

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 352

*An Act to amend and reenact §§ 56-16, 56-429, 56-433, 56-436, 56-437, and 56-438 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-439.1, relating to railroad companies' obligations to erect and maintain fences and cattle guards and construct and maintain wagonways; notification of and compensation for injury to or death of livestock; fees; penalties.*

[H 1054]

Approved April 5, 1994

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-16, 56-429, 56-433, 56-436, 56-437, and 56-438 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-439.1 as follows:**

§ 56-16. Wagonways to be constructed across roads, railroads, canals, and other works; enforcement.

*For the purpose of this section, "wagonway" means a vehicular crossing adequate to permit the passage of machinery and vehicles used for agricultural or forestal purposes, including but not limited to the transportation of agricultural and forestal products to markets.* Every public service corporation, whose road, railroad, canal, or works passes through the lands of any person in this Commonwealth, shall provide *and maintain* proper and suitable wagonways across such road, railroad, canal, or other works, from one part of such land to the other, and shall keep such ~~ways~~ wagonways in good repair. Such ~~ways~~ wagonways shall be constructed *and maintained* on the request of the landowner, in writing, ~~by certified mail, made to any section master, agent, or employee of such company, having charge and supervision of the registered agent for the corporation owning such road, railroad, canal, or other works at that point, and shall designate the points at which the wagonways are desired; and if there be no section master, agent, or employee of such company, having charge or supervision of the railroad, canal, or other works at such point, then on the request of the landowner, in writing, made to the company, or any officer or director thereof.~~ If the company ~~fail~~ fails or ~~refuse~~ refuses for ten ninety days after such request to construct *and maintain* wagonways of a convenient and proper character at the places designated, then the owner, ~~having given ten days' notice in writing, as aforesaid,~~ may apply to the circuit court of the county or the corporation court of the city wherein such land is located for the appointment of three disinterested persons whose lands do not abut on such road, railroad, canal, or other works, who shall constitute a board of commissioners whose duty it shall be to go upon the land and determine whether the *requested* wagonways ~~asked for~~ should be constructed *and maintained*.

*Any delay in construction or maintenance caused by inclement weather, war, strikes, acts of God, national emergencies, or failure of any local, state, or federal government agencies to grant permits shall extend the aforesaid period.* The decision of such board shall be in writing; and, if favorable to the landowner, ~~it~~ shall set forth the points at which the wagonways should be constructed *and maintained*, giving also a description of what should be done by the company to make *and maintain* a suitable and convenient ~~way~~ wagonway. The decision of the board of commissioners shall be returned to, and filed in, the clerk's office of such court, and when called up at the next or any succeeding term of such court, it shall be confirmed, unless good cause ~~be~~ is shown against it by the company. Either party shall have the right of appeal to the Supreme Court from the judgment of the court. If the company ~~shall fail~~ fails, within a reasonable time ~~to be fixed by the court at the time of the confirmation of a report favorable to the landowner, to make~~ *and maintain* the wagonways therein referred to, ~~of a suitable and proper character,~~ it shall pay the landowner ~~five dollars~~ fifty dollars for each ~~and every~~ day of such failure, which may be recovered on motion by the landowner against the company, in the *circuit* court of the county or city wherein such land is located having jurisdiction to try the same. The commissioners shall each receive for their services the sum of ~~two~~ fifty dollars per day, to be taxed as a part of the costs of the proceeding.

*Once the right to such wagonway has been established, should the railroad change the grade of any portion of the tracks across which such wagonway passes, it shall be the duty of the railroad to make whatever reasonable modifications of the wagonway are necessary within the railroad right-of-way to permit the passage of the aforesaid machinery and vehicles.*

§ 56-429. Company to erect fences along roadbed; cattle guards, etc.

*Upon the written request by certified mail to the registered agent of the railroad in question of any landowner whose land adjoins the railroad and whose land is otherwise enclosed for the purpose of maintaining livestock, every railroad company shall cause fences to be erected along its line and on both sides of its roadbed ~~lawful fences, as defined by the laws of this Commonwealth, which may be made of timber or, wire, or both~~ and shall keep the same such fences in proper repair. Such fences shall be adequate to enclose livestock.* The owners of adjoining lands may connect their fences with such

fences at such places as they may deem proper. In erecting such fences the company shall, at the termini of those portions of the roadbed which it is required to fence, and on each side of all public and private crossings, construct across its roadbed and keep in good repair cattle guards reasonably sufficient to turn all kinds of ~~stock~~ livestock, with which its fences shall be connected. Such cattle guards at private crossings may, ~~with the consent of the owners of such crossings,~~ be dispensed with, ~~but in such case, in lieu of cattle guards,~~ if the company shall erect and keep in good order ~~erects~~ sufficient gates and maintains them in good order.

*Such fences shall be constructed on the request of the landowner, in writing, by certified mail, to the registered agent of such railroad. If the company refuses or fails, for 180 days after such request, to construct or maintain the fences at the place designated, the owner, having given ten days' notice in writing to such registered agent, may apply to the circuit court of the county or city in which any such point is located for the appointment of three disinterested freeholders, whose duty it shall be to go on the land and determine whether the proposed fence shall be constructed. Their decision shall be in writing, and shall be forthwith returned to and filed in the office of the clerk of such court. If such decision is that the fence ought to be constructed, the company shall, within sixty days thereafter, construct the same. Upon its failure so to do, it shall pay to the landowner fifty dollars for every day of such failure. Any style of fence approved by the State Corporation Commission shall, if properly constructed and maintained, be deemed a sufficient fence within the meaning of this chapter. Any delay in construction or maintenance caused by inclement weather, war, strikes, acts of God, national emergencies or failure of any local, state, or federal governmental agencies to grant permits shall extend the aforesaid period.*

Any such company may erect gates or bars ~~in addition to~~ instead of the cattle guards required by this section, if, in the judgment of the company, the hazard to trains at such crossings requires gates or bars as ~~an additional~~ a safeguard to life and property on the trains. *If such fence, cattle guard or gate is destroyed or damaged due to the negligence of the landowner, the landowner shall be solely responsible for restoring or repairing such fence, cattle guard or gate.*

~~No court of this Commonwealth shall have jurisdiction by writ of mandamus or otherwise to The circuit court of the county or city wherein any such fence or cattle guard, or any portion thereof, is to be erected or built pursuant to this section shall have jurisdiction through its power to grant equitable relief to compel the erection of any such fence, or building of any such cattle guards, except that through along or adjoining lands or lots actually enclosed mandamus may lie to require such company to erect and maintain such fences and cattle guards.~~

§ 56-433. Cattle guards; remedy of aggrieved landowner; penalty.

Every railroad company, whose road passes through any enclosed lands in this Commonwealth, shall construct and keep in good order cattle guards reasonably sufficient to prevent the passage of ~~stock~~ livestock of every kind over such land, at any point where a fence may be necessary or proper, whether it ~~be is~~ a division fence between contiguous farms or between different parcels or tracts belonging to the same person, or a fence along a public highway. Such cattle guards shall be constructed on the request of the landowner, in writing, ~~made to any section master or employee of the company having charge or supervision of the road at that point by certified mail, to the registered agent of such railroad.~~ If the company ~~refuse or fail~~ refuses or fails, for ~~ten~~ ninety days after such request, to construct ~~or maintain~~ the cattle guards at the place designated, the owner, having given ten days' notice in writing to ~~such section master or employee the registered agent,~~ may apply to the circuit court of the county or city in which any such point is located for the appointment of three disinterested freeholders, whose duty it shall be to go on the land and determine whether the proposed cattle guard shall be constructed. Their decision shall be in writing, and shall be forthwith returned to and filed in the office of the clerk of such court. If such decision ~~be is~~ that the cattle guard ought to be constructed, the company shall, within ~~thirty~~ ninety days thereafter, construct the same. Upon its failure so to do, it shall pay to the landowner ~~five dollars~~ fifty dollars for every day of such failure. Any style of cattle guard approved by the State Corporation Commission shall, if properly ~~established~~ constructed and maintained, be deemed a sufficient cattle guard within the meaning of this chapter. *Any delay in construction or maintenance caused by inclement weather, war, strikes, acts of God, national emergencies or failure of any local, state, or federal governmental agencies to grant permits shall extend the aforesaid period.*

§ 56-436. Board of appraisers to appraise injured or killed livestock; duty of appraisers.

Whenever any horses, cattle, or other ~~stock~~ ~~may be~~ livestock are killed or injured, or other property damaged, by the cars or locomotives upon any railroad, it shall be lawful for the owner thereof or for the railroad company to have the property examined and the damages assessed by a board of appraisers in the following manner:

Either party, his agent or attorney, may appoint a ~~disinterested freeholder of the county or city wherein the injury occurred~~ one person as the appraiser in his behalf, and notify the other party; such notice, when intended for the railroad company, shall be sufficient if given to the nearest section foreman or station agent of the company; ~~thereupon~~ by certified mail to the registered agent of such railroad. Then the party so notified shall appoint a ~~like~~ an appraiser on his behalf, and the two appraisers ~~so selected~~ shall select a third person of like qualifications, who, after being duly sworn,

*appraiser. These three persons* shall constitute a board of appraisers to examine and appraise the property so injured or damaged, and shall examine the horses or other ~~stock~~ *livestock* so killed, or injured, or the other property so damaged, and affix a value upon the same if killed, or assess the damages to the same if injured, and make a written report, carefully describing the horses, cattle, or other ~~stock~~ *livestock* or property, stating whether killed or injured, and also setting out the valuation or assessment of damages made by them. Such report shall be returned to the office of the clerk of the circuit court of the county or ~~of the corporation court of the city~~ in which such ~~stock~~ *livestock* was killed or injured, who shall file and preserve the same.

§ 56-437. Effect of appraisal in case of suit; costs.

If the railroad company ~~shall fail~~ *fails*, for sixty days after such report is so returned to such clerk, to pay to the owner the full amount assessed by the board of appraisers *under* § 56-436, and the cost attending the assessment, the owner shall have the right to institute suit on the original cause of action. If, upon the trial, he recovers a verdict for an amount equal to, or greater than, the amount assessed in his favor by the board of appraisers, it shall be the duty of the court to render judgment in his favor for the amount of such verdict, and costs of suit and, of such appraisement, and ten ~~per centum~~ *percent* damages in addition thereto. If the owner ~~shall, in such case, recover~~ *recovers* less than the amount so assessed, judgment shall be rendered in his favor for the amount of the verdict and costs of suit and appraisement; but if the company has offered to pay the award, and the owner has refused to accept the same, and he ~~recover~~ *recovers* a verdict for an amount less than such assessment, judgment shall be rendered in his favor for the amount of his recovery, but the cost of the appraisement and action shall be taxed against him.

§ 56-438. Fee of appraisers and clerk.

Appraisers appointed pursuant to the provisions of § 56-436 shall receive for their services each the sum of ~~one dollar~~ *fifty dollars*, and the clerk in whose office their report is filed for his services, *two dollars and fifty cents*.

§ 56-439.1. *Notice of injury or death of certain livestock; penalty.*

*Whenever any horses, cattle, or other livestock are injured or killed by the cars or locomotives operating on a railroad, the section master or employee of the railroad having charge of the road at the place where the injury or death occurred shall, if he knows of the incident or should have known of it, within seventy-two hours, notify the owner of the animal or animals or the local law-enforcement agency of the injury or death and the location of the incident in relationship to state routes as well as railroad mile posts. Disposal of any such animal or animals without proper notification shall constitute a Class 1 misdemeanor.*