



March 20, 2013

ENGROSSED HOUSE BILL No. 1159

DIGEST OF HB 1159 (Updated March 18, 2013 1:07 pm - DI 106)

Citations Affected: IC 34-6; IC 34-13; IC 34-31.

Synopsis: School liability. Limits the liability of a public school or an accredited nonpublic school that provides community use physical fitness activities to the general public. Specifies that the tort claims act applies to charter schools, and provides tort claims immunity to a public or charter school for a claim based on the adoption or enforcement of a policy, or on the failure to adopt or enforce a policy.

Effective: July 1, 2013.

Huston, Behning, Smith V

(SENATE SPONSORS — MILLER PETE, MERRITT, TALLIAN, ALTING)

January 10, 2013, read first time and referred to Committee on Judiciary.
February 12, 2013, amended, reported — Do Pass.
February 18, 2013, read second time, ordered engrossed.
February 19, 2013, engrossed. Read third time, passed. Yeas 92, nays 3.

SENATE ACTION

February 25, 2013, read first time and referred to Committee on Civil Law.
March 19, 2013, amended, reported favorably — Do Pass.

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EH 1159—LS 6551/DI 69+



March 20, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1159

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 34-6-2-49, AS AMENDED BY P.L.90-2010,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 49. (a) "Governmental entity", for purposes of
4 section 91 of this chapter, IC 34-13-2, IC 34-13-3, and IC 34-13-4,
5 means the state or a political subdivision of the state. **For purposes of**
6 **IC 34-13-2, IC 34-13-3, and IC 34-13-4, the term includes a charter**
7 **school.**
8 (b) "Governmental entity", for purposes of section 103(j) of this
9 chapter, means the state or a political subdivision of the state.
10 SECTION 2. IC 34-13-3-3, AS AMENDED BY P.L.125-2011,
11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2013]: Sec. 3. A governmental entity or an employee acting
13 within the scope of the employee's employment is not liable if a loss
14 results from the following:
15 (1) The natural condition of unimproved property.
16 (2) The condition of a reservoir, dam, canal, conduit, drain, or
17 similar structure when used by a person for a purpose that is not

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- 1 foreseeable.
- 2 (3) The temporary condition of a public thoroughfare or extreme
- 3 sport area that results from weather.
- 4 (4) The condition of an unpaved road, trail, or footpath, the
- 5 purpose of which is to provide access to a recreation or scenic
- 6 area.
- 7 (5) The design, construction, control, operation, or normal
- 8 condition of an extreme sport area, if all entrances to the extreme
- 9 sport area are marked with:
- 10 (A) a set of rules governing the use of the extreme sport area;
- 11 (B) a warning concerning the hazards and dangers associated
- 12 with the use of the extreme sport area; and
- 13 (C) a statement that the extreme sport area may be used only
- 14 by persons operating extreme sport equipment.
- 15 This subdivision shall not be construed to relieve a governmental
- 16 entity from liability for the continuing duty to maintain extreme
- 17 sports areas in a reasonably safe condition.
- 18 (6) The initiation of a judicial or an administrative proceeding.
- 19 (7) The performance of a discretionary function; however, the
- 20 provision of medical or optical care as provided in IC 34-6-2-38
- 21 shall be considered as a ministerial act.
- 22 (8) The adoption and enforcement of or failure to adopt or
- 23 enforce:
- 24 (A) a law (including rules and regulations); or
- 25 (B) **in the case of a public school or charter school, a**
- 26 **policy;**
- 27 unless the act of enforcement constitutes false arrest or false
- 28 imprisonment.
- 29 (9) An act or omission performed in good faith and without
- 30 malice under the apparent authority of a statute which is invalid
- 31 if the employee would not have been liable had the statute been
- 32 valid.
- 33 (10) The act or omission of anyone other than the governmental
- 34 entity or the governmental entity's employee.
- 35 (11) The issuance, denial, suspension, or revocation of, or failure
- 36 or refusal to issue, deny, suspend, or revoke any permit, license,
- 37 certificate, approval, order, or similar authorization, where the
- 38 authority is discretionary under the law.
- 39 (12) Failure to make an inspection, or making an inadequate or
- 40 negligent inspection, of any property, other than the property of
- 41 a governmental entity, to determine whether the property
- 42 complied with or violates any law or contains a hazard to health

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- 1 or safety.
- 2 (13) Entry upon any property where the entry is expressly or
- 3 impliedly authorized by law.
- 4 (14) Misrepresentation if unintentional.
- 5 (15) Theft by another person of money in the employee's official
- 6 custody, unless the loss was sustained because of the employee's
- 7 own negligent or wrongful act or omission.
- 8 (16) Injury to the property of a person under the jurisdiction and
- 9 control of the department of correction if the person has not
- 10 exhausted the administrative remedies and procedures provided
- 11 by section 7 of this chapter.
- 12 (17) Injury to the person or property of a person under supervision
- 13 of a governmental entity and who is:
- 14 (A) on probation; or
- 15 (B) assigned to an alcohol and drug services program under
- 16 IC 12-23, a minimum security release program under
- 17 IC 11-10-8, a pretrial conditional release program under
- 18 IC 35-33-8, or a community corrections program under
- 19 IC 11-12.
- 20 (18) Design of a highway (as defined in IC 9-13-2-73), toll road
- 21 project (as defined in IC 8-15-2-4(4)), tollway (as defined in
- 22 IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the
- 23 claimed loss occurs at least twenty (20) years after the public
- 24 highway, toll road project, tollway, or project was designed or
- 25 substantially redesigned; except that this subdivision shall not be
- 26 construed to relieve a responsible governmental entity from the
- 27 continuing duty to provide and maintain public highways in a
- 28 reasonably safe condition.
- 29 (19) Development, adoption, implementation, operation,
- 30 maintenance, or use of an enhanced emergency communication
- 31 system.
- 32 (20) Injury to a student or a student's property by an employee of
- 33 a school corporation if the employee is acting reasonably under a
- 34 discipline policy adopted under IC 20-33-8-12.
- 35 (21) An act or omission performed in good faith under the
- 36 apparent authority of a court order described in IC 35-46-1-15.1
- 37 that is invalid, including an arrest or imprisonment related to the
- 38 enforcement of the court order, if the governmental entity or
- 39 employee would not have been liable had the court order been
- 40 valid.
- 41 (22) An act taken to investigate or remediate hazardous
- 42 substances, petroleum, or other pollutants associated with a

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1 brownfield (as defined in IC 13-11-2-19.3) unless:
 2 (A) the loss is a result of reckless conduct; or
 3 (B) the governmental entity was responsible for the initial
 4 placement of the hazardous substances, petroleum, or other
 5 pollutants on the brownfield.
 6 (23) The operation of an off-road vehicle (as defined in
 7 IC 14-8-2-185) by a nongovernmental employee, or by a
 8 governmental employee not acting within the scope of the
 9 employment of the employee, on a public highway in a county
 10 road system outside the corporate limits of a city or town, unless
 11 the loss is the result of an act or omission amounting to:

- 12 (A) gross negligence;
- 13 (B) willful or wanton misconduct; or
- 14 (C) intentional misconduct.

15 This subdivision shall not be construed to relieve a governmental
 16 entity from liability for the continuing duty to maintain highways
 17 in a reasonably safe condition for the operation of motor vehicles
 18 licensed by the bureau of motor vehicles for operation on public
 19 highways.

20 (24) Any act or omission rendered in connection with a request,
 21 investigation, assessment, or opinion provided under
 22 IC 36-9-28.7.

23 SECTION 3. IC 34-31-10 IS ADDED TO THE INDIANA CODE
 24 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2013]:

26 **Chapter 10. Limited Liability Arising From the Public Use of**
 27 **School Facilities for Physical Fitness Activities**

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

31 **Sec. 2. This chapter does not apply to an activity if the**
 32 **participant is paid by the school to participate in the activity.**

33 **Sec. 3. As used in this chapter, "community use physical fitness**
 34 **activity" means an activity in which the general public is invited to**
 35 **use:**

- 36 (1) school property;
- 37 (2) school equipment; or
- 38 (3) a school facility;

39 **to participate in a physical fitness activity that is approved as**
 40 **described in section 12 of this chapter.**

41 **Sec. 4. (a) As used in this chapter, "inherent risk of a physical**
 42 **fitness activity" means a condition, danger, or hazard that is an**

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1 integral part of:

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

5 as determined by a reasonable person considering the nature of the
 6 activity, equipment, or facility.

7 (b) The term includes the negligent acts of a participant that
 8 may contribute to injury to the participant or others, including:

- 9 (1) failing to follow instructions;
 10 (2) failing to exercise reasonable caution while engaging in an
 11 activity; or
 12 (3) failing to obey written warnings or postings.

13 Sec. 5. (a) As used in this chapter, "participant" means a person
 14 who is engaging in a community use physical fitness activity.

15 (b) The term does not include the following individuals if the
 16 individual is using the school's facilities in the course of school
 17 employment or is participating in an activity as part of an official
 18 school function:

- 19 (1) A school employee.
 20 (2) A person providing, directing, or supervising a physical
 21 fitness activity.
 22 (3) A student who attends the school or another school in the
 23 school corporation of the school.

24 Sec. 6. As used in this chapter, "school" means:

- 25 (1) a public school (as defined in IC 20-18-2-15); or
 26 (2) an accredited nonpublic school (as defined in
 27 IC 20-18-2-12).

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

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

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

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

- 40 (1) that has actual knowledge of, or that knows or reasonably
 41 should have known of, a dangerous condition on the property,
 42 facilities, or equipment used in the community use physical

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fitness activity;
(2) that fails to properly train a school employee or other person providing, directing, or supervising the community use physical fitness activity, if the school provides an employee or other person to provide, direct, or supervise the activity and the act or omission of the school employee or other person proximately causes the injury, loss, damage, or death; 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 the liability of a school that receives monetary consideration for a community use 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 community use physical fitness activity, section 7 of this chapter does not prevent or limit the liability of a 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 through 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, or 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.

(b) If the warning notice set forth in subsection (a) is posted on a sign as described in section 9(1) of this chapter, the warning must be posted on the sign in letters at least one (1) inch in height and

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1 the sign must be placed in a location where participants will likely
2 be present during the school physical fitness activity.
3 (c) If the warning notice set forth in subsection (a) is included in
4 a written contract as described section 10 of this chapter, the notice
5 must be in at least 14 point boldface type.
6 Sec. 12. A board of school trustees, a board of school
7 commissioners, a school board of an incorporated town and city,
8 or township school trustees must approve the types of activities
9 that may occur at a school as a community use physical fitness
10 activity under section 3 of this chapter.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1159, 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 10, after "paid" insert "**by the school**".

Page 1, between lines 10 and 11, begin a new paragraph and insert:

"Sec. 3. As used in this chapter, "community use physical fitness activity" means an activity in which the general public is invited to use:

- (1) school property;**
- (2) school equipment; or**
- (3) a school facility;**

to participate in a physical fitness activity that is approved as described in section 12 of this chapter."

Page 1, line 11, delete "3." and insert "4."

Page 2, line 8, delete "4." and insert "5."

Page 2, line 9, delete "school" and insert "**community use**".

Page 2, line 10, delete "a" and insert "**the following individuals if the individual is using the school's facilities in the course of school employment or is participating in an activity as part of an official school function:**

- (1) A".**

Page 2, line 10, delete "employee or other" and insert "**employee.**

- (2) A".**

Page 2, line 11, delete "the school" and insert "a".

Page 2, between lines 12 and 13, begin a new line block indented and insert:

"(3) A student who attends the school or another school in the school corporation of the school."

Page 2, line 13, delete "5." and insert "6."

Page 2, delete lines 17 through 25.

Page 2, line 40, delete "school" and insert "**community use**".

Page 3, line 1, delete "school" and insert "**community use**".

Page 3, line 2, after "if" insert "**the school provides an employee or other person to provide, direct, or supervise the activity and**".

Page 3, line 9, delete "school" and insert "**community use**".

Page 3, line 17, delete "school" and insert "**community use**".

Page 4, after line 2, begin a new paragraph and insert:

"Sec. 12. A board of school trustees, a board of school commissioners, a school board of an incorporated town and city,

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or township school trustees must approve the types of activities that may occur at a school as a community use physical fitness activity under section 3 of this chapter."

and when so amended that said bill do pass.

(Reference is to HB 1159 as introduced.)

STEUERWALD, Chair

Committee Vote: yeas 7, nays 6.

COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred House Bill No. 1159, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 34-6-2-49, AS AMENDED BY P.L.90-2010, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 49. (a) "Governmental entity", for purposes of section 91 of this chapter, IC 34-13-2, IC 34-13-3, and IC 34-13-4, means the state or a political subdivision of the state. **For purposes of IC 34-13-2, IC 34-13-3, and IC 34-13-4, the term includes a charter school.**

(b) "Governmental entity", for purposes of section 103(j) of this chapter, means the state or a political subdivision of the state.

SECTION 2. IC 34-13-3-3, AS AMENDED BY P.L.125-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

- (1) The natural condition of unimproved property.
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.
- (3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.
- (4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

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(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

- (A) a set of rules governing the use of the extreme sport area;
- (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and
- (C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

- (6) The initiation of a judicial or an administrative proceeding.
- (7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.
- (8) The adoption and enforcement of or failure to adopt or enforce:
 - (A) a law (including rules and regulations); **or**
 - (B) **in the case of a public school or charter school, a policy;**
 unless the act of enforcement constitutes false arrest or false imprisonment.
- (9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.
- (10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.
- (11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.
- (12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.
- (13) Entry upon any property where the entry is expressly or impliedly authorized by law.
- (14) Misrepresentation if unintentional.
- (15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's

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own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73), toll road project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-33-8-12.

(21) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(22) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:

(A) the loss is a result of reckless conduct; or

(B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

(23) The operation of an off-road vehicle (as defined in

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IC 14-8-2-185) by a nongovernmental employee, or by a governmental employee not acting within the scope of the employment of the employee, on a public highway in a county road system outside the corporate limits of a city or town, unless the loss is the result of an act or omission amounting to:

- (A) gross negligence;
- (B) willful or wanton misconduct; or
- (C) intentional misconduct.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain highways in a reasonably safe condition for the operation of motor vehicles licensed by the bureau of motor vehicles for operation on public highways.

(24) Any act or omission rendered in connection with a request, investigation, assessment, or opinion provided under IC 36-9-28.7."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1159 as printed February 12, 2013.)

ZAKAS, Chairperson

Committee Vote: Yeas 9, Nays 0.

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