



2009 SENATE BILL 136

March 26, 2009 – Introduced by Senators HOLPERIN, LEHMAN, COWLES, PLALE and OLSEN, cosponsored by Representatives MURSAU and CLARK. Referred to Committee on Agriculture and Higher Education.

1 **AN ACT to amend** 90.03, 90.035, 90.04 and 90.05 (1) (c) of the statutes; **relating**
2 **to:** the requirement to build and maintain partition fences.

Analysis by the Legislative Reference Bureau

Current law gives the occupants of adjacent properties equal responsibility to build and maintain a partition fence between the properties if one or both of the occupants use the property for farming or grazing, unless the occupants agree to a different arrangement.

This bill narrows the applicability of the law relating to partition fences so that occupants of adjacent properties have equal responsibility to build and maintain a partition fence only if both of the adjacent properties are used for grazing or keeping livestock.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 90.03 of the statutes is amended to read:
4 **90.03 Partition fences; when required.** The respective occupants of
5 adjoining lands used and occupied for farming or grazing purposes, and the
6 respective owners of adjoining lands when the lands of one of such owners is used and

SENATE BILL 136**SECTION 1**

1 occupied for farming or grazing purposes, grazing or keeping livestock shall keep and
2 maintain partition fences between their own and the adjoining premises in equal
3 shares so long as ~~either party continues~~ both parties continue to so occupy the lands,
4 except that the occupants of the lands may agree to the use of markers instead of
5 fences, and ~~such~~ shall keep those fences shall be kept in good repair throughout the
6 year unless the occupants of the lands on both sides otherwise mutually agree.

7 **SECTION 2.** 90.035 of the statutes is amended to read:

8 **90.035 Public fences.** Where the 2 parties, one of whom is the state or a
9 subdivision thereof, agree that a fence is reasonably necessary, the duty to erect and
10 maintain partition fences shall apply equally to the state, ~~as provided in s. 90.03,~~ and
11 its subdivisions as occupants of lands whenever such lands are bounded by privately
12 owned agricultural or grazing lands used for grazing or keeping livestock.

13 **SECTION 3.** 90.04 of the statutes is amended to read:

14 **90.04 Effect of fences on action for trespass by animals.** Owners of lands
15 who do not maintain and keep in repair lawful partition fences as required under s.
16 90.03 may not recover any damages for trespasses by the animals of owners of any
17 adjoining lands with whom partition fences ~~might~~ were required to have been
18 maintained if such lands had been enclosed; but the construction of such a fence does
19 not relieve the owner of swine, horses, sheep or goats from liability for any damage
20 they commit upon the enclosed premises of an adjoining owner.

21 **SECTION 4.** 90.05 (1) (c) of the statutes is amended to read:

22 90.05 (1) (c) ~~An~~ Notwithstanding pars. (a) and (b), an owner, or the owner's
23 heirs or assigns, are not obligated to build or maintain any part of a partition fence

