(122nd General Assembly)
(Amended Substitute Senate Bill Number 197)

AN ACT

To amend sections 971.02, 4907.02, 4907.08, 4907.60, 4907.61, 4959.02, 4959.04, 4959.07, and 4959.10 and to repeal sections 4959.05 and 4959.06 of the Revised Code to authorize the Public Utilities Commission to investigate and enforce existing laws pertaining to maintenance of fences, destruction of noxious vegetation, and provision of waterways along railroad rights-of-way.

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

SECTION 1. That sections 971.02, 4907.02, 4907.08, 4907.60, 4907.61, 4959.02, 4959.04, 4959.07, and 4959.10 of the Revised Code be amended to read as follows:

Sec. 971.02. The owners of adjoining lands shall build, keep up, and maintain in good repair, in equal shares, all partition fences between them, unless otherwise agreed upon by them in writing and witnessed by two persons. The fact that any land or tract of land is wholly unenclosed or is not used, adapted, or intended by its owner for use for agricultural purposes shall not excuse the owner thereof from the obligations imposed by this chapter on ~~him~~ the owner as an adjoining owner. This chapter does not apply to the enclosure of lots in municipal corporations, or of adjoining lands both of which are laid out into lots outside municipal corporations, or affect ~~sections 4959.02 to 4959.06~~ Chapter 4959. of the Revised Code, relating to fences required to be constructed by persons or corporations owning, controlling, or managing a railroad.

Sec. 4907.02. As used in Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and ~~4925.~~ 4959. of the Revised Code, "railroad" includes any corporation, company, individual, or association of individuals, or its lessees, trustees, or receivers appointed by a court, which owns, operates, manages, or controls a railroad or part of a railroad as a common carrier in this state, or which owns, operates, manages, or controls any cars or other equipment used on such a railroad, or which owns, operates, manages, or controls any bridges, terminals, union depots, sidetracks, docks, wharves, or

storage elevators used in connection with such a railroad, whether owned by such railroad or otherwise, and means and includes express companies, water transportation companies, freight-line companies, sleeping car companies, and interurban railroad companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state. All duties required of, and penalties imposed upon, a railroad or an officer or agent thereof insofar as they are applicable, are required and imposed upon express companies, water transportation companies, and interurban railroad companies, and upon their officers and agents.

The public utilities commission has the power of supervision and control of express companies, water transportation companies, and interurban railroad companies to the same extent as railroads.

Sec. 4907.08. The public utilities commission shall inquire into any neglect or violation of the laws of this state by a railroad doing business in this state, by its officers, agents, or employees, or by any person operating a railroad. The commission shall enforce Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and ~~4925.~~ 4959. of the Revised Code, as well as all other laws relating to railroads, and report violations thereof to the attorney general.

If, upon complaint or otherwise, the commission has reason to believe that a railroad or any officer, agent, or employee of a railroad has violated or is violating any law of this state, or if it has reason to believe that differences have arisen between citizens of the state and any railroad operating as a common carrier within this state, it shall examine into the matter.

Sec. 4907.60. If a railroad fails to perform a duty enjoined upon it by ~~Chapters~~ Chapter 4901., 4903., 4905., 4907., 4909., 4921., ~~and~~ 4923., or 4959. of the Revised Code, or does any act prohibited by any of those chapters, for which failure or act no penalty or forfeiture has been provided by law, or fails to obey a lawful requirement or order made by the public utilities commission or order of any court upon application of the commission, the railroad, except as otherwise specifically provided in sections 4905.83, 4905.95, 4919.99, 4921.99, and 4923.99 of the Revised Code, shall forfeit into the state treasury not less than one hundred nor more than ten thousand dollars for each violation or failure. In construing and enforcing this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by a railroad, while acting within the scope of ~~his~~ the officer's, agent's, or other person's employment, is the act, omission, or failure of the railroad.

Sec. 4907.61. Except as otherwise specifically provided in sections 4905.83, 4905.96, 4919.99, 4921.99, and 4923.99 of the Revised Code, when the attorney general prosecutes an action for the recovery of a forfeiture provided for in ~~Chapters~~ Chapter 4901., 4903., 4905., 4907., 4909., 4921., ~~and~~ 4923., or 4959. of the Revised Code, the attorney general may bring the action in the court of common pleas of Franklin county or of any county having jurisdiction of the defendant.

Sec. 4959.02. (A) A company or person having control or management of any railroad except a scenic railway shall construct and maintain in good repair, or otherwise provide for, on each side of ~~such~~ the railroad, along the line of the lands of the company owning or operating it, a fence sufficient to turn stock. ~~When such fence is constructed of barbed wire, or separate lateral strands not connected by interwoven wire, or cross-perpendicular wire not more than fifteen inches apart, there shall be securely fastened to the posts, at the top thereof, at right angles thereto, at least one board, not less than one and one-eighth inches thick and five inches wide, and extending the entire length thereof.~~ If, pursuant to section 4907.08 Of the Revised Code, the public utilities commission determines that the company or person having control or management of the railroad is in violation of this section, the commission may order the company or person to do any of the following:

(1) Construct, replace, or repair the fence;

(2) Provide the landowner with the required materials to construct, replace, or repair the fence;

(3) Pay the cost of the materials required to construct, replace, or repair the fence.

When the commission directs the company or person having control or management of the railroad to provide the landowner with the required materials under division (A)(2) of this section or to pay the cost of the required materials under division (A)(3) of this section, the landowner is responsible for the labor necessary to construct, replace, or repair the fence. Any fence constructed, replaced, or repaired under this section shall be the same as or comparable to existing fence on the property.

(B) In determining what remedy to order under division (A) of this section, the commission shall consider all of the following:

(1) The volume of train traffic;

(2) train types and speed;

(3) The cost of fence repair or replacement;

(4) The accessibility to the railroad right-of-way through the property;

(5) Any other relevant factors.

(C) The commission may order an action or remedy under division (A) of this section only if comparable fencing exists along or within the abutting landowner's property boundaries perpendicular or parallel to the railroad's property line.

(D) If an owner of land abutting a scenic railway requests the company or person having control or management of the railway to construct and maintain in good repair such a fence along the abutting line of land of the railway, the company or person having control or management of the railway shall do so, and the cost of constructing and maintaining the fence shall be equally shared between the railway and owner of land. ~~As~~

(E) As used in this section ~~and in section 4959.06 of the Revised Code~~, "scenic railway" means a railroad operated not for profit and exclusively as a tourist or historical attraction.

Sec. 4959.04. In the case of a railroad in process of construction~~,~~ or a proposed railroad which passes through enclosed land, the company or person having control of ~~such~~ the railroad during its construction~~,~~ shall provide suitable crossings for the owner or occupant of each farm, make and keep in repair fences along the line of ~~such~~ the railroad through ~~such~~ the enclosed fields, and protect crops growing thereon. When the company or person agrees with the owner of the lands through which a railroad passes~~,~~ that ~~such~~ the owner is to build and keep in repair any portion of the fencing, and if such fencing is destroyed or damaged by fire from passing trains or by the elements, the company or person owning or operating ~~such~~ the railroad shall rebuild or repair such fence if the property holder demands it. If ~~such~~ the company fails to construct a fence after having received written notice to do so from the owner or occupant of lands through which the railroad passes, after thirty days from the time of serving ~~such~~ the notice upon the agent of such company nearest such lands, ~~such~~ the owner or occupant may proceed to construct it, and the company shall be liable to ~~such~~ the person for the cost thereof~~, together with the attorney fees provided in section 4959.05 of the Revised Code~~.

Sec. 4959.07. Sections 4959.02 to ~~4959.06, inclusive,~~ 4959.04 of the Revised Code, relating to fences, do not apply to any case in which compensation for building a fence has been or may be taken into consideration~~,~~ and estimated as a part of the consideration to be paid for the right-of-way, so far as the fence has been or may be settled or paid for. ~~Such~~ Those sections do not affect, in any manner, any contract or agreement between a railroad company, or person having the control and management of a railroad, and the proprietors or occupants of lands adjoining for the construction or maintenance of fences and cattle guards.

Sec. 4959.10. A company or person having the control and management of a railroad, who fails to ~~construct or keep in repair fences, cattle guards, or public crossings, as prescribed by sections 4959.02 to 4959.08, inclusive, of the Revised Code, after thirty days' previous notice or request to construct them, made in writing by any person~~ comply with any provision of this chapter, shall forfeit and pay, for each day ~~such~~ the company or person so fails, a sum not exceeding fifty dollars per day, to be recovered in a civil action in the name of the state for the use of the county in which suit is brought.

SECTION 2. That existing sections 971.02, 4907.02, 4907.08, 4907.60, 4907.61, 4959.02, 4959.04, 4959.07, and 4959.10 and sections 4959.05 and 4959.06 of the Revised Code are hereby repealed.

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Speaker _____ *of the House of Representatives.*

_____

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

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Secretary of State.

File No. _____ Effective Date _____