

LEGISLATIVE BILL 882

Approved by the Governor April 18, 1994

Introduced by Dierks, 40

AN ACT relating to fences; to amend sections 34-106, 34-107, 34-108, 34-110, and 34-111, Reissue Revised Statutes of Nebraska, 1943; to change the method of selecting fence viewers; to change a fee; to change the procedure for assessment and collection of damages; to eliminate a provision relating to the recovery of damages; and to repeal the original sections, and also section 34-114, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 34-106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

34-106. Fence viewers shall be selected in the following manner: Each adjoining landowner shall choose one and such two shall choose the third one. No one of the fence viewers shall be related by blood or marriage to the contending parties, nor be financially interested in the outcome of the dispute. 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, 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. That section 34-107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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.

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 chosen assigned shall examine the premises and hear the allegations of the parties. The fee and 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. That section 34-108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

34-108. The decision of the fence viewers shall be reduced to writing, shall contain a description of the fence, and of the proportion to be maintained by each, and their decision upon any of the points in dispute between the parties, submitted to them as aforesaid, shall be forthwith filed in the office of the county clerk. The fence viewers shall determine by written order the obligations, rights, and duties of the respective parties in the controversy, shall assign to each landowner the part of the fence which the landowner shall erect, maintain, repair, or pay for, shall fix the value, including the costs of material and labor, and shall prescribe the time within which the erection, maintenance, or repair shall be completed or paid for. The fence viewers shall file the order forthwith in the office of the county clerk. Any person affected by an order of the fence viewers may appeal to the district court within ten days after the date such order is filed.

Sec. 4. That section 34-110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

34-110. Fence viewers shall be entitled to three dollars per day each for the time necessarily spent as above provided thirty dollars each for any one dispute plus expenses, to be paid in the first instance by the party requiring the service. All expenses of the view shall be borne equally between the parties, except in case of view to appraise damages for neglect or refusal to make or maintain a just proportion of the division fence, in which case the cost of view shall be paid by the party in default, and may be

recovered as a part of the damage assessed.

Sec. 5. That section 34-111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

34-111. If any person who is liable to contribute to the erection, maintenance, or reparation of a division fence shall neglect or refuse, for a period of four weeks after notice in writing so to do, by order of the fence viewers fails to appeal the order and neglects or refuses to make and maintain his or her proportion of such fence within the time prescribed in the order filed with the county clerk as provided in section 34-108, the party so neglecting or refusing shall be liable to the party injured for all damages which thereby accrue. The fence viewers shall provide for the erection or repair of the party injured may make or repair the same at the expense of the party so neglecting or refusing; to be recovered from him with costs of suit; and the party so neglecting or refusing; after notice in writing, shall be liable to the party injured for all damages which thereby accrue, to be determined by fence viewers selected as above provided. The fence viewers shall reduce their appraisal of damage to writing; and sign the same defaulting. The fence viewers shall require the complaining landowner to deposit with the fence viewers a sum of money in the amount prescribed in the order sufficient to pay for the erection, repair, or maintenance of the fence together with the fees and costs of the fence viewers. The complaining landowner may be engaged by the fence viewers to perform the erecting, repair, or maintenance of the fence.

Unless the party in default reimburses the complaining landowner within thirty days following the completion of the erection, repair, or maintenance of the fence, the fence viewers shall certify the amount deposited by the complaining landowner to the county treasurer who shall collect the amount as a special assessment against the real estate owned by the party or parties in default. The county treasurer shall reimburse the injured party the amount certified upon collection of the assessment. If the party in default is an agency of the State of Nebraska, the injured party may seek reimbursement pursuant to section 81-1170.01.

Sec. 6. That original sections 34-106, 34-107, 34-108, 34-110, and 34-111, Reissue Revised Statutes of Nebraska, 1943, and also section 34-114, Reissue Revised Statutes of Nebraska, 1943, are repealed.