
HOUSE BILL No. 1246

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2; IC 34-13-3-3.

Synopsis: Motorist assistance by law enforcement officers. 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.

Speedy, Mahan, Moses

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

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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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HOUSE BILL No. 1246



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

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 a**
 6 **member of:**
 7 (A) **a police department, including the police chief or a**
 8 **police officer appointed to the police department;**
 9 (B) **a sheriff's department, including the sheriff or a deputy**
 10 **appointed to the sheriff's department;**
 11 (C) **a town police department, including the town marshal**
 12 **or a deputy marshal appointed to the town police**
 13 **department; or**
 14 (D) **an office of a constable, including the constable or a**
 15 **deputy constable appointed to the office of the constable.**
 16 SECTION 2. IC 34-6-2-133.5 IS ADDED TO THE INDIANA
 17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2012]: **Sec. 133.5. "Roadside assistance", for**
 2 **purposes of IC 34-13-3-3, means assistance provided by a law**
 3 **enforcement officer to a motorist, whose motor vehicle is disabled,**
 4 **in order to allow the motor vehicle to be operated by the motorist.**
 5 **Roadside assistance includes opening a locked door, providing a**
 6 **jump for the battery, changing a flat tire, and supplying motor**
 7 **fuel.**

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

- 13 (1) The natural condition of unimproved property.
 14 (2) The condition of a reservoir, dam, canal, conduit, drain, or
 15 similar structure when used by a person for a purpose that is not
 16 foreseeable.
 17 (3) The temporary condition of a public thoroughfare or extreme
 18 sport area that results from weather.
 19 (4) The condition of an unpaved road, trail, or footpath, the
 20 purpose of which is to provide access to a recreation or scenic
 21 area.
 22 (5) The design, construction, control, operation, or normal
 23 condition of an extreme sport area, if all entrances to the extreme
 24 sport area are marked with:
 25 (A) a set of rules governing the use of the extreme sport area;
 26 (B) a warning concerning the hazards and dangers associated
 27 with the use of the extreme sport area; and
 28 (C) a statement that the extreme sport area may be used only
 29 by persons operating extreme sport equipment.

30 This subdivision shall not be construed to relieve a governmental
 31 entity from liability for the continuing duty to maintain extreme
 32 sports areas in a reasonably safe condition.

- 33 (6) The initiation of a judicial or an administrative proceeding.
 34 (7) The performance of a discretionary function; however, the
 35 provision of medical or optical care as provided in IC 34-6-2-38
 36 shall be considered as a ministerial act.
 37 (8) The adoption and enforcement of or failure to adopt or enforce
 38 a law (including rules and regulations), unless the act of
 39 enforcement constitutes false arrest or false imprisonment.
 40 (9) An act or omission performed in good faith and without
 41 malice under the apparent authority of a statute which is invalid
 42 if the employee would not have been liable had the statute been

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- 1 valid.
- 2 (10) The act or omission of anyone other than the governmental
- 3 entity or the governmental entity's employee.
- 4 (11) The issuance, denial, suspension, or revocation of, or failure
- 5 or refusal to issue, deny, suspend, or revoke any permit, license,
- 6 certificate, approval, order, or similar authorization, where the
- 7 authority is discretionary under the law.
- 8 (12) Failure to make an inspection, or making an inadequate or
- 9 negligent inspection, of any property, other than the property of
- 10 a governmental entity, to determine whether the property
- 11 complied with or violates any law or contains a hazard to health
- 12 or safety.
- 13 (13) Entry upon any property where the entry is expressly or
- 14 impliedly authorized by law.
- 15 (14) Misrepresentation if unintentional.
- 16 (15) Theft by another person of money in the employee's official
- 17 custody, unless the loss was sustained because of the employee's
- 18 own negligent or wrongful act or omission.
- 19 (16) Injury to the property of a person under the jurisdiction and
- 20 control of the department of correction if the person has not
- 21 exhausted the administrative remedies and procedures provided
- 22 by section 7 of this chapter.
- 23 (17) Injury to the person or property of a person under supervision
- 24 of a governmental entity and who is:
- 25 (A) on probation; or
- 26 (B) assigned to an alcohol and drug services program under
- 27 IC 12-23, a minimum security release program under
- 28 IC 11-10-8, a pretrial conditional release program under
- 29 IC 35-33-8, or a community corrections program under
- 30 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.
- 34 **(25) The provision of roadside assistance by a law**
 35 **enforcement officer.**

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