

SENATE BILL No. 308

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-26.

Synopsis: Partition fences. Provides that a fence that is used by adjoining property owners as a fence is, unless otherwise agreed upon by the property owners, considered a partition fence and must be repaired, maintained, and paid for by the person who builds the fence or causes the fence to be built. Provides that the existing partition fence law applies to partition fences built and maintained before January 1, 2019. Repeals provisions of the fence law concerning: (1) required payment to the owner for an existing fence when previously unenclosed property becomes enclosed; and (2) application and construction of the partition fence law.

Effective: January 1, 2019 (retroactive).

Stoops

January 7, 2019, read first time and referred to Committee on Agriculture.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 308

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 IC 32-26-2-15 IS REPEALED [EFFECTIVE
2 JANUARY 1, 2019 (RETROACTIVE)]. ~~Sec. 15: When a fence that is~~
3 ~~already erected becomes a partition fence because previously~~
4 ~~unenclosed property is enclosed; the person who encloses the~~
5 ~~previously unenclosed property shall pay to the owner of the existing~~
6 ~~fence fifty percent (50%) of the value of the existing fence; as~~
7 ~~estimated by the owner of the existing fence.~~

8 SECTION 2. IC 32-26-2-16 IS REPEALED [EFFECTIVE
9 JANUARY 1, 2019 (RETROACTIVE)]. ~~Sec. 16: (a) If a person who~~
10 ~~encloses previously unenclosed property refuses to pay the owner of an~~
11 ~~existing fence under section 15 of this chapter; the owner may file a~~
12 ~~civil action for recovery of the amount due under section 15 of this~~
13 ~~chapter.~~

14 (b) This subsection applies if, before a trial under subsection (a):
15 (1) the person who encloses the previously unenclosed property
16 offers to the owner of an existing fence; and
17 (2) the owner of the existing fence refuses to accept;



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

5 SECTION 3. IC 32-26-3-1 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]:

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

13 **(b) Except as provided in subsection (a), a fence that is used by**
 14 **adjoining property owners as a partition fence is considered a**
 15 **partition fence and must be repaired, maintained, and paid for by**
 16 **the person who builds the fence or causes the fence to be built.**

17 SECTION 4. IC 32-26-9-0.1 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 19 JANUARY 1, 2019 (RETROACTIVE)]: **Sec. 0.1. This chapter**
 20 **applies only to a fence that:**

21 **(1) is used as a partition fence; and**

22 **(2) was built and maintained as a partition fence before**
 23 **January 1, 2019.**

24 SECTION 5. IC 32-26-9-6 IS REPEALED [EFFECTIVE
 25 JANUARY 1, 2019 (RETROACTIVE)]. ~~Sec. 6: This chapter shall be~~
 26 ~~liberally construed in favor of the objects and purposes for which it is~~
 27 ~~enacted and shall apply to all agricultural land, whether enclosed or~~
 28 ~~unenclosed, cultivated or uncultivated, wild or wood lot.~~

29 SECTION 6. **An emergency is declared for this act.**

