# Indiana's Product Liability Act & Related Statutes

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## Selected Definitions Used in Indiana's Product Liability Act

The recodified Indiana Product Liability Act contains several terms that are defined separately in the Indiana code at IC §§ 34-6-2-1 *et seq*. For the reader's convenience, selected terms from IC § 34-6-2 are defined in this section and identified by italic typeset in this reference guide. The Indiana General Assembly has noted, with regard to the recodification, that it was intended "to recodify prior


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civil law and procedure in a style that is clear, concise, and easy to interpret and apply[,]" and that the recodification was not intended to affect existing rights and liabilities, "any proceedings begun," etc. See IC §§ 34-7-1-1, *et seq*.

### Consumer

Ind. Code § 34-6-2-29. "Consumer," for purposes of IC 34-20, means:

- a purchaser;
- any individual who uses or consumes the product;
- any other person who, while acting for or on behalf of the injured party, was in possession and control of the product in question; or
- any bystander injured by the product who would reasonably be expected to be in the vicinity of the product during its reasonably expected use.

### Fault

Ind. Code § 34-6-2-45. (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:

- Unreasonable failure to avoid an injury or to mitigate damages.
- 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.

### Manufacturer

Ind. Code § 34-6-2-77. (a) "Manufacturer," for purposes of IC 34-20, means a person or an entity who designs, assembles, fabricates,


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produces, constructs, or otherwise prepares a product or a component part of a product before the sale of the product to a user or consumer. "Manufacturer" includes a seller who:

- has actual knowledge of a defect in a product;
- creates and furnishes a manufacturer with specifications relevant to the alleged defect for producing the product or who otherwise exercises some significant control over all or a portion of the manufacturing process;
- alters or modifies the product in any significant manner after the product comes into the seller's possession and before it is sold to the ultimate user or consumer;
- is owned in whole or significant part by the manufacturer; or
- owns in whole or significant part the manufacturer.

(b) A seller who discloses the name of the actual manufacturer of a product is not a manufacturer under this section merely because the seller places or has placed a private label on a product.

**Nonparty**

Ind. Code § 34-6-2-88. "Nonparty," for purposes of IC 34-51-2, means a person who caused or contributed to cause the alleged injury, death, or damage to property but who has not been joined in the action as a defendant.

**Physical Harm**

Ind. Code § 34-6-2-105. (a) "Physical harm," for purposes of IC 34-20, means bodily injury, death, loss of services, and rights arising from any such injuries, as well as sudden, major damage to property.

The term does not include gradually evolving damage to property or economic losses from such damage.

**Product**

Ind. Code § 34-6-2-114. (a) "Product," for purposes of IC 34-20, means any item or good that is personalty at the time it is conveyed by the seller to another party.

- The term does not apply to a transaction that, by its nature, involves wholly or predominantly the sale of a service rather than a product.


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### Product Liability Action

Ind. Code § 34-6-2-115. "Product liability action," for purposes of IC 34-20, means an action that is brought:

- against a manufacturer or seller of a product; and
- for or on account of physical harm; regardless of the substantive legal theory or theories upon which the action is brought.

### Seller

Ind. Code § 34-6-2-136. "Seller," for purposes of IC 34-20, means a person engaged in the business of selling or leasing a product for resale, use, or consumption.

### Unreasonably Dangerous

Ind. Code § 34-6-2-146. "Unreasonably dangerous," for purposes of IC 34-20, refers to any situation in which the use of a product exposes the user or consumer to a risk of physical harm to an extent beyond that contemplated by the ordinary consumer who purchases the product with the ordinary knowledge about the product's characteristics common to the community of consumers.

### User

Ind. Code § 34-6-2-147. "User," for purposes of IC 34-20, has the same meaning as the term "consumer," which is set forth in section 29 [IC 34-6-2-29] of this chapter.

*As added by P.L. 1-1998, Sec. 1.*

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## Indiana's Product Liability Act

#### General Provisions

### Application of Article

Ind. Code § 34-20-1-1. This article governs all actions that are:

- brought by a *user* or *consumer*;
- against a *manufacturer* or *seller*; and
- for *physical harm* caused by a *product*;


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regardless of the substantive legal theory or theories upon which the action is brought.

### Remedies Cumulative

Ind. Code § 34-20-1-2. This article shall not be construed to limit any other action from being brought against a *seller* of a *product*.

### Severability

Ind. Code § 34-20-1-3. If a provision of this article or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications, and to this end the provisions of this article are severable.

### Effective Date

Ind. Code § 34-20-1-4. This article does not apply to a cause of action that accrues before June 1, 1978.

*As added by P.L. 1-1998, Sec. 15.*

#### Product Liability Actions

### Grounds For Action

Ind. Code § 34-20-2-1. Except as provided in section 3 [IC 34-20-2-3] of this chapter, a person who sells, leases, or otherwise puts into the stream of commerce any *product* in a defective condition *unreasonably dangerous* to any *user* or *consumer* or to the *user's* or *consumer's* property is subject to liability for *physical harm* caused by that *product* to the *user* or *consumer* or to the *user's* or *consumer's* property if:

- that *user* or *consumer* is in the class of persons that the *seller* should reasonably foresee as being subject to the harm caused by the defective condition;
- the *seller* is engaged in the business of selling the *product*; and
- the *product* is expected to and does reach the *user* or *consumer* without substantial alteration in the condition in which the *product* is sold by the person sought to be held liable under this article.


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### Exercise of Reasonable Care; Privity

Ind. Code § 34-20-2-2. The rule stated in section 1 [IC 34-20-2-1] of this chapter applies although:

- the *seller* has exercised all reasonable care in the manufacture and preparation of the *product*; and
- the *user* or *consumer* has not bought the *product* from or entered into any contractual relation with the *seller*.

However, in an action based on an alleged design defect in the *product* or based on an alleged failure to provide adequate warnings or instructions regarding the use of the *product*, the party making the claim must establish that the *manufacturer* or *seller* failed to exercise reasonable care under the circumstances in designing the *product* or in providing the warnings or instructions.

### Strict Liability of Manufacturer

Ind. Code § 34-20-2-3. A *product liability action* based on the doctrine of strict liability in tort may not be commenced or maintained against a seller of a *product* that is alleged to contain or possess a defective condition *unreasonably dangerous* to the *user* or *consumer* unless the *seller* is a *manufacturer* of the *product* or of the part of the *product* alleged to be defective.

### Principal Distributor or Seller Deemed Manufacturer

Ind. Code § 34-20-2-4. If a court is unable to hold jurisdiction over a particular *manufacturer* of a *product* or part of a *product* alleged to be defective, then that *manufacturer's* principal distributor or *seller* over whom a court may hold jurisdiction shall be considered, for the purposes of this chapter, the *manufacturer* of the *product*.

*As added by P.L. 1-1998, Sec. 15.*

#### Statute of Limitations and Statute of Repose

### Negligence and Strict Liability in Tort Actions

Ind. Code § 34-20-3-1. (a) This section applies to all persons regardless of minority or legal disability. Notwithstanding IC 34-11-6-1, this section applies in any *product liability action* in which the theory of liability is negligence or strict liability in tort.


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(b) Except as provided in section 2 [IC 34-20-3-2] of this chapter, a *product liability action* must be commenced:

- within two (2) years after the cause of action accrues; or
- within ten (10) years after the delivery of the *product* to the initial *user* or *consumer*.

However, if the cause of action accrues at least eight (8) years but less than ten (10) years after that initial delivery, the action may be commenced at any time within two (2) years after the cause of action accrues.

#### Defective Products

### Products Considered Defective

Ind. Code § 34-20-4-1. A *product* is in a defective condition under this article if, at the time it is conveyed by the *seller* to another party, it is in a condition:

- not contemplated by reasonable persons among those considered expected *users* or *consumers* of the *product*; and
- that will be *unreasonably dangerous* to the expected *user* or *consumer* when used in reasonably expectable ways of handling or consumption.

### Failure to Provide Adequate Warnings or Instructions

Ind. Code § 34-20-4-2. A *product* is defective under this article if the *seller* fails to:

- properly package or label the *product* to give reasonable warnings of danger about the *product*; or
- give reasonably complete instructions on proper use of the *product*; when the *seller*, by exercising reasonable diligence, could have made such warnings or instructions available to the *user* or *consumer*.

### Products Made Safe for Reasonably Expectable Handling and Consumption Not Considered Defective

Ind. Code § 34-20-4-3. A *product* is not defective under this article if it is safe for reasonably expectable handling and consumption. If


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an injury results from handling, preparation for use, or consumption that is not reasonably expectable, the *seller* is not liable under this article.

### Products Incapable of Being Made Safe Not Considered Defective

Ind. Code § 34-20-4-4. A *product* is not defective under this article if the *product* is incapable of being made safe for its reasonably expectable use, when manufactured, sold, handled, and packaged properly.

*As added by P.L. 1-1998, Sec. 15.*

#### Rebuttable Presumption that Product is Not Defective

### Rebuttable Presumption

Ind. Code § 34-20-5-1. In a *product liability action*, there is a rebuttable presumption that the *product* that caused the *physical harm* was not defective and that the *manufacturer* or *seller* of the *product* was not negligent if, before the sale by the *manufacturer*, the *product*:

- was in conformity with the generally recognized state of the art applicable to the safety of the *product* at the time the *product* was designed, manufactured, packaged, and labeled; or
- complied with applicable codes, standards, regulations, or specifications established, adopted, promulgated, or approved by the United States or by Indiana, or by an agency of the United States or Indiana.

*As added by P.L. 1-1998, Sec. 15.*

#### Defenses

### Applicability of Defenses

Ind. Code § 34-20-6-1. The defenses in this chapter are defenses to an action brought under this article (or IC 33-1-1.5 before its repeal).

### Burden of Proof

Ind. Code § 34-20-6-2. The burden of proof of any defense raised


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in an action under this article (or IC 33-1-1.5 before its repeal) is on the party raising the defense.

Use of Product with Knowledge of Defect or Danger

Ind. Code § 34-20-6-3. It is a defense to an action under this article (or IC 33-1-1.5 before its repeal) that the *user* or *consumer* bringing the action:

- knew of the defect;
- was aware of the danger in the *product*; and
- nevertheless proceeded to make use of the *product* and was injured.

### Misuse of Product

Ind. Code § 34-20-6-4. It is a defense to an action under this article (or IC 33-1-1.5 before its repeal) that a cause of the *physical harm* is a misuse of the *product* by the claimant or any other person not reasonably expected by the *seller* at the time the *seller* sold or otherwise conveyed the *product* to another party.

### Modification or Alteration of Product

Ind. Code § 34-20-6-5. It is a defense to an action under this article (or IC 33-1-1.5 before its repeal) that a cause of the *physical harm* is a modification or alteration of the *product* made by any person after the *product's* delivery to the initial *user* or *consumer* if the modification or alteration is the proximate cause of *physical harm* where the modification or alteration is not reasonably expectable to the *seller*.

*As added by P.L. 1-1998, Sec. 15.*

#### Assessing Liability and Percentage of Fault

### Assessment of Liability

Ind. Code § 34-20-7-1. In a *product liability action* where liability is assessed against more than one (1) defendant, a defendant is not liable for more than the amount of *fault*, as determined under IC 34-20-8, directly attributable to that defendant. A defendant in a *product liability action* may not be held jointly liable for damages attributable to the *fault* of another defendant.


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*As added by P.L. 1-1998, Sec. 15.*

### Assessment of Percentage of Fault

Ind. Code § 34-20-8-1. (a) In a *product liability action*, the *fault* of the person suffering the *physical harm*, as well as the *fault* of all others who caused or contributed to cause the harm, shall be compared by the trier of fact in accordance with IC 34-51-2-7, IC 34-51-2-8, or IC 34-51-2-9.

(b) In assessing percentage of *fault*, the jury shall consider the *fault* of all persons who contributed to the *physical harm*, regardless of whether the person was or could have been named as a party, as long as the *nonparty* was alleged to have caused or contributed to cause the *physical harm*.

*As added by P.L. 1-1998, Sec. 15.*

#### Indemnity

### Indemnification From Person Actually At Fault for Defect

Ind. Code § 34-20-9-1. This article does not affect the right of any person who is found liable to seek and obtain indemnity from any other person whose actual *fault* caused a *product* to be defective.

*As added by P.L. 1-1998, Sec. 15.*

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## Indiana's Comparative Fault Act

#### Compensatory Damages: Comparative Fault

### Applicability of Chapter

Ind. Code § 34-51-2-1. (a) This chapter governs any action based on fault that is brought to recover damages for injury or death to a person or harm to property, except as provided in subsection (b).

(b) This chapter does not apply to an action:

- brought against a qualified health care provider under IC 16-9.5 (before its repeal), IC 27-12 (before its repeal), or IC 34-18 for medical malpractice; or


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- that accrued before January 1, 1985.

### Governmental Entities and Public Employees Excepted

Ind. Code § 34-51-2-2. This chapter does not apply in any manner to tort claims against governmental entities or public employees under IC 34-13-3 (or IC 34-4-16.5 before its repeal).

### Causation

Ind. Code § 34-51-2-3. In an action brought under this chapter (or IC 34-4-33 before its repeal), legal requirements of causal relation apply to:

- fault as the basis for liability; and
- contributory fault.

### Defendant as Single Party

Ind. Code § 34-51-2-4. For purposes of sections 6 through 10 [IC 34-51-2-6 through IC 34-51-2-10] of this chapter, a defendant may be treated along with another defendant as a single party where recovery is sought against that defendant not based upon the defendant's own alleged act or omission but upon the defendant's relationship to the other defendant.

### Effect of Contributory Fault

Ind. Code § 34-51-2-5. In an action based on fault, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery except as provided in section 6 [IC 34-51-2-6] of this chapter.

### Barring of Recovery; Degree of Contributory Fault

Ind. Code § 34-51-2-6. (a) In an action based on fault that is brought against:

- one defendant; or
- two or more defendants who may be treated as a single party;

the claimant is barred from recovery if the claimant's contributory fault is greater than the fault of all persons whose fault proximately contributed to the claimant's damages.


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In an action based on fault that is brought against two (2) or more defendants, the claimant is barred from recovery if the claimant's contributory fault is greater than the fault of all persons whose fault proximately contributed to the claimant's damages.

**Jury Instructions; Single Party Defendant**

Ind. Code § 34-51-2-7. (a) This section applies to an action based on fault that is:

- brought against one (1) defendant or two (2) or more defendants who may be treated as a single party; and
- tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

- The jury shall determine the percentage of fault of the claimant, of the defendant, and of any person who is a The jury may not be informed of any immunity defense that is available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.
- If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendant and no further deliberation of the jury is required.
- If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury then shall determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.
- The jury next shall multiply the percentage of fault of the defendant by the amount of damages determined under


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subdivision (3) and shall then enter a verdict for the claimant in the amount of the product of that multiplication.

## Jury Instructions; Multiple Defendants

Ind. Code § 34-51-2-8. (a) This section applies to an action based on fault that:

- is brought against two (2) or more defendants; and
- is tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

- The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a The jury may not be informed of any immunity defense that might be available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.
- If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendants and no further deliberation of the jury is required.
- If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury shall then determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.
- The jury next shall multiply the percentage of fault of each defendant by the amount of damages determined under subdivision (3) and shall enter a verdict against each defendant (and such other defendants as are liable with the defendant by reason of their relationship to a defendant) in


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the amount of the product of the multiplication of each defendant's percentage of fault times the amount of damages as determined under subdivision (3).

### Trial Without Jury; Award of Damages

Ind. Code § 34-51-2-9. In an action based on fault that is tried by the court without a jury, the court shall make its award of damages according to the principles specified for juries in sections 7 and 8 [IC 34-51-2-7 and IC 34-51-2-8] of this chapter.

### Intentional Torts; Full Recovery of Damages from Convicted Defendant

Ind. Code § 34-51-2-10. In the case of an intentional tort, the plaintiff may recover one hundred percent (100%) of the compensatory damages in a civil action for intentional tort from a defendant who was convicted after a prosecution based on the same evidence.

### Form of Verdicts; Disclosure Requirements

Ind. Code § 34-51-2-11. The court shall furnish to the jury forms of verdicts that require only the disclosure of:

- the percentage of fault charged against each party and nonparty; and
- the amount of the verdict against each defendant.

If the evidence in the action is sufficient to support the charging of fault to a nonparty, the form of verdict also shall require a disclosure of the name of the nonparty and the percentage of fault charged to the nonparty.

### Contribution; Indemnity

Ind. Code § 34-51-2-12. In an action under this chapter (or IC 34-4-33 before its repeal), there is no right of contribution among tortfeasors. However, this section does not affect any rights of indemnity.

### Inconsistent Verdicts

Ind. Code § 34-51-2-13. In actions brought under this chapter (or IC 34-4-33 before its repeal), whenever a jury returns verdicts in which the ultimate amounts awarded are inconsistent with its


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determinations of total damages and percentages of fault, the trial court shall:

- inform the jury of such inconsistencies;
- order the jury to resume deliberations to correct the inconsistencies; and
- instruct the jury that the jury is at liberty to change any portion or portions of the verdicts to correct the inconsistencies.

### Nonparty Defense; Assertion

Ind. Code § 34-51-2-14. In an action based on fault, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a nonparty. This defense is referred to in this chapter as a nonparty defense.

### Nonparty Defense; Burden of Proof

Ind. Code § 34-51-2-15. The burden of proof of a nonparty defense is upon the defendant, who must affirmatively plead the defense. However, this chapter does not relieve the claimant of the burden of proving that fault on the part of the defendant or defendants caused, in whole or in part, the damages of the claimant.

### Nonparty Defense; Pleadings

Ind. Code § 34-51-2-16. A nonparty defense that is known by the defendant when the defendant files the defendant's first answer shall be pleaded as a part of the first answer. A defendant who gains actual knowledge of a nonparty defense after the filing of an answer may plead the defense with reasonable promptness.

However, if the defendant was served with a complaint and summons more than one hundred fifty (150) days before the expiration of the limitation of action applicable to the claimant's claim against the nonparty, the defendant shall plead any nonparty defense not later than forty-five (45) days before the expiration of that limitation of action. The trial court may alter these time limitations or make other suitable time limitations in any manner that is consistent with:


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- giving the defendant a reasonable opportunity to discover the existence of a nonparty defense; and
- giving the claimant a reasonable opportunity to add the nonparty as an additional defendant to the action before the expiration of the period of limitation applicable to the claim.

### Nonparty Defense; Medical Malpractice Claims

Ind. Code § 34-51-2-17. This section applies to a claim filed with the insurance commissioner under IC 16-9.5 (before its repeal), IC 27-12 (before its repeal), or IC 34-18 against a qualified health care provider, with the exception that the pleading of a nonparty defense, as required by sections 15 and 16 [IC 34-51-2-15 and IC 34-51-2-16] of this chapter must occur not later than ninety (90) days after the filing of the claim with the insurance commissioner. However, this time limitation may be enlarged or shortened by a court having jurisdiction over the claim in such matter as will give:

- the qualified health care provider reasonable opportunity to discover the existence of a nonparty defense; and
- the claimant reasonable opportunity to assert a claim against the nonparty before the expiration of the period of limitation applicable to the claim.

### Actions Against Defendants Who Are Qualified Healthcare Providers and Who Are Not Qualified Health Care Providers; Delay; Joinder

Ind. Code § 34-51-2-18. (a) This section applies to an action based on fault that is brought by the claimant against:

- one (1) or more defendants who are qualified health care providers under IC 34-18; and
- one (1) or more defendants who are not qualified health care providers.

(b) Upon application of the claimant, the trial court shall grant reasonable delays in the action brought against those defendants who are not qualified health care providers until the medical review panel procedure can be completed as to the qualified health care providers.


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(c) When an action is permitted to be filed against the qualified health care providers, the trial court shall permit a joinder of the qualified health care providers as additional defendants in the action on file against the non-health care providers.

### Liens or Claims To Diminish in Same Proportion As Claimant's Recovery Is Diminished

Ind. Code § 34-51-2-19. If a subrogation claim or other lien or claim that arose out of the payment of medical expenses or other benefits exists in respect to a claim for personal injuries or death and the claimant's recovery is diminished:

- by comparative fault; or
- by reason of the uncollectibility of the full value of the claim for personal injuries or death resulting from limited liability insurance or from any other cause; the lien or claim shall be diminished in the same proportion as the claimant's recovery is The party holding the lien or claim shall bear a pro rata share of the claimant's attorney's fees and litigation expenses.

*As added by P.L. 1-1998, Sec. 47.*

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## Action for Wrongful Death of an Adult

#### Wrongful Death Generally

### Death From Wrongful Act or Omission

Ind. Code § 34-23-1-1. When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefore against the latter, if the former might have maintained an action had he or she, as the case may be, lived, against the latter for an injury for the same act or omission. When the death of one is caused by the wrongful act or omission of another, the action shall be commenced by the personal representative of the decedent within two (2) years, and the damages shall be in such an amount as may be determined by the court or jury, including, but not limited to, reasonable medical, hospital, funeral and burial expenses, and lost earnings of such


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deceased person resulting from said wrongful act or omission. That part of the damages which is recovered for reasonable medical, hospital, funeral and burial expense shall inure to the exclusive benefit of the decedent's estate for the payment thereof. The remainder of the damages, if any, shall, subject to the provisions of this article, inure to the exclusive benefit of the widow or widower, as the case may be, and to the dependent children, if any, or dependent next of kin, to be distributed in the same manner as the personal property of the deceased. If such decedent depart this life leaving no such widow or widower, or dependent children or dependent next of kin, surviving her or him, the damages inure to the exclusive benefit of the person or persons furnishing necessary and reasonable hospitalization or hospital services in connection with the last illness or injury of the decedent, performing necessary and reasonable medical or surgical services in connection with the last illness or injury of the decedent, to a funeral director or funeral home for the necessary and reasonable funeral and burial expenses, and to the personal representative, as such, for the necessary and reasonable costs and expenses of administering the estate and prosecuting or compromising the action, including a reasonable attorney's fee, and in case of a death under such circumstances, and when such decedent leaves no such widow, widower, or dependent children, or dependent next of kin, surviving him or her, the measure of damages to be recovered shall be the total of the necessary and reasonable value of such hospitalization or hospital service, medical and surgical services, such funeral expenses, and such costs and expenses of administration, including attorney fees.

*As added by P.L. 1-1998, Sec. 18.*

**Wrongful Death of an Adult with No Dependents**

## Wrongful Death Actions; Damages

Ind. Code § 34-23-1-2. (a) As used in this section, "adult person" means an unmarried individual:

- who does not have any dependents; and
- who is not a child (as defined in IC 34-23-2-1).


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(b) If the death of an adult person is caused by the wrongful act or omission of another person, only the personal representative of the adult person may maintain an action against the person whose wrongful act or omission caused the death of the adult

(c) In an action to recover damages for the death of an adult person, the damages:

- must be in an amount determined by a:
  - court; or
  - jury;
- may not include:
  - damages awarded for a person's grief; or
  - punitive damages; and
- may include but are not limited to the following:
  - Reasonable medical, hospital, funeral, and burial expenses necessitated by the wrongful act or omission that caused the adult person's death.
  - Loss of the adult person's love and companionship.

(d) Damages awarded under subsection (c)(3)(A) for medical, hospital, funeral, and burial expenses inure to the exclusive benefit of the adult person's estate for the payment of the The remainder of the damages inure to the exclusive benefit of a nondependent parent or nondependent child of the adult person.

(e) Aggregate damages that may be recovered under subsection (c)(3)(B) may not exceed three hundred thousand dollars ($300,000). A jury may not be advised of the monetary limits placed on damages under this If the jury awards the plaintiff damages under subsection (c)(3)(B) in an amount that exceeds three hundred thousand dollars ($300,000), the court shall reduce that part of the damages awarded to the plaintiff to three hundred thousand dollars ($300,000).

(f) A parent or child who wishes to recover damages under this section has the burden of proving that the parent or child had a genuine, substantial, and ongoing relationship with the adult person before the parent or child may recover damages.


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(g) In an action brought under this section, a court or a jury may not hear evidence concerning the lost earnings of the adult person that occur as a result of the wrongful act or omission.

(h) In awarding damages under this section to more than one (1) person, the court or the jury shall specify the amount of the damages that should be awarded to each person.

(i) In an action brought under this section, the trier of fact shall make a separate finding with respect to damages awarded under subsection (c)(3)(B).

*As added by P.L. 84-1999, Sec. 2.*

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## Action for Wrongful Death of a Child

**Wrongful Death or Injury of a Child**

**Injury or Death of Child; Action by Parent or Guardian**

Ind. Code § 34-23-2-1. (a) This section does not apply to an abortion performed in compliance with:

- IC 16-34; or
- IC 35-1-58.5 (before its repeal).

(b) As used in this section, "child" means an unmarried individual without dependents who is:

- less than twenty (20) years of age; or
- less than twenty-three (23) years of age and is enrolled in a postsecondary educational institution or a career and technical education school or program that is not a postsecondary educational program.

(c) An action may be maintained under this section against the person whose wrongful act or omission caused the injury or death of a child. The action may be maintained by:

- the father and mother jointly, or either of them by naming the other parent as a codefendant to answer as to his or her


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interest;

- in case of divorce or dissolution of marriage, the person to whom custody of the child was awarded; and
- a guardian, for the injury or death of a protected person.

(d) In case of death of the person to whom custody of a child was awarded, a personal representative shall be appointed to maintain the action for the injury or death of the child.

(e) In an action brought by a guardian for an injury to a protected person, the damages inure to the benefit of the protected person.

(f) In an action to recover for the death of a child, the plaintiff may recover damages:

- for the loss of the child's services;
- for the loss of the child's love and companionship; and
- to pay the expenses of:
- - health care and hospitalization necessitated by the wrongful act or omission that caused the child's death;
  - the child's funeral and burial;
  - the reasonable expense of psychiatric and psychological counseling incurred by a surviving parent or minor sibling of the child that is required because of the death of the child;
  - uninsured debts of the child, including debts for which a parent is obligated on behalf of the child; and
  - the administration of the child's estate, including reasonable attorney's fees.

(g) Damages may be awarded under this section only with respect to the period of time from the death of the child until:

- the date that the child would have reached:
  - twenty (20) years of age; or
  - twenty-three (23) years of age, if the child was enrolled in a postsecondary educational institution or in a career


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and technical education school or program that is not a postsecondary educational program; or

- the date of the child's last surviving parent's death; whichever first occurs.

(h) Damages may be awarded under subsection (f)(2) only with respect to the period of time from the death of the child until the date of the child's last surviving parent's death.

(i) Damages awarded under subsection (f)(1), (f)(2), (f)(3)(C), and (f)(3)(D) inure to the benefit of:

- the father and mother jointly if both parents had custody of the child;
- the custodial parent, or custodial grandparent, and the noncustodial parent of the deceased child as apportioned by the court according to their respective losses; or
- a custodial grandparent of the child if the child was not survived by a parent entitled to benefit under this section.

(j) However, a parent or grandparent who abandoned a deceased child while the child was alive is not entitled to any recovery under this chapter.

- This section does not affect or supersede any other right, remedy, or defense provided by any other law.

*As added by P.L. 1-1998, Sec. 18. Amended by P.L. 2-2007, Sec. 373; P.L. 234-2007, Sec. 169; P.L. 3-2008, Sec. 242; P.L. 129-2009, SEC. 8.*

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## Indiana's Prejudgment Interest Statutes

### Definition of Prejudgment Interest

**Prejudgment interest**

Ind. Code § 34-6-2-113. "Prejudgment interest," for purposes of IC 34-51-4, means interest on the amount of a judgment that is


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computed for a period preceding the date that the court returns a verdict or finding in the proceeding.

*As added by P.L. 1-1998, Sec. 1.*

**Prejudgment Interest Statutes**

### Applicability of Chapter to Tort Actions

Ind. Code § 34-51-4-1. This chapter applies to any civil action arising out of tortious conduct.

### Applicability of Chapter to Claims Against Patient's Compensation Fund

Ind. Code § 34-51-4-2. This chapter does not apply to a claim against the patient's compensation fund under IC 34-18-6, IC 27-12-6 (before its repeal), or IC 16-9.5-4 (before its repeal).

### Applicability of Chapter to Punitive Damages Claims

Ind. Code § 34-51-4-3. This chapter does not impose liability for prejudgment interest on any part of a judgment that is awarded as punitive damages.

### Liability of State or Political Subdivision

Ind. Code § 34-51-4-4. This chapter does not impose liability for prejudgment interest on the state or any political subdivision (as those terms are defined in IC 34-6-2-140 and IC 34-6-2-110).

### Applicability of Chapter Upon Timely Offer of Settlement by Defendants

Ind. Code § 34-51-4-5. This chapter does not apply if:

- within nine (9) months after a claim is filed in the court, or any longer period determined by the court to be necessary upon a showing of good cause, one (1) or more of the parties against whom the claim is filed makes a written offer of settlement to the party receiving a judgment;
- the terms of the offer include payment within sixty (60) days after the offer is accepted; and
- the amount of the offer is at least two-thirds (2/3) of the amount of the judgment award.


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## Applicability of Chapter Upon Timely Offer of Settlement by Plaintiffs

Ind. Code § 34-51-4-6. This chapter does not apply if:

- within one (1) year after a claim is filed in the court, or any longer period determined by the court to be necessary upon a showing of good cause, the party who filed the claim fails to make a written offer of settlement to the party or parties against whom the claim is filed;
- the terms of the offer fail to provide for payment of the settlement offer within sixty (60) days after the offer is accepted; or
- the amount of the offer exceeds one and one-third (1 1/3) of the amount of the judgment awarded.

## Award of Prejudgment Interest as Part of The Judgment

Ind. Code § 34-51-4-7. The court may award prejudgment interest as part of a judgment.

## Time of Accrual of Prejudgment Interest

Ind. Code § 34-51-4-8. (a) If the court awards prejudgment interest, the court shall determine the period during which prejudgment interest accrues. However, the period may not exceed forty-eight (48) months. Prejudgment interest begins to accrue on the latest of the following dates:

- Fifteen (15) months after the cause of action
- Six (6) months after the claim is filed in the court if IC 34-18-8 and IC 34-18-9 do not
- One hundred eighty (180) days after a medical review panel is formed to review the claim under IC 34-18-10 (or IC 27-12-10 before its repeal).

(b) The court shall exclude from the period in which prejudgment interest accrues any period of delay that the court determines is caused by the party petitioning for prejudgment interest.

## Rate of Prejudgment Interest

Ind. Code § 34-51-4-9. The court shall compute the prejudgment interest at the simple rate of interest determined by the court. The


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rate set by the court may not be less than six percent (6%) per year and not more than ten percent (10%) per year.

*As added by P.L. 1-1998, Sec. 47.*

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## Indiana's Punitive Damages Statute

**Punitive Damages**

### Applicability of Chapter

Ind. Code § 34-51-3-1. This chapter applies to all cases in which a party requests the recovery of punitive damages in a civil action.

### Necessity of Evidence of Facts

Ind. Code § 34-51-3-2. Before a person may recover punitive damages in any civil action, that person must establish, by clear and convincing evidence, all of the facts that are relied upon by that person to support the recovery of punitive damages.

### Restrictions on Jury Instructions

Ind. Code § 34-51-3-3. A jury in a case subject to this chapter may not be advised of:

- the limitation on the amount of a punitive damage award under section 4 [IC 34-51-3-4] of this chapter; or
- the requirement under section 6 [34-51-3-6] of this chapter concerning allocation of money received in payment of a punitive damage award.

### Maximum Award of Damages

Ind. Code § 34-51-3-4. A punitive damage award may not be more than the greater of:

- three (3) times the amount of compensatory damages awarded in the action; or
- fifty thousand dollars ($50,000).


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## Reduction of Excessive Damage Award

Ind. Code § 34-51-3-5. If a trier of fact awards punitive damages that exceed the limitation under section 4 [IC 34-51-3-4] of this chapter, the court shall reduce the punitive damage award to not more than the greater of:

- three (3) times the amount of compensatory damages awarded in the action; or
- fifty thousand dollars ($50,000).

## Payment and Allocation of Damages; Notification; Negotiation of Award; State's Interest in Award

Ind. Code § 34-51-3-6. (a) Except as provided in IC 13-25-4-10, when a finder of fact announces a verdict that includes a punitive damage award in a civil action, the party against whom the judgment was entered shall notify the office of the attorney general of the punitive damage award.

(b) When a punitive damage award is paid, the party against whom the judgment was entered shall pay the punitive damage award to the clerk of the court where the action is

(c) Upon receiving the payment described in subsection (b), the clerk of the court shall:

- pay the person to whom punitive damages were awarded twenty-five percent (25%) of the punitive damage award; and
- pay the remaining seventy-five percent (75%) of the punitive damage award to the treasurer of state, who shall deposit the funds into the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) The office of the attorney general may negotiate and compromise a punitive damage award described in subsection (c)(2).

(e) The state's interest in a punitive damage award described in subsection (c)(2) is effective when a finder of fact announces a verdict that includes punitive damages.

*As added by P.L. 1-1998, Sec. 47. Amended by P.L. 105-2006, Sec.2; P.L.1-2007, Sec. 224.*


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# Indiana's Collateral Source Statutes

**Collateral Source Evidence**

## Purpose of Chapter

Ind. Code § 34-44-1-1. The purpose of this chapter is:

- to enable the trier of fact in a personal injury or wrongful death action to determine the actual amount of the prevailing party's pecuniary loss; and
- to provide that a prevailing party not recover more than once from all applicable sources for each item of loss sustained.

## Personal Injury or Wrongful Death Actions; Admissibility of Evidence

Ind. Code § 34-44-1-2. In a personal injury or wrongful death action, the court shall allow the admission into evidence of:

- proof of collateral source payments other than:
  - payments of life insurance or other death benefits;
  - insurance benefits for which the plaintiff or members of the plaintiff's family have paid for directly; or
  - payments made by:
    - the state or the United States; or
    - any agency, instrumentality, or subdivision of the state or the United States;

  that have been made before trial to a plaintiff as compensation for the loss or injury for which the action is brought;

- proof of the amount of money that the plaintiff is required to repay, including worker's compensation benefits, as a result of the collateral benefits received; and


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- proof of the cost to the plaintiff or to members of the plaintiff's family of collateral benefits received by the plaintiff or the plaintiff's family.

### Proof of Payments; Consideration for Amount and Review of Award

Ind. Code § 34-44-1-3. Proof of payments under section 2 [IC 34-44-1-2] of this chapter shall be considered by the trier of fact in arriving at the amount of any award and shall be considered by the court in reviewing awards that are alleged to be excessive.

*As added by P.L. 1-1998, Sec. 40.*

## Advance Payments in Personal Injury and Property Damage Cases

### Applicability of Chapter

Ind. Code § 34-44-2-1. (a) This chapter applies to an action brought to recover damages for:

- personal injuries;
- wrongful death; or
- property damage.

(b) This chapter does not apply to actions in which there is more than one (1) defendant.

### No Admission of Liability

Ind. Code § 34-44-2-2. (a) An advance payment shall not be construed as an admission of liability by any person.

(b) Except as provided in section 3 [IC 34-44-2-3] of this chapter, evidence of an advance payment is not admissible during the trial for any purpose by either plaintiff or defendant.

### Reduction of Plaintiff's Award by Amount of Advance Payment

Ind. Code § 34-44-2-3. If it is determined that the plaintiff is entitled to recover in an action described in section 1 [IC 34-44-2-1] of this chapter:

- the defendant may introduce evidence of any advance payment made; and


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- the court shall reduce the award to the plaintiff to the extent that the award includes an amount paid by the advance payment.

### Insurance Companies

Ind. Code § 34-44-2-4. (a) An advance payment made by an insurance company on behalf of an insured does not increase the limits of liability of the insurance company under any existing policy of insurance.

(b) The amount of an advance payment made in respect to any claim shall be credited against any obligation of the insurance company in respect to the claim.

*As added by P.L. 1-1998, Sec. 40.*

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## Indiana's Settlement of Claims Statutes

#### Qualified Settlement Offers

### Applicability of Chapter

Ind. Code § 34-50-1-1. (a) This chapter applies only to actions in tort brought under:

- IC 33, including IC 33-1-1.5 before its repeal; or
- this

(b) This chapter does not apply to small claims actions.

### Time of Offer

Ind. Code § 34-50-1-2. A qualified settlement offer may be made at any time after a complaint has been filed in a civil action, but may not be made less than thirty (30) days before a trial of the action.

### Resolution of Issues Before Acceptance

Ind. Code § 34-50-1-3. A qualified settlement offer must resolve all claims and defenses at issue in the civil action between the offeror and the recipient before the qualified settlement offer may be accepted by the recipient.


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## Requirements of Qualified Settlement Offer

Ind. Code § 34-50-1-4. A qualified settlement offer must:

- be in writing;
- be signed by the offeror or the offeror's attorney of record;
- be designated on its face as a qualified settlement offer;
- be delivered to each recipient or recipient's attorney of record;
    - by registered or certified mail; or
    - by a method that verifies the date of receipt;
- set forth the complete terms of the settlement proposed by the offeror to the recipient in sufficient detail to allow the recipient to decide whether to accept or reject it;
- include the name and address of the offeror and the offeror's attorney of record, if any; and
- expressly revoke all prior qualified settlement offers made by the offeror to the recipient.

## Acceptance

Ind. Code § 34-50-1-5. An acceptance of a qualified settlement offer must be:

- unconditional;
- in writing;
- signed by the accepting recipient or the accepting recipient's attorney of record; and
- delivered:
    - by registered or certified mail or by a means that verifies the date of receipt;
    - to the offeror or the offeror's attorney of record; and
    - not more than thirty (30) days after the recipient receives the qualified settlement offer.

## Attorney's Fees and Costs

Ind. Code § 34-50-1-6. (a) If:

- a recipient does not accept a qualified settlement offer; and


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- the final judgment is less favorable to the recipient than the terms of the qualified settlement offer; the court shall award attorney's fees, costs, and expenses to the offeror upon the offeror's motion.

(b) An award of attorney's fees, costs, and expenses under this section must consist of attorney's fees at a rate of not more than one hundred dollars ($100) per hour and other costs and expenses incurred by the offeror after the date of the qualified settlement However, the award of attorney's fees, costs and expenses may not total more than one thousand dollars ($1,000).

(c) A motion for an award of attorney's fees, costs, and expenses under this section must be filed not more than thirty (30) days after entry of The motion must be accompanied by an affidavit of the offeror or the offeror's attorney establishing the amount of the attorney's fees and other costs and expenses incurred by the offeror after the date of the qualified settlement offer. The affidavit constitutes prima facie proof of the reasonableness of the amount.

(d) Where appropriate, the court may order a judgment entered against the offeror and in favor of the recipient reduced by the amount of attorney's fees, costs, and expenses awarded to the offeror under this section (or IC 34-4-44.6-8 before its repeal).

*As added by P.L. 1-1998, Sec. 46.*

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## Indiana's Seat Belt Statute

**Passenger Restraint Systems**

### Application of Chapter

Ind. Code § 9-19-10-1. This chapter does not apply to a front seat occupant who meets any of the following conditions:

- For medical reasons should not wear safety belts, provided the occupant has written documentation of the medical reasons from a


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- Is a child required to be restrained by a child restraint system under IC 9-19-11.
- Is traveling in a commercial or a United States Postal Service vehicle that makes frequent stops for the purpose of pickup or delivery of goods or services.
- Is a rural carrier of the United States Postal Service and is operating a vehicle while serving a rural postal route.
- Is a newspaper motor route carrier or newspaper bundle hauler who stops to make deliveries from a vehicle.
- Is a driver examiner designated and appointed by the bureau and is conducting an examination of an applicant for a permit or license under IC 9-24-10.
- Is an occupant of a farm truck being used on a farm in connection with agricultural pursuits that are usual and normal to the farming operation.
- Is an occupant of a motor vehicle participating in a parade.
- Is an occupant of the living quarters area of a recreational vehicle.
- Is an occupant of the treatment area of an ambulance (as defined in IC 16-18-2-13).
- Is an occupant of the sleeping area of a tractor.
- Is anoccupantotherthantheoperatorofavehicledescribedinIC9-20-11-1(1).
- Is an occupant other than the operator of a truck on a construction site.
- Is a passenger other than the operator in a cab of a recovery vehicle who is being transported in the cab because the vehicle of the passenger is being towed by the recovery vehicle.
- Is an occupant other than the operator of a motor vehicle being used by a public utility in an emergency as set forth in IC 9-20-6-5.

*As added by P.L. 2-1991, Sec. 7. Amended by P.L. 67-2004, Sec. 2; P.L. 214-2007, Sec. 6; P.L. 216-2014, Sec. 49; P.L. 198-2016, Sec. 334.*


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## Use of Safety Belt by Motor Vehicle Occupants; Safety Belt Standards

Ind. Code § 9-19-10-2. Each occupant of a motor vehicle equipped with a safety belt that:

- meets the standards stated in the Federal Motor Vehicle Safety Standard Number 208 (49 CFR 208); and
- is standard equipment installed by the manufacturer;

shall have a safety belt properly fastened about the occupant's body at all times when the vehicle is in forward motion.

*As added by P.L. 2-1991, Sec. 7. Amended by P.L. 214-2007, Sec. 7.*

## Stopping, Inspecting, or Detaining Vehicle; Checkpoints

Ind. Code § 9-19-10-3.1. (a) Except as provided in subsection (b), a vehicle may be stopped to determine compliance with this chapter. However, a vehicle, the contents of a vehicle, the driver of a vehicle, or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of this chapter.

(b) A law enforcement agency may not use a safety belt checkpoint to detect and issue a citation for a person's failure to comply with this

*As added by P.L. 214-2007, Sec. 8.*

## Retail Sales, Leases, Trades and Transfers

Ind. Code § 9-19-10-5. A person may not buy, sell, lease, trade, or transfer from or to Indiana residents at retail an automobile that is manufactured or assembled, commencing with the 1964 models, unless the automobile is equipped with safety belts installed for use in the front seat.

## Failure to Comply; Fault; Liability of Insurer; Mitigation of Damages

Ind. Code § 9-19-10-7. (a) Failure to comply with section 1, 2, or 3.1(a) [IC 9-19-10-1, IC 9-19-10-2, or IC9-19-10-3.1(a)] of this chapter does not constitute fault under IC 34-51-2 and does not limit the liability of an insurer.

(b) Except as provided in subsection (c), evidence of the failure to comply with section 1, 2, or 1(a) of this chapter may not be admitted


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in a civil action to mitigate damages.

(c) Evidence of a failure to comply with this chapter may be admitted in a civil action as to mitigation of damages in a product liability action involving a motor vehicle restraint or supplemental restraint The defendant in such an action has the burden of proving noncompliance with this chapter and that compliance with this chapter would have reduced injuries, and the extent of the reduction.

*As added by P.L. 2-1991, Sec. 7. Amended by P.L. 121-1993, Sec. 1; P.L. 1-1998, Sec. 95; P.L.214-2007, Sec. 9; P.L. 262-2013, Sec. 102.*

### Failure of Front Seat Occupant to Use Belt; Violation; Classification; Assessment of Points

Ind. Code § 9-19-10-8. (a) A person who:

- is at least sixteen (16) years of age; and
- violates section 2 [IC 9-19-10-2] of this chapter;

commits a Class D infraction.

(b) The bureau may not assess points under the point system for Class D infractions under this section.

*As added by P.L. 2-1991, Sec. 7. Amended by P.L. 57-1998, Sec. 3; P.L.116-1998, Sec. 3.*

### Retail Transfers of Vehicles and Belt and Installation Specifications; Violation; Classification

Ind. Code § 9-19-10-9. A person who violates section 5 [IC 9-19-10-5] of this chapter commits a Class C infraction.

*As added by P.L. 2-1991, Sec. 7. Amended by P.L. 262-2013, Sec. 103.*

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## Indiana's Helmet Statute

**Motorcycle Equipment**

### Protective Headgear for Minors

Ind. Code § 9-19-7-1. (a) This section does not apply to an individual who is operating or riding in an autocycle.


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(b) An individual less than eighteen (18) years of age who is operating or riding on a motorcycle or motor driven cycle on the streets or highways shall do the following:

- Wear a helmet that meets the standards established by the United States Department of Transportation under 49 CFR 571.218 as in effect January 1, 1979.
- Wear protective glasses, goggles, or transparent face shields.

*As added by P.L. 2-1991, Sec. 7. Amended by P.L. 221-2014, Sec. 34; P.L. 82-2015, Sec. 3.*

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