

CHAPTER 359A

FENCES

[P]

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from chapter 113 in Code 1993

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359A.1 Definitions.

As used in this chapter, unless the context otherwise requires, “*book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

359A.1A Partition fences.

The respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year.

[C51, §895, 900, 901; R60, §1526, 1531, 1532; C73, §1489, 1494, 1495; C97, §2355; C24, 27, 31, 35, 39, §1829; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.1]

C93, §359A.1

C2001, §359A.1A

359A.2 Trimming and cutting back.

If said fence be hedge, the owner thereof shall trim or cut it back twice during each calendar year, the first time during the month of June and the last time during the month of September, to within five feet from the ground, unless such owners otherwise agree in writing to be filed with and recorded by the township clerk.

[C51, §900; R60, §1531; C73, §1494; C97, §2355; C24, 27, 31, 35, 39, §1830; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.2]

C93, §359A.2

359A.3 Powers of fence viewers.

The fence viewers shall have power to determine any controversy arising under this chapter, upon giving five days' notice in writing to the opposite party or parties, prescribing the time and place of meeting to hear and determine the matter named in said notice. Upon request of any landowner, the fence viewers shall give such notice to all adjoining landowners liable for the erection, maintenance, rebuilding, trimming, or cutting back, or repairing of a partition fence, or to pay for an existing hedge or fence.

[C51, §896, 898, 902, 909; R60, §1527, 1529, 1533, 1540; C73, §1490, 1492, 1496, 1503; C97, §2356; C24, 27, 31, 35, 39, §1831; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.3]

C93, §359A.3

[P] Trustees as fence viewers, §359.17

359A.4 Decision — deposit.

At said time and place the fence viewers shall meet and determine by written order the obligations, rights, and duties of the respective parties in such matter, and assign to each owner the part which the owner shall erect, maintain, rebuild, trim or cut back, or pay for, and fix the value thereof, and prescribe the time within which the same shall be completed or paid for, and, in case of repair, may specify the kind of repairs to be made. If the fence is not erected, rebuilt, or repaired within the time prescribed in the order, the fence viewers shall require the complaining landowner to deposit with the fence viewers a sum of money sufficient to pay for the erecting, rebuilding, trimming, cutting back or repairing such fence together with the fees of the fence viewers and costs. Such complaining landowner shall be reimbursed as soon as the costs and fees assessed against the party in default are collected as provided in section 359A.6.

[C51, §896, 898, 902, 909; R60, §1527, 1529, 1533, 1540; C73, §1490, 1492, 1496, 1503; C97, §2356; C24, 27, 31, 35, 39, §1832; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.4]

C93, §359A.4

2010 Acts, ch 1118, §6

[T] Section amended

359A.5 Contribution postponed.

In case a landowner desires to erect a partition hedge or fence when the owner of the adjoining land is not liable to contribute thereto, the fence viewers may assign to each owner the part which the owner shall erect, maintain, rebuild, and repair, trim or cut back, by pursuing the method provided in sections 359A.3 and 359A.4; but the adjoining owner shall not be required to contribute thereto until the adjoining owner becomes liable so to do, as elsewhere in this chapter provided.

[C51, §901; R60, §1532; C73, §1495; C97, §2357; C24, 27, 31, 35, 39, §1833; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.5]

C93, §359A.5

359A.6 Default — costs and fees collected.

If the erecting, rebuilding, or repairing of a fence is not completed within thirty days from and after the time fixed in the order, the board of township trustees acting as fence viewers shall cause the fence to be erected, rebuilt, and repaired, and the value thereof may be fixed by the fence viewers, and unless the sum so fixed, together with all fees of the fence viewers caused by such default, is paid to the county treasurer, within ten days after the same is so ascertained; or when ordered to pay for an existing fence, and the value thereof is fixed by the fence viewers, and said sum, together with the fees of the fence viewers, remains unpaid by the party in default for ten days, the fence viewers shall certify to the county treasurer the full amount due from the party or parties in default, including all fees and costs assessed by the fence viewers, together with a description of the real estate owned by the party or parties in default along or upon which the said fence exists, and the county treasurer shall enter the same upon the county system, and the amount shall be collected in the same manner as ordinary taxes. Upon certification to the county treasurer, the amount assessed shall be a lien on the parcel until paid.

[C51, §897, 899, 902; R60, §1528, 1530, 1533; C73, §1491, 1493, 1496; C97, §2358; S13, §2358; C24, 27, 31, 35, 39, §1834; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.6]

C93, §359A.6

2010 Acts, ch 1118, §7

[P] Collection of taxes, chapter 445 et seq.

[P] Fees of fence viewers, §359.46

[T] Section amended

359A.7 Service of notice on nonresidents.

The notice by the fence viewers provided for in this chapter may be served upon any owner nonresident of the county where the land is situated, by publication thereof, once each week, for two consecutive weeks in a newspaper printed in the county in which the land is situated, proof of which shall be made as in case of an original notice and filed with the fence viewers,

and a copy delivered to the occupant of said land, or to any agent of the owner in charge of the same.

[C97, §2359; S13, §2359; C24, 27, 31, 35, 39, §1835; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.7]

C93, §359A.7

[P] Proof of publication, R.C.P. 1.314

359A.8 Orders.

All orders and decisions made by the fence viewers shall be in writing, signed by at least two of them, and filed with the township clerk.

[C97, §2360; C24, 27, 31, 35, 39, §1836; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.8]

C93, §359A.8

359A.9 Notice.

All notices in this chapter required to be given shall be in writing, and return of service thereof made in the same manner as notices in actions before a judicial magistrate.

[C97, §2360; C24, 27, 31, 35, 39, §1837; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.9]

C93, §359A.9

[P] Service and return, R.C.P. 1.302 – 1.315

359A.10 Entry and record of orders.

Such orders, decisions, notices, and returns shall be entered of record at length by the township clerk, and a copy thereof certified by the township clerk to the county recorder, who shall record the same in the recorder's office in a book kept for that purpose, and index such record in the name of each adjoining owner as grantor to the other. The county recorder shall collect fees specified in section 331.604.

[C97, §2360; C24, 27, 31, 35, 39, §1838; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.10]

C93, §359A.10

2009 Acts, ch 27, §12

359A.11 Record conclusive.

The record in the recorder's office, unless modified, by appeal as hereinafter provided, shall be conclusive evidence of the matters therein stated, and such record or a certified copy thereof shall be competent evidence in all courts.

[C97, §2360; C24, 27, 31, 35, 39, §1839; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.11]

C93, §359A.11

[P] Appeal, §359A.23

359A.12 Division by agreement — record.

The several owners may, in writing, agree upon the portion of partition fences between their lands which shall be erected and maintained by each, which writing shall describe the lands and the parts of the fences so assigned, be signed and acknowledged by them, and filed and recorded in the office of the recorder of deeds of the county or counties in which they are situated. The county recorder shall collect fees specified in section 331.604.

[C51, §905; R60, §1536; C73, §1499; C97, §2361; C24, 27, 31, 35, 39, §1840; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.12]

C93, §359A.12

2009 Acts, ch 27, §13

359A.13 Orders and agreements — effect.

Any order made by the fence viewers, or any agreement in writing between adjoining landowners, when recorded in the office of the recorder of deeds, as in this chapter provided, shall bind the makers, their heirs, and subsequent grantees.

[C51, §905; R60, §1536; C73, §1499; C97, §2362; C24, 27, 31, 35, 39, §1841; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.13]

C93, §359A.13

359A.14 Lands in different townships.

When the adjoining lands are situated in different townships in the same or different counties, the clerk of the township of the owner making the application shall select two trustees of the clerk's township as fence viewers, and the clerk of the other township one from that clerk's township, who shall possess, in such case, all the powers given to fence viewers in this chapter, but all orders, notices, and valuations and taxation of costs made by them must be recorded in both townships and in the office of the recorder of deeds of each county.

[C51, §906; R60, §1537; C73, §1500; C97, §2363; C24, 27, 31, 35, 39, §1842; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.14]

C93, §359A.14

359A.15 Fence on another's land.

When a person has made a fence or other improvement on an enclosure, which is found to be on land of another, such person may enter upon the land of the other and remove the fence or other improvement and material, upon the first paying, or offering to pay, the other party for any damage to the soil which may be occasioned thereby, and the value of any timber used in said improvement taken from the land of such other party, if any; and if the parties cannot agree as to the damages, the fence viewers may determine them as in other cases; such removal shall be made as soon as practicable, but not so as to expose the crops of the other party.

[C51, §907, 908; R60, §1538, 1539; C73, §1501, 1502; C97, §2364; C24, 27, 31, 35, 39, §1843; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.15]

C93, §359A.15

359A.16 Right to build fence on line.

A person building a fence may lay the same upon the line between the person and the adjacent owners, so that it may be partly on one side and partly on the other, and the owner shall have the same right to remove it as if it were wholly on the owner's own land.

[C51, §910; R60, §1541; C73, §1504; C97, §2365; C24, 27, 31, 35, 39, §1844; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.16]

C93, §359A.16

359A.17 Fence on one side of line.

The provisions concerning partition fences shall apply to a fence standing wholly upon one side of the division line.

[C51, §911; R60, §1542; C73, §1505; C97, §2366; C24, 27, 31, 35, 39, §1845; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.17]

C93, §359A.17

359A.18 Lawful fence.

A lawful fence shall consist of:

1. Three rails of good substantial material fastened in or to good substantial posts not more than ten feet apart.
2. Three boards not less than six inches wide and three-quarters of an inch thick, fastened in or to good substantial posts not more than eight feet apart.
3. Three wires, barbed with not less than thirty-six iron barbs of two points each, or twenty-six iron barbs of four points each, on each rod of wire, or of four wires, two thus barbed and two smooth, the wires to be firmly fastened to posts not more than two rods apart, with not less than two stays between posts, or with posts not more than one rod apart without such stays, the top wire to be not more than fifty-four nor less than forty-eight inches in height.
4. Wire either wholly or in part, substantially built and kept in good repair, the lowest or bottom rail, wire, or board not more than twenty nor less than sixteen inches from the ground, the top rail, wire, or board to be between forty-eight and fifty-four inches in height

and the middle rail, wire, or board not less than twelve nor more than eighteen inches above the bottom rail, wire, or board.

5. A fence consisting of four parallel, coated steel, smooth high-tensile wire which meets requirements adopted by ASTM (American society for testing and materials) international, including but not limited to requirements relating to the grade, tensile strength, elongation, dimensions, and tolerances of the wire. The wire must be firmly fastened to plastic, metal, or wooden posts securely planted in the earth. The posts shall not be more than two rods apart. The top wire shall be at least forty inches in height.

6. Any other kind of fence which the fence viewers consider to be equivalent to a lawful fence or which meets standards established by the department of agriculture and land stewardship by rule as equivalent to a lawful fence.

[R60, §1544, 1545; C73, §1507; C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §1846; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.18]

85 Acts, ch 195, §11; 87 Acts, ch 17, §5

C93, §359A.18

94 Acts, ch 1061, §1; 2000 Acts, ch 1058, §33; 2004 Acts, ch 1086, §106

[P] School attendance center fences, §297.14

359A.19 Duty to maintain tight fences.

All partition fences may be made tight by the party desiring it, and when that party's portion is so completed, and securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart, the adjoining property owner shall construct the adjoining owner's portion of the adjoining fence, in a lawful tight manner, same to be securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart.

[R60, §1545; C73, §1507; C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §1847; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.19]

C93, §359A.19

359A.20 Tight fence.

All tight partition fences shall consist of:

1. Not less than twenty-six inches of substantial woven wire on the bottom, with three strands of barbed wire with not less than thirty-six barbs of at least two points to the rod, on top, the top wire to be not less than forty-eight inches, nor more than fifty-four inches high.

2. Good substantial woven wire not less than forty-eight inches nor more than fifty-four inches high with one barbed wire of not less than thirty-six barbs of two points to the rod, not more than four inches above said woven wire.

3. Any other kind of fence which the fence viewers consider to be equivalent to a tight partition fence or which meets standards established by the department of agriculture and land stewardship by rule as equivalent to a tight partition fence.

[C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §1848; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.20]

85 Acts, ch 195, §12; 87 Acts, ch 17, §6

C93, §359A.20

359A.21 Duty to keep fence tight.

In case adjoining owners or occupants of land shall use the same for pasturing sheep or swine, each shall keep that one's share of the partition fence in such condition as shall restrain such sheep or swine.

[C73, §1507; C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §1849; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.21]

C93, §359A.21

359A.22 Controversies.

Upon the application of either owner, after notice is given as prescribed in this chapter, the fence viewers shall determine all controversies arising under sections 359A.18 to 359A.21, inclusive, including the partition fences made sheep and swine tight.

[C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §1850; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.22]

C93, §359A.22

[P] Notice, §359A.3, 359A.7, 359A.9

359A.22A Habitual trespass.

A landowner of land where livestock are kept or an owner of adjoining land shall be liable to erect or maintain a fence if the livestock trespasses upon the land of a neighboring landowner or strays from the land where the livestock are kept onto a public road, as provided in section 169C.6.

2007 Acts, ch 64, §3

359A.23 Appeal.

Any person affected by an order or decision of the fence viewers may appeal to the district court by filing with the clerk of said court a notice of appeal within twenty days after the rendition of the order or decision appealed from and filing an appeal bond in an amount approved by the township clerk. The township clerk, after recording the original papers, shall thereupon file them in the office of the clerk of the district court, certifying them to be such, and the clerk shall docket them, entitling the applicant or petitioner as plaintiff, and it shall stand for trial as other cases.

[C97, §2369; C24, 27, 31, 35, 39, §1851; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.23]

C93, §359A.23

[P] Presumption of approval, §636.10

359A.24 Certification of decree.

Upon the final determination of said appeal the clerk of the district court shall certify to the recorder of deeds the fact that a judgment has been entered upon such appeal, with the book and page of such judgment, and the recorder shall thereupon enter on the recorder's record a notation that a judgment on appeal has been entered and that the same may be found in the office of the clerk of the district court, in the book and page designated in said certificate.

[C24, 27, 31, 35, 39, §1852; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.24]

C93, §359A.24

359A.25 Record kept — fees of clerk.

The township clerk shall enter all matters herein required to be made of record in the clerk's record book, and shall receive ten cents for each one hundred words in entering of record and making certified copies of the matters herein provided for, and twenty-five cents additional for the clerk's certificate thereto when required, and shall also receive the costs of recording in the office of the recorder of deeds of any instrument required to be so recorded.

[C97, §2370; C24, 27, 31, 35, 39, §1853; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.25]

C93, §359A.25