



February 20, 2009

HOUSE BILL No. 1336

DIGEST OF HB 1336 (Updated February 17, 2009 8:06 pm - DI 96)

Citations Affected: IC 34-13.

Synopsis: Immunity for off-road vehicle operation. Provides that a governmental entity or an employee of a governmental entity acting within the scope of the employee's employment is not liable if a loss results from the operation of an off-road vehicle by a: (1) nongovernmental employee; or (2) governmental employee not acting within the scope of the employee's employment; on a public highway in a county road system outside the corporate limits of a town, unless the loss is the result of an act or omission amounting to gross negligence, willful or wanton misconduct, or intentional misconduct.

Effective: Upon passage.

Austin, Stilwell, Grubb

January 13, 2009, read first time and referred to Committee on Roads and Transportation.
February 19, 2009, amended, reported — Do Pass.

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HB 1336—LS 6987/DI 96+



February 20, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1336



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 34-13-3-3, AS AMENDED BY P.L.47-2006,
- 2 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 UPON PASSAGE]: Sec. 3. A governmental entity or an employee
- 4 acting within the scope of the employee's employment is not liable if
- 5 a loss results from the following:
- 6 (1) The natural condition of unimproved property.
- 7 (2) The condition of a reservoir, dam, canal, conduit, drain, or
- 8 similar structure when used by a person for a purpose that is not
- 9 foreseeable.
- 10 (3) The temporary condition of a public thoroughfare or extreme
- 11 sport area that results from weather.
- 12 (4) The condition of an unpaved road, trail, or footpath, the
- 13 purpose of which is to provide access to a recreation or scenic
- 14 area.
- 15 (5) The design, construction, control, operation, or normal
- 16 condition of an extreme sport area, if all entrances to the extreme
- 17 sport area are marked with:

HB 1336—LS 6987/DI 96+



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

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1 (A) on probation; or
 2 (B) assigned to an alcohol and drug services program under
 3 IC 12-23, a minimum security release program under
 4 IC 11-10-8, a pretrial conditional release program under
 5 IC 35-33-8, or a community corrections program under
 6 IC 11-12.

7 (18) Design of a highway (as defined in IC 9-13-2-73), toll road
 8 project (as defined in IC 8-15-2-4(4)), tollway (as defined in
 9 IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the
 10 claimed loss occurs at least twenty (20) years after the public
 11 highway, toll road project, tollway, or project was designed or
 12 substantially redesigned; except that this subdivision shall not be
 13 construed to relieve a responsible governmental entity from the
 14 continuing duty to provide and maintain public highways in a
 15 reasonably safe condition.

16 (19) Development, adoption, implementation, operation,
 17 maintenance, or use of an enhanced emergency communication
 18 system.

19 (20) Injury to a student or a student's property by an employee of
 20 a school corporation if the employee is acting reasonably under a
 21 discipline policy adopted under IC 20-33-8-7(b).

22 (21) An error resulting from or caused by a failure to recognize
 23 the year 1999, 2000, or a subsequent year, including an incorrect
 24 date or incorrect mechanical or electronic interpretation of a date,
 25 that is produced, calculated, or generated by:

26 (A) a computer;
 27 (B) an information system; or
 28 (C) equipment using microchips;

29 that is owned or operated by a governmental entity. However, this
 30 subdivision does not apply to acts or omissions amounting to
 31 gross negligence, willful or wanton misconduct, or intentional
 32 misconduct. For purposes of this subdivision, evidence of gross
 33 negligence may be established by a party by showing failure of a
 34 governmental entity to undertake an effort to review, analyze,
 35 remediate, and test its electronic information systems or by
 36 showing failure of a governmental entity to abate, upon notice, an
 37 electronic information system error that caused damage or loss.
 38 However, this subdivision expires June 30, 2003.

39 (22) An act or omission performed in good faith under the
 40 apparent authority of a court order described in IC 35-46-1-15.1
 41 that is invalid, including an arrest or imprisonment related to the
 42 enforcement of the court order, if the governmental entity or

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1 employee would not have been liable had the court order been
 2 valid.
 3 (23) An act taken to investigate or remediate hazardous
 4 substances, petroleum, or other pollutants associated with a
 5 brownfield (as defined in IC 13-11-2-19.3) unless:
 6 (A) the loss is a result of reckless conduct; or
 7 (B) the governmental entity was responsible for the initial
 8 placement of the hazardous substances, petroleum, or other
 9 pollutants on the brownfield.
 10 **(24) The operation of an off-road vehicle (as defined in**
 11 **IC 14-8-2-185) by a:**
 12 **(A) nongovernmental employee; or**
 13 **(B) governmental employee not acting within the scope of**
 14 **the employee's employment;**
 15 **on a public highway in a county road system outside the**
 16 **corporate limits of a town, unless the loss is the result of an**
 17 **act or omission amounting to gross negligence, willful or**
 18 **wanton misconduct, or intentional misconduct.**
 19 **SECTION 2. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred House Bill 1336, 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 11, after "IC 14-8-2-185)" insert "**by a:**

(A) nongovernmental employee; or

(B) governmental employee not acting within the scope of the employee's employment;".

Page 4, line 12, delete "." and insert "**, unless the loss is the result of an act or omission amounting to gross negligence, willful or wanton misconduct, or intentional misconduct."**

and when so amended that said bill do pass.

(Reference is to HB 1336 as introduced.)

AUSTIN, Chair

Committee Vote: yeas 9, nays 0.

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