

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 47**

4 (By Senators Williams, Miller, Sypolt and Beach)

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6 [Originating in the Committee on the Judiciary;

7 reported February 28, 2013.]
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10 A BILL to repeal §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8,
11 §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of the Code of
12 West Virginia, 1931, as amended; and to amend and reenact
13 §19-18-1, §19-18-2 and §19-18-3 of said code, all relating to
14 providing a general livestock trespass law; prohibiting
15 livestock from trespassing; clarifying damages that may be
16 recovered; permitting containment of livestock; requiring
17 owner of trespassing livestock be notified; requiring
18 containment costs be negotiated; permitting containment costs
19 to be recovered in court; permitting the sheriff to take
20 possession of unclaimed livestock; permitting unclaimed
21 livestock be sold at auction; setting forth how the proceeds
22 of a livestock sale shall be distributed; and establishing
23 misdemeanor penalties.

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

25 That §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8,
26 §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of the Code of West

1 Virginia, 1931, as amended, be repealed; and that §19-18-1,
2 §19-18-2 and §19-18-3 of said code be amended and reenacted, all to
3 read as follows:

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

5 **§19-18-1. Livestock trespassing on property of another; damages**
6 **for injuries to person or property; notice to**
7 **livestock owner; containment of livestock; costs for**
8 **containment.**

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

13 (b) The landowner must attempt to contact the owner of the
14 trespassing livestock within forty-eight hours of the trespass. If
15 the owner cannot be contacted within forty-eight hours, the
16 landowner shall notify the county sheriff.

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

22 (d) The owner of the trespassing livestock and the landowner
23 shall attempt to mutually agree upon a fair cost for any
24 containment. A fair cost for containment is an amount which would
25 be allowed for the sheriff for containing similar livestock. If

1 the negotiation fails, or if the landowner is not otherwise
2 reimbursed for the costs for containment, the landowner may seek
3 monetary damages in a civil action for these costs.

4 **§19-18-2. Unclaimed livestock; containment by sheriff; sheriff's**
5 **sale at public auction.**

6 (a) If the owner of trespassing livestock cannot be
7 determined, or if the trespassing livestock has not been recovered
8 within ten days of notifying the owner, the county sheriff shall
9 take possession of the trespassing livestock.

10 (b) The county sheriff may return the livestock to its owner
11 and seek reimbursement for containment costs. If attempts to
12 return the livestock to the owner fail, the sheriff may, after
13 publishing notice as a Class I legal advertisement, sell the
14 livestock to the highest bidder at a public livestock auction.

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

17 (1) Costs incident to the sale;

18 (2) Costs of containment incurred by the sheriff and the
19 landowner;

20 (3) Any remaining amount to the owner of the trespassing
21 livestock; and

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

25 **§19-18-3. Criminal penalties for trespassing livestock.**

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

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

(NOTE: The purpose of this bill is to revise the antiquated stock laws of West Virginia. The name has been updated to "General Livestock Trespass Law." 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 clarifies misdemeanor penalties and fines for livestock that negligently trespass and injure persons or property. The bill also permits restitution.

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