

SENATE BILL No. 436

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2-45; IC 34-51-6.

Synopsis: Action for contribution by railroad entities. Creates a right of action for contribution by a railroad entity against another person for claims that arise under the Federal Employers' Liability Act.

Effective: July 1, 2018.

Ford

January 10, 2018, read first time and referred to Committee on Pensions and Labor.



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 BILL No. 436

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 34-6-2-45 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 45. (a) "Fault", for
3 purposes of IC 34-20, means an act or omission that is negligent,
4 willful, wanton, reckless, or intentional toward the person or property
5 of others. The term includes the following:
6 (1) Unreasonable failure to avoid an injury or to mitigate
7 damages.
8 (2) A finding under IC 34-20-2 (or IC 33-1-1.5-3 before its
9 repeal) that a person is subject to liability for physical harm
10 caused by a product, notwithstanding the lack of negligence or
11 willful, wanton, or reckless conduct by the manufacturer or seller.
12 (b) "Fault", for purposes of IC 34-51-2, includes any act or omission
13 that is negligent, willful, wanton, reckless, or intentional toward the
14 person or property of others. The term also includes unreasonable
15 assumption of risk not constituting an enforceable express consent,
16 incurred risk, and unreasonable failure to avoid an injury or to mitigate
17 damages.



1 (c) "Fault", for purposes of IC 34-51-6, means an act or
 2 omission that is negligent, willful, wanton, reckless, or intentional
 3 toward the person or property of others.

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

7 **Chapter 6. Right of Contribution for Railroad Entities Liability**
 8 **Act**

9 **Sec. 1. An action for contribution under this chapter does not**
 10 **apply to a claim for worker's compensation benefits paid by or on**
 11 **behalf of an employer to an employee under IC 22-3 or a**
 12 **comparable worker's compensation law in another jurisdiction.**

13 **Sec. 2. (a) A railroad entity subject to liability under the Federal**
 14 **Employers' Liability Act (45 U.S.C. 51), including liability for a**
 15 **violation of the Safety Appliance Act (49 U.S.C. 20302 et seq.) or**
 16 **the Locomotive Inspection Act (49 U.S.C. 20701 et seq.), has a right**
 17 **of action for contribution against any other person that may be at**
 18 **fault for an injury or death that gives rise to the action or claim**
 19 **against the railroad entity.**

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

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

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

28 **Sec. 3. (a) In an action brought under this chapter, a trier of fact**
 29 **shall determine each person's:**

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

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

35 **Sec. 4. (a) A railroad entity may enforce a right of contribution**
 36 **under this chapter in:**

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

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



1 (1) by lapse of time for appeal; or
2 (2) after appellate review.
3 (c) If there is no judgment for damages against a railroad entity,
4 any separate action by the railroad entity to enforce contribution
5 is barred, unless the railroad entity:
6 (1) discharges the liability by settlement; and
7 (2) starts the action for contribution not later than one (1)
8 year after the railroad entity's payment of damages.
9 Sec. 5. A defendant does not have a right of action of
10 contribution against a third party under this chapter if liability in
11 whole or in part relates to an occupational disease (as defined in
12 IC 22-3-7-10).

