

HOUSE BILL No. 1111

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-14-10; IC 34-11-2-14; IC 34-30-2-35.9.

Synopsis: Protections for community emergency response teams. Provides immunity from civil liability for community emergency response team (CERT) members performing CERT functions. Prohibits a public or private employer from disciplining an employee who is a CERT member for being absent from or leaving work when the employee is performing CERT functions, and allows a civil action against an employer who disciplines an employee for this reason. Authorizes a public or private employer to: (1) request proof that the employee was performing CERT functions when absent from work; and (2) require the employee to notify the employer of the expected absence before the employee's scheduled start time. Provides that a private or public employer other than the state is not required to pay salary or wages for time away from employment spent performing CERT functions. Specifies that the agent of a public employer other than the state who has authorized an absence for CERT purposes has not committed ghost employment.

Effective: July 1, 2014.

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January 9, 2014, read first time and referred to Committee on Employment, Labor and Pensions.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1111



A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-14-10 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]:
4 **Chapter 10. Community Emergency Response Teams**
5 **Sec. 1. As used in this chapter, "CERT functions" means**
6 **functions performed:**
7 (1) by a CERT member;
8 (2) at the direction of a CERT leader; and
9 (3) following a declaration of disaster or emergency.
10 **Sec. 2. As used in this chapter, "CERT leader" means the**
11 **manager of a community emergency response team.**
12 **Sec. 3. As used in this chapter, "CERT member" means an**
13 **individual who is trained through a CERT program.**
14 **Sec. 4. As used in this chapter, "CERT program" refers to a**
15 **program that is:**
16 (1) sponsored by a local sponsoring agency; and



1 (2) registered with the Federal Emergency Management
2 Agency as an official CERT program.

3 **Sec. 5.** As used in this chapter, "community emergency response
4 team" or "CERT" means a volunteer resource that:

5 (1) is created by a local sponsoring agency through a CERT
6 program; and

7 (2) functions as part of the local sponsoring agency's
8 capability following a declaration of disaster or emergency.

9 **Sec. 6.** As used in this chapter, "disaster" has the meaning set
10 forth in IC 10-14-3-1.

11 **Sec. 7.** As used in this chapter, "local sponsoring agency"
12 includes the following:

13 (1) A unit (as defined in IC 36-1-2-23).

14 (2) A fire protection district established under IC 36-8-11.

15 (3) A provider unit (as defined in IC 36-8-19-3) acting on
16 behalf of a fire protection territory established under
17 IC 36-8-19.

18 (4) A local emergency management organization.

19 (5) Other local public safety or emergency management
20 agencies designated by the director.

21 **Sec. 8.** All immunities from liability available to Indiana
22 political subdivisions, other units of local government in Indiana,
23 and their officers, agents, and employees within Indiana are
24 extended to a CERT member who is:

25 (1) performing a CERT role in response to a disaster or
26 emergency; or

27 (2) engaged in CERT training or exercises under a CERT
28 program.

29 **Sec. 9.** (a) This section does not apply to an employee of the state
30 subject to IC 4-15-10-7.

31 (b) This section applies to an employee of a political subdivision
32 who:

33 (1) is a CERT member; and

34 (2) has notified the employee's employer in writing that the
35 employee is a CERT member.

36 (c) The political subdivision employer may not discipline an
37 employee:

38 (1) for being absent from employment by reason of
39 performing CERT functions in response to a disaster or an
40 emergency that was declared before the time that the
41 employee was to report to employment;

42 (2) for leaving the employee's duty station to perform CERT



1 functions if the employee has secured authorization from the
 2 employee's supervisor to leave the duty station in response to
 3 a disaster or emergency that is declared after the employee
 4 has reported to work; or

5 (3) for:

6 (A) an injury; or

7 (B) an absence from work because of an injury;
 8 that occurs while the employee is performing CERT
 9 functions.

10 However, for each instance of performance of CERT functions that
 11 results in an injury to an employee, subdivision (3) applies only to
 12 the period of the employee's absence from work that does not
 13 exceed six (6) months from the date of the injury.

14 (d) The political subdivision employer may require an employee
 15 who has been absent from employment as set forth in subsection (c)
 16 to present a written statement from the CERT leader at the time
 17 of the absence or injury indicating that the employee was
 18 performing CERT functions at the time of the absence or injury.

19 (e) The political subdivision employer may require an employee
 20 who is injured or absent from work as described in subsection
 21 (c)(3) to provide evidence from a physician or other medical
 22 authority showing:

23 (1) treatment for the injury at the time of the absence; and

24 (2) a connection between the injury and the employee's
 25 performance of CERT functions.

26 (f) To the extent required by federal or state law, information
 27 obtained under subsection (e) by a political subdivision employer
 28 must be:

29 (1) retained in a separate medical file created for the
 30 employee; and

31 (2) treated as a confidential medical record.

32 (g) An employee who is disciplined by the employer in violation
 33 of subsection (c) may bring a civil action against the employer in
 34 the county of employment in accordance with IC 34-11-2-14. In the
 35 action, the employee may seek the following:

36 (1) Payment of back wages.

37 (2) Reinstatement to the employee's former position.

38 (3) Fringe benefits wrongly denied or withdrawn.

39 (4) Seniority rights wrongly denied or withdrawn.

40 (h) A public servant who permits or authorizes an employee of
 41 a political subdivision under the supervision of the public servant
 42 to be absent from employment as set forth in subsection (c) is not



1 considered to have committed a violation of IC 35-44.1-1-3(b).

2 Sec. 10. (a) This section applies to an employee of a private
3 employer who:

4 (1) is a CERT member; and

5 (2) has notified the employee's employer in writing that the
6 employee is a CERT member.

7 (b) Except as provided in subsection (c), the employer may not
8 discipline an employee:

9 (1) for being absent from employment by reason of
10 performing CERT functions in response to a disaster or an
11 emergency that was declared before the time that the
12 employee was to report to employment;

13 (2) for leaving the employee's duty station to perform CERT
14 functions if the employee has secured authorization from the
15 employee's supervisor to leave the duty station in response to
16 a disaster or emergency that is declared after the employee
17 has reported to work; or

18 (3) for:

19 (A) an injury; or

20 (B) an absence from work because of an injury;

21 that occurs while the employee is performing CERT
22 functions.

23 However, for each instance of performance of CERT functions that
24 results in an injury to an employee, subdivision (3) applies only to
25 the period of the employee's absence from work that does not
26 exceed six (6) months from the date of the injury.

27 (c) After the employer has received the notification required
28 under subsection (a)(2), the employer may reject the notification
29 from the employee on the grounds that the employee is an essential
30 employee to the employer. If the employer has rejected the
31 notification from the employee:

32 (1) subsection (b) does not apply to the employee; and

33 (2) the employee must promptly notify the CERT leader of the
34 rejection of the notification from the employee.

35 (d) The employer may require an employee who has been absent
36 from employment as set forth in subsection (b) to present a written
37 statement from the CERT leader at the time of the absence or
38 injury indicating that the employee was performing a CERT role
39 at the time of the absence or injury.

40 (e) The employer may require an employee who is injured or
41 absent from work as described in subsection (b)(3) to provide
42 evidence from a physician or other medical authority showing:



- 1 (1) treatment for the injury at the time of the absence; and
 2 (2) a connection between the injury and the performance of
 3 CERT functions.

4 (f) To the extent required by federal or state law, information
 5 obtained under subsection (e) by an employer must be:

- 6 (1) retained in a separate medical file created for the
 7 employee; and
 8 (2) treated as a confidential medical record.

9 Sec. 11. IC 34-30-12-1 (the good Samaritan statute) applies to a
 10 CERT member.

11 Sec. 12. (a) The employer may require an employee who will be
 12 absent from employment as set forth in:

- 13 (1) section 9(c)(1); or
 14 (2) section 10(b)(1);

15 of this chapter to notify the employer before the scheduled start
 16 time for the absence from employment to be excused by the
 17 employer.

18 (b) The employer is not required to pay salary or wages to an
 19 employee who has been absent from employment as set forth in
 20 section 9(c) or 10(b) of this chapter for the time away from the
 21 employee's duty station. The employee may seek remuneration for
 22 the absence from employment by the use of:

- 23 (1) vacation leave;
 24 (2) personal time;
 25 (3) compensatory time off; or
 26 (4) in the case of an absence from employment as set forth in
 27 section 9(c)(3) or 10(b)(3) of this chapter, sick leave.

28 (c) An employer shall administer an absence from employment
 29 as set forth in section 9(c)(3) or 10(b)(3) of this chapter in a manner
 30 consistent with the federal Family and Medical Leave Act of 1993
 31 (29 U.S.C. 2601 et seq.), as amended and in effect on July 1, 2014.

32 Sec. 13. Upon written application, the director may designate an
 33 agency as a local sponsoring agency. The director shall develop
 34 criteria for designating an agency as a local sponsoring agency.

35 SECTION 2. IC 34-11-2-14 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2014]: Sec. 14. An action brought under IC 10-14-10-9(g) against
 38 an employer for disciplining an employee who is absent from work
 39 in order to perform certain community emergency response team
 40 functions must be commenced by the employee within one (1) year
 41 after the date of the disciplinary action.

42 SECTION 3. IC 34-30-2-35.9 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2014]: **Sec. 35.9. IC 10-14-10-8 (Concerning**
3 **community emergency response teams).**

