

## LEGISLATIVE BILL 776

Approved by the Governor May 5, 1999

Introduced by Dierks, 40

AN ACT relating to fences; to amend sections 34-106, 34-107, and 34-115, Reissue Revised Statutes of Nebraska; to change provisions relating to fence viewers and lawful fences; and to repeal the original sections.

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

Section 1. Section 34-106, Reissue Revised Statutes of Nebraska, is amended to read:

34-106. Upon request of any landowner, the county clerk shall appoint and maintain a panel of at least six individuals to serve as fence viewers, but the clerk may not compel membership on the panel of fence viewers. Fence viewers shall be owners of agricultural land in the county where the dispute has originated, and at least three members of each panel shall be owners of livestock. Fence viewers shall not be considered employees of the county and shall receive compensation only as provided in section 34-110. Upon resignation of a member, the clerk shall appoint another individual to fill the vacancy.

Sec. 2. Section 34-107, Reissue Revised Statutes of Nebraska, is amended to read:

34-107. Upon receipt of a written request of any landowner, the county clerk shall assign three fence viewers from the panel of fence viewers appointed under section 34-106 to determine any controversy arising under sections 34-101 to 34-117. None of the fence viewers assigned shall be related by blood or marriage to the contending parties nor be financially interested in the outcome of the dispute. If the county clerk is unable to assign three fence viewers for any reason, the clerk shall notify the county sheriff who shall serve in place of the fence viewers or as one of the fence viewers, and all references to fence viewers in this section and sections 34-104 to 34-111 shall be construed to mean the county sheriff if the sheriff is serving in place of the fence viewers.

Before assigning the fence viewers, the clerk shall first require the landowner to show proof that notice has been given to adjoining landowners. Such notice shall be served upon any nonresident landowner by publication in a newspaper published in the county where the land is situated or by delivering a copy of the letter requesting the assignment of fence viewers to the occupant of such adjoining land or the landowner's agent in charge of such land. The fence viewers so assigned shall examine the premises and hear the allegations of the parties. The decision of any two of them shall be final upon the parties to such disputes and upon all parties holding under them.

Sec. 3. Section 34-115, Reissue Revised Statutes of Nebraska, is amended to read:

34-115. Lawful fences of different kinds used for fence to enclose lands shall be as hereinafter defined. (1) A rail fence shall consist of at least six rails, such rails to be secured by stakes at the end of each panel, well set in the ground, with a rider on the stakes. (2) A board fence shall consist of not less than three boards of at least five inches in width and one inch thick; such boards to be well secured to posts; the posts to be not more than eight feet apart. (3) A rail and post fence shall consist of at least three rails, well secured at each end to posts; the posts not to be more than ten feet apart. (4) A pole and post fence shall consist of not less than four poles, to be well secured to posts; the posts not to be more than seven feet apart. (5) A wire fence shall consist of at least four wires, of a size not less than number nine fencing wire, to be well secured to posts, the posts to be at no greater distance than one rod from each other; and there shall be placed between every two of the posts one stake or post to which the wire shall be attached. ~~Any~~ ~~PROVIDED, that any~~ of such wires may be a barbed wire composed of two or more single wire strands twisted into a cable wire with metal barbs thereon averaging not more than five inches apart, each of such single wire strands to be of a size not less than number twelve and one-half gauge fencing wire. (6) A hog and sheep tight fence shall consist of one barb wire at the ground, next above, one section of woven wire twenty-six inches high, consisting of not less than seven strands, the upper and lower strands to be number nine wire, intermediate strands to be number eleven wire with stays not more than twelve inches apart, and at the top, three barb wires

at intervals of six, nine, and nine inches; and the whole shall be securely fastened to posts at no greater distance than one rod from each other, and there shall be placed between every two of the posts one stake or post to which the wire shall be attached. (7) All other fences made and constructed of boards, rails, poles, stones, hedge plants, or other material which upon evidence is declared to be as strong and well calculated to protect enclosures and is as effective for resisting breaching stock shall be considered a lawful fence.

Sec. 4. Original sections 34-106, 34-107, and 34-115, Reissue Revised Statutes of Nebraska, are repealed.