

LEGISLATIVE BILL 85

Approved by the Governor February 22, 1975

Introduced by Johnson, 15

AN ACT to amend section 39-703, Reissue Revised Statutes of Nebraska, 1943, relating to highways; to make it unlawful to divert water onto or across a public road as prescribed; to increase penalties; to provide exceptions; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 39-703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-703. If any person shall injure or obstruct a public road by felling a tree or trees in, upon or across the same, or by placing or leaving any other obstruction thereon, or by encroaching upon the same with any fence, or by plowing or digging any ditch or other opening thereon, ~~or by turning a current of water so as to saturate or wash the same~~ or by diverting water onto or across such road so as to saturate, wash, or impair the maintenance, construction, or passability of such public road, or by allowing water to accumulate on the roadway or traveled surface of the road, or shall leave the cutting of any hedge thereupon for more than five days, he shall, upon conviction thereof, be punished by a fine ~~forfeit~~ for every such offense a sum of not less than three ten dollars nor more than ten one hundred dollars, and in case of placing any obstruction on the road an additional sum of not exceeding three dollars per day for every day he shall suffer such obstruction to remain after he has been ordered to remove the same by the road overseer or other officer in charge of road work in the area where such obstruction is located, complaint to be made by any person feeling himself aggrieved; Provided, this section shall not apply to any person who shall lawfully fell any tree for use, and will immediately remove the same out of the road, nor to any person through whose land a public road may pass, who shall desire to drain his land, and shall give due notice of such intention to the overseer or other officer in charge of road work, nor when damage has been caused by a mechanical malfunction of any irrigation equipment, when a sprinkler irrigation system had been set so that under normal weather conditions no water would have been placed

upon the right-of-way of any road, or when the county board grants permission for the landowner to divert water from one area to another along a county highway right-of-way or when a municipality has granted permission along or across the right-of-way under its jurisdiction. Any such officer, after having given reasonable notice to the owners of the obstruction, or person so obstructing, or plowing or digging ditches upon such road, may remove any such fence or other obstruction, fill up any such ditch or excavation, and recover the necessary cost of such removal from such owner or other person obstructing such road aforesaid, to be collected by such officer in an action in county court. Any public roads which have not been worked and which have not been used or traveled by the public for the last fifteen years may be fenced by the owners of adjoining lands if written permission is first obtained from the county board of commissioners or supervisors, and if adequate means of ingress and egress are provided by suitable gates.

Sec. 2. That original section 39-703, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 3. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.