

town, village or city in which the permit for conducting such business is issued.

4. The board of health of any town, village or city may at any time revoke any permit issued by it whenever the grantee shall conduct such business in an unclean and unsanitary manner, shall keep the utensils, cans, vessels, rooms or buildings, or other equipment, facilities or premises used in conducting such business in an unclean or unsanitary condition or in any condition tending to produce or promote unhealthfulness or disease, or shall be convicted of violating any of the laws of this state or the rules or regulations of the state board of health of such town, village or city, relating to sanitation.

5. Any person violating any of the provisions of subsection 1 of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than thirty days nor more than six months or by both such fine and imprisonment.

SECTION 2. This act shall take effect upon passage and publication.

Approved August 23, 1915.

No. 556, A.]

[Published August 26, 1915.

## CHAPTER 618.

AN ACT to amend sections 1391, 1392, 1393, 1395, 1396 and 1397 of the statutes, relating to partition fences.

*The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Sections 1391, 1392, 1393, 1395, 1396 and 1397 of the statutes are amended to read: Section 1391. The respective occupants of adjoining lands, used and occupied for farming purposes, *and the respective owners of adjoining lands when the lands of one of such owners is used and occupied for farming purposes*, shall keep and maintain partition fences between their own and next adjoining premises in equal shares so long as \* \* \* *either party* continues to so occupy the same, and such fences shall be kept in good repair throughout the year unless the occupants of the lands on both sides otherwise mutually agree. And owners of lands who do not maintain and keep in repair lawful partition fences shall not be entitled to recover any damages whatever 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.

Section 1392. Every partition of the fence or of the line upon which partition fences are to be built between adjoining owners, made by the owners thereof in writing, signed, sealed and witnessed by two witnesses, or by the fence viewers, in writing under their hands, in the cases and in the manner hereinafter provided, after being recorded in the town clerk's office, shall oblige such owners, their heirs and assigns, so long as such adjoining land on each side respectively shall remain in the same ownership, and after a severance of ownership until a new partition of such fence shall be made, to build and maintain such fence agreeably to said partition. But neither such owner nor his heirs or assigns shall be bound to build or maintain any part of such partition fence during any time when \* \* \* *none of such adjoining lands shall \* \* \* be so occupied.*

Section 1393. 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:

(1) When any owner of uninclosed lands shall desire to inclose the same he may have the line between his 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, whether such adjoining land be inclosed or not.

(2) 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 his part in severalty, and the other shall refuse or neglect, on demand, to divide with him the line where the fence ought to be built or to build a sufficient fence on his part of the line, when divided, the occupant desiring it may have the same divided and the share of each assigned.

(3) 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 two or more fence viewers of the town where the lands lie who, after reasonable notice in writing to each party to be served as a summons is in a civil action before a justice of the peace, shall, in writing under their hands, divide the partition fence or line and assign to each owner or occupant his share thereof; and in the second and third cases they shall also therein direct the time within which each party shall build or repair, as may be proper, his 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 shall refuse or neglect to build or repair within the time so assigned his part of the fence the other may, after having completed his own part, build or repair such part and recover \* \* \* the expense thereof as \* \* \* provided in section 1397 of the statutes.

Section 1395. When the boundary line between inclosed lands of 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 shall refuse to join in making a partition fence on either side thereof, or if they shall disagree respecting the same, either party may apply to two or more fence viewers of the town, who, after giving notice as provided in section 1393, shall proceed to view such river, brook, pond or creek; and if they shall determine that the same is not a sufficient fence and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line they shall, in writing under their hands, determine how or on which side thereof the fence shall be built or whether partly on one side and partly on the other, and assign to each owner or occupant his share thereof and the time within which the respective parties shall build the same, and file such determination in the office of the town clerk, who shall record the same. If either party shall refuse or neglect to build within the time so assigned his part of the fence the other may, after having completed his own part, build such part and recover \* \* \* the expense thereof as hereinafter provided. If said fence viewers shall determine that it is impracticable, either from the formation of the banks of such river, brook, pond or creek or from any other cause, to maintain any fence along or near said boundary line they shall give written notice to the parties of such determination.

Section 1396. In case any person shall neglect to repair or rebuild any partition fence which by law he ought to maintain the aggrieved party may complain to two or more fence viewers of the town, who, after giving notice as provided in section 1393, shall examine the same, and if they shall determine such fence is insufficient they shall signify the same to the delinquent party and direct him to repair or rebuild the same within such time as they shall deem reasonable. If such fence shall not be repaired or rebuilt within the time so fixed, the complainant may repair or rebuild the same and recover \* \* \* the expense thereof as hereinafter provided.

Section 1397. 1. Whenever any owner or occupant shall have built, repaired or rebuilt any fence in pursuance of the pre-

ceding sections which the adjoining owner or occupant shall have been lawfully directed by fence viewers to build, repair or rebuild, and have failed to do within the time prescribed, he may call upon any two or more fence viewers of the town, who shall, after having given notice to such adjoining owner or occupant as provided in section 1393, examine such fence and ascertain the expense thereof; and if they shall adjudge such fence sufficient they shall give to such party a certificate under their hands of such decision and of the amount of the expense of such building or repairing, and the fees of the fence viewers who made such order and of their own; and thereupon such party may demand \* \* \* the amount of such ascertained expense, together with such fees, from such adjoining owner or occupant; and in case of neglect and refusal to pay the same for one month after so demanded the \* \* \* *amount of such expenses and fees together with interest at the rate of one per cent a month \* \* \* shall constitute a special charge and lien against such adjoining lands and may be recovered in the manner provided in subsection 2 of this section.*

2. *The person to whom such certificate shall be executed and delivered may file the same with the town clerk of the town in which the lands charged with such expense are located. Upon the filing of such certificate such town clerk shall issue his warrant for the amount thereof upon the town treasurer payable to such person. The amount so paid together with interest at the rate of one per cent a month shall be included by the town clerk in the next tax roll as a special charge against such lands and such charge shall be collected by the town treasurer with the other taxes in such town. Any such charge remaining unpaid shall be added to the list of delinquent taxes returned to the county treasurer, who shall collect the same or sell the land as for delinquent taxes; and all proceedings in relation thereto 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 such delinquent charges shall pay the same to the treasurer of the proper town.*

SECTION 2. This act shall take effect upon passage and publication.

Approved August 23, 1915.