

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 341**

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

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8 [Originating in the Committee on the Judiciary;  
9 reported March 19, 2013.]  
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13 A BILL to repeal §19-17-5, §19-17-6, §19-17-7, §19-17-8, §19-17-10  
14 and §19-17-11 of the Code of West Virginia, 1931, as amended;  
15 to repeal §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8,  
16 §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of said code; to  
17 amend and reenact §19-17-1, §19-17-2, §19-17-3 and §19-17-4 of  
18 said code; and to amend and reenact §19-18-1, §19-18-2 and  
19 §19-18-3 of said code, all relating generally to livestock;  
20 requiring livestock be enclosed by a fence; stating that  
21 fences are for grazing and livestock purposes; clarifying  
22 procedures to build, maintain and repair partition fences;  
23 requiring an adjoining landowner to pay portion of the cost of  
24 partition fence; requiring notice; providing an exception for

1 emergency repairs; providing dispute resolution; authorizing  
2 the Commissioner of Agriculture to promulgate rules and  
3 emergency rules for fences; prohibiting livestock from  
4 trespassing; clarifying damages that may be recovered;  
5 permitting containment of livestock; requiring owner of  
6 trespassing livestock be notified; stating that containment  
7 costs may be negotiated and recovered in court; permitting the  
8 sheriff to contain unclaimed livestock; permitting unclaimed  
9 livestock be sold at auction and proceeds distributed; and  
10 establishing misdemeanor penalties.

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

12 That §19-17-5, §19-17-6, §19-17-7, §19-17-8, §19-17-10 and  
13 §19-17-11 of the Code of West Virginia, 1931, as amended, be  
14 repealed; that §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8,  
15 §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of said code be  
16 repealed; that §19-17-1, §19-17-2, §19-17-3 and §19-17-4 of said  
17 code be amended and reenacted; and that §19-18-1, §19-18-2 and  
18 §19-18-3 of said code be amended and reenacted, all to read as  
19 follows:

20 **ARTICLE 17. FENCES.**

21 **§19-17-1. Fencing of livestock required.**

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

1 **§19-17-2. Partition fences.**

2 (a) Adjoining landowners of property used for grazing or  
3 livestock purposes shall each pay for or perform a just proportion  
4 of the construction, repairs and maintenance of the partition fence  
5 between the properties.

6 (b) The owner of real property who converts land to grazing or  
7 other livestock purposes after an adjoining landowner constructs a  
8 partition fence shall pay a just proportion of the depreciation of  
9 the original cost of constructing the fence, and shall pay for or  
10 perform a just proportion of the repairs and maintenance of the  
11 partition fence in the future.

12 **§19-17-3. Building, maintaining and repairing partition fences.**

13 (a) Adjoining landowners are encouraged to communicate and  
14 have written agreements with one another concerning the type of  
15 fence to be built, the just apportionment of the cost of the fence  
16 or repairs, the portion of the partition fence each person shall  
17 maintain and any other agreements between the parties.

18 (b) A person desiring to build or repair a partition fence  
19 shall give written notice to the adjoining landowner of his or her  
20 intention to build or repair a partition fence. The notice shall  
21 state the description and type of fence to be built or the  
22 necessary repairs to be made. Within fourteen days, the adjoining  
23 landowner provided with the notice shall provide a written response  
24 agreeing to the proposal or responding with objections and counter

1 proposals and requesting a meeting to resolve the dispute. Failure  
2 to respond makes the adjoining landowner liable for a just  
3 proportion of the cost of the new fence or repair.

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

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

14 **§19-17-4. Rule-making authority.**

15 The Commissioner of Agriculture may propose rules for  
16 legislative approval in accordance with the provisions of article  
17 three, chapter twenty-nine-a of this code to regulate livestock  
18 fences, partition fences and disputes. The commissioner may  
19 promulgate emergency rules pursuant to section fifteen, article  
20 three, chapter twenty-nine of this code.

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

22 **§19-18-1. Livestock trespassing on property of another; damages**  
23 **for injuries to person or property; notice to**  
24 **livestock owner; containment of livestock; costs for**

1                   **containment.**

2           (a) If livestock enters the property of a landowner without  
3 that landowner's consent, the owner of the livestock is liable for  
4 damages for personal injury or property damage in a civil action in  
5 magistrate or circuit court.

6           (b) The landowner must attempt to contact the owner of the  
7 trespassing livestock within forty-eight hours of the trespass. If  
8 the owner cannot be contacted within forty-eight hours, the  
9 landowner shall notify the county sheriff.

10          (c) The landowner may contain the trespassing livestock on  
11 his or her property, but is not required to do so. If the  
12 landowner is able to contact the owner of the trespassing livestock  
13 pursuant to subsection (a) of this section, he or she shall also  
14 inform the owner of the costs of containment.

15          (d) The owner of the trespassing livestock and the landowner  
16 shall attempt to mutually agree upon a fair cost for any  
17 containment. A fair cost for containment is an amount which would  
18 be allowed for the sheriff for containing similar livestock. If  
19 the negotiation fails, or if the landowner is not otherwise  
20 reimbursed for the costs for containment, the landowner may seek  
21 monetary damages in a civil action for these costs.

22 **§19-18-2. Unclaimed livestock; containment by sheriff; sheriff's**  
23                   **sale at public auction.**

24          (a) If the owner of trespassing livestock cannot be

1 determined, or if the trespassing livestock has not been recovered  
2 within ten days of notifying the owner, the county sheriff shall  
3 take possession of the trespassing livestock.

4 (b) The county sheriff may return the livestock to its owner  
5 and seek reimbursement for containment costs. If attempts to  
6 return the livestock to the owner fail, the sheriff may, after  
7 publishing notice as a Class I legal advertisement, sell the  
8 livestock to the highest bidder at a public livestock auction.

9 (c) The proceeds of the livestock sale shall be distributed in  
10 the following order:

11 (1) Costs incident to the sale;

12 (2) Costs of containment incurred by the sheriff and the  
13 landowner;

14 (3) Any remaining amount to the owner of the trespassing  
15 livestock; and

16 (4) If the owner is unknown or does not claim the amount  
17 remaining within ninety days, that amount shall be deposited into  
18 the county treasury.

19 **§19-18-3. Criminal penalties for trespassing livestock.**

20 (a) While livestock may escape enclosures due to accident or  
21 unforeseen circumstances, it is unlawful for the owner of livestock  
22 to negligently permit livestock to run at large and trespass on the  
23 property of other landowners.

24 (b) If livestock injures a person or destroys the property of

1 another person while negligently trespassing, the owner of the  
2 livestock shall be given an oral or written warning for the first  
3 offense. For a second offense within six months of the first, the  
4 owner is guilty of a misdemeanor and, upon conviction thereof,  
5 shall be fined not less than \$50 nor more than \$100. For a third  
6 or subsequent offense within six months of the second or subsequent  
7 offense, the owner is guilty of a misdemeanor and, upon conviction  
8 thereof, shall be fined not less than \$100 nor more than \$1,000.

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(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 requires notice to adjoining landowners before a fence may be constructed or repaired. 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 also revises the antiquated livestock trespassing laws of West Virginia. The bill clarifies damages for injury or loss to person or property from trespassing livestock and permits costs to be reimbursed for containment of livestock. The bill requires notification to the owner of trespassing livestock within forty-eight hours. The bill requires negotiating the costs of containment. The bill requires unclaimed livestock to be given to the sheriff for sale at a public livestock auction and the proceeds of the sale are distributed in a particular order. The bill creates misdemeanor penalties and fines for livestock that negligently trespass and injure persons or property.

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.

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