

CHAPTER 194

TRANSPORTATION

HOUSE BILL 94-1019

BY REPRESENTATIVES Entz, Chlouber, Eisenach, Fleming, George, Moellenberg, Owen, and Shoemaker;
also SENATORS Ament, Bishop, Mutzebaugh, R. Powers, Roberts, and Wattenberg.

AN ACT**CONCERNING RIGHT-OF-WAY FENCES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 35-46-111, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-46-111. Right-of-way fences. (1) (a) Except as otherwise provided in PARAGRAPH (b) OF THIS SECTION SUBSECTION (1) AND SUBSECTION (4) OF THIS SECTION, it is the duty of the ~~highway operations and maintenance division~~ DEPARTMENT OF TRANSPORTATION to maintain right-of-way fences CONSTRUCTED AS OF JUNE 1, 1994, BY THE DEPARTMENT AT OR NEAR THE BOUNDARY OF THE DEPARTMENT'S HIGHWAY PROPERTY IN AGRICULTURALLY ZONED AREAS along and adjacent to all federal aid highways ~~constructed by the division~~, where such highways are maintained by the ~~division~~ DEPARTMENT. THE DEPARTMENT SHALL MAKE REPAIRS TO SUCH RIGHT-OF-WAY FENCES WHEN NECESSARY ONLY UPON ACTUAL NOTICE TO THE DEPARTMENT. NEITHER THE DEPARTMENT NOR THE LANDOWNER IS LIABLE FOR ANY DAMAGES CAUSED BY THE FAILURE TO ADEQUATELY CONSTRUCT, MAINTAIN, OR REPAIR THE RIGHT-OF-WAY FENCE UNLESS ACTUAL NOTICE IS GIVEN TO THE DEPARTMENT. ~~On all state or federal aid highway road construction projects where the highway operations and maintenance division constructs a right-of-way fence along and adjacent to such construction project, in whole or in part, it is the duty of the division to maintain the same. In the event that the highway operations and maintenance division removes a right-of-way fence during the completion of a road construction project, except for road construction projects along an interstate or other highway segment where the property owner has no rights of direct access to the highway, the right-of-way fence shall be replaced by the highway operations and maintenance division unless the landowner adjacent to the right-of-way fence~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~requests that the right-of-way fence not be replaced. Except for road construction projects along an interstate highway or other highway segment where the property owner has no rights of direct access to the highway, no right-of-way fence shall be erected unless the landowner adjacent to the right-of-way fence requests that the right-of-way fence be erected. The highway operations and maintenance division shall continue to maintain the right-of-way fence.~~

(b) IF THE DEPARTMENT REMOVES A RIGHT-OF-WAY FENCE IN AN AGRICULTURALLY ZONED AREA DURING A CONSTRUCTION PROJECT, THE DEPARTMENT SHALL REPLACE AND MAINTAIN SAID FENCE UNLESS THE LANDOWNER AND THE DEPARTMENT AGREE THAT SAID FENCE SHALL NOT BE REPLACED.

(2) IN NONAGRICULTURALLY ZONED AREAS, THE DEPARTMENT MAY ERECT A RIGHT-OF-WAY FENCE WHERE THE HIGHWAY HAS BEEN DECLARED A FREEWAY PURSUANT TO SECTION 43-3-101, C.R.S., OR IN AREAS THAT THE LANDOWNER AND THE DEPARTMENT AGREE THAT SAID FENCE BE ERECTED. IF THE DEPARTMENT ERECTS A RIGHT-OF-WAY FENCE OR HAS PREVIOUSLY ERECTED A RIGHT-OF-WAY FENCE WHERE THE HIGHWAY HAS BEEN DECLARED A FREEWAY, THE DEPARTMENT SHALL MAINTAIN AND REPAIR SAID FENCE WHEN NECESSARY UPON ACTUAL NOTICE TO THE DEPARTMENT. NEITHER THE DEPARTMENT NOR THE LANDOWNER IS LIABLE FOR ANY DAMAGES CAUSED BY THE FAILURE TO ADEQUATELY CONSTRUCT, MAINTAIN, OR REPAIR THE RIGHT-OF-WAY FENCE UNLESS ACTUAL NOTICE IS GIVEN TO THE DEPARTMENT.

(3) UPON ACTUAL NOTICE, THE DEPARTMENT SHALL MAINTAIN RIGHT-OF-WAY FENCES CONSTRUCTED BY THE DEPARTMENT, WHERE HIGHWAYS ARE MAINTAINED BY THE DEPARTMENT, AT OR NEAR THE BOUNDARY OF THE DEPARTMENT'S HIGHWAY PROPERTY ADJACENT TO PROPERTIES OWNED BY MUNICIPALITIES UNLESS OTHERWISE AGREED TO IN WRITING BY THE DEPARTMENT AND THE MUNICIPALITY.

(4) IF, IN BOTH AGRICULTURALLY AND NONAGRICULTURALLY ZONED AREAS, THE LANDOWNER ADJACENT TO AN EXISTING RIGHT-OF-WAY FENCE AND THE DEPARTMENT AGREE THAT SAID FENCE SHALL BE REMOVED, THE RIGHT-OF-WAY FENCE SHALL BE REMOVED BY THE DEPARTMENT AT ITS EXPENSE. IF THE LANDOWNER REMOVES OR CAUSES THE REMOVAL OF THE RIGHT-OF-WAY FENCE WITHOUT AGREEMENT BY THE DEPARTMENT, THE DEPARTMENT SHALL NOT BE REQUIRED TO REIMBURSE THE LANDOWNER FOR SUCH REMOVAL, AND THE LANDOWNER SHALL BE LIABLE FOR ANY AND ALL DAMAGES CAUSED BY THE UNAUTHORIZED REMOVAL OF THE FENCE.

(5) IF A RIGHT-OF-WAY FENCE IS EITHER REMOVED OR NOT REPLACED PURSUANT TO SUBSECTION (1) OR (4) OF THIS SECTION AND THE LANDOWNER WHO AGREED THAT THE FENCE BE REMOVED OR NOT REPLACED OR ANY SUBSEQUENT LANDOWNER OF PROPERTY ADJACENT TO THE RIGHT-OF-WAY LATER DESIRES TO ERECT A RIGHT-OF-WAY FENCE, SAID FENCE MAY BE ERECTED BY THE LANDOWNER AT THE LANDOWNER'S EXPENSE, BUT ONLY UPON PRIOR AGREEMENT BY THE DEPARTMENT. SUCH RIGHT-OF-WAY FENCE SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE STANDARDS APPLICABLE TO THE DEPARTMENT AT THE TIME SUCH FENCE IS ERECTED, AND THE DEPARTMENT IS REQUIRED TO MAKE REPAIRS TO SUCH RIGHT-OF-WAY FENCE UPON ACTUAL NOTICE TO THE DEPARTMENT. LIABILITY FOR ANY DAMAGES CAUSED BY FAILURE TO ADEQUATELY CONSTRUCT THE RIGHT-OF-WAY FENCE SHALL BE BORNE BY THE LANDOWNER AT THE TIME THE DAMAGES ARE INCURRED.

(6) ALL AGREEMENTS REQUIRED PURSUANT TO SUBSECTIONS (1) TO (5) OF THIS SECTION SHALL BE IN WRITING, BE RECORDED BY THE DEPARTMENT IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF EACH COUNTY WHERE THE REAL PROPERTY ADJACENT TO THE RIGHT-OF-WAY IS LOCATED, AND BE BINDING UPON AND NOTICE TO ALL PERSONS OR CLASSES OF PERSONS CLAIMING ANY INTEREST IN SAID PROPERTY.

(7) IF A LANDOWNER AND THE DEPARTMENT AGREE TO EITHER REMOVE OR NOT REPLACE A RIGHT-OF-WAY FENCE PURSUANT TO SUBSECTIONS (1) TO (5) OF THIS SECTION AND THE LANDOWNER AT THE TIME OF THE AGREEMENT OR ANY SUBSEQUENT LANDOWNER DOES NOT MAINTAIN LIVESTOCK, AS DEFINED IN SECTION 35-46-101 (2), ON THE LAND ADJACENT TO A HIGHWAY RIGHT-OF-WAY, ANY LIVESTOCK THAT ENTERS THE HIGHWAY RIGHT-OF-WAY THROUGH THAT LAND SHALL NOT BE A DANGEROUS CONDITION PURSUANT TO SECTION 24-10-106 (d), C.R.S. NEITHER THE LANDOWNER NOR THE DEPARTMENT SHALL BE LIABLE FOR ANY DAMAGES CAUSED BY SUCH LIVESTOCK BECAUSE OF THE ABSENCE OF SUCH RIGHT-OF-WAY FENCE.

(8) IF A PERSON HERDS LIVESTOCK ALONG A HIGHWAY ADJACENT TO PROPERTY FROM WHICH A FENCE HAS BEEN REMOVED PURSUANT TO THIS SECTION AND ANY OF THE LIVESTOCK STRAYS ONTO THAT PROPERTY, THE LANDOWNER MAY NOT RECOVER DAMAGES FOR TRESPASS AND INJURY TO GRASS, GARDEN OR VEGETABLE PRODUCTS, OR OTHER CROPS FROM THE OWNER OF THE LIVESTOCK UNLESS THE LANDOWNER CAN PROVE THE PERSON HERDING THE LIVESTOCK ALLOWED THE LIVESTOCK TO ENTER THE PROPERTY WITHOUT MAKING AN EFFORT TO REMOVE THE LIVESTOCK. NOTHING IN THIS SECTION IS INTENDED TO CHANGE THE STATUS OF OPEN RANGE LAW AND STATUTES RELATING TO FENCES IN COLORADO.

(9) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE DEPARTMENT MAY ERECT AND MAINTAIN A RIGHT-OF-WAY FENCE IN ANY AREA AT THE DEPARTMENT'S EXPENSE, IN ITS SOLE DISCRETION, BUT THE DEPARTMENT HAS NO DUTY TO ERECT AND MAINTAIN ANY FENCE AT ITS EXPENSE.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 19, 1994