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## States' Fence Statutes: *Tennessee*



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# States' Fence Statutes: Tennessee

## **Tenn. Code Ann. §§ 44-8-101 to 44-8-407, Tenn. Code Ann. § 44-21-103, Tenn. Code Ann. §§ 65- 6-301 to 65-6-303**

*Current with laws from the 2021 First Regular Sess. of the 112th Tennessee General Assembly, eff. through May 11, 2021, except for 2021 Pub. Acts, c. 285. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.*

### **Chapter 8. Fences and Confinement.**

#### **Part 1. General Provisions.**

##### **§ 44-8-101. Land in cultivation.**

Every planter shall make and keep a sufficient fence, of ordinarily sound and substantial material, around the planter's land in cultivation, and so close, for at least two and one-half feet (2 1/2') from the surface of the earth, as to prevent hogs large enough to do damage from passing through the fence.

##### **§ 44-8-102. Materials; sufficient fencing.**

(a) The following types of fence are deemed sufficient:

- (1) STONE. --A substantial stone fence or wall, three and one-half feet (3 1/2 ') high;
- (2) PLANK AND POST AND RAIL. --A post and plank or post and rail fence four feet (4') high;
- (3) RAIL. --A common worm or crooked rail fence five feet (5') high;
- (4) BANK. --Every bank or other means used as a fence, or part of a fence, equivalent, as an obstruction to stock, to either of the three (3) classes of fence above named;
- (5) WIRE.--Any enclosure made by nailing fast two (2) sound planks, each not less than six inches (6") wide, to posts set firmly in the ground not more than eight feet (8') apart, the bottom plank to be not more than three inches (3") from the ground, and the second plank from the ground not more than four inches (4") from the first; and then by stretching not less than four (4) strands of barbed wire tightly between the posts above the planks, the topmost wire to be not less than four and one-half feet (4 1/2 ') from the ground, and the bottom wire to be four inches (4") from the topmost plank; the next wire from the bottom one



to be nine inches (9") from the topmost plank, and the third wire from the bottom to be twenty-one inches (21") from the topmost plank, the above distance as nearly as practicable;

(6) OSAGE ORANGE. --Bois d' arc or Osage orange fences, wholly of bois d' arc or Osage orange, or in part of bois d' arc or Osage orange, and in part of wire or other material, at least four feet (4') high, and at least eighteen inches (18") across the top and sufficiently close to prevent stock of all kinds from passing through; and

(7) WIRE.--Any enclosure made by nine (9) smooth, horizontal wires, the bottom and top or first and ninth of which are to be standard number nine (9), and the other seven (7) standard number eleven (11) wires; the first wire to be placed upon or very near the ground; the second three and one-half inches (3 1/2") from the first; the third three and one-half inches (3 1/2") from the second; the fourth four inches (4") from the third; the fifth four inches (4") from the fourth; the sixth six inches (6") from the fifth; the seventh eight inches (8") from the sixth; the eighth ten inches (10") from the seventh; the ninth ten inches (10") from the eighth. The vertical stays or pickets are to be two feet (2') apart between the first or ground wire and the fifth, and from the fifth to the top or ninth wire four feet (4') apart. The posts are to be one (1) rod apart and well stayed at the ends of the fence, so as to keep the fence from sagging.

(b) In addition to subsection (a), sufficient fencing shall include:

- (1) A fence constructed from synthetic materials commonly sold for fencing, if such materials are installed pursuant to generally acceptable standards, to confine or restrict the movement of farm animals; and
- (2) systems or devices based on technology generally accepted as appropriate for the confinement or restriction of farm animals.

(c) The commissioner of agriculture may adopt rules and regulations regarding sufficient fencing consistent with this part to provide greater specificity as to the requirements of sufficient fencing. The absence of any such rule or regulation shall not affect the validity or applicability of this section or any section of this part as such sections relate to what constitutes sufficient fencing.

#### **§ 44-8-103. Horses, cattle and mules; sufficient fencing.**

The following shall be sufficient and be deemed a lawful fence only as to horses, cattle, and mules: any enclosure made by stretching not less than five (5) strands of barbed wire tightly between posts firmly set in the ground, or between growing trees and posts firmly set in the ground, not more than twenty feet (20') apart; the topmost wire not less than four and one-half feet (4 1/2 ') from the ground, the bottom wire not less than six inches (6"), and the next to the bottom wire not less than fifteen inches (15") from the ground.

#### **§ 44-8-104. Paling and wire fences.**



The paling and wire fence is made a lawful fence; provided, that the fence is built upon good- sized, substantial posts, set firmly in the ground, not more than twelve feet (12') apart; and provided further, that there is firmly fastened upon these posts two (2) sets doublestrand wire, one (1) near the top, the other near the bottom, into which there is woven substantial sawed or split palings, not less than three feet (3') long, with one (1) barbed wire one foot (1') above the paling, or four feet (4') without the wire, and not more than three inches (3") apart; but nothing in this section shall be construed as repealing any statute providing for lawful fences in this state.

#### **§ 44-8-105. Three wire, plank or slat fences.**

In addition, the following shall also be a lawful fence: a fence built on good-sized, substantial posts, set firmly in the ground not more than nine feet (9') apart. The fence shall consist of three (3) barbed wires, or three (3) planks, or three (3) slats running horizontally and fastened firmly to the posts, the first to be eighteen inches (18") from the ground, and the second and third eighteen inches (18") from the first and second respectively, counting from the center of each. The fence may consist entirely of wire strands, or of planks or of slats; or it may be composed of a wire, plank, and slat.

#### **§ 44-8-106. Trespass of animals; damages.**

(a) When any trespass has been committed by horses, cattle, hogs, goats, sheep, or other stock upon the cleared and cultivated ground of any person having the livestock fenced, as is described in §§ 44-8-101--44-8-105, the person may complain to a judge of the court of general sessions of the county, who shall cause two (2) discreet and impartial freeholders to be summoned, and with them shall view and examine, on oath of the freeholders to do justice, whether the complainant's fence is a lawful fence, and what damage, if any, the person has sustained by the trespass, and certify the result of this view and examination under the hands and seals of the judge and freeholders, which certificate the judge shall deliver to the complainant. The certificate shall be *prima facie* evidence of the plaintiff's demand.

(b) The owner of the stock shall be entitled to a hearing, but, if not successful, shall make full satisfaction for the trespass and damages to the party injured, to be recovered as the damages and costs, subject to the right of appeal of either party. To secure the payment of any judgment, execution may be levied upon the stock committing the trespass; and after ten (10) days' notice the stock may be sold to satisfy the judgment so recovered.

#### **§ 44-8-107. Insufficient fences.**

If it appears that the fence is insufficient, the owner of the animals shall not be liable to make satisfaction for the damages.

#### **§ 44-8-108. Maiming, wounding or killing animals; insufficient fences; damages.**

If any person, whose fence is adjudged insufficient, maims, wounds, or kills any such animal, or causes or procures it to be done, that person shall make full satisfaction to the person injured for all damages sustained, to be recovered before any tribunal having cognizance thereof.



### **§ 44-8-109. Notoriously mischievous stock; confinement upon premises.**

All persons owning notoriously mischievous stock, known to be in the habit of throwing down or jumping fences, shall be required to keep the stock confined upon their own premises.

### **§ 44-8-110. Notoriously mischievous stock; damages.**

The owners of notoriously mischievous stock shall be liable for all damages done by the stock to enclosure or crops of others.

### **§ 44-8-111. Executions.**

- (a) To secure the payment of such damage and costs, executions may be levied upon the stock committing the trespass.
- (b) After ten (10) days' notice, the stock may be sold to pay such amount of damages and costs.

### **§ 44-8-112. Pulling down fences; opening gates.**

Any person who pulls down the fence of another and leaves the same down, without permission of the owner, or opens and leaves open the gate of another, without permission of the owner, commits a C class misdemeanor.

### **Part 2. Partition Fences.**

#### **§ 44-8-201. Definition.**

Partition fences, within the meaning of this part, are fences erected on the line between lands owned by different persons; but no owner of land is compelled to allow a neighbor to join a fence exclusively on that person's own land.

#### **§ 44-8-202. Erection and repair at joint expense.**

Partition fences may be erected and repaired at the expense, jointly, of the occupants or owners; or if a person makes a fence a partition fence, by joining to it or using it as such, that person shall pay to the person erecting it that person's proportion of the expense.

#### **§ 44-8-203. Refusal or neglect to keep fence in good repair; damages.**

If either of the persons having a joint or partition fence refuses or neglects to keep that person's part of the fence in good repair, that person shall be liable for all damages the other may sustain to enclosures or crops, by trespassing stock, in consequence of the refusal or neglect.

#### **§ 44-8-204. Erecting or repairing fences; payments; freeholders.**

If the parties cannot agree as to the amount to be paid to the owner erecting or repairing a partition fence as provided in §§ 44-8-202 and 44-8-206, on application by either to a judge of the court of general sessions, the judge shall issue an order to three (3) disinterested freeholders, not related to either of the parties, to examine such fence, and to ascertain the amount to be paid to the owner erecting or repairing it.



### **§ 44-8-205. Freeholders; oaths and affirmations; examinations and reports.**

The freeholders, first taking an oath before the judge to discharge their duty fairly and impartially, on a day to be by them appointed, of which both parties shall have notice, shall examine the fence, and report to the judge, in writing, the amount to be paid the person erecting it; whereupon, unless the money be paid within ten (10) days thereafter, the judge shall enter up judgment, subject to appeal, and issue execution for the judgment.

### **§ 44-8-206. Rebuilding or repairing fences.**

The like proceedings may be had in cases where partition fences are rebuilt or repaired by either of the joint proprietors, the jury of view being judges, in the first instance, of the necessity or advisability of the improvement.

### **§ 44-8-207. Fees.**

The court is entitled to fifty cents (50¢) for issuing the order, and the fence reviewers to one dollar (\$1.00) each, one half (1/2) of which is to be paid by each party; and, if not paid within ten (10) days after the report, execution shall issue for such amount.

### **§ 44-8-208. Removal; notice.**

No partition fence, or any part of a partition fence, shall be removed without the mutual consent of the owners, unless the party desiring to remove the fence, or part of the fence, shall first give six (6) months' notice in writing to the other owner of the owner's intention to remove the fence. After the expiration of the time of the notice, the party may remove the fence, or part of the fence.

### **§ 44-8-209. Removal without notice; crimes and offenses.**

Any person who removes a partition fence, or any part of a partition fence, without first giving the notice required by § 44-8-208, commits a Class C misdemeanor, and is also liable to the person injured for any damages sustained by reason of the removal.

### **§ 44-8-210. Erection or maintenance of partition fence; disclaimer**

(a) In cases when the property on one (1) side of an existing or proposed partition fence is agricultural land, and the property on the other side is non-agricultural land, the owner of the non-agricultural land may disclaim any responsibility for the erection or maintenance of a partition fence pursuant to § 44-8-202. Such disclaimer shall be in writing, executed by the nonagricultural landowner and mailed to the owner of the agricultural land by registered mail, return receipt requested, or sent by some other means pursuant to which a written verification of receipt is obtained. The disclaimer shall be effective on the date of receipt by the owner of the agricultural land.

(b) Delivery of the disclaimer as described in subsection (a) shall have the effect of:

(1) Relieving the owner of the non-agricultural land of any responsibility to erect or maintain a partition fence pursuant to § 44-8-202; and



(2) Releasing the owner of the agricultural land from any claims by the owner of the non-agricultural land arising out of the non-existence or condition of a partition fence.

(c) As used in this section, unless the context otherwise requires:

(1) "Agricultural land" has the same meaning as set forth in § 67-5-1004; and

(2) "Non-agricultural land" means land:

(A) That is not agricultural land;

(B) That is the site of a residence; and

(C) On which the owner does not keep livestock.

(d)

(1) If property that meets the definition of non-agricultural land at the time

of delivery of a disclaimer as described in subsection (a) subsequently ceases to qualify as non-agricultural land, then the disclaimer, and all effects of the disclaimer as described in subsection (b), shall cease to be effective as of the date property ceases to be non-agricultural property.

(2) If a fence is erected by the owner of agricultural land during a period when a disclaimer as described in subsection (a) is in effect, and if the land owned by the disclaiming party subsequently ceases to be qualified as non-agricultural land, then the owner of the non-agricultural land shall reimburse the owner of the agricultural land a proportionate share of the cost of erecting the fence. If the parties cannot agree to the amount to be paid to the owner of the agricultural land, the process described in § 44-8-204 shall be applicable.

### **Part 3. Common Enclosures.**

#### **§ 44-8-301. Damages for failure to keep and maintain common fences.**

It is lawful for two (2) or more owners of adjoining farms to enclose the same under one (1) common fence or enclosure, to be kept up to the standard of a lawful fence by each owner upon that owner's own land, or in such manner and proportion as the owners may agree upon in writing. In the absence of an agreement, the owner of any of the land embraced in the common fence shall be liable to the owners of the other lands and their tenants for all damages to their lands, pastures, fruit trees, crops, or vegetables, occasioned by the failure or neglect of the other owner to keep and maintain the common fence on that owner's land up to the standard of a lawful fence, or by the owner's own stock or that of the owner's tenants trespassing beyond the owner's own land within the common enclosure.

#### **§ 44-8-302. Agreements.**

It is lawful to prescribe, in such an agreement, the means and method by which the common enclosure shall be constructed and maintained, regulations for the use and enjoyment by each



owner of the lands embraced in the enclosure, the penalties to be imposed upon each for violations and how the penalties shall be imposed, the mode of assessment of damages occasioned by trespassing stock of the parties to the agreement, and the length of time it shall continue in force. The agreement may also provide for impounding, feeding, and caring for trespassing stock of the parties to the agreement found within the common enclosure, and for a lien upon trespassing stock to secure the penalties and damages assessed against the owner on that account, and for the enforcement of the lien by sale. All such provisions, not in violation of any law, shall be binding upon all parties to the agreement.

#### **§ 44-8-303. Agreements; rescission; modification or amendment.**

Any such agreement shall continue in force and be binding upon all the parties to the agreement and their heirs and devisees, for the period prescribed in the agreement, unless rescinded by mutual consent. The agreement may be modified or amended in writing signed by all the parties, at any time. After the expiration of the period prescribed, the agreement shall be deemed continued by unanimous consent, unless between November 1 and January 1, some party to the agreement or the party's heir or devisee gives notice in writing to all the other parties to the agreement, resident in the county, of the party's intention to terminate the agreement, in which event the agreement shall terminate at the expiration of ninety (90) days from the service of the notice.

#### **§ 44-8-304. Agreements; acknowledgment and registration.**

- (a) The agreement may be acknowledged and registered in the county or counties in which the lands and any part of the lands are situated.
- (b) In case of registration, the agreement shall be binding upon any purchaser of any of the lands embraced in the common enclosure, and the purchaser's heirs and assigns, in the same manner and to the same extent as if the purchaser had been an original party to the agreement.

#### **§ 44-8-305. Damages caused by trespassing stock.**

Any person not a party to the agreement whose stock trespasses upon the common enclosure shall be liable to the injured party for all damages that the person sustains, and the party so damaged has all the rights and liens given by law to persons damaged by stock trespassing upon enclosures that are not common; provided, the common enclosure is at the time a lawful enclosure or fence.

### **Part 4. Running at Large (Refs & Annos).**

#### **§ 44-8-401. Crimes and offenses.**

- (a) It is unlawful for the owners of any livestock, as livestock is commonly known and defined, to willfully allow the livestock to run at large in this state.
- (b) A violation of this section is a Class C misdemeanor.

#### **§ 44-8-402. Damages; liens and incumbrances**



For any damages occasioned by stock running at large in violation of § 44-8-401, the person so damaged shall have a lien upon the stock, which lien shall be enforced by attachment before a judge of the court of general sessions in the same manner and to the same extent as other liens are enforced.

## **Chapter 21. Liability of Bovine Owners**

### **§ 44-21-103. Failure to post warning signs; maintenance of fences.**

(a) Nothing in § 44-21-102 shall prevent or limit the liability of a bovine owner if the owner:

- (1) Fails to post and maintain warning signs pursuant to § 44-21-104(a);
- (2) Fails to maintain proper fences and enclosures pursuant to chapter 8 of this title; or
- (3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the person, and that act or omission caused the injury, loss, damage, or death.

(b) Title 70, chapter 7 shall not apply to a bovine owner if the injury, loss, damage or death resulted from a bovine activity.

## **Chapter 6. Railroads--Powers--Construction and Maintenance.**

### **Part 3. Cattle Guards.**

#### **§ 65-6-301. Unfenced track; cattle guards.**

Each railroad company whose unfenced track passes through a field or enclosure is required to place a good and sufficient cattle guard or stops at the points of entering such field or enclosure and keep the same in good repair.

#### **§ 65-6-302. Unfenced areas; enlargement.**

In case a field or enclosure through which unfenced railroad track passes shall be enlarged or extended, or the owner of the land over which such unfenced track passes shall open a field so as to embrace the track of such railroad, such railroad company is required to place good and sufficient cattle guards or stops at the margin of such enclosure or fields, and keep the same in repair; provided, that such owner shall give the nearest or most accessible agent of such company thirty (30) days' notice of such change.

#### **§ 65-6-303. Noncompliance penalties.**

Any railroad company neglecting or refusing to comply with the provisions of this part shall be liable for all damages sustained by anyone by reason of such neglect or refusal; and, in order for the injured party to recover all damages such person sustained, it shall be only necessary for such person to prove such neglect or refusal, and the amount of such damages; provided, that such company shall not be liable if it shall be shown that the opening of such field was made capriciously and with intent to annoy and molest such company.





**Audio/Video Summarized:** The owner of a beach house that borders the public beach area was upset that our “liability” fencing was too close to her property and cost too much to erect. The contractor moved the posts temporarily, while the official Tennessee Codes Enforcement office was contacted, as well as the surveyor whose name was given in the audio. Neither had any recollection of having had a prior conversation regarding this issue. It was determined that a “shared” fence may **ride** the shared property line without permission or permit. As the posts were being moved back into their original positions, the owner made it clear by yelling that our butts were over her property line as we were pounding the posts back into place. The solution was to move the posts inward just enough so that a riding mower can make a pass outside the fence without encroaching on the owner’s property.

