



April 13, 2011

**ENGROSSED
SENATE BILL No. 346**

DIGEST OF SB 346 (Updated April 13, 2011 12:35 pm - DI 69)

Citations Affected: IC 13-23; IC 13-30; IC 34-6; IC 34-11.

Synopsis: Environmental legal action statute of limitations. Specifies the statute of limitations for: (1) an environmental legal action; and (2) an action for a contribution to pay for corrective action related to a release from an underground storage tank. Prohibits a person from reviving or raising new claims in an action that was finally adjudicated or settled prior to the effective date of the statute of limitations. Specifies that a person who brings an action prior to the effective of the statute of limitations for an environmental legal action may not amend the action or bring a new action based on the establishment of the statute of limitations.

Effective: Upon passage.

Gard, Bray, Tallian
(HOUSE SPONSOR — WOLKINS)

January 11, 2011, read first time and referred to Committee on Energy and Environmental Affairs.
February 15, 2011, amended, reported favorably — Do Pass.
February 17, 2011, read second time, ordered engrossed.
February 18, 2011, engrossed.
February 22, 2011, read third time, passed. Yeas 48, nays 0.
HOUSE ACTION
March 29, 2011, read first time and referred to Committee on Environmental Affairs.
April 13, 2011, amended, reported — Do Pass.

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April 13, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 346

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A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

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

1 SECTION 1. IC 13-23-13-7.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 7.5. IC 34-11-2-11.5 applies**
4 **to an action brought under section 8(b) of this chapter.**

5 SECTION 2. IC 13-30-9-2.5 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
7 UPON PASSAGE]: **Sec. 2.5. IC 34-11-2-11.5 applies to an**
8 **environmental legal action brought under section 2 of this chapter.**

9 SECTION 3. IC 34-6-2-103, AS AMENDED BY P.L.90-2010,
10 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 UPON PASSAGE]: Sec. 103. (a) "Person", for purposes of IC 34-14,
12 has the meaning set forth in IC 34-14-1-13.

13 (b) "Person", for purposes of **IC 34-11-2-11.5 and IC 34-24-4,**
14 means:

- 15 (1) an individual;
- 16 (2) a governmental entity;
- 17 (3) a corporation;

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- 1 (4) a firm;
- 2 (5) a trust;
- 3 (6) a partnership; or
- 4 (7) an incorporated or unincorporated association that exists
- 5 under or is authorized by the laws of this state, another state, or a
- 6 foreign country.
- 7 (c) "Person", for purposes of section 44.8 of this chapter, means an
- 8 adult or a minor.
- 9 (d) "Person", for purposes of IC 34-26-4, has the meaning set forth
- 10 in IC 35-41-1-22.
- 11 (e) "Person", for purposes of IC 34-30-5, means any of the
- 12 following:
- 13 (1) An individual.
- 14 (2) A corporation.
- 15 (3) A partnership.
- 16 (4) An unincorporated association.
- 17 (5) The state (as defined in IC 34-6-2-140).
- 18 (6) A political subdivision (as defined in IC 34-6-2-110).
- 19 (7) Any other entity recognized by law.
- 20 (f) "Person", for purposes of IC 34-30-6, means an individual, a
- 21 corporation, a limited liability company, a partnership, an
- 22 unincorporated association, or a governmental entity that:
- 23 (1) has qualifications or experience in:
- 24 (A) storing, transporting, or handling a hazardous substance or
- 25 compressed gas;
- 26 (B) fighting fires;
- 27 (C) emergency rescue; or
- 28 (D) first aid care; or
- 29 (2) is otherwise qualified to provide assistance appropriate to
- 30 remedy or contribute to the remedy of the emergency.
- 31 (g) "Person", for purposes of IC 34-30-18, includes:
- 32 (1) an individual;
- 33 (2) an incorporated or unincorporated organization or association;
- 34 (3) the state of Indiana;
- 35 (4) a political subdivision (as defined in IC 36-1-2-13);
- 36 (5) an agency of the state or a political subdivision; or
- 37 (6) a group of such persons acting in concert.
- 38 (h) "Person", for purposes of sections 42, 43, 69, and 95 of this
- 39 chapter, means an individual, an incorporated or unincorporated
- 40 organization or association, or a group of such persons acting in
- 41 concert.
- 42 (i) "Person", for purposes of IC 34-30-10.5, means the following:

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- 1 (1) A political subdivision (as defined in IC 36-1-2-13).
- 2 (2) A volunteer fire department (as defined in IC 36-8-12-2).
- 3 (3) An employee of an entity described in subdivision (1) or (2)
- 4 who acts within the scope of the employee's responsibilities.
- 5 (4) A volunteer firefighter (as defined in IC 36-8-12-2) who is
- 6 acting for a volunteer fire department.
- 7 (5) A corporation, a limited liability company, a partnership, an
- 8 unincorporated association, or any other entity recognized by law.
- 9 (j) "Person", for purposes of IC 34-28-7, means:
- 10 (1) an individual;
- 11 (2) a governmental entity;
- 12 (3) a corporation;
- 13 (4) a firm;
- 14 (5) a trust;
- 15 (6) a partnership; or
- 16 (7) an incorporated or unincorporated association that exists
- 17 under or is authorized by the laws of this state, another state, or a
- 18 foreign country.

19 SECTION 4. IC 34-11-2-11.5 IS ADDED TO THE INDIANA
 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
 21 [EFFECTIVE UPON PASSAGE]: **Sec. 11.5. (a) As used in this**
 22 **chapter, "person" has the meaning set forth in IC 34-6-2-103(b).**

23 **(b) Subject to subsections (c), (d), and (e), a person may seek to**
 24 **recover the following in an action brought on or after the effective**
 25 **date of this section under IC 13-30-9-2 or IC 13-23-13-8(b) to**
 26 **recover costs incurred for a removal action, a remedial action, or**
 27 **a corrective action:**

28 (1) **The costs incurred not more than ten (10) years before the**
 29 **date the action is brought, even if the person or any other**
 30 **person also incurred costs more than ten (10) years before the**
 31 **date the action is brought.**

32 (2) **The costs incurred on or after the date the action is**
 33 **brought.**

34 (c) **Costs are eligible for recovery under subsection (b)**
 35 **regardless of whether any part of the costs is incurred before the**
 36 **effective date of this section.**

37 (d) **This section does not permit a person to revive or raise new**
 38 **claims in an action brought under IC 13-30-9-2 or IC 13-23-13-8(b)**
 39 **that was finally adjudicated or settled before the effective date of**
 40 **this section.**

41 (e) **Any person that brought an action under IC 13-30-9-2 or**
 42 **IC 13-23-13-8(b) that was not finally adjudicated or settled prior**

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1 **to the effective date of this section may not amend that action, or**
2 **bring a new action, under this section.**
3 **SECTION 5. An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 346, 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, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 3. IC 34-6-2-103, AS AMENDED BY P.L.90-2010, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 103. (a) "Person", for purposes of IC 34-14, has the meaning set forth in IC 34-14-1-13.

(b) "Person", for purposes of **IC 34-11-2-11.5 and IC 34-24-4**, means:

- (1) an individual;
- (2) a governmental entity;
- (3) a corporation;
- (4) a firm;
- (5) a trust;
- (6) a partnership; or
- (7) an incorporated or unincorporated association that exists under or is authorized by the laws of this state, another state, or a foreign country.

(c) "Person", for purposes of section 44.8 of this chapter, means an adult or a minor.

(d) "Person", for purposes of IC 34-26-4, has the meaning set forth in IC 35-41-1-22.

(e) "Person", for purposes of IC 34-30-5, means any of the following:

- (1) An individual.
- (2) A corporation.
- (3) A partnership.
- (4) An unincorporated association.
- (5) The state (as defined in IC 34-6-2-140).
- (6) A political subdivision (as defined in IC 34-6-2-110).
- (7) Any other entity recognized by law.

(f) "Person", for purposes of IC 34-30-6, means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity that:

- (1) has qualifications or experience in:
 - (A) storing, transporting, or handling a hazardous substance or compressed gas;
 - (B) fighting fires;

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- (C) emergency rescue; or
- (D) first aid care; or
- (2) is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.
- (g) "Person", for purposes of IC 34-30-18, includes:
 - (1) an individual;
 - (2) an incorporated or unincorporated organization or association;
 - (3) the state of Indiana;
 - (4) a political subdivision (as defined in IC 36-1-2-13);
 - (5) an agency of the state or a political subdivision; or
 - (6) a group of such persons acting in concert.

(h) "Person", for purposes of sections 42, 43, 69, and 95 of this chapter, means an individual, an incorporated or unincorporated organization or association, or a group of such persons acting in concert.

- (i) "Person", for purposes of IC 34-30-10.5, means the following:
 - (1) A political subdivision (as defined in IC 36-1-2-13).
 - (2) A volunteer fire department (as defined in IC 36-8-12-2).
 - (3) An employee of an entity described in subdivision (1) or (2) who acts within the scope of the employee's responsibilities.
 - (4) A volunteer firefighter (as defined in IC 36-8-12-2) who is acting for a volunteer fire department.
 - (5) A corporation, a limited liability company, a partnership, an unincorporated association, or any other entity recognized by law.

- (j) "Person", for purposes of IC 34-28-7, means:
 - (1) an individual;
 - (2) a governmental entity;
 - (3) a corporation;
 - (4) a firm;
 - (5) a trust;
 - (6) a partnership; or
 - (7) an incorporated or unincorporated association that exists under or is authorized by the laws of this state, another state, or a foreign country."

Page 1 line 11, delete "Subject to" and insert "**As used in this chapter, "person" has the meaning set forth in IC 34-6-2-103(b).**".

Page 1, delete line 12.

Page 1, line 13, delete "entity," begin a new paragraph and insert: "**(b) Subject to subsections (c), (d), and (e), a person**".

Page 2, line 6, delete "(b)" and insert "**(c)**".

Page 2, line 6, delete "(a)" and insert "**(b)**".

Page 2, line 9, delete "(c)" and insert "**(d)**".

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Page 2, line 9, after "revive" insert "**or raise new claims in**".

Page 2, line 11, delete "against the person" and insert "**or settled**".

Page 2, between lines 12 and 13, begin a new paragraph and insert:

"(e) Any person that brought an action under IC 13-30-9-2 or IC 13-23-13-8(b) that was not finally adjudicated or settled prior to the effective date of this section may amend that action, or bring a new action, under this section."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 346 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 346, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 1, after "may" insert "**not**".

and when so amended that said bill do pass.

(Reference is to SB 346 as printed February 16, 2011.)

WOLKINS, Chair

Committee Vote: yeas 10, nays 0.

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