

LEGISLATIVE BILL 667

Approved by the Governor March 3, 2010

Introduced by Sullivan, 41; Carlson, 38; Dubas, 34; Louden, 49.

FOR AN ACT relating to fences; to amend section 34-102, Reissue Revised Statutes of Nebraska; to state intent; to change provisions relating to division fences; and to repeal the original section.

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

Section 1. The Legislature finds the duty of adjoining landowners for the construction and maintenance of division fences to be beneficial to the public interest and welfare. Such benefits are not confined to historical and traditional societal benefits that accrue from the proper constraint of livestock, but also include suppression of civil disputes and public and private nuisances and the protection of public safety. Division fences promote the peace and security of society by the demarcation of rural boundaries, physical separation of conflicting land uses, enhancement of privacy, diminishment of frequency of public burden imposed by incidences of trespass and adverse possession, and the mitigation of impacts of conflicting land use intrusion into those areas of the state devoted to agricultural and horticultural use.

Sec. 2. Section 34-102, Reissue Revised Statutes of Nebraska, is amended to read:

34-102 (1) When there are two or more adjoining landowners, each of them shall construct and maintain a just proportion of the division fence between them. Just proportion means an equitable allocation of the portion of the fenceline to be physically constructed and maintained by each landowner or, in lieu thereof, an equitable contribution to the costs to construct and maintain the division fence to be made by either landowner. Unless otherwise specified in statute or by agreement of the parties, such equitable allocation shall be one which results in an equal burden of construction and maintenance of the division fence. ~~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 shall not be construed to compel the erection and maintenance of a division fence if neither of the adjoining landowners desires such division fence.

(2) Unless the adjoining landowners have agreed otherwise, such fence shall be a ~~lawful wire fence,~~ as defined in subdivision (5) of 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. 3. Original section 34-102, Reissue Revised Statutes of Nebraska, is repealed.