

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 655**

Introduced by Wayne, 13.

Read first time January 23, 2019

Committee:

1 A BILL FOR AN ACT relating to real property; to amend sections 34-101,  
2 34-102, 34-103, 34-112, 34-112.01, and 34-301, Reissue Revised  
3 Statutes of Nebraska, and section 34-112.02, Revised Statutes  
4 Cumulative Supplement, 2018; to define a term; to change provisions  
5 relating to division fences and disputed corners and boundaries; and  
6 to repeal the original sections.

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

1 Section 1. Section 34-101, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 34-101 (1) The Legislature finds the duty of adjoining landowners  
4 for the construction and maintenance of division fences to be beneficial  
5 to the public interest and welfare. Such benefits are not confined to  
6 historical and traditional societal benefits that accrue from the proper  
7 constraint of livestock, but also include suppression of civil disputes  
8 and public and private nuisances and the protection of public safety.  
9 Division fences promote the peace and security of society by the  
10 demarcation of rural boundaries, physical separation of conflicting land  
11 uses, enhancement of privacy, diminishment of frequency of public burden  
12 imposed by incidences of trespass and adverse possession, and the  
13 mitigation of impacts of conflicting land use intrusion into those areas  
14 of the state devoted to agricultural and horticultural use.

15 (2) For purposes of sections 34-101 to 34-112.03, division fence  
16 means a fence on the property line between two adjacent landowners, but  
17 shall not include a fence located entirely on the property of one  
18 landowner.

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

21 34-102 (1) Unless provided otherwise by law or by agreement of each  
22 landowner, when ~~when~~ there are two or more adjoining landowners, each of  
23 them shall construct and maintain a just proportion of the division fence  
24 between them. Just proportion means an equitable allocation of the  
25 portion of the fenceline to be physically constructed and maintained by  
26 each landowner or, in lieu thereof, an equitable contribution to the  
27 costs to construct and maintain the division fence to be made by either  
28 landowner. Unless otherwise specified in statute or by agreement of the  
29 parties, such equitable allocation shall be one which results in an equal  
30 burden of construction and maintenance of the division fence. This  
31 section shall not be construed to compel the erection and maintenance of

1 a division fence if neither of the adjoining landowners desires such  
2 division fence.

3 (2) When any landowner does not desire the erection, replacement, or  
4 retention of a division fence, such landowner shall not be required to  
5 contribute to the construction or maintenance of such division fence.

6 (3) (2) Unless the adjoining landowners have agreed otherwise, such  
7 fence shall be a wire fence as defined in subdivision (5) of section  
8 34-115.

9 Sec. 3. Section 34-103, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 34-103 Every person liable to contribute to the construction and  
12 maintenance of a division fence or any portion thereof shall maintain his  
13 or her portion in good repair, including the necessary removal or  
14 trimming of trees and woody growth within or encroaching upon the  
15 fenceline to repair or avoid damage to, or dislocation of, the division  
16 fence. The occurrence of trees and woody growth within or encroaching  
17 upon a division fence by any landowner, whether or not such landowner is  
18 required to contribute to the construction or maintenance of such  
19 division fence, that causes damage to, or dislocation of, such division  
20 ~~the~~ fence shall constitute a private nuisance to the adjacent landowner's  
21 possessory interests in his or her land.

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

24 34-112 Whenever a division fence is injured or destroyed by fire,  
25 floods, or other casualty, the person bound to construct and maintain  
26 such fence, or any part thereof, shall make repairs to such division  
27 fence in the same, ~~or his or her just proportion thereof,~~ as provided in  
28 section 34-102.

29 Sec. 5. Section 34-112.01, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 34-112.01 An owner of land may enter upon adjacent land owned by

1 another person to construct, maintain, or repair a division fence  
2 pursuant to sections 34-102 and 34-112, but such access shall be allowed  
3 only to the extent reasonably necessary to construct, maintain, or repair  
4 the division fence. This section does not authorize (1) any alterations  
5 to adjacent land owned by another person, including the removal of trees,  
6 buildings, or other obstacles, without the consent of the adjacent  
7 landowner or a court order or (2) the removal of any items of personal  
8 property lying thereon without the consent of the adjacent landowner or a  
9 court order. Any damage to the property of an adjacent landowner,  
10 including the removal of trees, buildings, or other obstacles, in  
11 connection with the construction, maintenance, or repair of a division  
12 fence shall be paid by the landowner or its agents causing such damage.

13 Sec. 6. Section 34-112.02, Revised Statutes Cumulative Supplement,  
14 2018, is amended to read:

15 34-112.02 (1) Whenever a landowner desires to construct a division  
16 fence or perform maintenance or repairs to an existing division fence,  
17 such landowner shall give written notice of such intention to the  
18 adjacent landowner ~~any person who is liable for the construction,~~  
19 ~~maintenance, or repair of the division fence.~~ Such notice may only be  
20 served upon the adjacent landowner identified as the record owner in the  
21 real estate records ~~any nonresident by delivering the written notice to~~  
22 ~~the occupant of the land or the landowner's agent in charge of~~ the county  
23 in which the land is located. The written notice shall request that the  
24 person liable for the construction, maintenance, or repair satisfy his or  
25 her obligation by performance or by other manner of contribution and  
26 shall include the type of fence being constructed, maintained, or  
27 repaired and the amount of contribution, if any, requested by the  
28 landowner constructing, maintaining, or repairing such division fence. No  
29 sooner than thirty days after ~~After~~ giving written notice, a landowner  
30 may commence construction of a division fence, or commence maintenance or  
31 repair upon an existing division fence, unless the adjacent landowner

1 provides written notice objecting to the payment of any portion thereof  
2 or the type of fence being erected, in which case ~~cases~~ any cause of  
3 action under this section and sections 34-102, 34-112, and 34-112.01  
4 shall be an action for contribution.

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

24 (3) Upon filing of a fence dispute complaint, the court shall set a  
25 time for hearing and shall cause written notice to be served upon the  
26 record owner of the adjacent property, who shall be the defendant. Notice  
27 shall be served not less than five days before the time set for hearing.  
28 Notice shall consist of a copy of the complaint and a summons directing  
29 the defendant to appear at the time set for hearing and informing the  
30 defendant that if he or she fails to appear, judgment will be entered  
31 against him or her. Notice shall be served in the manner provided for

1 service of a summons in a civil action. If the notice is to be served by  
2 certified mail, the clerk shall provide the plaintiff with written  
3 instructions, prepared and provided by the State Court Administrator,  
4 regarding the proper procedure for service by certified mail. The cost of  
5 service shall be paid by the plaintiff, but such cost and filing fee  
6 shall be added to any judgment awarded to the plaintiff.

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

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

25 Sec. 7. Section 34-301, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 34-301 When one or more owners of land, the corners and boundaries  
28 of which are lost, destroyed, or in dispute, desire to have the corners  
29 and boundaries ~~same~~ established, they may bring an action in the district  
30 court of the county where such lost, destroyed, or disputed corners or  
31 boundaries, or part thereof, are situated, against the owners of the

1 other tracts which will be affected by the determination or establishment  
2 thereof, to have such corners or boundaries ascertained and permanently  
3 established. If any public road is likely to be affected thereby, the  
4 proper county shall be made a defendant. Notice of such action shall be  
5 given as in other cases to each record owner of an affected tract, and if  
6 the defendants or any of them are nonresidents of the state, or the  
7 notice address of the record owner is unknown, they may be served by  
8 publication as is provided by law. The action shall be a special one, and  
9 the only necessary pleading therein shall be the complaint of the  
10 plaintiff describing the land involved, and, so far as may be, the  
11 interest of the respective parties and asking that certain corners and  
12 boundaries therein described, as accurately as may be, shall be  
13 established. Either the plaintiff or defendant may, by proper plea, put  
14 in issue the fact that certain alleged boundaries or corners are the true  
15 ones, or that such have been recognized and acquiesced in by the parties  
16 or their grantors for a period of ten consecutive years, which issue  
17 shall be tried before the district court under its equity jurisdiction  
18 without the intervention of a jury, and appeals from such proceedings  
19 shall be had and taken in conformity with the equity rules. Existence of  
20 a division fence shall not control any such determination.

21       Sec. 8.       Original sections 34-101, 34-102, 34-103, 34-112,  
22 34-112.01, and 34-301, Reissue Revised Statutes of Nebraska, and section  
23 34-112.02, Revised Statutes Cumulative Supplement, 2018, are repealed.