

Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 436

AN ACT to amend the Indiana Code concerning civil procedure.

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

SECTION 1. IC 34-6-2-45 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 45. (a) "Fault", for purposes of IC 34-20, means an act or omission that is negligent, willful, wanton, reckless, or intentional toward the person or property of others. The term includes the following:

(1) Unreasonable failure to avoid an injury or to mitigate damages.

(2) A finding under IC 34-20-2 (or IC 33-1-1.5-3 before its repeal) that a person is subject to liability for physical harm caused by a product, notwithstanding the lack of negligence or willful, wanton, or reckless conduct by the manufacturer or seller.

(b) "Fault", for purposes of IC 34-51-2 **and IC 34-51-6**, includes any act or omission that is negligent, willful, wanton, reckless, or intentional toward the person or property of others. The term also includes unreasonable assumption of risk not constituting an enforceable express consent, incurred risk, and unreasonable failure to avoid an injury or to mitigate damages.

SECTION 2. IC 34-51-6 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:

Chapter 6. Right of Contribution for Railroad Entities Liability Act

SEA 436 — Concur



Sec. 1. (a) A railroad entity subject to liability under the Federal Employers' Liability Act (45 U.S.C. 51), including liability for a violation of the Safety Appliance Act (49 U.S.C. 20302 et seq.) or the Locomotive Inspection Act (49 U.S.C. 20701 et seq.), has a right of action for contribution against any other person or entity that:

- (1) is not an employee of the railroad entity; and
- (2) may be at fault for an injury or death that gives rise to the action or claim against the railroad entity.

(b) A railroad entity has a right of contribution if the railroad entity has paid more in damages than the railroad entity's percentage of fault.

(c) A railroad entity's total recovery under this chapter is limited to the amount paid by the railroad entity that exceeds the railroad entity's percentage of fault.

(d) This chapter does not impair any rights of indemnity under law.

Sec. 2. (a) In an action brought under this chapter, a trier of fact shall determine each person's:

- (1) percentage of fault; and
- (2) amount of damages consistent with the apportionment of fault under subdivision (1).

(b) In an action brought under this chapter, legal requirements of causal relation apply to contributory fault.

Sec. 3. (a) A railroad entity may enforce a right of contribution under this chapter in:

- (1) the original action brought against the railroad entity; or
- (2) a separate action brought for that purpose, if the original action is no longer pending.

(b) If there is a judgment for damages against a railroad entity, the railroad entity must bring an action for contribution not later than one (1) year after the judgment is final:

- (1) by lapse of time for appeal; or
- (2) after appellate review.

(c) If there is no judgment for damages against a railroad entity, any separate action by the railroad entity to enforce contribution is barred, unless the railroad entity:

- (1) discharges the liability by settlement; and
- (2) starts the action for contribution not later than one (1) year after the railroad entity's payment of damages.

Sec. 4. (a) If a railroad entity enforces a right of contribution in the original action brought against the railroad entity under section 3(a)(1) of this chapter, the plaintiff in the original action



may seek to bifurcate the plaintiff's claim from the contribution claim of the railroad entity.

(b) Upon the plaintiff's motion for bifurcation, the court may order the bifurcation of the plaintiff's claim, and allow the plaintiff's claim to proceed in advance of the contribution claim of the railroad entity.

Sec. 5. A defendant does not have a right of action of contribution against a third party under this chapter if liability in whole or in part relates to an occupational disease (as defined in IC 22-3-7-10).



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 436 — Concur

