



January 31, 2020

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## SENATE BILL No. 199

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DIGEST OF SB 199 (Updated January 30, 2020 11:07 am - DI 125)

**Citations Affected:** IC 34-52.

**Synopsis:** Recovery of litigation expenses. Provides that attorney's fees may be awarded against a governmental entity in a case where a court finds that the claim brought by the governmental entity was frivolous, unreasonable, or groundless, but provides that the application of the law to governmental entities may not be interpreted to waive sovereign immunity. Includes individuals in the list of parties that may seek reasonable fees and expenses in a civil suit against a state agency. Increases the amount of fees and expenses awarded against a state agency from \$10,000 to \$25,000, and from \$30,000 to \$75,000, if more than three parties in a case are eligible for an award.

**Effective:** July 1, 2020.

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**Koch, Buck, Freeman,  
Randolph Lonnie M, Rogers, Taylor G**

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January 6, 2020, read first time and referred to Committee on Judiciary.  
January 16, 2020, amended, reported favorably — Do Pass. Reassigned to Committee on Appropriations pursuant to Rule 68(b).  
January 30, 2020, amended, reported favorably — Do Pass.

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January 31, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## SENATE BILL No. 199

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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 34-52-1-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) In all civil  
3 actions, the party recovering judgment shall recover costs, except in  
4 those cases in which a different provision is made by law.  
5 (b) In any civil action, the court may award attorney's fees as part of  
6 the cost to the prevailing party, if the court finds that either party:  
7 (1) brought the action or defense on a claim or defense that is  
8 frivolous, unreasonable, or groundless;  
9 (2) continued to litigate the action or defense after the party's  
10 claim or defense clearly became frivolous, unreasonable, or  
11 groundless; or  
12 (3) litigated the action in bad faith.  
13 (c) The award of fees under subsection (b) does not prevent a  
14 prevailing party from bringing an action against another party for abuse  
15 of process arising in any part on the same facts. However, the  
16 prevailing party may not recover the same attorney's fees twice.  
17 (d) **This chapter may be applied to a government entity.**

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1 **However, this chapter may not be interpreted to waive sovereign**  
 2 **immunity.**

3 SECTION 2. IC 34-52-2-2 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. In addition to any  
 5 other compensation awarded in a civil action involving an agency as a  
 6 party, the court having jurisdiction in the case may enter an order  
 7 against the agency for the payment of the reasonable fees and other  
 8 expenses of a party, if the court finds that:

- 9 (1) the party files a written notice of the party's intent to seek  
 10 reimbursement under this chapter (or IC 34-2-36 before its repeal)  
 11 not later than thirty (30) days after the party files any pleading or  
 12 other paper with the court;  
 13 (2) the party obtained final judgment in its favor;  
 14 (3) the party has obtained substantive relief that makes it probable  
 15 that the party will prevail on the merits after remand of the case  
 16 to the agency, if remand is necessary;  
 17 (4) the party is:

18 **(A) an individual;**

19 ~~(A)~~ **(B)** a commercial or business entity (including a sole  
 20 proprietorship or a partnership) with fewer than fifty (50)  
 21 employees at the time of the:

22 (i) civil action; or

23 (ii) the agency action (as defined in IC 4-21.5-1-4) giving  
 24 rise to the civil action;

25 but is not a subsidiary or affiliate of another entity that does  
 26 not qualify as a small business under this clause; or

27 ~~(B)~~ **(C)** an organization exempt from federal income taxation  
 28 under Section 501 of the Internal Revenue Code;

29 (5) to the extent that the fees and other expenses of the party are  
 30 for attorney's fees or expert witness fees, the fees are based upon  
 31 the number of actual hours of service performed multiplied by a  
 32 reasonable fee for the service rendered not to exceed seventy-five  
 33 dollars (\$75) per hour;

34 (6) the party filed a claim not later than thirty (30) days after a  
 35 final judgment was rendered; and

36 (7) section 3 of this chapter does not apply.

37 SECTION 3. IC 34-52-2-4 IS AMENDED TO READ AS  
 38 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. A party may be  
 39 awarded an amount under this chapter not exceeding ~~ten~~ **twenty-five**  
 40 thousand dollars ~~(\$10,000)~~. **(\$25,000)**. However, if more than three (3)  
 41 parties in a case are eligible for an award under this chapter, the total  
 42 award made to all parties in the case may not exceed ~~thirty~~



1 **seventy-five** thousand dollars ~~(\$30,000)~~. **(\$75,000)**.



REPORT OF THE PRESIDENT  
PRO TEMPORE

Madam President: Pursuant to Senate Rule 68(b), I hereby report that, subsequent to the adoption of the Committee Report on January 16, 2020, Senate Bill 199 was reassigned to the Committee on Appropriations.

BRAY

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 199, 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 17, begin a new paragraph and insert:

"SECTION 1. IC 34-52-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) In all civil actions, the party recovering judgment shall recover costs, except in those cases in which a different provision is made by law.

(b) In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
- (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
- (3) litigated the action in bad faith.

(c) The award of fees under subsection (b) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees twice.

**(d) This chapter may be applied to a government entity. However, this chapter may not be interpreted to waive sovereign immunity.**

SECTION 2. IC 34-52-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. In addition to any other compensation awarded in a civil action involving an agency as a party, the court having jurisdiction in the case may enter an order against the agency for the payment of the reasonable fees and other

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expenses of a party, if the court finds that:

- (1) the party files a written notice of the party's intent to seek reimbursement under this chapter (or IC 34-2-36 before its repeal) not later than thirty (30) days after the party files any pleading or other paper with the court;
- (2) the party obtained final judgment in its favor;
- (3) the party has obtained substantive relief that makes it probable that the party will prevail on the merits after remand of the case to the agency, if remand is necessary;
- (4) the party is:
  - (A) an individual;**
  - ~~(A)~~ **(B)** a commercial or business entity (including a sole proprietorship or a partnership) with fewer than fifty (50) employees at the time of the:
    - (i) civil action; or
    - (ii) the agency action (as defined in IC 4-21.5-1-4) giving rise to the civil action;
 but is not a subsidiary or affiliate of another entity that does not qualify as a small business under this clause; or
  - ~~(B)~~ **(C)** an organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;
- (5) to the extent that the fees and other expenses of the party are for attorney's fees or expert witness fees, the fees are based upon the number of actual hours of service performed multiplied by a reasonable fee for the service rendered not to exceed seventy-five dollars (\$75) per hour;
- (6) the party filed a claim not later than thirty (30) days after a final judgment was rendered; and
- (7) section 3 of this chapter does not apply.

SECTION 3. IC 34-52-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. A party may be awarded an amount under this chapter not exceeding ~~ten fifty~~ thousand dollars ~~(\$10,000)~~: **(\$50,000)**. However, if more than three (3) parties in a case are eligible for an award under this chapter, the total award made to all parties in the case may not exceed ~~thirty one hundred fifty~~ thousand dollars ~~(\$30,000)~~: **(\$150,000)**."

Delete page 2.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 199 as introduced.)

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KOCH, Chairperson

Committee Vote: Yeas 8, Nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 199, 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 2, line 39, delete "fifty" and insert "**twenty-five**".

Page 2, line 40, delete "\$50,000" and insert "**(\$25,000)**".

Page 2, line 42, delete "one hundred fifty" and insert "**seventy-five**".

Page 3, line 1, delete "\$150,000" and insert "**(\$75,000)**".

and when so amended that said bill do pass.

(Reference is to SB 199 as printed January 17, 2020.)

MISHLER, Chairperson

Committee Vote: Yeas 12, Nays 0.

