

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 766

Introduced by Brasch, 16.

Read first time January 03, 2018

Committee:

- 1 A BILL FOR AN ACT relating to division fences; to amend section
- 2 34-112.02, Reissue Revised Statutes of Nebraska; to change
- 3 provisions relating to construction, maintenance, repair, and
- 4 notice; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 34-112.02, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 34-112.02 (1) Whenever a landowner desires to construct a division
4 fence or perform maintenance or repairs to an existing division fence,
5 such landowner shall give written notice of such intention to any person
6 who is liable for the construction, maintenance, or repair of the
7 division fence. Such notice may be served upon any nonresident by
8 delivering the written notice to the occupant of the land or the
9 landowner's agent in charge of the land. The written notice shall request
10 that the person liable for the construction, maintenance, or repair
11 satisfy his or her obligation by performance or by other manner of
12 contribution. After giving written notice, a landowner may commence ~~or~~
13 ~~complete~~ construction of a division fence, or commence ~~or complete~~
14 maintenance or repair upon an existing division fence, in which cases any
15 cause of action under this section and sections 34-102, 34-112, and
16 34-112.01 shall be an action for contribution.

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

1 not commence an action under this subsection until thirty seven days
2 after giving notice under subsection (1) of this section and shall
3 commence the action within one year after giving such notice.

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

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

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

4 Sec. 2. Original section 34-112.02, Reissue Revised Statutes of
5 Nebraska, is repealed.