

**IC 32-26**

**ARTICLE 26. FENCES**

**IC 32-26-1**

Chapter 1. Fencing Associations

**IC 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.

*As added by P.L.2-2002, SEC.11.*

**IC 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.

*As added by P.L.2-2002, SEC.11.*

**IC 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.

*As added by P.L.2-2002, SEC.11.*

**IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 32-26-1-9**

#### **Fences erected before 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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.

*As added by P.L.2-2002, SEC.11.*

**IC 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.

*As added by P.L.2-2002, SEC.11.*

**IC 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.

*As added by P.L.2-2002, SEC.11.*

**IC 32-26-1-13****Money drawn by treasurer**

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

*As added by P.L.2-2002, SEC.11.*

**IC 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.

*As added by P.L.2-2002, SEC.11.*

**IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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 (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.

*As added by P.L.2-2002, SEC.11.*

### **IC 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 32-26-1-22**

#### **Rules or 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.

*As added by P.L.2-2002, SEC.11.*

### **IC 32-26-1-23**

#### **Throwing down common fence**

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.

*As added by P.L.2-2002, SEC.11.*

#### **IC 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.

*As added by P.L.2-2002, SEC.11.*

#### **IC 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.

*As added by P.L.2-2002, SEC.11.*