

LEGISLATIVE BILL 108

Approved by the Governor March 7, 2007

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

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

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

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

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

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

2-4808 (1) Any borrower or creditor may request mediation of any indebtedness incurred in relation to an agricultural loan by applying to the farm mediation service. Any party involved in an adverse decision from a United States Department of Agriculture agency may request mediation by applying to the farm mediation service. The farm mediation service may also accept disputes regarding division fences, including disputes referred by a court pursuant to section 6 of this act.

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

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

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

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

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

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

34-112 Whenever a division fence shall be is injured or destroyed by fire, floods, or other casualty, the person bound to make and repair construct and maintain such fence, or any part thereof, shall make or repair repairs

to the same, or his or her just proportion thereof, within ten days after he shall be thereto requested by any person interested therein, such requisition to be in writing and signed by the party making the same. as provided in section 34-102.

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

Sec. 6. (1) Whenever a landowner desires to construct a division fence or perform maintenance or repairs to an existing division fence, such landowner shall give written notice of such intention to any person who is liable for the construction, maintenance, or repair of the division fence. Such notice may be served upon any nonresident by delivering the written notice to the occupant of the land or the landowner's agent in charge of the land. The written notice shall request that the person liable for the construction, maintenance, or repair satisfy his or her obligation by performance or by other manner of contribution. After giving written notice, a landowner may commence or complete construction of a division fence, or commence or complete maintenance or repair upon an existing division fence, in which cases any cause of action under this section, sections 34-102 and 34-112, and section 5 of this act shall be an action for contribution.

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

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

(4) In any proceeding under this section, subsequent to the initial filing, the parties shall receive from the clerk of the court information regarding availability of mediation through the farm mediation service of the Department of Agriculture or the state mediation centers as established through the Office of Dispute Resolution. Development of the informational materials and the implementation of this subsection shall be accomplished through the State Court Administrator. With the consent of both parties, a court may refer a case to mediation and may state a date for the case to return to court, but such date shall be no longer than ninety days from the date the order is signed unless the court grants an extension. If the parties consent to mediate and if a mediation agreement is reached, the court shall enter the agreement as the judgment in the action. The costs of mediation shall be shared by the parties according to the schedule of fees established by the mediation service and collected directly by the mediation service.

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

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

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

37-1012 (1) The Game and Parks Commission shall have the same responsibility with regard to division fences as a private landowner as provided in sections 34-101 34-102 to 34-117 and sections 5 and 6 of this act, except that in those areas where a state recreational trail is developed, the commission shall have the same responsibility as a railroad as provided in sections 74-601 to 74-604, but the type of fence required under section 74-601 shall not be required for those areas where a state recreational trail is developed. All fences shall be constructed and maintained as required under this subsection unless such construction and maintenance is waived in writing by affected adjoining landowners. The commission shall be responsible for the construction and replacement cost of any fence agreed to by the commission and adjoining landowner. The commission shall also be responsible for providing supplies for the maintenance of any fence along a state recreational trail or for the reimbursement to the adjoining landowner for the cost of supplies for the maintenance of any fence along a state recreational trail. The adjoining landowner shall be responsible for the maintenance of the fence. In such areas the type of fence may be (a) wire fence of at least four barbed wires, of a size not less than twelve and one-half gauge fencing wire, to be secured to posts, the posts to be at no greater distance than one rod from each other, or (b) a fence of any type that is agreed to by the commission and adjoining landowners. All fences constructed under either subdivision (a) or (b) of this subsection shall be deemed to be manifestly designed to exclude intruders for the purposes of subdivision (1)(c) of section 28-521.

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

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

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

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

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.