

IC 8-4-33

Chapter 33. Fencing Railroads

IC 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.

(Formerly: Acts 1885(ss), c.91, s.1.) As amended by P.L.62-1984, SEC.89.

IC 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.

(Formerly: Acts 1885(ss), c.91, s.2.)

IC 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.

(Formerly: Acts 1885(ss), c.91, s.3.)

IC 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.

(Formerly: Acts 1885(ss), c.91, s.4.) As amended by P.L.62-1984, SEC.90.

IC 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.

(Formerly: Acts 1885(ss), c.91, s.5.)