

## SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 219

AN ACT

To repeal sections 272.010, 272.020, 272.040, 272.050, 272.060, 272.070, 272.100, 272.110, 272.130, 272.150, 272.160, 272.170, 272.180, 272.190 and 272.200, RSMo 2000, relating to property rights, and to enact in lieu thereof twelve new sections relating to the same subject.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 272.010, 272.020, 272.040, 272.050, 272.060, 272.070, 272.100, 272.110, 272.130, 272.150, 272.160, 272.170, 272.180, 272.190 and 272.200, RSMo 2000, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 272.010, 272.020, 272.040, 272.050, 272.060, 272.070, 272.100, 272.110, 272.130, 272.132, 272.134 and 272.136, to read as follows:

272.010. All fields and enclosures where animals are kept shall be enclosed by [hedge, or with a fence sufficiently close, composed of posts and rails, posts and palings, posts and planks, posts and wires, palisades or rails alone, laid up in a manner commonly called a worm fence, or of turf, with ditches on each side, or of stone or brick] a lawful fence as defined in section 272.020.

272.020. [All hedges shall be at least four feet high, and all fences composed of posts and rails, posts and palings, posts and wire, posts and boards or palisades, shall be at least four

and one-half feet high, with posts set firmly in the ground, not more than eight feet apart, and with rails, palings, wire, boards or palisades securely fastened thereto, and placed at proper distances apart, so as to resist horses, cattle, swine and like stock; and fences composed of woven wire, wire netting or wire mesh shall be at least four and one-half feet high, securely fastened to posts, such posts to be set firmly in the ground, and not more than sixteen feet apart, and such woven wire, wire netting or wire mesh to be of sufficient closeness and strength as to resist horses, cattle, swine and like stock; those composed of turf shall be at least four feet high and with ditches on either side at least three feet wide at the top and three feet deep; and what is known as a worm fence shall be at least five feet high to the top of the rider, or if not ridered, shall be five feet to the top rail or pole, and shall be locked with strong rails or poles or stakes; those composed of stone or brick shall be at least four and one-half feet high; provided, that in counties in this state in which swine are restrained from running at large, all fences built of posts set firmly in the ground, not more than sixteen feet apart, and three barbed wires tensely stretched and securely fastened thereto, and the upper wire being substantially four feet from the ground, and the two remaining wires placed at proper distances below to resist horses, cattle and like stock, and all fences built of posts and rails, or posts and slats, with posts set firmly in the ground, not more than ten feet apart, and with three rails or slats securely fastened thereto, and the upper rail or slat being placed substantially four and one-half feet from the ground, and the two remaining

rails or slats to each panel being placed at proper distances below to resist horses, cattle and like stock, and all fences built of posts and boards, with posts set firmly in the ground, not more than eight feet apart, and board substantially one inch thick and six inches wide, securely fastened thereto, and the upper board being at least four and one-half feet high, and the remaining boards placed at proper distances below, to resist horses, cattle and like stock, shall be deemed and held to be a good and lawful fence; provided, that nothing contained in this section shall be so construed as to relieve any railroad company from the obligation of fencing the right-of-way of said company against hogs, sheep, cattle, horses and like stock.] 1. Any fence consisting of posts and wire or boards at least four feet high which is mutually agreed upon by adjoining landowners or decided upon by the associate circuit court of the county is a lawful fence.

2. All posts shall be set firmly in the ground not more than twelve feet apart with wire or boards securely fastened to such posts and placed at proper distances apart to resist horses, cattle and other similar livestock.

272.040. Upon complaint of [the party injured to any circuit or associate circuit judge of the county, such circuit or] either party claiming to be injured because of the trespass or taking up of livestock as described in section 272.030, the associate circuit judge shall, without delay, issue an order to three disinterested householders of the neighborhood, not of kin to either party, reciting the complaint, and requiring them to view the [hedge or] fence where the trespass is complained of,

and take memoranda of the same, and appear before the [judge] court on the day set for trial; and their evidence shall determine the lawfulness of such fence. The persons appointed by the associate circuit judge shall be paid twenty-five dollars each per day for the time actually employed which shall be taxed as costs in the case equally against the parties and collected accordingly.

272.050. If any person [damnified for want of such] who does not maintain a sufficient [hedge or] fence, shall hurt, wound, lame, kill or destroy, or cause the same to be done by shooting, worrying with dogs, or otherwise, any of the animals in this chapter mentioned, such [persons] person shall satisfy the owner in double damages with costs.

272.060. [Whenever the fence of any owner of real estate, now erected or constructed, or which shall hereafter be erected or constructed, the same being a lawful fence, as defined by sections 272.010 and 272.020, serves to enclose the land of another, or which shall become a part of the fence enclosing the lands of another, on demand made by the person owning such fence, such other person shall pay the owner one-half the value of so much thereof as serves to enclose his land, and upon such payment shall own an undivided half of such fence.] 1. Whenever the owner of real estate desires to construct or repair a lawful fence, as defined by section 272.020, which divides his or her land from that of another, such owner shall give written notice of such intention to the adjoining landowner. The landowners shall meet and each shall construct or repair that portion of the division fence which is on the right of each owner as the owners

face the fence line while standing at the center of their common property line on their own property. If the owners cannot agree as to the part each shall construct or keep in repair, either of them may apply to an associate circuit judge of the county who shall forthwith summon three disinterested householders of the township or county to appear on the premises, giving three days' notice to each of the parties of the time and place where such viewers shall meet, and such viewers shall, under oath, designate the portion to be constructed or kept in repair by each of the parties interested and notify them in writing of the same. Such viewers shall receive twenty-five dollars each per day for the time actually employed, which shall be taxed as court costs.

2. Existing agreements not consistent with the procedure prescribed by subsection 1 of this section shall be in writing, signed by the agreeing parties, and shall be recorded in the office of the recorder of deeds in the county or counties where the fence line is located. The agreement shall describe the land and the portion of partition fences between their lands which shall be erected and maintained by each party. The agreement shall bind the makers, their heirs and assigns.

272.070. [If the parties interested shall fail to agree as to the value of one-half of such fence, the owner of the fence may apply to a circuit or associate circuit judge of the county, who shall without delay, issue an order to three disinterested householders of the township, not of kin to either party, reciting the complaint, and requiring them to view the fence, estimate the value thereof, and make return under oath to the associate circuit judge on the day named in the order.] If either

party fails to construct or repair his or her portion of the fence in accordance with the provisions of section 272.060 within a reasonable time, the other may petition the associate circuit court of the county to authorize the petitioner to build or repair the fence in a manner to be directed by the court. If the court authorizes such action, the petitioner shall be given a judgment for that portion of the total cost of the fence which is chargeable as the other party's portion of the fence, court costs and reasonable attorney's fees. Any such judgment shall be a lien on the real estate of the party against whom the judgment may be given.

272.100. The persons appointed by the associate circuit judge [under sections 272.070 and 272.090] pursuant to section 272.040 to discharge the duties therein specified, shall receive [one dollar] twenty-five dollars each per day for the time actually employed, which[, together with the fees of the associate circuit judge and sheriff,] shall be taxed as costs in the case against the parties [in proportion to their respective interests,] and collected accordingly.

272.110. Every person owning a part of a division fence shall keep his or her portion of the same in good repair according to the requirements of this chapter, and [when said division fence is a hedge, shall properly trim the same at least once a year, to a height not greater than four and one-half feet, and to a breadth not greater than three feet, and for the purpose of trimming said hedge as aforesaid, he shall have the right to] may enter upon any land lying adjacent thereto for such purpose. [Either party owning land adjoining a division fence or hedge

may, upon the failure of any of the other parties, have all that part of such division fence belonging to such other parties repaired, upon the failure of such other party to do so, such repairing or trimming to be at the cost of the party so failing to repair or trim his part of such fence; and the party so repairing or trimming such hedge shall always throw the brush trimmed off on his own side of such hedge; and upon neglect or refusal to keep said fence in repair, or to keep said hedge trimmed as provided in this section, such owner shall be liable in double damages to the party injured thereby, and such injured party may enforce the collection of such damages by restraining any cattle or other stock that may break in or come upon his enclosure by reason of the failure of such other party to keep his portion of such division fence in repair and proceeding therewith under the provisions of sections 270.010 to 270.200, RSMo.]

272.130. Any person aggrieved by any order or judgment of the associate circuit judge made or entered [under] pursuant to the provisions of [sections 272.040, 272.070 and 272.090] section 272.040 or 272.070 may have the same reviewed in the same manner as other civil actions.

272.132. If either of two adjoining landowners does not need a fence, the landowner that needs a fence may build the entire fence and report the total cost to the associate circuit judge who shall authorize the cost to be recorded on each deed. Should the landowner that claimed no need for a fence subsequently place livestock against the fence, the landowner that built the fence shall be reimbursed for one-half the

construction costs share to be determined as provided in section 272.060.

272.134. Nothing in this chapter shall prevent adjoining landowners from agreeing that no fence is needed between their property.

272.136. Nothing in this chapter shall prevent either of adjoining landowners from building the landowner or the landowner's neighbor's portion of a fence in excess of the lawful fence requirements prescribed by this chapter.

[272.150. The owners and occupiers of saltpeter works within this state shall keep the same enclosed with a good and lawful fence, so as to prevent horses, cattle and other stock that may receive injury thereby from having access thereto.]

[272.160. Every person, owner or occupier of any saltpeter works within this state, failing to secure the same, with a good and lawful fence, from horses, cattle and any kind of stock that may be injured by drinking the saltpeter water, shall be liable to an action by the party injured by such neglect for double the value of such horses, cattle or other stock injured or killed by drinking such water, to be recovered in any court having competent jurisdiction to try the same.]

[272.170. Hereafter all persons owning or running cotton gins in the state of Missouri shall keep them enclosed with a sufficient fence to keep out hogs.]

[272.180. They shall not allow the cotton seed from their gin to be scattered or thrown outside of the enclosure.]

[272.190. Any person violating the provisions of sections 272.170 and 272.180 shall be liable for all damage accruing therefrom.]

[272.200. All lands, within this state, upon which sorghum or other poisonous crops are planted shall be enclosed by the owners and occupiers with a good and lawful fence so as to prevent horses, cattle or other stock that may receive injury thereby from



having access thereto; provided, that a lawful fence as used in this section shall be construed to mean such fences as are described elsewhere in this chapter and that the same penalties for damages as provided in section 272.160 shall be recoverable under this section; provided further, that this law shall not apply to counties and townships that have or may hereafter adopt a stock law.]