



# The National Agricultural Law Center

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## States' Fence Statutes: *Nebraska*



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# A National Agricultural Law Center Research Publication

## States' Fence Statutes: Nebraska

**Neb. Rev. Stat. §§ 34-101 to 34-117, Neb. Rev. Stat. §§ 54-301 to 54-414, Neb. Rev. Stat. §§ 74- 601 to 74-605**

*Current through legislation effective May 22, 2021, of the 1st Regular Session of the 107th Legislature (2021)*

### **Article 1. Division Fences.**

#### **34-101. Legislative findings.**

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.

#### **34-102. Division fence; adjoining landowners; construct and maintain just proportion of fence.**

(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. 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 wire fence as defined in subdivision (5) of section 34-115.

#### **34-112. Division fence; injury or destruction; repair.**

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

#### **34-112.01. Division fence; entry upon land authorized.**

An owner of land may enter upon adjacent land owned by another person to construct,



maintain, or repair a division fence pursuant to sections 34-102 and 34-112, but such access shall be allowed only to the extent reasonably necessary to construct, maintain, or repair the division fence. This section does not authorize any alterations to adjacent land owned by another person, including the removal of trees, buildings, or other obstacles, without the consent of the adjacent landowner or a court order or the removal of any items of personal property lying thereon without the consent of the adjacent landowner or a court order.

**34-112.02. Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs.**

(1) Whenever a landowner desires to construct a division fence or perform maintenance or repairs to an existing division fence, such landowner shall give written notice of such intention to any person who is liable for the construction, maintenance, or repair of the division fence. Such notice may be served upon any nonresident by delivering the written notice to the occupant of the land or the landowner's agent in charge of the land. The written notice shall request that the person liable for the construction, maintenance, or repair satisfy his or her obligation by performance or by other manner of contribution. After giving written notice, a landowner may commence construction of a division fence, or commence maintenance or repair upon an existing division fence, in which cases any cause of action under this section and sections 34-102, 34-112, and 34-112.01 shall be an action for contribution.

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

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



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

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

#### **34-112.03. Division fence; changes made by Laws 2007, LB 108; applicability.**

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

#### **34-115. Lawful fences, defined.**

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 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.

#### **34-116. Lawful fences; height and spaces.**

The fences described in section 34-115 shall be at least four and one-half feet in height; and in the construction of such fences the spaces between the boards, rails, poles, and wires shall not exceed one foot each, measuring from the top.

#### **34-117. Lawful fences; Warner's Patent; requirements.**

Fence known as Warner's Patent shall be at least four and one-half feet in height, and consist of not less than five boards; such boards to be of a width of not less than five inches, and one inch thick.

### **Article 3. Herd Laws.**

#### **54-301. Herd laws; stock grower, cattle drover, defined.**

Every person who shall keep neat cattle, horses, mules, sheep, or goats, for their growth or increase within the state, shall be deemed a stock grower. Any person who shall drive or bring neat cattle into or through this state shall be deemed a cattle drover.

#### **54-302. Driving off another's livestock; penalty.**

Any cattle drover, or his employee, who shall drive off any neat cattle, horses, mules, or sheep belonging to another person, intentionally or through neglect, shall be guilty of a Class V misdemeanor.

#### **54-303. Herd laws; actions; proof of ownership.**

In any indictment or complaint under sections 54-301 to 54-310, the description of any kind or class of neat cattle shall be deemed sufficient if described as cattle; and the proof of brand shall be deemed to be *prima facie* evidence of ownership of such stock.

#### **54-304. Male animal running at large; liability of owner.**

The owner of any stallion, jack, bull, buck, or boar shall restrain the same, and any person may take possession of any such animal running at large in the county in which such person resides, or in which he or she occupies or uses real estate. He or she shall give notice thereof to the sheriff or any constable in the county in which such animal is taken, who shall give notice to the owner of such animal, if known to him or her, by delivering a written notice to the owner, or leaving the same at his or her usual place of abode, giving a description of the animal so taken. If such owner does not appear within ten days after such notice to claim his or her property and pay costs and damages if any, then the sheriff or constable shall sell the animal so taken, at public auction to the highest bidder for cash, having given twenty days' notice of the time and place of sale, with a description of the property, by posting such notice in three public places in the township or precinct in which such animal was found at large. Out of



the proceeds of such sale he or she shall pay all costs and any damages done by such animal, to be ascertained and determined by him or her, and the sheriff or constable shall pay the remainder, if any, into the county treasury for the use of the county. If legal proof is made to the county board by the owner of such animal of a right thereto at any time within one year of the sale, the county board shall order the proper amount to be paid to the owner by its warrant drawn for that purpose. If the owner, or any person for him or her, on or before the day of sale shall pay the costs thus far made and all damages, to be determined by the sheriff or constable if the parties cannot agree, and make satisfactory proof of ownership, the sheriff or constable shall release the animal to him or her. This remedy shall not be construed as a bar to any suit for damages sustained and not covered by the proceeds of the sale as hereinbefore provided.

**54-305. Cattle drover; duty to prevent trespassing animals.**

Any person owning or having charge of any drove of cattle, horses or sheep, numbering one head or more, who shall drive the same into or through any county of Nebraska of which the owner is not a resident, or landowner, or stock grower, and when the land in said county is occupied, it shall be the duty of such owner or person in charge of such horses, cattle or sheep to prevent the same from mixing with the cattle, horses or sheep belonging to the occupiers. The owner shall also prevent the drove from trespassing on such land as may be the property of the actual occupier, or may be held by him under a preemption, or a leasehold right, and used by him for the grazing of animals, growing hay or timber, or other agricultural purposes, or doing injury to the ditches made for irrigation of crops.

**54-306. Cattle drover; trespassing; penalty; liability for damages.**

If any owner or person in charge of any drove of cattle, horses or sheep shall willfully, carelessly or negligently injure any resident within the state by driving such drove from the public highways and herding the same on the lands occupied and improved by persons in possession of the same, he shall be deemed guilty of a Class V misdemeanor, and shall be liable for such damages as may be done to the property.

**54-307. Cattle drover; driving off another's livestock; liability.**

When the stock of any person shall be driven off its range within Nebraska against his will by the drovers of any drove, and the same shall be found in such drove, every person engaged as drover of such drove shall be liable for damages to the party injured to the amount of the full value of the animal for each head so driven off, together with all costs accruing in the trial of the cause, and the herd of stock shall be liable for the same, or a sufficient number to cover all damages and costs.

**54-308. Cattle drover; mixing of cattle; duty to separate; penalty.**

When the stock of any resident of the State of Nebraska shall mix with any drove of any animals, it shall be the duty of the drover or drovers, or person in charge of such drove, to cut out and separate such stock from such droves immediately. Every person, either owner or drover, or otherwise connected with such drove, who shall neglect to comply with the provisions of this section, shall be fined in any sum not exceeding one thousand dollars.

**54-309. Cattle or sheep; hides; removal by other than owner; prohibited; exception.**

It shall be unlawful for any person other than the owner or his agent or employee, to skin or remove from the carcass the skin, hide or pelt of any neat cattle or sheep found dead,



except when such stock is killed by railroad trains, when the employees of such railroads may remove the hides from stock so killed.

**54-310. Herd laws; violations; rewards; authorized.**

The county boards of the several counties may offer and pay rewards for the detection of those violating sections 54-301 to 54-309.

**54-311. Wells and pitfalls; prohibited acts.**

It shall be unlawful for the owner or holder of any real estate in the State of Nebraska to leave uncovered any well or other pitfall into which any person or animal may fall or receive injury. Every pitfall shall be filled, adequately covered, or enclosed so as not to constitute a safety hazard. Every well not in use shall be decommissioned or properly placed in inactive status in accordance with the Water Well Standards and Contractors' Practice Act so as not to constitute a safety hazard.

**54-315. Wells and pitfalls; violation; penalty.**

Any person who violates section 54-311 shall be guilty of a Class IV misdemeanor.

**Article 4. Estrays and Trespassing animals.**

**54-401. Estrays, trespassing animals; damages; liability.**

The owners of cattle, horses, mules, swine, sheep, and goats in this state are liable for all damages done by such stock upon the lands of another in this state as provided by section 54-402 if the damages to the lands are not the result of negligent or willful damage to the division fence by the person claiming damages to the land.

**54-402. Trespassing animals; damages; lien.**

All damages to property so committed by such stock running at large shall be paid by the owners of such stock; and the person, whose property is so damaged thereby, may have a lien upon such trespassing animals for the full amount of damages and costs, and may enforce the collection of the same by the proper civil action.

**54-403. Trespassing animals; distraint; notice.**

When any such stock is found upon the lands of another, it is lawful for the owner or person in possession of such lands to impound such stock. If the owner of the stock can be found, and is known to the distrainer, it is the duty of the distrainer to notify the owner by leaving a written notice at his or her usual place of residence with some member of the family over the age of fourteen or, in the absence of such person, by posting on the door of such residence a copy of the notice of the distraint of the stock, describing it, and stating the amount of damages claimed and the name of the arbitrator. The notice shall also require the owner within forty-eight hours after receiving such notice to take the stock away, after making full payment of all damages and costs to the satisfaction of the distrainer of trespassing animals. The notice may be in the following form:

You are hereby notified that on this .... day of .... 20 ...., your stock, of which I now have in my possession .... (here describe the animal or animals) did trespass upon my land, and damage it to the amount of .... You are required to pay the above charges within forty-eight hours from the delivery of this notice or the stock will be sold as provided by law. I have



appointed .... to act as arbitrator should you not feel satisfied with the amount of damages claimed in the within notice.

No claim for damages shall be maintained by the distrainor without the notice contemplated in this section having been given when the owner is known by the distrainor of such stock.

**54-404. Trespassing animals; restraint; damages; owner's failure to pay; sale.**

If the owner of such stock shall refuse, within forty-eight hours after having been notified in writing, to pay the damages claimed or appoint an arbitrator to represent his interests, the animal or animals shall be sold upon execution as required by law, when the amount of damages and costs have been filed with the county court of the county within which the damages have been sustained.

**54-405. Restraint; arbitrators; number; powers.**

In case the parties interested cannot agree as to the amount of damages and costs sustained, each party may choose a man, and, in case the two men chosen cannot agree, they shall choose a third man, and, after being duly sworn for the purpose herein named, the three shall proceed to assess the damages, possessing for that purpose the general power of arbitrators.

**54-406. Restraint; arbitration award; enforcement; appeal.**

The arbitrators shall make an award in writing, which, if not paid within five days after the award has been made, may be filed with the county court and shall operate as a judgment, which judgment shall be a lien upon the stock so restrained, and execution may issue upon such stock for the collection of such damages and costs as in other cases; *Provided*, either party may have an appeal from the judgment as in other cases in county court. The arbitrators shall be allowed two dollars each for their services.

**54-407. Estrays; owner unknown; procedure.**

In case the owner of such stock is not known or found in the county, the distrainor of the stock so trespassing upon lands shall proceed as provided by law regulating estrays and the stock shall be held liable for all damages and costs.

**54-416. Feral swine; applicability of sections; destruction; when.**

The duties and liabilities imposed by sections 54-401 to 54-415 do not apply in the case of stray or trespass of feral swine as defined in section 37-524.01. Feral swine may be destroyed as provided in section 37-524.01.

**Railroads and Fencing.**

**74-601. Fencing; cattle guards.**

Within six months after the lines of the railroad or any part thereof is open, each railroad shall erect and thereafter maintain fences on the sides of its right-of-way, or the part thereof so open for use, suitable and sufficient to prevent cattle, horses, sheep, and hogs from getting on such right-of-way, except at the crossings of public roads and highways, and within the limits of towns, cities, and villages, with openings, gates, or bars at all the farm crossings of its tracks for the use of the proprietors of the lands adjoining such right-of-way. Each railroad shall also construct and maintain, at all road crossings, cattle guards suitable and sufficient to prevent cattle, horses, sheep, and hogs from getting onto such right-of-way.



#### **74-602. Failure to fence or repair; liability.**

So long as such fences and cattle guards are not made after the time prescribed in section 74-601 has elapsed and when such fences and guards, or any part thereof, are not in sufficiently good repair to accomplish the objects for which they are intended, such railroad and its agents shall be liable for any damage which is done by the agents, engines, or trains of any such railroad, or by the locomotives or trains of any other railroad permitted to run over or upon such tracks, to any cattle, horses, sheep, or hogs thereon. When such fences and guards have been fully and duly made and are kept in sufficient repair, such railroad shall not be liable for any damages, unless the damage arises from negligent or willful acts of the railroad or its agents.

#### **74-603. Fencing; duty; landowner may fence; cost.**

Any person who owns land adjoining the right-of-way of any railroad and not within the limits of any town, village, or city who intends to enclose the land, or any part thereof, that adjoins such right-of-way with a fence may notify the railroad in writing of such intention and request the railroad to build a lawful fence as described in section 74-601 on the line between its railroad and the land intended to be enclosed. The notice shall specify two points on such line between which points the fence is requested to be erected and shall describe the land intended to be enclosed. The railroad shall, within six months after receiving such notice, cause the fence requested by such notice to be erected, and in case of a failure so to do, the party giving notice may cause such fence to be erected at a reasonable cost and collect such amount from the railroad.

#### **74-604. Failure to fence; injury to livestock; liability.**

Any railroad which fails to fence on both sides of its right-of-way against all livestock running at large at all points shall be absolutely liable to the owner of any livestock injured or killed by the railroad's agents or the agents of any other railroad which runs over and upon such right-of-way.

#### **74-605. Injured animals; care; violation; penalty**

Whenever any horse, cow, or other domestic animal is injured on the right-of-way of any railroad, the trackwalkers and section personnel of the railroad shall care for the animal at once and report the facts to the nearest station agent. If the animal is injured by a train, such member of the train crew as is required by the railroad shall, upon arriving at the first communications facility, notify the person in charge of the track of the fact, and such person shall at once notify the railroad employee having charge of the section upon which the animal is injured who shall at once care for the animal. If any such animal is maimed beyond hope of recovery, such persons shall kill the animal at once. When the animal is not killed, the section official shall give immediate notice, when possible, of the condition of the animal to the owner or his or her agent who shall have the animal cared for at once. When immediate notice to the owner is not possible, the section official shall have the injured animal properly cared for at once. No act of the railroad, its employees or agents, or the owner of an injured animal pursuant to this section shall be held to be an admission of liability or responsibility on the part of the railroad for the injury of the animal nor a waiver or relinquishment by the owner of any right or claim to damages from the railroad. Any person who violates any provision of this section shall be guilty of a Class V misdemeanor.

