

# SENATE BILL No. 414

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-13-10.

**Synopsis:** Recovery of litigation expenses. Requires a court to award reasonable litigation expenses to the prevailing party in a civil action brought against that party by a governmental entity if the court finds that the civil action was brought by the governmental entity without substantial justification.

**Effective:** July 1, 2017.

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January 10, 2017, read first time and referred to Committee on Judiciary.

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First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

# SENATE BILL No. 414



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 34-13-10 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]:  
4 **Chapter 10. Payment of Litigation Expenses by Governmental**  
5 **Entities**  
6 **Sec. 1. This chapter does not apply to an action brought under**  
7 **IC 24-1 concerning restraint of trade.**  
8 **Sec. 2. As used in this chapter, "governmental entity" means an**  
9 **agency, department, or board exercising a regulatory function of**  
10 **the state or a political subdivision of the state.**  
11 **Sec. 3. (a) As used in this chapter, "prevail" means to obtain a**  
12 **favorable final judgment in an action:**  
13 **(1) on substantially all counts or charges in the action; and**  
14 **(2) with respect to the most significant issue or set of issues**  
15 **presented in the action;**  
16 **after the right to all appeals has been exhausted.**  
17 **(b) The term does not include the settlement of an action, either**



1 by stipulation, consent decree, or otherwise, regardless of when the  
2 settlement occurs.

3 **Sec. 4. As used in this chapter, "reasonable litigation expenses"**  
4 **means:**

- 5 (1) court costs;
- 6 (2) administrative hearing costs;
- 7 (3) attorney's fees; and
- 8 (4) witness fees;

9 that a court finds were reasonably incurred by a party in opposing  
10 a civil action or administrative action brought against the party by  
11 a governmental entity.

12 **Sec. 5. If:**

- 13 (1) a governmental entity brings a civil action against a party  
14 that involves the regulatory functions of the governmental  
15 entity;
- 16 (2) the party prevails in the civil action; and
- 17 (3) the court finds that the civil action was brought by the  
18 governmental entity without substantial justification;

19 the court shall award reasonable litigation expenses to the party.

20 **Sec. 6. If:**

- 21 (1) a governmental entity makes a final administrative  
22 decision concerning a party that:
- 23 (A) involves the regulatory functions of the governmental  
24 entity; and
- 25 (B) is appealed under IC 4-21.5-5 by the party;
- 26 (2) the party prevails in the appeal; and
- 27 (3) a court finds that the administrative action that led to the  
28 final administrative decision was undertaken without  
29 substantial justification;

30 the court shall award reasonable litigation expenses to the party.

31 **Sec. 7. A party must exhaust all administrative remedies**  
32 **available to the party before the party may be awarded reasonable**  
33 **litigation expenses under this chapter.**

34 **Sec. 8. If a governmental entity is required to pay reasonable**  
35 **litigation expenses under this chapter, the expenses must be paid**  
36 **from money in the regular operating budget of the governmental**  
37 **entity.**

