

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 934

Introduced by Agriculture Committee: Kremer, 34, Chairperson; Burling, 33; Chambers, 11; Cunningham, 40; Erdman, 47; Fischer, 43; Preister, 5; Wehrbein, 2; and McDonald, 41; Stuthman, 22

Read first time January 6, 2006

Committee: Judiciary

A BILL

1 FOR AN ACT relating to fences; to amend sections 2-4806, 2-4808,
2 34-101, 34-102, 34-112, and 37-1012, Reissue Revised
3 Statutes of Nebraska; to eliminate provisions relating
4 to fence viewers and viewing; to create a civil action
5 relating to fence disputes; to provide for mediation of
6 such disputes; to harmonize provisions; to repeal the
7 original sections; to outright repeal sections 34-103,
8 34-104, 34-105, 34-106, 34-107, 34-108, 34-109, 34-110,
9 34-111, and 34-113, Reissue Revised Statutes of Nebraska;
10 and to declare an emergency.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-4806, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-4806 The administrator shall adopt and promulgate rules
4 and regulations setting appropriate fee guidelines for the services
5 provided under the Farm Mediation Act, which fees shall not exceed
6 actual costs and shall be borne equally by all parties, and setting
7 forth any procedures or requirements necessary to implement the
8 act. The rules and regulations shall provide that the fees shall be
9 collected by the farm mediation service and retained by the farm
10 mediation service to offset its costs and that the farm mediation
11 service may require payment of the fees or a portion thereof
12 prior to a mediation meeting. The administrator may adopt and
13 promulgate rules and regulations that allow a separate fee schedule
14 for mediation services that are not eligible for partial or full
15 federal reimbursement.

16 Sec. 2. Section 2-4808, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 2-4808 (1) Any borrower or creditor may request mediation
19 of any indebtedness incurred in relation to an agricultural loan
20 by applying to the farm mediation service. Any party involved in
21 an adverse decision from a United States Department of Agriculture
22 agency may request mediation by applying to the farm mediation
23 service. The farm mediation service may also accept disputes
24 regarding division fences, including disputes referred by a court
25 pursuant to section 7 of this act.

1 (2) The farm mediation service shall notify all the
 2 parties and, upon their consent, schedule a meeting with a
 3 mediator. The parties shall not be required to attend any mediation
 4 meetings under this section, and failure to attend any mediation
 5 meetings or to participate in mediation under this section shall
 6 not affect the rights of any party in any manner. Participation in
 7 mediation under this section shall not be a prerequisite or a bar
 8 to the institution of or prosecution of legal proceedings by any
 9 party.

10 Sec. 3. Section 34-101, Reissue Revised Statutes of
 11 Nebraska, is amended to read:

12 34-101 Whenever any owner ~~or owners,~~ occupier ~~or~~
 13 ~~occupiers of any lands~~ of land bordering upon any public road or
 14 highway, except a street or alley in a town, ~~may wish~~ wishes to
 15 plant and cultivate any hedge or live fence, along the margin of
 16 ~~his, her, or their~~ the land, it shall be lawful for any such person
 17 ~~or persons to~~ may set and plant any such hedge or live fence
 18 precisely on the line of the road ~~or public highway,~~ and also to
 19 place on the margin of such road a protection fence, not to occupy
 20 more than six feet of the margin or edge of ~~said~~ the road. Such,
 21 ~~and such~~ protection fence, when placed opposite any live fence or
 22 hedge actually set and planted, shall be permitted, by the county
 23 board and all other persons, to remain for the term of seven years.
 24 The ~~PROVIDED,~~ the county board may grant permission in writing to
 25 the owner ~~or owners~~ of any live fence or hedge to continue such

1 protection fence any term of time which ~~it may deem~~ the county
2 board deems necessary.

3 Sec. 4. Section 34-102, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 34-102 (1) When there are two or more persons shall have
6 lands adjoining adjoining landowners, each of them shall make and
7 maintain a just proportion of the division fence between them,
8 except that if the adjoining landowners each cause or allow the use
9 of the division fence to confine livestock upon their respective
10 properties, each landowner shall make and maintain the division
11 fence between them in equal shares. This section ~~+~~ ~~PROVIDED,~~
12 ~~HOWEVER,~~ this shall not be construed to compel the erection and
13 maintenance of a division fence where ~~where~~ if neither of the adjoining
14 landowners desires such division fence.

15 (2) Unless the owners of such lands adjoining shall
16 landowners have agreed otherwise, such fence shall be a lawful
17 fence, as defined in section 34-115.

18 (3) The duty assigned to adjoining landowners by this
19 section applies (a) when either or both of the adjoining lands
20 lie within an area zoned for agricultural or horticultural use as
21 defined in section 77-1343 and either or both of the adjoining
22 lands are utilized as agricultural or horticultural land and (b) in
23 all other areas of the state when both of the adjoining lands are
24 utilized as agricultural or horticultural land.

25 Sec. 5. Section 34-112, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 34-112 Whenever a division fence ~~shall be~~ is injured or
3 destroyed by fire, floods, or other casualty, the person bound to
4 make and ~~repair~~ maintain such fence, or any part thereof, shall
5 make or repair the same, or his or her ~~just~~ proportion thereof,
6 ~~within ten days after he shall be thereto requested by any person~~
7 ~~interested therein, such requisition to be in writing and signed by~~
8 ~~the party making the same~~ as provided in section 34-102.

9 Sec. 6. An owner of land may enter upon adjacent land for
10 purposes of constructing a division fence or performing his or her
11 obligations with respect to a division fence pursuant to sections
12 34-102 and 34-112, but such access shall be allowed only to the
13 extent reasonably necessary to enable the activities reasonably
14 contemplated by such sections to be performed. No person shall be
15 authorized by this section to cause any alterations to the land
16 of another, including the removal of trees, buildings, or other
17 obstacles, without the consent of the adjacent landowner or a court
18 order or to remove any items of personal property lying thereon
19 without the consent of the adjacent landowner or a court order.

20 Sec. 7. (1) Whenever a landowner desires to construct a
21 division fence or perform maintenance or repairs to an existing
22 division fence, such landowner shall give written notice of such
23 intention to any person who is liable for the construction,
24 maintenance, or repair of the same. Such notice may be served
25 upon any nonresident by delivering the written notice to the

1 occupant of the land or the landowner's agent in charge of the
2 land. The written notice shall request that the person liable
3 for the construction, maintenance, or repair satisfy his or
4 her obligation by performance or by other manner of equitable
5 contribution. After giving written notice, a landowner may commence
6 or complete construction of a division fence, or commence or
7 complete maintenance or repair activities upon an existing division
8 fence, in which cases any cause of action under this section,
9 sections 34-102 and 34-112, and section 6 of this act shall be
10 an action for equitable contribution. The purpose of this notice
11 procedure is to encourage the landowners to meet and resolve issues
12 regarding division fences without the need for a court action.

13 (2) If the person so notified either fails to respond to
14 such request or refuses such request, the landowner sending notice
15 may commence an action in the county court of the county where the
16 land is located. If the landowners cannot agree what proportion of
17 a division fence each shall construct, maintain, or repair, whether
18 by performance or by contribution, either landowner may commence an
19 action, without further written notice, in the county court of the
20 county where the land is located. An action shall be commenced by
21 filing a fence dispute petition on a form prescribed by the State
22 Court Administrator and provided to the plaintiff by the clerk of
23 the county court. The petition shall be executed by the plaintiff
24 in the presence of a judge, a clerk or deputy or assistant clerk of
25 a county court, or a notary public or other person authorized by

1 law to take acknowledgments and be accompanied by the fee provided
2 in section 33-123. A party may not commence an action under this
3 subsection until seven days after giving notice under subsection
4 (1) of this section and must commence the action within one year
5 after giving such notice.

6 (3) Upon filing of a fence dispute petition, the court
7 shall set a time for hearing and shall cause notice to be served
8 upon the defendant. Notice shall be served not less than five
9 days before the time set for hearing. Notice shall consist of
10 a copy of the petition and a summons directing the defendant to
11 appear at the time set for hearing and informing the defendant that
12 if he or she fails to appear, judgment will be entered against
13 him or her. Notice shall be served in the manner provided for
14 service of a summons in a civil action. If the notice is to be
15 served by certified mail, the clerk shall provide the plaintiff
16 with written instructions, prepared and provided by the State
17 Court Administrator, regarding the proper procedure for service by
18 certified mail. The cost of service shall be paid by the plaintiff,
19 but such cost and filing fee shall be added to any judgment given
20 the plaintiff.

21 (4) The court shall order that the parties submit to
22 mediation to attempt resolution of the respective duties of the
23 parties arising under this section, sections 34-102 and 34-112, and
24 section 6 of this act. The order shall set a date for the case
25 to return to court, but such date shall not be longer than ninety

1 days from the date the order is signed unless the court grants an
2 extension. The purpose of this mediation referral is to encourage
3 the parties to meet and resolve issues regarding the division fence
4 prior to further court action. Either party may object to the order
5 to mediation within five days after notice has been served under
6 subsection (3) of this section.

7 (5) If a mediation agreement is reached, the court shall
8 enter the agreement as the judgment in the action. If mediation
9 is terminated or fails to reach an agreement between the parties,
10 the action shall proceed as a civil action subject to the rules of
11 civil procedure. If either party objects to the order to mediation,
12 the action shall proceed as a civil action subject to the rules
13 of civil procedure. The costs of mediation shall be shared by
14 the parties according to the schedule of fees established by the
15 mediation service and collected directly by the mediation service.

16 Sec. 8. Unless otherwise provided by law, the State of
17 Nebraska shall have the same responsibility with regard to division
18 fences as a private landowner as provided in sections 34-101 to
19 34-117 and sections 6 and 7 of this act, but any claim shall be
20 made pursuant to the State Miscellaneous Claims Act rather than
21 under such sections.

22 Sec. 9. The changes made to sections 34-101, 34-102,
23 34-112, and 37-1012 by this legislative bill, sections 6 to 8 of
24 this act, and the repeal of sections 34-103 to 34-111 and 34-113
25 by this legislative bill apply commencing on the effective date

1 of this act, except that prior law applies to any division fence
2 dispute commenced prior to such date.

3 Sec. 10. Section 37-1012, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 37-1012 (1) The Game and Parks Commission shall have the
6 same responsibility with regard to division fences as a private
7 landowner as provided in sections 34-101 to 34-117 and sections
8 6 and 7 of this act, except that in those areas where a state
9 recreational trail is developed, the commission shall have the
10 same responsibility as a railroad as provided in sections 74-601
11 to 74-604, but the type of fence required under section 74-601
12 shall not be required for those areas where a state recreational
13 trail is developed. All fences shall be constructed and maintained
14 as required under this subsection unless such construction and
15 maintenance is waived in writing by affected adjoining landowners.
16 The commission shall be responsible for the construction and
17 replacement cost of any fence agreed to by the commission and
18 adjoining landowner. The commission shall also be responsible
19 for providing supplies for the maintenance of any fence along a
20 state recreational trail or for the reimbursement to the adjoining
21 landowner for the cost of supplies for the maintenance of any fence
22 along a state recreational trail. The adjoining landowner shall be
23 responsible for the maintenance of the fence. In such areas the
24 type of fence may be (a) wire fence of at least four barbed wires,
25 of a size not less than twelve and one-half gauge fencing wire,

1 to be secured to posts, the posts to be at no greater distance
2 than one rod from each other, or (b) a fence of any type that is
3 agreed to by the commission and adjoining landowners. All fences
4 constructed under either subdivision (a) or (b) of this subsection
5 shall be deemed to be manifestly designed to exclude intruders for
6 the purposes of subdivision (1)(c) of section 28-521.

7 (2) The responsibility of the commission for fences along
8 a state recreational trail shall not exceed the amount appropriated
9 to the commission by the Legislature for such purpose during any
10 biennium, except that the commission may use any funds specifically
11 gifted or obtained by grant application to the commission the sole
12 purpose of which is to provide fencing for a state recreational
13 trail.

14 (3) The commission shall adopt and promulgate rules and
15 regulations to carry out this section.

16 Sec. 11. Original sections 2-4806, 2-4808, 34-101,
17 34-102, 34-112, and 37-1012, Reissue Revised Statutes of Nebraska,
18 are repealed.

19 Sec. 12. The following sections are outright repealed:
20 Sections 34-103, 34-104, 34-105, 34-106, 34-107, 34-108, 34-109,
21 34-110, 34-111, and 34-113, Reissue Revised Statutes of Nebraska.

22 Sec. 13. Since an emergency exists, this act takes effect
23 when passed and approved according to law.