

1 IN THE SENATE

BY SENATORS COGHILL AND OWEN

2 SENATE BILL NO. 60

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to division fences be-  
7 tween adjoining occupants of land; pro-  
8 viding for the settlement of disputes;  
9 providing for the repair of division fences;  
10 and providing for an effective date."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 Section 1. DIVISION FENCE: ADJOINING OCCUPANTS. When  
13 two or more persons shall have lands adjoining, each of them  
14 shall make and maintain a just proportion of the division fence  
15 between them; Provided, however, this shall not be construed to  
16 compel the erection and maintenance of a division fence where  
17 neither of the adjoining landowners desires such division fence.  
18 Unless the owners of such lands adjoining shall have agreed  
19 otherwise, such fence shall be a lawful fence, as defined in  
20 Section 33-4-1, ACLA 1949, as amended.

21 Sec. 2. DIVISION FENCE: ERECTION BY LANDOWNER: COLLECTION  
22 OF ONE HALF COST FROM ADJOINING OWNER: HOG AND SHEEP TIGHT  
23 FENCES. Any landowner who shall erect a division fence may  
24 demand and collect by civil suit from such adjoining landowner  
25 one half the reasonable value of such division fence. Any land-  
26 owner putting in a hog and sheep tight fence, where the adjoin-  
27 ing landowner does not desire to use or pay for such a fence,  
28 may demand and receive from such adjoining landowner one half  
29 the cost of a lawful wire fence as defined in Sec. 33-4-1, ACLA

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1 1949, as amended. If such adjoining landowner subsequently  
2 wishes to use his land abutting on said fence as a hog or sheep  
3 pasture he shall thereupon pay his half of the entire cost of  
4 the hog and sheep tight fence.

5 Sec. 3. DIVISION FENCE: VALUE AND PROPORTION: DETERMI-  
6 NATION: FENCE VIEWERS. The value of such fence, and the pro-  
7 portion thereof to be paid by each adjoining landowner and the  
8 proportion of the division fence to be made and maintained by  
9 each adjoining landowner shall be determined by fence viewers  
10 as hereinafter provided for.

11 Sec. 4. DIVISION FENCE: DISPUTES: SETTLEMENT BY VIEWERS.  
12 If disputes arise between the owners of adjoining lands concern-  
13 ing the proportion of fence to be made or maintained by either  
14 of them, such disputes shall be settled by fence viewers. In  
15 such case it shall be the duty of the fence viewers to distinctly  
16 mark and define the proportion of the fence to be made or main-  
17 tained by each.

18 Sec. 5. DIVISION FENCE: VIEWERS: HOW SELECTED: QUALI-  
19 FICATIONS. Fence viewers shall be selected in the following  
20 manner: Each adjoining landowner shall choose one and such two  
21 shall choose the third one. No one of the fence viewers shall  
22 be related by blood or marriage to the contending parties, nor  
23 be financially interested in the outcome of the dispute.

24 Sec. 6. DIVISION FENCE: DISPUTE: DETERMINATION BY  
25 VIEWERS: PROCEDURE. The fence viewers so chosen shall examine  
26 the premises and hear the allegations of the parties; and the  
27 decision of any two of them shall be final upon the parties to  
28 such disputes and upon all parties holding under them.

29 Sec. 7. DIVISION FENCE: DISPUTE: DECISION OF VIEWERS:  
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1 FORM: WHERE FILED. The decision of the fence viewers shall be  
2 reduced to writing, shall contain a description of the fence,  
3 and of the proportion to be maintained by each, and their de-  
4 cision upon any of the points in dispute between the parties,  
5 submitted to them as aforesaid, shall be forthwith filed in the  
6 office of the clerk of court in the judicial districts where  
7 the fence or site thereof is located.

8 Sec. 8. DIVISION FENCE: DISPUTE: VIEWERS: POWER TO  
9 COMPEL TESTIMONY: ADMINISTER OATHS. Fence viewers may examine  
10 witnesses on any and all questions submitted to them, and shall  
11 have power to issue subpoenas for, and administer oaths to such  
12 witnesses.

13 Sec. 9. DIVISION FENCE: DISPUTE: VIEWERS: FEES: HOW  
14 PAID. Fence viewers shall be entitled to ten dollars per day  
15 each for the time necessarily spent as above provided. All  
16 expenses of the view shall be borne equally between the parties,  
17 except in case of view to appraise damages for neglect or re-  
18 fusal to make or maintain a just proportion of the division  
19 fence, in which case the cost of view shall be paid by the party  
20 in default, and may be recovered as a part of the damage assessed.

21 Sec. 10. DIVISION FENCE: NEGLECT OR REFUSAL TO REPAIR:  
22 ASSESSMENT OF DAMAGES: FORM: RIGHTS OF ADJOINING OCCUPANT.  
23 If any person who is liable to contribute to the erection or  
24 reparation of a division fence shall neglect or refuse, for the  
25 period of thirty days after notice in writing so to do, to make  
26 and maintain his proportion of such fence, the party injured may  
27 make or repair the same at the expense of the party so neglecting  
28 or refusing, to be recovered from him with costs of suit; and  
29 the party so neglecting or refusing after notice in writing,

1 shall be liable to the party injured for all damages which there-  
2 by accrue, to be determined by fence viewers selected as above  
3 provided. The fence viewers shall reduce their appraisement of  
4 damage to writing, and sign the same.

5 Sec. 11. DIVISION FENCE: DESTRUCTION BY FIRE OR FLOOD, ETC:  
6 RECONSTRUCTION: REPAIR. Whenever a division fence shall be in-  
7 jured or destroyed by fire, floods, or other casualty, the  
8 person bound to make and repair such fence, or any part thereof,  
9 shall make or repair the same, or his just proportion thereof,  
10 within ten days after he shall be thereto requested by any  
11 person interested therein, such requisition to be in writing and  
12 signed by the party making the same.

13 Sec. 12. DIVISION FENCE: DESTRUCTION BY FIRE OR FLOOD, ETC:  
14 RECONSTRUCTION AT OTHER PARTY'S EXPENSE. If such person shall  
15 neglect or refuse to make or repair his proportion of such fence  
16 for a period of ten days after such request, the party injured  
17 may make or repair the same at the expense of the party so re-  
18 fusing or neglecting to be recovered with cost of suit.

19 Sec. 13. DAMAGES: HOW RECOVERED. Damages accruing to any  
20 person or persons under the provisions of Secs. 1 through 12 may  
21 be recovered in a civil action in a court of competent juris-  
22 diction.

23 Sec. 14. APPLICATION: The provisions of this Act shall  
24 apply only where one or both of the lands adjoining are devoted to  
25 or set aside for use as pasture land.

26 Sec. 15. EFFECTIVE DATE. This Act shall take effect  
27 immediately upon its passage and approval or upon becoming law  
28 without such approval.

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