



February 12, 2013

HOUSE BILL No. 1159

DIGEST OF HB 1159 (Updated February 11, 2013 1:30 pm - DI 107)

Citations Affected: IC 34-31.

Synopsis: Liability for use of school facilities. Limits the liability of a public school or an accredited nonpublic school that provides community use physical fitness activities to the general public.

Effective: July 1, 2013.

Huston, Behning, Smith V

January 10, 2013, read first time and referred to Committee on Judiciary.
February 12, 2013, amended, reported — Do Pass.

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HB 1159—LS 6551/DI 69+



February 12, 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.

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 34-31-10 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]:
4 **Chapter 10. Limited Liability Arising From the Public Use of**
5 **School Facilities for Physical Fitness Activities**
6 **Sec. 1. The limited liability provided in this chapter is in**
7 **addition to any immunity or limited liability provided by the**
8 **Indiana tort claims act (IC 34-13-3).**
9 **Sec. 2. This chapter does not apply to an activity if the**
10 **participant is paid by the school to participate in the activity.**
11 **Sec. 3. As used in this chapter, "community use physical fitness**
12 **activity" means an activity in which the general public is invited to**
13 **use:**
14 (1) school property;
15 (2) school equipment; or
16 (3) a school facility;
17 **to participate in a physical fitness activity that is approved as**

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1 described in section 12 of this chapter.
 2 **Sec. 4. (a)** As used in this chapter, "inherent risk of a physical
 3 fitness activity" means a condition, danger, or hazard that is an
 4 integral part of:
 5 (1) a physical fitness activity;
 6 (2) the use of exercise equipment; or
 7 (3) the use of a facility provided by a school;
 8 as determined by a reasonable person considering the nature of the
 9 activity, equipment, or facility.
 10 **(b)** The term includes the negligent acts of a participant that
 11 may contribute to injury to the participant or others, including:
 12 (1) failing to follow instructions;
 13 (2) failing to exercise reasonable caution while engaging in an
 14 activity; or
 15 (3) failing to obey written warnings or postings.
 16 **Sec. 5. (a)** As used in this chapter, "participant" means a person
 17 who is engaging in a community use physical fitness activity.
 18 **(b)** The term does not include the following individuals if the
 19 individual is using the school's facilities in the course of school
 20 employment or is participating in an activity as part of an official
 21 school function:
 22 (1) A school employee.
 23 (2) A person providing, directing, or supervising a physical
 24 fitness activity.
 25 (3) A student who attends the school or another school in the
 26 school corporation of the school.
 27 **Sec. 6.** As used in this chapter, "school" means:
 28 (1) a public school (as defined in IC 20-18-2-15); or
 29 (2) an accredited nonpublic school (as defined in
 30 IC 20-18-2-12).
 31 **Sec. 7.** Except as provided in sections 8 through 10 of this
 32 chapter, a school is not liable for the death or injury of a
 33 participant that results from an inherent risk of a physical fitness
 34 activity. A participant or the representative of a participant may
 35 not:
 36 (1) make a claim against;
 37 (2) bring or maintain an action against; or
 38 (3) recover damages from;
 39 a school for injury, loss, damage, or death of a participant that
 40 results from the inherent risk of a physical fitness activity.
 41 **Sec. 8.** Section 7 of this chapter does not prevent or limit the
 42 liability of a school:

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- 1 (1) that has actual knowledge of, or that knows or reasonably
- 2 should have known of, a dangerous condition on the property,
- 3 facilities, or equipment used in the community use physical
- 4 fitness activity;
- 5 (2) that fails to properly train a school employee or other
- 6 person providing, directing, or supervising the community use
- 7 physical fitness activity, if the school provides an employee or
- 8 other person to provide, direct, or supervise the activity and
- 9 the act or omission of the school employee or other person
- 10 proximately causes the injury, loss, damage, or death; or
- 11 (3) for an act or omission that is the result of willful, wanton,
- 12 or intentional misconduct.

13 **Sec. 9. Section 7 of this chapter does not prevent or limit the**
 14 **liability of a school that receives monetary consideration for a**
 15 **community use physical fitness activity from any person other than**
 16 **a government agency unless the school:**

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

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

27 **Sec. 11. (a) The warning notice described in sections 9 through**
 28 **10 of this chapter must state the following:**

29 **WARNING**

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

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

41 You are assuming the risk of participating in this physical
 42 fitness activity.

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1 **(b) If the warning notice set forth in subsection (a) is posted on**
2 **a sign as described in section 9(1) of this chapter, the warning must**
3 **be posted on the sign in letters at least one (1) inch in height and**
4 **the sign must be placed in a location where participants will likely**
5 **be present during the school physical fitness activity.**
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 boldface type.**
9 **Sec. 12. A board of school trustees, a board of school**
10 **commissioners, a school board of an incorporated town and city,**
11 **or township school trustees must approve the types of activities**
12 **that may occur at a school as a community use physical fitness**
13 **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.

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