



February 4, 2011

HOUSE BILL No. 1133

DIGEST OF HB 1133 (Updated January 31, 2011 1:51 pm - DI 107)

Citations Affected: IC 14-8; IC 14-26; 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. Repeals provisions being superseded by this bill.

Effective: July 1, 2011.

Frye R, Goodin, Friend, Lehe

January 6, 2011, read first time and referred to Committee on Judiciary.
February 3, 2011, amended, reported — Do Pass.

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HB 1133—LS 7427/DI 77+



February 4, 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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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:

- 1 SECTION 1. IC 14-8-2-117.3 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 117.3. "Governmental
- 3 entity", for the purposes of ~~IC 14-22-10-2, IC 14-22-10-2.5, and~~
- 4 IC 14-34-19-15, ~~has the meaning set forth in IC 14-22-10-2(a).~~ means
- 5 any of the following:
- 6 (1) The government of the United States of America.
- 7 (2) The state of Indiana.
- 8 (3) A county.
- 9 (4) A city.
- 10 (5) A town.
- 11 (6) A township.
- 12 (7) The following, if created by the Constitution of the United
- 13 States, the Constitution of the State of Indiana, a statute, a
- 14 ordinance, a rule, or an order:
- 15 (A) An agency.
- 16 (B) A board.
- 17 (C) A commission.

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- 1 **(D) A committee.**
- 2 **(E) A council.**
- 3 **(F) A department.**
- 4 **(G) A district.**
- 5 **(H) A public body corporate and politic.**

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

- 9 (1) For purposes of IC 14-11-4, the meaning set forth in
 10 IC 14-11-4-2.
- 11 (2) For purposes of IC 14-15, a person who has the legal title to
 12 a watercraft.
- 13 (3) For purposes of IC 14-16-1, the meaning set forth in
 14 IC 14-16-1-6.
- 15 (4) For purposes of IC 14-25-4, the meaning set forth in
 16 IC 14-25-4-4.
- 17 (5) For purposes of IC 14-27-7, the meaning set forth in
 18 IC 14-27-7-1.
- 19 (6) For purposes of IC 14-27-7.5, the meaning set forth in
 20 IC 14-27-7.5-4.
- 21 (7) For purposes of IC 14-36, the term includes the following:
 - 22 (A) Owners in fee.
 - 23 (B) Life tenants.
 - 24 (C) Tenants for years.
 - 25 (D) Holders of remainder of reversionary interests.
 - 26 (E) Holders of leaseholds or easements.
 - 27 (F) Holders of mineral rights.
- 28 (8) For purposes of IC 14-37, a person who has the right to drill
 29 into and produce from a pool and to appropriate the oil and gas
 30 produced from the pool for:
 - 31 (A) the person or others; or
 - 32 (B) the person and others.
- 33 ~~(9) For the purposes of IC 14-22-10-2, the meaning set forth in~~
 34 ~~IC 14-22-10-2(c).~~

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

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

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1 quality of water.

2 (c) The state and the citizens of Indiana do not acquire a continuing

3 right or interest in a body of water subject to this section if the owner

4 permits entrance to or recreational use of the body of water by the

5 public.

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

7 under this section.

8 (e) This section does not affect the duties of the department to

9 enforce Indiana fish and wildlife laws as the laws apply to public

10 entrance or recreational use of the body of water.

11 SECTION 4. IC 34-31-9 IS ADDED TO THE INDIANA CODE AS

12 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY

13 1, 2011]:

14 **Chapter 9. Limited Liability Arising From Agritourism**

15 **Activities**

16 **Sec. 1. (a) This chapter does not apply to activities if the**

17 **participant is paid to participate in the activity.**

18 **(b) This chapter does not apply to an agritourism provider who**

19 **does not comply with the requirements concerning signs and**

20 **warning notices required by this chapter.**

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

22 **(1) an activity at an agricultural, horticultural, or**

23 **agribusiness operation where the general public is allowed or**

24 **invited to participate in, view, or enjoy the activities for**

25 **recreational, entertainment, or educational purposes,**

26 **including farming, ranching, historic and cultural agricultural**

27 **activities, self-pick farms, or farmers' markets;**

28 **(2) an activity involving an animal exhibition at an**

29 **agricultural fair; or**

30 **(3) natural resource based activities and attractions, including**

31 **hunting, fishing, hiking, trail riding, water sports, winter**

32 **sports, spelunking, camping, and harvesting of products.**

33 **Sec. 3. As used in this chapter, "agritourism provider" means**

34 **a person who provides the opportunity for agritourism activities**

35 **whether or not the participant pays to participate in the activity.**

36 **The term includes employees or authorized agents who offer or**

37 **conduct agritourism activities on behalf of an agritourism**

38 **provider.**

39 **Sec. 4. As used in this chapter, "inherent risks of agritourism**

40 **activities" means those conditions, dangers, or hazards that are an**

41 **integral part of an agritourism activity, including the following:**

42 **(1) Surface and subsurface conditions and natural conditions**

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1 of land, vegetation, and waters.
 2 (2) The behavior of wild or domestic animals.
 3 (3) The ordinary dangers of structures or equipment when the
 4 structures or equipment are being:
 5 (A) used; or
 6 (B) stored;
 7 by an agritourism provider in a manner and for a purpose for
 8 which a reasonable person should know that structures or
 9 equipment is intended.
 10 (4) The negligent acts of a participant that may contribute to
 11 injury to the participant or others, including failing to follow
 12 instructions given by an agritourism provider, failing to
 13 exercise reasonable caution while engaging in the agritourism
 14 activity, or failing to obey written warnings or postings on the
 15 premises of the agritourism operation.
 16 Sec. 5. As used in this chapter, "land" means all real property,
 17 land, and water including all structures, fixtures, equipment, and
 18 machinery located on the property.
 19 Sec. 6. As used in this chapter, "monetary consideration" means
 20 a fee or other charge for permission to go upon a tract of land. The
 21 term does not include:
 22 (1) the gratuitous sharing of game, fish, or other products of
 23 the recreational use of the land;
 24 (2) services rendered for the purpose of wildlife management;
 25 or
 26 (3) contributions in kind made for the purpose of wildlife
 27 management.
 28 Sec. 7. As used in this chapter, "participant" means any person,
 29 other than the agritourism provider, who engages in an
 30 agritourism activity.
 31 Sec. 8. As used in this chapter, "person" means an individual,
 32 governmental entity, corporation, limited liability company,
 33 partnership, unincorporated association, or other legal or
 34 commercial entity.
 35 Sec. 9. An activity may be an agritourism activity whether or
 36 not a participant provides monetary or other valuable
 37 compensation to participate in the activity.
 38 Sec. 10. (a) Subject to section 11 of this chapter, an agritourism
 39 provider is not liable for:
 40 (1) an injury to a participant; or
 41 (2) the death of a participant;
 42 resulting from an inherent risk of agritourism activities.

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

- 3 (1) make a claim against;
- 4 (2) maintain an action against; or
- 5 (3) recover from;

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

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

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

- 13 (A) a dangerous condition on the land, facilities, or
14 equipment used in the agritourism activity; or
- 15 (B) the dangerous propensity of a particular animal used
16 in the agritourism activity;

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

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

- 24 (3) who commits an act or omission that:
 - 25 (A) constitutes willful or wanton disregard for the safety of
26 the participant; and
 - 27 (B) caused the injury or death of the participant; or
- 28 (4) who intentionally injures the participant.

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

- 32 (1) posts and maintains a sign on which is printed the warning
33 notice set forth in section 14 of this chapter; or
- 34 (2) has a signed release from the participant indicating that
35 the participant has received written notice of the warning set
36 forth in section 13 of this chapter.

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

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

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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."

Re-number 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.

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