

HOUSE BILL No. 1380

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-30-6; IC 34-12-4.

Synopsis: Environmental nuisance actions. Specifies that a civil action brought for monetary or injunctive relief due to the discharge of a contaminant in substantial compliance with a permit issued by the United States Environmental Protection Agency (EPA) or the Indiana department of environmental management (IDEM) may be brought only as a nuisance action. Defines "stigma damages" and specifies that in a nuisance action brought in connection with a discharge that substantially complies with an EPA or IDEM permit, the plaintiff: (1) must establish certain damages by clear and convincing evidence; and (2) is not entitled to stigma damages.

Effective: July 1, 2021.

Morrison

January 14, 2021, read first time and referred to Committee on Environmental Affairs.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1380

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 32-30-6-1.2 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2021]: **Sec. 1.2. As used in this chapter, "authorized discharge"**
4 **has the meaning set forth in IC 34-12-4-1.**

5 SECTION 2. IC 32-30-6-4.5 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2021]: **Sec. 4.5. As used in this chapter, "stigma damages" means**
8 **damages that result from the diminution of the value of real**
9 **property resulting from an authorized discharge due to any**
10 **perceived risk:**

11 (1) **associated with the authorized discharge; or**
12 (2) **that the property will require future environmental**
13 **remediation.**

14 SECTION 3. IC 32-30-6-12 IS ADDED TO THE INDIANA CODE
15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2021]: **Sec. 12. (a) This section applies to an action brought to**
17 **abate, enjoin, or recover damages for a nuisance caused by an**



1 authorized discharge.

2 (b) In addition to the other requirements of this chapter, a
3 person who brings an action to which this section applies bears the
4 burden of proving by clear and convincing evidence that the
5 authorized discharge:

- 6 (1) materially and unreasonably interfered in fact with the
7 plaintiff's reasonable use and enjoyment of the property; or
8 (2) resulted in direct and tangible physical damage to
9 property.

10 (c) A person who brings an action to which this section applies
11 may not recover stigma damages.

12 SECTION 4. IC 34-12-4 IS ADDED TO THE INDIANA CODE AS
13 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2021]:

15 **Chapter 4. Actions Concerning Agricultural, Forestry, and**
16 **Industrial Operations**

17 **Sec. 1. The following definitions apply throughout this chapter:**

18 (1) "Agricultural operation" has the meaning set forth in
19 IC 32-30-6-1.

20 (2) "Authorized discharge" means a discharge made in
21 material compliance with a permit issued by the:

- 22 (A) United States Environmental Protection Agency; or
23 (B) department of environmental management.

24 The term includes the presence of any discharged substance
25 named in the permit or permit application, regardless of its
26 ultimate location.

27 (3) "Discharge" means the:

- 28 (A) discharge;
29 (B) emission;
30 (C) dispersal;
31 (D) escape or release;
32 (E) disposition; or
33 (F) migration of a substance upon discharge, emission,
34 injection, disposition, or escape or release;

35 of any substance to air, land, or water (including subsurface
36 land or water) by an agricultural operation, forestry
37 operation, or industrial operation.

38 (4) "Forestry operation" has the meaning set forth in
39 IC 32-30-6-1.5.

40 (5) "Industrial operation" has the meaning set forth in
41 IC 32-30-6-2.

42 **Sec. 2. Except as provided in section 3 of this chapter, a person**



1 **may not bring or maintain any cause of action against an**
2 **agricultural operation, a forestry operation, or an industrial**
3 **operation based on injury or damage allegedly caused by an**
4 **authorized discharge.**

5 **Sec. 3. A person may bring or maintain an action against an**
6 **agricultural operation, a forestry operation, or an industrial**
7 **operation based on injury or damage allegedly caused by an**
8 **authorized discharge only under IC 32-30-6.**

