CHAPTER 90

FENCES

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90.01 Fence viewers. The supervisors in their respective towns, the alderpersons of cities in their respective aldermanic districts, and the trustees of villages in their respective villages shall be fence viewers.

History: 1971 c. 304 s. 29 (1); 1993 a. 184.

Town supervisors are not authorized by this chapter to settle boundary disputes. 70 Atty. Gen. 187.

90.02 Legal fences; space between ground and bottom. (1) In this section, "high tensile wire" means wire with a tensile strength of 1,235 to 1,450 mega pascals or 179,000 to 210,000 pounds per square inch.

(1m) The following and none other are legal and sufficient fences:

(a) A fence of strong woven wire not less than 26 inches wide with 3 barbed wires or 3 high tensile wires above.

(b) A fence of strong woven wire not less than 30 inches wide with 2 barbed wires or 2 high tensile wires above.

(c) A fence of strong woven wire not less than 46 inches wide with one barbed wire or one high tensile wire above.

(d) A fence of strong woven wire not less than 50 inches wide.

(e) A fence of boards firmly fastened to posts well set, not more than 8 feet apart, the space between the boards to the height of 30 inches to be not more than 6 inches and at no point to be more than 10 inches.

(f) A fence of 2 boards with 3 barbed wires or 3 high tensile wires above, firmly fastened to sufficient posts well set not more than 8 feet apart, the space between the boards to be not more than 6 inches.

(g) A fence of 3 or more wires not less than No. 12, with pickets not less than 4 feet long properly woven in or fastened thereto, and set not more than 6 inches apart.

(h) All fences consisting of rails, boards, wires or walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches, or hedges, which shall, in the judgment of the fence viewers, be equivalent to either of the fences before mentioned.

(i) The following minimum requirements shall constitute a standard electric fence and shall be a legal fence when agreed to in writing by the adjoining property owners. Such a fence shall consist of 2 strands of strong, tightly stretched wire, charged by a standard approved electric or battery fencer, and the top wire not over 36 inches and not less than 34 inches from the ground, measured at the post, and firmly fastened with insulators to sufficient post, firmly set, and not over 2 rods apart.

(j) A fence not less than 48 inches high of 4 or more barbed wires or high tensile wires spaced evenly on a steel post of any diameter or on a wood post at least 3 inches in diameter. Existing fences of a lesser standard are legal until they are rebuilt, repaired or replaced.

(2) The strands of woven wire shall not be smaller than No. 12 wire and the cross wires shall not be smaller than No. 16 wire; the strands shall not be more than 8 inches apart, and the cross wires not more than 12 inches apart. All wires must be tightly stretched and securely fastened to sufficient posts firmly set not more than 16 feet apart, except as provided in sub. (1m) (f) or (i) and except that the posts may be set not more than 20 feet apart if the wire is high tensile wire. The space between barbed wires or high tensile wires shall not exceed 8 inches; and the space between the top board or upper edge of woven wire and the bottom barbed wire or high tensile wire shall not exceed 6 inches.

(3) Fences shall not be less than 50 inches high, and the bottom of the fence shall be not more than 4 inches from the ground, measurements to be made at the posts.

History: 1995 a. 41, 225, 417.

90.03 Partition fences; when required. The respective occupants of adjoining lands used and occupied for farming or grazing purposes, and the respective owners of adjoining lands when the lands of one of such owners is used and occupied for farming or grazing purposes, shall keep and maintain partition fences between their own and the adjoining premises in equal shares so long as either party continues to so occupy the lands, except that the occupants of the lands may agree to the use of markers instead of fences, and such fences shall be kept in good repair throughout the year unless the occupants of the lands on both sides otherwise mutually agree.

History: 1995 a. 41.

90.035 Public fences. Where the 2 parties, one of whom is the state or a subdivision thereof, agree that a fence is reasonably necessary, the duty to erect and maintain partition fences shall apply equally to the state, as provided in s. 90.03, and its subdivisions as occupants of lands whenever such lands are bounded by privately owned agricultural or grazing lands.

90.04 Effect of fences on action for trespass by animals. Owners of lands who do not maintain and keep in repair lawful partition fences may not recover any damages for trespasses by the animals of owners of any adjoining lands with whom partition fences might have been maintained if such lands had been enclosed; but the construction of such a fence does not relieve the owner of swine, horses, sheep or goats from liability for any damage they commit upon the enclosed premises of an adjoining owner.

History: 1995 a. 148.

90.05 How partition made. (1) (a) Every partition of a fence or of the line upon which partition fences are to be built between owners of adjoining lands, after being recorded in the town clerk's office, obligates the owners, their heirs and assigns to build and maintain the fence in accordance with the partition, if any of the following conditions is met:

1. The partition is made by the owners of the adjoining lands and is in writing, signed and sealed by the owners and witnessed by 2 witnesses.

2. The partition is made by fence viewers in the manner provided under this chapter and is in writing under their hands.

(b) A partition made in accordance with par. (a) shall remain in effect so long as the adjoining land on each side respectively remains in the same ownership, and after a severance of ownership until a new partition of the fence is made.

(c) An owner, or the owner's heirs or assigns, are not obligated to build or maintain any part of a partition fence during any time when none of the adjoining lands is occupied for farming or grazing.

(2) If a fence is constructed by a subdivider under a town ordinance adopted under s. 60.23 (19) and the land adjoining the subdivision is not subdivided, the partition under sub. (1) shall require that an undivided one–half of the fence be maintained by the owner of the adjoining land not subdivided and one–half of the fence divided into equal shares be maintained by all of the owners of the adjoining subdivided land.

History: 1977 c. 229; 1983 a. 532 s. 36; 1991 a. 316; 1997 a. 253.

90.06 Relocation of fence. (1) When any owner or occupant of land builds a fence before a boundary line has been located between that land and any adjoining land and the location of the boundary line establishes that the fence is located on the adjoining land, the person who built the fence or that person's grantee, devisee or heirs shall be the owner of the fence. The owner of the fence shall relocate the fence to the boundary line within 30 days after service of written notice of the location of the fence upon the owner of the fence by the owner or occupant of the land upon which the fence is located.

(2) The notice under sub. (1) shall be served personally on the fence owner or by leaving a copy of the notice at the fence owner's usual place of abode with some member of the fence owner's family who is of suitable age and discretion. If the notice is left with a family member, the family member shall be informed of the contents of the notice.

(3) If the relocation of the fence is not made within 30 days after service of the notice under sub. (2), the party who served or caused the notice to be served may relocate the fence to the boundary line and recover the expense of doing so from the fence owner. However, no fence that is subject to relocation under this section shall be relocated by the party giving the notice during a time when annual crops will be damaged unless the owners or occupants of the adjoining lands mutually agree.

History: 1991 a. 316; 1997 a. 253.

90.07 Division of partition fence. (1) A division of a partition fence, or the line upon which a partition fence between adjoining lands shall be built, may be made by fence viewers in the following cases:

(a) When a division of a partition fence, or the line upon which a partition fence between adjoining lands shall be built, shall not have been made in the manner prescribed by s. 90.05, either of the owners of adjoining lands may have the line between that person's land and the adjoining land of any other person divided, and the portion upon which the respective owners shall erect their share of the partition fence assigned, regardless of whether that person's land be enclosed or not and regardless of whether such adjoining land be enclosed or not.

(b) When any lands belonging to different persons in severalty shall have been occupied in common or without a partition fence between them and one of the occupants shall be desirous to occupy that occupant's part in severalty, and the other shall refuse or neglect, on demand, to divide with the desiring occupant the line where the fence ought to be built or to build a sufficient fence on the part of the line belonging to the other occupant, when divided, the occupant desiring it may have the same divided and the share of each assigned.

(c) When any controversy shall arise about the right of the respective occupants in partition fences or their obligation to maintain the same, either party may have the line divided and the share of each assigned.

(2) In either such case application may be made to 2 or more fence viewers of the town where the lands lie or to 2 or more fence viewers of 2 towns, if the lands lie in 2 towns, who, after 8 days' notice in writing to each party to be served as a summons is in a civil action in a court of record or by registered mail with return receipt requested in the case of a party who does not reside in this state, shall, in writing, divide the partition fence or line and assign to each owner or occupant that party's share thereof; and in each of said cases they shall also therein direct the time within which each party shall build or repair, as may be proper, that party's share of the fence, having regard to the season of the year, and shall file such decision in the town clerk's office, who shall record the same. If either party refuses or neglects to build or repair within the time so assigned that party's part of the fence the other may, after having completed his or her own part, build or repair such part and recover the expense thereof as provided in s. 90.11.

(3) Whenever practicable, in determining the division of a new line fence, when facing a farm, going around the farm to the right, the first one–half of the line fence belongs to the farm faced.

History: 1991 a. 316.

90.08 Partition of fences in water. Where a partition fence running into the water is necessary to be made the same shall be done in equal shares unless otherwise agreed by the parties, and in case either party shall refuse or neglect to make or maintain the share belonging to that party similar proceedings shall be had as in case of other fences and with the like effect.

History: 1991 a. 316.

90.09 Partition when land bounded by water. (1) When the boundary line between enclosed lands owned by different persons is a river, brook, pond or creek, which of itself is not a sufficient fence, and it is impracticable, without unreasonable expense, for a partition fence to be built on the true boundary line, and either owner or occupant refuses to join in making a partition fence on either side of the river, brook, pond or creek, or they disagree respecting making a partition fence, either party may apply to 2 or more fence viewers of the town, who, after giving notice as provided in s. 90.07, shall proceed to view the river, brook, pond or creek.

(2) If the fence viewers determine that the river, brook, pond or creek is not a sufficient fence and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line, the fence viewers shall, in writing under their hands, determine how or on which side of the river, brook, pond or creek the fence shall be built or whether the fence shall be built partly on one side and partly on the other side. The fence viewers shall assign to each owner or occupant that owner's or occupant's share of the fence and the time within which the respective parties shall build the fence. The fence viewers shall file their determination in the office of the town clerk, who shall record the determination.

(3) If either party refuses or neglects to build that party's part of the fence within the time assigned by the fence viewers, the other party may, after having completed his or her own part, build the other party's part and recover the expense of building the other party's part of the fence as provided under s. 90.11.

(4) If the fence viewers determine that it is impracticable, either from the formation of the banks of the river, brook, pond or creek or for any other reason, to maintain any fence along or near the boundary line, they shall give written notice to the parties of that determination.

History: 1991 a. 316; 1997 a. 253.

90.10 Compulsory repair of fence. If any person neglects to repair or rebuild any partition fence that by law that person is required to maintain, the aggrieved party may complain to 2 or more fence viewers of the town, who, after giving notice as provided in s. 90.07, shall examine the fence. If the fence viewers determine that the fence is insufficient, they shall inform the delin-

quent party of the insufficiency and direct the delinquent party to repair or rebuild the fence within a time that the fence viewers determine is reasonable. If the fence is not repaired or rebuilt within the time fixed by the fence viewers, the complainant may repair or rebuild the fence and recover the expense of repairing or rebuilding the fence as provided under s. 90.11.

History: 1991 a. 316; 1997 a. 253.

90.11 Cost of repairs. (1) (a) Whenever any owner or occupant of land has built, repaired or rebuilt any fence, pursuant to the provisions of this chapter, that the adjoining owner or occupant has been lawfully directed by fence viewers to build, repair or rebuild but has failed to do within the time prescribed, the owner or occupant who built, repaired or rebuilt the fence may complain to any 2 or more fence viewers of the town.

(b) The fence viewers complained to under par. (a) shall, after having given notice to the defaulting adjoining owner or occupant as provided in s. 90.07, examine the fence and ascertain the expense of building, repairing or rebuilding the fence. If the fence viewers adjudge the fence sufficient they shall give to the complaining party a certificate under their hands of their decision and of the amount of the expense of building, repairing or rebuilding the fence and of the fees of the fence viewers.

(c) Upon receipt of the fence viewers' certificate, the complaining party may demand the amount of the expense determined by the fence viewers, together with the fence viewers' fees, from the defaulting, adjoining owner or occupant. If the adjoining owner or occupant fails to pay the expenses and fees for one month after the complaining party has demanded payment, the amount of expenses and fees together with interest at the rate of 1% per month shall constitute a special charge and lien against the adjoining owner's or occupant's lands and may be recovered in the manner provided in sub. (2).

(2) (a) The complaining party may file the certificate executed and delivered to him or her under sub. (1) (b) with the clerk of the town in which the lands charged with the expense and fees set forth in the certificate are located. Upon the filing of the certificate, the town clerk shall issue a warrant for the amount of the listed expenses and fees upon the town treasurer payable to the person to whom the certificate was executed and delivered.

(b) The amount paid by the town treasurer under par. (a) together with interest at the rate of 1% per month shall be included by the town clerk in the next tax roll as a special charge against the lands charged with the expense and fees. The special charge shall be collected by the town treasurer with the other taxes in the town. Any special charge under this paragraph remaining unpaid shall be added to the list of delinquent taxes returned to the county treasurer. The county treasurer shall collect the delinquent special charge or sell the land as for delinquent taxes. All proceedings in relation to the sale of land for a delinquent special charge shall be the same in all respects as in the case of land sold for other delinquent taxes. Every county treasurer who shall collect or receive any moneys on account of delinquent charges under this subsection shall pay the moneys received to the treasurer of the proper town.

History: 1991 a. 316; 1997 a. 253.

The remedy in this section is the exclusive remedy available for the recovery of costs of repairing a fence that an adjoining owner or occupant had been lawfully directed by fence viewers to build or repair. The fence viewers' determination of recoverable expenses is subject to common law certiorari review. Tomaszewski v. Giera, 2003 WI App 65, 260 Wis. 2d 569, 659 N.W.2d 882, 02–2409.

90.12 Apportionment of cost of fence. When, in any controversy that may arise between occupants of adjoining lands as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than that occupant's just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him or her to repair or maintain; the just value thereof which the other occupant ought to pay shall be ascertained by proceeding as prescribed in s. 90.11.

History: 1991 a. 316.

90.13 Partition fence on newly enclosed land. (1) When any previously unenclosed land is enclosed, the owner or occupant of the newly enclosed land shall pay for 50% of each partition fence standing upon the line between that owner's or occupant's land and the enclosure of any other owner or occupant, unless the line has been previously divided. If the line has been previously divided, the owner or occupant of the newly enclosed land shall pay the value of the fence on the part of the line previously assigned to that owner or occupant. In either case, the value of the fence at the time shall be ascertained on the application of either adjoining owner or occupant as provided in s. 90.11, if the parties do not agree.

(2) If the responsible owner or occupant fails to pay the value for 60 days after the value has been ascertained and demand made, the proprietor of the fence may recover the value with the fence viewers' fees and costs.

History: 1991 a. 316; 1997 a. 253.

90.14 Fence on town line. In all cases where the line upon which a partition fence is to be made or to be divided is the boundary line between towns or partly in one town and partly in another a fence viewer shall be taken from each town; and divisions of such fences by them or by agreement of the parties shall be recorded in the office of the clerk of each town.

90.15 Fees of viewers; neglect of duty. A fence viewer is entitled to the following fees and expenses for services rendered under this chapter: daily employment, mileage, service of notice or process and folios written. The rate of pay for the fees and expenses shall be set by the viewer's city, village or town. The fees and expenses shall be paid equally by the parties to the controversy, and if any of them neglect to pay the same within 30 days after the services are performed, each fence viewer may recover from delinquent parties jointly double the amount of the fees and expenses. A fence viewer who neglects to perform his or her duties shall forfeit $5 and be liable to the injured party for damages. Fence viewers may administer oaths for purposes of this chapter.

History: 1979 c. 221.

90.16 Record of partition. Every partition of a division fence or line made by fence viewers, signed and recorded as hereinbefore provided, and the record or a certified copy thereof, shall be presumptive evidence of the regularity of all the proceedings prior to the making thereof.

90.20 Fencing of farm–raised deer that are not white–tailed deer. (1) DEFINITIONS. In this section:

(a) "Farm–raised deer" has the meaning given in s. 95.001 (1) (ag).

(b) "Heavily galvanized" means having a zinc coating weighing 230 grams per square meter or 0.8 ounces per square foot.

(c) "High tensile" means having a tensile strength of 179,000 to 210,000 pounds per square inch.

(d) "Medium tensile" means having a tensile strength of 101,000 to 123,000 pounds per square inch.

(2) SPECIFICATIONS. Unless s. 90.21 or 95.55 (1) (c) applies, any person who keeps farm–raised deer shall keep the farm–raised deer enclosed by a fence that meets all of the following requirements:

(a) Except for animals of the genus rangifer, the fence is at least 7 feet 10 inches high and is a woven wire fence that satisfies sub. (3), is a high tensile fence that satisfies sub. (4) or, if made of other materials, is of a design and level of strength that provides equivalent retentive capacity. The top 6 inches of the fence may consist of a single strand of smooth high tensile wire.

(b) For animals of the genus rangifer, the fence is at least 5 feet high and is a woven wire fence that satisfies sub. (3), is a high tensile fence that satisfies sub. (4) or, if made of other materials, is of a design and level of strength that provides equivalent retentive capacity.

(c) If the fence is made with wood posts, all of the following apply:

1. The posts are at least 12 feet long.

2. The tops of the line posts are, if rectangular, at least 3.5 inches in the smallest dimension or, if round, at least 3.5 inches in diameter.

3. The tops of the corner and gate posts are, if rectangular, at least 5.5 inches in the smallest dimension or, if round, at least 5.5 inches in diameter.

4. The wires are held securely to the posts, allowing for free movement of the horizontal line wires, using 9–gauge staples of at least 1.5 inch size.

(d) If the fence is made with steel or iron posts, the posts are at least 11 feet long or, if the posts are of the type known as T post, the posts are at least 10 feet long.

(e) The wires are installed on the side of the fence toward the farm–raised deer except at corners.

(3) WOVEN WIRE FENCE. A woven wire fence satisfies the requirements of this subsection if all of the following apply:

(a) The wire is 14 1/2 gauge or heavier.

(b) If the wire is 14 1/2 gauge, the mesh is not larger than 36 square inches.

(c) If the wire is heavier than 14 1/2 gauge, the mesh is not larger than 48 square inches.

(d) The posts are not more than 12 feet apart.

(4) HIGH TENSILE FENCE. A high tensile fence satisfies the requirements of this subsection if all of the following apply:

(a) The horizontal line wires are not less than 2.5 millimeters in size and are heavily galvanized high tensile wire.

(b) The vertical stay wires are not less than 2.5 millimeters in size and are heavily galvanized medium tensile wire.

(c) The knot wire is not less than 2.24 millimeters in size and is heavily galvanized mild steel.

(d) The distance between vertical stay wires is not more than 6 inches.

(e) The distance between horizontal line wires is not more than 4 inches in the bottom foot of the fence, is not more than 6.5 inches in the next 2 feet of the fence and is not more than 8.5 inches in the rest of the fence.

(f) The posts are not more than 20 feet apart.

History: 1995 a. 79; 2001 a. 56; 2005 a. 409.

90.21 Fencing of farm–raised deer; white–tailed deer. (1) DEFINITIONS. In this section:

(a) "Department" means the department of natural resources.

(b) "Farm–raised deer" has the meaning given in s. 95.001 (1) (ag).

(2) REQUIREMENTS. (a) No person may keep farm–raised deer if any of the farm–raised deer are white–tailed deer unless all of the farm–raised deer are contained in a fenced area for which the person holds a valid fence inspection certificate issued by the department under this section.

(b) The department may not issue a fence inspection certificate under this section for a fence that is used to contain farm–raised deer that are white–tailed deer unless the fence meets the requirements established by the department by rule under sub. (6).

(c) No person may apply for registration under s. 95.55 in order to keep farm–raised deer that are white–tailed deer without being first issued a fence inspection certificate under this section.

(d) Notwithstanding pars. (a) and (b), a person may keep farm–raised deer and the department shall issue a fence inspection certificate under this section if the fence complies with s. 95.55 (1) (c) 2.

(3) FEES. (a) The fee for a fence inspection certificate issued under this section is $50 for a fenced area that is less than 80 acres in size and $100 for a fenced area that is 80 acres or more in size.

(b) If a person expands a fenced area that is less than 80 acres in size during the period that the fence inspection certificate issued under this section is valid so that the fenced area is 80 acres or more in size, the person shall apply for a new fence inspection certificate and pay an additional fee of $50.

(c) A fence inspection certificate issued under par. (a) or (b) shall be valid from the date of issuance until the 10th December 31 following the date of issuance.

(4) NEW OPERATIONS; DRIVING OUT OF WILD DEER. A person who is starting an operation to keep farm–raised deer that are white–tailed deer and who is applying for a fence inspection certificate under this section shall make a reasonable effort to drive any wild white–tailed deer from the area to be fenced before the area is completely closed. No person may place any baiting material in attempt to attract white–tailed deer to remain in the fenced area. If the department issues a certificate under this section, the department shall determine whether any white–tailed deer remaining in the area after the area is completely closed will be killed or will be sold to the holder of the certificate. If the white–tailed deer are to be killed, the department shall determine how the deer will be killed. If the white–tailed deer are to be sold, the holder of the certificate shall pay the department the fair market value for each deer.

(5) EXISTING OPERATIONS. A person who holds a license under s. 29.871, 1999 stats., on January 1, 2003, may continue to keep white–tailed deer, and the department shall automatically issue the person a fence inspection certificate under this section that will be valid during the period beginning on January 1, 2003, and ending on the 30th day after the effective date of the rules promulgated under sub. (6).

(6) RULES. The department shall promulgate rules to establish requirements for fences for which fence inspection certificates are issued under this section. If the rules include provisions authorizing the placement of fences in navigable bodies of water, s. 30.12 does not apply to fences placed in compliance with these rules.

(7) ENFORCEMENT AUTHORITY. If a fence fails to comply with the requirements established by rule under sub. (6), the department may issue an order directing the person who is required to maintain the fence to bring the fence into compliance within 10 days after the issuance of the order. If the person fails to comply with the order within 10 days of its issuance, the department may revoke the applicable fence inspection certificate.

(8) PENALTIES. (a) Any person who violates this section, or a rule promulgated under this section, shall be subject to a forfeiture of not more than $200.

(b) In addition to or in lieu of the forfeiture specified in par. (a), a court may suspend a fence inspection certificate issued under this section, a registration issued under s. 95.55 that authorizes the defendant to keep farm–raised deer, or both, for a period of up to 3 years.

(c) The department may revoke any fence inspection certificate issued under this section to which any of the following applies:

1. The holder fails to comply with an order issued under sub. (7).

2. The department determines that the certificate was fraudulently procured, or erroneously issued.

History: 2001 a. 56, 105; 2005 a. 409.