

# SENATE BILL No. 306

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-6-2; IC 34-31-11.

**Synopsis:** Limited liability arising from trespassing. Provides that a person who possesses any fee, reversionary, or easement interest in real property, including an owner, a lessee, or another lawful occupant of real property, does not owe a duty of care to: (1) a trespasser, except to refrain from willfully or wantonly injuring the trespasser, after the trespasser has been discovered; or (2) an undiscovered trespasser; on the real property possessed by the person. Provides that a person who possesses real property may be subject to liability for bodily injury to or the death of a trespasser who is a child under certain circumstances.

**Effective:** July 1, 2015.

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January 8, 2015, read first time and referred to Committee on Civil Law.

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First Regular Session 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.

## SENATE BILL No. 306

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 34-6-2-21 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 21. (a) "Child", for  
3 purposes of IC 34-23-2, has the meaning set forth in ~~IC 34-23-2~~.  
4 **IC 34-23-2-1(b).**

5 (b) "Child", for purposes of IC 34-30-11, includes a child of any  
6 age.

7 (c) "Child", for purposes of IC 34-31-4, means an unemancipated  
8 person who is less than eighteen (18) years of age.

9 **(d) "Child", for purposes of IC 34-31-11, has the meaning set  
10 forth in IC 34-31-11-1.**

11 SECTION 2. IC 34-6-2-111.5 IS ADDED TO THE INDIANA  
12 CODE AS A NEW SECTION TO READ AS FOLLOWS  
13 [EFFECTIVE JULY 1, 2015]: **Sec. 111.5. "Possessor of land", for  
14 purposes of IC 34-31-11, has the meaning set forth in  
15 IC 34-31-11-2.**

16 SECTION 3. IC 34-6-2-143.9 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 2 [EFFECTIVE JULY 1, 2015]: **Sec. 143.9. "Trespasser", for purposes**  
 3 **of IC 34-31-11, has the meaning set forth in IC 34-31-11-3.**

4 SECTION 4. IC 34-31-11 IS ADDED TO THE INDIANA CODE  
 5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2015]:

7 **Chapter 11. Limited Liability Arising From Trespassing**

8 **Sec. 1. As used in this chapter, "child" means a person who is**  
 9 **less than eighteen (18) years of age.**

10 **Sec. 2. (a) As used in this chapter, "possessor of land" means a**  
 11 **person who possesses any fee, reversionary, or easement interest**  
 12 **in real property.**

13 **(b) The term includes:**

- 14 **(1) an owner;**
- 15 **(2) a lessee; or**
- 16 **(3) another lawful occupant;**

17 **of real property.**

18 **Sec. 3. As used in this chapter, "trespasser" means a person who**  
 19 **enters or remains on real property possessed by another person**  
 20 **without:**

- 21 **(1) a right to enter or remain on the real property;**
- 22 **(2) the consent of the other person; or**
- 23 **(3) an actual or implied invitation from the other person.**

24 **Sec. 4. A possessor of land does not owe a duty of care to:**

- 25 **(1) a trespasser, except to refrain from willfully or wantonly**  
 26 **injuring the trespasser, after the trespasser has been**  
 27 **discovered; or**
- 28 **(2) an undiscovered trespasser;**

29 **on real property possessed by the possessor of land.**

30 **Sec. 5. Notwithstanding section 4 of this chapter, a possessor of**  
 31 **land may be subject to liability for bodily injury to or the death of**  
 32 **a trespasser who is a child if all of the following apply:**

- 33 **(1) A structure or condition was maintained or allowed on**  
 34 **real property:**
  - 35 **(A) possessed by a possessor of land; and**
  - 36 **(B) by the possessor of land.**
- 37 **(2) Maintaining or allowing the structure or condition on the**  
 38 **real property described in subdivision (1) resulted in the**  
 39 **bodily injury to or death of a trespasser who was a child.**
- 40 **(3) The structure or condition was particularly dangerous to**  
 41 **a child.**



- 1           **(4) The danger described in subdivision (3) was latent,**  
2           **uncommon to nature, and unlikely to be comprehended by a**  
3           **child.**
- 4           **(5) The structure or condition:**  
5                 **(A) was particularly attractive to a child; and**  
6                 **(B) provided a special enticement for a child to enter or**  
7                 **play upon.**
- 8           **(6) The possessor of land had actual or constructive**  
9           **knowledge of:**  
10                 **(A) the structure or condition on the real property; and**  
11                 **(B) the likelihood that a child would:**  
12                         **(i) trespass on the real property; and**  
13                         **(ii) be injured because of the structure or condition.**
- 14           **(7) The bodily injury to or death of the trespasser was a**  
15           **natural, probable, and foreseeable result of maintaining or**  
16           **allowing the structure or condition on the real property.**
- 17           **Sec. 6. This chapter may not be construed to:**  
18                 **(1) create or increase the liability of a possessor of land; and**  
19                 **(2) affect any immunities from or defenses to civil liability:**  
20                         **(A) established by another provision of the Indiana Code;**  
21                         **or**  
22                         **(B) available at common law;**  
23           **to which a possessor of land may be entitled.**

