

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 339

Introduced by Schilz, 47.

Read first time January 17, 2013

Committee: Agriculture

A BILL

1 FOR AN ACT relating to fences; to amend sections 2-4808, 34-112.02,
2 and 34-112.03, Reissue Revised Statutes of Nebraska; to
3 change fence dispute provisions; to harmonize provisions;
4 and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-4808, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-4808 (1) Any borrower or creditor may request mediation
4 of any indebtedness incurred in relation to an agricultural loan by
5 applying to the farm mediation service. Any party involved in an
6 adverse decision from a United States Department of Agriculture
7 agency may request mediation by applying to the farm mediation
8 service. The farm mediation service may also accept disputes
9 regarding division fences, ~~including disputes referred by a court~~
10 ~~pursuant to section 34-112.02.~~

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

19 Sec. 2. Section 34-112.02, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 34-112.02 (1) Whenever a landowner desires to construct a
22 division fence or perform maintenance or repairs to an existing
23 division fence, such landowner shall give written notice of such
24 intention to any person who is liable for the construction,
25 maintenance, or repair of the division fence. Such notice may be

1 served upon any nonresident by delivering the written notice to the
2 occupant of the land or the landowner's agent in charge of the land.
3 The written notice shall request that the person liable for the
4 construction, maintenance, or repair satisfy his or her obligation by
5 performance or by other manner of contribution. After giving written
6 notice, a landowner may commence or complete construction of a
7 division fence, or commence or complete maintenance or repair upon an
8 existing division fence, in which cases any cause of action under
9 this section and sections 34-102, 34-112, and 34-112.01 shall be an
10 action for contribution.

11 (2) If the person so notified either fails to respond to
12 such request or refuses such request, the landowner sending notice
13 may commence an action in the county court of the county where the
14 land is located. If the landowners cannot agree what proportion of a
15 division fence each shall construct, maintain, or repair, whether by
16 performance or by contribution, either landowner may commence an
17 action, without further written notice, in the county court of the
18 county where the land is located. An action shall be commenced by
19 filing a fence dispute complaint on a form prescribed by the State
20 Court Administrator and provided to the plaintiff by the clerk of the
21 county court. The complaint shall be executed by the plaintiff in the
22 presence of a judge, a clerk or deputy or assistant clerk of a county
23 court, or a notary public or other person authorized by law to take
24 acknowledgments and be accompanied by the fee provided in section
25 33-123. A party shall not commence an action under this subsection

1 until seven days after giving notice under subsection (1) of this
2 section and shall commence the action within one year after giving
3 such notice.

4 (3) Upon the filing of a fence dispute complaint, the
5 court shall issue an order to three disinterested householders of the
6 county unrelated to either party reciting the complaint and requiring
7 them to view the fence, giving three days' notice to each of the
8 parties of the time and place where such fence viewers shall meet.
9 The fence viewers so appointed shall make a report under oath to the
10 judge on the day named in the order. The report of the fence viewers
11 shall state the determination of the fence viewers of the portion of
12 the fence to be constructed, maintained, or repaired by each of the
13 parties interested, or an equitable contribution to the costs to
14 construct, maintain, or repair the division fence to be made by
15 either landowner. Such report may contain any determination of the
16 fence viewers regarding the necessity of management of trees or other
17 vegetation within or encroaching upon the fenceline to correct or
18 avoid damage to, or dislocation of, the fence. The persons appointed
19 by the court to discharge the duties specified shall receive thirty-
20 five dollars for each day or portion thereof and mileage at the rate
21 provided in section 81-1176 for each mile necessarily traveled, which
22 shall be taxed as costs in the case against the parties and collected
23 accordingly.

24 (4) Unless either landowner disputes the determination of
25 the fence viewers, the court shall enter the report of the fence

1 viewers as the judgment in the action. If either landowner disputes
2 the recommendations of the fence viewers, the action shall proceed as
3 a civil action subject to the rules of civil procedure.

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

18 ~~(4) In any proceeding under this section, subsequent to~~
19 ~~the initial filing, the parties shall receive from the clerk of the~~
20 ~~court information regarding availability of mediation through the~~
21 ~~farm mediation service of the Department of Agriculture or the state~~
22 ~~mediation centers as established through the Office of Dispute~~
23 ~~Resolution. Development of the informational materials and the~~
24 ~~implementation of this subsection shall be accomplished through the~~
25 ~~State Court Administrator. With the consent of both parties, a court~~

1 ~~may refer a case to mediation and may state a date for the case to~~
2 ~~return to court, but such date shall be no longer than ninety days~~
3 ~~from the date the order is signed unless the court grants an~~
4 ~~extension. If the parties consent to mediate and if a mediation~~
5 ~~agreement is reached, the court shall enter the agreement as the~~
6 ~~judgment in the action. The costs of mediation shall be shared by the~~
7 ~~parties according to the schedule of fees established by the~~
8 ~~mediation service and collected directly by the mediation service.~~

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

13 Sec. 3. Section 34-112.03, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 34-112.03 ~~The changes made to sections 34-102, 34-112,~~
16 ~~and 37-1012 by Laws 2007, LB 108, sections 34-112.01 and 34-112.02,~~
17 ~~and the repeal of sections 34-101, 34-103 to 34-111, and 34-113 by~~
18 ~~Laws 2007, LB 108, apply commencing on March 8, 2007, except that~~
19 ~~prior law applies to any division fence dispute commenced prior to~~
20 ~~such date.~~

21 The changes made to section 34-112.02 by this legislative
22 bill apply commencing on the effective date of this act, except that
23 prior law applies to any division fence dispute commenced prior to
24 such date.

25 Sec. 4. Original sections 2-4808, 34-112.02, and

1 34-112.03, Reissue Revised Statutes of Nebraska, are repealed.