

## **IC 32-26-2**

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

#### **IC 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.

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

#### **IC 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.

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

#### **IC 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.

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

#### **IC 32-26-2-4**

##### **Strays; confining 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.

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

#### **IC 32-26-2-5**

##### **Notice to owner; confining 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.

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

#### **IC 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.

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

#### **IC 32-26-2-7**

##### **Notice or advertisement of confined 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.

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

#### **IC 32-26-2-8**

##### **Owner demanding trespassing stray from confiner**

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.

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

#### **IC 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.

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

#### **IC 32-26-2-10**

##### **Jury trial**

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

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

#### **IC 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.

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

#### **IC 32-26-2-12**

##### **Judgment; trespass not committed by animal confined**

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.

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

#### **IC 32-26-2-13**

##### **Sale of trespassing strays; 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.

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

#### **IC 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.

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

**IC 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.

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

**IC 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.

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

**IC 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.

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

**IC 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.

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

#### **IC 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.

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

#### **IC 32-26-2-20**

##### **Removal of fence erected on land of another; safeguarding 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.

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