



February 24, 2012

**ENGROSSED
HOUSE BILL No. 1040**

DIGEST OF HB 1040 (Updated February 21, 2012 1:50 pm - DI 106)

Citations Affected: IC 34-30; IC 34-31; IC 36-8.

Synopsis: Immunity for fast responders. Provides that if: (1) a county adopts an ordinance approving the provision of community fast responder services; and (2) the nonprofit corporation directing the provision of community fast responder services maintains a certain level of insurance; the liability of a community fast responder is limited to the amount of insurance. Provides that a community fast responder nonprofit corporation does not include a hospital or an entity operated or directed by a hospital. Provides that fast responders have the same immunity from liability as first responders. Requires a community fast responder nonprofit corporation to purchase an insurance policy that provides \$700,000 of insurance coverage for the liability of the corporation's community fast responders. Provides that the limit of liability of a community fast responder nonprofit corporation is \$5,000,000. Limits the liability of a school that provides physical fitness activities to the general public. Makes conforming amendments.

Effective: July 1, 2012.

Grubb, Brown T

(SENATE SPONSOR — MILLER)

January 9, 2012, read first time and referred to Committee on Veterans Affairs and Public Safety.

January 11, 2012, reported — Do Pass.

January 13, 2012, read second time, ordered engrossed. Engrossed.

January 17, 2012, read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 23, 2012, amended, reported favorably — Do Pass.

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February 24, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1040

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 34-30-2-156.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2012]: **Sec. 156.5. IC 36-8-23 (Concerning**
4 **community fast responders).**

5 SECTION 2. IC 36-8-23 IS ADDED TO THE INDIANA CODE AS
6 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2012]:

8 **Chapter 23. Community Fast Responders**
9 **Sec. 1. As used in this chapter, "community fast responder"**
10 **means a volunteer who may be summoned to perform**
11 **cardiopulmonary resuscitation, defibrillation, or other emergency**
12 **services under the direction of a nonprofit corporation.**

13 **Sec. 2. As used in this chapter, "community fast responder**
14 **nonprofit corporation" means a nonprofit corporation that**
15 **organizes or directs community fast responders. The term, for**
16 **purposes of this chapter, does not include a hospital or an entity**
17 **operated or directed by a hospital.**

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1 **Sec. 3. IC 34-30-12-1 (the good Samaritan statute) applies to a**
2 **community fast responder.**

3 **Sec. 4. IC 16-31-6 applies to a community fast responder.**

4 **Sec. 5. (a) This section applies if:**

5 **(1) a county adopts an ordinance approving the provision of**
6 **community fast responder services by a community fast**
7 **responder nonprofit corporation; and**

8 **(2) the community fast responder nonprofit corporation**
9 **purchases an insurance policy described in subsection (b).**

10 **(b) A community fast responder nonprofit corporation shall**
11 **purchase an insurance policy that provides at least seven hundred**
12 **thousand dollars (\$700,000) of insurance coverage for the liability**
13 **of all of the corporation's community fast responders for bodily**
14 **injury or property damage caused by the corporation's community**
15 **fast responders acting within the scope of their duties.**

16 **(c) The civil liability of a community fast responder for:**

17 **(1) an act that is within the scope of a community fast**
18 **responder's duties; or**

19 **(2) the failure to do an act that is within the scope of a**
20 **community fast responder's duties;**

21 **while performing emergency services or while traveling to the**
22 **scene of an emergency or from the scene of an emergency is limited**
23 **to the coverage provided by the insurance policy purchased under**
24 **this section. A community fast responder may not be named in a**
25 **lawsuit as a nonparty and is not liable for punitive damages for any**
26 **act that is within the scope of the community fast responder's**
27 **duties.**

28 **(d) The civil liability of a community fast responder nonprofit**
29 **corporation is limited to five million dollars (\$5,000,000) for injury**
30 **to or death of all persons in an occurrence. A community fast**
31 **responder nonprofit corporation is not liable for punitive damages.**

32 **Sec. 6. A county that adopts an ordinance under section 5(a)(1)**
33 **of this chapter is immune from civil liability in accordance with**
34 **IC 34-13-3-3.**

35 SECTION 3. IC 34-31-10 IS ADDED TO THE INDIANA CODE
36 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2012]:

38 **Chapter 10. Limitation on Liability Arising From the Public Use**
39 **of School Facilities for Physical Fitness Activities**

40 **Sec. 1. The limitation on liability provided in this chapter is in**
41 **addition to any immunity or limitation on liability provided by the**
42 **Indiana tort claims act (IC 34-13-3).**

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1 **Sec. 2. (a) This chapter does not apply to activities if the**
 2 **participant is paid to participate in the activity.**

3 **(b) This chapter does not apply to a school that does not comply**
 4 **with the requirements concerning signs and warning notices set**
 5 **forth in this chapter.**

6 **Sec. 3. As used in this chapter, "inherent risk of a physical**
 7 **fitness activity" means a condition, danger, or hazard that is an**
 8 **integral part of:**

9 **(1) a physical fitness activity;**

10 **(2) the use of exercise equipment; or**

11 **(3) the use of a facility provided by a school;**

12 **as determined by a reasonable person considering the nature of the**
 13 **activity, equipment, or facility. The term includes the negligent acts**
 14 **of a participant that may contribute to injury to the participant or**
 15 **others, including failing to follow instructions, failing to exercise**
 16 **reasonable caution while engaging in activity, or failing to obey**
 17 **written warnings or postings.**

18 **Sec. 4. As used in this chapter, "participant" means a person**
 19 **who is engaging in a school physical fitness activity. The term does**
 20 **not include:**

21 **(1) a student; or**

22 **(2) a school employee or other person providing, directing, or**
 23 **supervising the school physical fitness activity.**

24 **Sec. 5. As used in this chapter, "school" means a public school**
 25 **(as defined in IC 20-18-2-15) or an accredited nonpublic school (as**
 26 **defined in IC 20-18-2-12).**

27 **Sec. 6. As used in this chapter, "school physical fitness activity"**
 28 **means an activity in which the general public is invited to use**
 29 **school property, school equipment, or a school facility to**
 30 **participate in a physical fitness activity, including participation in**
 31 **sports, weightlifting, running, swimming, diving, bicycling, or any**
 32 **other similar activity, whether or not the member of the public**
 33 **pays to participate in the activity.**

34 **Sec. 7. Except as provided in sections 8 through 10 of this**
 35 **chapter, a school is not liable for the death or injury of a**
 36 **participant that results from an inherent risk of a physical fitness**
 37 **activity, and a participant or the representative of a participant**
 38 **may not:**

39 **(1) make a claim against;**

40 **(2) bring or maintain an action against; or**

41 **(3) recover damages from;**

42 **a school for injury, loss, damage, or death of a participant that**

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results from the inherent risk of a physical fitness activity.

Sec. 8. Section 7 of this chapter does not prevent or limit the liability of a school:

- (1) that has actual knowledge of, or that reasonably should have known of, a dangerous condition on the school property or affecting the facilities or equipment used in the school physical fitness activity;**
- (2) that fails to properly train a school employee or other person providing, directing, or supervising the school physical fitness activity, if the act or omission of the school employee or other person proximately causes the loss; or**
- (3) for an act or omission that is the result of willful, wanton, or intentional misconduct.**

Sec. 9. Section 7 of this chapter does not prevent or limit a school's liability to a participant if the school receives monetary consideration for a school physical fitness activity from any person other than a government agency unless the school:

- (1) posts and maintains a sign on which is printed the warning notice set forth in section 11 of this chapter; or**
- (2) has received a signed release from the participant indicating that the participant has received written notice of the warning set forth in section 11 of this chapter.**

Sec. 10. If there is a written contract between a school and a participant for the provision of a school physical fitness activity, section 7 of this chapter does not prevent or limit the liability of the school unless the contract contains the warning notice set forth in section 11 of this chapter.

Sec. 11. (a) The warning notice described in sections 9 and 10 of this chapter must state the following:

"WARNING

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

Inherent risks of physical fitness activities include risks of injury inherent in exercise, the nature of a sport, the use of exercise equipment, and the use of a facility provided by a school. Inherent risks also include the potential that you may act in a negligent manner that may contribute to your injury or death, or that other participants may act in a manner that may result in injury or death to you.

You are assuming the risk of participating in this physical

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- 1 **fitness activity at this location."**
- 2 **(b) If the warning notice set forth in subsection (a) is posted on**
- 3 **a sign as described in section 9 of this chapter, the warning must be**
- 4 **posted in letters at least one (1) inch in height on a sign placed in a**
- 5 **location where participants will likely be present.**
- 6 **(c) If the warning notice set forth in subsection (a) is included in**
- 7 **a written contract as described section 10 of this chapter, the notice**
- 8 **must be in at least 14 point bold face type.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Veterans Affairs and Public Safety, to which was referred House Bill 1040, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BORDERS, Chair

Committee Vote: yeas 10, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1040, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, after line 34, begin a new paragraph and insert:

"SECTION 2. IC 34-31-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 10. Limitation on Liability Arising From the Public Use of School Facilities for Physical Fitness Activities

Sec. 1. The limitation on liability provided in this chapter is in addition to any immunity or limitation on liability provided by the Indiana tort claims act (IC 34-13-3).

Sec. 2. (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 a school that does not comply with the requirements concerning signs and warning notices set forth in this chapter.

Sec. 3. As used in this chapter, "inherent risk of a physical fitness activity" means a condition, danger, or hazard that is an integral part of:

- (1) a physical fitness activity;**
- (2) the use of exercise equipment; or**
- (3) the use of a facility provided by a school;**

as determined by a reasonable person considering the nature of the activity, equipment, or facility. The term includes the negligent acts of a participant that may contribute to injury to the participant or others, including failing to follow instructions, failing to exercise

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reasonable caution while engaging in activity, or failing to obey written warnings or postings.

Sec. 4. As used in this chapter, "participant" means a person who is engaging in a school physical fitness activity. The term does not include:

- (1) a student; or
- (2) a school employee or other person providing, directing, or supervising the school physical fitness activity.

Sec. 5. As used in this chapter, "school" means a public school (as defined in IC 20-18-2-15) or an accredited nonpublic school (as defined in IC 20-18-2-12).

Sec. 6. As used in this chapter, "school physical fitness activity" means an activity in which the general public is invited to use school property, school equipment, or a school facility to participate in a physical fitness activity, including participation in sports, weightlifting, running, swimming, diving, bicycling, or any other similar activity, whether or not the member of the public pays to participate in the activity.

Sec. 7. Except as provided in sections 8 through 10 of this chapter, a school is not liable for the death or injury of a participant that results from an inherent risk of a physical fitness activity, and a participant or the representative of a participant may not:

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

a school for injury, loss, damage, or death of a participant that results from the inherent risk of a physical fitness activity.

Sec. 8. Section 7 of this chapter does not prevent or limit the liability of a school:

- (1) that has actual knowledge of, or that reasonably should have known of, a dangerous condition on the school property or affecting the facilities or equipment used in the school physical fitness activity;
- (2) that fails to properly train a school employee or other person providing, directing, or supervising the school physical fitness activity, if the act or omission of the school employee or other person proximately causes the loss; or
- (3) for an act or omission that is the result of willful, wanton, or intentional misconduct.

Sec. 9. Section 7 of this chapter does not prevent or limit a school's liability to a participant if the school receives monetary

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consideration for a school physical fitness activity from any person other than a government agency unless the school:

- (1) posts and maintains a sign on which is printed the warning notice set forth in section 11 of this chapter; or
- (2) has received a signed release from the participant indicating that the participant has received written notice of the warning set forth in section 11 of this chapter.

Sec. 10. If there is a written contract between a school and a participant for the provision of a school physical fitness activity, section 7 of this chapter does not prevent or limit the liability of the school unless the contract contains the warning notice set forth in section 11 of this chapter.

Sec. 11. (a) The warning notice described in sections 9 and 10 of this chapter must state the following:

"WARNING

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

Inherent risks of physical fitness activities include risks of injury inherent in exercise, the nature of a sport, the use of exercise equipment, and the use of a facility provided by a school. Inherent risks also include the potential that you may act in a negligent manner that may contribute to your injury or death, or that other participants may act in a manner that may result in injury or death to you.

You are assuming the risk of participating in this physical fitness activity at this location."

(b) If the warning notice set forth in subsection (a) is posted on a sign as described in section 9 of this chapter, the warning must be posted in letters at least one (1) inch in height on a sign placed in a location where participants will likely be present.

(c) If the warning notice set forth in subsection (a) is included in a written contract as described section 10 of this chapter, the notice must be in at least 14 point bold face type."

and when so amended that said bill do pass.

(Reference is to HB 1040 as printed January 11, 2012.)

STEELE, Chairperson

Committee Vote: Yeas 10, Nays 0.

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