

Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1349

AN ACT to amend the Indiana Code concerning courts and court officers.

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

SECTION 1. IC 34-6-2-46.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 46.7. "Firearm", for purposes of IC 34-30-20, has the meaning set forth in IC 35-47-1-5.**

SECTION 2. IC 34-6-2-89 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 89. **(a)** "Offender", for purposes of IC 34-13-3-7, means a person who is committed to the department of correction or was committed to the department of correction.

(b) "Offender", for purposes of IC 34-58, means a person who is committed to the department of correction or incarcerated in a jail.

SECTION 3. IC 34-12-3-3, AS ADDED BY P.L.19-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. Except as provided in ~~section 5~~ **section 5(1) or 5(2)** of this chapter, a person may not bring an action against a firearms or ammunition manufacturer, trade association, or seller for:

- (1) recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the lawful:
 - (A) design;
 - (B) manufacture;
 - (C) marketing; or

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- (D) sale;
 - of a firearm or ammunition for a firearm; or
 - (2) recovery of damages resulting from the criminal or unlawful misuse of a firearm or ammunition for a firearm by a third party.

SECTION 4. IC 34-12-3-5, AS ADDED BY P.L.19-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. Nothing in this chapter may be construed to prohibit a person from bringing an action against a firearms or ammunition manufacturer, trade association, or seller for recovery of damages for the following:

- (1) Breach of contract or warranty concerning firearms or ammunition purchased by a person.
- (2) Damage or harm to a person or to property owned or leased by a person caused by a defective firearm or ammunition.
- (3) Injunctive relief to enforce a valid statute, rule, or ordinance.

However, a person may not bring an action seeking injunctive relief if that action is barred under section 3 of this chapter.

SECTION 5. IC 34-30-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 20. Immunity for Misuse of a Firearm or Ammunition by a Person Other Than the Owner

Sec. 1. A person is immune from civil liability based on an act or omission related to the use of a firearm or ammunition for a firearm by another person if the other person directly or indirectly obtained the firearm or ammunition for a firearm through the commission of the following:

- (1) Burglary (IC 35-43-2-1).
- (2) Robbery (IC 35-42-5-1).
- (3) Theft (IC 35-43-4-2).
- (4) Receiving stolen property (IC 35-43-4-2).
- (5) Criminal conversion (IC 35-43-4-3).

Sec. 2. The provisions of this chapter are severable. If this chapter or any part of this chapter is found to violate the United States Constitution or the Constitution of the State of Indiana, or is held invalid for any other reason, the validity of the remainder of this chapter shall not be affected.

SECTION 6. IC 34-58 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

**ARTICLE 58. SCREENING OF OFFENDER LITIGATION
Chapter 1. Screening Procedure**

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Sec. 1. Upon receipt of a complaint or petition filed by an offender, the court shall docket the case and take no further action until the court has conducted the review required by section 2 of this chapter.

Sec. 2. (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:

- (1) is frivolous;**
- (2) is not a claim upon which relief may be granted; or**
- (3) seeks monetary relief from a defendant who is immune from liability for such relief.**

(b) A claim is frivolous under subsection (a)(1) if the claim:

- (1) is made primarily to harass a person; or**
- (2) lacks an arguable basis either in:**
 - (A) law; or**
 - (B) fact.**

(c) A court shall dismiss a complaint or petition if:

- (1) the offender who filed the complaint or petition received leave to prosecute the action as an indigent person; and**
- (2) the court determines that the offender misrepresented the offender's claim not to have sufficient funds to prosecute the action.**

Sec. 3. If a court determines that a claim may not proceed under section 2 of this chapter, the court shall enter an order:

- (1) explaining why the claim may not proceed; and**
- (2) stating whether there are any remaining claims in the complaint or petition that may proceed.**

Sec. 4. The clerk of the court shall send an order entered under section 3 of this chapter to:

- (1) the offender;**
- (2) each defendant or respondent in the action;**
- (3) the department of correction, if the offender is incarcerated by the department of correction;**
- (4) the sheriff of the county in which the inmate is incarcerated, if the inmate is incarcerated in a county or city jail; and**
- (5) the attorney general.**

Chapter 2. Abusive Litigation

Sec. 1. If an offender has filed at least three (3) civil actions in which a state court has dismissed the action or a claim under IC 34-58-1-2, the offender may not file a new complaint or petition unless a court determines that the offender is in immediate danger

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of serious bodily injury (as defined in IC 35-41-1-25).

SECTION 7. IC 34-13-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 7. Commencement of Action Against Public Employees and Government Entities by Offender

Sec. 1. (a) In addition to any other requirements under law, before filing a civil rights action or tort claim action against a public employee or government entity, an offender must submit to the trial court:

- (1) a copy of the complaint the offender wishes to file;**
- (2) a list of all cases previously filed by the offender involving the same, similar, or related cause of actions; and**
- (3) a copy of all relevant documents pertaining to the ultimate disposition of each previous case filed by the offender against any of the same defendants in a state or federal court. The relevant documents include:**

- (A) the complaint;**
- (B) any motions to dismiss or motions for summary judgment filed by the defendants in the actions;**
- (C) the state or federal court order announcing disposition of the case; and**
- (D) any opinions issued in the case by any appellate court.**

(b) An offender must file with the court a brief that includes:

- (1) a legal argument;**
- (2) a citation to authority; and**
- (3) an explanation to the court why the new action is not subject to dismissal as a matter finally decided on its merits by a court and not subject to litigation again between the same parties.**

(c) If the trial court determines that the complaint is frivolous, malicious, or otherwise utterly without merit, or fails to state a claim upon which relief may be granted, the court shall dismiss the complaint.

SECTION 8. [EFFECTIVE JULY 1, 2004] IC 34-58, as added by this act, applies to a cause of action filed after June 30, 2004.

SECTION 9. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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