March 2, 2011

ENGROSSED
HOUSE BILL No. 1133

DIGEST OF HB 1133 (Updated March 1, 2011 11:05 am - DI 106)

Citations Affected: IC 34-31.

Synopsis: Agritourism liability. Provides that an agritourism provider is not liable for the injury or death of an agritourism participant if the cause of the injury or death is an inherent risk of the agritourism activity. Establishes exceptions. Requires the agritourism provider to post a warning sign and place the warning notice in any contracts signed by the participant.

Effective: July 1, 2011.

Frye R, Goodin, Friend, Lehe

(SENATE SPONSORS — STEELE, LEISING)

January 6, 2011, read first time and referred to Committee on Judiciary.
February 3, 2011, amended, reported — Do Pass.
February 8, 2011, read second time, amended, ordered engrossed.
February 9, 2011, engrossed.
February 10, 2011, read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 17, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
March 1, 2011, reported favorably — Do Pass.

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March 2, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1133

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

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

SECTION 1. IC 34-31-9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 9. Limited Liability Arising From Agritourism Activities

Sec. 1. (a) This chapter does not apply to activities if the participant is paid to participate in the activity.

(b) This chapter does not apply to an agritourism provider who does not comply with the requirements concerning signs and warning notices required by this chapter.

Sec. 2. As used in this chapter, "agritourism activity" means:

(1) an activity at an agricultural, horticultural, or agribusiness operation where the general public is allowed or invited to participate in, view, or enjoy the activities for recreational, entertainment, or educational purposes, including farming, ranching, historic and cultural agricultural activities, self-pick farms, or farmers' markets;

(2) an activity involving an animal exhibition at an agricultural fair; or

(3) natural resource based activities and attractions, including hunting, fishing, hiking, and trail riding.

Sec. 3. As used in this chapter, "agritourism provider" means a person who provides the opportunity for agritourism activities whether or not the participant pays to participate in the activity. The term includes employees or authorized agents who offer or conduct agritourism activities on behalf of an agritourism provider.

Sec. 4. As used in this chapter, "inherent risks of agritourism activities" means those conditions, dangers, or hazards that are an integral part of an agritourism activity, including the following:

(1) Surface and subsurface conditions and natural conditions of land, vegetation, and waters.

(2) The behavior of wild or domestic animals.

(3) The ordinary dangers of structures or equipment when the structures or equipment are being:

(A) used; or

(B) stored;

by an agritourism provider in a manner and for a purpose for which a reasonable person should know that structures or equipment is intended.

(4) The negligent acts of a participant that may contribute to injury to the participant or others, including failing to follow instructions given by an agritourism provider, failing to exercise reasonable caution while engaging in the agritourism activity, or failing to obey written warnings or postings on the premises of the agritourism operation.

Sec. 5. As used in this chapter, "land" means all real property, land, and water including all structures, fixtures, equipment, and machinery located on the property.

Sec. 6. As used in this chapter, "monetary consideration" means a fee or other charge for permission to go upon a tract of land. The term does not include:

(1) the gratuitous sharing of game, fish, or other products of the recreational use of the land;

(2) services rendered for the purpose of wildlife management; or

(3) contributions in kind made for the purpose of wildlife management.

Sec. 7. As used in this chapter, "participant" means any person,

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other than the agritourism provider, who engages in an agritourism activity.

Sec. 8. As used in this chapter, "person" means an individual, governmental entity, corporation, limited liability company, partnership, unincorporated association, or other legal or commercial entity.

Sec. 9. An activity may be an agritourism activity whether or not a participant provides monetary or other valuable compensation to participate in the activity.

Sec. 10. (a) Subject to section 11 of this chapter, an agritourism provider is not liable for:

(1) an injury to a participant; or

(2) the death of a participant;

resulting from an inherent risk of agritourism activities.

(b) Subject to section 11 of this chapter, a participant or participant's representative may not:

(1) make a claim against;

(2) maintain an action against; or

(3) recover from;

an agritourism provider for injury, loss, damage, or death of the participant resulting from an inherent risk of agritourism activities.

Sec. 11. Section 10 of this chapter does not prevent or limit the liability of an agritourism provider:

(1) who has actual knowledge or reasonably should have known of:

(A) a dangerous condition on the land, facilities, or equipment used in the agritourism activity; or

(B) the dangerous propensity of a particular animal used in the agritourism activity;

and does not make the danger known to the participant and the danger proximately causes injury, damage, or death to the participant;

(2) who fails to properly train, or improperly or inadequately trains, employees who are actively involved in agritourism activities and an act or omission of the employee proximately causes injury, damage, or death to the participant;

(3) who commits an act or omission that:

(A) constitutes willful or wanton disregard for the safety of the participant; and

(B) caused the injury or death of the participant; or

(4) who intentionally injures the participant.

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Sec. 12. (a) This chapter does not apply to an agritourism provider who receives monetary consideration from an individual other than a government agency unless an agritourism provider:

(1) posts and maintains a sign on which is printed the warning notice set forth in section 14 of this chapter; or

(2) has a signed release from the participant indicating that the participant has received written notice of the warning set forth in section 13 of this chapter.

(b) A sign referred to in subsection (a) must be placed in a clearly visible location at the main point of entrance to the agritourism activity.

(c) The warning notice on a sign referred to in subsection (a) must be printed in black letters, and each letter must be at least one (1) inch in height.

Sec. 13. If there is a written contract between an agritourism provider and a participant for the providing of access, services, instruction, or the rental of equipment to a participant for purposes of engaging in or participating in an agritourism activity, the contract must contain in clearly readable print the warning notice specified in section 14 of this chapter,

Sec. 14. The warning notice that must be printed on a sign under section 12 of this chapter and included in a written contract under section 13 of this chapter is as follows:

WARNING

Under Indiana law, an agritourism provider is not liable for an injury to, or the death of, a participant in agritourism activities at this location if the death or injury results from the inherent risks of agritourism activity.

Inherent risks of agritourism activities include risks of injury inherent to land, equipment, and animals as well as the potential for you to act in a negligent manner that may contribute to your injury or death, or for other participants to act in a manner that may cause you injury or cause your death.

You are assuming the risk of participating in this agritourism activity.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1133, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 14-8-2-117.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 117.3. "Governmental entity", for the purposes of ~~IC 14-22-10-2, IC 14-22-10-2.5, and~~ IC 14-34-19-15, ~~has the meaning set forth in IC 14-22-10-2(a).~~ **means any of the following:**

(1) The government of the United States of America.

(2) The state of Indiana.

(3) A county.

(4) A city.

(5) A town.

(6) A township.

(7) The following, if created by the Constitution of the United States, the Constitution of the State of Indiana, a statute, an ordinance, a rule, or an order:

(A) An agency.

(B) A board.

(C) A commission.

(D) A committee.

(E) A council.

(F) A department.

(G) A district.

(H) A public body corporate and politic.

SECTION 2. IC 14-8-2-195 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 195. "Owner" has the following meaning:

(1) For purposes of IC 14-11-4, the meaning set forth in IC 14-11-4-2.

(2) For purposes of IC 14-15, a person who has the legal title to a watercraft.

(3) For purposes of IC 14-16-1, the meaning set forth in IC 14-16-1-6.

(4) For purposes of IC 14-25-4, the meaning set forth in IC 14-25-4-4.

(5) For purposes of IC 14-27-7, the meaning set forth in IC 14-27-7-1.

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(6) For purposes of IC 14-27-7.5, the meaning set forth in IC 14-27-7.5-4.

(7) For purposes of IC 14-36, the term includes the following:

(A) Owners in fee.

(B) Life tenants.

(C) Tenants for years.

(D) Holders of remainder of reversionary interests.

(E) Holders of leaseholds or easements.

(F) Holders of mineral rights.

(8) For purposes of IC 14-37, a person who has the right to drill into and produce from a pool and to appropriate the oil and gas produced from the pool for:

(A) the person or others; or

(B) the person and others.

~~(9) For the purposes of IC 14-22-10-2, the meaning set forth in IC 14-22-10-2(c).~~

SECTION 3. IC 14-26-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14. (a) This section applies to an off-stream, privately owned pond, lake, reservoir, or other body of water designed and constructed primarily for the reduction or control of pollutants or cooling before discharge of the water into the public water of Indiana.

(b) A body of water subject to this section does not become a body of public water for the purpose of permitting the state to regulate the quality of water.

(c) The state and the citizens of Indiana do not acquire a continuing right or interest in a body of water subject to this section if the owner permits entrance to or recreational use of the body of water by the public.

(d) ~~IC 14-22-10-2~~ **IC 34-31-9** applies to a body of water operated under this section.

(e) This section does not affect the duties of the department to enforce Indiana fish and wildlife laws as the laws apply to public entrance or recreational use of the body of water.".

Page 1, line 8, delete "professional" and insert "**provider**".

Page 2, line 4, delete "and trailing riding." and insert " **trail riding, water sports, winter sports, spelunking, camping, and harvesting of products.**".

Page 2, line 5, delete "professional" and insert "**provider**".

Page 2, line 6, delete "is engaged in the business of providing" and insert "**provides the opportunity for**".

Page 2, line 10, delete "professional." and insert "**provider.**".

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Page 2, line 17, after "equipment" insert "**when the structures or equipment are being:**

(A) used; or

(B) stored;

by an agritourism provider in a manner and for a purpose for which a reasonable person should know that structures or equipment is intended.".

Page 2, delete lines 18 through 19.

Page 2, line 22, delete "professional," and insert "**provider,**".

Page 2, between lines 25 and 26, begin a new paragraph and insert:

"**Sec. 5. As used in this chapter, "land" means all real property, land, and water including all structures, fixtures, equipment, and machinery located on the property.**

Sec. 6. As used in this chapter, "monetary consideration" means a fee or other charge for permission to go upon a tract of land. The term does not include:

(1) the gratuitous sharing of game, fish, or other products of the recreational use of the land;

(2) services rendered for the purpose of wildlife management; or

(3) contributions in kind made for the purpose of wildlife management.".

Page 2, line 26, delete "5." and insert "**7.**".

Page 2, line 27, delete "professional," and insert "**provider,**".

Page 2, line 29, delete "6." and insert "**8.**".

Page 2, line 33, delete "7." and insert "**9.**".

Page 2, line 36, delete "8." and insert "**10.**".

Page 2, line 36, delete "9" and insert "**11**".

Page 2, line 37, delete "professional" and insert "**provider**".

Page 2, line 41, delete "9" and insert "**11**".

Page 3, line 4, delete "professional" and insert "**provider**".

Page 3, line 7, delete "9. Section 8" and insert "**11. Section 10**".

Page 3, line 8, delete "professional:" and insert "**provider:**".

Page 3, line 9, after "knowledge" insert "**or reasonably should have known**".

Page 3, line 26, delete "10." and insert "**12.**".

Page 3, line 26, after "apply" insert "**to an agritourism provider who receives monetary consideration from an individual other than a government agency**".

Page 3, line 27, delete "professional" and insert "**provider:**

(1)".

Page 3, line 28, delete "12" and insert "**14**".

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Page 3, line 28, delete "chapter." and insert "**chapter; or**
(2) has a signed release from the participant indicating that the participant has received written notice of the warning set forth in section 13 of this chapter.".
Page 3, line 35, delete "Sec. 11. (a)" and insert "**Sec. 13.**".
Page 3, line 36, delete "professional and" and insert "**provider and**".
Page 3, line 36, delete "of professional" and insert "**of access,**".
Page 3, line 40, delete "12" and insert "**14**".
Page 3, delete lines 41 through 42.
Page 4, delete lines 1 through 2.
Page 4, line 3, delete "12." and insert "**14.**".
Page 4, line 4, delete "10" and insert "**12**".
Page 4, line 5, delete "11" and insert "**13**".
Page 4, line 7, delete "professional" and insert "**provider**".
Page 4, after line 18, begin a new paragraph and insert:
"SECTION 5. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2011]: IC 14-22-10-2; IC 14-22-10-2.5; IC 34-30-2-56.".
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1133 as introduced.)

FOLEY, Chair

Committee Vote: yeas 5, nays 2.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1133 be amended to read as follows:
Page 1, delete lines 1 through 17.
Delete page 2.
Page 3, delete lines 1 through 10.
Page 3, line 31, delete "trail riding, water sports, winter" and insert "**and trail riding.**".
Page 3, delete line 32.
Page 6, delete lines 23 through 24.
Renumber all SECTIONS consecutively.

(Reference is to HB 1133 as printed February 4, 2011.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1133, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1133 as printed February 9, 2011.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 0.

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