



Reprinted  
February 19, 2013

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## SENATE BILL No. 400

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DIGEST OF SB 400 (Updated February 18, 2013 2:43 pm - DI 106)

**Citations Affected:** IC 35-31.5; IC 35-32; IC 35-44.1.

**Synopsis:** Aid in enforcing unconstitutional laws. Prohibits specified state actors in Indiana from aiding certain United States agencies or other state actors in the investigation, prosecution, or detention of a person lawfully in Indiana under a state or federal law that the state actor knows or reasonably should know violates the due process clause of the United States Constitution or the Due Course of Law Clause of the Indiana Constitution, and prohibits state actors from investigating, prosecuting, or detaining a person lawfully in Indiana under a state or federal law that the state actor knows or reasonably should know violates the due process clause of the United States Constitution or the Due Course of Law Clause of the Indiana Constitution. Makes a knowing or intentional violation a Class A misdemeanor.

**Effective:** July 1, 2013.

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**Banks, Young R Michael, Kruse,  
Schneider, Waterman, Yoder, Smith J,  
Tomes, Stoops, Steele, Boots, Delph**

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January 10, 2013, read first time and referred to Committee on Corrections & Criminal Law.  
February 14, 2013, amended, reported favorably — Do Pass.  
February 18, 2013, read second time, amended, ordered engrossed.

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SB 400—LS 6999/DI 106+



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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

## SENATE BILL No. 400

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

1 SECTION 1. IC 35-31.5-2-311.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2013]: **Sec. 311.5. "State actor" for purposes**  
4 **of IC 35-32-4 and IC 35-44.1-6, has the meaning set forth in**  
5 **IC 35-32-4-1.**

6 SECTION 2. IC 35-32-4 IS ADDED TO THE INDIANA CODE AS  
7 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2013]:

9 **Chapter 4. Prohibition on Aiding the Enforcement of**  
10 **Unconstitutional Laws**

11 **Sec. 1. As used in this chapter, "state actor" means the**  
12 **following:**

- 13 (1) **The state or a state agency.**  
14 (2) **A unit (as defined in IC 36-1-2-23).**  
15 (3) **A political subdivision (as defined in IC 24-9-2-11).**  
16 (4) **The Indiana Army National Guard, when on state duty.**  
17 (5) **The Indiana Air National Guard, when on state duty.**

SB 400—LS 6999/DI 106+



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1           **(6) An employee or member of an entity described in this**  
 2           **section, when acting in the employee's or member's official**  
 3           **capacity.**  
 4           **Sec. 2. (a) A state actor may not aid:**  
 5           **(1) the United States;**  
 6           **(2) an agency of the United States;**  
 7           **(3) an agency of the armed forces of the United States;**  
 8           **(4) a corporation or private entity providing services to the**  
 9           **United States; or**  
 10          **(5) a state actor;**  
 11          **in the investigation, prosecution, or detention of any person**  
 12          **lawfully in Indiana under a state or federal law that the state actor**  
 13          **knows or reasonably should know deprives a person of life, liberty,**  
 14          **or property without a fair proceeding in violation of the Due**  
 15          **Process Clause of the United States Constitution or the Due Course**  
 16          **of Law Clause of the Constitution of the State of Indiana.**  
 17          **(b) A state actor may not investigate, prosecute, or detain any**  
 18          **person lawfully in Indiana under a state or federal law that the**  
 19          **state actor knows or reasonably should know deprives a person of**  
 20          **life, liberty, or property without a fair proceeding in violation of**  
 21          **the Due Process Clause of the United States Constitution or the**  
 22          **Due Course of Law Clause of the Constitution of the State of**  
 23          **Indiana.**  
 24          SECTION 3. IC 35-44.1-6 IS ADDED TO THE INDIANA CODE  
 25          AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 26          JULY 1, 2013]:  
 27          **Chapter 6. Enforcement of Unconstitutional Laws**  
 28          **Sec. 1. A state actor who knowingly or intentionally violates**  
 29          **IC 35-32-4-2 (prohibition on enforcing or aiding the enforcement**  
 30          **of unconstitutional laws) commits enforcing or aiding in the**  
 31          **enforcement of an unconstitutional law, a Class A misdemeanor.**

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## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 400, 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, delete lines 1 through 5.

Page 1, line 13, delete "Prohibited State Aid Under Public Law 112-81" and insert "**Prohibition on Aiding the Enforcement of Unconstitutional Laws**".

Page 1, delete lines 14 through 17.

Page 2, delete lines 1 through 4.

Page 2, line 5, delete "Sec. 2." and insert "**Sec. 1.**".

Page 2, delete lines 15 through 32, begin a new paragraph, and insert:

**"Sec. 2. A state actor may not aid:**

- (1) the United States;**
- (2) an agency of the United States;**
- (3) an agency of the armed forces of the United States;**
- (4) a corporation or private entity providing services to the United States; or**
- (5) a state actor;**

**in the investigation, prosecution, or detention of any person lawfully in Indiana under a state or federal law that the state actor knows or reasonably should know deprives a person of life, liberty, or property without a fair proceeding in violation of the Due Process Clause of the United States Constitution or the Due Course of Law Clause of the Constitution of the State of Indiana."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 400 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 8, Nays 0.

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## SENATE MOTION

Madam President: I move that Senate Bill 400 be amended to read as follows:

Page 1, line 4, delete "IC 35-32-4," and insert "**IC 35-32-4 and IC 35-44.1-6,**".

Page 1, line 4, delete "IC 35-32-4-2." and insert "**IC 35-32-4-1.**".

Page 2, line 3, after "Sec. 2." insert "**(a)**".

Page 2, after line 15, begin a new paragraph and insert:

**"(b) A state actor may not investigate, prosecute, or detain any person lawfully in Indiana under a state or federal law that the state actor knows or reasonably should know deprives a person of life, liberty, or property without a fair proceeding in violation of the Due Process Clause of the United States Constitution or the Due Course of Law Clause of the Constitution of the State of Indiana.**

SECTION 3. IC 35-44.1-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

**Chapter 6. Enforcement of Unconstitutional Laws**

**Sec. 1. A state actor who knowingly or intentionally violates IC 35-32-4-2 (prohibition on enforcing or aiding the enforcement of unconstitutional laws) commits enforcing or aiding in the enforcement of an unconstitutional law, a Class A misdemeanor."**

(Reference is to SB 400 as printed February 15, 2013.)

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