

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 527**

4 (By Senators Williams and Miller)

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6 [Originating in the Committee on the Judiciary;

7 reported February 14, 2012.]

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12 A BILL to repeal §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8,
13 §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of the Code of
14 West Virginia, 1931, as amended; and to amend and reenact
15 §19-18-1, §19-18-2 and §19-18-3 of said code, all relating to
16 providing for general livestock trespass law; prohibiting
17 livestock from trespassing; clarifying damages that may be
18 recovered; permitting containment of livestock; requiring
19 owner of trespassing livestock be notified; requiring
20 containment costs be negotiated; permitting containment costs
21 to be recovered in court; permitting the sheriff to take
22 possession of unclaimed livestock; permitting unclaimed
23 livestock be sold at auction; setting forth how the proceeds
24 of a livestock sale shall be distributed; and establishing

1 misdemeanor penalties.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8,
4 §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of the Code of West
5 Virginia, 1931, as amended, be repealed; and that §19-18-1,
6 §19-18-2 and §19-18-3 of said code be amended and reenacted, all to
7 read as follows:

8 **ARTICLE 18. GENERAL LIVESTOCK TRESPASS LAW.**

9 **§19-18-1. Livestock trespassing on property of another; damages**
10 **for injuries to person or property; notice to**
11 **livestock owner; containment of livestock; costs for**
12 **containment.**

13 (a) If livestock enters the property of another landowner
14 without that landowner's consent, the owner or manager of the
15 livestock is liable for damages for personal injury or property
16 loss in a civil action in magistrate or circuit court.

17 (b) The affected landowner must attempt to contact the owner
18 or manager of the trespassing livestock within forty-eight hours of
19 the trespass. If the owner or manager cannot be contacted within
20 forty-eight hours, the landowner shall notify the county sheriff.

21 (c) The landowner may contain the trespassing livestock on
22 his or her property, but is not required to do so. If the
23 landowner is able to contact the owner or manager of the
24 trespassing livestock pursuant to subsection (a) of this section,

1 he or she shall also inform the owner or manager of the costs of
2 containment.

3 (d) The owner or manager of the trespassing livestock and the
4 landowner shall attempt to mutually agree on a fair cost for any
5 containment. A fair cost for containment is an amount which would
6 be allowed for the sheriff for containing similar livestock. If
7 the negotiation fails, or if the landowner is not otherwise
8 reimbursed for the costs for containment, the landowner may seek
9 monetary damages in a civil action for these costs.

10 **§19-18-2. Unclaimed livestock; containment by sheriff; sheriff's**
11 **sale at public auction.**

12 (a) If the owner or manager of trespassing livestock cannot be
13 determined, or if the trespassing livestock has not been recovered
14 within ten days of notifying the owner or manager, the county
15 sheriff shall take possession of the trespassing livestock.

16 (b) The county sheriff may return the livestock to its owner
17 or manager and seek reimbursement for containment costs. If
18 attempts to return the livestock to the owner or manager fail the
19 sheriff may, after publishing notice as a Class I legal
20 advertisement, sell the livestock to the highest bidder at a public
21 livestock auction.

22 (c) The proceeds of the livestock sale shall be distributed in
23 the following order: (1) costs incident to the sale; (2) costs of
24 containment by the sheriff and the landowner; (3) any remaining

1 amount to the owner of the trespassing livestock; and (4) if the
2 owner is unknown or does not claim the amount remaining within
3 ninety days, that amount shall be deposited into the county
4 treasury.

5 **§19-18-3. Criminal penalties for trespassing livestock;**
6 **restitution.**

7 (a) While livestock may escape enclosures due to accident or
8 unforeseen circumstances, it is unlawful for the owner or manager
9 of livestock to negligently permit livestock to run at large and
10 trespass on the property of other landowners.

11 (b) If livestock injures a person or destroys the property of
12 another person while negligently trespassing, the owner or manager
13 of the livestock shall be given an oral or written warning for the
14 first offense. For a second offense within six months of the
15 first, the owner or manager is guilty of a misdemeanor and, upon
16 conviction thereof, shall be fined not less than \$50 nor more than
17 \$100. For a third or subsequent offense within six months of the
18 second or subsequent offense, the owner or manager is guilty of a
19 misdemeanor and, upon conviction thereof, shall be fined not less
20 than \$100 nor more than \$1,000.

(NOTE: §19-18-1, §19-18-2 and §19-18-3 have been completely
rewritten; therefore, strike-throughs and underscoring have been
omitted.)