

SENATE BILL No. 359

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-13-3-3; IC 36-10-2-3.

Synopsis: Swimming in Lake Michigan. Provides that a governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from failure to prohibit or limit swimming in Lake Michigan. Allows municipalities that abut Lake Michigan to adopt an ordinance to prohibit or limit swimming in the part of the lake within or immediately adjacent to the boundaries of the municipality.

Effective: Upon passage.

Bowser

January 10, 2000, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

SENATE BILL No. 359



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-13-3-3, AS AMENDED BY P.L.142-1999,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 3. A governmental entity or an employee
4 acting within the scope of the employee's employment is not liable if
5 a loss results from:
6 (1) the natural condition of unimproved property;
7 (2) the condition of a reservoir, dam, canal, conduit, drain, or
8 similar structure when used by a person for a purpose that is not
9 foreseeable;
10 (3) the temporary condition of a public thoroughfare that results
11 from weather;
12 (4) the condition of an unpaved road, trail, or footpath, the
13 purpose of which is to provide access to a recreation or scenic
14 area;
15 (5) the initiation of a judicial or an administrative proceeding;
16 (6) the performance of a discretionary function; however, the
17 provision of medical or optical care as provided in IC 34-6-2-38

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- 1 shall be considered as a ministerial act;
- 2 (7) the adoption and enforcement of or failure to adopt or enforce
- 3 a law (including rules and regulations), unless the act of
- 4 enforcement constitutes false arrest or false imprisonment;
- 5 (8) an act or omission performed in good faith and without malice
- 6 under the apparent authority of a statute which is invalid if the
- 7 employee would not have been liable had the statute been valid;
- 8 (9) the act or omission of anyone other than the governmental
- 9 entity or the governmental entity's employee;
- 10 (10) the issuance, denial, suspension, or revocation of, or failure
- 11 or refusal to issue, deny, suspend, or revoke, any permit, license,
- 12 certificate, approval, order, or similar authorization, where the
- 13 authority is discretionary under the law;
- 14 (11) failure to make an inspection, or making an inadequate or
- 15 negligent inspection, of any property, other than the property of
- 16 a governmental entity, to determine whether the property
- 17 complied with or violates any law or contains a hazard to health
- 18 or safety;
- 19 (12) entry upon any property where the entry is expressly or
- 20 impliedly authorized by law;
- 21 (13) misrepresentation if unintentional;
- 22 (14) theft by another person of money in the employee's official
- 23 custody, unless the loss was sustained because of the employee's
- 24 own negligent or wrongful act or omission;
- 25 (15) injury to the property of a person under the jurisdiction and
- 26 control of the department of correction if the person has not
- 27 exhausted the administrative remedies and procedures provided
- 28 by section 7 of this chapter;
- 29 (16) injury to the person or property of a person under supervision
- 30 of a governmental entity and who is:
- 31 (A) on probation; or
- 32 (B) assigned to an alcohol and drug services program under
- 33 IC 12-23, a minimum security release program under
- 34 IC 11-10-8, or a community corrections program under
- 35 IC 11-12;
- 36 (17) design of a highway (as defined in IC 9-13-2-73) if the
- 37 claimed loss occurs at least twenty (20) years after the public
- 38 highway was designed or substantially redesigned; except that
- 39 this subdivision shall not be construed to relieve a responsible
- 40 governmental entity from the continuing duty to provide and
- 41 maintain public highways in a reasonably safe condition;
- 42 (18) development, adoption, implementation, operation,

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1 maintenance, or use of an enhanced emergency communication
2 system;

3 (19) injury to a student or a student's property by an employee of
4 a school corporation if the employee is acting reasonably under a
5 discipline policy adopted under IC 20-8.1-5.1-7(b); ~~or~~

6 (20) an error resulting from or caused by a failure to recognize the
7 year 1999, 2000, or a subsequent year, including an incorrect date
8 or incorrect mechanical or electronic interpretation of a date, that
9 is produced, calculated, or generated by:

10 (A) a computer;

11 (B) an information system; or

12 (C) equipment using microchips;

13 that is owned or operated by a governmental entity. However, this
14 subdivision does not apply to acts or omissions amounting to
15 gross negligence, willful or wanton misconduct, or intentional
16 misconduct. For purposes of this subdivision, evidence of gross
17 negligence may be established by a party by showing failure of a
18 governmental entity to undertake an effort to review, analyze,
19 remediate, and test its electronic information systems or by
20 showing failure of a governmental entity to abate, upon notice, an
21 electronic information system error that caused damage or loss;
22 **or**

23 **(21) failure to prohibit or limit swimming in Lake Michigan**
24 **under IC 36-10-2-3.**

25 However, subdivision (20) expires on June 30, 2003.

26 SECTION 2. IC 36-10-2-3 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A unit may
28 regulate any recreational use of a watercourse.

29 **(b) The legislative body of a municipality that abuts Lake**
30 **Michigan may adopt an ordinance to prohibit or limit swimming**
31 **in the part of Lake Michigan that is:**

32 **(1) under the jurisdiction of the state of Indiana;**

33 **(2) within or immediately adjacent to the boundaries of the**
34 **municipality; and**

35 **(3) adjacent to a public beach, public pier, or other public**
36 **facility operated by one (1) of the following:**

37 **(A) The United States.**

38 **(B) The state of Indiana.**

39 **(C) A political subdivision.**

40 **(D) An instrumentality of an entity listed in clauses (A)**
41 **through (C).**

42 **(E) A private individual under contract with an entity**



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listed in clauses (A) through (C).

(c) The following apply to an ordinance that a legislative body adopts under subsection (b):

(1) The ordinance may prohibit or limit swimming at times or places where a public officer or other appropriate public employee designated in the ordinance determines and issues an order that conditions are unsafe for swimming in Lake Michigan as a result of actual or potential water currents, weather conditions, or other physical conditions.

(2) The ordinance may not prohibit surf boarding or other legitimate recreational activity of a similar nature.

(3) The ordinance may impose a penalty for a violation of the ordinance if notice of the prohibition or limitation of swimming is:

(A) posted in a conspicuous place in the area where swimming is prohibited or limited;

(B) legible from a distance of fifty (50) feet from the shoreline; and

(C) posted during the entire time that swimming in the area is prohibited or limited.

SECTION 3. An emergency is declared for this act.

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