



PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 197 be amended to read as follows:

- 1 Page 30, between lines 35 and 36, begin a new paragraph and insert:
- 2 "SECTION 31. IC 34-13-3.6 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2021]:
- 5 **Chapter 3.6. Property Loss Due to Unlawful Assembly**
- 6 **Sec. 1. The following definitions apply throughout this chapter:**
- 7 (1) "Executive" has the meaning set forth in IC 35-44.1-1-1.5.
- 8 (2) "Property" means real or personal property. The term
- 9 does not include property of the state or a political
- 10 subdivision.
- 11 (3) "Unit" means a county, city, or town.
- 12 (4) "Unlawful assembly" has the meaning set forth in
- 13 IC 35-45-1-1.
- 14 **Sec. 2. Notwithstanding IC 34-13-3-3 and IC 34-13-3-5, and**
- 15 **except as otherwise provided in this chapter, if an unlawful**
- 16 **assembly within a unit is the proximate cause of the theft, damage,**
- 17 **or destruction of real or personal property located within the unit,**
- 18 **the injured party may recover actual damages for the loss in a civil**
- 19 **action against the executive of the unit if the injured party**
- 20 **establishes that the executive recklessly failed to prevent the theft,**
- 21 **damage, or destruction of real or personal property by failing to**
- 22 **exercise reasonable diligence to prevent or suppress the unlawful**

1 assembly.

2 **Sec. 3. In determining whether the executive of a unit recklessly**
 3 **failed to prevent the theft, damage, or destruction of real or**
 4 **personal property under this chapter, the trier of fact may consider**
 5 **whether the executive:**

6 (1) had:

7 (A) good reason to believe that the unlawful assembly was
 8 imminent; or

9 (B) sufficient notice that the unlawful assembly was taking
 10 place in time to prevent the theft, damage, or destruction
 11 of the property; and

12 (2) had the ability to prevent the theft, damage, or destruction
 13 of the property by using:

14 (A) the unit's police department; or

15 (B) the unit's police department with the assistance of
 16 another law enforcement agency with which the unit has
 17 an agreement for mutual aid.

18 **Sec. 4. An executive of a county is not liable under this chapter**
 19 **for theft, damage, or destruction of property located within a**
 20 **municipality that:**

21 (1) is located within the county; and

22 (2) has a municipal police department.

23 **Sec. 5. This chapter does not:**

24 (1) impose liability on; or

25 (2) create a cause of action against;

26 **the executive of a unit that renders or fails to render mutual aid to**
 27 **the unit in which the unlawful assembly occurs."**

28 Page 36, between lines 2 and 3, begin a new paragraph and insert:

29 "SECTION 36. IC 35-31.5-2-122.8 IS ADDED TO THE INDIANA
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2021]: **Sec. 122.8 "Executive", for purposes**
 32 **of IC 35-44.1-1-1.5, has the meaning set forth in IC 35-44.1-1-1.5."**

33 Page 36, between lines 32 and 33, begin a new paragraph and insert:

34 "SECTION 42. IC 35-31.5-2-341, AS ADDED BY P.L.114-2012,
 35 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2021]: Sec. 341. "Unlawful assembly" for purposes of
 37 ~~IC 35-45-1~~, has the meaning set forth in IC 35-45-1-1."

38 Page 76, between lines 23 and 24, begin a new paragraph and insert:

39 "SECTION 84. IC 35-44.1-1-1.5 IS ADDED TO THE INDIANA
 40 CODE AS A NEW SECTION TO READ AS FOLLOWS
 41 [EFFECTIVE JULY 1, 2021]: **Sec. 1.5. (a) As used in this section,**
 42 **"executive" means the following:**

43 (1) The board of commissioners, for a county that does not
 44 have a consolidated city.

45 (2) The mayor of the consolidated city, for a county having a
 46 consolidated city.

- 1 **(3) The mayor, for a city.**
- 2 **(4) The president of the town council, for a town.**
- 3 **(b) An executive who knowingly, intentionally, or recklessly fails**
- 4 **to prevent the theft, damage, or destruction of real or personal**
- 5 **property by failing to exercise reasonable diligence to prevent or**
- 6 **suppress an unlawful assembly commits dereliction of duty, a Level**
- 7 **6 felony.**
- 8 **(c) In determining whether an executive knowingly,**
- 9 **intentionally, or recklessly failed to prevent the theft, damage, or**
- 10 **destruction of real or personal property under this section, the**
- 11 **trier of fact may consider whether the executive:**
- 12 **(1) had:**
 - 13 **(A) good reason to believe that the unlawful assembly was**
 - 14 **imminent; or**
 - 15 **(B) sufficient notice that the unlawful assembly was taking**
 - 16 **place in time to prevent the theft, damage, or destruction**
 - 17 **of the property; and**
 - 18 **(2) had the ability to prevent the theft, damage, or destruction**
 - 19 **of the property by using:**
 - 20 **(A) the unit's police department; or**
 - 21 **(B) the unit's police department with the assistance of**
 - 22 **another law enforcement agency with which the unit has**
 - 23 **an agreement for mutual aid.**
- 24 **(d) This section does not apply to the executive of:**
 - 25 **(1) a county with respect to theft, damage, or destruction of**
 - 26 **property located within a municipality that:**
 - 27 **(A) is located within the county; and**
 - 28 **(B) has a municipal police department; or**
 - 29 **(2) a unit that renders or fails to render mutual aid to the unit**
 - 30 **in which the unlawful assembly occurs."**
- 31 Renumber all SECTIONS consecutively.
 (Reference is to ESB 197 as printed April 1, 2021.)

Representative Jacob