

**Senate Bill No. 341**

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

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[Introduced February 21, 2013; referred to the Committee on  
Agriculture and Rural Development; and then to the Committee on  
the Judiciary.]

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A BILL to repeal §19-17-5, §19-17-6, §19-17-7, §19-17-8, §19-17-10  
and §19-17-11 of the Code of West Virginia, 1931, as amended;  
and to amend and reenact §19-17-1, §19-17-2, §19-17-3 and §19-  
17-4 of said code, all relating to requiring livestock be  
enclosed by a fence; requiring adjoining landowners to pay for  
a just proportion of partition fences; encouraging adjoining  
landowners to have written agreements; requiring written  
notice to adjoining landowners before a fence may be  
constructed or repaired; providing an exception for  
emergencies; providing that an adjoining landowner may give a  
written response; providing that when a landowner does not  
respond he or she is responsible for a just proportion of the  
costs; permitting civil actions; and authorizing promulgation

1 of rules and emergency rules.

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

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5 repealed; and that §19-17-1, §19-17-2, §19-17-3 and §19-17-4 of  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

7 **ARTICLE 17. FENCES.**

8 **§19-17-1. Fencing of livestock required.**

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

12 **§19-17-2. Partition fences.**

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

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

1 **§19-17-3. Building, maintaining and repairing partition fences.**

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

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

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

22 (d) If a dispute arises between adjoining landowners regarding  
23 building, maintaining or repairing a partition fence, and the

1 parties have met and attempted to resolve the dispute and failed,  
2 either party may proceed with a civil action in magistrate or  
3 circuit court for relief.

4 **§19-17-4. Rulemaking authority.**

5       The Commissioner of Agriculture is authorized to propose rules  
6 for legislative approval pursuant to article three, chapter twenty-  
7 nine-a of this code to regulate livestock fences, partition fences  
8 and disputes. The commissioner is also authorized to promulgate  
9 emergency rules pursuant to section fifteen of that article.

NOTE: The purpose of 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.