

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:

- 1 Page 2, after line 34, begin a new paragraph and insert:
2 "SECTION 2. IC 34-31-10 IS ADDED TO THE INDIANA CODE
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2012]:
5 **Chapter 10. Limitation on Liability Arising From the Public Use
6 of School Facilities for Physical Fitness Activities**
7 **Sec. 1. The limitation on liability provided in this chapter is in
8 addition to any immunity or limitation on liability provided by the
9 Indiana tort claims act (IC 34-13-3).**
10 **Sec. 2. (a) This chapter does not apply to activities if the
11 participant is paid to participate in the activity.**
12 **(b) This chapter does not apply to a school that does not comply
13 with the requirements concerning signs and warning notices set
14 forth in this chapter.**
15 **Sec. 3. As used in this chapter, "inherent risk of a physical
16 fitness activity" means a condition, danger, or hazard that is an
17 integral part of:**
18 **(1) a physical fitness activity;**
19 **(2) the use of exercise equipment; or**
20 **(3) the use of a facility provided by a school;**
21 **as determined by a reasonable person considering the nature of the**

1 activity, equipment, or facility. The term includes the negligent acts
 2 of a participant that may contribute to injury to the participant or
 3 others, including failing to follow instructions, failing to exercise
 4 reasonable caution while engaging in activity, or failing to obey
 5 written warnings or postings.

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

9 (1) a student; or

10 (2) a school employee or other person providing, directing, or
 11 supervising the school physical fitness activity.

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

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

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

27 (1) make a claim against;

28 (2) bring or maintain an action against; or

29 (3) recover damages from;

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

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

34 (1) that has actual knowledge of, or that reasonably should
 35 have known of, a dangerous condition on the school property
 36 or affecting the facilities or equipment used in the school
 37 physical fitness activity;

38 (2) that fails to properly train a school employee or other
 39 person providing, directing, or supervising the school physical
 40 fitness activity, if the act or omission of the school employee
 41 or other person proximately causes the loss; or

42 (3) for an act or omission that is the result of willful, wanton,

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

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

and when so amended that said bill do pass .

Committee Vote: Yeas 10, Nays 0.

Senator Steele, Chairperson