

## CHAPTER 28 ♦ FENCES AND CATTLE GUARDS

### 11-28-101. Who considered owner.

Any person occupying, using, enjoying, maintaining or having the charge of any enclosure shall be considered the owner thereof, in any action commenced under the provisions of W.S. 11-28-101 through 11-28-108.

### 11-28-102. Lawful fences generally.

(a) The following are lawful fences in this state:

(i) A fence made of steel, concrete or sound wooden posts and three (3) spans of barbed wire not more than fifteen (15) inches or less than ten (10) inches apart, or two (2) spans of barbed wire with a wooden rail on top. Wooden posts shall be at least four (4) inches in diameter. Posts shall be set firmly in the ground at least twenty (20) inches deep, at no greater distance apart than twenty-two (22) feet between the posts or thirty-three (33) feet with at least two (2) iron or wooden stays between the posts. Stays shall be placed equal distance apart from themselves and the post on either side;

(ii) A post and board fence made of sound posts not less than four (4) inches in diameter set substantially in the ground not more than ten (10) feet apart, with three (3) boards sold as one (1) inch lumber eight (8) inches wide, and not more than ten (10) inches apart, or four (4) boards sold as one (1) inch lumber six (6) inches wide, not more than eight (8) inches apart, securely fastened with nails or otherwise;

(iii) A four (4) pole fence with round poles not less than two (2) inches in diameter at the small end, with either upright or leaning posts not more than sixteen (16) feet apart, and securely fastened with nails, wires or otherwise.

(b) All other fences made and constructed of boards, rails, poles, stones, hedge plants or other material which upon evidence is declared to be as strong and well calculated to protect enclosures, and is as effective for resisting breaching stock as those described in subsection (a) of this section, shall be considered a lawful fence.

(c) Any fence enclosing any hay corral situated outside of any field or pasture enclosed by a lawful fence, shall be at least six (6) feet high, constructed of boards, poles or wire. The posts shall not be more than eight (8) feet apart and set twenty-four (24) inches in the ground. If the fence is constructed of barbed wire there shall be at least seven (7) spans of wire, and all wires shall be kept properly stretched. Any fence better than the above described fence is a lawful fence.

**11-28-103. Constructing of unlawful wire fence; liability and penalty; reconstruction required; penalty for failure.**

(a) Any person who constructs or maintains any unlawful wire fence contrary to this act [ §§ 11-28-101 through 11-28-108], is liable in a civil action for all damages to animals that may occur by reason of the unlawful enclosure. The owner of any unlawful wire fence is guilty of a misdemeanor and shall be fined not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00), and for each subsequent offense the fine shall not be less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00).

(b) The owner of any unlawful wire fence shall, within thirty (30) days after conviction, reconstruct the wire fence into a lawful wire fence. If he fails or refuses to do so, the owner is guilty of a separate offense and on conviction thereof, shall be punished as provided in subsection (a) of this section. Each period of thirty (30) days thereafter that the owner refuses or neglects to reconstruct the unlawful fence is a separate offense and the owner is subject to like punishment.

#### **11-28-104. Fences across roads generally.**

All fences constructed across a road leading to a watering place, or constructed across any road used as a public road, shall at the point where the fence intersects or crosses the road be constructed of boards or poles extending not less than eight (8) feet on each side of the middle of the road. The owner of any fence that violates this section is guilty of a misdemeanor and shall be punished as provided in W.S. 11-28-103(a).

#### **11-28-105. Board of county commissioners to authorize lawful fences upon right-of-way.**

The board of county commissioners may authorize the erection of a lawful fence upon the right-of-way of any public road at the expense of the petitioners for the establishment of the roads, or as may be agreed upon between petitioners and the board of county commissioners, or at the expense of the owners of lands to be benefited by the fencing or at the expense of the county, as the board of county commissioners may determine. The board shall locate and cause to be constructed gates and cattle guards at such intervals as it deems necessary for the convenience of the public. Cattle guards shall be constructed according to specification prescribed by the state highway department, under the supervision of the county surveyor or county commissioners at the expense of the petitioners, the land owners who may be benefited, or the county as the board of county commissioners may determine.

#### **11-28-106. Construction and maintenance of partition fences.**

(a) Except as otherwise provided, the owner of any lawful fence which is or becomes a partition fence separating the owner's land from that belonging to some other person may require the person to pay for one-half (1/2) of what it would or does actually cost to construct the partition fence. In case of refusal, the owner may maintain a civil action against the person refusing and is entitled to recover one-half (1/2) of what it would or did actually cost to construct that portion of the partition fence used by the person and costs of suit. The joint users of a partition fence shall contribute to the cost of maintenance in proportion to their respective interests and if either refuses to pay his share of the cost of maintenance, the other may recover maintenance costs in the manner provided for recovering the cost of construction.

(b) For subdivisions as defined in W.S. 18-5-302(a)(vii), the subdivider shall be responsible for the construction of a perimeter partition fence on any part of the subdivision adjacent to lands upon which livestock can be legally run at large. The costs of the perimeter partition fence shall be paid for by the parties in accordance with subsection (a) of this section. The adjoining landowner shall not be liable for any damages caused by, or arising from, livestock pastured on the adjoining land that may wander onto the subdivided land.

**11-28-107. Prohibited acts; penalties.**

Any person who willfully or negligently leaves open, breaks down or destroys any bars or gate provided for the use and convenience of the public, or willfully tears down, throws down or destroys in any manner any lawful fence, is guilty of a misdemeanor and shall be fined not more than one hundred dollars (\$100.00), or imprisoned not more than three (3) months, or both.

**11-28-108. Liability for breach into lawful enclosure by animal; civil action or arbitration.**

(a) Any person owning or having in his possession or charge any livestock or domesticated buffalo which breaches into any lawful enclosure belonging to someone other than the owner of the animal, is liable to the party sustaining the injury for all damages sustained by reason of such breaching. Damages may be recovered in a civil action before any court having jurisdiction, or by arbitration, each party to select a property holder and the two (2) arbitrators to select a third. The arbitrators shall be sworn before a judge of a circuit court before entering upon their duties. The arbitrators shall carefully examine the fence and assess the damage done, examine witnesses under oath, one (1) of them to administer the oath to the witnesses, and make a written report signed by at least two (2) of the arbitrators, to the circuit court in the county in which the damage is sustained. The finding of the arbitration, as provided for in this section, shall within three (3) days after rendered, be filed with a judge of a circuit court in the county where the trespass was committed, who shall enter the cost upon his docket and proceed to issue execution therein as in other cases originally commenced before him.

(b) The party sustaining the damage shall notify the owner or person having in charge the offending animals, of the damage and the probable amount if he knows to whom the animals belong and if the owner or keeper resides within the county where the damage was committed.

(c) The person suffering damage may restrain and keep in custody as many of the offending animals as are equal in value to the damage done, until the finding of the court or arbitration is ascertained, unless before suit the amount of his claim and expense of keeping the animals is tendered to him.

(d) If, upon trial of any action under subsection (a) of this section, it appears the plaintiff's enclosure is a lawful fence, he shall be allowed to prove the amount of damage sustained and if he has retained in custody the animals committing the damage, the amount of expense incurred for keeping the animals. Any judgment rendered for damages, costs and expenses against the defendant shall be a lien upon the animals committing the damage. If it appears upon trial that

the plaintiff's enclosure is not a lawful fence or that no damage was sustained, judgment shall be rendered against the plaintiff for costs of suit and damages sustained by defendant.

(e) If upon trial it appears the defendant is not the owner or person in charge of the offending animals, he shall be discharged from the action with his costs, and the suit may proceed against a defendant whose name is unknown. If, at the commencement of the action, the plaintiff does not know the name of the owner or keeper of the offending animals, he may bring suit against a defendant unknown.