



April 1, 2015

ENGROSSED HOUSE BILL No. 1045

DIGEST OF HB 1045 (Updated March 30, 2015 4:36 pm - DI 106)

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

Synopsis: Recreational facility immunity. Specifies the duties and responsibilities of the users and the operator of a recreational facility operated by an elementary, secondary, or postsecondary educational institution. Specifies that the operator of such a recreational facility who fulfills the operator's duties and responsibilities has a complete defense to a civil action. Makes conforming amendments.

Effective: July 1, 2015.

Morrison, Bauer, DeVon

(SENATE SPONSORS — FORD, BASSLER, YOUNG R MICHAEL)

January 6, 2015, read first time and referred to Committee on Judiciary.
January 27, 2015, amended, reported — Do Pass.
February 2, 2015, read second time, amended, ordered engrossed.
February 3, 2015, engrossed. Read third time, passed. Yeas 80, nays 16.

SENATE ACTION

February 24, 2015, read first time and referred to Committee on Civil Law.
March 31, 2015, amended, reported favorably — Do Pass.

EH 1045—LS 6474/DI 106



April 1, 2015

First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1045

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 34-6-2-91, AS AMENDED BY P.L.77-2013,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 91. (a) "Operator", for purposes of IC 34-30-3,
4 means a person who is an owner, a lessee, a tenant, or an occupant of
5 land or premises that are used in the production of agricultural
6 products.
7 (b) "Operator", for purposes of IC 34-31-6, means a person or an
8 entity, other than a governmental entity or an employee of a
9 governmental entity, that owns, manages, controls, directs, or has
10 operational responsibility for a roller skating rink.
11 (c) "Operator", for purposes of IC 34-31-6.5, means an approved
12 postsecondary educational institution (as defined in IC 21-7-13-6) that
13 owns, manages, controls, directs, or has operational responsibility for
14 an ice skating rink.
15 (d) "Operator", for purposes of IC 34-31-11.4, means an:

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- 1 (1) elementary school (as defined under IC 20-18-2-4);
 2 (2) approved secondary school (as defined under
 3 IC 21-12-1-5); or
 4 (3) approved postsecondary school (as defined under
 5 IC 21-7-13-6);

6 that owns, manages, controls, directs, or has operational
 7 responsibility for a recreational facility.

8 SECTION 2. IC 34-6-2-129.4 IS ADDED TO THE INDIANA
 9 CODE AS A NEW SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2015]: **Sec. 129.4. "Recreation"**, for purposes
 11 of IC 34-31-11.4, includes physical exercise, leisure, or sports.

12 SECTION 3. IC 34-6-2-129.5 IS ADDED TO THE INDIANA
 13 CODE AS A NEW SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2015]: **Sec. 129.5. "Recreational facility"**, for
 15 purposes of IC 34-31-11.4, means a building, location, or area
 16 primarily designed and used for purposes of recreation. The term
 17 includes:

- 18 (1) a gymnasium;
 19 (2) a park;
 20 (3) a playground;
 21 (4) a swimming pool;
 22 (5) a fieldhouse;
 23 (6) a beach;
 24 (7) a stadium;
 25 (8) a golf course;
 26 (9) a campground;
 27 (10) a boat launching site;
 28 (11) an arboretum;
 29 (12) a bicycle path;
 30 (13) a bridle path;
 31 (14) a community center;
 32 (15) a bowling alley;
 33 (16) a billiard hall;
 34 (17) a court, field, or other area designated for sports; and
 35 (18) any other building, location, or area specifically set aside
 36 for recreation.

37 SECTION 4. IC 34-6-2-129.6 IS ADDED TO THE INDIANA
 38 CODE AS A NEW SECTION TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2015]: **Sec. 129.6. "Recreational user"**, for
 40 purposes of IC 34-31-11.4, means an authorized user of a
 41 recreational facility who is using the facility for the recreational
 42 purpose for which it was primarily designed. However, the term



1 does not include a person participating in or attending an
2 intercollegiate or interscholastic event.

3 SECTION 5. IC 34-31-11.4 IS ADDED TO THE INDIANA CODE
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2015]:

6 **Chapter 11.4. Limited Liability for Operators of Recreational**
7 **Facilities**

8 **Sec. 1. (a) This chapter applies only to a recreational facility**
9 **that is operated by an:**

- 10 (1) elementary school (as defined under IC 20-18-2-4);
11 (2) approved secondary school (as defined under
12 IC 21-12-1-5); or
13 (3) approved postsecondary school (as defined under
14 IC 21-7-13-6).

15 **(b) This chapter does not apply to the operator of:**

- 16 (1) an ice skating rink that is described in IC 34-31-6.5; or
17 (2) a recreational facility with respect to an activity:
18 (A) for which the recreational facility is not primarily
19 designed (even if the recreational facility is designed to
20 allow this activity); or
21 (B) that is not recreation.

22 **Sec. 2. To qualify for limited liability under this chapter, an**
23 **operator shall do all the following with respect to a recreational**
24 **facility:**

- 25 (1) Post the:
26 (A) duties of recreational users; and
27 (B) duties, obligations, and liabilities of the operator;
28 as prescribed in this chapter in at least three (3) conspicuous
29 locations in or along the recreational facility.
30 (2) Maintain the stability and legibility of all signs, symbols,
31 and posted notices required by this chapter.
32 (3) This subdivision applies only to a recreational facility
33 located in a building. When the recreational facility is open,
34 at least one (1) floor supervisor must be on duty. A floor
35 supervisor:
36 (A) must have received appropriate training to carry out
37 the floor supervisor's duties; and
38 (B) must use reasonable care in carrying out the floor
39 supervisor's duties.
40 (4) Maintain the floor or surface of the recreational facility in
41 proper and reasonably safe condition.
42 (5) If the recreational facility is located in a building or



1 includes a building, maintain in good and safe condition the
2 areas of the building open to recreational users.

3 (6) Maintain equipment in good mechanical condition.

4 (7) Comply with all applicable state and local fire safety
5 codes, building codes, and other safety codes applicable to a
6 recreational facility.

7 **Sec. 3. A recreational user shall do all the following:**

8 (1) Maintain reasonable control of the recreational user's
9 speed and course at all times.

10 (2) Use due care while operating or using equipment.

11 (3) Heed all posted signs and warnings.

12 (4) Maintain a proper view to avoid other recreational users,
13 individuals, and objects.

14 (5) Accept the responsibility for the following:

15 (A) Knowing the range of the recreational user's ability.

16 (B) Using the recreational facility within the limits of the
17 recreational user's ability.

18 (6) Refrain from acting in a manner that may cause or
19 contribute to the injury of the recreational user or any other
20 individual.

21 **Sec. 4. (a) Recreational users are considered to:**

22 (1) have knowledge of; and

23 (2) assume;

24 the risks of using the recreational facility.

25 (b) For purposes of this chapter, risks of using a recreational
26 facility include the following:

27 (1) Injuries that result from collisions or incidental contact
28 with other recreational users or other individuals who are
29 properly present at the recreational facility.

30 (2) Injuries that result from falls caused by loss of balance.

31 (3) Injuries that involve objects or artificial structures that
32 are not otherwise attributable to an operator's breach of the
33 operator's duties or responsibilities under section 2 of this
34 chapter.

35 (4) Injuries that result from the recreational user's violation
36 of the recreational user's duties under section 3 of this
37 chapter.

38 **Sec. 5. (a) Except as provided in subsection (b) and**
39 **notwithstanding IC 34-51-2-6 concerning comparative fault, the**
40 **assumption of risk under section 4 of this chapter is a complete**
41 **defense to an action against an operator by a recreational user for**
42 **injuries and property damage resulting from the assumed risks.**



- 1 **(b) The following apply if an operator violates any of the**
- 2 **operator's duties or responsibilities under section 2 of this chapter:**
- 3 **(1) The complete defense against an action against an**
- 4 **operator under subsection (a) does not apply.**
- 5 **(2) The provisions of IC 34-51-2-6 apply, unless IC 34-13-3**
- 6 **applies to the operator.**
- 7 **(c) If IC 34-13-3 applies to an operator, the liability of the**
- 8 **operator under section 2 of this chapter is subject to IC 34-13-3**
- 9 **and IC 34-51-2-2.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1045, 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 3, line 17, delete "duty for every one" and insert "**duty**".

Page 3, line 18, delete "hundred seventy-five (175) recreational users."

and when so amended that said bill do pass.

(Reference is to HB 1045 as introduced.)

STEUERWALD

Committee Vote: yeas 11, nays 0.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1045 be amended to read as follows:

Page 2, line 1, delete "approved" and insert "**approved:**

- (1) elementary school (as defined under IC 20-18-2-4);**
- (2) secondary school (as defined under IC 21-12-1-5); or**
- (3) postsecondary school (as defined under IC 21-7-13-6);"**

Page 2, line 1, delete "postsecondary educational institution (as defined in".

Page 2, line 2, delete "IC 21-7-13-6)".

Page 3, line 2, delete "approved" and insert "**approved:**

- (1) elementary school (as defined under IC 20-18-2-4);**
- (2) secondary school (as defined under IC 21-12-1-5); or**
- (3) postsecondary school (as defined under IC 21-7-13-6)."**

Page 3, line 2, delete "postsecondary educational".

Page 3, delete line 3.

(Reference is to HB 1045 as printed January 27, 2015.)

MCMILLIN



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred House Bill No. 1045, 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, line 15, delete "IC 34-31-11," and insert "**IC 34-31-11.4**,".

Page 1, line 15, delete "an" and insert "**an**:".

Page 2, line 1, delete "approved:".

Page 2, line 3, after "(2)" insert "**approved**".

Page 2, line 4, after "(3)" insert "**approved**".

Page 2, line 10, delete "IC 34-31-11," and insert "**IC 34-31-11.4**,".

Page 2, line 14, delete "IC 34-31-11," and insert "**IC 34-31-11.4**,".

Page 2, line 39, delete "IC 34-31-11," and insert "**IC 34-31-11.4**,".

Page 2, line 40, delete "facility." and insert "**facility who is using the facility for the recreational purpose for which it was primarily designed. However, the term does not include a person participating in or attending an intercollegiate or interscholastic event.**".

Page 2, line 41, delete "IC 34-31-11" and insert "IC 34-31-11.4".

Page 3, line 2, delete "11." and insert "**11.4**".

Page 3, line 5, delete "an approved:" and insert "**an**:".

Page 3, line 7, after "(2)" insert "**approved**".

Page 3, line 8, after "(3)" insert "**approved**".

Page 3, line 9, delete "of" and insert "**of**:".

(1)".

Page 3, line 10, delete "IC 34-31-6.5." and insert "**IC 34-31-6.5; or**

(2) a recreational facility with respect to an activity:

(A) for which the recreational facility is not primarily designed (even if the recreational facility is designed to allow this activity); or

(B) that is not recreation.".

Page 3, line 11, delete "An" and insert "**To qualify for limited liability under this chapter, an**".

Page 3, delete lines 40 through 41.

Page 3, line 42, delete "(3)" and insert "**(2)**".

Page 4, line 1, delete "(4)" and insert "**(3)**".

Page 4, line 2, delete "(5)" and insert "**(4)**".

Page 4, line 4, delete "(6)" and insert "**(5)**".

Page 4, line 8, delete "(7)" and insert "**(6)**".

Page 4, line 37, delete "apply." and insert "**apply, unless IC 34-13-3 applies to the operator.**



(c) If IC 34-13-3 applies to an operator, the liability of the operator under section 2 of this chapter is subject to IC 34-13-3 and IC 34-51-2-2."

and when so amended that said bill do pass.

(Reference is to HB 1045 as reprinted February 3, 2015.)

ZAKAS, Chairperson

Committee Vote: Yeas 7, Nays 0.

