



February 21, 2012

ENGROSSED
SENATE BILL No. 322

DIGEST OF SB 322 (Updated February 20, 2012 4:03 pm - DI 107)

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

Synopsis: Tort immunity for DOC employees and motorist assistance by law enforcement. Provides for certain tort immunities pertaining to governmental entities and public employees for employees of the department of correction (DOC) who provide: (1) monitoring services; or (2) sex offender treatment; for certain offenders. Provides that a governmental entity or government employee is not liable if a loss results from an injury to a person or property of an individual who is on parole. Provides that a law enforcement officer (officer) acting within the scope of the officer's employment is not liable if a loss results when the officer provides roadside assistance to a motorist whose motor vehicle is disabled.

Effective: July 1, 2012.

Tomes, Steele, Buck, Hume

(HOUSE SPONSOR — STEUERWALD)

January 9, 2012, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

January 23, 2012, reported favorably — Do Pass.

January 26, 2012, read second time, ordered engrossed.

January 27, 2012, engrossed.

January 31, 2012, read third time, passed. Yeas 48, nays 2.

HOUSE ACTION

February 9, 2012, read first time and referred to Committee on Judiciary.

February 21, 2012, amended, reported — Do Pass.

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ES 322—LS 6672/DI 107+



February 21, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 322

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

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

1 SECTION 1. IC 34-6-2-73.3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 73.3. "Law
3 enforcement officer", for purposes of:

4 (1) IC 34-26-5, has the meaning set forth in IC 35-41-1-17; and
5 (2) section 133.5 of this chapter and IC 34-13-3-3, means:

6 (A) a police officer (including a correctional police officer),
7 sheriff, constable, or marshal;

8 (B) a deputy of any of the persons listed in clause (A);

9 (C) a person employed by the department of correction as
10 a correctional officer.

11 SECTION 2. IC 34-6-2-133.5 IS ADDED TO THE INDIANA
12 CODE AS A NEW SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2012]: Sec. 133.5. "Roadside assistance", for
14 purposes of IC 34-13-3-3, means assistance provided by a law
15 enforcement officer to a motorist whose motor vehicle is disabled
16 in order to allow the motor vehicle to be operated by the motorist.
17 The term includes opening a locked door, providing a jump for the

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1 **battery, changing a flat tire, and supplying motor fuel.**
2 SECTION 3. IC 34-13-3-2, AS AMENDED BY P.L.145-2011,
3 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2012]: Sec. 2. This chapter applies to a claim or suit in tort
5 against any of the following:

6 (1) A member of the bureau of motor vehicles commission
7 established under IC 9-15-1-1.

8 (2) An employee of the bureau of motor vehicles commission who
9 is employed at a license branch under IC 9-16, except for an
10 employee employed at a license branch operated under a contract
11 with the commission under IC 9-16.

12 (3) A member of the driver education advisory board established
13 by IC 9-27-6-5.

14 **(4) An employee of the department of correction who**
15 **provides:**

16 **(A) monitoring services; or**

17 **(B) sex offender treatment;**

18 **to an individual on parole under IC 11-13-3-4.**

19 SECTION 4. IC 34-13-3-3, AS AMENDED BY P.L.125-2011,
20 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2012]: Sec. 3. A governmental entity or an employee acting
22 within the scope of the employee's employment is not liable if a loss
23 results from the following:

24 (1) The natural condition of unimproved property.

25 (2) The condition of a reservoir, dam, canal, conduit, drain, or
26 similar structure when used by a person for a purpose that is not
27 foreseeable.

28 (3) The temporary condition of a public thoroughfare or extreme
29 sport area that results from weather.

30 (4) The condition of an unpaved road, trail, or footpath, the
31 purpose of which is to provide access to a recreation or scenic
32 area.

33 (5) The design, construction, control, operation, or normal
34 condition of an extreme sport area, if all entrances to the extreme
35 sport area are marked with:

36 (A) a set of rules governing the use of the extreme sport area;

37 (B) a warning concerning the hazards and dangers associated
38 with the use of the extreme sport area; and

39 (C) a statement that the extreme sport area may be used only
40 by persons operating extreme sport equipment.

41 This subdivision shall not be construed to relieve a governmental
42 entity from liability for the continuing duty to maintain extreme

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

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- 1 (iv) a community corrections program under IC 11-12.
- 2 (18) Design of a highway (as defined in IC 9-13-2-73), toll road
- 3 project (as defined in IC 8-15-2-4(4)), tollway (as defined in
- 4 IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the
- 5 claimed loss occurs at least twenty (20) years after the public
- 6 highway, toll road project, tollway, or project was designed or
- 7 substantially redesigned; except that this subdivision shall not be
- 8 construed to relieve a responsible governmental entity from the
- 9 continuing duty to provide and maintain public highways in a
- 10 reasonably safe condition.
- 11 (19) Development, adoption, implementation, operation,
- 12 maintenance, or use of an enhanced emergency communication
- 13 system.
- 14 (20) Injury to a student or a student's property by an employee of
- 15 a school corporation if the employee is acting reasonably under a
- 16 discipline policy adopted under IC 20-33-8-12.
- 17 (21) An act or omission performed in good faith under the
- 18 apparent authority of a court order described in IC 35-46-1-15.1
- 19 that is invalid, including an arrest or imprisonment related to the
- 20 enforcement of the court order, if the governmental entity or
- 21 employee would not have been liable had the court order been
- 22 valid.
- 23 (22) An act taken to investigate or remediate hazardous
- 24 substances, petroleum, or other pollutants associated with a
- 25 brownfield (as defined in IC 13-11-2-19.3) unless:
- 26 (A) the loss is a result of reckless conduct; or
- 27 (B) the governmental entity was responsible for the initial
- 28 placement of the hazardous substances, petroleum, or other
- 29 pollutants on the brownfield.
- 30 (23) The operation of an off-road vehicle (as defined in
- 31 IC 14-8-2-185) by a nongovernmental employee, or by a
- 32 governmental employee not acting within the scope of the
- 33 employment of the employee, on a public highway in a county
- 34 road system outside the corporate limits of a city or town, unless
- 35 the loss is the result of an act or omission amounting to:
- 36 (A) gross negligence;
- 37 (B) willful or wanton misconduct; or
- 38 (C) intentional misconduct.
- 39 This subdivision shall not be construed to relieve a governmental
- 40 entity from liability for the continuing duty to maintain highways
- 41 in a reasonably safe condition for the operation of motor vehicles
- 42 licensed by the bureau of motor vehicles for operation on public

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1 highways.
2 (24) Any act or omission rendered in connection with a request,
3 investigation, assessment, or opinion provided under
4 IC 36-9-28.7.
5 **(25) The provision of roadside assistance by a law**
6 **enforcement officer.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 322, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 322 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 322, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 34-6-2-73.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 73.3. "Law enforcement officer", for purposes of:

- (1) IC 34-26-5, has the meaning set forth in IC 35-41-1-17; and
- (2) **section 133.5 of this chapter and IC 34-13-3-3, means:**
 - (A) **a police officer (including a correctional police officer), sheriff, constable, or marshal;**
 - (B) **a deputy of any of the persons listed in clause (A);**
 - (C) **a person employed by the department of correction as a correctional officer.**

SECTION 2. IC 34-6-2-133.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 133.5. "Roadside assistance", for purposes of IC 34-13-3-3, means assistance provided by a law enforcement officer to a motorist whose motor vehicle is disabled in order to allow the motor vehicle to be operated by the motorist. The term includes opening a locked door, providing a jump for the battery, changing a flat tire, and supplying motor fuel."**

Page 2, delete lines 1 through 5.



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Page 4, after line 33, begin a new line block indented and insert:
"(25) The provision of roadside assistance by a law enforcement officer."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 322 as printed January 24, 2012.)

FOLEY, Chair

Committee Vote: yeas 11, nays 1.

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