

SENATE BILL No. 322

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-13-3.

Synopsis: Tort immunity for DOC employees and contractors. Provides for certain tort immunities pertaining to governmental entities and public employees for employees of the department of correction (DOC) and contractors of 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.

Effective: July 1, 2012.

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

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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.

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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 34-13-3-2, AS AMENDED BY P.L.145-2011,
- 2 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2012]: Sec. 2. This chapter applies to a claim or suit in tort
- 4 against any of the following:
- 5 (1) A member of the bureau of motor vehicles commission
- 6 established under IC 9-15-1-1.
- 7 (2) An employee of the bureau of motor vehicles commission who
- 8 is employed at a license branch under IC 9-16, except for an
- 9 employee employed at a license branch operated under a contract
- 10 with the commission under IC 9-16.
- 11 (3) A member of the driver education advisory board established
- 12 by IC 9-27-6-5.
- 13 (4) **An employee of the department of correction who**
- 14 **provides:**
- 15 (A) **monitoring services; or**
- 16 (B) **sex offender treatment;**
- 17 **to an individual on parole under IC 11-13-3-4.**



- 1 **(5) A contractor of the department of correction who**
- 2 **provides:**
- 3 **(A) monitoring services; or**
- 4 **(B) sex offender treatment;**
- 5 **to an individual on parole under IC 11-13-3-4.**
- 6 SECTION 2. IC 34-13-3-3, AS AMENDED BY P.L.125-2011,
- 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2012]: Sec. 3. A governmental entity or an employee acting
- 9 within the scope of the employee's employment is not liable if a loss
- 10 results from the following:
- 11 (1) The natural condition of unimproved property.
- 12 (2) The condition of a reservoir, dam, canal, conduit, drain, or
- 13 similar structure when used by a person for a purpose that is not
- 14 foreseeable.
- 15 (3) The temporary condition of a public thoroughfare or extreme
- 16 sport area that results from weather.
- 17 (4) The condition of an unpaved road, trail, or footpath, the
- 18 purpose of which is to provide access to a recreation or scenic
- 19 area.
- 20 (5) The design, construction, control, operation, or normal
- 21 condition of an extreme sport area, if all entrances to the extreme
- 22 sport area are marked with:
- 23 (A) a set of rules governing the use of the extreme sport area;
- 24 (B) a warning concerning the hazards and dangers associated
- 25 with the use of the extreme sport area; and
- 26 (C) a statement that the extreme sport area may be used only
- 27 by persons operating extreme sport equipment.
- 28 This subdivision shall not be construed to relieve a governmental
- 29 entity from liability for the continuing duty to maintain extreme
- 30 ~~sports~~ **sport** areas in a reasonably safe condition.
- 31 (6) The initiation of a judicial or an administrative proceeding.
- 32 (7) The performance of a discretionary function; however, the
- 33 provision of medical or optical care as provided in IC 34-6-2-38
- 34 shall be considered as a ministerial act.
- 35 (8) The adoption and enforcement of or failure to adopt or enforce
- 36 a law (including rules and regulations), unless the act of
- 37 enforcement constitutes false arrest or false imprisonment.
- 38 (9) An act or omission performed in good faith and without
- 39 malice under the apparent authority of a statute which is invalid
- 40 if the employee would not have been liable had the statute been
- 41 valid.
- 42 (10) The act or omission of anyone other than the governmental

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- 1 entity or the governmental entity's employee.
 2 (11) The issuance, denial, suspension, or revocation of, or failure
 3 or refusal to issue, deny, suspend, or revoke any permit, license,
 4 certificate, approval, order, or similar authorization, where the
 5 authority is discretionary under the law.
 6 (12) Failure to make an inspection, or making an inadequate or
 7 negligent inspection, of any property, other than the property of
 8 a governmental entity, to determine whether the property
 9 complied with or violates any law or contains a hazard to health
 10 or safety.
 11 (13) Entry upon any property where the entry is expressly or
 12 impliedly authorized by law.
 13 (14) Misrepresentation if unintentional.
 14 (15) Theft by another person of money in the employee's official
 15 custody, unless the loss was sustained because of the employee's
 16 own negligent or wrongful act or omission.
 17 (16) Injury to the property of a person under the jurisdiction and
 18 control of the department of correction if the person has not
 19 exhausted the administrative remedies and procedures provided
 20 by section 7 of this chapter.
 21 (17) Injury to the person or property of a person under supervision
 22 of a governmental entity and who is:
 23 (A) on probation; ~~or~~
 24 **(B) on parole under IC 11-13-3; or**
 25 ~~(B)~~ **(C) assigned to:**
 26 **(i)** an alcohol and drug services program under IC 12-23;
 27 **(ii)** a minimum security release program under IC 11-10-8;
 28 **(iii)** a pretrial conditional release program under IC 35-33-8;
 29 or
 30 **(iv)** a community corrections program under IC 11-12.
 31 (18) Design of a highway (as defined in IC 9-13-2-73), toll road
 32 project (as defined in IC 8-15-2-4(4)), tollway (as defined in
 33 IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the
 34 claimed loss occurs at least twenty (20) years after the public
 35 highway, toll road project, tollway, or project was designed or
 36 substantially redesigned; except that this subdivision shall not be
 37 construed to relieve a responsible governmental entity from the
 38 continuing duty to provide and maintain public highways in a
 39 reasonably safe condition.
 40 (19) Development, adoption, implementation, operation,
 41 maintenance, or use of an enhanced emergency communication
 42 system.

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- 1 (20) Injury to a student or a student's property by an employee of
 2 a school corporation if the employee is acting reasonably under a
 3 discipline policy adopted under IC 20-33-8-12.
- 4 (21) An act or omission performed in good faith under the
 5 apparent authority of a court order described in IC 35-46-1-15.1
 6 that is invalid, including an arrest or imprisonment related to the
 7 enforcement of the court order, if the governmental entity or
 8 employee would not have been liable had the court order been
 9 valid.
- 10 (22) An act taken to investigate or remediate hazardous
 11 substances, petroleum, or other pollutants associated with a
 12 brownfield (as defined in IC 13-11-2-19.3) unless:
 13 (A) the loss is a result of reckless conduct; or
 14 (B) the governmental entity was responsible for the initial
 15 placement of the hazardous substances, petroleum, or other
 16 pollutants on the brownfield.
- 17 (23) The operation of an off-road vehicle (as defined in
 18 IC 14-8-2-185) by a nongovernmental employee, or by a
 19 governmental employee not acting within the scope of the
 20 employment of the employee, on a public highway in a county
 21 road system outside the corporate limits of a city or town, unless
 22 the loss is the result of an act or omission amounting to:
 23 (A) gross negligence;
 24 (B) willful or wanton misconduct; or
 25 (C) intentional misconduct.
- 26 This subdivision shall not be construed to relieve a governmental
 27 entity from liability for the continuing duty to maintain highways
 28 in a reasonably safe condition for the operation of motor vehicles
 29 licensed by the bureau of motor vehicles for operation on public
 30 highways.
- 31 (24) Any act or omission rendered in connection with a request,
 32 investigation, assessment, or opinion provided under
 33 IC 36-9-28.7.

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