

Livestock Laws

Livestock laws are a collection of statutes that state legislatures have enacted over the years to regulate the ownership and control over various forms of livestock.

The days of the unregulated open range are long gone in most of America. Instead, modern society has a complicated set of laws to regulate the inter-relationship of livestock, people and property. Most states have a statute that defines what is a "legal fence." If a fence complies with the legal requirements, that protects the livestock owner from liability for damage done by a stray cow. Conversely, if the livestock of a neighbor damages crops, the right of the farmer to be compensated may depend upon whether his property was fenced in by a "legal fence." In other words, some states have "fence your livestock in" laws while others have "fence the livestock of others out" laws. Frequently, a single state will have both kinds of laws and make them available on an option basis by local election.

There are also complicated regulations that speak to the question what are the legal rights and duties of the parties when stray livestock are captured by someone other than the owner. Who may keep them, for how long, and with what responsibility for seeking out the true owner? What happens if the owner cannot be found after a reasonable period of time? Can the "taker up" of the stray force the owner to pay for the care of them?

There often are statutes that regulate the obligations of livestock owners to keep their livestock off of public highways and that provide for liability when livestock wander onto the public road and collide with a motor vehicle.

There are also laws that regulate railroads and seek to minimize in various ways the damage trains can do to meandering livestock. Sometimes, the railroad is required to fence in its right of way. Statutes also frequently address the question of legal liability when a train kills livestock.

Finally, there are lengthy provisions in the laws regulating fences that run along property lines. How is the cost of construction and maintenance to be allocated between the owners? What should happen if one owner wants and need a fence, while the owner of the adjoining property does not? Frequently, statutes provide for a local committee, called "fence viewers" to examine the situation and to allocate responsibility for these types of fences.

The related topic of identifying livestock by brands is dealt with in a separate segment: Brand Laws.

Livestock Laws were first posted in the middle 1990s. They were reviewed and updated as needed in December 2001. Posted December 15, 2001.

All states have some form of livestock laws.

New York Livestock Laws

New York Consolidated Laws Service

ENVIRONMENTAL CONSERVATION LAW

ARTICLE 11. Fish and Wildlife

TITLE 21. Conservation Areas and Facilities; Private Refuges and Posted Lands

11-2117. Damage to property, livestock or domestic fowl by hunters and fishermen
No person, for the purpose of or while hunting, trapping or fishing, shall without the permission of the owner, lessee or lawful occupant enter upon the land of another and while thereon kill or injure any dog, livestock or domestic fowl, or cut, destroy or damage any bars, gates or fence or any part thereof, or deface or damage any vehicle, farm equipment, buildings or appurtenances to the land, resulting in damage to the owner or occupant of the land or of the dog, livestock, domestic fowl, bars, gates, fences, vehicles, equipment, buildings or appurtenances to the land.

TOWN LAW

ARTICLE 18. Fences, Strays and Pounds

300. Apportionment of division fence

Each owner of two adjoining tracts of land, except when they otherwise agree, shall make and maintain a just and equitable portion of the division fence between such lands, unless both of said adjoining owners shall agree to let their said lands lie open, along the division line, to the use of all animals which may be lawfully upon the lands of either; provided, however, that the owner of an adjoining tract of land who does not keep such animals thereon within five years of the date of the erection or repair of a division fence shall not be obligated or liable for erecting, maintaining or repairing such a division fence under this article. Unless otherwise agreed, an adjoining owner who erects or repairs a division fence shall be entitled to recover from the owner of the other adjoining tract, twenty percent of the proportionate cost thereof otherwise ascribable to such other owner for each year or part thereof in which the other adjoining tract is regularly used for keeping animals occurring within five years of the date of such erection or repair. When the adjoining lands shall border upon any of the navigable lakes, streams or rivers of the state, the owners of the lands shall make and maintain the division fence between them down to the line of low water mark, in such lakes, streams or rivers except those lands which overflow annually so as to be so submerged with water that no permanent fence can be kept thereon, and known as low flat lands; and when adjoining lands shall be bounded by a line between the banks of streams of water not navigable, and the owners or occupants thereof cannot agree upon the manner in which the division fence between them shall be maintained, the fence viewers of the town shall direct upon which bank of the stream, and where the division fence shall be located, and the portion to be kept and maintained by each adjoining owner.

301. Lands lying open

When the owners of adjoining lands shall choose to let them lie open, as provided in section three hundred, neither of such owners shall be liable to the other in any action or proceeding for any damages done by animals lawfully upon the other's premises going upon the lands so lying open or upon any other lands of the owner thereof through such lands so lying open. Either owner of any lands so lying open and adjoining may, unless the agreement is for a specified period, and after such agreement has expired may then have the same inclosed, by giving written notice to that effect to the owners or occupants of the adjoining lands, whereupon it shall be the duty of both parties to build and maintain their several proportions of a division fence.

302. Division fence on change of title

Whenever a subdivision or new apportionment of any division fence shall become necessary by reason of transfer of the title of either of the adjoining owners, to the whole or any portion of the adjoining lands, by conveyance, devise or descent, such subdivision or new apportionment shall thereupon be made by the adjoining owners affected thereby; and either adjoining owner shall refund to the other a just proportion of the value at the time of such transfer of title of any division fence that shall theretofore have been made and maintained by such other adjoining owner, or the person from whom he derived his title, or he shall build his proportion of such division fence. The value of any fence, and the proportion thereof to be paid by any person, and the proportion to be built by him, shall be determined by any two or the fence viewers of the town, in case of disagreement.

303. Settlement of disputes

If disputes arise between the owners of adjoining lands, concerning the liability of either party to make or maintain any division fence, or the proportion or particular part of the fence to be made or maintained by either of them, such disputes shall be settled by any two of the fence viewers of the town, one of whom shall be chosen by each party; and if either neglect, after eight days' notice, to make such choice, the other party may select both. The fence viewers, in all matters heard by them, shall see that all interested parties have had reasonable notice thereof, and shall examine the premises and hear the allegations of the parties. If they cannot agree, they shall select another fence viewer to act with them, and the decision of any two shall be reduced to writing, and contain a description of the fence, and the proportion to be maintained by each, and shall be forthwith filed in the office of the town clerk, and shall be final upon the parties to such dispute, and all parties holding under them.

304. Powers of fence viewers

Witnesses may be examined by the fence viewers on all questions submitted to them; and either of such fence viewers may issue subpoenas for witnesses. A subpoena issued under this section shall be regulated by the civil practice law and rules. Each fence viewer thus employed shall be entitled to one dollar and fifty cents per diem. The party refusing or neglecting to pay the fence viewers or either of them shall be liable to an action for the same with costs.

305. Neglect to make or repair division fence

If any person who is liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall be liable to pay the party injured all such damages as shall accrue thereby, to be ascertained and appraised by any two fence viewers of the town, and to be recovered with costs. The appraisement shall be reduced to writing, and signed by the fence viewers making it. If such neglect or refusal shall be continued for the period of one month after request in writing to make or repair the fence, the party injured may make or repair the same, at the expense of the party so neglecting or refusing, to be recovered from him with costs.

306. Fence destroyed by accident

Whenever a division fence shall be injured or destroyed by floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be so required by any person interested therein. Such requisition shall be in writing, and signed by the party making it. If the person so notified shall refuse or neglect to make or repair his proportion of such fence, for the space of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered from him with costs.

307. Damages for insufficient fence

Whenever the electors of any town shall have made any rule or regulation prescribing what shall be deemed a sufficient division fence in such town, any person who shall thereafter neglect to keep a fence according to such rule or regulation shall be precluded from recovering compensation for damages done by any beast lawfully kept upon the adjoining lands that may enter therefrom on any lands of such person, not fenced in conformity to the said rule or regulation, through any such defective fence. When the sufficiency of a fence shall come in question in any action, it shall be presumed to have been sufficient until the contrary be established.

308. Damages for omitting to build fence

If any person liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be put out of repair, he shall not be allowed to have and maintain any action for damages incurred by beasts coming thereon from adjoining lands, where such beasts are lawfully kept, by reason of such defective fence, but shall be liable to pay to the party injured all damages that shall accrue to his lands, and the crops, fruit trees and shrubbery thereon, and fixtures connected with the land, to be ascertained and appraised by any two fence viewers of the town, and to be recovered, with costs; which appraisement shall be

reduced to writing and signed by the fence viewers making the same, but shall be only prima facie evidence of the amount of such damages.

309. Use of barbed or other wire for division fence

Barbed or other wire may be used in the construction of any division fence, provided, that such fence, be built in the following manner: The fence shall be of at least four strands of wire with the posts and supports of such fence, at such distances apart, as the fence viewers of the town may prescribe, but the posts thereof shall be no farther apart than fourteen feet; and such fence shall be otherwise substantially built and a reasonably sufficient inclosure for holding the particular kind or class of cattle or animals usually pastured on either side of the fence. Nothing contained in section three hundred seven shall be construed to authorize the electors of any town to prohibit the use of wire fences, for division fences, if such fences comply with the requirements of this section.

Whenever such fence shall become so out of repair as to be unsafe, it shall be the duty of the owner or owners to immediately repair the same. But this section shall not be so construed as to permit railroad corporations to use barbed wire in the construction of fences along their lines contrary to the provisions of section fifty-two of the railroad law.

310. Lien upon strays

Whenever any person shall have any strayed horses, cattle, sheep, swine or other beast upon his inclosed land, or shall find any such beast on land owned or occupied by him doing damage, and such beast shall not have come upon such lands from adjoining lands, where they are lawfully kept, by reason of his refusal or neglect to make or maintain a division fence required of him by law, such person may have a lien upon such beasts for the damage sustained by reason of their so coming upon his lands and doing damage, for his reasonable charges for keeping them, and all fees and costs made thereon, and he may keep such beast until such damages, charges, fees and costs are paid, or such lien is foreclosed, upon complying with the provisions of this article relating thereto.

311. Notice of lien to town clerk

If such beasts are not redeemed within five days after coming upon such lands, the person entitled to such lien shall deliver to the town clerk of the town, within which such lands or some part thereof shall be, a written notice subscribed by him, containing his residence, and a description of the beasts so strayed or coming upon his lands, as near as may be, and that he claims a lien on such beasts for such damages, charges, fees and costs. The town clerk shall record the notice in a book to be kept by him for that purpose, for which he shall receive ten cents for each beast, to be paid by the person delivering the notice. Such books shall always be kept open for inspection, and no fees shall be taken by the clerk therefor.

312. Impounding strays

Within six days after such beasts shall have come upon such lands, such owner or occupant may cause them to be put in the nearest pound in the same town, if there be one, there to remain until they be redeemed, sold or reclaimed according to law. If there be no such pound, or he elect to keep such beasts, he shall cause them to be properly fed and cared for until they are redeemed, sold or reclaimed according to law.

313. Notice of strays to owner

Within thirty days after any such beasts may have come or been found upon any lands, the owner or occupant of the lands shall serve a written notice, either personally or by mail, upon the owner of the beasts, if known, that they are upon his lands, or in pound, as the case may be, and are held by him as strays or beasts doing damage, as the case may be; and if such owner is not known, he shall publish such notice, within such time, in the nearest newspaper of the county for at least two successive weeks.

314. Charges for notice of strays

The person delivering the notice to the town clerk shall be entitled to receive therefor, in addition to the fees paid the town clerk, fifteen cents each for all horses, mules, cattle and swine, and five cents for each other beast described in the notice. If the charges, damages, costs and fees are not agreed upon between the person delivering the notice and the owner of the beasts, they shall be determined by two fence viewers of the town, one of whom shall be selected by the person claiming the lien, the other by the fence viewer so selected. If such fence viewers cannot agree, they shall select another to act with them, and the decision of any two of them shall be final.

315. Fees of fence viewers as to strays

Each fence viewer shall be entitled to receive ten cents for every mile he shall be obliged to travel from his residence to the place where the beasts are kept, and seventy-five cents for a certificate of the charges as ascertained by them.

316. Foreclosure of lien upon strays

If the owner of such beasts shall not redeem the same within one month after delivery of the notice to the town clerk, the person delivering the notice may foreclose his lien by action, or by a sale of the beasts, as herein provided. When a person claiming a lien, as herein provided, shall fail to establish the same, he shall not be entitled to receive anything for damages, charges, fees or costs, but shall be liable to pay all fees, costs and expenses incurred by reason of his keeping such beasts and the proceedings thereon.

317. Notice of sale of strays by fence viewers

After such one month, a fence viewer of the town, on application of the person delivering the notice, shall give at least ten days' previous notice of the time and place of the sale of

such beasts, by advertisement posted in at least five public places in the town where such beasts may have been kept, one of which shall be at or near the outside door of the town clerk's office. At the time and place mentioned, such fence viewers shall sell such beasts to the highest bidder, unless redeemed by the owner.

318. Proceeds of sale of strays

Out of the proceeds from such sale, the fence viewer shall retain and pay the sums charged for such notices, fees and costs, together with the sums specified in the certificate for keeping the beasts, and damages done by them; and the like charges for the sale as are allowed on sales under executions issued out of justices' courts, and he shall pay the residue to the owner of the beasts, if he shall appear and demand the same.

319. Notice to owner of strays of fence viewers' meeting

When the owner of such beasts is known and resides in the same town where such beasts are kept, five days' notice of the time and place of meetings of the fence viewers to determine the damages done by such beasts, and the charges for keeping them, shall be personally served on him; if he resides elsewhere, and his post-office address is known, such notice shall be served by mail or personally.

320. Duties of fence viewers as to strays

The fence viewers shall view the premises where damages are claimed to have been done, and they may issue subpoenas, examine witnesses and take any competent evidence of the facts and circumstances necessary to enable them to determine the matter submitted to them, and shall determine any dispute that may arise touching the sufficiency of any division fence around the premises where such damage was done, and from where and how the beasts came upon the lands of the person claiming such damages and charges; if they determine that for any cause the claimants' lien is not enforceable, they shall so certify, and the owner of the beasts shall thereupon be entitled to them without paying any charges thereon.

321. Foreclosure of lien upon strays by action

When such lien is foreclosed by action, all questions relating to damages, charges, sufficiency of fence, and from where and how such beasts came upon the lands of the person claiming such damages and charges shall be proven upon the trial of such action, and no certificate of fence viewers upon such questions shall then be necessary.

322. Surplus money upon sale of strays

If the owner of the beasts shall not appear and demand the residue of such moneys within one year after the sale he shall be thereafter precluded from recovering any part thereof, and the same shall be paid by the officer making the sale to the supervisor of the town, or, in cities, to the treasurer, and their receipt shall be a legal discharge to the keeper of such

beasts and the officer selling the same. If the officer who shall have sold such beasts shall not, within thirty days after the expiration of the year, pay such moneys to the supervisor of the town, or, in cities, to the treasurer he shall forfeit to the town or city double the sum so remaining in his hands, together with the amount of such moneys.

325. Application of article

The villages and cities of this state shall be considered towns for the purpose of construing provisions of this article relating to strays; and the trustees of the village and the aldermen, councilmen or members of the legislative body of the city shall be fence viewers therein for such purposes.