
SENATE BILL No. 101

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-10-9.

Synopsis: Partition fences. Provides that the duty to maintain a partition fence does not apply to an adjoining landowner who does not keep livestock on the landowner's property for five years after the construction or repair of the fence. Provides that, unless the parties agree otherwise, a landowner who keeps livestock on the property is liable to an adjoining landowner who builds, rebuilds, or repairs a partition fence for a portion of the costs of building, rebuilding, or repairing the partition fence, up to a maximum of 50% of the total costs.

Effective: July 1, 2000.

Wheeler

November 18, 1999, read first time and referred to Committee on Agriculture and Small Business.

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Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

SENATE BILL No. 101

A BILL FOR AN ACT to amend the Indiana Code concerning property.

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

- 1 SECTION 1. IC 32-10-9-0.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2000]: **Sec. 0.5. As used in this chapter, "livestock" includes the**
4 **following:**
- 5 (1) Beef cattle, dairy cattle, and other animals of the bovine
6 species.
 - 7 (2) Swine and other animals of the porcine species.
 - 8 (3) Sheep and other members of the ovine species.
 - 9 (4) Horses, mules, burros, asses, and other animals of the
10 equine species.
 - 11 (5) Goats and other members of the caprine species.
 - 12 (6) Ostriches, rhea, emus, and other members of the ratite
13 species.
 - 14 (7) Camels, llamas, and other members of the camelid species.
 - 15 (8) Farm raised deer, elk, moose, and other members of the
16 cervidae species.
 - 17 (9) Bison.



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1 SECTION 2. IC 32-10-9-2 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) **Except as**
 3 **provided in section 2.1 of this chapter**, it shall be the duty of all
 4 owners of land whose lands lie outside or abuts or lies adjacent to the
 5 boundary of the corporate limits of any town or city, to separate said
 6 land from adjoining lands by a partition fence to be constructed upon
 7 the line or lines dividing or separating said lands whether said lands
 8 were divided heretofore or may hereafter be divided.

9 (b) Except as ~~hereinafter~~ otherwise provided **in this chapter**, or in
 10 case no division of said partition fence has been made between the
 11 landowners for the building or repairing or rebuilding of such partition
 12 fence, then in such case the landowner, whose land lies to the east of
 13 said fence, shall build the north half thereof and the landowner whose
 14 land lies to the west of said fence, shall build the south half thereof and
 15 if the landowner's land lies north of the fence to be built, rebuilt or
 16 repaired, he shall build, rebuild or repair the west half thereof, and if
 17 the land lies to the south of such fence, such landowner shall build the
 18 east half thereof.

19 (c) If either of such landowners shall have constructed one half (1/2)
 20 of any partition fence, other than the half prescribed in subsection (b)
 21 of this section, and shall have maintained such one half (1/2) of such
 22 partition fence for a period of not less than five (5) years, such
 23 landowners shall thereafter be entitled to continue to maintain such one
 24 half (1/2) of such fence, notwithstanding any of the provisions of
 25 subsection (b) of this section.

26 (d) If any landowner fails to build, rebuild or repair such fence after
 27 receiving notice as is hereinafter provided, the township trustees
 28 wherein said land or line is located, shall build, rebuild or repair such
 29 fence as is hereinafter provided.

30 SECTION 3. IC 32-10-9-2.1 IS ADDED TO THE INDIANA CODE
 31 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2000]: **Sec. 2.1. (a) An owner of a tract of land who does not keep**
 33 **livestock on the owner's tract of land is not liable for any of the**
 34 **costs incurred by the owner of an adjoining tract of land in**
 35 **constructing, reconstructing, or repairing a partition fence**
 36 **between the adjoining tracts of land unless subsection (b) applies.**

37 **(b) This subsection applies only if:**

38 **(1) the owner of a tract of land keeps livestock on the owner's**
 39 **tract of land more than twenty (20) days in any year in the**
 40 **first five (5) years after the construction, reconstruction, or**
 41 **repair of a partition fence is completed; and**

42 **(2) the tract of land described in subdivision (1) is separated**



1 from an adjoining tract of land by a partition fence
 2 constructed, reconstructed, or repaired at the expense of the
 3 owner of the adjoining tract of land.

4 **The owner of the tract of land described in subdivision (1) is liable**
 5 **to the owner of the adjoining tract of land who constructs,**
 6 **reconstructs, or repairs a partition fence between the adjacent**
 7 **tracts of land for ten percent (10%) of the total costs of the**
 8 **construction, reconstruction, or repair of the partition fence for**
 9 **each year (during the five (5) year period described in subdivision**
 10 **(1)) that the owner keeps livestock on the tract of land for more**
 11 **than twenty (20) days, up to a maximum of fifty percent (50%) of**
 12 **the total cost of the construction, reconstruction, or repair of the**
 13 **partition fence.**

14 (c) **The owners of the adjacent tracts of land described in**
 15 **subsection (b) may agree to apportion the costs of construction,**
 16 **reconstruction, or repair of a partition fence. If the owners of the**
 17 **adjacent tracts of land enter into an agreement under this**
 18 **subsection, subsection (b) does not apply.**

19 SECTION 4. IC 32-10-9-3 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. **Except as provided**
 21 **in section 2.1 of this chapter,** all partition fences shall be built, rebuilt,
 22 kept in repair at the cost of the several landowners whose lands are
 23 inclosed or separated by such fences equally according to the number
 24 of rods or proportion thereof such landowner may have along such line
 25 of fence, whether his, her or their title be in fee simple or a life estate.
 26 If any landowner, as above defined, shall fail or refuse to compensate
 27 for building, rebuilding or repairing his, her or their proportion of
 28 fence, any landowner interested in such fence, after having built,
 29 rebuilt or repaired his proportion of such fence, shall give to the
 30 defaulting landowner, his agent or tenant twenty (20) days' notice to
 31 build, rebuild or repair his proportion of such fence, as the case may be,
 32 and if such defaulting party shall fail to build, rebuild or repair such
 33 fence within said time, such landowner shall then notify the township
 34 trustee of the township wherein said lands are located of such fact:
 35 provided, that where the fence sought to be established, rebuilt or
 36 repaired is on a township line, in such case, the complaining landowner
 37 or landowners shall notify the trustee of the township wherein the lands
 38 of the complaining landowner or landowners are located of the
 39 improvement he or they may desire made, and such trustee shall have
 40 jurisdiction of such matter, unless disqualified as hereinafter provided,
 41 estimate the costs for such fence, building, rebuilding or repairing the
 42 same, as the case may be, and, within a reasonable time after being



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1 notified, such trustee shall make out a statement and notify such
 2 defaulting party of the probable cost of building, rebuilding or repairing
 3 such fence, as the case may be, and if after twenty (20) days, said fence
 4 is not built, rebuilt or repaired by such defaulting landowners, such
 5 trustee of such township shall build, or repair such fence, as the case
 6 may be: provided, that such trustee shall use only the materials for such
 7 fences as are most commonly used by the farmers of such community:
 8 provided, further, that if such trustee of such township is disqualified
 9 to act, then it shall be lawful and it shall be the duty of the trustee of the
 10 adjoining township, residing nearest to where such fence is situated, to
 11 act in the premises, upon receiving a notice so to do by any landowner
 12 interested therein: also, provided, further, that a lawful partition fence
 13 shall be a straight board and wire fence or a straight wire or a straight
 14 board fence or a picket fence four (4) feet high, a straight rail fence
 15 four and one-half (4 1/2) feet high, a worm rail fence five (5) feet high,
 16 and all fences of every structure to be sufficiently tight and strong to
 17 hold ~~hogs, sheep, cattle, mules and horses:~~ **livestock**; provided, further,
 18 that if a ditch or creek crosses the division line between two (2)
 19 landowners, necessitating additional expense in the maintenance of the
 20 part over such stream, if such landowners can not agree upon the
 21 proportionate share of each, the township trustee shall appoint three (3)
 22 disinterested citizens who shall apportion the partition fence to be built
 23 by each landowner: provided, further, that if any trustee is related to
 24 any of the parties interested or is an interested party himself, then it
 25 shall be lawful for the trustee of any other township residing nearest to
 26 where such fence is situated to act in the premises: provided, further,
 27 that in all cases where a ditch or creek forms, covers or marks the
 28 dividing line, or any part thereof, of the lands of separate and different
 29 landowners of this state so that partition fences such as are required
 30 and provided for in this chapter can not be built and maintained on
 31 such dividing line, then, and in all such cases, such partition fences
 32 shall be built and maintained under the provisions of this chapter as
 33 near to such boundary line as may be, and each landowner shall be
 34 required, on his own land, to build a separate partition fence, and to
 35 maintain the same at his own cost: provided, further, that in all cases
 36 where partition fences, such as are required and provided for in this
 37 chapter, cross any ditch or creek and, by reason thereof, it is
 38 impracticable to construct or maintain that portion of said fence as
 39 would cross said ditch or creek as a stationary fence, then, and in all
 40 such cases, there shall be erected, in lieu of such portion of said fence
 41 across said ditch or creek, and as a part of such partition fence,
 42 floodgates or other similar structures, sufficiently high, tight and strong

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1 to turn ~~hogs, sheep, cattle, mules and horses or other domestic animals,~~
 2 **livestock**, and so constructed as to swing up in times of high water, and
 3 such floodgates or other similar structures shall be so built and
 4 constructed as to connect continuously such partition fences: and,
 5 provided, further, that if the building and maintenance of such
 6 floodgates or other similar structure occasions additional expenses and
 7 such landowners can not agree upon the character of floodgates or
 8 other similar structure, or upon the proportionate share of the cost
 9 thereof to be borne by each, the township trustee, upon notice in
 10 writing from either landowner of such disagreement and the nature
 11 thereof, shall appoint three (3) disinterested citizens of said township
 12 who shall determine the kind of structure and apportion the cost of such
 13 floodgate or other structure between such landowners, taking into
 14 consideration the parts and portion of such fence being maintained by
 15 each landowner. And the determination of a majority of such arbitrators
 16 of any matter or matters submitted to them shall be final and binding
 17 on each landowner. The compensation of such arbitrators shall be two
 18 dollars (\$2.00) each, which shall be paid by said landowners in the
 19 proportion they are ordered to bear the expense of such gate or
 20 structure. In case either or both of such landowners shall fail to
 21 construct or compensate for constructing the structure determined upon
 22 by such arbitrators in the proportion determined, within thirty (30) days
 23 from such determination, such township trustee shall proceed at once
 24 to construct such gate or structure and collect the cost thereof,
 25 including the compensation of such arbitrators, from such defaulting
 26 landowner or landowners, in the same manner as is provided for
 27 ordinary partition fences. And such floodgate or other structure shall
 28 be repaired, rebuilt or replaced in accordance with the determination
 29 of said arbitrators.

30 SECTION 5. IC 32-10-9-6 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 6. This chapter shall be
 32 liberally construed in favor of the objects and purposes for which it is
 33 enacted and, **except as provided in section 2.1 of this chapter**, shall
 34 apply to all lands, whether ~~inclosed~~ **enclosed** or ~~uninclosed~~;
 35 **unenclosed**, cultivated or uncultivated, wild or wood lot.

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