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States’ Fence Laws

State of Virginia

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States’ Fence Laws

STATE OF VIRGINIA


Current through the end of the 2011 Regular Session

Highways, Bridges, and Ferries

§ 33.1-202. Landowners may erect and maintain gates across private roads

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; provided, however, that a court of competent jurisdiction may, upon petition, where it is alleged and proved by petitioner that the gates have been willfully and maliciously erected, may require the said landowner to make such changes therein as may be necessary and reasonable in the use of said roads for both the landowner and the petitioner.

§ 33.1-203. Leaving gates open; penalty

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

§ 33.1-204. Gate or other obstruction across private roadway leading to forestlands; penalty for removal or leaving open or unlocked

The owners of forest and timberlands may substantially obstruct or close private and seldom used roadways leading to or into such forest or timberlands from the public roads of this Commonwealth at points at or near which such roads enter their property or forestlands; and, in all cases where any such private roadway is subject to an easement for travel for the benefit of other lands not regularly and continuously inhabited, the owner of the said forest or timberlands may obstruct the roadway with a gate, chain, cable or other removable obstruction, lock the said 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 roadway.

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 said owner, destroying, removing or leaving the obstruction open, or unlocked, in cases where the
obstruction is locked by said owner and the keys are furnished as herein provided, shall be guilty of a misdemeanor, and, if upon trial is found guilty, shall be fined a sum 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 said obstructions, including the breaking of locks.

§ 33.1-210. 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 road in any system of state highways, except as herein otherwise provided, 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, however, that this section shall not apply when such livestock are being driven along such road or right-of-way while under the control of a responsible drover or drovers.

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

On gated roads carrying fifty or more vehicles per day, the Department of Transportation 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 forty-foot right-of-way, reimburse abutting landowners a sum equal to one dollar per foot of fencing which 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 of Transportation 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 shall violate any of the provisions of this article shall be fined not less than ten dollars nor more than fifty dollars for such offense.

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

Article 1. Electric Fences

§ 55-298.1. Unlawful to sell, distribute, construct, install, maintain or use certain electric fences upon agricultural land except as provided in § 55-298.2

A. It shall be 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 meet the safety standards promulgated by the Underwriters Laboratories, Inc., in its publication number UL69, dated August 31, 1977, 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 Commission for Conformity Certification of Electrical Equipment in its publication number 5, Second Edition, approved April, 1979, and entitled “Specification for Mains-Operated Electric Fence Controllers,” as the same may from time to time be supplemented.

B. No metallically 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.

§ 55-298.2. Unlawful to sell other controlling devices unless they meet certain standards

A controlling device which does not conform to the requirements of § 55-298.1 may not be sold, distributed, constructed, installed, maintained, or used unless it meets the following standards:

1. A peak-discharge-output type controlling device which delivers intermittent current of a value not in excess of four milliampere-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 milliampere-seconds at maximum “on” periods of both two-tenths and one-tenth second to three and two-tenths milliampere-seconds at six-hundredths second, one and nine-tenths milliampere-seconds at three-hundredths second, and consequently to shorter “on” periods as output current increases.

2. A sinusoidal-output type controlling device which 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 forty milliamperes for one-tenth second to fifty-seven milliamperes for five-hundredths second, and sixty-five milliamperes for twenty-seven thousandths second.

3. Any other type of controlling device which delivers a maximum intermittent current output of a value not in excess of four milliampere-seconds for a maximum “on” period of two-tenths second and a minimum “off” period of nine-tenths second.

§ 55-298.3. Exceptions to § 55-298.2

Notwithstanding the provisions of § 55-298.2, no electric fence controlling device shall be sold, distributed, constructed, installed, maintained or used which will permit for longer than one second an uninterrupted electric current on the fence with an effective value in excess of 5
milliamperes when the load, including the measuring device, is not less than 450 ohms nor more than 550 ohms.

§ 55-298.4. Definition

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

§ 55-298.5. Penalty

Punishment for violation of any provision of this article shall be as prescribed by § 18.2-324.1.

Article 2. What Constitutes Lawful Fence

§ 55-299. Definition of lawful fence

Every fence shall be deemed a lawful fence as to any livestock named in § 55-306, which could not creep through the same, if

(1) Five feet high, including, if the fence be on a mound, the mound to the bottom of the ditch,

(2) Of barbed wire, 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 shall be also fixed,

(3) Of boards, planks, or rails, 42 inches high, consisting of at least three boards firmly attached to posts, trees, or other supports substantially set in the ground,

(4) Three feet high within the limits of any incorporated town whose charter does not prescribe, nor give to the council thereof power of prescribing, what shall constitute a lawful fence within such corporate limits, or

(5) Any fence of any kind whatsoever, except as described in this section, and except in the case of incorporated towns as set forth in subdivision (4), which shall be:

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 livestock named in § 55-306, and

c. Installed pursuant to generally acceptable standards so that applicable livestock named in § 55-306 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 livestock mentioned in § 55-306.

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

§ 55-300. Court may declare stream of water or canal a lawful fence; proceeding therefor

The circuit court of any county, upon a petition of any proprietor or tenant of lands on any stream of water or canal, may, in its discretion, declare and establish the same, or any part of either within the limits and jurisdiction of the county, a lawful fence as to any of the stock named in § 55-306. 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 the part whereof the petition applies, for thirty days, and by publishing the same once a week for four successive weeks in a newspaper, if one is published in the county. At or before the trial of the cause, any person interested may enter himself a defendant thereto, and the same shall thereafter be proceeded in as other causes.

§ 55-301. Revocation of order

Such court may upon like petition and notice of any person interested, revoke or alter any order made under § 55-300; 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.

§ 55-302. 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 the Counties of Buckingham, Albemarle, and Goochland, 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.

§ 55-303. 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 which 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

§ 55-304. 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, street or 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.

§ 55-305. 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. These 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

§ 55-306. Damages for trespass by animals; punitive and double damages

If any livestock domesticated by man shall enter into any grounds enclosed by a lawful fence, as defined in §§ 55-299 through 55-303, the owner or manager of any such animal shall be liable for the actual damages sustained.

When punitive damages are awarded, the same shall not exceed twenty dollars in any case.

For every succeeding trespass the owner or manager of such animal shall be liable for double damages, both actual and punitive.

§ 55-307. Lien on animals

After a judgment of the court a lien upon such animal shall enure for the benefit of the owner or tenant of such enclosed ground, and execution shall thereupon issue from the court rendering the judgment, and the animal or animals so trespassing shall be levied upon by the officer to whom the execution was issued, who shall sell the same, as provided by statute.

§ 55-308. Impounding animals
Whenever any such animal is found trespassing upon any such enclosed ground, the owner or tenant of such enclosed grounds shall have the right to take up such animal and impound the same until the damages provided for by the preceding sections shall have been paid, or until the same are taken under execution by the officer as hereinbefore provided, and the costs of taking up and impounding such animal shall be estimated as a part of the actual damage.

§ 55-309. Duty to issue warrant when animal impounded

It shall be the duty of such owner or tenant of such lands so trespassed upon, within three days after the taking up and impounding such animal unless the damages be otherwise settled, to 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 so claimed by him, and such court, or the clerk thereof, shall issue the same, to be made returnable at as early a date, not less than three days thereafter, 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

§ 55-310. How governing body of county may make local fence law

The board of supervisors or other governing body in any county in this State after posting notice of the time and place of meeting thirty days at the front door of the courthouse, and at each voting place in the county, and by publishing the same once a week for four successive weeks in some newspaper of such county, if any be published therein, and if none be published therein, in some newspaper having a general circulation therein, a majority of the board being present and concurring, may declare the boundary line of each lot or tract of land, or any stream in such county, or any magisterial district thereof, or any selected portion of such county, to be a lawful fence as to any or all of the animals mentioned in § 55-306, or may declare any other kind of fence for such county, magisterial district or selected portion of the county than as prescribed by § 55-299 to be a lawful fence, as to any or all of such animals.

§ 55-311. Effect of such law on certain fences

Such declaration shall not be construed as applying and shall not apply to relieve the adjoining landowners from making and maintaining their division fences, as defined by § 55-299, but as to such division fences, §§ 55-317 to 55-322, inclusive, shall be applicable.

§ 55-312. Application to railroad companies

No action taken under the provisions of § 55-310 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.

§ 55-313. No authority to adopt more stringent fence laws
Nothing in § 55-310 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 § 55-299.

§ 55-314. Effect on existing fence laws or no-fence laws

Nothing in § 55-310 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, in accordance with the provisions thereof; nor shall the provisions of such section 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 under an order of the board of supervisors or other governing body of such county entered pursuant to such section.

§ 55-315. Lands under quarantine

The boundary line of each lot or tract of land in any county in this Commonwealth which is under quarantine shall be a lawful fence as to any and all of the animals mentioned in § 55-316.

§ 55-316. When unlawful for animals to run at large

It shall be unlawful for the owner or manager of any animal or type of animal described in § 55-306 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 wherein such boundaries have been constituted and shall be a lawful fence.

Article 6. Division Fences

§ 55-317. 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 shall choose to let his land lie open or unless they shall otherwise agree between themselves.

§ 55-318. When no division fence has been built

When no division fence has been built, either one of the adjoining owners may give notice in writing of his desire and intention to build such fence to the owner of the adjoining land, or to his agent, and require him to come forward and build his half thereof. The owner so notified may, within ten 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, in which event, and if the one giving the original notice shall build such division fence and the one who has so chosen to let his land lie open, or his successors in title, shall afterwards enclose it, he, or they, as the case may be, shall be liable to the one who built such fence, or to his successors in title, for one-half of the value of such fence at the time such land shall be so enclosed, and such fence shall thereafter be deemed a division fence between such lands.
If, however, the person so notified shall fail to give notice of his intention to let his land lie open, as hereinabove provided, and shall fail to come forward within thirty days after being so notified, and build his half of such fence, he shall be liable to the person who builds the same for one-half of the expense thereof, 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 indexing of the original notice in the clerk's office of the county in which the land is located.

§ 55-319. When division fence already built

When any fence which has been built and used by adjoining landowners as a division fence, or any fence which has been built by one, and the other afterwards required to pay half of the value, or expense thereof, under the provisions hereinbefore contained, and which has thereby become a division fence between such lands, shall become 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 come forward and repair his half thereof, and if he shall fail to do so within thirty 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 thereof.

§ 55-320. Recovery of amount due in connection with division fence

Any sum which may be due and payable by one adjoining landowner to another in pursuance of any of the provisions of §§ 55-318 and 55-319 may be recovered by motion, action or warrant, according to the amount.

§ 55-321. 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 be in writing and specifically so state, and be recorded in the deed book in the clerk's office of the county in which the land is located, and properly indexed as deeds are required by law to be indexed.

If any notice, as required by § 55-318 or § 55-319 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 which may be due pursuant to § 55-320.

§ 55-322. How notice given

Any notice herein provided to be given shall be given to the owner of the land, if he reside in the county in which the land lies; otherwise, it may be given to such person as, under the laws of this Commonwealth, would be his agent; or to any person occupying such land as tenant of the owner, who shall, for the purposes of this article, be deemed the agent of such owner.
Article 7. Special Provisions for Unincorporated Communities

§ 55-323. 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 as herein provided, to fix the boundaries of such village or unincorporated community for the purpose of preventing those animals specified in § 55-306 from running at large within such boundaries.

§ 55-324. Petition for action under § 55-323

Twenty or more freeholders residing within the boundaries referred to in § 55-323 may present to such court a petition signed by them praying that the boundaries of such village or unincorporated community be fixed for the purposes of § 55-323; notice of the intention to present such petition, stating the date on which the same will be presented, shall be posted at the front door of the courthouse of such county, and at three or more conspicuous places within such boundaries at least ten 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, and that at least 300 persons reside within such boundaries, and that a majority of the freeholders residing therein are in favor of prohibiting such animals from running at large.

§ 55-325. Entry of order if petition not contested

The petitions referred to in § 55-324, 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 herein provided for unless such petition be contested.

§ 55-326. Procedure in case of contest

Any person having a lawful interest in any land within the boundaries referred to in any petition as provided for in § 55-324 who wishes to contest such petition may have himself entered as a party defendant thereto. In case of such contest the court, without a jury, 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, and also the names of all the freeholders residing therein, and whether the latter are for or against the petition.

§ 55-327. 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.
§ 55-328. Animals may not run at large after entry of order

After the expiration of ten days from the date of entering such order it shall be unlawful for any animal specified in § 55-306 to run at large within such boundaries, and any person owning or having charge of any such animal who shall permit the same to run at large within such boundaries shall be guilty of a Class 4 misdemeanor, each day such animal is permitted to run at large to constitute 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 shall have been paid.

§ 55-329. Costs; by whom fines imposed

If the petition be uncontested, the costs thereof shall be borne by the petitioners; if it be contested, costs shall be awarded to the party prevailing. The fine provided for by § 55-328 may be imposed by the general district court of the county within which such village or unincorporated community is located.

§ 55-330. Owner of animals liable for trespasses

If any of the animals specified in § 55-306, as to which the boundaries of the lots or tracts of land in any county, or magisterial district thereof, or in any selected portion of such county, constitute a lawful fence, shall be 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 may 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 shall constitute a lawful fence, and any of such animals shall escape across the line or boundary of the two counties, the owner of such animal shall not be liable to the fine imposed by the second paragraph of § 55-306, 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 shall be enclosed, as provided in § 55-299.

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 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.