

## ARTICLE 3. TORT CLAIMS

### Rule 1. Tort Claims (Repealed)

*(Repealed by Office of Attorney General for the State; filed Jun 16, 2011, 8:51 a.m.: 20110713-IR-010110151FRA)*

### Rule 2. Tort Claim Form

#### 10 IAC 3-2-1 Tort claims against the state; form

Authority: IC 34-13-3-6

Affected: IC 5-15-5.1-5; IC 8-15-2-4; IC 8-15-3-7; IC 8-15.7-2-4; IC 9-13-2-73; IC 11-10-8; IC 11-12; IC 12-23; IC 13-11-2-19.3; IC 20-33-8-12; IC 34-6-2-38; IC 34-13-3-3; IC 34-13-3-7; IC 35-33-8; IC 35-46-1-15.1

Sec. 1. (a) A claim for personal injury or property damage against the state of Indiana must be:

- (1) filed on the form prescribed in subsection (b); or
- (2) in writing as prescribed under IC 34-13-3 and this rule.

(b) The claim form is as follows:



NOTICE OF TORT CLAIM FOR  
PROPERTY DAMAGE AND/OR PERSONAL INJURY  
State Form 54668 (3-11)  
Special Investigations Division

OFFICE OF ATTORNEY GENERAL  
ATTN: Tort Claim Investigations  
Government Center South, 5th floor  
302 W. Washington Street  
Indianapolis, IN 46204  
Telephone: (317) 232-6350

- INSTRUCTIONS: Anyone who has a claim for personal injury or property damage against the State of Indiana must either use this form to file a claim or make the claim in writing as prescribed in Indiana Code 34-13-3. Immunities are listed on the back of this form.
1. If applicable, include copies of accident/incident report, vehicle registration, paid receipts for repair or two (2) estimates for repair, medical reports, photographs, and any additional documentation in reference to this matter.
  2. Each person who had a loss should file a separate form.
  3. Sign and date this form.
  4. State statute requires the claim be delivered in person or be sent via Certified or Registered mail to the address in the upper right corner above.
  5. Do not delay making your claim. Indiana law gives you two hundred seventy (270) days after the loss to make a claim, and it must comply with Indiana Code 34-13-3.
  6. Keep a copy of your claim form, receipts, bills, and certified/registered mail receipt.
  7. If your claim is properly filed, the Office of the Attorney General will investigate it and will notify you in writing within ninety (90) days of receipt if your claim is approved. A claim is denied if not approved within ninety (90) days.
  8. The filing of this claim is part of a legal process. If you have any questions about the right way to file a claim, please contact an attorney of your choice. The state's attorneys are not authorized by law to assist you with filing this claim. For your information, a list of actions, or conditions, resulting in nonliability pursuant to Indiana Code 34-13-3 are shown on the back of this form.

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| CLAIMANT INFORMATION  |  |                       |                       |                                     |
|---|--|-----------------------|-----------------------|-------------------------------------|
| Name  | Home Telephone   | Work Telephone        | Cellular Telephone    |                                     |
| Address at Time of Loss (number and street, city, state, and ZIP code)<br>_____                       | Email Address  |                       |                       |                                     |
| Current Address (if different from above)<br>_____  | Driver License Number  |                       | Issuing State         |                                     |
|   | Vehicle License Plate Number (if involved)                                 |                       | Issuing State         |                                     |
| LOSS INFORMATION  |  |                       |                       |                                     |
| Date of Loss (m/d/yy)   | Time of Loss<br><input type="checkbox"/> AM<br><input type="checkbox"/> PM | Dollar Amount of Loss | State Agency Involved | State Vehicle Commission (if known) |
| Exact Location of Loss (include town, street and nearest crossroad)<br>_____                          |  |                       |                       | Loss County                         |
| Names/Addresses of All Persons Involved (if known)<br>_____   |  |                       |                       |                                     |
| Alleged Negligence<br>_____   |  |                       |                       |                                     |
| Explanation of what happened (use additional sheets if necessary)<br>_____<br>_____<br>_____<br>_____ |  |                       |                       |                                     |

Please read: I swear and affirm under the penalties for perjury that the foregoing information is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Claimant's Signature Date (m/d/yy)

Immunity of governmental entity or employee

A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

- (1) The natural condition of unimproved property.
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.
- (3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.
- (4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.
- (5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme

sport area are marked with:

- (A) a set of rules governing the use of the extreme sport area;
- (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and
- (C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

- (6) The initiation of a judicial or an administrative proceeding.
- (7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.
- (8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.
- (9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.
- (10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.
- (11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.
- (12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.
- (13) Entry upon any property where the entry is expressly or impliedly authorized by law.
- (14) Misrepresentation if unintentional.
- (15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.
- (16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.
- (17) Injury to the person or property of a person under supervision of a governmental entity and who is:
  - (A) on probation; or
  - (B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.
- (18) Design of a highway (as defined in IC 9-13-2-73), toll road project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.
- (19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.
- (20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-33-8-12.
- (21) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.
- (22) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:
  - (A) the loss is a result of reckless conduct; or
  - (B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.
- (23) The operation of an off-road vehicle (as defined in IC 14-8-2-185) by a nongovernmental employee, or by a governmental employee not acting within the scope of the employment of the employee, on a public highway in a county road system outside the corporate limits of a city or town, unless the loss is the result of an act or omission amounting to:
  - (A) gross negligence;
  - (B) willful or wanton misconduct; or

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(C) intentional misconduct.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain highways in a reasonably safe condition for the operation of motor vehicles licensed by the bureau of motor vehicles for operation on public highways.

*(Office of Attorney General for the State; 10 IAC 3-2-1; filed Jun 16, 2011, 8:51 a.m.: 20110713-IR-010110151FRA)*

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