or upon the premises of another without reference to the fence that may enclose the premises.

(B) The running at large of any animal specified in section 951.02 of the Revised Code in or upon any of the places specified in that section is prima-facie evidence in a civil action for damages under division (A) of this section that the owner or keeper of the animal negligently permitted the animal to run at large in violation of section 951.02 of the Revised Code.

951.11 Confining animal found at large; publication of notice; lien

A person finding an animal at large in violation of section 951.02 of the Revised Code, may, and a law enforcement officer of a county, township, city, or village, on view or information, shall, take and confine that animal, promptly giving notice of the taking and confining of the animal to the owner or keeper, if known, and, if not known, by publishing a notice describing the animal once in a newspaper of general circulation in the county, township, city, or village where the animal was found. If the owner or keeper does not appear and claim the animal and pay the compensation prescribed in section 951.13 of the Revised Code for so taking, advertising, and keeping it within ten days from the date of the notice, that person or the county shall have a lien for that compensation, and the animal may be sold at public auction as provided in section 1311.49 of the Revised Code. The residue of the proceeds of sale shall be paid and deposited by the treasurer in the general fund of the county.

951.12 Unavoidable escapes.

If it is proven that an animal running at large in violation of section 951.02 of the Revised Code escaped from its owner or keeper without the owner's or keeper's knowledge or



fault, the animal shall be returned to its owner or keeper upon payment of the compensation prescribed in section 951.13 of the Revised Code for its taking, advertising, and keeping.

951.13 Compensation and expenses recoverable from owner or keeper.

The person or county, township, city, or village whose law enforcement officer takes an animal running at large in violation of section 951.02 of the Revised Code is entitled to receive from the owner or keeper of the animal the following compensation:

- (A) For taking and advertising each horse, mule, head of cattle, bison, swine, sheep, goat, llama, alpaca, or goose, five dollars;
- (B) Reasonable expenses actually incurred for keeping each animal described in division (A) of this section.

Compensation for taking, advertising, and keeping a single herd or flock shall not exceed fifty dollars when the flock or herd belongs to one person.

951.99 Penalty.

Whoever recklessly violates section 951.02 of the Revised Code is guilty of a misdemeanor of the fourth degree.

Chapter 971. Fences.

971.01 Definitions.

As used in this chapter:

- (A) "Applicable county recorder" means the county recorder of a county in which a partition fence is, was, or is not required to be constructed and maintained in good repair.
- (B) "Build a fence," "construct a fence," and "maintain a fence in good repair" include any necessary clearing of land.
- (C) "Livestock" means horses, mules, asses, hogs, sheep, goats, cattle, and any other animal that is raised or maintained domestically for food, fiber, or hunting purposes.
- (D) "Owner" means both of the following:
 - (1) The owner of land in fee simple, of estates for life, of easements, or of rights-of-way while used by the owners thereof as farm outlets;
 - (2) Any of the following with regard to any land that it owns, leases, manages, or otherwise controls and that is adjacent to land used to graze livestock:
 - (a) The department of natural resources;
 - (b) A conservancy district organized under Chapter 6101. of the Revised Code;
 - (c) A political subdivision with a real property interest in recreational trails.
- (E) "Partition fence" means a fence that is located on the division line between the adjoining properties of two owners. "Partition fence" includes a fence that has



been considered a division line between two such properties even though a subsequent land survey indicates that the fence is not located directly on the division line.

(F) “Preferred partition fence” means a partition fence that is a woven wire fence, either standard or high tensile, with one or two strands of barbed wire located not less than forty-eight inches from the ground or a nonelectric high tensile fence of at least seven strands and that is constructed in accordance with the United States natural resources conservation service conservation practice standard for fences, code 382. “Preferred partition fence” includes a barbed wire, electric, or live fence, provided that the owners of adjoining properties agree, in writing, to allow such fences.

(G) “Recreational trail” has the same meaning as in section 1519.07 of the Revised Code.

Partition Fences.

971.02 Partition fences.

(A) Except as otherwise provided in this section, all fields and enclosures in which livestock are kept or placed and that are bordered by a division line between the adjoining properties of different owners shall be enclosed by a preferred partition fence.

(B) Nothing in this chapter prevents an owner from building a fence that exceeds the requirements for a preferred partition fence established under this chapter. The owner building such a fence shall pay all additional costs and expenses of building the fence and maintaining it in good repair.

(C) This section does not apply to either of the following:

(1) The owners of adjoining properties that enter into an agreement in accordance with section 971.04 of the Revised Code;

(2) Fences that were constructed prior to the effective date of this section.

971.03 Applicability.

This chapter does not apply to any of the following:

(A) The enclosure of lots in municipal corporations;

(B) The enclosure of adjoining properties that are laid out into lots outside of municipal corporations;

(C) Fences that are required to be constructed by persons or corporations owning, controlling, or managing a railroad pursuant to Chapter 4959. of the Revised Code.

971.04 Agreements between landowners.

Nothing in this chapter prevents the owners of adjoining properties from entering into a written agreement that states that no fence is needed between the properties, a fence other than a preferred partition fence may be built and maintained pursuant to division (C)(1) of section 971.02 of the Revised Code, or the rights and obligations of the owners are different from what is established in this chapter. The agreement shall be filed with the applicable county recorder and placed in the partition fence record established under section 971.15 of the Revised Code. In addition, the agreement runs with the properties that are subject to the agreement.



971.05 Affidavit of previous fence.

(A) If there is evidence that a partition fence previously existed between the adjoining properties of two owners, one of the owners, or both, may file an affidavit with the applicable county recorder to be placed in the partition fence record established under section 971.15 of the Revised Code stating that a partition fence existed between the adjoining properties within two years prior to the filing of the affidavit. The affidavit also shall specify the location of the properties and that the fence has been removed and not replaced. The affidavit shall be filed no later than one year after the effective date of this section.

(B) If an affidavit is filed under this section, section 971.06 of the Revised Code applies.

(C) If an affidavit is not filed under this section, section 971.07 of the Revised Code applies.

971.06 Maintenance of fences; building or removal.

(A) If a partition fence exists between adjoining properties, the owners of the adjoining properties shall maintain the fence in good repair in equitable shares. If the owners decide to build a new fence, they shall do so in equitable shares in accordance with this chapter unless the owners enter into an agreement in accordance with section 971.04 of the Revised Code.

(B) The owners of adjoining properties shall build and maintain in good repair a partition fence in equitable shares in accordance with this chapter if there is evidence that a partition fence previously existed between the adjoining properties or if either of the owners of the adjoining properties, or the previous owners of the adjoining properties, has or had filed an affidavit with the applicable county recorder under section 971.05 of the Revised Code. However, the owners of the adjoining properties are not required to build and maintain in good repair a partition fence in equitable shares if the owners enter or the previous owners entered, as applicable, into an agreement in accordance with section 971.04 of the Revised Code.

(C)

(1) If a partition fence is removed by an owner and not replaced within one year after removal, the owner who removed the partition fence shall file an affidavit with the applicable county recorder to be placed in the partition fence record established under section 971.15 of the Revised Code stating that a partition fence existed between the adjoining properties within one year prior to the filing of the affidavit. The affidavit also shall specify the location of the properties and state that the fence has been removed and not replaced.

(2) If an affidavit is filed and a partition fence is rebuilt, the owners of the adjoining properties shall build and maintain in good repair the new fence in equitable shares in accordance with this chapter unless the owners enter into an agreement in accordance with section 971.04 of the Revised Code.

(3) If an affidavit is not filed and a partition fence is rebuilt, the owner constructing the fence shall bear the total costs of building and maintaining it in good repair.

971.07 Cost of building or maintaining.



(A) If a partition fence does not exist between adjoining properties, there is no evidence that a partition fence previously existed, an affidavit has not been filed with the applicable county recorder in accordance with section 971.05 or 971.06 of the Revised Code, or a written agreement between the owners of adjoining properties has not been filed with the applicable county recorder in accordance with section 971.04 of the Revised Code and an owner wants to build a partition fence, that owner shall bear the costs of building and maintaining in good repair the partition fence. The owner may file with the applicable county recorder an affidavit that specifies the costs incurred by the owner to build the partition fence. Each year after the fence is built, the owner may file with the applicable county recorder an affidavit that specifies the costs incurred that year by the owner to maintain the fence in good repair.

(B) If an owner of adjoining property that did not assist in bearing the costs of building and maintaining in good repair a partition fence, or any successor in interest of the property, subsequently uses the fence to keep livestock enclosed on the property within thirty years after the fence was built, the owner that built the fence, or any successor in interest of the property, may file a claim for reimbursement of a proportionate share of the total cost of building and maintaining in good repair the partition fence with the owner of the adjoining property or that owner's successor in interest, provided that an affidavit has been filed under division (A) of this section. A reimbursement claimed under this division shall equal the total cost of building and maintaining the partition fence in good repair minus one-thirtieth of the total cost multiplied by the number of years, including parts of a year, that are included in the period beginning on the date on which the affidavit was filed and ending on the date on which the claim for reimbursement is made. An owner that receives a claim for reimbursement under this division promptly shall pay it. In addition, if necessary, the owners shall modify the partition fence so that it complies with the standards for preferred partition fences established in this chapter. The owners shall equally divide the costs of the modification of the partition fence.

(C) If the owner of adjoining property, or that owner's successor in interest, fails to pay the claim for reimbursement of the proportionate share of the total cost of building and maintaining in good repair the partition fence that was filed under division (B) of this section, the owner that filed the claim for reimbursement may file an action in a court of competent jurisdiction to recover not more than the proportionate share of the total cost of building and maintaining in good repair the partition fence.

(D) If the owner of adjoining property, or that owner's successor in interest, pays the claim for reimbursement filed by the owner that built and maintained in good repair the partition fence under division (B) of this section or is required to reimburse that owner by a court under division (C) of this section, the owner of the adjoining property, or that owner's successor in interest, subsequently is subject to section 971.06 of the Revised Code.

(E) If the owner that builds and maintains in good repair a partition fence does not file an affidavit under division (A) of this section, the owner forfeits the owner's right to reimbursement from the owner of adjoining property as authorized under this section.

971.071 Sharing of cost.

Notwithstanding any other provision in this chapter, an owner of land as defined in division (D)(2) of section 971.01 of the Revised Code is responsible for fifty per cent of



the total cost of building and maintaining in good repair a partition fence between that owner and the owner of adjoining property unless a written agreement has been entered into under section 971.04 of the Revised Code.

971.08 Entry on property.

(A) If an owner chooses to build a partition fence and the owner of adjoining property does not share in the construction of the fence, the owner building the fence, or a contractor hired by the owner, may enter on the adjoining property for no more than ten feet for the length of the fence to build and maintain in good repair the fence. The owner or contractor building the fence is not guilty of a violation of section 2911.21 of the Revised Code or an ordinance of a municipal corporation that is substantially equivalent, provided that the owner or contractor does not enter onto the property beyond the ten feet specified in this division. However, that owner or contractor is liable for all damages caused by the entry onto the adjoining property, including damages to crops.

(B) No person shall obstruct or interfere with anyone who is lawfully engaged in the construction or maintenance of a partition fence.

971.09 Duty of board of township trustees.

(A)

(1) When an owner neglects to build or maintain in good repair a partition fence, or the portion thereof that the owner is required to build or maintain, the aggrieved owner may do either of the following:

(a) File an action in a court of common pleas as provided in section 971.16 of the Revised Code;

(b) File a complaint with the board of township trustees of the township in which the land or fence is located or is to be built.

(2) If the aggrieved owner intends to file a complaint with the applicable board of township trustees, the board shall present the aggrieved owner with a document containing both of the following:

(a) Notification that in lieu of filing a complaint with the board of township trustees as provided in this section, an action may be filed in a court of common pleas as provided in section 971.16 of the Revised Code;

(b) A description of the possible financial and maintenance responsibilities that may result from the board's findings.

The aggrieved owner shall sign and date the document and return it to the board prior to filing a complaint with the board.

(3) When a partition fence is on a township or county line, the boards of township trustees of the adjacent townships have concurrent jurisdiction, and the board of township trustees of either of the townships may be called to perform the applicable duties established in this chapter. Either party to the complaint may call the board of the other township, in which case they shall act jointly, but a separate record shall be made in both townships.

(B) If a complaint is filed with a board of township trustees, the board, after not



less than ten days' written notice to all adjoining owners of the time and place of meeting, shall view the fence or premises where the fence is located or is to be built. At the meeting, the board shall determine whether a partition fence exists, regardless of whether it is in disrepair, or there is evidence that a partition fence previously existed. If there is no evidence that a partition fence exists, even in disrepair, or if there is no evidence that a partition fence previously existed, the board shall review the applicable county recorder's records to determine whether an affidavit has been filed in accordance with section 971.05, 971.06, or 971.07 of the Revised Code or an agreement has been filed in accordance with section 971.04 of the Revised Code.

(C) After viewing the fence or premises and reviewing the applicable county recorder's records, if applicable, the board may request additional information from either owner that is a party to the complaint.

(D)

(1) At the next regularly scheduled meeting of the board after viewing the fence or premises and reviewing the applicable county recorder's records, if applicable, the board shall determine if a partition fence is required to be built or maintained in good repair, as applicable. If the board determines that a partition fence is required to be built or maintained, the board shall decide each owner's responsibility for building or maintaining in good repair the partition fence.

(2) If the board finds that both owners are responsible, the board shall equitably assign, in writing, each owner's share of building or maintaining in good repair the partition fence. When making an equitable assignment, the board may assign a specific portion of the partition fence to be built or maintained in good repair, or the board may assign a portion of the total cost of building or maintaining in good repair the partition fence if the owners have submitted to the board an estimate from a contractor of the necessary cost to perform the applicable work. If the partition fence does or will contain livestock, the board shall include in the equitable assignment the cost of building or modifying the fence to meet the standards for preferred partition fences established in this chapter.

(3) If the board finds that one owner is responsible, the board shall require that owner, in writing, to pay the total cost of building or maintaining in good repair the partition fence or the portion of the partition fence for which the owner is responsible, as applicable.

(4) If the board determines that a partition fence is not required to be built or maintained in good repair, as applicable, the board shall notify each owner of that determination in writing.

(E) When making an equitable assignment under division (D)(2) of this section, the board shall consider, without limitation, all of the following:

- (1) The topography of the applicable property;
- (2) The presence of streams, creeks, rivers, or other bodies of water;
- (3) The presence of trees, vines, or other vegetation;
- (4) The level of risk of trespassers on either property due to the population density surrounding the property or the recreational use of adjoining



properties;

(5) The importance of marking division lines between the properties;

(6) The number and type of livestock owned by either owner that may be contained by the partition fence.

(F) The board shall certify a report of an assignment made under division (D)(2) of this section or a finding made under division (D)(3) of this section to the applicable county recorder, who shall record the assignment or finding in the partition fence record established under section 971.15 of the Revised Code.

(G)

(1) If either owner does not agree to the board's assignment of responsibility under division (D)(2) of this section for building or maintaining in good repair a partition fence, the owner, not later than thirty days after the assignment has been made, may deliver to the board and the other owner a written request for binding arbitration. An owner that requests binding arbitration also shall deliver a copy of the request to the court of common pleas of the county in which the arbitration is to be held, which shall be the county in which the owner that seeks the binding arbitration resides. If either owner requests binding arbitration, the board shall submit a report of its recommendation of assignment that is made under division (D)(2) of this section or of its finding that is made under division (D)(3) of this section, as applicable, to the court of common pleas in which the arbitration is to be held.

(2) The court of common pleas in which the arbitration is to be held shall appoint an arbitrator. The court shall furnish the board's report that is submitted to the court under division (G)(1) of this section to the arbitrator. The owners shall pay the costs of the arbitrator's services in equal amounts. An arbitrator that has knowledge of this chapter shall be appointed, if possible.

(3) Not later than thirty days after appointment of an arbitrator, each owner and the board shall deliver to the arbitrator a recommendation for the assignment of responsibility for building or maintaining in good repair the partition fence. Not later than sixty days after appointment of the arbitrator, the arbitrator shall approve one of the recommendations submitted or assign responsibility for building or maintaining in good repair the partition fence based on the arbitrator's judgment.

The arbitrator shall deliver to each owner and the board a written statement of the arbitration decision that states each owner's responsibility for building or maintaining in good repair the partition fence. The arbitrator shall certify a report of the arbitration decision to the applicable county recorder, who shall record the decision in the partition fence record established under section 971.15 of the Revised Code.

The owners shall abide by the arbitration decision. The arbitration decision shall be enforced, upon petition by either owner, by the court of common pleas of the county in which the petitioner resides.

971.10 Costs for making assignment.

The cost due the township fiscal officer and the board of township trustees for making the



assignment set forth in section 971.09 of the Revised Code shall be taxed equally against each of the persons and, if not paid to the fiscal officer within thirty days from the date of the assignment, shall be certified by the fiscal officer to the county auditor, with a correct description of the lands and the amount charged against each portion.

971.11 Collection of tax.

The county auditor shall place the amount authorized in section 971.10 of the Revised Code upon the duplicate to be collected as other taxes, and the county treasurer shall pay it, when collected, to the township fiscal officer as other funds are paid.

971.12 Partition fences; failure to comply with assignment.

(A) If either owner fails to build or maintain in good repair the portion of a partition fence assigned to the owner under section 971.09 of the Revised Code, the board of township trustees, upon the application of the aggrieved owner, shall award the contract to the lowest responsible bidder agreeing to furnish the labor and material, and build or maintain the fence according to the specifications proposed by the board, after advertising for bids once a week for two consecutive weeks in a newspaper of general circulation in the county in which the township is situated.

The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation in the county, provided that the first notice published in such newspaper meets all of the following requirements:

- (1) It is published at least two weeks before the opening of bids.
- (2) It includes a statement that the notice is posted on the board's internet web site.
- (3) It includes the internet address of the board's internet web site.
- (4) It includes instructions describing how the notice may be accessed on the board's internet web site.

(B) If no bids are received from responsible bidders as provided in this section, the trustees shall procure labor and materials at prevailing rates and cause the fence to be constructed or maintained.

(C) No person shall obstruct or interfere with anyone lawfully engaged in construction or maintenance of a partition fence or in the performance of any other act described in this section.

971.13 Certification of costs.

When the work provided for under section 971.12 of the Revised Code is completed to the satisfaction of the board of township trustees, it shall certify the costs to the township fiscal officer. If the costs are not paid within thirty days, the township fiscal officer shall certify them to the county auditor with a statement of the cost of the construction or maintenance and incidental costs incurred by the trustees and a correct description of each piece of land upon which the costs are assessed.



971.14 Duties of county auditor.

The county auditor shall place the amounts certified, as provided in section 971.13 of the Revised Code, upon the tax duplicate, which amounts shall become a lien and be collected as other taxes. The board of township trustees shall certify the amount due each person for building or maintaining the fence and the amount due each trustee and the township fiscal officer for services rendered. In anticipation of the collection of the amounts, the auditor shall draw orders for the payment of the amounts out of the county treasury.

971.15 Partition fence record.

All agreements between the owners of adjoining properties filed in accordance with this chapter, all affidavits filed by owners in accordance with this chapter, and all assignments of and findings and decisions regarding responsibility for building and maintaining in good repair partition fences made under this chapter shall be recorded in the official records of the county recorder. A document recorded in the official records shall be final between the parties thereto and successive owners thereafter until modified by a subsequent document. All documents recorded shall describe the land where a partition fence is located and the portion of the fence assigned to each applicable owner. In addition, the documents shall describe the purposes and use of the partition fence.

971.16 Actions for building or repairing.

(A) An owner may file an action in a court of common pleas of the county in which the owner resides if the owner of adjoining property neglects to build or maintain in good repair a partition fence or the portion of a partition fence that the owner is required to build or maintain.

(B) In an action filed under this section, a court shall consider all of the following when making an assignment of responsibility for building or maintaining in good repair a partition fence:

- (1) Whether a partition fence currently exists even if it is in disrepair;
- (2) Whether there is evidence that a partition fence existed in the past;
- (3) Whether a written agreement between the owners has been filed with the applicable county recorder in accordance with section 971.04 of the Revised Code;
- (4) Whether an affidavit has been filed with the applicable county recorder in accordance with section 971.05, 971.06, or 971.07 of the Revised Code;
- (5) All of the following:
 - (a) The topography of the applicable property;
 - (b) The presence of streams, creeks, rivers, or other bodies of water;
 - (c) The presence of trees, vines, or other vegetation;
 - (d) The level of risk of trespassers on either property due to the population density surrounding the property or the recreational use of adjoining properties;



- (e) The importance of marking division lines between the properties;
- (f) The number and type of livestock owned by either owner that may be contained by the partition fence.

The court shall make an assignment in equitable shares.

(C) The court shall assign attorney's fees and court costs in an equitable manner to the parties.

971.17 Notice of fence removal; disposal of debris.

(A) Not fewer than twenty-eight days prior to removing a partition fence, an owner shall notify the owner of adjoining property in writing that the owner intends to remove the partition fence. The notice may be delivered personally or by certified mail, return receipt requested, to the last known address of the adjoining owner. If the notice delivered by certified mail is refused or unclaimed, the notice may be delivered by ordinary mail. If the notice delivered by ordinary mail is returned for failure of delivery, or if the address of the adjoining owner is unknown and cannot be ascertained with reasonable diligence, notice may be served by publication once a week for three consecutive weeks in a newspaper of general circulation in the county in which the partition fence is located.

(B) If an owner removes a partition fence without notifying the owner of adjoining property in accordance with division (A) of this section, the owner forfeits the owner's right to seek reimbursement under section 971.07 of the Revised Code for the construction and maintenance of a new partition fence.

(C) An action for trespass by the owner of adjoining property against the owner removing a partition fence may include a reasonable request for court costs, attorney's fees, and other litigation costs.

(D) No owner shall place any debris accumulated from the removal of a partition fence on adjoining property without entering into a written agreement with the owner of the adjoining property. An adjoining owner who has not entered into a written agreement under this division shall have a cause of action against the owner that placed debris from the removal of a partition fence on the adjoining owner's property for the cost of removing that debris. Any action against the owner may include any attorney's fees.

971.18 Damage by loose livestock.

An owner of livestock who negligently permits the livestock to run at large out of the livestock's enclosure is liable for all damages resulting from injury, death, or loss to person or property caused by the livestock on the premises of another.

Fences and Cattle Guards.

4959.02 Fences; scenic railway's obligations.

(A) A company or person having control or management of any railroad except a scenic railway shall construct and maintain in good repair, or otherwise provide for, on each side of the railroad, along the line of the lands of the company owning or operating it, a fence sufficient to turn stock. If, pursuant to section 4907.08 of the Revised Code, the public utilities commission determines that the company or person having control or management of the railroad is in violation of this section, the commission may order the company or person to do any of the following:



- (1) Construct, replace, or repair the fence;
- (2) Provide the landowner with the required materials to construct, replace, or repair the fence;
- (3) Pay the cost of the materials required to construct, replace, or repair the fence.

When the commission directs the company or person having control or management of the railroad to provide the landowner with the required materials under division (A)(2) of this section or to pay the cost of the required materials under division (A)(3) of this section, the landowner is responsible for the labor necessary to construct, replace, or repair the fence. Any fence constructed, replaced, or repaired under this section shall be the same as or comparable to existing fence on the property.

(B) In determining what remedy to order under division (A) of this section, the commission shall consider all of the following:

- (1) The volume of train traffic;
- (2) Train types and speed;
- (3) The cost of fence repair or replacement;
- (4) The accessibility to the railroad right-of-way through the property; (5) Any other relevant factors.

(C) The commission may order an action or remedy under division (A) of this section only if comparable fencing exists along or within the abutting landowner's property boundaries perpendicular or parallel to the railroad's property line.

(D) If an owner of land abutting a scenic railway requests the company or person having control or management of the railway to construct and maintain in good repair such a fence along the abutting line of land of the railway, the company or person having control or management of the railway shall do so, and the cost of constructing and maintaining the fence shall be equally shared between the railway and owner of land.

(E) As used in this section, "scenic railway" means a railroad operated not for profit and exclusively as a tourist or historical attraction.

4959.03 Cattle guards and crossings.

Before operating a railroad, the company or person having control or management of such railroad shall maintain at every point where a public road, street, lane, or highway used by the public crosses such railroad, safe and sufficient crossings, and on each side of such crossings cattle guards sufficient to prevent domestic animals from going upon such railroad. Such company or person shall be liable for all damages sustained in person or property by reason of the want or insufficiency of such fence, crossing, or cattle guard, or neglect or carelessness in the construction or keeping in repair of such fence, crossing, or cattle guard.

4959.04 Temporary crossings.

In the case of a railroad in process of construction or a proposed railroad which passes



through enclosed land, the company or person having control of the railroad during its construction shall provide suitable crossings for the owner or occupant of each farm, make and keep in repair fences along the line of the railroad through the enclosed fields, and protect crops growing thereon. When the company or person agrees with the owner of the lands through which a railroad passes that the owner is to build and keep in repair any portion of the fencing, and if such fencing is destroyed or damaged by fire from passing trains or by the elements, the company or person owning or operating the railroad shall rebuild or repair such fence if the property holder demands it. If the company fails to construct a fence after having received written notice to do so from the owner or occupant of lands through which the railroad passes, after thirty days from the time of serving the notice upon the agent of such company nearest such lands, the owner or occupant may proceed to construct it, and the company shall be liable to the person for the cost thereof.

4959.07 Exception.

Sections 4959.02 to 4959.04 of the Revised Code, relating to fences, do not apply to any case in which compensation for building a fence has been or may be taken into consideration and estimated as a part of the consideration to be paid for the right-of-way, so far as the fence has been or may be settled or paid for. Those sections do not affect, in any manner, any contract or agreement between a railroad company, or person having the control and management of a railroad, and the proprietors or occupants of lands adjoining for the construction or maintenance of fences and cattle guards.

4959.08 Company may build fence at landowner's expense.

If an owner of lands abutting on the line of lands of a company, who is legally bound to build or repair the fence dividing his lands from the lands of the company, fails to build or repair such fence within the time in which he is bound to build or repair it, the company may build or repair such fence and present an itemized account of the cost of labor and materials so expended to such owner for payment. If it is not settled or paid within thirty days, the company may recover from such person the reasonable cost of such labor and materials.

4959.09 Right to use culvert for cattle way.

An owner of land through which a railroad is constructed, and upon which there is a culvert, waterway, or opening through the embankment of the railroad of sufficient height for such purpose, may use such culvert, waterway, or opening, as a stock or cattle way under the track of the railroad so as to permit stock to pass and repass. The landowner shall build and maintain all necessary fences on both sides of the opening, and shall not, by use or otherwise, permit the foundations of structures about such opening to be injured or interfered with.

4959.10 Forfeitures for not complying with chapter.

A company or person having the control and management of a railroad, who fails to comply with any provision of this chapter, shall forfeit and pay, for each day the company or person so fails, a sum not exceeding fifty dollars per day, to be recovered in a civil action in the name of the state for the use of the county in which suit is brought.

