



March 10, 2015

ENGROSSED
SENATE BILL No. 306

DIGEST OF SB 306 (Updated March 9, 2015 12:45 pm - DI 123)

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

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 a trespasser, except to refrain from willfully or wantonly injuring the trespasser, after the trespasser has been discovered on the real property possessed by the person. Provides that the person may be subject to liability for physical injury or death to a child trespasser under certain circumstances.

Effective: July 1, 2015.

Bray, Head, Lanane, Holdman,
Arnold J, Steele, Taylor, Crider
(HOUSE SPONSORS — STEUERWALD, KOCH, STEMLER)

January 8, 2015, read first time and referred to Committee on Civil Law.
February 10, 2015, amended, reported favorably — Do Pass.
February 12, 2015, read second time, ordered engrossed. Engrossed.
February 17, 2015, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 2, 2015, read first time and referred to Committee on Judiciary.
March 10, 2015, reported — Do Pass.

ES 306—LS 6591/DI 69



March 10, 2015

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.

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

6 SECTION 2. IC 34-6-2-143.9 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2015]: **Sec. 143.9. "Trespasser", for purposes**
9 **of IC 34-31-11, has the meaning set forth in IC 34-31-11-2.**

10 SECTION 3. IC 34-31-11 IS ADDED TO THE INDIANA CODE
11 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2015]:

13 **Chapter 11. Limited Liability Arising From Trespassing**
14 **Sec. 1. (a) As used in this chapter, "possessor of land" means a**
15 **person who possesses any fee, reversionary, or easement interest**
16 **in real property.**

ES 306—LS 6591/DI 69



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

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

5 **of real property.**

6 **Sec. 2. As used in this chapter, "trespasser" means a person who**
 7 **enters or remains on real property of another person without:**

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

11 **Sec. 3. (a) A possessor of land does not owe a duty of care to a**
 12 **trespasser, except to refrain from willfully or wantonly injuring the**
 13 **trespasser, after the trespasser has been discovered on real**
 14 **property possessed by the possessor of land.**

15 **(b) Notwithstanding subsection (a), a possessor of land may be**
 16 **subject to liability for physical injury or death to a child trespasser**
 17 **if all of the following apply:**

- 18 **(1) The structure or condition complained of is maintained or**
 19 **permitted on the property by the possessor.**
 20 **(2) The structure or condition is particularly dangerous to**
 21 **children.**
 22 **(3) The danger is latent, uncommon to nature, and unlikely to**
 23 **be comprehended by children.**
 24 **(4) The structure or condition is particularly attractive to**
 25 **children and provides a special enticement for children to**
 26 **play or sport on the structure or condition.**
 27 **(5) The possessor has actual or constructive knowledge of**
 28 **both the structure or condition and the likelihood that**
 29 **children will trespass and be injured.**
 30 **(6) The injury is a natural, probable, and foreseeable result of**
 31 **the wrong.**

32 **Sec. 4. This chapter may not be construed to:**

- 33 **(1) create or increase the liability of a possessor of land; or**
 34 **(2) affect any immunities from or defenses to civil liability:**
 35 **(A) established by another provision of the Indiana Code;**
 36 **or**
 37 **(B) available at common law;**

38 **to which a possessor of land may be entitled.**

39 **Sec. 5. The purpose of this chapter is to codify Indiana common**
 40 **law as it exists on July 1, 2015, with respect to the duty owed by a**
 41 **possessor of land to a trespasser.**



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 306, 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, delete lines 1 through 10.

Page 1, line 15, delete "IC 34-31-11-2." and insert "**IC 34-31-11-1.**".

Page 2, line 3, delete "IC 34-31-11-3." and insert "**IC 34-31-11-2.**".

Page 2, delete lines 8 through 9.

Page 2, line 10, delete "2." and insert "**1.**".

Page 2, line 18, delete "3." and insert "**2.**".

Page 2, line 19, delete "possessed by" and insert "**of**".

Page 2, delete lines 24 through 41, begin a new paragraph and insert:

"Sec. 3. (a) A possessor of land does not owe a duty of care to a trespasser, except to refrain from willfully or wantonly injuring the trespasser, after the trespasser has been discovered on real property possessed by the possessor of land.

(b) Notwithstanding subsection (a), a possessor of land may be subject to liability for physical injury or death to a child trespasser if all of the following apply:

(1) The structure or condition complained of is maintained or permitted on the property by the possessor.

(2) The structure or condition is particularly dangerous to children.

(3) The danger is latent, uncommon to nature, and unlikely to be comprehended by children.

(4) The structure or condition is particularly attractive to children and provides a special enticement for children to play or sport on the structure or condition.

(5) The possessor has actual or constructive knowledge of both the structure or condition and the likelihood that children will trespass and be injured.

(6) The injury is a natural, probable, and foreseeable result of the wrong."

Page 3, delete lines 1 through 16.

Page 3, line 17, delete "6." and insert "**4.**".

Page 3, line 18, delete "and" and insert "**or**".

Page 3, after line 23, begin a new paragraph and insert:

"Sec. 5. The purpose of this chapter is to codify Indiana common law as it exists on July 1, 2015, with respect to the duty owed by a possessor of land to a trespasser."



Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 306 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 306, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 306 as printed February 11, 2015.)

STEUERWALD

Committee Vote: Yeas 6, Nays 3

