



## 1997 ASSEMBLY BILL 700

January 13, 1998 - Introduced by Representatives SPRINGER, AINSWORTH, GOETSCH, MUSSER, GROTHMAN, PLOUFF and HUBER, cosponsored by Senators WINEKE and DECKER. Referred to Committee on Natural Resources.

1     **AN ACT** *to renumber and amend* 90.03; *to amend* 90.04; and *to create* 90.03  
2           (1), 90.03 (2) (a) 1., 90.03 (2) (a) 2. and 90.03 (3) of the statutes; **relating to:**  
3           requiring partition fences.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the owners or occupants of adjoining lands, if the land of at least one of the owners or occupants is used and occupied for farming or grazing purposes, must construct and maintain, assuming equal responsibility for, a partition fence, which is a fence between the properties. An owner who does not comply with the requirement to construct and maintain a partition fence may not recover any damages for trespass by animals owned by the owner of the adjoining land. The construction of a partition fence, however, does not relieve a person from liability for damages that are caused by his or her swine, horses, sheep or goats to the enclosed property of an adjoining landowner.

This bill modifies the circumstances under which a partition fence must be constructed and maintained. The owners or occupants of adjoining lands have responsibility for such a fence if the land of at least one of them is used and occupied for grazing or keeping livestock and if the livestock of at least one of them graze or are kept on land that is actually contiguous to the adjoining property. Livestock is defined as bovine animals, sheep, goats, swine, farm-raised deer and equine animals. If the livestock graze or are kept in a separate enclosure that is contiguous to the adjoining property, the responsibility for constructing and maintaining that enclosure applies only to the portion of the enclosure that is coterminous with the

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adjoining property. Current law related to recovery of and liability for damages caused by the animals is not changed, except that those provisions now apply to damages caused by the animals included in the new definition for livestock.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 90.03 of the statutes is renumbered 90.03 (2) (a) (intro.) and  
2 amended to read:

3           90.03 **(2)** (a) (intro.) The respective occupants or owners of adjoining lands used  
4 and occupied for farming or grazing purposes, and the respective owners of adjoining  
5 lands when the lands of one of such owners is used and occupied for farming or  
6 grazing purposes, shall keep and maintain partition fences between their own and  
7 the adjoining premises in equal shares so long as either party continues to so occupy  
8 the lands, except that the occupants of the lands may agree to the use of markers  
9 instead of fences, and such if all of the following apply:

10           (b) Partition fences shall be kept in good repair throughout the year unless the  
11 occupants of the lands on both sides otherwise mutually agree.

12           **SECTION 2.** 90.03 (1) of the statutes is created to read:

13           90.03 **(1)** In this section, "livestock" has the meaning given in s. 95.68 (1) (d).

14           **SECTION 3.** 90.03 (2) (a) 1. of the statutes is created to read:

15           90.03 **(2)** (a) 1. At least one of the adjoining premises is used and occupied for  
16 grazing or keeping livestock.

17           **SECTION 4.** 90.03 (2) (a) 2. of the statutes is created to read:

18           90.03 **(2)** (a) 2. Livestock on at least one of the adjoining premises graze or are  
19 kept on land that is actually contiguous to the other adjoining premises.

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1           **SECTION 5.** 90.03 (3) of the statutes is created to read:

2           90.03 (3) If livestock specified in sub. (2) (a) 2. graze or are kept in a separate  
3 enclosure or fenced area that is contiguous to the adjoining premises, the obligation  
4 under sub. (2) to keep and maintain a partition fence applies to only so much of the  
5 enclosure or fenced area that is actually coterminous with the adjoining premises.

6           **SECTION 6.** 90.04 of the statutes is amended to read:

7           **90.04** (title) **Effect of fences on action for trespass by ~~animals~~ livestock.**

8 Owners of lands who do not maintain and keep in repair lawful partition fences may  
9 not recover any damages for trespasses by the ~~animals~~ livestock, as defined in s.  
10 90.03 (1), of owners of any adjoining lands with whom partition fences might have  
11 been maintained if such lands had been enclosed; ~~but the.~~ The construction of such  
12 a partition fence does not relieve the owner of ~~swine, horses, sheep or goats~~ livestock,  
13 as defined in s. 90.03 (1), from liability for any damage ~~they commit~~ caused by the  
14 livestock upon the enclosed premises of an adjoining owner.

15           **SECTION 7. Initial applicability.**

16           (1) This act first applies to partition fences that are constructed on the effective  
17 date of this subsection.

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(END)