

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 341**

4 (By Senators Miller, Williams, Laird, Nohe and D. Hall)

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6 [Originating in the Committee on Agriculture and Rural  
7 Development;  
8 reported March 5, 2013.]  
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12 A BILL to repeal §19-17-5, §19-17-6, §19-17-7, §19-17-8, §19-17-10  
13 and §19-17-11 of the Code of West Virginia, 1931, as amended;  
14 and to amend and reenact §19-17-1, §19-17-2, §19-17-3 and §19-  
15 17-4 of said code, all relating to requiring livestock be  
16 enclosed by a fence; stating that fences are for grazing and  
17 livestock purposes; clarifying the procedures adjoining  
18 landowners shall follow to build, maintain and repair  
19 partition fences; requiring adjoining landowners to pay for a  
20 just proportion of the cost of partition fence; requiring  
21 notice; providing an exception for emergency repairs;  
22 providing dispute resolution and civil actions; and  
23 authorizing the Commissioner of Agriculture to promulgate  
24 rules and emergency rules.

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

2       That §19-17-5, §19-17-6, §19-17-7, §19-17-8, §19-17-10 and  
3 §19-17-11 of the Code of West Virginia, 1931, as amended, be  
4 repealed; and that §19-17-1, §19-17-2, §19-17-3 and §19-17-4 of  
5 said code be amended and reenacted, all to read as follows:

6 **ARTICLE 17. FENCES.**

7 **§19-17-1. Fencing of livestock required.**

8       Livestock shall be enclosed by a fence, including gates and  
9 grates, that is built to reasonably prevent livestock from escaping  
10 the enclosure.

11 **§19-17-2. Partition fences.**

12       (a) Adjoining landowners of property used for grazing or  
13 livestock purposes shall each pay for or perform a just proportion  
14 of the construction, repairs and maintenance of the partition fence  
15 between the properties.

16       (b) The owner of real property who converts land to grazing or  
17 other livestock purposes after an adjoining landowner constructs a  
18 partition fence shall pay a just proportion of the depreciation of  
19 the original cost of constructing the fence, and shall pay for or  
20 perform a just proportion of the repairs and maintenance of the  
21 partition fence in the future.

22 **§19-17-3. Building, maintaining and repairing partition fences.**

23       (a) Adjoining landowners are encouraged to communicate and  
24 have written agreements with one another concerning the type of

1 fence to be built, the just apportionment of the cost of the fence  
2 or repairs, the portion of the partition fence each person shall  
3 maintain and any other agreements between the parties.

4 (b) A person desiring to build or repair a partition fence  
5 shall give written notice to the adjoining landowner of his or her  
6 intention to build or repair a partition fence. The notice shall  
7 state the description and type of fence to be built or the  
8 necessary repairs to be made. Within fourteen days, the adjoining  
9 landowner provided with the notice shall provide a written response  
10 agreeing to the proposal or responding with objections and counter  
11 proposals and requesting a meeting to resolve the dispute. Failure  
12 to respond makes the adjoining landowner liable for a just  
13 proportion of the cost of the new fence or repair.

14 (c) Emergency repairs to partition fences necessitated by  
15 storms, accidents or other unforeseen circumstances are exempt from  
16 the notice requirements of subsection (b) of this section.  
17 However, the adjoining landowner shall be notified of the repairs  
18 and costs as soon as possible.

19 (d) If a dispute arises between adjoining landowners regarding  
20 building, maintaining or repairing a partition fence, and the  
21 parties have met and attempted to resolve the dispute and failed,  
22 either party may proceed with a civil action in magistrate or  
23 circuit court for relief.

24 **§19-17-4. Rulemaking authority.**

1       The Commissioner of Agriculture and Rural Development may  
2 propose rules for legislative approval in accordance with the  
3 provisions of article three, chapter twenty-nine-a of this code to  
4 regulate livestock fences, partition fences and disputes. The  
5 commissioner may promulgate emergency rules pursuant to section  
6 fifteen, article three, chapter twenty-nine of this code.

NOTE: This bill requires livestock be enclosed by a fence. The bill requires adjoining landowners to pay for a just proportion of partition fences. The bill encourages adjoining landowners to have written agreements. The bill requires notice to adjoining landowners before a fence may be constructed or repaired. The bill provides an exception for emergencies. The bill provides that an adjoining landowner may respond. The bill provides when a landowner does not respond he or she is responsible for a portion of the costs. The bill permits civil actions. The bill authorizes promulgation of rules and emergency rules.

The bill repeals §19-17-5, §19-17-6, §19-17-7, §19-17-8, §19-17-10 and §19-17-11.

§19-17-1, §19-17-2, §19-17-3 and §19-17-4 have been completely rewritten; therefore, strike-throughs and underscoring have been omitted.