

SENATE BILL No. 251

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-11-2-17; IC 34-13-10.

Synopsis: Cause of action for business damages. Provides that if a unit enacts an ordinance that causes a business's profit to decline by at least 15%, the business may bring an action for damages against the unit. Exempts certain ordinances and specifies which businesses may bring an action. Provides that a unit is not liable for damages if the unit repeals the ordinance, amends the ordinance in a manner that will not cause the business's profit to decline by at least 15%, or grants a waiver to the affected business.

Effective: July 1, 2023.

Doriot

January 10, 2023, read first time and referred to Committee on Local Government.



First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE BILL No. 251

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 34-11-2-17 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2023]: **Sec. 17. An action for business damages under**
- 4 **IC 34-13-10 must be commenced not later than one (1) year from**
- 5 **the effective date of the enactment giving rise to the action.**
- 6 SECTION 2. IC 34-13-10 IS ADDED TO THE INDIANA CODE
- 7 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2023]:
- 9 **Chapter 10. Action for Business Damages**
- 10 **Sec. 1. (a) This chapter does not apply to eminent domain.**
- 11 **(b) This chapter applies to an ordinance, resolution, executive**
- 12 **or administrative order, regulation, or rule adopted by a unit after**
- 13 **June 30, 2023.**
- 14 **Sec. 2. As used in this chapter, "business" means any of the**
- 15 **following that exist for profit making purposes:**
- 16 **(1) A sole proprietorship.**
- 17 **(2) An organization.**



- 1 **(3) An association.**
 2 **(4) A corporation.**
 3 **(5) A partnership.**
 4 **(6) A joint venture.**
 5 **(7) A limited partnership.**
 6 **(8) A limited liability partnership.**
 7 **(9) A limited liability company.**
 8 **(10) A business association.**
- 9 **The term includes all wholly owned subsidiaries, majority owned**
 10 **subsidiaries, parent businesses, and affiliates of those entities or**
 11 **business associations that exist for profit making purposes.**
- 12 **Sec. 3. As used in this chapter, "business records" means**
 13 **records relied upon by a business to substantiate a claim for**
 14 **business damages. The term includes:**
- 15 **(1) copies of federal and state income tax returns;**
 16 **(2) federal and state income tax withholding statements;**
 17 **(3) federal and state miscellaneous income tax statements;**
 18 **(4) state sales tax returns;**
 19 **(5) balance sheets;**
 20 **(6) profit and loss statements; and**
 21 **(7) corporate income tax returns for the three (3) years**
 22 **preceding the adoption of the enactment.**
- 23 **Sec. 4. As used in this chapter, "enactment" means an**
 24 **ordinance, resolution, executive or administrative order,**
 25 **regulation, or rule adopted by a unit or an agency of a unit. The**
 26 **term includes an amendment to an existing enactment.**
- 27 **Sec. 5. As used in this chapter, "exempt enactment" means one**
 28 **(1) or more of the following enactments:**
- 29 **(1) An enactment required to comply with, or specifically**
 30 **authorized by, state or federal law.**
 31 **(2) An enactment related to emergency management (as**
 32 **defined by IC 10-14-3-2) or to implement a local or**
 33 **interjurisdictional disaster plan.**
 34 **(3) An enactment related to a local disaster emergency under**
 35 **IC 10-14-3-29.**
 36 **(4) A temporary enactment that is effective for not more than**
 37 **ninety (90) days.**
 38 **(5) An enactment related to:**
 39 **(A) planning, zoning, and development;**
 40 **(B) transportation and public works;**
 41 **(C) recreation, culture, and community facilities; or**
 42 **(D) waste management districts under IC 36-11.**



- 1 **(6) An enactment related to fire safety, building safety, or**
 2 **equipment safety under IC 22.**
 3 **(7) An enactment required to implement a contract or**
 4 **agreement, including an agreement to receive a federal, state,**
 5 **local, or private grant, or other financial assistance accepted**
 6 **by a unit.**
 7 **(8) An enactment related to the issuance, repayment, or**
 8 **refinancing of debt.**
 9 **(9) An enactment related to the adoption of a budget,**
 10 **including revenue sources necessary to fund the budget.**
 11 **(10) An enactment related to procurement.**
 12 **(11) An enactment intended to promote, enable, or facilitate**
 13 **economic competition.**

14 **Sec. 6. As used in this chapter, "unit" means a county, city, or**
 15 **town.**

16 **Sec. 7. (a) Except as provided in section 8 of this chapter, a**
 17 **business may bring an action under this chapter against a unit for**
 18 **damages suffered by the adoption of an enactment if all of the**
 19 **following apply:**

- 20 **(1) The business, and each business location, if applicable, has**
 21 **been in continuous operation in the unit for the three (3) years**
 22 **immediately preceding the adoption of the enactment.**
 23 **(2) The enactment has or will cause a reduction to the**
 24 **business's profits of at least fifteen percent (15%), calculated**
 25 **individually for each business location operating in the unit.**

26 **(b) Damages under subsection (a) may be calculated in any**
 27 **reasonable manner, but may not exceed the present value of the**
 28 **business's future lost profits for the lesser of:**

- 29 **(1) seven (7) years; or**
 30 **(2) the number of years the business has been in continuous**
 31 **operation in the unit before the adoption of the enactment.**

32 **(c) If an enactment adopted before July 1, 2023, is amended**
 33 **after June 30, 2023, an action seeking damages on the basis of the**
 34 **amendment may only recover damages caused by the amendment**
 35 **alone, and may not recover any damages caused by the enactment**
 36 **that is being amended.**

37 **Sec. 8. A unit is not liable for damages caused by an exempt**
 38 **enactment.**

39 **Sec. 9. (a) At least one hundred eighty (180) days before a**
 40 **business files an action under this chapter, and not later than one**
 41 **hundred eighty (180) days from the effective date of the relevant**
 42 **enactment, the business must present a written offer to settle the**



1 business's claim for damages to the legislative body of the unit.

2 (b) The offer described in subsection (a) must:

3 (1) be made in good faith;

4 (2) include an explanation of the nature, extent, and monetary
5 amount of the damages; and

6 (3) be prepared by the owner, a certified public accountant, or
7 an expert familiar with the nature of the operations of the
8 business.

9 (c) At the time the business submits its settlement offer, the
10 business must also provide a copy of the business's business
11 records that substantiate the damages claim. If additional
12 information is needed beyond the business records existing at the
13 time of the offer, the business and the unit may agree on a schedule
14 for the submission of that information.

15 Sec. 10. (a) A unit is not liable in an action under this chapter if,
16 not later than one hundred twenty (120) days after receipt of the
17 settlement offer under section 9 of this chapter, the unit does one
18 (1) or more of the following:

19 (1) Repeals the enactment that gave rise to the business's
20 claim.

21 (2) Amends the enactment that gave rise to the business's
22 claim in a manner that:

23 (A) returns the enactment to its form in existence at the
24 time the business's claim arose;

25 (B) avoids causing a reduction of at least fifteen percent
26 (15%) of the business's profit as described in section
27 7(a)(2) of this chapter; or

28 (C) publishes notice of its intent to repeal or amend the
29 enactment that gave rise to the business's claim and, not
30 later than thirty (30) days after publication of the notice:

31 (i) repeals the enactment; or

32 (ii) amends the enactment in the manner described in
33 clause (A) or (B).

34 (3) Grants a waiver of the enactment to a business submitting
35 a claim for damages.

36 (b) Notwithstanding any enactment to the contrary, a unit may
37 provide relief under subsection (a).

38 Sec. 11. A court may award reasonable attorney's fees to the
39 prevailing party in an action under this chapter.

