



Reprinted
January 27, 2012

HOUSE BILL No. 1091

DIGEST OF HB 1091 (Updated January 26, 2012 2:34 pm - DI 77)

Citations Affected: IC 32-30; IC 32-35; IC 34-6; IC 35-50.

Synopsis: Agricultural operations. Provides that if a court finds that an agricultural operation that is the subject of a nuisance action was not a nuisance and that the nuisance action was frivolous, initiated maliciously, or groundless, the court shall award the expenses of litigation, including reasonable attorney's fees, to the defendant in the action. Provides that a choice of forum clause in a contract involving goods, services, or leases related to agricultural products, livestock, poultry, livestock products, poultry products, or an agricultural operation is not enforceable when the amount of damages being sought is less than \$25,000. Provides that a court order a person who manufactures: (1) methamphetamine; or (2) marijuana; on property owned by another to pay certain liquidated damages as restitution to the property owner.

Effective: July 1, 2011; July 1, 2012.

Friend, Lehe

January 9, 2012, read first time and referred to Committee on Agriculture and Rural Development.

January 11, 2012, amended, reported — Do Pass.

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

January 17, 2012, engrossed.

January 25, 2012, returned to second reading.

January 26, 2012, amended, ordered engrossed.

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HB 1091—LS 6306/DI 77+



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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1091

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 32-30-6-9.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]: **Sec. 9.5. If a court finds that an agricultural operation
4 that is the subject of a nuisance action was not a nuisance under
5 section 9 of this chapter and that the nuisance action was frivolous,
6 initiated maliciously, or groundless, the court shall award the
7 expenses of litigation, including reasonable attorney's fees, to the
8 defendant in the action.**
- 9 SECTION 2. IC 32-35-3 IS ADDED TO THE INDIANA CODE AS
10 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2011]:
- 12 **Chapter 3. Choice of Forum Clauses**
- 13 **Sec. 1. For purposes of this chapter, "choice of forum clause"**
14 **means language in a contract that:**
- 15 (1) **requires a party to resolve a dispute in:**
16 (A) **a court outside Indiana; or**
17 (B) **arbitration or another dispute resolution process at a**

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- 1 location outside Indiana; or
- 2 (2) purports to be the consent to:
- 3 (A) the jurisdiction of a court outside Indiana; or
- 4 (B) arbitration or another dispute resolution process at a
- 5 location outside Indiana.

6 **Sec. 2. This chapter applies only to a contract:**

- 7 (1) entered into, extended, or renewed after June 30, 2012;
- 8 (2) that is the subject of a lawsuit in which the complaint seeks
- 9 actual damages that are less than twenty-five thousand dollars
- 10 (\$25,000); and
- 11 (3) involving goods, services, or leases related to agricultural
- 12 products (as defined in IC 34-6-2-8), livestock, poultry,
- 13 livestock products, poultry products, or an agricultural
- 14 operation (as defined in IC 32-30-6-1).

15 **Sec. 3. Except as provided in the Uniform Commercial Code**
16 **(IC 26-1), a choice of forum clause in a contract described in**
17 **section 2 of this chapter for:**

- 18 (1) goods;
- 19 (2) services; or
- 20 (3) leases;

21 **is not enforceable.**

22 SECTION 3. IC 34-6-2-8 IS AMENDED TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2012]: Sec. 8. "Agricultural product", for
24 purposes of IC 34-30-3 and IC 32-35-3, means a natural product of a
25 farm, a nursery, a grove, an orchard, a vineyard, a garden, or an apiary.
26 The term includes trees and firewood.

27 SECTION 4. IC 35-50-5-3, AS AMENDED BY P.L.173-2006,
28 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 2012]: Sec. 3. (a) Except as provided in subsection (i), or (j),
30 (l), or (m), in addition to any sentence imposed under this article for a
31 felony or misdemeanor, the court may, as a condition of probation or
32 without placing the person on probation, order the person to make
33 restitution to the victim of the crime, the victim's estate, or the family
34 of a victim who is deceased. The court shall base its restitution order
35 upon a consideration of:

- 36 (1) property damages of the victim incurred as a result of the
- 37 crime, based on the actual cost of repair (or replacement if repair
- 38 is inappropriate);
- 39 (2) medical and hospital costs incurred by the victim (before the
- 40 date of sentencing) as a result of the crime;
- 41 (3) the cost of medical laboratory tests to determine if the crime
- 42 has caused the victim to contract a disease or other medical

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- 1 condition;
- 2 (4) earnings lost by the victim (before the date of sentencing) as
- 3 a result of the crime including earnings lost while the victim was
- 4 hospitalized or participating in the investigation or trial of the
- 5 crime; and
- 6 (5) funeral, burial, or cremation costs incurred by the family or
- 7 estate of a homicide victim as a result of the crime.
- 8 (b) A restitution order under subsection (a), ~~or (i), or (j), (l), or (m)~~,
- 9 is a judgment lien that:
- 10 (1) attaches to the property of the person subject to the order;
- 11 (2) may be perfected;
- 12 (3) may be enforced to satisfy any payment that is delinquent
- 13 under the restitution order by the person in whose favor the order
- 14 is issued or the person's assignee; and
- 15 (4) expires;
- 16 in the same manner as a judgment lien created in a civil proceeding.
- 17 (c) When a restitution order is issued under subsection (a), the
- 18 issuing court may order the person to pay the restitution, or part of the
- 19 restitution, directly to:
- 20 (1) the victim services division of the Indiana criminal justice
- 21 institute in an amount not exceeding:
- 22 (A) the amount of the award, if any, paid to the victim under
- 23 IC 5-2-6.1; and
- 24 (B) the cost of the reimbursements, if any, for emergency
- 25 services provided to the victim under IC 16-10-1.5 (before its
- 26 repeal) or IC 16-21-8; or
- 27 (2) a probation department that shall forward restitution or part of
- 28 restitution to:
- 29 (A) a victim of a crime;
- 30 (B) a victim's estate; or
- 31 (C) the family of a victim who is deceased.
- 32 The victim services division of the Indiana criminal justice institute
- 33 shall deposit the restitution it receives under this subsection in the
- 34 violent crime victims compensation fund established by IC 5-2-6.1-40.
- 35 (d) When a restitution order is issued under subsection (a), (i), ~~or (j)~~,
- 36 **(l), or (m)**, the issuing court shall send a certified copy of the order to
- 37 the clerk of the circuit court in the county where the felony or
- 38 misdemeanor charge was filed. The restitution order must include the
- 39 following information:
- 40 (1) The name and address of the person that is to receive the
- 41 restitution.
- 42 (2) The amount of restitution the person is to receive.



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1 Upon receiving the order, the clerk shall enter and index the order in
 2 the circuit court judgment docket in the manner prescribed by
 3 IC 33-32-3-2. The clerk shall also notify the department of insurance
 4 of an order of restitution under subsection (i).

5 (e) An order of restitution under subsection (a), (i), ~~or~~ (j), **(l)**, or
 6 **(m)**, does not bar a civil action for:

7 (1) damages that the court did not require the person to pay to the
 8 victim under the restitution order but arise from an injury or
 9 property damage that is the basis of restitution ordered by the
 10 court; and

11 (2) other damages suffered by the victim.

12 (f) Regardless of whether restitution is required under subsection (a)
 13 as a condition of probation or other sentence, the restitution order is not
 14 discharged by the completion of any probationary period or other
 15 sentence imposed for a felony or misdemeanor.

16 (g) A restitution order under subsection (a), (i), ~~or~~ (j), **(l)**, or **(m)**, is
 17 not discharged by the liquidation of a person's estate by a receiver
 18 under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6,
 19 IC 34-1-12, or IC 34-2-7 before their repeal).

20 (h) The attorney general may pursue restitution ordered by the court
 21 under subsections (a) and (c) on behalf of the victim services division
 22 of the Indiana criminal justice institute established under IC 5-2-6-8.

23 (i) The court may order the person convicted of an offense under
 24 IC 35-43-9 to make restitution to the victim of the crime. The court
 25 shall base its restitution order upon a consideration of the amount of
 26 money that the convicted person converted, misappropriated, or
 27 received, or for which the convicted person conspired. The restitution
 28 order issued for a violation of IC 35-43-9 must comply with
 29 subsections (b), (d), (e), and (g), and is not discharged by the
 30 completion of any probationary period or other sentence imposed for
 31 a violation of IC 35-43-9.

32 (j) The court may order the person convicted of an offense under
 33 IC 35-43-5-3.5 to make restitution to the victim of the crime, the
 34 victim's estate, or the family of a victim who is deceased. The court
 35 shall base its restitution order upon a consideration of the amount of
 36 fraud or harm caused by the convicted person and any reasonable
 37 expenses (including lost wages) incurred by the victim in correcting the
 38 victim's credit report and addressing any other issues caused by the
 39 commission of the offense under IC 35-43-5-3.5. If, after a person is
 40 sentenced for an offense under IC 35-43-5-3.5, a victim, a victim's
 41 estate, or the family of a victim discovers or incurs additional expenses
 42 that result from the convicted person's commission of the offense under

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1 IC 35-43-5-3.5, the court may issue one (1) or more restitution orders
 2 to require the convicted person to make restitution, even if the court
 3 issued a restitution order at the time of sentencing. For purposes of
 4 entering a restitution order after sentencing, a court has continuing
 5 jurisdiction over a person convicted of an offense under IC 35-43-5-3.5
 6 for five (5) years after the date of sentencing. Each restitution order
 7 issued for a violation of IC 35-43-5-3.5 must comply with subsections
 8 (b), (d), (e), and (g), and is not discharged by the completion of any
 9 probationary period or other sentence imposed for an offense under
 10 IC 35-43-5-3.5.

11 (k) The court shall order a person convicted of an offense under
 12 IC 35-42-3.5 to make restitution to the victim of the crime in an amount
 13 equal to the greater of the following:

14 (1) The gross income or value to the person of the victim's labor
 15 or services.

16 (2) The value of the victim's labor as guaranteed under the
 17 minimum wage and overtime provisions of:

18 (A) the federal Fair Labor Standards Act of 1938, as amended
 19 (29 U.S.C. 201-209); or

20 (B) IC 22-2-2 (Minimum Wage);

21 whichever is greater.

22 **(l) The court shall order a person who:**

23 **(1) is convicted of dealing in methamphetamine under**
 24 **IC 35-48-4-1.1(a)(1)(A); and**

25 **(2) manufactured the methamphetamine on property owned**
 26 **by another person, without the consent of the property owner;**
 27 **to pay liquidated damages to the property owner in the amount of**
 28 **ten thousand dollars (\$10,000).**

29 **(m) The court shall order a person who:**

30 **(1) is convicted of dealing in marijuana under**
 31 **IC 35-48-4-10(a)(1)(A); and**

32 **(2) manufactured the marijuana on property owned by**
 33 **another person, without the consent of the property owner;**
 34 **to pay liquidated damages to the property owner in the amount of**
 35 **two thousand dollars (\$2,000).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1091, 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, line 6, delete "court:" and insert "**court**".

Page 1, line 7, delete "(1)".

Page 1, line 7, run in lines 6 through 7.

Page 1, line 8, delete "attorney" and insert "**attorney's**".

Page 1, line 8, delete "action; and" and insert "**action.**".

Page 1, delete line 9.

and when so amended that said bill do pass.

(Reference is to HB 1091 as introduced.)

LEHE, Chair

Committee Vote: yeas 9, nays 3.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1091 be amended to read as follows:

Page 1, delete lines 9 through 17, begin a new paragraph and insert:

"SECTION 2. IC 35-48-4-18 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2012]: **Sec. 18. (a) As used in this section, "agricultural land" means real property, including any structure on the property, that is:**

(1) used for the production of crops, fruit, timber, or raising livestock; and

(2) assessed as agricultural land for property tax purposes under IC 6-1.1-20.6.

(b) A person who:

(1) manufactures methamphetamine; or

(2) grows or harvests marijuana;

on agricultural land while committing a civil or criminal trespass commits a Class A infraction."



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Delete page 2.
Renumber all SECTIONS consecutively.
(Reference is to HB 1091 as printed January 11, 2012.)

FRIEND

HOUSE MOTION

Mr. Speaker: I move that Engrossed House Bill 1091 be returned to the second reading calendar forthwith for the purpose of amendment.

FRIEND

HOUSE MOTION

Mr. Speaker: I move that House Bill 1091 be amended to read as follows:

Page 1, delete lines 9 through 17, begin a new paragraph and insert:
"SECTION 2. IC 35-50-5-3, AS AMENDED BY P.L.173-2006, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Except as provided in subsection (i), ~~or~~ (j), **(l), or (m)**, in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;
- (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and



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(5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a), ~~or (i), or (j), (l), or (m)~~, is a judgment lien that:

- (1) attaches to the property of the person subject to the order;
- (2) may be perfected;
- (3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and
- (4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

- (1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:
 - (A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and
 - (B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or
- (2) a probation department that shall forward restitution or part of restitution to:
 - (A) a victim of a crime;
 - (B) a victim's estate; or
 - (C) the family of a victim who is deceased.

The victim services division of the Indiana criminal justice institute shall deposit the restitution it receives under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a), (i), ~~or (j), (l), or (m)~~, the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

- (1) The name and address of the person that is to receive the restitution.
- (2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-32-3-2. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a), (i), ~~or (j), (l), or~~



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(m), does not bar a civil action for:

(1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a), (i), ~~or~~ (j), **(l), or (m)**, is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6, IC 34-1-12, or IC 34-2-7 before their repeal).

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court shall base its restitution order upon a consideration of the amount of money that the convicted person converted, misappropriated, or received, or for which the convicted person conspired. The restitution order issued for a violation of IC 35-43-9 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for a violation of IC 35-43-9.

(j) The court may order the person convicted of an offense under IC 35-43-5-3.5 to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of the amount of fraud or harm caused by the convicted person and any reasonable expenses (including lost wages) incurred by the victim in correcting the victim's credit report and addressing any other issues caused by the commission of the offense under IC 35-43-5-3.5. If, after a person is sentenced for an offense under IC 35-43-5-3.5, a victim, a victim's estate, or the family of a victim discovers or incurs additional expenses that result from the convicted person's commission of the offense under IC 35-43-5-3.5, the court may issue one (1) or more restitution orders to require the convicted person to make restitution, even if the court issued a restitution order at the time of sentencing. For purposes of entering a restitution order after sentencing, a court has continuing jurisdiction over a person convicted of an offense under IC 35-43-5-3.5

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for five (5) years after the date of sentencing. Each restitution order issued for a violation of IC 35-43-5-3.5 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for an offense under IC 35-43-5-3.5.

(k) The court shall order a person convicted of an offense under IC 35-42-3.5 to make restitution to the victim of the crime in an amount equal to the greater of the following:

- (1) The gross income or value to the person of the victim's labor or services.
- (2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of:
 - (A) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209); or
 - (B) IC 22-2-2 (Minimum Wage);
 whichever is greater.

(l) The court shall order a person who:

- (1) is convicted of dealing in methamphetamine under IC 35-48-4-1.1(a)(1)(A); and**
- (2) manufactured the methamphetamine on property owned by another person, without the consent of the property owner; to pay liquidated damages to the property owner in the amount of ten thousand dollars (\$10,000).**

(m) The court shall order a person who:

- (1) is convicted of dealing in marijuana under IC 35-48-4-10(a)(1)(A); and**
- (2) manufactured the marijuana on property owned by another person, without the consent of the property owner; to pay liquidated damages to the property owner in the amount of two thousand dollars (\$2,000)."**

Delete page 2.

Renumber all SECTIONS consecutively.

(Reference is to HB 1091 as reprinted January 14, 2012.)

FRIEND

HOUSE MOTION

Mr. Speaker: I move that House Bill 1091 be amended to read as follows:

Page 1, between lines 8 and 9, begin a new paragraph and insert:

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"SECTION 2. IC 32-35-3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 3. Choice of Forum Clauses

Sec. 1. For purposes of this chapter, "choice of forum clause" means language in a contract that:

- (1) requires a party to resolve a dispute in:**
 - (A) a court outside Indiana; or**
 - (B) arbitration or another dispute resolution process at a location outside Indiana; or**
- (2) purports to be the consent to:**
 - (A) the jurisdiction of a court outside Indiana; or**
 - (B) arbitration or another dispute resolution process at a location outside Indiana.**

Sec. 2. This chapter applies only to a contract:

- (1) entered into, extended, or renewed after June 30, 2012;**
- (2) that is the subject of a lawsuit in which the complaint seeks actual damages that are less than twenty-five thousand dollars (\$25,000); and**
- (3) involving goods, services, or leases related to agricultural products (as defined in IC 34-6-2-8), livestock, poultry, livestock products, poultry products, or an agricultural operation (as defined in IC 32-30-6-1).**

Sec. 3. Except as provided in the Uniform Commercial Code (IC 26-1), a choice of forum clause in a contract described in section 2 of this chapter for:

- (1) goods;**
- (2) services; or**
- (3) leases;**

is not enforceable.

SECTION 3. IC 34-6-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. "Agricultural product", for purposes of IC 34-30-3 **and IC 32-35-3**, means a natural product of a farm, a nursery, a grove, an orchard, a vineyard, a garden, or an apiary. The term includes trees and firewood."

Renumber all SECTIONS consecutively.

(Reference is to HB 1091 as reprinted January 14, 2012.)

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