

Bill No. 1705

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Referred to Committee on JUDICIARY

LCO No. 4192

Introduced by SEN. ODEGARD - 4TH DIST.

General Assembly,

January Session, A.D., 1971

AN ACT CONCERNING FENCING OF LAND.

CONNECTICUT
STATE LIBRARY
LEGISLATIVE REFERENCE
SECTION

Be it enacted by the Senate and House of Representatives in
General Assembly convened:

Section 1. Section 47-43 of the general statutes is
repealed and the following is substituted in lieu thereof: [The
proprietors of lands shall make and maintain sufficient fences to
secure their particular fields.] Within cities and adjacent to
house lots, a tight board fence four and one-half feet high, an
open picket fence four feet high, the opening between pickets not
to exceed four inches, or a slat rail fence four feet high, the
opening between slats not to exceed six inches, the lower slat
not over six inches from the ground, a fence not less than four
feet high of chain link galvanized wire not smaller than number
nine gauge supported upon galvanized tubular steel posts set in
concrete, all end and corner posts to be suitably braced, and all
to be substantially erected, or any other fence which in the
judgment of the [selectmen or other] officials charged with the
duty of fence viewers is equal thereto, shall be a sufficient
fence; in places outside of incorporated cities, a rail fence
four and one-half feet high, a stone wall four feet high,
suitably erected, a wire fence consisting of four strands not
more than twelve inches apart, stretched tightly, the lower
strand not more than twelve inches and the upper strand not less
than four feet from the ground, with good substantial posts not
more than sixteen feet apart, and any other fence which in the
judgment of [the selectmen] SUCH OFFICIALS is equal to such a

rail fence, shall be a sufficient fence. Adjoining proprietors 41
 [shall] MAY each make and maintain half of a divisional fence, 42
 the middle line of which shall be on the dividing line, and such 43
 fence shall not exceed in width, if a straight wood fence or 44
 hedge fence, two feet; if a brick or stone fence, three feet; if 45
 a crooked rail fence, six feet; and, if a ditch, eight feet, not 47
 including the bank, which shall be on the land of the maker. No 48
 ditch shall be made adjacent to a house lot without the consent
 of the owner of the house.

Sec. 2. Section 47-49 of the general statutes is repealed 50
 and the following is substituted in lieu thereof: If one 51
 proprietor or his predecessor in title makes the whole fence and 52
 the adjoining proprietor afterwards encloses his land, AND IN SO 53
 DOING MAKES USE OF A PORTION OF THE FENCE SO MADE, such adjoining 54
 proprietor shall purchase and maintain half of the divisional 55
 fence. If the parties do not agree in dividing and appraising 56
 it, either may call on the selectmen of the town in which such 57
 fence is situated, who may set out, to each, his proportion of 58
 such fence and determine how much shall be paid to the party 59
 erecting or owning the same by the other; a certificate of which 60
 determination, under the hands of the selectmen, shall be 61
 sufficient evidence for the recovery of the amount so determined. 62
 No action therefor shall be maintained unless the proprietor, 63
 who, or whose predecessor in title, first occupied his land and 64
 made the whole of the divisional fence, has caused such fence to 65
 be so divided and appraised within [six] THREE years after the 66
 adjoining proprietor, or those under whom he holds, has first 67
 enclosed his land by particular enclosure, nor unless such action 68
 is commenced within one year after such division and appraisal
 have been made. 69

Sec. 3. Section 47-51 of the general statutes is repealed 70
 and the following is substituted in lieu thereof: If any person 72
 neglects to keep his division fence in repair, the party
 aggrieved [may call on the selectmen to view it, who, if they 73
 find it insufficient,] BY SUCH NEGLIGENT shall immediately give 74

written notice thereof, BY CERTIFIED MAIL, to the person bound to 75
 MAKE SURE repair [it, and shall also mail to the owner of any 76
 mortgage upon land which is partly bounded by the fence in 76
 question a written notice of an order to repair such fence. If 78
 none of the parties interested, to whom notice has been given, 79
 makes such repairs within fifteen days from the time of giving 80
 such notice, the party aggrieved may make such repairs and 81
 recover of the person bound to repair it double the cost of such 82
 repairs as estimated in writing by the selectmen and also the 82
 fees of such selectmen] OF SAID AGRIEVED PARTY'S INTENT TO MAKE 83
 SUCH REPAIRS. IF WITHIN TWENTY DAYS OF RECEIPT OF SUCH NOTICE 84
 THE PARTY SO NOTIFIED DOES NOT MAKE SUCH REPAIRS, THE PARTY 85
 GIVING NOTICE MAY MAKE THE REPAIRS HE DEEMS NECESSARY AND RECOVER 86
 OF THE PARTY SO BOUND TO REPAIR SAID FENCE AND SO NOTIFIED TRIPLE 87
 THE COST OF SUCH REPAIRS. Such sums shall constitute a lien upon 88
 such land against all persons interested therein, provided such 89
 lien shall be recorded in the office of the town clerk of the 90
 town in which such land is situated within sixty days from the 91
 time of completing such repairs. Such liens may be foreclosed in 93
 the manner provided for the foreclosure of mortgages.

Sec. 4. Section 47-55 of the general statutes is repealed 94
 and the following is substituted in lieu thereof: All damage done 96
 [within enclosures] by cattle, horses, asses, mules, sheep, swine 97
 or goats, when the fence is sufficient, shall be paid by the 97
 owner of the animals. [No person shall recover for damage done 99
 within his enclosure by reason of the insufficiency of his fence, 100
 unless done by animals at large contrary to law, or by unruly 101
 cattle that are not restrained by ordinary fences; or unless the 102
 owner of animals puts them into or voluntarily trespasses on such 103
 enclosure; or unless they entered through a part of the fence 104
 which was sufficient; in all of which cases the owner of the land 105
 may impound them and recover poundage and damages.] IT SHALL BE 106
 A DEFENSE TO AN ACTION TO RECOVER SUCH DAMAGES THAT THE DAMAGE 107
 WAS THE RESULT OF THE TEASING OR TORMENTING OF SUCH ANIMALS BY 107
 PERSONS OTHER THAN THE OWNER, HIS AGENTS, SERVANTS OR EMPLOYEES. 108

IT SHALL ALSO BE A DEFENSE THAT SUCH ANIMALS WERE RELEASED FROM 109
AN ENCLOSURE OR COMPOUND ENCOMPASSED BY A FENCE NORMALLY 110
SUFFICIENT TO CONTAIN THEM BY THE ACTION OF A PERSON OR PERSONS 111
OTHER THAN THE OWNER, HIS AGENTS, EMPLOYEES, SERVANTS, LEASEES OR 112
BAILEES.

Sec. 5. For the purposes of sections 1 and 2 of this act 113
proprietors of adjoining lands may agree among themselves in 115
regard to the proportion of a divisional fence to be owned and 116
maintained by each of them, and said agreement shall be recorded 118
in the land records of the municipality or municipalities in 120
which such lands are situated. In the absence of such agreement 121
it shall be presumed that the proprietor of lands northerly, 123
northeasterly, easterly and southeasterly of said fence shall be 124
the owner of and responsible for the repair of the northern most 126
and eastern most portion of said fence and the proprietor of 128
lands situated southerly, southwesterly, westerly and 129
northwesterly of said fence shall be the owner of and responsible 130
for the repair of the southern most and western most portions of 132
said fence.

Sec. 6. Sections 47-44, 47-45, 47-50, 47-52, 47-53, 47-54 138
and 47-56 of the general statutes are repealed. 140

STATEMENT OF PURPOSE: To modernize the fence law. 144

[Proposed deletions are enclosed in brackets and proposed 146
additions are all capitalized, or underlined where appropriate.] 148