

Chapter 608

1955 REPLACEMENT PART

Fences to Prevent Damage by or to Animals

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GENERAL PROVISIONS**608.010 Duty to fence; fence materials.**

(1) All fields and inclosures shall be inclosed with a fence sufficiently close, composed of posts and rails, posts and palings, posts and poles, posts and planks, palisades, or rails alone, laid up in the manner commonly called a woven fence, or turf, with a ditch on either side, or wall of rock or stone four and one-half feet high.

(2) All fences composed of posts and rails, posts and palings, posts and poles, posts and planks or palisades, shall be at least four and one-half feet high. Those composed of turf shall be at least four feet high, with trenches on either side at least three feet wide at the top and three feet deep. What is commonly called a woven fence shall be at least five feet high to the top of the rider. If such woven fence is not ridered, it shall be five feet to the top rail, and the corners shall be locked with strong rails, poles or stakes.

608.020 Civil liability for animals breaking a sufficient fence. (1) If any horse, cattle, hog, shoat, pig or stock breaks into any inclosures, the fence being of the height and sufficiency provided by ORS 608.010, the owner of such animal shall, for the first trespass, make reparation to the party injured for the true value of the damages he sustains. For every trespass thereafter, the owner of the animal shall be liable for double damages, to be recovered, with costs, before a justice of the peace or any court of record having cognizance of such claim demanded by the party injured. For the third offense from any of the animals mentioned in this section breaking into such inclosure, the party injured may take up such animals, and keep them at the expense of the owner.

(2) All animals taken and kept in accordance with this section shall be held as surety for the expenses of keeping. However, the owner may at any time pay charges and take such animal away.

(3) ORS 608.010 to 608.040 do not apply to Umatilla County.

608.030 Viewing fence on complaint; sufficiency of worm. (1) Upon complaint of the party injured, to any justice of the peace of the county, the justice shall issue his order without delay to three disinterested householders of the neighborhood,

nowise related to the parties, reciting the complaint, and requiring them to view the fence where the trespass is complained of, and take a memorandum of it. The testimony in such cases shall be good evidence on the trial touching the lawfulness of the fence.

(2) In all cases, the sufficiency of the worm shall be determined by the persons who are summoned to view the fence.

608.040 Animals injured or killed by owner of damaged premises. Any person, damaged for want of a sufficient fence required by ORS 608.010, who hurts, lames, kills or destroys, or causes such to be done, by shooting or otherwise, any of the animals mentioned in ORS 608.020, shall satisfy the owner in double damages, with costs.

608.050 Recovering damages from animal's owner and holding animal for security in certain counties. (1) Any person sustaining any damage done by any animal mentioned in ORS 608.060, and whose premises where such damage was done were at the time inclosed with a lawful fence, as provided by ORS 608.070 and 608.080, may recover for such damage in an action before any court having jurisdiction. The animals so trespassing may be taken and held as security for the payment of such damage and cost. The owner may recover possession of the animal so taken and held upon executing to the person holding it a sufficient undertaking, in a sum not less than double the value of the animal held, with one or more sufficient sureties, conditioned that the owner will pay all costs and damages which the plaintiff recovers in the action.

(2) Any person holding any animal under this section shall, while such is held, supply it with sufficient care, food and water. The person holding the animal shall, within three days after taking it, notify the owner of the animal, if known, or can with reasonable diligence be ascertained. The notice may be served as provided by law for the service of a summons in an ordinary action in a justice's court, and the same fee taxed for the service and recovered as costs in the action.

(3) ORS 608.050 to 608.080 apply only to the counties of Yamhill, Wasco, Gilliam, Morrow, Umatilla, Union, Baker, Grant, Wheeler, Wallowa, Crook, Klamath, Lake, Harney and Malheur.

608.060 Lawful fence as condition to recovery of damages. No action shall be maintained for damages done by any horse, mare, gelding, mule, ass, jenny, foal, bull, stag, cow, ox, steer, heifer, calf or goat, upon the premises of another, unless the person seeking such damages alleges and proves upon the trial thereof that the premises were, at the time of the commission of the damage, inclosed with a lawful fence. However, this section does not apply to any incorporated city, nor to any place where such animals or any of them are prohibited by law from running at large, or to any place where the owner of lands or premises is not required to fence his premises against such animals. Where any of the animals named in this section are not lawfully permitted to be at large, any person suffering damages by reason thereof has a right of action for all damages sustained on account of the trespass of such animals.

608.070 What constitutes a lawful fence. A lawful fence, unless otherwise provided, shall be not less than four feet six inches high from the surface of the ground, and constructed in one of the following ways:

(1) Rails or poles laid up in the manner commonly known as worm fence, with stakes and riders, or in lieu thereof, to have the corners locked with rails, posts, or poles.

(2) Posts and rails, with space between the rails, and between the rails and the ground, not exceeding 10 inches wide below, two feet six inches in height, and not to exceed 12 inches at any place, the rails to be attached to the posts by nails, spikes, pins, wire or in any other manner, if strong and secure. The posts shall be firmly set in the ground, not more than 10 feet apart from each other, and not less than four feet six inches high from the ground.

(3) Posts and poles, posts and planks, constructed in the manner required by subsection (2) of this section, as to the length and setting of posts. If it is constructed of posts and plank, the plank shall be not less than six inches wide and one inch thick, and it shall be fastened as required if posts and rails.

(4) Posts and paling, pickets or palisades, constructed in the usual manner, with space not exceeding five inches.

(5) Wall of stone entire, or stone with rails, poles, plank or earth, which taken together, would constitute a fence four feet six inches high.

(6) Turf and earth entire, or turf and earth, which, with rails, poles, plank or thorn brush would constitute a fence four feet six inches high, with a ditch or trench on the side, at least three feet wide at the top and not less than three feet deep. However, when there is a ditch or trench on the side, and constructed in the manner specified in this section, the fence shall be not less than four feet high from the surface of the ground.

(7) Post and rails, poles or plank, not less in size than specified in this section, with posts set in the ground not more than 10 feet apart, leaning upon braces sufficiently strong to support them, with the poles, rails or planks not less than three in number to the panel, securely fastened to posts.

608.080 Lawful fence east of Cascade Mountains; natural obstruction as lawful fences. (1) Any structure, hedge or ditch, in the nature of a fence, used for purposes of inclosure, which is such as good husbandmen generally keep, and shall on the testimony of skillful men appear to be sufficient, is a lawful fence for all purposes in all counties east of the Cascade Mountains, within the meaning of ORS 608.050 and 608.060.

(2) All precipices, embankments, streams, lakes, ponds or other natural obstructions, if as secure against trespass of any domestic animals as fences described in ORS 608.070, or made so by artificial means, are lawful fences.

608.090 to 608.200 [Reserved for expansion]

WIRE FENCES

608.210 Lawful wire fence west of the Cascade Mountains. (1) Any of the following types of fence, substantially constructed, is a lawful fence:

(a) One of posts and woven wire of sufficient weave and strength and not less than four feet high.

(b) One of woven wire and barbed wires, the woven wire to be not less than 20 inches wide and three barbed wires.

(c) One of woven wire 26 inches wide and two barbed wires.

(d) One of woven wire 36 inches wide and one barbed wire.

The top wire to be not less than four feet from the ground. This subsection shall not

apply to that portion of the state lying east of the summit of the Cascade Mountains.

(2) All barbed wire fences in any of the counties west of the Cascade Mountains shall have a board not less than one by six inches, or a pole not less than four inches in diameter, securely fastened to post and false post, not further than eight inches below the top barbed wire. However, a woven wire fence of height not less than four feet and six inches, with barb attached to top and bottom wires thereof is, in any of such counties, a lawful fence, and such a fence need not be equipped with any board or pole as described in this subsection.

(3) All persons having barbed wire fences shall keep them in good repair.

608.220 Civil liability of owners of animals and land. (1) The owner of any animal breaking a fence described in subsection (1) of ORS 608.210, is liable in damages as provided by ORS 608.020.

(2) In all cases in which stock is killed or injured by coming in contact with barbed wire fences, which are not at the time of injury kept in substantial compliance with the terms of subsections (2) and (3) of ORS 608.210, the owner of the stock may recover from the owner of such fence, by action of the law, a sum equal to the amount of the injury sustained by him in the killing or injury to his stock.

608.230 Downed barbed wire and barbed wire fences. No person having barbed wire or barbed wire fences, shall allow them to be left down or strewn around on the ground in such a manner that livestock are liable to be injured thereby. However, no person shall be liable for barbed wires left down or strewn about when they are not exposed so that there is danger of injury to animals running at large.

608.240 Notice of down fence. Any person, sheriff, deputy sheriff, constable or policeman having knowledge by written notice or otherwise that any barbed wire or barbed wire fence is down or strewn on the ground, shall give notice of such fact, either verbally or otherwise, to the person having such wire or fence.

608.250 Duty to remove downed barbed wire or barbed wire fence. No person who,

after knowing by his own knowledge or by receiving notice as provided by ORS 608.240, shall fail to remove the downed barbed wire within 10 days after such notice.

608.260 Sale of downed barbed wire fences on abandoned ranch. Any sheriff, deputy sheriff or constable knowing, by personal knowledge or otherwise, of any barbed wire or barbed wire fence being strewn or down as provided in ORS 608.230, on any ranch, or fence which has been abandoned, and the owner of such fence or ranch is unknown or has left the state so that notice cannot be served upon him, shall take, or cause to be taken up, such barbed wire or barbed wire fence and sell it at public auction to the highest bidder. The proceeds shall go to cover the expense of the removal of the barbed wire or barbed wire fence. If there is any money left over from such sale, it shall be turned into the county treasury of the county wherein such fence or ranch is located.

608.270 Barbed wire fences in Klamath, Lake, Harney and Grant Counties. All barbed wire fences in the Counties of Klamath, Lake, Harney and Grant shall have posts six and one-half feet in length, and not less than four inches in diameter, made of sound timber. Such posts shall be set in the ground two feet, and shall be not farther than 32 feet apart. There shall be not fewer than three wires of the kind in common use stretched from post to post. The lower wire shall be two feet from the ground. The second wire shall be 15 inches above the lower, and the upper one 15 inches from the second one. The wires shall be fastened to the posts securely, in the customary manner. Eight feet from each of the posts, and at every space of eight feet from each other throughout the entire length of such fences, there shall be poles or false posts set up on the ground, four and one-half feet in height, to which the wires of such fence shall be securely fastened. However, a pole not less than two inches thick at the small end, or plank not less than one inch thick by six inches wide, affixed to posts as provided in this section, but not more than eight feet apart, may take the place of the middle of the wire and false posts.

608.280 to 608.300 [Reserved for expansion]

**FENCES AND CROSSINGS ON
RAILROAD RIGHT OF WAY;
RAILROAD'S LIABILITY**

608.310 Erecting and maintaining fences, crossings, gates and cattle guards. (1) Every person, or his lessee or agent, owning or operating any railroad, shall erect and maintain good and sufficient lawful fences on both sides of his railroad line, except at the crossings of and upon public roads and highways, within such portions of cities as are or may be laid out and platted in lots and blocks and at railroad station grounds. Such person shall also at the same time erect and maintain necessary farm crossings and gates and sufficient cattle guards at all public crossings.

(2) Railroad lines shall be so fenced and farm crossings, gates and cattle guards installed, within three months from the time such lines are put in operation. However, the Public Utility Commissioner, upon complaint or upon his own motion in the manner provided by ORS 760.510 and 760.515, may prescribe the number, location and character of farm crossings which may be necessary and the manner in which they shall be constructed so that they are reasonably adequate, safe, sufficient and convenient, but not so as to impair the terms of any contract between the landowner and the railroad or decree in condemnation relative to such crossings.

(3) Upon complaint or upon his own motion and after hearing, as provided in ORS 760.510 and 760.515, the Public Utility Commissioner may, by order, determine and prescribe any other description of fence than that designated as a lawful fence, which shall be constructed and maintained by any such railroad company between the points which are designated in such order, and may provide for the apportionment of the costs of reconstruction necessitated thereby as between the parties interested.

(4) The Public Utility Commissioner, for good cause shown, upon complaint, or upon his own motion, and after notice and hearing as provided in ORS 760.510 and 760.515, may suspend the operation of this section as to any particular portion of any line of railroad.

608.320 Railroad refusing or failing to maintain fences, gates and guards. (1) Any person shall forfeit and pay into the State Treasury the sum of \$100 for each mile of fence on either side of a railroad, or for

each farm crossing, gate or cattle guard which he fails, neglects or refuses to erect and maintain in violation of ORS 608.310. This shall be recovered as other penalties are recovered and paid into the State Treasury.

(2) If a person neglects or refuses to comply with ORS 608.310 to 608.330, the Attorney General, prosecuting attorney of the proper county or Public Utility Commissioner may, by mandamus, compel compliance with such sections.

(3) The provisions of ORS 608.310 to 608.330 are cumulative to existing remedies.

608.330 Leaving gate open. (1) No person shall intentionally or negligently leave open or unfastened any farm crossing gate, or let down and leave down any bars of any railroad fence.

(2) Justices of the peace have original jurisdiction for violations of this section.

608.340 Liability of railroad for killing or injuring stock. Any person, or his lessee or agent, owning or operating any railroad, is liable for the value of any horses, mules, colts, cows, bulls, calves, hogs or sheep killed, and for reasonable damages for any injury to any such livestock upon or near any unfenced track of any railroad in this state, whenever the killing or injury is caused by any moving train, engine or cars upon such track.

608.350 Fences sufficient to relieve railroad of liability. No railroad track shall be deemed to be fenced within the meaning of ORS 608.340 unless it is guarded by such fence against the entrance thereon of any livestock on either side of the track, and not more than 100 feet from the track. Whatever is a lawful fence in the county where the killing or injury occurs, and no other, shall be deemed a lawful fence under ORS 608.340. However, complete natural defenses against the entrance of stock upon the track, such as natural walls or deep ditches, shall be deemed to be a fence under such section, when it, in connection with other and ordinary lawful fences, forms a continuous guard and defense against the entrance of such livestock upon the track.

608.360 When railroad's negligence is presumed; contributory negligence and wilful intent as defense. In every action for the recovery of the value of any livestock killed, or for damages for injury to any livestock, under ORS 608.340, proof of such killing

or injury shall of itself be deemed conclusive evidence in any court of this state of negligence upon the part of the person, or his lessees or agents, owning or operating such railroad. Contributory negligence on the part of the plaintiff in such action may be set up as a defense, but allowing stock to run at large upon common unfenced range or upon inclosed land owned or in possession of the owner of such stock shall not be deemed contributory negligence. In any such action, proof of wilful intent on the part of the plaintiff to procure the killing or injury of such stock shall defeat the recovery of any damages for such killing or injury.

608.370 Service of process on agent. In any action authorized by ORS 608.340, service of summons or any other necessary process may be made upon any person, or his lessees or agents, owning or operating any railroad, by personal service upon any authorized agent thereof, residing or stationed in the county where such action is brought.

608.380 Notice of stock injured or killed. Whenever any livestock mentioned in ORS 608.340 is killed or injured by a moving train or engine upon the unfenced railroad track of any railroad in this state, the owner, operator, lessee or his agent of the railroad shall immediately notify or cause notice to be given to the sheriff of the county where the accident occurred, and within a reasonable time shall deliver to the sheriff a written description of the livestock so killed or injured, including brands, earmarks and any marks of ownership, and a statement of the condition of or extent and nature of injuries to the livestock.

608.390 Notifying brand inspector. Upon receipt of the information mentioned in ORS 608.380, the sheriff shall immediately notify the nearest brand inspector and deliver the written statement to him.

608.400 Inspection of injured livestock and notice to owner. When notified of the killing or injury of livestock under the circumstances described in ORS 608.380, the brand inspector or sheriff shall go to the scene of the accident, examine any identifying marks and, if the ownership of the livestock is determined, notify the owner. If the owner remains unknown, the sheriff shall cause publication in a county newspaper of a description of the livestock and the facts of the accident.

608.410 to 608.500 [Reserved for expansion]

FENCING AGAINST HOGS

608.510 Fencing against hogs. The owner or occupant of premises is not required to fence against hogs. No owner or person entitled to the possession of a hog shall permit it to run at large or upon the property of another person.

608.520 Notice to owner of trespassing hogs. If any hog is found trespassing, the occupant or proprietor of the premises so invaded shall notify, in writing, the owner or person entitled to the possession of such hog, if known. Such owner or person entitled to possession shall within 24 hours thereafter take up and remove the hog from the premises upon which it is trespassing. If the owner or person entitled to the possession of such hog is unknown, written notice shall be given to the constable as provided in ORS 608.530.

608.530 Sale and disposition of proceeds if owner fails to take up hog. (1) If the owner or person entitled to the possession of such hog fails to take it up as provided by ORS 608.520, the occupant or proprietor of the premises upon which the hog is found trespassing shall notify, in writing, the constable of the precinct, who in turn shall immediately take up and confine the hog. The constable shall give notice thereof to the owner or person entitled to the possession of such hog, if known, and if not known, by posting notice describing such animal, in at least three public places within the precinct. If the owner or person entitled to the possession of such hog does not appear and claim his property, and pay all charges for taking up, advertising and keeping it, within three days from the date of notice, the constable shall sell it at public auction after first giving five days' notice of such sale by posting three notices in conspicuous places in the precinct and by publishing a notice of the sale in some newspaper having a general circulation in the precinct, if there is a paper so published.

(2) The sums realized from the sale of the hog shall be applied:

(a) First, to payment of constable fees, which are the same as on execution.

(b) Second, charges for keeping and

taking up the hog, and the publicity given to the sale thereof.

(c) The remainder, if any, shall be paid over to the owner of such animal.

608.540 Civil liability of owner of trespassing hog. The owner or occupant of the property on which a hog is found trespassing shall have a right of action against the owner or person entitled to the possession of such hog for the damages occurring by reason of the trespass.

608.550 to 608.980 [Reserved for expansion]

PENALTIES

608.990 Penalties. (1) Violation of any of the provisions of ORS 608.230 to 608.260 is punishable, upon conviction, by a fine of not less than \$5 nor exceeding \$25.

(2) Violation of ORS 608.330 is punishable, upon conviction, by a fine not exceeding \$50 or by imprisonment in the county jail not exceeding 10 days, or both.

(3) Violation of ORS 608.380 is punishable, upon conviction, by a fine not exceeding \$500.

(4) Violation of ORS 608.510 is punishable, upon conviction, by a fine of not less than \$10 nor exceeding \$50.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on October 15, 1955.

Sam R. Haley
Legislative Counsel