DRAFT ONLY
NOT APPROVED FOR INTRODUCTION

HOUSE BILL NO.

Federal lands-fencing.

Sponsored by: Joint Agriculture, State and Public Lands & Water Resources Interim Committee

A BILL

for

AN ACT relating to fences; requiring federal lands to be treated in the same manner as private lands under specified statutes; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 11-28-109 is created to read:

To the extent permitted by federal law, W.S. 11-28-103, 11-28-106(a) and 11-28-108 shall apply with respect to lands owned or administered by or under the jurisdiction of the

United States in the same manner as those provisions would apply if the lands were privately owned.

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STAFF COMMENT

As this bill draft would apply to W.S. 11-28-103, 11-28-106(a), and 11-28-108, these statutes are included below for the Committee's reference.

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 chapter, 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.

11-28-106. Construction and maintenance of partition fences; fencing of state lands.

(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.

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.

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