



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE April 30, 2026

TO Members, Joint Agriculture, State and Public Lands and Water Resources Interim Committee

FROM Savannah Collins, Staff Attorney

SUBJECT Topic Summary: Wyoming Fence Out and Fence in Laws

INTRODUCTION

This topic summary was drafted at the request of the Chairmen to provide an overview of fence out and fence in laws in the state of Wyoming. This topic summary provides an overview of fence statutes in Wyoming, the fence out requirement, and the history of the common law concept of fencing in in Wyoming.

Fence Owners and Lawful Fences Defined, Liability and Penalties for Unlawful Wire Fences

A person who occupies, uses, enjoys, maintains, or has the charge of an enclosure is considered to be the owner of the fence in question.¹ A person considered to be the owner of a fence is the responsible party for any action that is commenced under the statutory provisions for fences and cattle guards.²

There are three distinct types of lawful fences, and statute provides that any other type of fence may be considered lawful if it meets criteria to protect enclosures or resist breaching by stock animals.³ The first distinct type of lawful fence includes barbed wire in its construction.⁴ For this first type of fence to be lawful, it must be constructed using steel, concrete or wooden posts and either three or two spans of barbed wire.⁵ A lawful fence that uses three spans of barbed wire must have the wire spaced out between ten and fifteen inches apart.⁶ A lawful fence that uses two spans of barbed wire must have a wooden rail on top⁷ The fence must be constructed with posts that are set at least twenty inches into the ground, and any wooden posts used must be at least four inches in diameter.⁸ The fence posts can be set no further than twenty-two feet apart, except the posts may be set at a maximum of thirty-three feet apart if iron or wooden stays are

¹ W.S. 11-28-101.

² See W.S. 11-28-103(a); W.S. 11-28-101.

³ W.S. 11-28-102(a)(i)-(iii), (b).

⁴ W.S. 11-28-102(a)(i).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* Note: statute requires that the barbed wire be spaced ten to fifteen inches apart for a three span fence but does not necessarily give a distance for a two-span fence. For a two-span fence, the only direct requirement is that there is wooden rail on top of the fence.

⁸ *Id.*

set between the posts.⁹ Those stays that are set between fence posts must be placed equidistant between the posts.¹⁰

The second distinct type of lawful fence is a post and board fence which is constructed either with three or four boards between posts and securely fastened with nails or something similar.¹¹ The specific requirements are that the posts must be at least four inches in diameter and set "substantially" into the ground.¹² For a three board fence, the boards used must be sold as one inch by eight inches wide lumber and the boards must be set apart no more than ten inches.¹³ For a four board fence, the boards used must be sold as one inch by six inch wide lumber and the boards must be set apart no more than eight inches.¹⁴

The final distinct type of lawful fence is a pole fence that uses round poles that are no less than two inches in diameter at the small end.¹⁵ The posts for this type of fence can be either upright or leaning but they must be spaced no more than sixteen feet apart.¹⁶ The poles must be securely fastened with nails, wire, or something similar.¹⁷

Wyoming law allows for any other fence that is constructed using various materials such as boards, rails, poles, stones, hedge plants or any other material to be considered a lawful fence under certain conditions.¹⁸ For the fence to be considered lawful, it must be "declared as strong and well calculated to protect enclosures" or be able to resist a breach by stock animals in the same manner as the three specific types of lawful fences as previously discussed.¹⁹ A lawful fence that encloses any hay corral that is set outside of a field or pasture has additional requirements.²⁰ That fence must be constructed of boards, poles or wire and be at least six feet tall.²¹ The posts for the fence enclosing the hay corral must be set at least twenty-four inches into the ground and set no more than eight feet apart.²² If the fence for a hay corral is constructed using barbed wire, there must be at least seven spans of barbed wire that are kept properly stretched.²³ Any fence to enclose a hay corral that is considered to be "better" than the statutory requirements will also be considered a lawful fence.²⁴

A person that constructs or maintains an unlawful wire fence that does not meet statutory requirements, that person is liable in a civil action for all damages to animals that are the result of the unlawful wire fence.²⁵ The owner of an unlawful wire fence is guilty of a misdemeanor and may be fined between \$5.00 and \$25.00.²⁶ The fine increases to between \$25.00 and \$100.00 for each subsequent offense.²⁷ In addition to any fines that are imposed, the owner of an unlawful wire fence is required to rebuild the wire fence to meet

⁹ *Id.*

¹⁰ *Id.*

¹¹ W.S. 11-28-102(a)(ii).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ W.S. 11-28-102(a)(iii).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ W.S. 11-28-102(b).

¹⁹ *Id.*

²⁰ W.S. 11-28-102(c).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ W.S. 11-28-103(a).

²⁶ *Id.*

²⁷ *Id.*

the standards for a lawful fence within thirty days of conviction.²⁸ Any owner of an unlawful wire fence who does not or refuses to rebuild the fence to meet lawful fence standards within those thirty days is guilty of a separate offense.²⁹ Upon conviction for the separate offense for maintaining the unlawful wire fence, the owner may be fined as discussed above.³⁰ Every thirty days that the unlawful wire fence is not remediated will result in a separate offense and similar punishment.³¹

General Fence Provisions

Fences that are constructed across a public road or a road that leads to a watering place must, at the point where the fence crosses the road, be constructed of boards or poles that extend no less than eight feet on each side of the middle of the road.³² Any person who violates this requirement is guilty of a misdemeanor and subject to the same penalties as is prescribed for an unlawful wire fence.³³

A board of county commissioners may authorize lawful fences to be constructed on the right-of-way of any public road.³⁴ The cost of the fence may be placed on the petitioner for the establishment of the road, may be agreed to by the petitioner and board of county commissioners, may be placed on the owners of lands that would benefit from the fence, or may be paid for by the county, which is to be determined by the board of county commissioners.³⁵ The board of county commissioners is required to locate and construct gates and cattle guards as it deems necessary for the convenience of the public.³⁶ The cattle guards that are installed must meet the specifications of the state highway department, and the expense shall be that of the petitioner, benefitting landowner, or the county at the board of county commissioner's determination.³⁷

The owner of a lawful fence that was constructed as or does become a partition fence between the owner's land and the land of another person may require the other person to pay half of the costs of the fence.³⁸ The costs that must be paid by the other landowner may be the actual cost or what the cost would be to construct the fence.³⁹ If the other landowner refuses to pay half of the fence cost, the owner of the fence may bring a civil action against the other landowner to recover half of the fence costs and the costs of the suit.⁴⁰ The joint users of a partition fence must share the maintenance costs of the fence for their respective uses.⁴¹ Any refusal by either party to share in the costs for maintenance may similarly be recovered by civil action.⁴²

Private landowners who own land adjoining state lands but who do not lease the state land may construct a "lawful partition fence along state lands."⁴³ If the state lands are not leased at the time, the Office of State Lands and Investments shall pay for half the cost of constructing the partition fence.⁴⁴ If there is a lessee of

²⁸ W.S. 11-28-103(b).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² W.S. 11-28-104.

³³ *Id.*

³⁴ W.S. 11-28-105.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ W.S. 11-28-106(a).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ W.S. 11-28-106(c).

⁴⁴ *Id.*

the state lands at the time, they are responsible for half the cost of constructing the partition fence instead.⁴⁵ The joint users of a partition fence must share the maintenance costs of the fence for their respective uses, whether the other party is the Office of State Lands and Investments or a lessee.⁴⁶

Wyoming statutes prohibit any person willfully or negligently leaving open, breaking down or destroying any bars or gates that are for the use of the public or any manner of destruction of a lawful fence.⁴⁷ Any person who is found to have done so is guilty of a misdemeanor and faces penalties of up to a \$100 fine or imprisonment of three months or both.⁴⁸

Fence Out Requirement and Liability

Any person who owns or has in their possession livestock or domesticated buffalo that breaches into the lawful enclosure of another person is liable to the injured party for all damages that occurred as a result of the breach.⁴⁹ Damages resulting from the breach may be recovered in a civil action either before a court having jurisdiction or through arbitration.⁵⁰ In the event of arbitration, each party to the civil action shall choose a property holder to serve as an arbiter, and the two selected arbiters will choose a third.⁵¹ The three arbiters shall be sworn by a judge of the circuit court before beginning their duties, which include examination of the fence, assessment of damage done, examination of witnesses under oath, which shall be administered by one of the arbiters, and creation of a written report of findings to be signed by at least two arbiters and submitted to the circuit court in the county where the damage occurred.⁵² The arbiters' report shall be filed with a judge of circuit court in the county where the trespass was committed within three days after the findings were rendered.⁵³ Once filed, the circuit court judge is required to enter the case upon their docket and proceed to execute the case as if it were originally brought before that judge.⁵⁴

In situations where livestock breaches the lawful enclosure of another person, the person who sustained the injury is required to notify the owner of the livestock about the damage and the probable amount of the damage if the injured person knows who the animals belong to, and if the owner of the animals resides within the county where the damage occurred.⁵⁵ The injured person may keep as many of the animals that caused the damage in custody, equal to the amount of damages incurred.⁵⁶ The injured party may maintain those animals in custody during the course of the civil action or arbitration unless the amount of money required to cover the damage to the injured person's fence and the cost of caring for the animals is tendered to him.⁵⁷

If the civil action that is commenced for damage to a lawful enclosure proceeds to trial and the damaged enclosure is determined to be a lawful fence, the plaintiff (who sustained proven damage to their fence) is awarded the costs of damage to the fence and costs of keeping any of the offending animals in custody.⁵⁸

⁴⁵ W.S. 11-28-106(c).

⁴⁶ *Id.*

⁴⁷ W.S. 11-28-107.

⁴⁸ *Id.*

⁴⁹ W.S. 11-28-108(a).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ W.S. 11-28-108(b).

⁵⁶ W.S. 11-28-108(c).

⁵⁷ *Id.*

⁵⁸ W.S. 11-28-108(d).

Any judgment for damages and costs that is entered in favor of the plaintiff will result in a lien against the animals causing the damage.⁵⁹ If it is found at trial that the plaintiff's enclosure was not a legal fence or if it is found that no damage was sustained, then judgement will be entered against the plaintiff to include any costs for the suit and damages sustained by the defendant.⁶⁰ Additionally, if at trial it is found that the defendant is not the owner or in charge of the animals that caused the damage, then that defendant will be discharged from the action with his costs.⁶¹ If the defendant is discharged, the case can proceed against an unknown defendant.⁶² Similarly, the plaintiff who suffered injury can bring a civil action against a defendant unknown if the plaintiff does not know who owns or keeps the animals causing the damage.⁶³

Common Law Concept of Fence In

Fencing in livestock is a common law principle coming over from England. It holds the owner of livestock generally "strictly liable for harms ensuing from livestock intrusions upon property."⁶⁴ Practically, this means the owner of livestock would be strictly liable in cases where they have not constructed a fence to keep in their livestock and would be presumed to allow their livestock to "run at large."⁶⁵ The western United States was mostly established on the principle of open-range grazing and generally does not follow fencing in. "The common law rule requiring the owner of cattle to confine them or in default thereof to answer for any damages occasioned by their trespasses upon the lands of another" was "never obtained" in Wyoming, so Wyoming is generally known as a "fence out" state for cattle.⁶⁶

In a foundational case from 1902, two men were found to be liable for the damage their sheep did to an adjacent property owner's land when they did nothing to restrain their sheep from grazing on the adjacent leased land.⁶⁷ The two men were grazing their sheep on public land in a checkerboard pattern with the plaintiff's leased land and continued to let their sheep go onto the leased land despite being repeatedly informed the land was leased and being used for the plaintiff's sheep herd.⁶⁸ The Wyoming Supreme Court found the two men liable for a number of reasons, including they had not "honestly and prudently endeavored to confine their sheep to [the public] lands."⁶⁹ Likely due to the original common law, the founding of Wyoming, and early cases such as this, Wyoming does not have any law regarding fencing in of any livestock.⁷⁰

Please let me know if you have any questions or need further information.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ W.S. 11-28-108(e).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 21 (AM. L. INST. 2010).

⁶⁵ *Id.*

⁶⁶ *Martin v. Platte Valley Sheep Co.*, 76 P. 571, 574 (Wyo. 1904).

⁶⁷ *Cosgriff Bros. v. Miller*, 68 P. 206 (Wyo. 1902).

⁶⁸ *Id.*

⁶⁹ *Id.* at 225.

⁷⁰ See *Martin v. Platte Valley Sheep Co.*, 76 P. 571, 574 (Wyo. 1904).