WEST VIRGINIA CODE CHAPTER 19 ARTICLE 17

WV Legislature

§19-17-1. Definition of lawful fence.

Every fence of the height and description hereinafter mentioned shall be deemed a lawful fence as to any horses, mules, asses, jennets, cattle, sheep, swine, or goats, which could not creep through the same, that is to say:

(a) If built of common rails, known as the worm fence, four and one half feet high;

(b) If built with posts and rails, or posts and plank, or pickets, four feet high;

(c) If built with stone, two feet wide at base, and three and one-half feet high;

(d) If a hedge fence, four feet high. If any hedge fence be built upon a mound, the same from the bottom of the ditch shall be included in estimating the height of such fence;

(e) If built with posts and wire, or pickets and wire, four feet high, and shall consist of not less than six strands, the first strand five inches, the second strand ten inches, the third strand seventeen inches, the fourth strand twenty-five inches, the fifth strand thirty-six inches, and the sixth strand forty-eight inches from the ground; and if with more than six strands, the space between the strands shall in no case be greater than hereinbefore provided. The space between the posts shall, in no case, be greater than sixteen feet;

(f) If built with posts and high tensile galvanized wire, forty-six inches high, and shall consist of not less than eight strands, the first strand four inches, the second strand nine inches, the third strand fourteen inches, the fourth strand nineteen inches, the fifth strand twenty-five inches, the sixth strand thirty-one inches, the seventh strand thirty-eight inches, and the eighth strand forty-six inches from the ground. The wire shall be maintained at no less than a two hundred pound tension at all times. The space between posts shall, in no case, be greater than thirty feet, provided that pressuretreated one and one-fourth inch by one and one-half inch by forty-eight inch slotted hardwood or one and one-half inch by two inch by forty-eight inch soft wood battens are used between posts at a distance no greater than ten feet; and

(g) If built with posts and high tensile galvanized wire and electrified, thirty-eight inches high and shall consist of not less than five strands, the first strand five inches, the second strand ten inches, the third strand seventeen inches, the fourth strand twenty-seven inches, and the fifth strand thirty-eight inches from the ground. The wire shall be maintained at no less than a two-hundred pound tension at all times. The space between posts shall, in no case, be greater than one hundred fifty feet, provided that pressuretreated one and one-fourth inch by one and one-half inch slotted hardwood or one and one-half inch by two inch softwood battens are used between posts at a distance no greater than thirty-five feet: Provided, That if said fence is constructed to confine only horses, mules, asses, jennets, or cattle, it shall be deemed a legal fence if it is not less than three strands, the first strand seventeen inches, the second strand twenty-seven inches and the third strand thirty-eight inches from the ground. The space between posts shall, in no case, be greater than one

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hundred fifty feet, provided that pressuretreated one and one-fourth inch by one and one-half inch slotted hardwood or one and one-half inch by two inch softwood battens are used between posts at a distance no greater than thirty-five feet. Only high-powered low impedance fence controllers which comply with international safety standards shall be used to electrify fence.

All fences heretofore built under the existing law and in compliance therewith shall be and remain and may be kept up as lawful fences.

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§19-17-2. Rivers and streams as lawful fences; establishment or discontinuance.

All rivers and streams, and parts thereof, within this state, which are lawful fences at the time this code takes effect, under existing laws, shall continue such until otherwise ordered by the county court of the county. The county court of any county, upon the written application of any owner or tenant of lands on any river or stream in such county, or which constitutes a boundary line thereof, may, in its discretion, by order entered of record, declare and establish such river or stream, or any part of either, a lawful fence as to any stock named in section one of this article. Notice of the application shall be given by publishing the same as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Any person interested may appear and oppose such application.

The county court may, upon like application and notice of any person, annul or amend any order made by said court establishing any river or stream, or any part of either, as a lawful fence; but such order shall not be made within one year from the date of the order sought to be annulled or amended, and shall not take effect until six months after it is made.

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§19-17-3. Hedge fence.

All hedge fences along public roads, or division hedge fences between farms or on any land or premises, shall be kept trimmed so that their branches shall not extend into the public road, or upon the lands of an adjoining owner, more than eighteen inches over the dividing line. For failure to keep the hedge fence so trimmed, after ten days' notice in writing by the county engineer or supervisor of roads, or by parties owning the adjoining land or premises, the owner shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding $1 for each day such fence shall remain untrimmed after the ten days' notice expires.

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§19-17-4. Partition fence; liability for trespass of animals.

All partition fences shall be lawful fences, unless otherwise agreed upon by the adjoining owners by a writing executed in duplicate and duly acknowledge, in which case, if such fence be kept in good repair, there shall be the same liability for damages occasioned by trespass of animals owned by said adjoining owners as if such fence were a lawful fence.

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§19-17-5. Apportionment of construction and maintenance of partition fence.

Persons owning adjoining lands, both of which are used for agricultural, horticultural, grazing or livestock purposes, shall bear a just proportion of the cost of the constructing, repairing and maintaining a partition fence between such lands.

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§19-17-6. Sharing cost of constructed fences.

Where a person has chosen to let his land lie open, if he shall afterwards enclose or use such land, or portion thereof, for agricultural, horticultural, grazing or livestock purposes, he shall refund to the adjoining owner a just proportion of the value of the partition fence adjoining such lands, or portion thereof, enclosed or so used that shall have been made by such adjoining owner, regardless of whether or not such fence at the time is a lawful fence.

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§19-17-7. Notice of intention to build or repair partition fence; answer.

Any person desiring to build or to repair a partition fence may give notice in writing to the owner of any adjoining lands, or to his agent, of his intention to build or repair such fence and requiring him to build or repair his just portion thereof, which notice shall state the description and kind of the fence proposed to be built or such repairs as are proposed to be made. The person so served with such notice shall, within ten days thereafter make answer in writing and serve the same upon the person desiring to build or repair such fence, which answer shall state any objections to such notice, and upon failure to do so he shall be liable to the person building or repairing such partition fence for his just proportion of the cost thereof if he shall fail to build or repair his proportion of the same.

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§19-17-8. Disputes relating to partition fences.

If a dispute arises between the owners of adjoining lands concerning the proportion or particular part of a fence to be built or maintained by either of them, or the amount to be paid by one party to the other for any fence already built or maintained, either party may proceed by civil action in a magistrate or circuit court, as shall have jurisdiction of the amount or value in controversy, within the county in which any portion of the partition built or to be built, is or is to be located, to determine the amount to be paid by one party to the other for the just proportion of the costs of any construction, repair or maintenance of the partition fence. The person who is required to share in the cost of the construction, repair or maintenance of the partition fence shall not be liable for more than one half of the cost of the construction, repair or maintenance of a fence which meets the standards of subdivision (e), section one of this article.

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§19-17-9.

Repealed.

Acts, 1993 Reg. Sess., Ch. 57.

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§19-17-10. Liability of owner for refusal to repair fence.

When each of the adjoining owners of a partition fence has been allotted a particular part thereof to maintain, and either owner fails or refuses to keep in good repair the part of such fence so allotted to him he shall be liable in damages to the adjoining owner for all damages occasioned by animals kept by him trespassing on such adjoining premises as the result of such failure or refusal to repair. The adjoining owner may serve written notice on the owner whose duty it is to keep his part of such fence in repair, requiring him to repair the same, and if such owner fails or refuses so to do within ten days after the service of such notice, the adjoining owner may repair such part of the fence, and the owner whose duty it is to keep the same in repair shall be liable to him for all the expenses of such repair.

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§19-17-11. Presumptions as to sufficiency of fence.

In any controversy in which the sufficiency of a fence under the provisions of this chapter shall come in question, it shall be presumed that the same was, at the time to which such controversy relates, a lawful fence and in good condition and repair, unless the contrary be proven.

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