

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 108

Introduced By: Agriculture Committee; Erdman, 47, Chairperson;
Chambers, 11; Dierks, 40; Dubas, 34; Karpisek, 32;
Preister, 5; Wallman, 30

Read first time: January 8, 2007

Committee: Agriculture

A BILL

1 FOR AN ACT relating to fences; to amend sections 2-4806, 2-4808,
2 34-102, 34-112, and 37-1012, Reissue Revised Statutes of
3 Nebraska; to eliminate provisions relating to fence viewers
4 and viewing; to provide a civil action relating to fence
5 disputes; to provide for mediation of such disputes; to
6 harmonize provisions; to repeal the original sections; to
7 outright repeal sections 34-101, 34-103, 34-104, 34-105,
8 34-106, 34-107, 34-108, 34-109, 34-110, 34-111, and 34-113,
9 Reissue Revised Statutes of Nebraska; and to declare an
10 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 act.
8 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 prior to
12 a mediation meeting. The administrator may adopt and promulgate rules
13 and regulations that allow a separate fee schedule for mediation
14 services that are not eligible for partial or full federal
15 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 by
20 applying to the farm mediation service. Any party involved in an
21 adverse decision from a United States Department of Agriculture agency
22 may request mediation by applying to the farm mediation service. The
23 farm mediation service may also accept disputes regarding division
24 fences, including disputes referred by a court pursuant to section 7
25 of this act.

26 (2) The farm mediation service shall notify all the
27 parties and, upon their consent, schedule a meeting with a mediator.

1 The parties shall not be required to attend any mediation meetings
 2 under this section, and failure to attend any mediation meetings or to
 3 participate in mediation under this section shall not affect the
 4 rights of any party in any manner. Participation in mediation under
 5 this section shall not be a prerequisite or a bar to the institution
 6 of or prosecution of legal proceedings by any party.

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

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

20 (2) Unless the adjoining landowners have agreed otherwise,
 21 such fence shall be a lawful fence, as defined in section 34-115.

22 (3) The duty assigned to adjoining landowners by this
 23 section applies (a) when either or both of the adjoining lands lie
 24 within an area zoned for agricultural or horticultural purposes as
 25 defined in section 77-1359 and either or both of the adjoining lands
 26 are utilized as agricultural or horticultural land and (b) in all
 27 other areas of the state when both of the adjoining lands are

1 utilized as agricultural or horticultural land.

2 Sec. 4. Section 34-112, Reissue Revised Statutes of
3 Nebraska, is amended to read:

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

12 Sec. 5. An owner of land may enter upon adjacent land owned
13 by another person to construct, maintain, or repair a division fence
14 pursuant to sections 34-102 and 34-112, but such access shall be
15 allowed only to the extent reasonably necessary to construct,
16 maintain, or repair the division fence. This section does not
17 authorize any alterations to adjacent land owned by another person,
18 including the removal of trees, buildings, or other obstacles,
19 without the consent of the adjacent landowner or a court order or the
20 removal of any items of personal property lying thereon without the
21 consent of the adjacent landowner or a court order.

22 Sec. 6. (1) Whenever a landowner desires to construct a
23 division fence or perform maintenance or repairs to an existing
24 division fence, such landowner shall give written notice of such
25 intention to any person who is liable for the construction,
26 maintenance, or repair of the division fence. Such notice may be
27 served upon any nonresident by delivering the written notice to the

1 occupant of the land or the landowner's agent in charge of the land.
2 The written notice shall request that the person liable for the
3 construction, maintenance, or repair satisfy his or her obligation by
4 performance or by other manner of contribution. After giving written
5 notice, a landowner may commence or complete construction of a
6 division fence, or commence or complete maintenance or repair upon an
7 existing division fence, in which cases any cause of action under
8 this section, sections 34-102 and 34-112, and section 5 of this act
9 shall be an action for contribution.

10 (2) If the person so notified either fails to respond to
11 such request or refuses such request, the landowner sending notice may
12 commence an action in the county court of the county where the land
13 is located. If the landowners cannot agree what proportion of a
14 division fence each shall construct, maintain, or repair, whether by
15 performance or by contribution, either landowner may commence an
16 action, without further written notice, in the county court of the
17 county where the land is located. An action shall be commenced by
18 filing a fence dispute petition on a form prescribed by the State
19 Court Administrator and provided to the plaintiff by the clerk of the
20 county court. The petition shall be executed by the plaintiff in the
21 presence of a judge, a clerk or deputy or assistant clerk of a county
22 court, or a notary public or other person authorized by law to take
23 acknowledgments and be accompanied by the fee provided in section
24 33-123. A party shall not commence an action under this subsection
25 until seven days after giving notice under subsection (1) of this
26 section and shall commence the action within one year after giving
27 such notice.

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

15 (4) In any proceeding under this section, subsequent to the
16 initial filing, the parties shall receive from the clerk of the court
17 information regarding availability of mediation through the farm
18 mediation service of the Department of Agriculture or the state
19 mediation centers as established through the office of dispute
20 resolution. Development of the informational materials and the
21 implementation of this subsection shall be accomplished through the
22 State Court Administrator. With the consent of both parties, a court
23 may refer a case to mediation and may state a date for the case to
24 return to court, but such date shall be no longer than ninety days
25 from the date the order is signed unless the court grants an
26 extension. If the parties consent to mediate and if a mediation
27 agreement is reached, the court shall enter the agreement as the

1 judgment in the action. The costs of mediation shall be shared by the
2 parties according to the schedule of fees established by the
3 mediation service and collected directly by the mediation service.

4 (5) If the case is not referred to mediation or if
5 mediation is terminated or fails to reach an agreement between the
6 parties, the action shall proceed as a civil action subject to the
7 rules of civil procedure.

8 Sec. 7. The changes made to sections 34-102, 34-112, and
9 37-1012 by this legislative bill, sections 5 and 6 of this act, and
10 the repeal of sections 34-101, 34-103 to 34-111, and 34-113 by this
11 legislative bill apply commencing on the effective date of this act,
12 except that prior law applies to any division fence dispute commenced
13 prior to such date.

14 Sec. 8. Section 37-1012, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 37-1012. (1) The Game and Parks Commission shall have the
17 same responsibility with regard to division fences as a private
18 landowner as provided in sections ~~34-101~~ 34-102 to 34-117 and
19 sections 5 and 6 of this act, except that in those areas where a
20 state recreational trail is developed, the commission shall have the
21 same responsibility as a railroad as provided in sections 74-601 to
22 74-604, but the type of fence required under section 74-601 shall not
23 be required for those areas where a state recreational trail is
24 developed. All fences shall be constructed and maintained as required
25 under this subsection unless such construction and maintenance is
26 waived in writing by affected adjoining landowners. The commission
27 shall be responsible for the construction and replacement cost of any

1 fence agreed to by the commission and adjoining landowner. The
2 commission shall also be responsible for providing supplies for the
3 maintenance of any fence along a state recreational trail or for the
4 reimbursement to the adjoining landowner for the cost of supplies for
5 the maintenance of any fence along a state recreational trail. The
6 adjoining landowner shall be responsible for the maintenance of the
7 fence. In such areas the type of fence may be (a) wire fence of at
8 least four barbed wires, of a size not less than twelve and one-half
9 gauge fencing wire, to be secured to posts, the posts to be at no
10 greater distance than one rod from each other, or (b) a fence of any
11 type that is agreed to by the commission and adjoining landowners. All
12 fences constructed under either subdivision (a) or (b) of this
13 subsection shall be deemed to be manifestly designed to exclude
14 intruders for the purposes of subdivision (1)(c) of section 28-521.

15 (2) The responsibility of the commission for fences along a
16 state recreational trail shall not exceed the amount appropriated to
17 the commission by the Legislature for such purpose during any
18 biennium, except that the commission may use any funds specifically
19 gifted or obtained by grant application to the commission the sole
20 purpose of which is to provide fencing for a state recreational trail.

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

23 Sec. 9. Original sections 2-4806, 2-4808, 34-102, 34-112,
24 and 37-1012, Reissue Revised Statutes of Nebraska, are repealed.

25 Sec. 10. The following sections are outright repealed:
26 Sections 34-101, 34-103, 34-104, 34-105, 34-106, 34-107, 34-108,
27 34-109, 34-110, 34-111, and 34-113, Reissue Revised Statutes of

1 Nebraska.

2 Sec. 11. Since an emergency exists, this act takes effect

3 when passed and approved according to law.