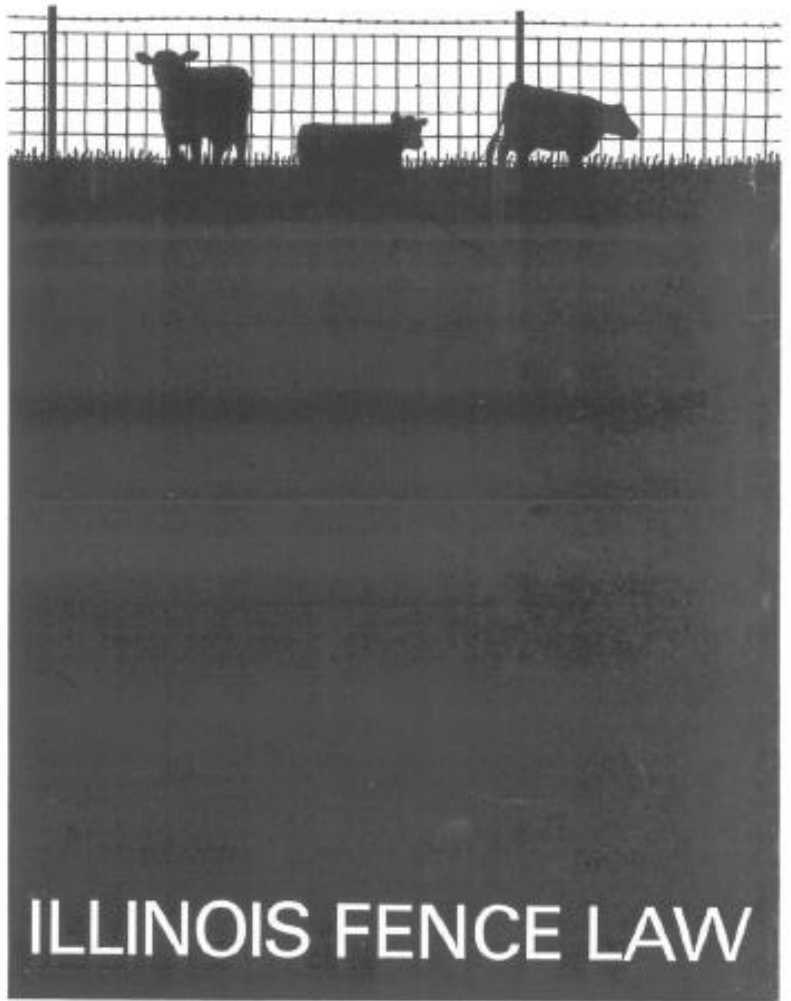


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ILLINOIS FENCE LAW

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Circular 1211

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THIS CIRCULAR has been written to answer many of the questions that Illinois farmers and other landowners ask about their rights and duties in regard to fences. Illinois laws supply the answers to some of these questions, particularly chapter 54 of the Illinois Revised Statutes. Other answers come from court decisions. The answers to some questions have not yet been settled and can only be conjectured.

Cooperation between neighboring landowners can prevent some fence problems and solve others. Even when both parties are cooperative, however, questions arise about which adjoining owners may have an honest difference of opinion.

This circular may be used to help resolve some of these differences of opinion. It is not designed, however, as a substitute for legal counsel. When a dispute arises or seems likely to arise, the landowner should consult an attorney.

GENERAL FENCE LAW

The Duty to Confine Animals

The object of fencing is not to keep other people's animals off an occupant's premises, but rather to keep the occupant's animals at home. Illinois courts therefore hold that all persons have the duty to fence their animals in and that their neighbors have no duty to fence them out. An owner who fails to confine animals properly can be held liable for the damage they cause, regardless of whether the property of the injured person was fenced. For example, if animals driven along a road get out of control and enter adjoining fields, the owner of the animals may be held liable for the damage the animals cause, even though the fields are not protected by a fence.

The term *animals* includes cattle, horses, sheep, hogs, and other stock. It also includes poultry, and therefore poultry owners also have the duty to confine their animals to prevent trespass.

Dogs and cats traditionally have not been included in this legal definition of animals so far as trespass laws are concerned. The owners may be held liable, however, for any actual damages caused by their pets even though no technical trespass may have occurred. In addition, municipal, county, or township ordinances may require confinement of dogs and cats.

Liability for Trespass by Animals

Whenever a domestic animal goes onto any premises without the consent of the owner of the premises, the animal technically trespasses, whether or not the premises are fenced. The owner of the trespassing animal may therefore be held liable for any damages caused by the trespass, unless that owner has used reasonable care to restrain the animal from running at large and makes "immediate pursuit" on discovering that the animal has escaped.

Injury to crops, persons, other livestock, and property, and the service of female animals are the most common damages. Illinois courts have allowed recovery for each of these types of damages. The amount that can be recovered is based on the best evidence of actual loss, for example, the impairment of crop yield, the value of an animal killed or injured, and the difference in value of progeny.

The spread of disease is another type of damage for which courts have allowed recovery. Legal authority suggests, however, that owners are not liable for damage due to disease spread by their trespassing animals unless they knew or suspected that the animals were diseased.

As in all injury cases, negligence or fault on the part of the injured party may affect the amount recovered. In April 1981, the Illinois Supreme Court adopted a new law for determining the damages to be awarded to an injured party who was negligent. Under this newly adopted system of "pure comparative negligence," the amount of fault attributed to the injured party proportionately affects the amount of damages recovered from the other negligent party. For example, an injured person determined to be 60 percent at fault might still recover 40 percent of the amount of his or her damages. Because this system of comparative negligence is new to Illinois, the courts will spend a number of years working out the details of its application in specific cases.

The fact that an owner's animals have caused injury or damage does not always mean that the owner will be liable. In fact, an owner completely free of negligence or fault in the incident may not be held liable. For example, if a highway commissioner wrongfully tears out a fence or a storm blows a fence down, the owner of that fence cannot be held liable for the damage his or her animals do unless the owner fails to make "immediate pursuit" of the animals after discovering the break in the fence.

When animals escape through a division fence (discussed later), their owner may not be held liable if the escape was made through the adjoining owner's portion of the fence and evidence shows that the adjoining owner's portion of the fence was not in good repair. An Illinois court has held, however, that an owner who turns animals out knowing that the neighbor's portion of the fence will not restrain them may be held liable

for their trespass. The court reasoned that the owner of the animals has a right under the law to make the adjoining owner repair the fence or pay for having the repair made and that the owner should have used this remedy.

One need not own animals to be liable for damage caused by trespass. Those who take care of animals for others (agisters or stablekeepers for example) assume liability for trespassing animals in their charge just as the owners do. But keepers may not be held liable if they can show that they used reasonable care in restraining the animals and did not know that the animals were at large.

As a rule, a landlord is not liable for the trespass of a tenant's livestock. A landlord might be held liable, however, if a livestock-share arrangement creates a legal partnership that makes the tenant an agent of the landlord. Furthermore, under the principle that an employer is liable for the acts of employees while they are engaged in the employer's work, a livestock owner may be held liable for trespass resulting from the negligence of a hired hand.

Animals on Highways

Farm animals—calves and hogs particularly—often get out on highways. A highway user who runs into an animal and is injured or has a damaged vehicle usually seeks compensation from the owner of the animals. Although no one can predict exactly what damages, if any, will be recovered in a particular instance, certain general rules apply:

- Farmers negligent in maintaining fences may be liable for the damage the escaped animals cause to persons using the highway.
- Farmers who maintain fences in good repair yet keep animals that they know are in the habit of breaking out may be held liable for damages caused by the animals when they do break out.
- If adequate fences are maintained and animals not in the habit of breaking out get through the fence and onto a highway, the owners may be held liable for the damages the animals cause if the owners know the animals are out and if they make no reasonable effort to get the animals back. Owners are not liable for injuries caused by their loose animals if they can establish both that they used reasonable care in restraining the animals and that they did not know that the animals were at large.
- Farmers who drive animals along, across, or on a highway, particularly a paved highway, may become liable on the grounds of negligence. When driving animals, an owner is required to keep them under control. Under some circumstances (at night or in heavy traffic) and on

some highways (limited access or other highways on which animals could be prohibited), it would be negligent and possibly a violation of the law to drive animals at all.

- It is unlawful for a farmer to tether or turn loose any animals on the highway (or in some circumstances, on a railroad right-of-way) for the purpose of feeding.

In some accidents involving animals on highways, the motorist may be at fault, partially or completely. If the motorist's negligence has contributed toward the accident, the doctrine of comparative negligence will prevent the motorist from recovering full damages from the farmer. Moreover, the farmer may also be able to recover damages. If the farmer was not negligent, he or she may be able to recover the value of the animal from a negligent motorist. Even if negligent, the farmer may still be able to recover part of the damages, provided the motorist was also negligent.

Railroad Fences and Farm Crossings

Illinois law requires every railroad company to maintain fences on both sides of its road, as well as cattle guards at all road crossings, to prevent livestock from getting onto its tracks. Illinois courts have held that farmers have the right to turn their animals against a railroad fence.

A railroad company failing to build fences and cattle guards or to keep them in good repair is liable for all damages that may occur to livestock on its roads. If the railroad company maintains fences and guards that are adequate and in good repair, it is not liable for injury to livestock "unless negligently and willfully done." This law imposes a duty on railroads to maintain adequate fences and guards. It protects the traveling public as well as the owners of livestock. A person suing and recovering damages from the railroad under this law is entitled to reasonable attorney's fees.

Illinois law provides a penalty for driving livestock down a railroad right-of-way (within its fences) without the consent of the railroad, for damaging railroad fences or guards, for leaving gates at farm crossings open, and for leaving horses or other animals standing on farm or road crossings.

When a railroad company neglects to build or repair its fences and farm crossing gates, the owner of the land adjoining the railroad may give written notice to the company to build within thirty days or to repair within ten days, as the case may be. Should the company fail to comply with the notice, the landowner may do the work personally and then sue to recover double the value plus interest of 1 percent a month until payment is made. A railroad company and an adjoining owner may also contract to transfer the duty of maintaining fences to that adjoining owner.

Although Illinois law requires a railroad company to construct farm crossings wherever necessary, a landowner does not have an absolute right to a farm crossing. Factors determining whether a farm crossing is necessary and, if so, what type of crossing is required, include the character and value of the land adjoining the railroad, the benefit accruing to the landowner if the crossing is constructed, the possibility of increased danger to the public from construction of the crossing, and the cost to the railroad of construction and maintenance. The Illinois Supreme Court has stated that the proper test of need is "reasonable convenience" rather than indispensability.

DIVISION FENCES

The Illinois legislature first passed a law concerning division fences in 1819. The law, amended several times, now provides that two or more persons having lands adjoining shall each build and maintain a just proportion of the fence dividing their properties. This fence law is designed to serve two purposes. First, it prevents friction between adjoining owners by specifying each owner's duties. Second, it eliminates the waste of resources resulting from two fences separated by a "devil's lane." Fence viewers have significant responsibility in implementing Illinois fence law. Their role is discussed later in this circular.

The Duty to Fence

Many Illinois farmers keep no livestock and therefore feel that any fencing between their own and adjoining property should be built and maintained by the owner of the adjoining land. As mentioned earlier, however, Illinois law does not relieve them of responsibility. Instead, the law provides that

[w]hen any person wishes to inclose his land, located in any county having less than 1,000,000 population according to the last preceding federal census and not within the corporate limits of any municipality in such county, each owner of land adjoining his land shall build, or pay for the building of, a just proportion of the division fence between his land and that of the adjoining owner and each owner shall bear the same proportion of the costs of keeping that fence maintained and in good repair. [Ill. Rev. Stat., ch. 34, §4]

Illinois law thus gives a landowner the right to compel an adjoining owner to build a division fence. Nonetheless, the landowner desiring the

fence may not attempt to coerce the adjoining owner to build a fence by willfully permitting his or her animals to enter the adjoining owner's property.

The obligation of landowners to contribute their just share toward the cost of maintaining a fence arises at the time the fence becomes a division fence. For example, an owner who sells a part of his or her farm must, with the purchaser, share the responsibility for the division fence from the date of sale.

In addition to private landowners, others may bear responsibility for division fences. School districts in Illinois must repair and maintain all division fences between school grounds and adjoining lands. Although the statute does not prescribe the kind of fence required, it can be assumed that the fence should be a "lawful" one as described in the fence law — one capable of preventing hogs, sheep, cattle, horses, and other stock from entering the adjoining land of another. In addition, Illinois law states that if land adjoining any state park is used for farming, the Department of Conservation must construct and maintain its just proportion of the division fence.

Churches, cemeteries, park districts, and other agencies, whether public or private, are apparently in the same position as other landowners with respect to division fences. If such an agency desires a fence that would exceed the legal requirement, however, it should bear the extra cost of building and maintaining such a fence.

Highway authorities are not required to fence the road right-of-way. The obligations for fencing borne by railroad companies are discussed in the section, "Railroad Fences and Farm Crossings."

The Lawful Fence

Under Illinois fence law, one owner can compel the adjoining owner to build a fence that meets the standard of a "lawful" fence. The law defines a lawful fence as a fence 4½ feet high, in good repair, consisting of rails, timber boards, stone, hedges, barbed wire, woven wire, or other suitable material. The fence is to be sufficient to prevent cattle, horses, sheep, hogs, and other stock from entering the adjoining lands of another.*

* In counties under township organization, the electors at an annual town meeting may determine what shall constitute a legal fence in that township. In counties not under township organization, the county board has the power to regulate the height of fences. In addition, fence viewers of a town or precinct may permit construction with other materials equivalent to those specified in the law.

The corporate authorities of each municipality have the power to regulate fences (not including railroad fences) within the jurisdiction of the municipality. This power would apply to fences on farmland within the corporate limits of the municipality.

This definition helps to prevent disputes about what constitutes a proper division fence. It indicates that one adjoining owner cannot compel the other to use certain kinds of material in the construction of the fence, nor can one owner demand a fence that will turn away animals other than those specified in the law. The definition, however, applies only to division fences, not to other fences on the farm.

Owners whose properties adjoin may agree on the type of division fence that they want. They may agree, for example, that a barbed wire fence or an electric fence on the division line will suffice. Or they may agree that they need no fence at all.

An owner cannot be held liable for injuries to another's animals caused by his or her fence, unless the injury results from the owner's negligence in maintaining the fence.

Electric Fences

Can an electric fence be considered a "lawful" fence under Illinois law? The answer to this question depends on the interpretation of the fence law, particularly those portions giving discretion to fence viewers, township electors, and county boards. Because barbed wire can be used in a legal fence, an electric fence would also seem to meet the requirements for a legal fence if it is in good repair, if the top strand is at least 4½ feet high, and if it will hold the kind of livestock turned against it. An electric fence should be considered a legal fence, however, only if it can safely prevent livestock from trespassing. Adjoining owners may agree to use an electric fence for the division fence.

Because electric fences are used primarily as temporary or movable fences within the farm itself, their legality is often less important than the question of liability for death or injury to persons or to the animals of other owners. When injury to others is caused by negligence in constructing, installing, or maintaining an electric fence, the owner may be held liable for damages. The Illinois law of comparative negligence may sometimes result in liability for the owner even if the injured parties are themselves partially at fault.

Maintaining a Just Proportion

Illinois law requires each adjoining owner to build and maintain a "just proportion" of the division fence. The law does not specify which portion or how much of the fence each owner must build and maintain. By custom, owners ordinarily assume responsibility for a designated half of the fence, usually the half to their right as, standing on their own property, they face the division line. Owners may agree, however, to divide the

responsibility in another way. If one part of the fence is more difficult or expensive to maintain, for example, the owner maintaining that part may be responsible for less than half of the entire fence.

Ordinarily, a floodgate or water gap is maintained by the owner in whose end of the fence it happens to lie. Because the law states that each owner shall maintain a "just proportion" of the fence, there is no reason why an owner who maintains a floodgate or water gap should not be compensated by having a smaller proportion of the fence to maintain.

When owners cannot agree on the proportion of the division fence that each must build or maintain, the law provides that fence viewers can specify the proportion for which each owner is responsible. One decision that fence viewers cannot make, however, is that each owner should maintain his or her own side of a hedge fence.

In making their decision, the fence viewers will examine the premises and listen to the allegations of the parties. They may also question previous owners and tenants, as well as employees of the farm, to see which portion of the fence had been maintained by former owners.

The Right to Discontinue Maintenance

The law prescribes the conditions under which an owner (A) may stop maintaining his or her part of a division fence. Stated briefly, owner A must give the adjoining owner (B) one year's written notice of A's intention to remove a portion of the fence; receive permission for removal from the adjoining owner; and let adjacent lands lie uncultivated and un-pastured. Even if these conditions are met, owner B may prevent owner A from removing A's portion of the fence by having the value of that portion determined by fence viewers and by paying the amount of that valuation to owner A. But if a fence has been removed entirely in accordance with this law and a new one has been erected, any person wanting to use the new fence must pay one-half of its original cost to the owner.

A landowner who fails to comply with these requirements and removes a division fence without giving the adjoining owner written notice can be held liable for all damages that may result. Should an unlawful removal be made, the adjoining owner may rebuild the fence at the expense of the person who made the unlawful removal.

Construction and Repair

Illinois law provides two remedies for situations in which an owner neglects to repair or rebuild a just portion of a division fence. First, the adjoining owner may have two fence viewers of the town or precinct examine the fence. If the fence viewers find that the fence is inadequate,

they are required to direct the negligent owner to repair or rebuild a just proportion of the division fence within a reasonable time.

The second remedy applies to repair as well as to the initial erection of a division fence. Under this provision, an owner may give sixty days' written notice to an adjoining owner to build the fence or ten days' written notice to repair the fence. Should the adjoining owner fail to comply with this notice, the complaining owner may build or repair the fence. Under this provision, too, the owner may hold the adjacent owner liable for any damage resulting from neglect of the fence and may recover the expense of building or repairing the fence, along with costs of suit.

An Illinois court decision suggests that one who repairs a fence under this provision cannot collect for the cost of repair unless fence viewers have first determined that repairs were necessary. In any event, fence viewers should be consulted. The concurrence of fence viewers on the genuine need for repairs will aid the complaining owner, should court action prove necessary.

The law also provides that when fire, flood, or other casualty damages or destroys a division fence, that portion of the fence must be rebuilt or repaired by the person responsible for it within ten days after the latter has received written notice to do so. If a flood destroys a floodgate or a part of the fence that crosses a stream or natural watercourse, however, the owner must rebuild or repair within two days after being notified. Should the owner, under these circumstances, fail to make repairs within the time specified by law, the injured party may do the work and recover the expenses as well as costs of suit if legal action is necessary.

Mislocated Fences

The Illinois fence law includes provisions that apply to mislocated fences. An owner who has mistakenly built a division fence on an adjoining owner's land may enter that land and move the fence to the true line within six months after the true line has been run. If removal within that six-month period will expose the crops of either party to livestock, the fence may be removed within a reasonable time after crops are secured. If the fence was made of materials taken from the land on which it was built, it may be removed only after the owner pays (or tenders payment) for materials taken from that land. These provisions for the removal of mislocated fences, however, do not alter the law that applies to fences mislocated for twenty years or more.

If a fence marking the boundary between two tracts of land has been mislocated for more than twenty years, a permanent change in ownership may result through the law of adverse possession. The Illinois law of ad-

verse possession has a number of technical requirements. In general, it must be established that the claimant's possession of the land in question has been hostile or adverse, actual, open and notorious, exclusive, continuous for more than twenty years, and under a claim of ownership. Proof of adverse possession must be clear and convincing. Illinois courts have held that a mislocated boundary fence may satisfy these requirements. A lawsuit is necessary to establish clear title by adverse possession, however, and a landowner who has questions on this matter should consult an attorney.

Fence Viewers

The fence viewers are a local body with significant responsibility to implement Illinois fence law effectively. In counties under township organization, town boards of trustees are ex officio fence viewers. In counties not under township organization, the presiding officer of the county board, with the advice and consent of the board at its annual meeting, appoints three fence viewers in each precinct to one-year terms.

Fence viewers have three main responsibilities:

1. to determine the value of a division fence when adjoining owners cannot agree on the amount that one owner should contribute to another for building the fence, or when one owner intends to let his or her land lie open and the adjoining owner wishes to buy that portion of the fence;
2. to fix, when disputes arise, the proportion of a division fence to be maintained by each owner; and
3. to examine the fence on the complaint of one owner that an adjoining owner has failed to make the necessary repairs and, if the fence requires repairs, to order the delinquent party to make them within a reasonable, specified time.

When fence viewers must be consulted, adjoining owners ordinarily engage two viewers to resolve the dispute. Each party may choose one of the viewers, but if one owner should neglect to do so, the other owner may choose both after giving eight days' written notice. If the two viewers disagree, they may select a third viewer to act with them.

In performing their functions, fence viewers may compel testimony with regard to any questions submitted to them, and each has the power individually to issue subpoenas for and administer oaths to witnesses.

For the time spent settling fence disputes, each viewer is entitled to payment of \$1.50 a day from the party requesting the services. Expenses of the fence viewing are usually shared equally by the parties. But if the viewers determine that one party is at fault for failure to build or main-

tain a just proportion of the division fence, that person must bear the entire cost.

Fence viewers must conform strictly to the law and act only in the area over which the law gives them authority. Their decisions must be written and filed with the town clerk or, in counties not under township organization, with the county clerk. A decision by any two fence viewers binds the parties to the dispute and all those who receive ownership or possession of the land from the parties. Nonetheless, a party is entitled to seek judicial review of the fence viewers' decision for the purpose of determining whether the decision was arbitrary and inequitable.

HEDGE FENCES

Hedges may be used as division fences according to Illinois fence law. Hedges are also frequently used along highways. Because hedges require regular trimming, Illinois law includes some special rules for hedge fences.

The law does not prescribe the type of hedge that may be used as fencing. Osage-orange hedges are mentioned specifically, but apparently other fences, including multiflora rose, come within the legal requirements that apply to hedges.

Trimming Hedge Division Fences

Illinois law requires the owner of a hedge division fence to trim it to a height of 4 feet or less the year after the hedge becomes seven years old, and to 5 feet every two years after that time. Trimming must be done on or before June 15. If an owner fails to trim the hedge as required by law, an adjoining owner who has complied with the fence law may give ten days' written notice. After that time, the adjoining owner may trim the hedge and recover the cost from the owner of the hedge.

Sixty rods of hedge in a division fence may be left untrimmed to protect wildlife, orchards, buildings, or windbreaks, or to protect against soil erosion. The hedge must actually be serving as protection if this exception is to be made. The mere prospect of such use is not considered a sufficient reason for failure to trim the hedge.

In trimming a hedge fence, even one neglected by an adjoining owner, a person is entitled only to his or her share of the posts that might be taken out of the trimmings.

Trimming Hedges Along Highways

Illinois law requires the regular trimming of hedge fences growing along the right-of-way line of any public highway so that the hedges will not obstruct the public highway, impair its usefulness, or endanger the

public. In the year after a hedge fence becomes seven years old, the owner must trim it to a height of 5 feet or less; at least once every year after that time, the hedge must be trimmed to 5 feet. An orange-orange hedge is subject to the same regulations, except that annual trimming need not begin until the second year after it is first trimmed, and it must be trimmed to a height of 4 feet. In addition to height requirements, owners must trim hedges on the roadside so that foliage will not extend more than 4 feet over the right-of-way line. All required trimming must be done before October 1.

The appropriate highway authority may permit an owner to leave as much as one-fourth of the length of a hedge fence along a highway untrimmed to serve as a windbreak for livestock. The owner must apply for this privilege, and the permission can be revoked at any time.

Planting willow hedge fences on the margin of highways has been made illegal in Illinois. Where such hedge fences already exist so as to make tiling impracticable, the appropriate highway authority may contract with the owner for their destruction before tiling.

Removing Hedges

One landowner cannot force another to remove a hedge because Illinois law refers only to the trimming and not the removal of hedges. If, however, a division hedge fence as trimmed will not contain animals, the owner may be forced to make the hedge a "lawful" fence. The owner may do this by reinforcing the hedge with other material or by removing the hedge and replacing it with a different kind of fence.

Liability for Crop Damages

Where a landowner maintains a hedge in his or her portion of the division fence according to the law, there is no liability for crop damage caused to adjoining property. Although the law is not clear about liability when hedges are maintained contrary to the trimming statute, it seems reasonable that an owner should be liable for damages resulting from improper trimming. This principle would also apply to hedges that are not part of a division fence but that nevertheless overhang and damage adjoining property.

No Illinois cases discuss damages for loss of yield caused by overhanging branches and trespassing roots of individual trees. One remedy available to an adjoining owner is to trim the overhanging limbs and remove the roots that cross the division line.

Urbana, Illinois

Revised March, 1983

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copy of the conservation right to be mailed to the State Department of Conservation.
 P.A. 80-584, § 5, eff. Sept. 12, 1977. Amended by P.A. 83-358, § 26, eff. Sept. 14, 1983.
 Formerly Ill.Rev.Stat.1991, ch. 30, § 405.

120/6. Construction of Act

§ 6. This Act shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of the Act shall, on account of any provision herein, be unenforceable. Nothing in this Act shall diminish the powers granted in any other law to acquire by purchase, gift, grant, eminent domain or otherwise and to use land for public purposes.

P.A. 80-584, § 6, eff. Sept. 12, 1977.

Formerly Ill.Rev.Stat.1991, ch. 30, § 406.

ACT 125. ENTRY ON ADJOINING LAND TO ACCOMPLISH REPAIRS ACT

Section
 125/0.01. Short title.
 125/1. Repair and maintenance.

125/0.01. Short title

§ 0.01. Short title. This Act may be cited as the Entry on Adjoining Land to Accomplish Repairs Act.
 P.A. 86-561, § 0.01, added by P.A. 86-1324, § 272, eff. Sept. 6, 1990.

Formerly Ill.Rev.Stat.1991, ch. 30, § 1050.

Title of Act:

An Act concerning repair and maintenance of real property. P.A. 86-561, approved Sept. 1, 1989, eff. Jan. 1, 1990.

125/1. Repair and maintenance

§ 1. If repair and maintenance of a single family residence existing on the date this Act takes effect cannot be reasonably accomplished without entering onto the adjoining land, and if the owner of the adjoining land refuses to permit entry onto that adjoining land for the purpose of repair and maintenance of the single family residence, then the owner of the single family residence may bring an action in the circuit court to compel the owner of the adjoining land to permit entry for the purpose of repair and maintenance. The court shall prescribe the conditions of the entry and shall determine the amount of damages to be paid to the owner of the adjoining land. The court may require the owner of the single family residence to give bond to the owner of the adjoining land to secure performance and payment.

P.A. 86-561, § 1, eff. Jan. 1, 1990.

Formerly Ill.Rev.Stat.1991, ch. 30, § 1051.

ACT 130. FENCE ACT

Section
 130/0.01. Short title.
 130/1. Fence viewers.
 130/2. Lawful fence.
 130/3. Division fence.
 130/4. Inclosed lands—Contribution.
 130/5. Value of fence, etc., ascertained.
 130/6. Neglect to repair or rebuild.
 130/7. Disputes—Settlement.

Section
 130/8. Choice of viewers—Notice.
 130/9. Viewing fence—Disagreement.
 130/10. Decision—Filing.
 130/10.1. Failure to decide—Assumption of jurisdiction.
 130/11. Neglect—Damages.
 130/12. Making and repairing fences destroyed.
 130/13. Refusing to make or repair.
 130/14. Removal of division fence—Notice—Use of new fence—Landlord's responsibility.
 130/15. Removal without notice.
 130/16. Mistake in locating fence—Removal.
 130/17. When removal may not be made.
 130/18. Viewers may examine witnesses, etc.
 130/19. Fees.
 130/20. Damages by animals entering fenced enclosure.
 130/21. Damages feasant—Rescues—Actions—Notice.

130/0.01. Short title

§ 0.01. Short title. This Act may be cited as the Fence Act.

R.S.1874, p. 527, § 0.01, added by P.A. 86-1324, § 482, eff. Sept. 6, 1990.

Formerly Ill.Rev.Stat.1991, ch. 54, § 0.01.

Title of Act:

An Act to revise the law in relation to fences. R.S.1874, p. 527, approved March 21, 1874, eff. July 1, 1874.

130/1. Fence viewers

§ 1. In counties under township organization the board of trustees shall be ex officio fence viewers in their respective towns. In counties not under township organization the presiding officer of the county board, with the advice and consent of the county board, at the annual meeting of the county board in December, shall appoint three fence viewers in each precinct, who shall hold their office for one year, and until their successors are appointed.

R.S.1874, p. 527, § 1, eff. July 1, 1874. Amended by Laws 1915, p. 444, § 1, eff. July 1, 1915; Laws 1959, p. 1401, § 1, eff. April 24, 1961; P.A. 78-1128, § 32, eff. Oct. 1, 1974; P.A. 82-783, Art. X, § 11, eff. July 12, 1982.

Formerly Ill.Rev.Stat.1991, ch. 54, § 1.

130/2. Lawful fence

§ 2. Fences four and one-half feet high, and in good repair, consisting of rails, timber boards, stone, hedgus, barb wire, woven wire or whatever the fence viewers of the town or precinct where the same shall lie shall consider equivalent thereto suitable and sufficient to prevent cattle, horses, sheep, hogs and other stock from getting on the adjoining lands of another, shall be deemed legal and sufficient fences: Provided, that in counties under township organization, the electors, at any annual town meeting, may determine what shall constitute a legal fence in the town; and in counties not under township organization, the power to regulate the height of fences shall be vested in the county board.

R.S.1874, p. 527, § 2, eff. July 1, 1874. Amended by Laws 1887, p. 188, § 1, eff. July 1, 1887; Laws 1917, p. 527, § 1, eff. July 1, 1917.

Formerly Ill.Rev.Stat.1991, ch. 54, § 2.

130/3. Division fence

§ 3. When 2 or more persons have lands adjoining, each of them shall make and maintain a just proportion of the division fence between them, and if such fence shall be a hedge fence, then the owner or owners of such hedge fence shall, during the year after such hedge has attained the age of 7 years, cut back or trim such hedge fence to a height not to exceed 4 feet, and shall at least once in every 2 years thereafter, cut back or trim such hedge fence to the height of 5 feet. The provisions of this section shall not apply to any hedge fence protecting either an orchard, buildings or wind break, nor shall the provisions of this Section apply to any such fence for the preservation of wildlife and protection against soil erosion. Such hedge fences protecting wildlife, or orchards, or buildings or windbreaks, and such fences protecting against soil erosion shall not exceed 60 rods in length. If the owner or owners of such hedge fence shall fail or refuse to comply with the provisions of this act, on or before the 15th day of June in the year that such hedge should be cut or trimmed, any one of the owners of such division fence having complied with the provisions of this act may give the owner or owners, or their agents, of any such uncut or untrimmed hedge, 10 days notice, in writing to cut or trim such hedge. And should the owner or owners, or their agents so notified fail or refuse to comply with such notice it shall be lawful for the person giving the notice to cut or trim or cause to be cut or trimmed, in accordance with law, and the cost and damage of cutting or trimming such hedge may be recovered off of the owner or owners of such hedge before any court of competent jurisdiction.

R.S.1874, p. 527, § 3, eff. July 1, 1874. Amended by Laws 1889, p. 155, § 1, eff. July 1, 1889; Laws 1957, p. 1146, § 1, eff. July 5, 1957; Laws 1965, p. 3536, § 1, eff. Aug. 24, 1965.

Formerly Ill.Rev.Stat.1991, ch. 54, § 3.

130/4. Inclosed lands—Contribution

§ 4. When any person wishes to inclose his land, located in any county having less than 1,000,000 population according to the last preceding federal census and not within the corporate limits of any municipality in such county, each owner of land adjoining his land shall build, or pay for the building of, a just proportion of the division fence between his land and that of the adjoining owner and each owner shall bear the same proportion of the costs of keeping that fence maintained and in good repair. The provisions of this Section shall not apply to fences on lands held by public bodies for roadway purposes.

R.S.1874, p. 527, § 4, eff. July 1, 1874. Amended by Laws 1951, p. 1734, § 1, eff. July 28, 1951; Laws 1967, p. 3001, § 1, eff. Aug. 14, 1967.

Formerly Ill.Rev.Stat.1991, ch. 54, § 4.

130/5. Value of fence, etc., ascertained

§ 5. The value of such fence, and the proportion thereof to be paid by such person, and the proportion of the division fence to be made and maintained by him, in case of his inclosing his land, may be determined by 2 fence viewers of the town, in counties under township organization, and in other counties by any 2 fence viewers of the precinct; or, at the option of the aggrieved party, such

value or proportion may be ascertained in an action brought by him before any court of competent jurisdiction. R.S.1874, p. 527, § 5, eff. July 1, 1874. Amended by Laws 1917, p. 527, § 1, eff. July 1, 1917; Laws 1965, p. 3536, § 1, eff. Aug. 24, 1965.

Formerly Ill.Rev.Stat.1991, ch. 54, § 5.

130/6. Neglect to repair or rebuild

§ 6. If any person neglect to repair or rebuild a division fence, or portion thereof, which he ought to maintain, any two fence viewers of the town or precinct, as the case may be, shall, on complaint by the party aggrieved, after giving due notice to each party, examine such fence, and if they deem the same to be insufficient, they shall so notify the delinquent party, and direct him to repair or rebuild the same within such time as they may deem reasonable.

R.S.1874, p. 527, § 6, eff. July 1, 1874.

Formerly Ill.Rev.Stat.1991, ch. 54, § 6.

130/7. Disputes—Settlement

§ 7. If disputes arise between the owners of adjoining lands concerning the proportion of fence to be made or maintained by either of them, such dispute may be settled by any two of the fence viewers of the town or precinct, as the case may be, and in such cases it shall be the duty of the two fence viewers to distinctly mark and define the proportion of the fence to be made or maintained by each.

R.S.1874, p. 527, § 7, eff. July 1, 1874. Amended by Laws 1917, p. 527, § 1, eff. July 1, 1917.

Formerly Ill.Rev.Stat.1991, ch. 54, § 7.

130/8. Choice of viewers—Notice

§ 8. When any of the above mentioned matters shall be submitted to fence viewers, each party shall choose one; and if either neglect, after eight days' notice in writing, to make such choice, the other party may select both. And for all purposes of notice under this act, it shall be sufficient to notify the tenant or person in possession of said adjoining premises, when the owner thereof is not a resident of the town in which such fences are situated.

R.S.1874, p. 527, § 8, eff. July 1, 1874.

Formerly Ill.Rev.Stat.1991, ch. 54, § 8.

130/9. Viewing fence—Disagreement

§ 9. The two fence viewers so chosen shall examine the premises, and hear the allegations of the parties. In case of their disagreement, they shall select another fence viewer to act with them; and the decision of any two of them shall be final upon the parties to such dispute, and upon all parties holding under them.

R.S.1874, p. 527, § 9, eff. July 1, 1874.

Formerly Ill.Rev.Stat.1991, ch. 54, § 9.

130/10. Decision—Filing

§ 10. 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 other point in dispute between the parties, submitted to them as aforesaid; and shall be forthwith filed in the office of the town clerk, or in the office of the county clerk in counties which shall not have adopted township organization.

R.S.1874, p. 527, § 10, eff. July 1, 1874.

Formerly Ill.Rev.Stat.1991, ch. 54, § 10.

130/10.1. Failure to decide—Assumption of jurisdiction

§ 10.1. If for any reason the fence viewers shall fail to make a decision within 90 days after the matter has been submitted to them, either the county board or the township board of trustees may assume jurisdiction of the matter and make a decision thereon. If neither the county board nor the township board of trustees makes a decision thereon within 60 days after the expiration of such 90 day period, either party may petition the circuit court of the county in which the fence is located to make the decision thereon and in such case the circuit court shall have original jurisdiction to hear and decide the matter.

R.S.1874, p. 527, § 10.1, added by P.A. 84-339, § 1, eff. Jan. 1, 1986.

Formerly Ill.Rev.Stat.1991, ch. 54, § 10.1.

130/11. Neglect—Damages

§ 11. If any person who is liable to contribute to the erection or reparation of a division fence shall neglect or refuse to make or repair his proportion of such fence, the party injured, after giving 60 days' notice, in writing, that a fence should be erected, or 10 days' notice, in writing, that the reparation of a fence is necessary, 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, in the circuit court; and the party so neglecting or refusing, after notice in writing, shall be liable to the party injured for all damages which shall thereby accrue.

R.S.1874, p. 527, § 11, eff. July 1, 1874. Amended by Laws 1917, p. 527, § 1, eff. July 1, 1917; Laws 1965, p. 8596, § 1, eff. Aug. 24, 1965; P.A. 79-1362, § 5, eff. Oct. 1, 1976.

Formerly Ill.Rev.Stat.1991, ch. 54, § 11.

130/12. Making and repairing fences destroyed

§ 12. Whenever a division fence shall be injured or destroyed by fire, floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be thereto required by any person interested therein—such requisition to be in writing, and signed by the party making the same: Provided, that when a flood gate or that portion of a division fence which crosses a stream or natural water course is destroyed by flood, the person bound to make or repair the same shall make or repair the same or his just proportion thereof within two days after he shall be thereto required by any interested person.

R.S.1874, p. 527, § 12, eff. July 1, 1874. Amended by Laws 1919, p. 569, § 1, eff. July 1, 1919.

Formerly Ill.Rev.Stat.1991, ch. 54, § 12.

130/13. Refusing to make or repair

§ 13. If such person shall neglect or refuse to make or repair his proportion of such fence or flood gate within the periods specified in section 12 of this Act, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered with costs of suit.

R.S.1874, p. 527, § 13, eff. July 1, 1874. Amended by Laws 1919, p. 569, § 1, eff. July 1, 1919.

Formerly Ill.Rev.Stat.1991, ch. 54, § 12.

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130/14. Removal of division fence—Notice—Use of new fence—Landlord's responsibility

§ 14. If any person is disposed to remove a division fence, or part thereof, owned by him or her, and allow his or her lands to be uncultivated and not used for pasture purposes, after having first given the adjoining owner one year's notice, in writing, of his or her intention so to do and having received such adjoining owner's permission, he or she may, at any time thereafter, remove the same, unless such adjoining owner shall previously cause the value of the fence to be ascertained by fence viewers, selected as hereinbefore provided, and pay or tender the same to such person; provided that if, in accordance with such provisions, the fence has been removed entirely and a new one erected, any person who seeks to make use of the new fence shall pay to the owner one-half of the original cost thereof. With reference to the removal or use of a fence as set forth in this Section, a landlord shall be responsible for the acts of a tenant.

R.S.1874, p. 527, § 14, eff. July 1, 1874. Amended by Laws 1945, p. 872, § 1, eff. July 25, 1945; Laws 1951, p. 1734, § 1, eff. July 23, 1951; P.A. 81-669, § 1, eff. Jan. 1, 1980; P.A. 84-551, § 36, eff. Sept. 18, 1985.

Formerly Ill.Rev.Stat.1991, ch. 54, § 14.

130/15. Removal without notice

§ 15. If any such fence shall be removed without such notice, the party removing the same shall pay to the party injured all such damages as he may thereby sustain, to be recovered with costs of suit.

R.S.1874, p. 527, § 15, eff. July 1, 1874.

Formerly Ill.Rev.Stat.1991, ch. 54, § 15.

130/16. Mistake in locating fence—Removal

§ 16. When a person has made a fence on an inclosure which afterward on making division lines is found to be on the land of another, and the same has occurred through mistake, such first person may enter on the land of the other and remove his fence and material within six months after such line has been run.

R.S.1874, p. 527, § 16, eff. July 1, 1874.

Formerly Ill.Rev.Stat.1991, ch. 54, § 16.

130/17. When removal may not be made

§ 17. But such fence shall not be removed if it was made of material taken from the land on which it is built, until the party pays or tenders to the owner of the land the value of such material, to be ascertained by the fence viewers; nor shall a fence be removed at a time when the removal will throw open or expose the crops of either party, but it may be removed within a reasonable time after the crops are secured, although the six months above specified have passed.

R.S.1874, p. 527, § 17, eff. July 1, 1874. Amended by Laws 1951, p. 1734, § 1, eff. July 23, 1951.

Formerly Ill.Rev.Stat.1991, ch. 54, § 17.

130/18. Viewers may examine witnesses, etc.

§ 18. Fence viewers may examine witnesses on any and all questions submitted to them, and either of such

fence viewers shall have power to issue subpoenas for, and administrator oaths to such witnesses.

R.S.1874, p. 527, § 18, eff. July 1, 1874.

Formerly Ill.Rev.Stat.1991, ch. 54, § 18.

130/19. Fees

§ 19. Fence viewers shall be entitled to \$15 per day, each, for the time necessarily spent as above provided, to be paid in the first instance by the party requiring the services; and 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 a division fence, in which case the costs of view shall be paid by the party in default, and may be recovered as part of the damages assessed.

R.S.1874, p. 527, § 19, eff. July 1, 1874. Amended by P.A. 84-369, § 1, eff. Jan. 1, 1986.

Formerly Ill.Rev.Stat.1991, ch. 54, § 19.

130/20. Damages by animals entering fenced enclosure

§ 20. If any horse, mule or ass, or any neat cattle, pigs or sheep, or other domestic animals, shall break into any person's inclosure, the fence being good and sufficient, the owner of such animal or animals shall be liable, in a civil action, to make good all damages to the owner or occupier of the inclosure. This section shall not be construed to require such fence, in order to maintain an action for injuries done by animals running at large contrary to law.

R.S.1874, p. 527, § 20, eff. July 1, 1874. Amended by Laws 1935, p. 880, § 1, eff. July 1, 1935.

Formerly Ill.Rev.Stat.1991, ch. 54, § 20.

30/21. Damages fenant—Rescue—Actions—Notice

§ 21. If any such animal or animals shall break into an enclosure surrounded by a fence of the height and sufficiency prescribed by this act, or shall be wrongfully upon the premises of another, the owner or occupier of such enclosure or premises may take into possession such animal or animals trespassing, and keep the same until damages, with reasonable charges for keeping and feeding, and all costs of action be paid, to be recovered in the circuit court, and any person who shall take or rescue any such animal so taken up from the possession of the holder of the animal without such holder's consent, shall be liable to a fine of not less than 3 nor more than 5 dollars for each of such animals so rescued, to be recovered in the circuit court of the county where such offense has been committed, for the use of the school fund of the proper county. Within 24 hours after taking such animal into his or her possession, such holder of the animal shall give notice to the owner thereof, if known, or if unknown, he or she shall post notices at some public place near the premises.

R.S.1874, p. 527, § 21, eff. July 1, 1874. Amended by P.A. 83-337, § 2, eff. Sept. 14, 1983.

Formerly Ill.Rev.Stat.1991, ch. 54, § 21.

ACT 135. WATER DAM USE ACT

Section

135/0.01. Short title.

135/1. Regulating and measuring water-power.

135/0.01. Short title

§ 0.01. Short title. This Act may be cited as the Water Dam Use Act.

Laws 1877, p. 138, § 0.01, added by P.A. 86-1324, § 688, eff. Sept. 6, 1990.

Formerly Ill.Rev.Stat.1991, ch. 96 1/2, § 8150.

Title of Act:

An Act to enable any person, persons or corporation owning dams, to regulate the delivery and use of water or water-power. Laws 1877, p. 138, approved May 11, 1877, eff. July 1, 1877.

135/1. Regulating and measuring water-power

§ 1. In any and all cases where different persons have the right to use, in separate or distinct quantities or proportions, the water or water-power furnished by a dam across any river in this state, it shall be lawful for such person and the owner or owners of such dam and water-power to fix and determine upon some fair, impartial and reasonable mode and manner by a system of weirs, or weirs and floats, or other reasonable plan of measuring and delivering to each person entitled to use the water or water-power furnished by such dam, his just share or proportion thereof, which regulation, when made and acknowledged by such persons and the owner or owners of such dam and water-power, and recorded in the recorder's office of the county in which such dam is situated, shall be binding upon all persons entitled to use the water or water-power furnished by such dam; and in case any such dam is owned by a corporation, such corporation may by by-law or resolution entered upon a book kept by the corporation and subject to the free inspection of all persons interested make such regulations: Provided, however, that in all cases the regulations made for measuring and delivering such water or water-power shall fairly and impartially apportion the same to each person entitled to the use of the same according to his just share thereof: And, provided, further, that nothing in this act contained shall be construed to impair any covenant, contract or agreement heretofore executed to any person or corporation for water or water-power or their legal rights thereto.

Laws 1877, p. 138, § 1, eff. July 1, 1877.

Formerly Ill.Rev.Stat.1991, ch. 96 1/2, § 8151.

ACT 140. ADJACENT LANDOWNER EXCAVATION PROTECTION ACT

Section

140/0.01. Short title.

140/1. Evacuation—Notice—Liability—Sustention adjoining land—Standard depth, defined.

140/2. Repealed.

140/0.01. Short title

§ 0.01. Short title. This Act may be cited as the Adjacent Landowner Excavation Protection Act.

Laws 1967, p. 1102, § 0.01, added by P.A. 86-1324, § 794, eff. Sept. 6, 1990.

Formerly Ill.Rev.Stat.1991, ch. 111 1/2, § 3300.

Title of Act:

An Act to prescribe the duty of an owner or occupant of lands upon which excavations are made in reference to the furnishing of lateral and subjacent support to adjoining lands and structures thereon. Laws 1967, p. 1102, approved and eff. July 1, 1967.