

FIRST REGULAR SESSION

HOUSE BILL NO. 219

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES TOWNLEY, RANSALL AND HEGEMAN (Co-sponsors).

Pre-filed December 28, 2000, and 1000 copies ordered printed.

ANNE C. WALKER, Chief Clerk

0732L.011

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, 272.200, 272.210, 272.220, 272.230, 272.235, 272.240, 272.250, 272.260, 272.270, 272.280, 272.290, 272.300, 272.310, 272.330, 272.340, 272.350, 272.360 and 272.370, RSMo 2000, relating to property rights, and to enact in lieu thereof twelve new sections relating to the same subject.

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, 272.200, 272.210, 272.220, 272.230, 272.235, 272.240, 272.250, 272.260, 272.270, 272.280, 272.290, 272.300, 272.310, 272.330, 272.340, 272.350, 272.360 and 272.370, RSMo 2000, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 272.010, 272.020, 272.040, 272.050, 272.060, 272.070, 272.100, 272.110, 272.130, 272.235, 272.240 and 272.250, to read as follows:

272.010. All fields and enclosures 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

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

5 distances apart, so as to resist horses, cattle, swine and like stock; and fences composed of woven
6 wire, wire netting or wire mesh shall be at least four and one-half feet high, securely fastened to
7 posts, such posts to be set firmly in the ground, and not more than sixteen feet apart, and such
8 woven wire, wire netting or wire mesh to be of sufficient closeness and strength as to resist
9 horses, cattle, swine and like stock; those composed of turf shall be at least four feet high and
10 with ditches on either side at least three feet wide at the top and three feet deep; and what is
11 known as a worm fence shall be at least five feet high to the top of the rider, or if not ridered,
12 shall be five feet to the top rail or pole, and shall be locked with strong rails or poles or stakes;
13 those composed of stone or brick shall be at least four and one-half feet high; provided, that in
14 counties in this state in which swine are restrained from running at large, all fences built of posts
15 set firmly in the ground, not more than sixteen feet apart, and three barbed wires tensely
16 stretched and securely fastened thereto, and the upper wire being substantially four feet from the
17 ground, and the two remaining wires placed at proper distances below to resist horses, cattle and
18 like stock, and all fences built of posts and rails, or posts and slats, with posts set firmly in the
19 ground, not more than ten feet apart, and with three rails or slats securely fastened thereto, and
20 the upper rail or slat being placed substantially four and one-half feet from the ground, and the
21 two remaining rails or slats to each panel being placed at proper distances below to resist horses,
22 cattle and like stock, and all fences built of posts and boards, with posts set firmly in the ground,
23 not more than eight feet apart, and board substantially one inch thick and six inches wide,
24 securely fastened thereto, and the upper board being at least four and one-half feet high, and the
25 remaining boards placed at proper distances below, to resist horses, cattle and like stock, shall
26 be deemed and held to be a good and lawful fence; provided, that nothing contained in this
27 section shall be so construed as to relieve any railroad company from the obligation of fencing
28 the right-of-way of said company against hogs, sheep, cattle, horses and like stock.] **1. Any**
29 **fence consisting of posts and wire or boards at least four feet high which is mutually agreed**
30 **upon by adjoining landowners or decided upon by the associate circuit court of the county**
31 **is a lawful fence.**

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

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

7 on the day set for trial; and their evidence shall determine the lawfulness of such fence. **The**
8 **persons appointed by the associate circuit judge shall be paid twenty-five dollars each per**
9 **day for the time actually employed which shall be taxed as costs in the case equally against**
10 **the parties and collected accordingly.**

272.050. If any person [damnified for want of such] **who does not maintain a** sufficient
2 [hedge or] fence, shall hurt, wound, lame, kill or destroy, or cause the same to be done by
3 shooting, worrying with dogs, or otherwise, any of the animals in this chapter mentioned, such
4 [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,
2 or which shall hereafter be erected or constructed, the same being a lawful fence, as defined by
3 sections 272.010 and 272.020, serves to enclose the land of another, or which shall become a part
4 of the fence enclosing the lands of another, on demand made by the person owning such fence,
5 such other person shall pay the owner one-half the value of so much thereof as serves to enclose
6 his land, and upon such payment shall own an undivided half of such fence.] **1. Whenever the**
7 **owner of real estate desires to construct or repair a lawful fence, as defined by section**
8 **272.020, which divides his or her land from that of another, such owner shall give written**
9 **notice of such intention to the adjoining landowner. The landowners shall meet and each**
10 **shall construct or repair that portion of the division fence which is on the right of each**
11 **owner as the owners face the fence line while standing at the center of their common**
12 **property line on their own property. If the owners cannot agree as to the part each shall**
13 **construct or keep in repair, either of them may apply to an associate circuit judge of the**
14 **county who shall forthwith summon three disinterested householders of the township or**
15 **county to appear on the premises, giving three days' notice to each of the parties of the time**
16 **and place where such viewers shall meet, and such viewers shall, under oath, designate the**
17 **portion to be constructed or kept in repair by each of the parties interested and notify them**
18 **in writing of the same. Such viewers shall receive twenty-five dollars each per day for the**
19 **time actually employed, which shall be taxed as court costs.**

2. Existing agreements not consistent with the procedure prescribed by subsection
21 **1 of this section shall be in writing, signed by the agreeing parties, and shall be recorded**
22 **in the office of the recorder of deeds in the county or counties where the fence line is**
23 **located. The agreement shall describe the land and the portion of partition fences between**
24 **their lands which shall be erected and maintained by each party. The agreement shall bind**
25 **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
2 fence, the owner of the fence may apply to a circuit or associate circuit judge of the county, who
3 shall without delay, issue an order to three disinterested householders of the township, not of kin

4 to either party, reciting the complaint, and requiring them to view the fence, estimate the value
5 thereof, and make return under oath to the associate circuit judge on the day named in the order.]
6 **If either party fails to construct or repair his or her portion of the fence in accordance with**
7 **the provisions of section 272.060 within a reasonable time, the other may petition the**
8 **associate circuit court of the county to authorize the petitioner to build or repair the fence**
9 **in a manner to be directed by the court. If the court authorizes such action, the petitioner**
10 **shall be given a judgment for that portion of the total cost of the fence which is chargeable**
11 **as the other party's portion of the fence, court costs and reasonable attorney's fees. Any**
12 **such judgment shall be a lien on the real estate of the party against whom the judgment**
13 **may be given.**

272.100. The persons appointed by the associate circuit judge [under sections 272.070
2 and 272.090] **pursuant to section 272.040** to discharge the duties therein specified, shall receive
3 [one dollar] **twenty-five dollars** each per day for the time actually employed, which[, together
4 with the fees of the associate circuit judge and sheriff,] shall be taxed as costs in the case against
5 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**
2 **of** the same in good repair according to the requirements of this chapter, and [when said division
3 fence is a hedge, shall properly trim the same at least once a year, to a height not greater than
4 four and one-half feet, and to a breadth not greater than three feet, and for the purpose of
5 trimming said hedge as aforesaid, he shall have the right to] **may** enter upon any land lying
6 adjacent thereto **for such purpose**. [Either party owning land adjoining a division fence or
7 hedge may, upon the failure of any of the other parties, have all that part of such division fence
8 belonging to such other parties repaired, upon the failure of such other party to do so, such
9 repairing or trimming to be at the cost of the party so failing to repair or trim his part of such
10 fence; and the party so repairing or trimming such hedge shall always throw the brush trimmed
11 off on his own side of such hedge; and upon neglect or refusal to keep said fence in repair, or to
12 keep said hedge trimmed as provided in this section, such owner shall be liable in double
13 damages to the party injured thereby, and such injured party may enforce the collection of such
14 damages by restraining any cattle or other stock that may break in or come upon his enclosure
15 by reason of the failure of such other party to keep his portion of such division fence in repair
16 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
2 made or entered [under] **pursuant to** the provisions of [sections 272.040, 272.070 and 272.090]
3 **section 272.040 or 272.070** may have the same reviewed in the same manner as other civil
4 actions.

2 [272.150. The owners and occupiers of saltpeter works within this state shall
3 keep the same enclosed with a good and lawful fence, so as to prevent horses, cattle
4 and other stock that may receive injury thereby from having access thereto.]

2 [272.160. Every person, owner or occupier of any saltpeter works within this
3 state, failing to secure the same, with a good and lawful fence, from horses, cattle and
4 any kind of stock that may be injured by drinking the saltpeter water, shall be liable
5 to an action by the party injured by such neglect for double the value of such horses,
6 cattle or other stock injured or killed by drinking such water, to be recovered in any
7 court having competent jurisdiction to try the same.]

2 [272.170. Hereafter all persons owning or running cotton gins in the state of
3 Missouri shall keep them enclosed with a sufficient fence to keep out hogs.]

2 [272.180. They shall not allow the cotton seed from their gin to be scattered
3 or thrown outside of the enclosure.]

2 [272.190. Any person violating the provisions of sections 272.170 and
3 272.180 shall be liable for all damage accruing therefrom.]

2 [272.200. All lands, within this state, upon which sorghum or other
3 poisonous crops are planted shall be enclosed by the owners and occupiers with a
4 good and lawful fence so as to prevent horses, cattle or other stock that may receive
5 injury thereby from having access thereto; provided, that a lawful fence as used in
6 this section shall be construed to mean such fences as are described elsewhere in this
7 chapter and that the same penalties for damages as provided in section 272.160 shall
8 be recoverable under this section; provided further, that this law shall not apply to
9 counties and townships that have or may hereafter adopt a stock law.]

2 [272.210. As used in sections 272.210 to 272.370 the following words and
3 terms have the following meanings:

4 (1) "Lawful fence", a fence with not less than four boards per four feet of
5 height; said boards to be spaced no farther apart than twice the width of the boards
6 used fastened in or to substantial posts not more than twelve feet apart with one stay,
7 or a fence of four barbed wires supported by posts not more than fifteen feet apart
8 with one stay or twelve feet apart with no stays, or any fence which is at least
9 equivalent to the types of fences described herein;

10 (2) "Stay", a vertical member attached to each board or wire comprising the
horizontal members of the fence.]

2 [272.220. All fields and enclosures in which livestock are kept or placed
3 shall be enclosed by a lawful fence.]

2 [272.230. If any horses, cattle or other stock trespass upon the premises of
3 another, the owner of the animal shall for the first trespass make reparation to the
4 party injured for the true value of the damages sustained, to be recovered with costs
5 before an associate circuit judge, or in any court of competent jurisdiction, and for
6 any subsequent trespass the party injured may put up the animal or animals and take
7 good care of them and immediately notify the owner, who shall pay to the taker-up
8 the amount of the damages sustained, and such compensation as shall be reasonable
9 for the taking up and keeping of the animals, before he shall be allowed to remove

9 them, and if the owner and taker-up cannot agree upon the amount of the damages
10 and compensation either party may make complaint to an associate circuit judge of
11 the county, setting forth the fact of the disagreement, and the associate circuit judge
12 shall be possessed of the cause, and shall issue a summons to the adverse party and
13 proceed with the cause as in other civil cases. If the owner recovers, he shall recover
14 his costs and any damages he may have sustained, and the associate circuit judge
15 shall issue an order requiring the taker-up to deliver to him the animals. If the
16 taker-up recover, the judgment shall be a lien upon the animals taken up, and, in
17 addition to a general judgment and execution, he shall have a special execution
18 against the animals to pay the judgment rendered and costs.]

272.235. If [there is a need for a fence by] either of two [joining] **adjoining** landowners
2 [both shall be obligated to build and maintain a fence under the provisions of sections 272.210
3 to 272.370. Nothing in sections 272.210 to 272.370 shall prevent joining landowners from
4 agreeing that no fence is needed between their property] **does not need a fence, the landowner
5 that needs a fence may build the entire fence and report the total cost to the associate
6 circuit judge who shall authorize the cost to be recorded on each deed. Should the
7 landowner that claimed no need for a fence subsequently place livestock against the fence,
8 the landowner that built the fence shall be reimbursed for one-half the construction costs
9 and maintenance share to be determined as provided in section 272.060.**

272.240. [Whenever the owner of real estate desires to erect or construct a lawful fence
2 which wholly or partially borders the land of another, he shall notify the other owner that he
3 desires a division fence. If within ninety days after receiving the notice, the other landowner has
4 not erected or constructed one-half of the division fence, the owner desiring the fence may apply
5 to the associate division of the circuit court for an order to proceed with the construction and
6 ordering the other landowner to pay one-half the value of so much thereof, as borders his land,
7 and upon the payment shall own an undivided one-half of the fence; except that no owner shall
8 be required to pay more than one-half the value of a lawful fence of four barbed wires, regardless
9 of the type fence constructed. The associate division of the circuit court costs shall be taxed
10 against the other landowner.] **Nothing in this chapter shall prevent adjoining landowners
11 from agreeing that no fence is needed between their property.**

272.250. [If the parties interested fail to agree as to the value of one-half of the fence,
2 the owner of the fence may apply to a circuit or associate circuit judge of the county, who shall
3 without delay issue an order to three disinterested householders of the township, not of kin to
4 either party, reciting the complaint, and requiring them to view the fence, estimate the value
5 thereof, and make return under oath to the judge on the day named in the order.] **Nothing in this
6 chapter shall prevent either of adjoining landowners from building his or his neighbor's
7 portion of a fence in excess of the lawful fence requirements prescribed by this chapter.**

[272.260. If the person thus assessed or charged with the value of one-half

2 of any fence, under the provisions of sections 272.210 to 272.370 shall neglect or
3 refuse to pay over to the owner of the fence the amount so awarded, the same may
4 be recovered before a court of competent jurisdiction.]

2 [272.270. 1. The several owners may, in writing, agree upon the portion of
3 partition fences between their lands which shall be erected and maintained by each,
4 which writing shall describe the lands and the parts of the fences so assigned, be
5 signed and acknowledged by them, and filed and recorded in the office of the
6 recorder of deeds of the county or counties in which they are situated. Any such
7 agreement shall bind the makers, their heirs and assigns.

8 2. When one owner desires to make a division of the fence between his land
9 and an adjoining landowner refuses to agree to a division, then the provisions of
10 section 272.280 may be used to effect a division which shall be recorded in the office
of the recorder of deeds in the county in which most of the fence is located.]

2 [272.280. If the parties cannot agree as to the part each shall have and keep
3 in repair, either of them may apply to a circuit or associate circuit judge of the county
4 who shall forthwith summon three disinterested householders of the township to
5 appear on the premises, giving three days' notice to each of the parties of the time and
6 place where said viewers shall meet, and the viewers shall, under oath, designate the
7 portion to be kept in repair by each of the parties interested, and notify them in
writing of the same.]

2 [272.290. Whenever the fence of any owner of real estate now erected or
3 constructed, or which shall hereafter be erected, constructed or rebuilt, the same
4 being thereafter a fence designed to restrain swine, sheep or other animals requiring
5 special fences, borders the land of another or which becomes a part of the fence
6 bordering the land of another and is used to enclose such animals owned by the other
7 person, on demand made by the person owning the fence, the other person shall pay
8 the owner one-half of the value of so much thereof as borders his land, and upon the
9 payment shall own an undivided half of the fence; except that no owner shall be
10 required to pay more than the amount which would have been required to erect,
construct or rebuild a lawful fence of four barbed wires on his one-half of the fence.]

2 [272.300. The persons appointed by the judge under sections 272.250 and
3 272.280 to discharge the duties therein specified, shall receive five dollars each per
4 day for the time actually employed, which, together with the fees of the judge and
5 sheriff, shall be taxed as costs in the case against the parties in proportion to their
respective interests, and collected accordingly.]

2 [272.310. Every person owning a part of a division fence shall keep the same
3 in good repair according to the requirements of sections 272.210 to 272.370. Either
4 party owning land adjoining a division fence may, upon the failure of any of the other
5 parties, have all that part of the division fence belonging to the other parties repaired,
6 upon the failure of the other party to do so, the repairing to be at the cost of the party
so failing to repair his part of the fence.]

2 [272.330. 1. The provisions of sections 272.240 to 272.350 shall apply to
3 any division fence even though it may stand wholly upon one side of the division
4 line.

5 2. The provisions of sections 272.210 to 272.370 shall not apply to counties
6 which have all or partial open range.]

7 [272.340. Any person aggrieved by any order or judgment of the judge made
8 or entered under the provisions of sections 272.250 and 272.280 may have the same
2 reviewed by a petition in the circuit court of the county wherein the proceedings were
3 had, verified by affidavit. A copy of the petition shall be delivered to the adverse
4 party at least fifteen days before the commencement of the next term of the court, and
5 the original filed in the office of the clerk; provided, that the petition may be filed
6 within thirty days after the order or judgment was made or rendered, and not
7 afterward.]

8 [272.350. The petition shall set forth the grounds of objection, and upon the
2 filing thereof the circuit court shall be possessed of the cause, and proceed to hear
3 and determine the objections, and make such order or judgment as may be right and
4 just in the premises.]

5 [272.360. The provisions of sections 272.210 to 272.370 are hereby
6 suspended in the several counties of this state until a majority of the legal voters of
7 any county voting on the question at any general or special election called for that
8 purpose shall decide to enforce the same in the county.]

9 [272.370. The county commission may on its own motion and shall upon the
10 petition of one hundred real estate owners of ten acres or more of the county submit
11 to the voters at a general or special election the proposition for the adoption by the
12 county of the provisions of sections 272.210 to 272.370. The commission shall cause
13 notice of the election to be published in a newspaper published within the county, or
14 if no newspaper is published within the county, in a newspaper published in an
adjoining county, for three weeks consecutively, the last insertion of which shall be
at least ten days before the day of the election, and by posting printed notices thereof
at three of the most public places in each township in the county. If a majority of the
voters voting on the proposition vote in favor of the adoption of the provisions of
sections 272.210 to 272.370 the county commission shall issue an order declaring the
adoption. From and after the issuance of the order the provisions of sections 272.210
to 272.370 shall be in full force and effect in the county and the provisions of
sections 272.010 to 272.140 shall be suspended in the county.]