

**CHAPTER 58.**

**An Act to Establish a Fence Law in Albany, Carbon and Uinta Counties.**

*Be it enacted by the Council and House of Representatives of the Territory of Wyoming.*

SEC. 1. A fence constructed in any of the two <sup>What is a law</sup> following ways shall be a lawful fence. <sup>ful fence.</sup>

*First,* By placing the ends of ordinary fence posts firmly in the ground at least twenty inches deep, and not more than twelve feet distant from each other, and by firmly fastening thereto good, sound rails or poles of sufficient size, five to the panel, the top rail or pole to be at least five feet from the surface of the ground, and the bottom rail or pole not more than ten inches from the ground.

*Second,* By placing posts, as provided in the first subdivision of this section, but not more than eight feet apart, and nailing or firmly fastening thereto, ordinary, sound, fencing boards, five boards to the panel, and position of top and bottom boards as provided for rails or poles in first subdivision of this section.

SEC. 2. If two or more persons join in the construction <sup>Partition fence.</sup> of a partition fence, each party shall thereafter keep in good repair his portion of such fence, and neither party shall abandon his part of such partition fence, or remove the same or any portion thereof until after one year's notice to the other party or parties interested therein, of his intention so to do unless by the consent of all parties interested therein.

Owners of  
breachy animals  
liable. Arbitra-  
tion.

SEC. 3. Any person or persons owning or having in his or her or their possession or charge, any horses, mules, cattle or any one of such animals, which shall breach over or under, or breach into any lawful inclosure belonging to any person or persons other than the owners of such animal or animals, such person or persons owning or having in charge or possession such breaching animal or animals shall be liable to the party or parties sustaining such injury, for all damages, he, she, or they may have sustained by reason of such breaching as aforesaid, to be recovered in a civil action before any court having jurisdiction thereof or by arbitration, each party to select a property holder, and the two arbitrators to select a third, and said arbitrators, before entering upon their duties, shall be first sworn before a justice of the peace, and it shall be the duty of the arbitrators to carefully examine the fence, its condition, and assess the damage done; the arbitrators shall examine witnesses under oath, one of them to administer said oath to the witness; they shall make a written report signed by at least two of the arbitrators, to any justice of the peace in the county in which damage is sustained. The finding of the arbitration as provided for in section three, shall, within three days after the same shall have been rendered, be filed with any justice of the peace in the county where said trespass shall have been committed, who shall enter the cost upon his docket, and proceed to issue execution therein, as in other cases originally commenced before him.

Owner of in-  
closure.

SEC. 4. Any person or persons occupying or having the charge of an enclosure shall be considered the owner thereof in any action, under provisions of the last section.

Owner notified.  
Proviso.

SEC. 5. The party sustaining the damage shall notify the owner or person having in charge such offending animals, of such damage and the probable amount thereof; *Provided*, he knows to whom such animal or animals belong, and that such owner or keeper resides within the county where the damage was committed.

Animals kept  
in custody.

SEC. 6. The person suffering such damage done by animals as mentioned in section four, may restrain and keep

in custody as many of such offending animals as are equal in value to the damage done, until the finding of the court or arbitration be ascertained, unless before such suit the amount of his claim or expense of keeping such animals be tendered him.

SEC. 7. If, upon the trial of any action under the provisions of section four of this act, it shall appear by competent testimony, that the plaintiff's enclosure is a lawful fence under the provisions of this act, he shall be allowed to prove the amount of damage sustained; and (if he has retained in custody the animals committing such damage) the amount of the expense incurred for keeping such animals, and any judgment rendered for damages, costs and expenses against the defendant, shall be a lien upon the animals committing the damage. But if it shall appear upon the 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.

SEC. 8. If upon the trial it appears that the defendant is not the owner, or the person in charge of such offending animals, he shall be discharged from the action with his costs, and the suit may proceed against a defendant whose name is unknown; and if at the commencement of the action, the plaintiff does not know the name of the owner, or keeper of such offending animals, he may bring suit against a defendant unknown, in which case service shall be made by posting copies of the summons in three of the most public places within the county, not less than ten days previous to the day of trial, which posting may be done by the proper officer, or by any voter of the county.

SEC. 9. That the fence known as a "worm fence" or a stone wall, or any fence constructed of any material shall be a lawful fence, provided such worm fence, wall, or other fence, shall be as effective for resisting breaching stock as

the fences made in the manner prescribed by section one of this act.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.