

## **81-4-101-108 Montana Legal Fencing**

**81-4-101. Legal fences defined.** Any one of the following, if not less than 44 inches or more than 48 inches in height, shall be a legal fence in the state of Montana:

(1) all fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which must not be less than 15 inches or more than 18 inches from the ground, securely fastened as nearly equidistant as possible to substantial posts firmly set in the ground or to well-supported leaning posts not exceeding 20 feet apart or 33 feet apart where two or more stays or pickets are used equidistant between posts. All corral fences which are used exclusively for the purposes of enclosing stacks which are situated outside of any lawful enclosure shall not be less than 16 feet from such stack so enclosed and shall be substantially built with posts not more than 8 feet distant from each other and not less than five strands of well-stretched barbed wire and shall not be less than 5 or more than 6 feet high. Any kind of a fence equally as effectual for the purpose of a corral fence may be made in lieu thereof.

(2) all fences constructed of any standard woven wire not less than 28 inches in height, securely fastened to substantial posts not more than 30 feet apart, provided that two equidistant barbed wires shall be placed above the same at a height of not less than 48 inches from the ground;

(3) all other fences made of barbed wire, which shall be as strong and as well calculated to protect enclosures as those above described;

(4) all fences consisting of four boards, rails, or poles with standing or leaning posts not over 17 feet and 6 inches apart, provided that, if leaning posts are used, there shall be a pole or wire fastened securely on the inside of the leg or support of such leaning post;

(5) all rivers, hedges, mountain ridges and bluffs, or other barriers over or through which it is impossible for stock to pass.

**History:** En. Sec. 1, p. 46, L. 1881; amd. Sec. 1, p. 76, L. 1885; amd. Sec. 1111, 5th Div. Comp. Stat. 1887; amd. Sec. 3250, Pol. C. 1895; amd. Sec. 1, p. 139, L. 1901; amd. Sec. 1, Ch. 37, L. 1905; amd. Sec. 1, Ch. 64, L. 1913; amd. Sec. 1, Ch. 163, L. 1919; re-en. Sec. 3374, R.C.M. 1921; re-en. Sec. 3374, R.C.M. 1935; R.C.M. 1947, 46-1401.

**81-4-102. Construction of auto pass not to deprive legal fence of character.** There may be maintained in a legal fence a pass so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across said opening without depriving such fence of the character of a legal fence under the laws of this state.

**History:** En. Sec. 3, Ch. 153, L. 1933; re-en. Sec. 4486.3, R.C.M. 1935; R.C.M. 1947, 16-1129.

**81-4-103. Civil liability.** Any person constructing or maintaining any fence of any kind not described in [81-4-101](#) is liable in a civil action for all damages caused by reason of injury to stock resulting from such defective fence.

**History:** En. Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3251, Pol. C. 1895; re-en. Sec. 2083, Rev. C. 1907; re-en. Sec. 3375, R.C.M. 1921; re-en. Sec. 3375, R.C.M. 1935; R.C.M. 1947, 46-1402.

**81-4-104. Barbed wire fences to be kept in repair.** The owners of barbed wire fences shall keep the same in repair, and a person who receives notice in writing that the person's barbed wire fence or any part of the fence is down or in such condition as to be likely to injure any livestock and who fails or refuses to repair the fence is liable to pay damages in an amount equal to the value of any cattle, horses, mules, or other domestic animals that may be injured by coming into contact with the fence.

**History:** En. Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3252, Pol. C. 1895; re-en. Sec. 2084, Rev. C. 1907; re-en. Sec. 3376, R.C.M. 1921; re-en. Sec. 3376, R.C.M. 1935; R.C.M. 1947, 46-1403; amd. Sec. 2646, Ch. 56, L. 2009.

**81-4-105. Fallen wire fencing declared nuisance -- abatement.** All barbed wire and other wire fencing which has sagged or fallen to the ground so as to be ineffectual for the purpose of turning stock and a menace to any person riding or walking over the same is declared to be a public nuisance and subject to abatement in the manner hereinafter provided.

**History:** En. Sec. 1, Ch. 84, L. 1927; re-en. Sec. 3376.1, R.C.M. 1935; R.C.M. 1947, 46-1404.

**81-4-106. Notice to owner to repair fence -- duty of county commissioners.** Upon ascertaining the existence in the county of any nuisance specified in [81-4-105](#), the board of county commissioners shall notify by registered or certified mail the owner of such wire, if such owner be known to said board and within the state, to remove same. If such owner shall fail to remove said wire or to rebuild said fence within 60 days following receipt of said notice, the board of county commissioners shall have authority to remove and dispose of said wire in the manner provided by [81-4-107](#).

**History:** En. Sec. 2, Ch. 84, L. 1927; re-en. Sec. 3376.2, R.C.M. 1935; R.C.M. 1947, 46-1405.

**81-4-107. Procedure when owner unknown or not resident of state -- sale of wire removed.** If there is no known owner of such wire within the state or if such owner is unknown to the board of county commissioners, the board may collect and remove the wire at the expense of the county. All such wire or other fencing as in the opinion of the board of county commissioners can be sold at a price sufficient to cover at least the expense of removal and sale shall be sold by the county commissioners in the manner provided by law for the sale of county property, except that notice of such sale need be published only once and need be given only 10 days before such sale.

**History:** En. Sec. 3, Ch. 84, L. 1927; re-en. Sec. 3376.3, R.C.M. 1935; amd. Sec. 50, Ch. 12, L. 1977; R.C.M. 1947, 46-1406.

**81-4-108. Disposal of proceeds of sale of wire after payment of expense.** The proceeds of a sale under [81-4-107](#) must be used to defray the cost of collecting and selling the wire, and the balance, if any, must be placed by the county treasurer in a special fund and must be held subject to claim by any person establishing to the satisfaction of the board of county commissioners that the person was the lawful owner of the wire and entitled to the remaining proceeds of the sale. If a person does not claim the money within 1 year of the date of sale, the money must be deposited in the general fund of the county.

**History:** En. Sec. 4, Ch. 84, L. 1927; re-en. Sec. 3376.4, R.C.M. 1935; R.C.M. 1947, 46-1407; amd. Sec. 2647, Ch. 56, L. 2009.