

SENATE BILL No. 324

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2; IC 34-13.5.

Synopsis: Torts involving commercial trucking industry. Creates a procedure to bifurcate a trial of a civil action filed against the operator of a commercial motor vehicle and the employer of the operator or the owner of the commercial motor vehicle involved in a motor vehicle accident. Requires certain defendants to file a motion to bifurcate within a specified period of time. Provides that certain evidence may be presented in the first phase of a bifurcated trial. Allows a plaintiff to pursue punitive damages in the second phase of a bifurcated trial.

Effective: July 1, 2023.

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January 12, 2023, read first time and referred to Committee on Judiciary.



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. 324

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 34-6-2-23.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2023]: **Sec. 23.5. "Commercial motor vehicle", for purposes of**
4 **IC 34-13.5, has the meaning set forth in IC 34-13.5-2-1.**
5 SECTION 2. IC 34-6-2-38.2 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2023]: **Sec. 38.2. "Employee defendant", for purposes of**
8 **IC 34-13.5, has the meaning set forth in IC 34-13.5-2-1.**
9 SECTION 3. IC 34-6-2-38.4 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2023]: **Sec. 38.4. "Employer defendant", for purposes of**
12 **IC 34-13.5, has the meaning set forth in IC 34-13.5-2-1.**
13 SECTION 4. IC 34-13.5 IS ADDED TO THE INDIANA CODE AS
14 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
15 2023]:
16 **ARTICLE 13.5. CAUSES OF ACTION: COMMERCIAL**
17 **MOTOR VEHICLES**



1 **Chapter 1. Application**

2 **Sec. 1. This article governs a civil action brought by an**
 3 **individual against an employee defendant and employer defendant**
 4 **seeking damages resulting from a motor vehicle accident involving**
 5 **a commercial motor vehicle.**

6 **Chapter 2. Definitions**

7 **Sec. 1. The following definitions apply throughout this article:**

8 **(1) "Commercial motor vehicle" has the meaning set forth in**
 9 **IC 6-6-4.1-1.**

10 **(2) "Employee defendant" means a defendant in a lawsuit**
 11 **filed under this chapter that was operating a commercial**
 12 **motor vehicle when the accident occurred and is employed by**
 13 **an employer defendant.**

14 **(3) "Employer defendant" means:**

15 **(A) the owner of a commercial motor vehicle; or**

16 **(B) the employer of the person operating a commercial**
 17 **motor vehicle;**

18 **that is a defendant in a lawsuit filed under this chapter.**

19 **Chapter 3. Bifurcation of Trial**

20 **Sec. 1. The court shall bifurcate an action if a defendant files a**
 21 **motion requesting bifurcation and the motion is filed:**

22 **(1) not later than one hundred twenty (120) days after the**
 23 **employer defendant's first answer is filed; or**

24 **(2) not later than thirty (30) days after the plaintiff files an**
 25 **amended complaint adding a new claim or cause of action**
 26 **against the employer defendant that is filing the motion to**
 27 **bifurcate.**

28 **Sec. 2. (a) If a trial is bifurcated under section 1 of this chapter,**
 29 **the trier of fact must find the following in the first phase of the**
 30 **trial:**

31 **(1) Whether the employee defendant was negligent in the**
 32 **operation of the commercial motor vehicle.**

33 **(2) The amount of compensatory damages to be awarded to**
 34 **the plaintiff.**

35 **(b) If the trier of fact determines that an employee defendant**
 36 **was negligent under subsection (a), this finding may be presented**
 37 **as evidence in the second phase of the bifurcated trial if the**
 38 **plaintiff has also asserted a negligence claim against an employer**
 39 **defendant that requires a finding by the trier of fact that the**
 40 **employee defendant was negligent in operating the commercial**
 41 **motor vehicle.**

42 **(c) An employer defendant's liability for damages caused by the**



1 ordinary negligence of the employee defendant may only be based
 2 upon respondeat superior if the employer defendant stipulated
 3 within the time frame described in section 1 of this chapter that, at
 4 the time of the accident, the operator of the commercial motor
 5 vehicle was:

- 6 (1) an employee of the employer defendant; and
 7 (2) the employee was acting within the scope of employment.

8 Sec. 3. Evidence of an employer defendant's failure to comply
 9 with an applicable local, state, or federal regulation or standard
 10 may be admissible in a bifurcated trial brought under this chapter,
 11 if the evidence:

- 12 (1) is relevant to causation;
 13 (2) is relevant to the proximate cause of the injuries that are
 14 subject of the action and damages sought by the plaintiff; and
 15 (3) unambiguously applies to the employer defendant or is
 16 relevant to a duty of care owed by the employer defendant.

17 Sec. 4. (a) Except as provided in subsection (b), a plaintiff may
 18 not present evidence of the employer defendant's liability in the
 19 first phase of a trial that is bifurcated under this chapter.

20 (b) If the plaintiff brings a negligent entrustment claim against
 21 the employer defendant in the first phase of the bifurcated trial
 22 and the employer defendant is subject to the federal Motor Carrier
 23 Safety Improvement Act of 1999 (MCSIA) (Public Law
 24 106-159.113 Stat. 1748), the only evidence that may be admissible
 25 as to the employer defendant's liability in the first phase of the
 26 bifurcated trial is the following:

- 27 (1) Whether the employee defendant who was operating the
 28 commercial motor vehicle at the time of the accident:
 29 (A) was licensed to drive the vehicle;
 30 (B) was disqualified from driving a vehicle under
 31 IC 9-24-6.1-7 (disqualified individual operating
 32 commercial motor vehicle), 49 CFR 383.51, 49 CFR 383.52,
 33 or 49 CFR 391.15;
 34 (C) was subject to an out-of-service order, as defined by 49
 35 CFR 390.5;
 36 (D) was driving the vehicle in violation of a license
 37 restriction imposed under 49 CFR 383.95;
 38 (E) had received a certificate of driver's road test from the
 39 employer defendant as required by 49 CFR 391.31 or had
 40 an equivalent certificate or license as provided by 49 CFR
 41 391.33;
 42 (F) had been medically certified as physically qualified to



- 1 operate the vehicle under 49 CFR 391.41;
 2 (G) was operating the vehicle when prohibited from doing
 3 so under:
 4 (i) IC 9-24-6.1-6, IC 9-30-5, or 49 CFR 382.201 (alcohol
 5 concentration);
 6 (ii) 49 CFR 382.205 (on-duty use);
 7 (iii) 49 CFR 382.207 (pre-duty use);
 8 (iv) 49 CFR 382.215 (controlled substances testing);
 9 (v) 49 CFR 395.3 (maximum driving time for
 10 property-carrying vehicles); or
 11 (vi) 49 CFR 395.5 (maximum driving time for
 12 passenger-carrying vehicles);
 13 (H) was texting or using a handheld mobile telephone while
 14 driving the vehicle in violation of IC 9-21-8-59, 49 CFR
 15 392.80, or 49 CFR 392.82;
 16 (I) had provided the employer defendant with an
 17 application for employment as required by 49 CFR
 18 391.21(a) if the accident occurred on or before the one (1)
 19 year anniversary of the date the employee defendant began
 20 employment with the employer defendant; and
 21 (J) had refused to submit to a controlled substance test as
 22 required by:
 23 (i) 49 CFR 382.303 (post-accident testing);
 24 (ii) 49 CFR 382.305 (random testing);
 25 (iii) 49 CFR 382.307 (reasonable suspicion testing);
 26 (iv) 49 CFR 382.309 (return-to-duty testing); or
 27 (v) 49 CFR 382.311 (follow-up testing);
 28 during the two (2) years preceding the date of the accident.
 29 (2) Whether the employer defendant:
 30 (A) allowed the employee defendant to operate the
 31 employer's commercial motor vehicle at the time of the
 32 accident in violation of:
 33 (i) IC 9-24-6.1-6, IC 9-30-5, or 49 CFR 382.201 (alcohol
 34 concentration);
 35 (ii) 49 CFR 382.205 (on-duty use);
 36 (iii) 49 CFR 382.207 (pre-duty use);
 37 (iv) 49 CFR 382.215 (controlled substances testing);
 38 (v) 49 CFR 382.701(d) (drug and alcohol clearinghouse);
 39 (vi) 49 CFR 395.3 (maximum driving time for
 40 property-carrying vehicles); or
 41 (vii) 49 CFR 395.5 (maximum driving time for
 42 passenger-carrying vehicles);



1 **(B) had complied with 49 CFR 382.301 (pre-employment**
 2 **testing) in regard to controlled substance testing of the**
 3 **employee defendant if:**

4 **(i) the employee defendant was impaired because of the**
 5 **use of a controlled substance at the time of the accident;**
 6 **and**

7 **(ii) the accident occurred within one hundred eighty**
 8 **(180) days of the date that the employee defendant began**
 9 **employment with the employer defendant;**

10 **(C) had made the investigations and inquiries as provided**
 11 **by 49 CFR 391.23(a) in regard to the employee defendant**
 12 **if the accident occurred on or before the one (1) year**
 13 **anniversary of the date the employee defendant began**
 14 **employment with the employer defendant; and**

15 **(D) was subject to an out-of-service order, as defined by 49**
 16 **CFR 390.5, at the time of the accident.**

17 **Sec. 5. In either part of a bifurcated trial brought under this**
 18 **chapter, evidence of a photograph or video of:**

19 **(1) a motor vehicle;**

20 **(2) a commercial motor vehicle; or**

21 **(3) an object involved in the motor vehicle accident that is the**
 22 **subject of the action;**

23 **may be admissible without expert testimony, except as necessary**
 24 **to authenticate the photograph or video.**

25 **Sec. 6. In the second part of a bifurcated trial brought under**
 26 **this chapter, the trier of fact may determine the following:**

27 **(1) whether the employer defendant is liable for the claims**
 28 **filed against it; and**

29 **(2) the amount of punitive damages that may be awarded to**
 30 **the plaintiff.**

