

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:00 a.m./~~pm~~ on February 14, 1986 in room 432-S of the Capitol.

All members were present ~~except~~
~~xxxx~~:

Committee staff present:

Fred Carmen, Revisor's Office
Raney Gilliland, Legislative Research Department

Conferees appearing before the committee:

Dan R. McGee, Centel Corporation, Western Power
Pat Hubbell, Kansas Association of Railroads
Howard Tice, Kansas Association of Wheat Growers

Senator Allen called the Committee to order and called attention to Committee minutes. Senator Doyen made a motion the minutes stand approved. Senator Arasmith seconded the motion. Motion carried.

Copies of information from Roy Irons concerning the Fence Law were given to Committee members (attachment 1).

The Chairman announced the meeting to be for Committee action on SB 403, the Fence Law. He announced several amendments were going to be suggested. He called first on Dan McGee to present an amendment.

Mr. McGee gave copies of the amendment to the Committee members (attachment 2). Mr. McGee explained this amendment was a preventive measure. The amendment states a utility company could not be held liable for any damages caused from an electric fence during a power failure.

Senator Doyen made a motion that the Committee adopt this amendment. Senator Norvell seconded the motion. Motion carried.

The Chairman called on Pat Hubbell to present amendments.

Mr. Hubbell gave copies of proposed amendments for SB 403 (attachment 3).

Senator Norvell made a motion the Committee accept the proposed amendments. Senator Montgomery seconded the motion. Motion carried.

The Chairman called on Howard Tice to present proposed amendments.

Mr. Tice gave copies of proposed amendments to SB 403 (attachment 4). Mr. Tice explained the proposed changes were to clarify wording in the partition fence sections to be compatible with wording of New Section 1 so that it would reflect 'fence in' policy. Committee discussion centered around question of whether these proposed amendments would create liability problems and whether it would be better to eliminate the two words "otherwise than" from the present law instead of accepting the proposed amendments.

Senator Norvell made a motion the proposed amendments be adopted. Senator Karr seconded the motion. Committee discussion included that a neighbor who does not use or benefit from a partition fence should not be required to share the cost and upkeep expenses with his neighbor. It was also stated that these amendments were needed to carry out the intent of the new fence law and all the amendments should be incorporated into SB 403 so that all fence laws would be together.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
room 432-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 14, 1986

Senator Kerr made a substitute motion to strike words "otherwise than" from the fence law in K.S.A. 29-309. Senator Karr seconded the substitute motion. The substitute motion carried.

Senator Norvell made a motion the amendments be adopted pertaining to K.S.A. 29-304, K.S.A. 29-306, K.S.A. 29-408 and K.S.A. 29-309 as previously worded with the words "otherwise than" deleted as just removed by the previous motion.

As time ran out, the Chairman announced the Committee had not considered the amendments the Kansas Livestock Association had prepared (attachment 5), and that further action, if any, would be taken at a later time. He then declared the meeting adjourned at 11:00 a.m.

Attachments: #1 - Roy Irons regarding fence law
#2 - Amendment by Mr. McGee
#3 - Proposed amendment for SB 403
#4 - Proposed amendment by Mr. Tice
#5 - Proposed amendments by Ks. Livestock Assoc.

Senator Jim Allen, Chairman, and members
of the Senate Agriculture Committee:

Your work and concerns in the matter of
electric fences and the studies of the interim
committee last summer is very much appreciated.

We have some concerns relative to S.B. 403.

We feel that our experience brings to light
a possible attempt by the railroads to get
around their obligation under the law to
fence along the right-of-way and possibly
any responsibility for livestock killed or
injured by a train. The railroads have always
settled reasonably well for any cattle we have
lost on the railroad. However, we do not
want to see a change in the Fence Law that
would change the railroads responsibility under
Chapter 66. This whole matter boils down to
a law that recognized an electric fence as
legal when built to minimum requirements,
as the law have done for other fences.
In our opinion there is not too much
wrong with the present fence law. It is
much better than we thought when we first
started studying it. Hopefully we will not
lose more than we gain by any change or
up-dating that we may enact.

Thank you!

Sincerely,
Ray A. Lyons

attachment 1
2-14-86
Sen. Ag.

Amendment for SB 403

On page 3, in line 104, following the period, by adding a sentence as follows:

"No utility which furnishes electricity shall have or incur any liability to any person in the event of electric power failure to or for any electric fence."

*attachment 2
2-14-86 Sen. Ag.*

Proposed Amendment
1986 Senate Bill No. 403

On page 3, following line 108, by inserting a new section to read as follows:

"Sec. 7. K.S.A. 66-308 is hereby amended to read as follows: 66-308. (a) Any person, persons or corporations owning land by or through which any railroad or any electric interurban line has been or may be constructed, who has enclosed or may enclose the same or any part thereof, and adjacent to the line of such railroad or interurban line, with either a lawful fence or a hog-tight fence, may demand of such railroad or interurban company that it enclose its line next thereto with a lawful fence or hog-tight fence corresponding in class of fence to that maintained by the owner, and maintain the same: Provided, That the following shall constitute a hog-tight fence for the purpose of this act: A woven-wire fence not less than twenty-six inches high with not less than seven cables and meshes not to exceed six inches in length. The bottom mesh shall not be more than three inches wide; the second not more than three and one half inches wide, the third not more than four inches wide, the fourth not more than four and one half inches wide, the fifth not more than five inches wide, and the sixth not more than six inches wide. The bottom wire of the said woven-wire fence shall be placed not to exceed two

attachment 3
2/14/86 Sen. Ag.

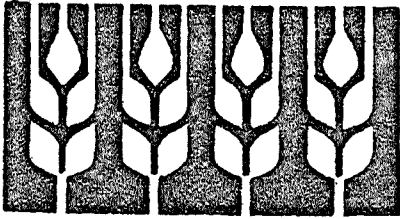
inches from the surface of the ground. And in addition to the woven wire already prescribed there shall be not less than three barbed wires placed above said woven wire. The first barbed wire above the woven wire shall be placed four inches above the top of the woven-wire fence. The second barbed wire shall be placed eight inches above the first barbed wire, and the third barbed wire to be placed eight inches above the second barbed wire; in all, forty-eight inches. The posts shall be of ordinary size for fence purposes and set in the ground at least two feet deep and not to exceed sixteen feet apart. The barbs on the barbed wire shall not exceed six inches apart, said wire to be of not less than No. 13 standard gauge.

"(b) For purposes of this section, an electrically charged wire fence described in section 5 of this act shall not be deemed a lawful fence."

Also on page 3, by renumbering sections 7 and 8 as sections 8 and 9, respectively; in line 111, by striking the word "and" and inserting in lieu thereof a comma; also in line 111, after the word "inclusive", by inserting: ", and 66-308";

On page 1, in the title, in line 19, by striking the word "and" where it first appears and inserting in lieu thereof a comma; also in line 19, after "47-122" by inserting the following: "and 66-308";

KANSAS ASSOCIATION
OF FENCE GROWERS



SENATE COMMITTEE ON AGRICULTURE & LIVESTOCK

SENATE BILL 403 - Kansas Fence Law

Proposed Amendments

THE KAWS SUPPORTS SB 403 AS IT IS WRITTEN, BUT REQUESTS THE FOLLOWING AMENDMENTS TO SECTIONS OF THE PARTITION FENCE SECTION OF EXISTING LAW, NOT ALREADY ADDRESSED IN THE BILL.

KSA 29-304 & KSA 29-306 by striking the words, [and upon all succeeding occupants of the lands.] from both sections.

KSA29-309 as follows: ~~No person not wishing his land enclosed, and not occupying or using it otherwise than in common, shall be compelled to contribute to erect or maintain any fence dividing between his land and that of an adjacent owner; but when he encloses or uses his land otherwise than in common, he shall contribute to the partition fence as in this act is provided.~~ *using a partition fence to enclose livestock, shall be compelled to contribute to the cost of erecting or maintaining any fence dividing between his land and that of an adjacent land owner who is required by this act to enclose livestock.**

If said land owner, or any succeeding land owner, uses the land previously unenclosed to pasture or hold livestock for a period exceeding six months, said land owner shall then contribute to the maintenance of the partition fence as in this act is provided.

If the owner of said unenclosed land uses that land for temporary livestock pasture, he shall be required to enclosed said livestock with a legal fence.

29-408 as follows: ~~If any of the animals mentioned in this act shall break into an enclosure surrounded by a fence of the height and sufficiency prescribed by this act, the owner of the enclosure break free of their enclosure, and trespass on land owned by another land owner, the owner of said land may take into possession such animal trespassing, and keep the same until damages, with reasonable cost for feeding and keeping, and all costs of suit, be paid, to be recovered in any court of competent jurisdiction.~~

* NOT WITHSTANDING THE PROVISIONS OF KSA 66-308-311 IN RESPECT TO FENCES ALONG RAILROAD RIGHT-OF-WAYS.

attachment 4
2/14/86 Sen. Ag.

0082 posts and fastened to the wires by staples, or with holes in the
 0083 slats: ~~Provided, That in townships or counties where hogs are~~
 0084 ~~allowed to run at large, there shall be three additional barbed~~
 0085 ~~wires, the lower one of which shall not be more than four inches~~
 0086 ~~from the ground; the other two to be placed an equal distance~~
 0087 ~~apart, or nearly so, between this and the lower wire as required~~
 0088 ~~above.~~

0089 (b) On and after the effective date of this act, a newly
 0090 constructed barbed-wire fence to be deemed a legal fence under
 0091 this section, shall, in addition to all other requirements of
 0092 subsection (a), be constructed of four wires with a post for every
 0093 ~~rod~~ of distance with the fourth wire from the ground being not 24 feet
 0094 less than 48 inches from the ground and the first wire from the
 0095 ground being not more than 18 inches from the ground.

0096 New Sec. 5. In addition to fences otherwise declared by law
 0097 to be a legal fence, an electrically charged wire fence with at
 0098 least one 14 gauge wire or its equivalent and which is deemed by
 0099 the fence viewers in whose jurisdiction such fence is located, to
 0100 be equivalent to other legal fences, is hereby deemed a legal
 0101 fence. The board of county commissioners of any county may, by
 0102 enacting a resolution so providing, elect to declare that such
 0103 electrically charged wire fence shall not be a legal fence within
 0104 the jurisdiction of such board.

0105 Sec. 6. K.S.A. 47-122 is hereby amended to read as follows:
 0106 47-122. ~~That~~ It shall be unlawful for any ~~neat cattle, horses,~~
 0107 ~~mules, asses, swine or sheep,~~ domestic animal, other than dogs
 0108 and cats, to run at large.

0109 Sec. 7. K.S.A. 29-101, 29-102, 29-105, 29-410 to 29-423, in-
 0110 clusive, 47-101 to 47-103, inclusive, 47-105 to 47-110, inclusive,
 0111 47-112 to 47-119, 47-122 and 47-301 to 47-313, inclusive are
 0112 hereby repealed.

0113 Sec. 8. This act shall take effect and be in force from and
 0114 after its publication in the statute book.

attachment 5
 2/14/86 Sen. Ag.

0082 posts and fastened to the wires by staples, or with holes in the
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 0110 clusive, 47-101 to 47-103, inclusive, 47-105 to 47-110, inclusive,
 0111 47-112 to 47-119, 47-122 and 47-301 to 47-313, inclusive are
 0112 hereby repealed.

0113 Sec. 8. This act shall take effect and be in force from and
 0114 after its publication in the statute book.

Sec. 8. Nothing in this act shall be construed as relieving the liability of the user of highways constructed through pastures, pursuant to K.S.A. 68-126, et seq., or imposing any liability upon county commissioners, landowners or lessees of such lands.