

The National Agricultural  
Law Center



University of Arkansas • Division of Agriculture

An Agricultural Law Research Project

## **States' Fence Laws**

### **State of Indiana**

[www.NationalAgLawCenter.org](http://www.NationalAgLawCenter.org)



## States' Fence Laws

### STATE OF INDIANA

**Ind. Code §§ 8-4-32-1 to 8-4-33-5, Ind. Code §§ 8-6-14-1 to 8-6-14-3, Ind. Code §§ 32-26-1-1 to 32-26-9-6**

*Current through the 2010 2nd Regular Session*

#### **Railroad's Liability for Livestock**

##### **8-4-32-1 Scope of liability; evidence as to name of railroad**

Sec. 1. Any railroad corporation, lessee, assignee, receiver, and other person or corporation, running, controlling, or operating any railroad into or through this state, shall be liable, jointly or severally, for stock killed or injured by the locomotives, cars, or other carriages run on such road, in the name in which the road was run or operated at the time, to the extent and according to the provisions of this chapter; and the bills of lading usually issued at any railroad station in the county in which such stock was killed or injured shall be prima facie evidence as to the character or name in which said railroad was owned, held, controlled, or operated.

##### **8-4-32-2 Complaints; venue**

Sec. 2. If an animal is killed or injured by the locomotives, cars, or other carriages used on any railroad in or running into or through Indiana, whether the railroad is run and controlled by the company, a lessee, an assignee, a receiver, or other person, an owner of the animal may file a complaint and prosecute a claim in the circuit court of the county in which the animal was injured or killed.

##### **8-4-32-3 Summons; service**

Sec. 3. When the complaint is filed in the circuit court under section 2 of this chapter, the clerk of the court shall issue a summons in the case as in other cases. The summons may be served by copy on any conductor on any train on the road passing into or through the county.

##### **8-4-32-4 Parties**

Sec. 4. The action may, in all cases contemplated by this chapter, be brought against the railroad as defendants, whether the same is or was being run by the company, or by a lessee, assignee, receiver, or other person in the name of such company.

#### **8-4-32-5 Judgment upon hearing; order to appear; answer; deposit in court pending final judgment**

Sec. 5. (a) After the hearing of the cause under this chapter, the court or jury trying the cause shall give judgment for the plaintiff or plaintiffs for the value of the animal or animals killed or the injury done, without regard to the question whether the killing or injury was the result of willful misconduct, negligence, or unavoidable accident.

(b) If the cause is commenced in the county specified under section 2 of this chapter, the court shall, on motion of the plaintiff or plaintiffs, on the rendition of the judgment, or afterward, at any time, after notice is served on the railroad company defendant, order a writ to issue, directed to the sheriff of the proper county, for any agent, conductor, or employee of the railroad company or the lessee, a receiver, or an assignee of the company, named in the motion, to appear and answer upon oath as to:

(1) the amount of money in their hands, if any, belonging to the company or the assignee, lessee, or receiver; and

(2) the probable amount of money receivable by the agent, conductor, or employee belonging to the railroad company, lessee, assignee, or receivers.

(c) If an agent, a conductor, or an employee ordered to appear under subsection (b) answers that the agent, conductor, or employee has any money, or is in constant receipt of money as agent, conductor, or employee, the court shall order the agent, conductor, or employee to pay into the clerk's office of the court, at the times named by the court, the portions of the money held or received, not exceeding one-half ( 1/2 ) the amount held or received, as may be determined just by the court, until the judgment and costs are fully paid and satisfied.

#### **8-4-32-7 Applicability to fenced property**

Sec. 7. This chapter shall not apply to any railroad securely fenced in, and such fence properly maintained by such company, lessee, assignee, receiver, or other person running the same.

### **Fencing Railroads**

#### **8-4-33-1 Time for construction; areas to be enclosed**

Sec. 1. Any railroad corporation, lessee, or assignee or receiver, or other person or corporation, running, controlling, or operating, or that may after July 18, 1885, construct, build, run, control, or operate, any railroad into or through this state, shall, not later than July 18, 1886, and within twelve (12) months from the date of the construction and completion of any part of a line of road constructed after July 18, 1885, erect, build, construct, and thereafter maintain fences, which may be constructed of barbed wire, on both sides of such railroad throughout the entire length completed within the state of Indiana, sufficient and suitable to turn and prevent cattle, horses, mules, sheep, hogs, or other stock from getting on such road, except at the crossings of public roads and highways, and within such portions of cities and incorporated towns and

villages as are on or after July 18, 1885, laid out and platted into lots and blocks, and shall also, in like manner and within the time herein before prescribed, construct, where the same has not already been done, and thereafter maintain, at all public road and highway crossings, existing on July 18, 1885, or established after July 18, 1885, barriers and cattle guards suitable and sufficient to prevent cattle, horses, sheep, hogs, and other stock from getting on such railroad; provided, however, when such fences and cattle guards are not made as herein provided, or when such fence or cattle guards are not kept in repair, such railroad corporation, or persons operating the same, shall be liable for all damages which may be done by the agents, employees, engineers, or cars of such corporation or person operating the same, to any such cattle, horses, sheep, hogs, or other stock thereon; provided, however, that such railroad corporation or other person operating the same shall not be required to fence such railroad track through unimproved and uninclosed lands, and the provisions of this chapter shall not apply to such parts and portions of any such railroad which runs through unimproved and uninclosed lands, but when such lands become improved and inclosed on three (3) sides, the same shall apply, and such railroad corporation or person operating the same shall be required to fence the same under the provisions of this chapter within six (6) months from the date of such inclosure.

#### **8-4-33-2 Failure of railroad to construct; construction by abutting landowner; compelling payment by railroad**

Sec. 2. If such railroad corporation, lessee, assignee, receiver or other person or corporation aforesaid neglect or refuse to construct such fence, barriers or cattle-guards as provided in the preceding section, the owner of any lands abutting on the land or right of way of said railroad shall have the right (after giving thirty (30) days' notice in writing of his intention so to do, to be served upon the nearest freight receiving and shipping agent employed by the company or person controlling and operating said railroad), to enter upon the land, right of way and track of said railroad, and may build, erect and construct such fences, barriers and cattle-guards as therein provided for, so far as the lands of such landowner abuts on the land and right of way of such railroad, and when he has completed the same, he may present for payment to the agent of such corporation or person controlling and operating such road at the nearest shipping station to the tract of land so fenced, an itemized statement, verified by the affidavit of such person, or his agent, of the expenses thereof, including material and labor, and if such corporation or person so operating said road neglects or refuses for sixty (60) days to pay said account, such landowner may recover, in any court of competent jurisdiction, the reasonable value of such fence, barrier and cattle-guards from said corporation or person operating the same, together with reasonable attorney's fees: Provided, however, If such railroad corporation or other person operating the same, so liable for the value of such fence, cattle-guards and barriers, shall, within said sixty (60) days, make a tender of a sum of money to such person in satisfaction of such claim or liability against such corporation or person, and such person to whom such tender is made shall refuse to accept the same in satisfaction of such claim, and shall sue for the recovery of the value of such fence, barriers and cattle-guards, and shall not recover more than the amount so tendered, he shall not in such action recover attorney's fees.

#### **8-4-33-3 Maintenance and repair**

Sec. 3. When such fence, barrier and cattle-guards are completed, such railroad corporation, lessee, assignee, receiver or other person or corporation operating and controlling the same

shall keep the same in good repair and sufficient to answer the purposes for which constructed, and if any such corporation, lessee, assignee, receiver or other person or corporation shall permit any part of the fence, barrier or cattle-guards to get out of repair so that it will not turn cattle, horses, mules, sheep, hogs or other stock, the owner of the land abutting upon the land or right of way of such railroad may notify the agent, in writing, for receiving and shipping freight at the station nearest the tract of land so owned by such person, that a portion of the fence is out of repair, stating where the same is out of repair, and the probable cost of making such repair, and if such railroad corporation, lessee, assignee, receiver or other person or corporation shall fail, for thirty (30) days, to make or commence such repairs, such abutting landowner shall have the right to enter upon the land, right of way and railroad track, and make such repairs, and shall furnish a sworn itemized account of the cost of such repairs, including the material necessarily used and the labor, to the agent aforesaid, and if such bill is not paid within sixty (60) days from the time the same was so furnished to such agent, the said party so making such repairs may recover the reasonable value of such repairs so made from such railroad corporation, lessee, assignee, receiver, or other person or corporation so controlling and operating the same, together with reasonable attorney's fees: Provided, That in case the said railroad corporation or person operating the same, liable for such repairs, shall, within said sixty (60) days, tender to such person so making such repairs a sum of money in satisfaction of such repairs made by him, and such person shall refuse to accept the same, and shall sue for the recovery of the value of such repairs, and shall not recover more than was so tendered, he shall not recover attorney's fees in such suit.

#### **8-4-33-4 Liability for stock killed or injured**

Sec. 4. Nothing in this chapter contained shall in any manner affect or change the liability of railroad corporations, or of the assignees, lessees, or receivers of such corporations, for stock killed or injured upon their railroads; but such liability shall exist and be governed as if this chapter had never been enacted.

#### **8-4-33-5 Farm crossings, constructing gates and bars**

Sec. 5. All gates and bars at farm crossings, shall, in the absence of a contract or agreement to the contrary, be constructed and maintained and kept closed by the owner of such farm crossing.

### **Farm Crossings of Railroad Tracks**

#### **8-6-14-1 Authority for establishment; plans and specifications**

Sec. 1. Owners of tracts of land separated by the right of way of a railway company, or owner of a tract or tracts of land separated by the right of way of a railway company from a public highway or road, lying and situated immediately contiguous to and adjoining said right of way, may, if such right of way has been or shall hereafter be acquired by condemnation and appropriation, or by purchase or donation, construct and maintain wagon and driveways over and across such right of way leading from one of such tracts to another on the opposite side of such right of way, or leading from such tract or tracts of land on one (1) side to the highway on

the other side of the right of way, at any point most convenient to such owner. For this purpose, such owner may enter upon such right of way and construct such embankment, or make such excavation, on one (1) or both sides of the track of such railway as may be necessary to establish easy grades from one (1) tract of land to the opposite tract or highway, and may spike planks on the ties of such railway on the line of such way for the space of the width of such way, of such thickness as not to be elevated above the top of the rails of such railway, and may also bridge the gutters at the sides of such railway track in such manner as not to obstruct the flow of water therein: Provided, The railroad company shall make the crossing.

#### **8-6-14-2 Fences; gates**

Sec. 2. When such railroad is fenced on one (1) or both sides at the point where such way is constructed, such owner shall erect and maintain substantial gates in the line of such fence or fences across such way, and keep the same securely locked when not in use by himself or employees.

#### **8-6-14-3 Killing or injuring livestock**

Sec. 3. If animals are killed or injured on the track of such railroad by the cars or locomotives thereof, the company owning or operating such railroad, shall not be liable to pay damages therefor if such animal entered upon the track of such railroad through such gates, unless it shall be proved that such killing or injury was caused by the negligence of the servants of the company owning or operating such railroad.

### **Fences**

#### **Chapter 1. Fencing Associations**

##### **32-26-1-1 Enclosure of lands; articles of association**

Sec. 1. (a) Five (5) or more persons may form a fencing association if the persons are interested in:

- (1) enclosing land with one (1) general fence; or
- (2) doing any other work necessary to protect land and to secure crops raised on land.

(b) The enclosed land described in subsection (a) must be:

- (1) improved land;
- (2) used for purposes of cultivation; and
- (3) situated in an area that is:
  - (A) definitely described by sections or subdivisions of sections; or

(B) sufficiently described by metes and bounds, and on or near any stream, watercourse, lake, pond, or marsh, and subject to overflow from any stream, watercourse, lake, pond, or marsh.

(c) The association shall adopt and subscribe articles, which must specify the name and objects of the association.

### **32-26-1-2 Notice of election of directors**

Sec. 2. (a) Three (3) or more members of the association may give notice of an election to choose directors for the association.

(b) The notices must:

(1) be written or printed;

(2) specify the time and location of the election; and

(3) be posted for at least ten (10) days before the election in at least five (5) public places in each township where the contemplated work will occur.

(c) The location of the election must be near the contemplated work.

### **32-26-1-3 Election of directors**

Sec. 3. At the election, at least five (5) of the association members shall elect by ballot at least three (3) but not more than seven (7) association members as directors of the association.

### **32-26-1-4 Articles of association; recording**

Sec. 4. (a) After the election of directors, the association shall record articles of association in the office of the recorder of the county where the proposed fence will be located.

(b) The articles must specify the following:

(1) The name and objects of the association.

(2) The names of the association's officers for the first year.

(3) The character of the work proposed.

(4) The location where the fence is to be located.

(c) After recording the articles of association, the association is a body corporate and politic by the name and style adopted, with all the rights, incidents, and liabilities of bodies corporate.

(d) Any person owning land in the area may at any time become a member of the association by signing the articles of association.

### **32-26-1-5 Petition; viewers; examination and apportionment of assessments**

Sec. 5. (a) The board of directors shall petition the board of commissioners of the county where the fence is to be located.

(b) The petition must do the following:

(1) Be signed by the owners of the major part of the improved land.

(2) Give a full description of the contemplated work, specifying particularly:

(A) the points of beginning and ending of the work;

(B) the course and distances of the work;

(C) the manner and character of the gates to be placed on all public highways crossed;

(D) the nature and character of the improvement;

(E) a detailed statement of the projected cost, as accurately as the projected cost can conveniently be stated; and

(F) the description of the area to be enclosed.

(3) Request the appointment of viewers to view and apportion among the owners of real estate in the area the cost of the improvement, and all expenses that:

(A) are incurred procuring the improvement; and

(B) are considered to be necessary in maintaining the improvement for one (1) year after the completion of the fence.

(c) The apportionment of the cost and expenses incurred under this chapter must be made according to the number of acres of land owned by each landowner that is improved and used for the purposes of cultivation, as described in section 6 of this chapter.

(d) The board of commissioners, on proof that the signers of the petition own the major part of the improved land in the area, shall hear and consider the petition. If the board of commissioners decides the improvement is a public utility and is in the best interests of the owners of the lands in the area, the board of commissioners shall appoint three (3) viewers.

(e) The viewers, who may not be members of the association or interested in the proposed work, shall make the apportionments described in subsection (b)(3) among the landowners.

(f) The viewers shall be furnished:

- (1) a copy of the plan and profile of the proposed work; and
- (2) a certified copy of the order of the board of commissioners for their appointment.

(g) The viewers shall meet at a time and place in the area to make the apportionment as fixed by the board of commissioners.

(h) Before the apportionment begins, the owners of improved land in the area are entitled to notice of the time when and place where the viewers will begin the examination of lands and the apportionment of assessments by written or printed notices posted at the door of the courthouse of the county and five (5) public places in the area.

### **32-26-1-6 Assessments; costs and expenses of improvements**

Sec. 6. (a) At the time and place named by the board of commissioners and fixed by the notices, the appointed viewers shall do the following:

- (1) Meet and inspect the lands improved and used for cultivation in the area.
  - (2) Assess against the owners of the improved land the costs and expenses of the improvement. The costs and expenses shall be apportioned among them severally, according to the number of acres of improved land owned by each owner.
  - (3) Hear and determine any complaints at that time regarding the assessment.
- (b) The appointed viewers have the authority to:
- (1) hear evidence;
  - (2) swear and examine witnesses;
  - (3) reexamine any lands;
  - (4) cause surveys and measurements to be made; and
  - (5) adjourn periodically until the viewers complete the apportionment of assessments.

### **32-26-1-7 Viewers' report and assessments**

Sec. 7. (a) The appointed viewers, after having completed their apportionment, shall submit a written report of their work to the board of commissioners, together with a tabular statement of the assessments made.

(b) The directors of the association shall record the written report by the appointed viewers in the office of the recorder of the county.

(c) From the recording date of the written report, the assessments in the written report shall be respectively a lien on each tract of land described in the written report for the amount assessed to the tract.

### **32-26-1-8 Annual assessments**

Sec. 8. (a) The board of directors may make annual assessments after the first assessment for the purpose of repairing and maintaining the improvement and for other necessary expenses.

(b) The board of directors shall apportion the annual assessments among the owners and file a tabular statement of the apportionment and assessment in the recorder's office.

(c) The tabular statement of the apportionment and assessment is a lien on the tracts of land respectively assessed and may be collected in the same manner as the original assessment.

### **32-26-1-9 Fences erected prior to present law**

Sec. 9. (a) If the owners of land have, under or by virtue of any law of Indiana or by mutual consent, erected a fence before March 14, 1877, as described in this chapter, the landowners may:

- (1) organize an association according to the provisions of this chapter;
- (2) file their articles of association in the office of the recorder; and
- (3) petition the board of commissioners as provided in subsection (b).

(b) The petition must show that:

- (1) the fence was built before March 14, 1877; and
- (2) the goal of the organization is to maintain the fence in good order and repair, as though built under this chapter.

(c) The board of commissioners shall consider the petition. If the board of commissioners is satisfied that:

- (1) the owners of the major part of the land improved and used for the purposes of cultivation enclosed by the fence signed the petition; and
- (2) the maintenance of the improvement is of public utility and for the best interests of the owners of the land in the area;

the board of commissioners shall make an order allowing the board of directors of the association to make assessments for that purpose, as provided in section 8 of this chapter.

(d) After the directors of the association follow the steps provided in section 8 of this chapter, the association is a body corporate and politic, as though originally organized under this chapter, and has all the rights and powers granted in this chapter.

(e) All liens that then exist in favor of any creditor that financed the improvement, or against any lands on account of the improvement, shall be preserved and may be enforced, either according to the law under which the liens were created or according to this chapter.

### **32-26-1-10 Officers of fencing association**

Sec. 10. (a) The board of directors shall appoint a president, secretary, and treasurer.

(b) The treasurer shall give a bond:

(1) sufficient in penalties and securities;

(2) payable to the association by its corporate name; and

(3) conditioned for:

(A) the faithful discharge of the treasurer's duties; and

(B) the safekeeping and prompt payment, according to the order of the board of directors, of all money accessible to the treasurer.

(c) A majority of the board of directors is a quorum for the transaction of business.

(d) Previous notice of any regular or adjourned meeting of the directors is not necessary.

### **32-26-1-11 Vacancy in office of director**

Sec. 11. If a vacancy occurs in the office of director, the other members of the board shall fill the vacancy by a pro tempore appointment from the members of the association. The appointment continues until the next annual election and until a successor is elected and qualified.

### **32-26-1-12 Officers of association; term of office**

Sec. 12. The president, secretary, and treasurer continue in office for one (1) year and until their successors in office are elected and qualified.

### **32-26-1-13 Money drawn from treasurer**

Sec. 13. The treasurer may not draw money, except upon the order of the president and secretary.

### **32-26-1-14 Treasurer; presenting vouchers and settling with board**

Sec. 14. Each year, before the expiration of the treasurer's term, and more often if the board of directors requires, the treasurer shall present the treasurer's vouchers and settle with the board.

### **32-26-1-15 Supplemental assessments**

Sec. 15. (a) If the board of directors finds that any lands that will be affected by the proposed work have been omitted from the assessment or that any mistake has occurred in the assessment, the board may order a supplemental assessment for the correction of mistakes.

(b) The owners of all lands directly affected by the supplemental assessment shall have notice of the time and place of making the supplemental assessment and of a time when and place where the owners may be heard regarding the supplemental assessment in the same manner as in respect to the original assessment.

(c) The supplemental assessment, when completed, shall be filed for record in the same manner as the original assessment.

(d) The supplemental assessment shall, from that date, be a lien on the lands described in the supplemental assessment in like manner as the original assessment.

### **32-26-1-16 Assessments; installment payments**

Sec. 16. The board of directors may, without reference to the completion of the proposed work, order:

(1) the payment of the assessment in installments as it considers proper; or

(2) the payment in full at a stated time.

### **32-26-1-17 Assessments; enforcing payment**

Sec. 17. Payment of the assessments may be enforced by suit in any court with jurisdiction as for ordinary debts or by the foreclosure of the lien in any court with jurisdiction in the same manner as is provided by law for the foreclosure of mortgages and the sale of mortgaged premises for the collection of debts.

### **32-26-1-18 Proposed work; contracts; advertisements**

Sec. 18. (a) The proposed work shall be awarded by the board of directors by contract to the lowest responsible bidder, after suitable advertisements, as a whole or in sections or subdivisions as the board considers most advantageous.

(b) The board of directors may purchase any fence built along the line of the proposed fence and use the fence instead of building new fencing.

### **32-26-1-19 Appropriation of land; assessment of damages**

Sec. 19. If the association wishes to appropriate any land for the construction or maintenance of any work, the association must proceed in the manner required by law for the assessment of like damages in case of the construction of railroads or other similar works.

### **32-26-1-20 Incorrect or imperfect description of proposed work**

Sec. 20. Every association organized under this chapter with the concurrence of three-fourths (  $\frac{3}{4}$  ) of its members, expressed by resolution at any regular meeting of the association, may:

- (1) correct or perfect any incorrect or imperfect description of the proposed work; or
- (2) provide for the extension of the proposed work beyond the limits prescribed in the original articles of the association.

### **32-26-1-21 Limitation of actions to enforce assessment**

Sec. 21. An association may not commence an action to enforce any lien upon land for assessments made five (5) years after the date of recording the schedule of the assessment constituting a lien, as contemplated by this chapter. Any assessment made under any former law of Indiana upon the same subject, when action is not pending for the enforcement of the assessment, is prima facie satisfied upon the record five (5) years after the recording of the schedule of the assessment.

### **32-26-1-22 Rules and regulations; powers of fencing association**

Sec. 22. The association may pass any rules and impose reasonable fines and penalties to insure the success of the object of the association's incorporation. The association may:

- (1) employ individuals to keep the fence in repair;
- (2) employ gatekeepers to attend to the gates on all public highways;
- (3) employ keepers of pounds to impound and care for all stock found running at large in the area enclosed by the fence;
- (4) make bylaws regulating:
  - (A) when stock may run at large in the enclosed area; and
  - (B) the number of cattle, horses, and swine each landowner or occupant of lands in the enclosed area may be allowed to permit to run at large.

### **32-26-1-23 Throwing down common fence; liability for damages**

Sec. 23. A person may not throw down the common fence. A person who throws down a common fence shall pay to the association at least five dollars (\$5) but not more than twenty dollars (\$20), recoverable before any court with jurisdiction. A person who throws down a

common fence is liable for all damages that accrue because of the person's actions. Damages are recoverable under this subsection in the same manner as a forfeiture.

### **32-26-1-24 Permitting animals to run at large within enclosed area**

Sec. 24. It is a Class C infraction for a person to allow the person's stock to run at large in the enclosed area unless expressly permitted to do so by the board of directors of the association. A person who violates this section is liable to all persons whose lands are trespassed upon for consequential damages.

### **32-26-1-25 Stock roving within enclosed area**

Sec. 25. (a) Any stock found roving about in the enclosed area contrary to the laws or regulations of the association shall be taken up and impounded at the expense of the owner. The poundkeeper shall:

- (1) if the owner is known, notify the owner, in writing, of the impounding of the stock; or
- (2) if the owner is unknown, post for ten (10) days a written or printed description of the stock at the public gates of the association and three (3) other public places in the township where the fence is located.
- (b) If, after the expiration of ten (10) days, the owner fails to reclaim and pay the expenses of keeping and posting the stock and the damages caused by the stock to any owner or occupant of land in the area, the stock shall, upon ten (10) days further notice, be sold to pay the expenses and damages.
- (c) If, after payment for the stock, there is a remaining balance, the balance shall be deposited in the treasury of the association for the benefit of the owner. If no claim is made for the remaining balance for six (6) months, it shall vest in the association.

## **Chapter 2. Enclosures, Trespassing Animals, and Partition Fences**

### **32-26-2-1 Lawful fences**

Sec. 1. (a) As used in this chapter, "lawful fence" means any structure typically used by husbandmen for the enclosure of property.

(b) The term includes:

- (1) a cattle guard;
- (2) a hedge;
- (3) a ditch; and

(4) any other structure that witnesses knowledgeable about fences testify is sufficient to enclose property.

### **32-26-2-2 Domestic animal breaking into enclosure**

Sec. 2. (a) This subsection applies in a township for which the board of county commissioners has adopted an ordinance that allows domestic animals to run at large in unenclosed public areas. If a domestic animal breaks into an enclosure or enters upon the property of another person that is enclosed by a lawful fence, the person injured by the actions of the domestic animal may recover the amount of damage done.

(b) This subsection applies in a township for which the board of county commissioners has not adopted an ordinance that allows domestic animals to run at large in unenclosed public areas. If a domestic animal breaks into an enclosure or enters upon the property of another person, it is not necessary for the person injured by the actions of the domestic animal to allege or prove the existence of a lawful fence to recover for the damage done.

### **32-26-2-3 Tender of costs and damages; confession of judgment**

Sec. 3. (a) The owner of a domestic animal described in section 2 of this chapter may:

(1) tender to the person injured by the domestic animal:

(A) any costs that have accrued; and

(B) an amount, in lieu of damage, which equals or exceeds the amount of damages awarded by the court or by a jury in an action filed to recover damages caused by the actions of the domestic animal; or

(2) offer in writing to confess judgment for the amounts set forth in subdivision (1);

before an action filed to recover damages caused by a domestic animal described in section 2 of this chapter proceeds to trial.

(b) If the person injured by the domestic animal described in section 2 of this chapter rejects the tender or offer under subsection (a) and causes a trial for damages to proceed, the person injured:

(1) shall pay the costs of the trial; and

(2) may recover only the damages awarded.

### **32-26-2-4 Estrays; taking up domestic animal**

Sec. 4. Except as provided in this chapter, if a domestic animal breaks into the enclosure of a person who is not the owner of the domestic animal, the person, without regard to the season of the year:

- (1) may confine the animal in the same manner as a stray animal may be confined; and
- (2) shall proceed under IC 32-34-8 for stray animals.

#### **32-26-2-5 Notice to owner; taking up domestic animal**

Sec. 5. A person described in section 4 of this chapter shall, within twenty-four (24) hours after confining a stray animal, give notice to the owner of the animal, if the owner is known and can be immediately found.

#### **32-26-2-6 Examination and assessment of damages**

Sec. 6. Before posting or advertising a stray animal, a person described in section 4 of this chapter shall procure from two (2) disinterested property owners an examination and assessment of the damages caused by the stray animal with a certificate of the damages. Damages under this section may include reasonable pay for the persons making the assessment.

#### **32-26-2-7 Notice or advertisement of taking up domestic animal**

Sec. 7. A notice or advertisement described in section 6 of this chapter must specify the following:

- (1) The fact of trespass in the enclosure of the person confining the stray animal.
- (2) The damages assessed, including pay for the person making the assessment.

#### **32-26-2-8 Owner demanding trespassing estray from taker up**

Sec. 8. The owner of a stray animal confined under section 4 of this chapter may demand the stray animal from the person who confined the stray animal only if the following conditions are met:

- (1) The owner proceeds under IC 32-34-8-18 to prove that the stray animal is the owner's property.
- (2) The owner pays the costs allowed in the case of stray animals.
- (3) The owner pays the damages and the costs of assessment.

#### **32-26-2-9 Trial; owner controverting damages or denying trespass**

Sec. 9. (a) Within five (5) days after the owner of a stray animal confined under section 4 of this chapter receives a notice under section 7 of this chapter, the owner may file a civil action to:

- (1) controvert the amount of damages assessed; or

(2) deny the trespass.

(b) If the owner of a stray animal confined under section 4 of this chapter files an action under subsection (a), the cause shall be docketed for trial.

### **32-26-2-10 Jury trial**

Sec. 10. Either party in an action filed under section 9 of this chapter may demand a jury.

### **32-26-2-11 Damages and costs; payment before recovering property**

Sec. 11. If damages are assessed against the owner of a stray animal in a trial under this chapter, the owner must pay the damages and all costs assessed against the owner before the owner may recover the owner's property.

### **32-26-2-12 Judgment; trespass not committed by animal taken up**

Sec. 12. If the verdict or finding in a trial under this chapter is that the stray animal confined under section 4 of this chapter did not commit the trespass, a judgment shall be entered against the person who confined the stray animal for all costs and damages that are assessed.

### **32-26-2-13 Sale of trespassing estrays; retention of damages and costs**

Sec. 13. If a stray animal confined under section 4 of this chapter is sold under IC 32-34-8, the person who confined the stray animal may retain out of the sale price of the stray animal the damages sustained by the person and the costs of assessing the damages in addition to the costs and allowances recoverable under IC 32-34-8.

### **32-26-2-14 Release of trespassing animal; fence not lawful**

Sec. 14. In an action filed under this chapter, if the court or jury finds the fence through which a stray animal breaks is not a lawful fence, the animal shall be released to the animal's owner and the occupant of the enclosure shall pay costs and damages to the animal's owner.

### **32-26-2-15 Existing fence becoming partition fence; compensation**

Sec. 15. When a fence that is already erected becomes a partition fence because previously unenclosed property is enclosed, the person who encloses the previously unenclosed property shall pay to the owner of the existing fence fifty percent (50%) of the value of the existing fence, as estimated by the owner of the existing fence.

### **32-26-2-16 Existing fence becoming partition fence; action for payment**

Sec. 16. (a) If a person who encloses previously unenclosed property refuses to pay the owner of an existing fence under section 15 of this chapter, the owner may file a civil action for recovery of the amount due under section 15 of this chapter.

(b) This subsection applies if, before a trial under subsection (a):

(1) the person who encloses the previously unenclosed property offers to the owner of an existing fence; and

(2) the owner of the existing fence refuses to accept;

an amount equal to or larger than the damages awarded at the trial and the costs accrued up to the date of the offer. The owner of the existing fence shall pay the costs of the action and receive only the damages assessed.

### **32-26-2-17 Joining fence to fence of another**

Sec. 17. A person who encloses property that has previously been unenclosed may not join the new fence to another person's existing fence without the consent of the owner of the existing fence. If consent to join the new fence with the existing fence is not given, each property owner shall give property that is equivalent to fifty percent (50%) of the width of a lane, or a reasonable distance, for the erection of the second fence.

### **32-26-2-18 Notice; intention to remove partition fence**

Sec. 18. This section applies to a person who ceases to use the person's property or opens the person's enclosures. A person to whom this section applies may not remove any part of the person's fence that forms a partition fence between the person's property and the enclosure of any other person until the person to whom this section applies has first given six (6) months notice of the person's intention to remove the fence to any person who may be interested in the removal of the fence.

### **32-26-2-19 Removal of fence erected on land of another; damages**

Sec. 19. (a) This section applies to a person who, by mistake, erects a fence on the property of another person.

(b) Within six (6) months after the determination of the legal property line, a person to whom this section applies may enter upon the other person's property and remove the fence that the person to whom this section applies erected. Before entering upon the other person's property, the person to whom this section applies must pay or offer to pay to the other person reasonable damages for injury caused in passing over the property to remove the fence.

### **32-26-2-20 Removal of fence erected on land of another; safeguarding of crops**

Sec. 20. If the fence to be removed under section 19 of this chapter forms any part of a fence enclosing a field of another party on which there is a crop, the person to whom section 19 of this chapter applies may not remove the fence in a manner that exposes the field until the crop:

(1) has been gathered and removed, or secured from injury; or

(2) might, with reasonable diligence, have been gathered and secured. After the conditions set forth in this section have been met, the person to whom section 19 of this chapter applies may immediately remove the fence and materials, whether or not more than six (6) months have elapsed since the legal property line was determined.

### **Chapter 3. Recording Agreements to Erect and Repair Fences**

#### **32-26-3-1 Fencing agreements not provided by law**

Sec. 1. Adjoining property owners who elect to erect, repair, maintain, or pay for fences separating their lands in a manner other than that set forth under this article shall do so by written agreement. When the agreement is signed by the adjoining property owners, the agreement must be recorded in the office of the recorder in the county or counties in which the adjoining properties are situated.

#### **32-26-3-2 Existing rights safeguarded**

Sec. 2. This chapter may not be held or construed as annulling or abrogating any subsisting legal right created under or any cause of action that arose and was fully accrued under any law or agreement if the legal right became effective before January 1, 1950.

### **Chapter 4. Cutting of Live Fences Along Public Highways**

#### **32-26-4-1 Obstruction of view; trimming and maintaining; application of law**

Sec. 1. (a) This chapter:

(1) does not apply to:

(A) a highway intersection located within a city or town; or

(B) a building of a substantial character that is located at the intersection of highways; and

(2) except for the provisions of this chapter concerning hedge fences, applies only to the intersection of a state highway with another state highway, a county highway, or a township highway.

(b) Except as provided in subsection (c), the owner of a hedge or live fence along the line of a highway shall cut and trim down the hedge or live fence to a height of not more than five (5) feet once in each calendar year.

(c) This subsection applies if a hedge, live fence, or natural growth other than a tree connects with or is found at a highway intersection, adjacent to a curve where the view of the highway may be obstructed, or at a railway right-of-way. The owner of a hedge, live fence, or other growth to which this subsection applies shall trim and maintain the hedge, live fence, or other

growth at a height of not more than five (5) feet above the level of the center of the traveled road bed in the highway that adjoins the hedge, live fence, or other growth:

(1) throughout the year;

(2) for a distance of:

(A) one hundred (100) feet, if the obstruction is a hedge or live fence; or

(B) fifty (50) feet, if the obstruction consists of any other natural growths; and

(3) beginning at the intersection of the highway and continuing along the lines dividing the highways and the adjoining property.

(d) This subsection applies to a tree growing within fifty (50) feet of the intersection of a highway with:

(1) another highway; or

(2) a steam or interurban railroad.

The owner of a tree to which this subsection applies shall trim the tree so that the view at the intersection is not obstructed.

(e) Except for a natural elevation of land, an obstruction to the view at the intersection of a highway with another highway or a steam or interurban railroad that exceeds a height of five (5) feet above the center of the highway may not be maintained at the intersection.

(f) After May 22, 1933, a building may not be erected within fifty (50) feet of an intersection to which this chapter applies.

### **32-26-4-2 Examination of live fences; notice to cut or trim; collection of expenses**

Sec. 2. (a) The trustee of each township, the county highway superintendent, the Indiana department of transportation, or other officer in control of the maintenance of a highway shall between January 1 and April 1 of each year, examine all hedges, live fences, natural growths along highways, and other obstructions described in section 1 of this chapter in their respective jurisdictions. If there are hedges, live fences, other growths, or obstructions along the highways that have not been cut, trimmed down, and maintained in accordance with this chapter, the owner shall be given written notice to cut or trim the hedge or live fence and to burn the brush trimmed from the hedge or live fence and remove any other obstructions or growths.

(b) The notice required under subsection (a) must be served by reading the notice to the owner or by leaving a copy of the notice at the owner's usual place of residence.

(c) If the owner is not a resident of the township, county, or state where the hedge, live fence, or other obstructions or growth is located, the notice shall be served upon the owner's agent or

tenant residing in the township. If an agent or a tenant of the owner does not reside in the township, the notice shall be served by mailing a copy of the notice to the owner, directed to the owner's last known post office address.

(d) If the owner, agents, or tenants do not proceed to cut and trim the fences and burn the brush trimmed from the fences or remove any obstructions or growths within ten (10) days after notice is served, the township trustee, county highway superintendent, or Indiana department of transportation shall immediately:

(1) cause the fences to be cut and trimmed or obstructions or growths removed in accordance with this chapter; and

(2) burn the brush trimmed from the fences.

All expenses incurred under this subsection shall be assessed against and become a lien upon the land in the same manner as road taxes.

(e) The township trustee, county highway superintendent, or Indiana department of transportation having charge of the work performed under subsection (d) shall prepare an itemized statement of the total cost of the work of removing the obstructions or growths and shall sign and certify the statement to the county auditor of the county in which the land is located. The county auditor shall place the statement on the tax duplicates. The county treasurer shall collect the costs entered on the duplicates at the same time and in the same manner as road taxes are collected. The treasurer may not issue a receipt for road taxes unless the costs entered on the duplicates are paid in full at the same time the road taxes are paid. If the costs are not paid when due, the costs shall become delinquent, bear the same interest, be subject to the same penalties, and be collected at the same time and in the same manner as other unpaid and delinquent taxes.

### **32-26-4-3 Actions; recover expenses of cutting or trimming**

Sec. 3. The prosecuting attorney shall prosecute a suit under section 2(e) of this chapter in the name of the state on relation of the supervisor or county highway superintendent. The prosecuting attorney shall receive a fee of ten dollars (\$10), collected as a part of the costs of the suit, for bringing a suit under this section.

## **Chapter 5. Cutting Live Fences Between Adjoining Lands**

### **32-26-5-1 Height and width of hedge or live fence**

Sec. 1. A hedge or other live fence grown along the lines dividing properties owned by different persons in Indiana shall be cut and trimmed down to the height of not more than five (5) feet and to a width of not more than three (3) feet once in each calendar year.

### **32-26-5-2 Complaint; written notice**

Sec. 2. (a) Upon receiving a complaint in writing signed by an owner of land adjoining a hedge or fence to which this chapter applies alleging that the owner of the fence has neglected to cut and trim the hedge or fence, the township trustee shall examine, within five (5) days after receiving the complaint, the hedge or other live fence.

(b) If the hedge or other live fence that is the subject of the complaint under subsection (a) has not been cut and trimmed, the township trustee shall give the owner of the hedge or other live fence written notice to cut and trim the hedge or other live fence and to remove the brush to the owner's property within thirty (30) days after receiving the notice.

(c) The notice required under subsection (b) must be served by reading the notice to the owner or by leaving a copy of the notice at the owner's usual place of residence. If the owner of properties divided by the hedge or other live fence is not a resident of the township where the hedge or other live fence is located, the notice shall be served by mailing a copy of the notice to the owner directed to the owner's last known post office address.

(d) If the owner or the owner's agents or tenants do not cut and trim the fences and remove the brush, the trustee shall, immediately after the expiration of thirty (30) days, cause the hedge or other live fence to be cut and trimmed and the brush removed to the owner's property.

(e) The trustee shall recover all expenses incurred under subsection (d) by bringing a suit against the owner of the property on which the hedge or live fence is situated before the county court, the circuit court, or the superior court of the county in which the hedge or other live fence is situated. Collection of the expenses and any judgment recovered shall be without relief from valuation or appraisal laws.

### **32-26-5-3 Actions and proceedings; recovery of cutting and trimming expenses**

Sec. 3. The prosecuting attorney shall prosecute a suit under this chapter in the name of the state on relation of a township trustee. The prosecuting attorney shall receive ten dollars (\$10) collected as part of the cost of the suit, for bringing a suit under this section.

## **Chapter 6. Enclosure of Land Subject to Flooding**

### **32-26-6-1 Petition; inspection; assessment**

Sec. 1. (a) The owners of real property in a county who own the major portion of the property in the county that is:

(1) improved and used for purposes of agriculture;

(2) in an area that is:

(A) definitely described by sections or subdivisions of sections; or

(B) sufficiently described by metes and bounds; and

(3) situated upon or near, and subject to overflow from:

(A) a stream;

(B) a watercourse;

(C) a lake;

(D) a pond; or

(E) a marsh;

may petition the board of commissioners of the county, asking permission to enclose the properties within one (1) general fence that has swinging gates on all public highways crossed by the fence. A petition under this subsection must set forth the kind of fence and gates desired.

(b) Upon the receipt of a petition under subsection (a), the board of county commissioners shall appoint as viewers three (3) reputable householders of the county who are not related by blood or marriage to any of the parties interested in the subject of the petition. After being sworn to faithfully and fairly perform the services required of them, the viewers shall proceed:

(1) within a reasonable time after the viewers' appointment; and

(2) after giving publication of the viewers' intention by posting written or printed notices describing the properties in the townships where the properties are located;

to inspect the properties and make an assessment against the owners of the properties for the cost of the fence.

(c) The cost of the fence shall be apportioned between the owners of the properties severally according to the number of acres of improved land owned by each owner and the benefits accruing to the owners severally because of the fence.

### **32-26-6-2 Reports of viewers; order to erect or construct fence**

Sec. 2. (a) After having performed the duties required under section 1 of this chapter, the viewers shall, as soon as practicable, submit a report in writing to the board of county commissioners of the viewers' actions and a tabular statement of the viewers' assessment. The report submitted under this section is sufficient authority for the board of county commissioners to issue an order for the erection or construction of the fence and gates if there is no remonstrance against the erection of the fence and gates.

(b) If a remonstrance is made under subsection (a), the board of county commissioners may order or refuse to order the erection of the fence or gate, in the board's discretion.

(c) If the order under subsection (a) is not made because of a mistake or error committed by the viewers, other viewers may be appointed to perform the same service and submit a report.

### **32-26-6-3 Affidavit of unpaid assessments**

Sec. 3. (a) A certified copy of the report of the viewers, as approved by the board of commissioners, shall be filed in the office of the county auditor.

(b) Thirty (30) days after the fence and gates described in section 1 of this chapter have been constructed, any person interested in the fence and gates may make an affidavit before the county auditor showing which property owners have not paid their several assessments. The county auditor shall enter the sums assessed against the delinquent persons upon the tax duplicate to be collected by the treasurer as other taxes are collected. When the assessments have been collected, the money shall be paid out to the property owners who have voluntarily paid the cost of the fence, in proportion to the amount of the property owners' several assessments.

### **32-26-6-4 Surveyors; compensation of viewers**

Sec. 4. The viewers appointed under this chapter may, if necessary, employ a surveyor, who shall be paid for the surveyor's services as may be agreed upon. The board of county commissioners shall fix the compensation of the viewers for their services. The entire cost and expenses of the proceedings are a part of the cost of the erection of the fence and gates and shall be collected in the same manner.

### **32-26-6-5 Stock running at large**

Sec. 5. A person who owns property enclosed under this chapter may not allow stock to run at large upon the enclosed property during the period beginning March 16 and ending December 25 of any year.

## **Chapter 7. Recording Fencemarks; Removal of Marked Fencing from Overflowed Lands**

### **32-26-7-1 Rails and plank-fencing; record of marks**

Sec. 1. If petitioned by at least twenty (20) property owners in the county, the board of county commissioners shall furnish a blank book to the recorder of the county, paid for out of the county fund, in which the county recorder shall keep a record of marks of rails and plank fencing that are adopted by the property owners of the county.

### **32-26-7-2 Fees for recording marks**

Sec. 2. The county recorder shall charge a fee in accordance with IC 36-2-7-10 for the recording of each mark from the person adopting and having the mark recorded. The recorder may not record two (2) marks that exactly correspond.

### **32-26-7-3 Floods removing rails or plank-fencing; recovery from land of another**

Sec. 3. Any person who has the person's rails or plank fencing marked and recorded as provided under this chapter may, if the rails or plank fencing are removed by high water and overflow off the person's property on to the property of another person, remove the rails and plank fencing on to the person's own property at any time of the year. The owner of the rails or plank fencing is responsible for and shall pay all damages that may be done to growing grain on the property from which the rails or plank fencing are removed or over which the rails or plank fencing are hauled.

## **Chapter 8. Recovery of Property Moved by High Water**

### **32-26-8-1 Rights of property owners; arbitration**

Sec. 1. (a) When the fence rails or other property of a person in Indiana are removed by high water and lodged upon the real property of another person, the owner of the fence rails or other property may proceed, within sixty (60) days after the fence rails or other property are lodged, upon the real property on which the fence rails or other property are lodged.

(b) If the owner of the real property refuses to deliver up the fence rails or other property, the parties shall each select an arbitrator, who shall examine or hear evidence upon all the circumstances and facts and determine the case.

(c) If the arbitrators selected under subsection (b) cannot agree, the arbitrators shall select an umpire. The decision of a majority of the arbitrators and the umpire is final.

### **32-26-8-2 Oath of arbitrators**

Sec. 2. Before the arbitrators proceed under section 1 of this chapter, the arbitrators must swear, before a person who may administer oaths, to discharge the arbitrators' duties faithfully, impartially, and according to law.

### **32-26-8-3 Notice of arbitration**

Sec. 3. If at least ten (10) persons claim the same property under section 1 of this chapter, the persons shall give notice to all interested persons of the time and place of the arbitration. Upon hearing all the facts and circumstances in the case, the arbitrators shall award to each person making a claim a proportion of the property as the arbitrators consider reasonable and just.

### **32-26-8-4 Persons recovering property not trespassers**

Sec. 4. It is not a trespass for a person to go upon the real property of another person for the purposes set forth in this chapter. A person who goes upon the real property of another person under this chapter shall go upon the route that will do the least possible injury to the real property, if it is practicable and convenient.

## **Chapter 9. Partition Fences**

### **32-26-9-0.5 "Agricultural land" defined**

Sec. 0.5. (a) As used in this section, “agricultural land” means land that is:

- (1) zoned or otherwise designated as agricultural land;
- (2) used for growing crops or raising livestock; or
- (3) reserved for conservation.

(b) This chapter does not apply to a fence that separates two (2) adjoining parcels of property unless at least one (1) of the adjoining parcels is agricultural land.

### **32-26-9-1 Existing fences**

Sec. 1. A fence that is used by adjoining property owners as a partition fence, unless otherwise agreed upon by the property owners, is considered a partition fence and shall be repaired, maintained, and paid for as provided under this chapter.

### **32-26-9-2 Lands outside or abutting municipal boundary**

Sec. 2. (a) The owner of a property that:

- (1) is located outside;
- (2) abuts; or
- (3) is adjacent to;

the boundary of the corporate limits of a town or city shall separate the owner's property from adjoining properties by a partition fence constructed upon the line dividing or separating the properties regardless of when the properties were divided.

(b) Except as otherwise provided in this chapter, and if a division of the partition fence has not been made between the property owners for the building, repairing, or rebuilding of the partition fence:

(1) for a partition fence built along a property line than runs from north to south:

(A) the owner whose property lies to the east of the fence shall build the north half of the fence; and

(B) the owner whose land lies to the west of the fence shall build the south half of the fence; and

(2) for a partition fence built along a property line that runs from east to west:

(A) the owner whose property lies north of the fence shall build the west half of the fence; and

(B) the owner whose property lies to the south of the fence shall build the east half of the fence.

(c) Notwithstanding subsection (b), if either property owner has constructed one-half ( 1/2 ) of a partition fence that is not the portion required under subsection (b) and has maintained that portion of the partition fence for a period of not less than five (5) years, the property owner may continue to maintain the portion of the fence.

(d) If a property owner fails to build, rebuild, or repair a partition fence after receiving notice under this chapter, the township trustee of the township in which the property is located shall build, rebuild, or repair the fence as provided under this chapter.

### **32-26-9-3 Defaulting landowner; description of lawful partition fence; floodgates across water courses**

Sec. 3. (a) A partition fence shall be built, rebuilt, and kept in repair at the cost of the property owners whose properties are enclosed or separated by the fences proportionately according to the number of rods or proportion of the fence the property owner owns along the line of the fence, whether the property owner's title is a fee simple or a life estate.

(b) If a property owner fails or refuses to compensate for building, rebuilding, or repairing the property owner's portion of a partition fence, another property owner who is interested in the fence, after having built, rebuilt, or repaired the property owner's portion of the fence, shall give to the defaulting property owner or the defaulting property owner's agent or tenant twenty (20) days notice to build, rebuild, or repair the defaulting property owner's portion of the fence. If the defaulting property owner or the defaulting property owner's agent or tenant fails to build, rebuild, or repair the fence within twenty (20) days, the complaining property owner shall notify the township trustee of the township in which the properties are located of the default.

(c) This subsection applies if the fence sought to be established, rebuilt, or repaired is on a township line. Unless disqualified under subsection (h), the complaining property owner shall notify the trustee of the township in which the property of the complaining property owner is located of the default under subsection (b), and the trustee has jurisdiction in the matter.

(d) The township trustee who receives a complaint under this section shall:

(1) estimate the costs for building, rebuilding, or repairing the partition fence; and

(2) within a reasonable time after receiving the complaint, make out a statement and notify the defaulting property owner of the probable cost of building, rebuilding, or repairing the fence.

If twenty (20) days after receiving a notice under this subsection the defaulting property owner has not built, rebuilt, or repaired the fence, the trustee shall build or repair the fence. The trustee may use only the materials for the fences that are most commonly used by the farmers of the community.

(e) If the trustee of a township is disqualified to act under subsection (h), the trustee of an adjoining township who resides nearest to where the fence is located shall act on the complaint upon receiving a notice by a property owner who is interested in the fence.

(f) A lawful partition fence is any one (1) of the following that is sufficiently tight and strong to hold cattle, hogs, horses, mules, and sheep:

(1) A straight board and wire fence, a straight wire fence, a straight board fence, or a picket fence four (4) feet high.

(2) A straight rail fence four and one-half (4 1/2 ) feet high.

(3) A worm rail fence five (5) feet high.

(g) This subsection applies if a ditch or creek crosses the division line between two (2) property owners, causing additional expense in the maintenance of the part over the stream. If the property owners cannot agree upon the proportionate share of each property owner, the township trustee shall appoint three (3) disinterested citizens who shall apportion the partition fence to be built by each property owner.

(h) If a township trustee is:

(1) related to any of the interested property owners; or

(2) an interested property owner;

the trustee of any other township who resides nearest to where the fence is located shall act under this chapter.

(i) This subsection applies if a ditch or creek forms, covers, or marks the dividing line or a part of the dividing line between the properties of separate and different property owners so that partition fences required under this chapter cannot be built and maintained on the dividing line. The partition fences shall be built and maintained under this chapter as near to the boundary line as is practical, and each property owner shall build a separate partition fence on the property owner's property and maintain the fence at the property owner's cost.

(j) This subsection applies where a partition fence required under this chapter crosses a ditch or creek and it is impracticable to construct or maintain that portion of the fence that crosses the ditch or creek as a stationary fence. Instead of the portion of the fence that would cross the ditch or creek, there shall be constructed, as a part of the partition fence, floodgates or other similar structures that are sufficiently high, tight, and strong to turn hogs, sheep, cattle, mules, and horses or other domestic animals. The floodgates or other similar structures shall be constructed to swing up in times of high water and to connect continuously with the partition fences.

(k) This subsection applies if the building and maintenance of the floodgates or other similar structure required under subsection (j) causes additional expenses and the property owners cannot agree upon the character of floodgates or other similar structure, or upon the proportionate share of the cost to be borne by each property owner. The township trustee, upon notice in writing from either property owner of a disagreement and the nature of the disagreement, shall appoint three (3) disinterested citizens of the township who shall determine the kind of structure and apportion the cost of the floodgate or other structure between the property owners, taking into consideration the parts of the fence being maintained by each property owner.

(l) The determination of a majority of the arbitrators of any matter or matters submitted to them under this section is final and binding on each property owner. The compensation of the arbitrators is two dollars (\$2) each, which shall be paid by the property owners in the proportion each property owner is ordered to bear the expense of a gate or structure.

(m) This subsection applies if either or both of the property owners fail to construct or compensate for constructing the structure determined upon by the arbitrators in the proportion determined within thirty (30) days after the determination. The township trustee shall proceed at once to construct the gate or structure and collect the cost of the gate or structure, including the compensation of the arbitrators, from the defaulting property owner in the same manner as is provided for ordinary partition fences. The floodgate or other structure shall be repaired, rebuilt, or replaced according to the determination of the arbitrators.

#### **32-26-9-4 Expenses; construction and maintenance by township**

Sec. 4. (a) As soon as the township trustee has had a fence built, rebuilt, or repaired under this chapter, the trustee shall make out a certified statement in triplicate of the actual cost incurred by the trustee in the building, rebuilding, or repairing the fence. One (1) copy must be handed to or mailed to the property owner affected by the work, one (1) copy must be retained by the trustee as a record for the township, and one (1) copy must be filed in the auditor's office of the county in which the fence is located and in which the property of the property owner affected by the work is located. At the same time the trustee shall also file with the county auditor a claim against the county for the amount shown in the statement filed with the county auditor.

(b) The county auditor shall:

(1) examine the claims and statement as other claims are examined; and

(2) present the claims and statements to the board of county commissioners at the next regular meeting.

Unless there is an apparent error in the statement or claim, the board of county commissioners shall make allowance, and the county auditor shall issue a warrant for the amount claimed to the township trustee submitting the claim out of the county general fund without an appropriation being made by the county council.

(c) The amount paid out of the county general fund under subsection (b) shall be:

- (1) placed by the county auditor on the tax duplicate against the property of the property owner affected by the work;
- (2) collected as taxes are collected; and
- (3) when collected, paid into the county general fund.

#### **32-26-9-5 Construction and maintenance by township; personal liability of trustees**

Sec. 5. The township trustee has no personal liability for a contract the trustee makes under this chapter for building, rebuilding, or repairing fences under this chapter. The contractor shall receive payment from the township funds, which shall be reimbursed when the contract price is paid into the county treasury.

#### **32-26-9-6 Construction and application of law**

Sec. 6. This chapter shall be liberally construed in favor of the objects and purposes for which it is enacted and shall apply to all agricultural land, whether enclosed or unenclosed, cultivated or uncultivated, wild or wood lot.