



February 23, 2007

SENATE BILL No. 396

DIGEST OF SB 396 (Updated February 20, 2007 1:31 pm - DI 106)

Citations Affected: IC 9-21; IC 34-6; IC 34-13.

Synopsis: Immunity for emergency vehicle operators. Provides a governmental entity or an employee acting within the scope of the employee's employment immunity from a loss resulting from the operation of an authorized emergency vehicle under certain circumstances.

Effective: July 1, 2007.

Weatherwax, Tallian

January 16, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 22, 2007, amended, reported favorably — Do Pass.

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SB 396—LS 7598/DI 107+



February 23, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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SENATE BILL No. 396

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

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

- 1 SECTION 1. IC 9-21-1-8 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) This section applies to the
3 person who drives an authorized emergency vehicle when:
4 (1) responding to an emergency call;
5 (2) in the pursuit of an actual or suspected violator of the law; or
6 (3) responding to, but not upon returning from, a fire alarm.
7 (b) The person who drives an authorized emergency vehicle may do
8 the following:
9 (1) Park or stand, notwithstanding other provisions of this article.
10 (2) Proceed past a red or stop signal or stop sign, but only after
11 slowing down as necessary for safe operation.
12 (3) Exceed the maximum speed limits if the person who drives the
13 vehicle does not endanger life or property.
14 (4) Disregard regulations governing direction of movement or
15 turning in specified directions.
16 (c) This section applies to an authorized emergency vehicle only
17 when the vehicle is using audible or visual signals as required by law.

SB 396—LS 7598/DI 107+



1 An authorized emergency vehicle operated as a police vehicle is not
2 required to be equipped with or display red and blue lights visible from
3 in front of the vehicle.

4 (d) This section does not do the following:

5 (1) Relieve the person who drives an authorized emergency
6 vehicle from the duty to drive with due regard for the safety of all
7 persons.

8 (2) Protect the person who drives an authorized emergency
9 vehicle from the consequences of the person's reckless disregard
10 for the safety of others.

11 **(3) Abrogate the immunity granted under IC 34-13-3-3.**

12 SECTION 2. IC 9-21-8-35 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 35. (a) Upon the
14 immediate approach of an authorized emergency vehicle, when the
15 person who drives the authorized emergency vehicle is giving audible
16 signal by siren or displaying alternately flashing red, red and white, or
17 red and blue lights, a person who drives another vehicle shall do the
18 following unless otherwise directed by a law enforcement officer:

19 (1) Yield the right-of-way.

20 (2) Immediately drive to a position parallel to and as close as
21 possible to the right-hand edge or curb of the highway clear of any
22 intersection.

23 (3) Stop and remain in the position until the authorized
24 emergency vehicle has passed.

25 (b) Upon approaching a stationary authorized emergency vehicle,
26 when the authorized emergency vehicle is giving a signal by displaying
27 alternately flashing red, red and white, or red and blue lights, a person
28 who drives an approaching vehicle shall:

29 (1) proceeding with due caution, yield the right-of-way by making
30 a lane change into a lane not adjacent to that of the authorized
31 emergency vehicle, if possible with due regard to safety and
32 traffic conditions, if on a highway having at least four (4) lanes
33 with not less than two (2) lanes proceeding in the same direction
34 as the approaching vehicle; or

35 (2) proceeding with due caution, reduce the speed of the vehicle,
36 maintaining a safe speed for road conditions, if changing lanes
37 would be impossible or unsafe.

38 (c) Upon approaching a stationary recovery vehicle or a stationary
39 highway maintenance vehicle, when the vehicle is giving a signal by
40 displaying alternately flashing amber lights, a person who drives an
41 approaching vehicle shall:

42 (1) proceeding with due caution, yield the right-of-way by making

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1 a lane change into a lane not adjacent to that of the recovery
 2 vehicle or highway maintenance vehicle, if possible with due
 3 regard to safety and traffic conditions, if on a highway having at
 4 least four (4) lanes with not less than two (2) lanes proceeding in
 5 the same direction as the approaching vehicle; or
 6 (2) proceeding with due caution, reduce the speed of the vehicle,
 7 maintaining a safe speed for road conditions, if changing lanes
 8 would be impossible or unsafe.

9 (d) This section does not operate to:
 10 (1) relieve the person who drives an authorized emergency
 11 vehicle, a recovery vehicle, or a highway maintenance vehicle
 12 from the duty to operate the vehicle with due regard for the safety
 13 of all persons using the highway; **and**

14 (2) **abrogate the immunity granted under IC 34-13-3-3.**
 15 SECTION 3. IC 34-6-2-152 IS ADDED TO THE INDIANA CODE
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2007]: **Sec. 152. "Willful or wanton misconduct", for purposes**
 18 **of IC 34-13-3-3, means a course of action that:**

- 19 (1) **shows an actual or deliberate intention to cause harm; or**
 20 (2) **if not intentional, shows indifference to or a conscious**
 21 **disregard for the safety of other individuals or property.**

22 SECTION 4. IC 34-13-3-3, AS AMENDED BY P.L.47-2006,
 23 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2007]: Sec. 3. A governmental entity or an employee acting
 25 within the scope of the employee's employment is not liable if a loss
 26 results from the following:

- 27 (1) The natural condition of unimproved property.
 28 (2) The condition of a reservoir, dam, canal, conduit, drain, or
 29 similar structure when used by a person for a purpose that is not
 30 foreseeable.
 31 (3) The temporary condition of a public thoroughfare or extreme
 32 sport area that results from weather.
 33 (4) The condition of an unpaved road, trail, or footpath, the
 34 purpose of which is to provide access to a recreation or scenic
 35 area.
 36 (5) The design, construction, control, operation, or normal
 37 condition of an extreme sport area, if all entrances to the extreme
 38 sport area are marked with:
 39 (A) a set of rules governing the use of the extreme sport area;
 40 (B) a warning concerning the hazards and dangers associated
 41 with the use of the extreme sport area; and
 42 (C) a statement that the extreme sport area may be used only

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- 1 by persons operating extreme sport equipment.
- 2 This subdivision shall not be construed to relieve a governmental
- 3 entity from liability for the continuing duty to maintain extreme
- 4 sports areas in a reasonably safe condition.
- 5 (6) The initiation of a judicial or an administrative proceeding.
- 6 (7) The performance of a discretionary function; however, the
- 7 provision of medical or optical care as provided in IC 34-6-2-38
- 8 shall be considered as a ministerial act.
- 9 (8) The adoption and enforcement of or failure to adopt or enforce
- 10 a law (including rules and regulations), unless the act of
- 11 enforcement constitutes false arrest or false imprisonment.
- 12 (9) An act or omission performed in good faith and without
- 13 malice under the apparent authority of a statute which is invalid
- 14 if the employee would not have been liable had the statute been
- 15 valid.
- 16 (10) The act or omission of anyone other than the governmental
- 17 entity or the governmental entity's employee.
- 18 (11) The issuance, denial, suspension, or revocation of, or failure
- 19 or refusal to issue, deny, suspend, or revoke any permit, license,
- 20 certificate, approval, order, or similar authorization, where the
- 21 authority is discretionary under the law.
- 22 (12) Failure to make an inspection, or making an inadequate or
- 23 negligent inspection, of any property, other than the property of
- 24 a governmental entity, to determine whether the property
- 25 complied with or violates any law or contains a hazard to health
- 26 or safety.
- 27 (13) Entry upon any property where the entry is expressly or
- 28 impliedly authorized by law.
- 29 (14) Misrepresentation if unintentional.
- 30 (15) Theft by another person of money in the employee's official
- 31 custody, unless the loss was sustained because of the employee's
- 32 own negligent or wrongful act or omission.
- 33 (16) Injury to the property of a person under the jurisdiction and
- 34 control of the department of correction if the person has not
- 35 exhausted the administrative remedies and procedures provided
- 36 by section 7 of this chapter.
- 37 (17) Injury to the person or property of a person under supervision
- 38 of a governmental entity and who is:
- 39 (A) on probation; or
- 40 (B) assigned to an alcohol and drug services program under
- 41 IC 12-23, a minimum security release program under
- 42 IC 11-10-8, a pretrial conditional release program under

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1 IC 35-33-8, or a community corrections program under
 2 IC 11-12.

3 (18) Design of a highway (as defined in IC 9-13-2-73), toll road
 4 project (as defined in IC 8-15-2-4(4)), tollway (as defined in
 5 IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the
 6 claimed loss occurs at least twenty (20) years after the public
 7 highway, toll road project, tollway, or project was designed or
 8 substantially redesigned; except that this subdivision shall not be
 9 construed to relieve a responsible governmental entity from the
 10 continuing duty to provide and maintain public highways in a
 11 reasonably safe condition.

12 (19) Development, adoption, implementation, operation,
 13 maintenance, or use of an enhanced emergency communication
 14 system.

15 (20) Injury to a student or a student's property by an employee of
 16 a school corporation if the employee is acting reasonably under a
 17 discipline policy adopted under IC 20-33-8-7(b).

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

22 (A) a computer;
 23 (B) an information system; or
 24 (C) equipment using microchips;

25 that is owned or operated by a governmental entity. However, this
 26 subdivision does not apply to acts or omissions amounting to
 27 gross negligence, willful or wanton misconduct, or intentional
 28 misconduct. For purposes of this subdivision, evidence of gross
 29 negligence may be established by a party by showing failure of a
 30 governmental entity to undertake an effort to review, analyze,
 31 remediate, and test its electronic information systems or by
 32 showing failure of a governmental entity to abate, upon notice, an
 33 electronic information system error that caused damage or loss.
 34 However, this subdivision expires June 30, 2003.

35 (22) An act or omission performed in good faith under the
 36 apparent authority of a court order described in IC 35-46-1-15.1
 37 that is invalid, including an arrest or imprisonment related to the
 38 enforcement of the court order, if the governmental entity or
 39 employee would not have been liable had the court order been
 40 valid.

41 (23) An act taken to investigate or remediate hazardous
 42 substances, petroleum, or other pollutants associated with a

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1 brownfield (as defined in IC 13-11-2-19.3) unless:
2 (A) the loss is a result of reckless conduct; or
3 (B) the governmental entity was responsible for the initial
4 placement of the hazardous substances, petroleum, or other
5 pollutants on the brownfield.
6 **(24) The operation in accordance with IC 9-21-1-8(a) of an**
7 **authorized emergency vehicle (as defined in IC 9-13-2-6), if**
8 **the vehicle used a siren, an exhaust whistle, lights, or a bell as**
9 **required under IC 9-19-14, unless the operation of the vehicle**
10 **constituted willful or wanton misconduct of the operator of**
11 **the vehicle.**

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SENATE MOTION

Madam President: I move that Senator Tallian be added as coauthor of Senate Bill 396.

WEATHERWAX

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 396, 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 6, line 6, after "operation" insert "**in accordance with IC 9-21-1-8(a)**".

Page 6, line 7, delete ":".

Page 6, line 8, delete "(A)".

Page 6, line 9, delete "; or" and insert ",".

Page 6, delete lines 10 through 13.

Page 6, run in lines 7 through 14.

and when so amended that said bill do pass.

(Reference is to SB 396 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 0.

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