February 13, 1998

ENGROSSED
HOUSE BILL No. 1011

DIGEST OF HB1011 (Updated February 11, 1998 11:47 am - DI 51)

Citations Affected: Numerous provisions throughout the Indiana code.

Synopsis: Title 34 Recodification. Recodifies Title 34 concerning civil law and procedure. Makes conforming changes throughout the Indiana Code. (The introduced version of this bill was recommended by the Code Revision Commission.)

Effective: July 1, 1998.

Kuzman, Foley, Villalpando, Behning

(SENATE SPONSOR — KENLEY)

January 6, 1998, read first time and referred to Committee on Judiciary.
January 20, 1998, amended, reported — Do Pass.
January 26, 1998, read second time, ordered engrossed.
January 27, 1998, engrossed. Read third time, passed. Yeas 97, nays 2.

SENATE ACTION

January 30, 1998, read first time and referred to Committee on Judiciary.
February 12, 1998, reported favorably — Do Pass.

C o p y

February 13, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

C o p y

ENGROSSED
HOUSE BILL No. 1011

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

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

SECTION 1. IC 34-6 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 6. DEFINITIONS

Chapter 1. General Provisions

Sec. 1. Except as otherwise provided, the definitions in this article apply throughout this title.

Chapter 2. Definitions

Sec. 1."Abuse", for purposes of IC 34-26-2, includes conduct or threatened conduct that if completed would cause:

(1) bodily injury as defined by IC 35-41-1; or

(2) damage to property.

Sec. 2. (a) "Actual damages", for purposes of IC 34-15-3, includes all damages that the plaintiff may have suffered in respect to the plaintiff's character, property, business, trade, profession, or occupation.

(b)"Actual damages", for purposes of IC 34-15-4, means all damages that the plaintiff may have suffered in respect to the plaintiff's reputation, property, business, trade, profession, or occupation.

(c) The phrase does not include any other damages.

Sec. 3. "Advance payment", for purposes of IC 34-44-2, means a payment made:

(1) by:

(A) the defendant in an action to recover damages for personal injuries, wrongful death, or property damage; or

(B) the defendant's insurance company; and

(2) to or for the plaintiff or any other person.

Sec. 4. "Advanced emergency medical technician", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-3.

Sec. 5. (a)"Agency", for purposes of IC 34-30-9, has the meaning set forth in IC 4-20.5-1-3. The term includes any institution supported by taxes.

(b) "Agency", for purposes of IC 34-52-2, refers to any elected official or other authority exercising any of the executive, including administrative, authority of the state. The term does not include the legislative or judicial department of state government or a political subdivision.

Sec. 6. "Aggrieved person", for purposes of IC 34-24-2, means any of the following:

(1) A person who has an interest in property or in an enterprise that:

(A) is the object of corrupt business influence (IC 35-45-6-2); or

(B) has suffered damages or harm as a result of corrupt business influence (IC 35-45-6-2).

(2) An individual whose personal safety is threatened by criminal gang (as defined in section 32 of this chapter) activity.

(3) An individual or a business whose property value or business activity is negatively affected due to criminal gang (as defined in section 32 of this chapter) activity.

(4) A political subdivision in which criminal gang (as defined in section 32 of this chapter) activity negatively affects the property values or business activity of the political subdivision or the personal safety of the political subdivision's residents.

C o p y

(5) The state.

Sec. 7."Agricultural operation", for purposes of IC 34-19-1-4, includes any facility used for the production of crops, livestock, poultry, livestock products, poultry products, or horticultural products or for the growing of timber.

Sec. 8."Agricultural product", for purposes of IC 34-30-3, means a natural product of a farm, a nursery, a grove, an orchard, a vineyard, a garden, or an apiary. The term includes trees and firewood.

Sec. 9. "Ambulance service", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-4.

Sec. 10. "Annual aggregate", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-5.

Sec. 11."Armory", for purposes of IC 34-30-8, means an armory constructed and operated under IC 10-2-2.

Sec. 12. "Assisting sheriff", for purposes of IC 34-47-4, means the sheriff of a county other than the county in which a writ of attachment has been issued under IC 34-47-4.

Sec. 13."Auctioneer", for purposes of IC 34-55-6, means an auctioneer licensed under IC 25-6.1.

Sec. 14. "Authority", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-6.

Sec. 15. "Authorized persons", for purposes of IC 34-43-1, include:

(1) the patient;

(2) a person authorized by the patient to request the records, if the authorization was made in writing not more than sixty (60) days before the date of the request for the records;

(3) physicians or other professionals within the hospital;

(4) a person entitled to request health records under IC 16-39-1-3;

(5) a coroner who is investigating a death under IC 36-2-14-6; and

(6) any other person designated by order of a court of competent jurisdiction.

Sec. 16."Beverages", for purposes of IC 34-30-8, includes alcoholic beverages.

Sec. 17. "Business", for purposes of IC 34-42, means each business, bank, industry, governmental entity, profession, occupation, and calling of every kind.

Sec. 18."Center", for purposes of IC 34-57-3, means a community dispute resolution center or local program that

C o p y

provides conciliation, mediation, arbitration, or other dispute resolution services.

Sec. 19. "Certified copy of a certificate of title", for purposes of IC 34-40-4, means a document that is:

(1) a copy of a certificate of title for a motor vehicle, by whatever name designated, that is issued by the bureau of motor vehicles or a governmental entity in another state;

(2) prepared from a record of the governmental entity issuing the certificate of title; and

(3) certified by the officer having legal custody of the record described in subdivision (2) or the officer's deputy.

Sec. 20."Charitable entity", for purposes of IC 34-30-5, means any entity exempted from the Indiana gross income tax under IC 6-2.1-3-20.

Sec. 21. (a) "Child", for purposes of IC 34-23-2, has the meaning set forth in IC 34-23-2.

(b) "Child", for purposes of IC 34-30-11, includes a child of any age.

(c) "Child", for purposes of IC 34-31-4, means an unemancipated person who is less than eighteen (18) years of age.

Sec. 22. "Cognovit note", for purposes of IC 34-54-4, means a negotiable instrument or other written contract to pay money that contains a provision or stipulation:

(1) giving to any person a power of attorney, or authority as attorney, for the maker, endorser, assignor, or other person liable on the negotiable instrument or contract, and in the name of the maker, endorser, assignor, or other obligor:

(A) to appear in any court, whether of record or inferior; or

(B) to waive personal service of process;

in any action to enforce payment of money or any part of the money claimed to be due;

(2) authorizing or purporting to authorize an attorney, agent, or other representative, however designated, to confess judgment on the instrument for a sum of money when the sum is to be ascertained, or the judgment is to be rendered or entered otherwise than by action of court upon a hearing after personal service upon the debtor, whether with or without attorney's fee; or

(3) authorizing or purporting to authorize an attorney, agent, or representative to:

(A) release errors or the right of appeal from any

C o p y

judgment; or

(B) consent to the issuance of execution on the judgment.

Sec. 23. "College, university, or junior college", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-7.

Sec. 24. "Commissioner", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-8.

Sec. 25. "Community health center", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-9.

Sec. 26. "Community mental health center", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-10.

Sec. 27. “Community mental retardation center”, for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-11.

Sec. 28.(a) "Compensation", for purposes of section 127 of this chapter, does not include payments:

(1) to reimburse the expenses of a qualified director (as defined in section 127 of this chapter); and

(2) for per diem.

(b) "Compensation", for purposes of IC 34-30-18, means anything of value given as payment for performing a function. The term does not include:

(1) payment for expenses, prizes, or trophies; or

(2) a payment to an individual of fifteen dollars ($15) or less for performing one (1) or more functions during a day.

(c) "Compensation", for purposes of IC 34-30-19, does not include the following:

(1) Reimbursement or payment of reasonable expenses incurred for the benefit of a sports or leisure activity.

(2) Any award, meal, or other gift that does not exceed one hundred dollars ($100) in value and is given as a token of appreciation or recognition.

(3) Any per diem payment that does not exceed fifty dollars ($50) for personal services as a referee, umpire, judge, or assistant to a referee, umpire, or judge.

Sec. 29. “Consumer", for purposes of IC 34-20, means:

(1) a purchaser;

(2) any individual who uses or consumes the product;

(3) 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

(4) any bystander injured by the product who would reasonably be expected to be in the vicinity of the product during its reasonably expected use.

C o p y

Sec. 30. "Cost of the periodic payments agreement", for purposes of IC 34-18-14, has the meaning set forth in IC 34-18-14-1.

Sec. 31.(a) "Court", for purposes of IC 34-51-4, refers to the court awarding a judgment.

(b) "Court", for purposes of IC 34-57-2, has the meaning set forth in IC 34-57-2-17.

Sec. 32. "Criminal gang", for purposes of section 6 of this chapter, has the meaning set forth in IC 35-45-9-1.

Sec. 33."Daily newspaper", for purposes of IC 34-15-4, means a newspaper that publishes five (5) or more issues each week.

Sec. 34."Department", for purposes of IC 34-13-3-7, refers to the department of correction.

Sec. 35. "Economically feasible", for purposes of IC 34-55-6, means a finding by the court that:

(1) a reasonable probability exists that with the use of auctioneer services a valid and enforceable bid will be made at the execution for a sale price equal to or greater than the amount of the judgment and the costs and expenses necessary to its satisfaction, including the costs of the auctioneer; and

(2) no such probability exists without the use of an auctioneer.

Sec. 36."Emergency", for purposes of IC 34-30-6, means an occurrence or an imminent threat of an occurrence that involves a hazardous substance or compressed gas and that creates the possibility of harm to any person, to property, or to the environment.

Sec. 37. "Emergency medical technician", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-12.

Sec. 38. (a)"Employee" and "public employee", for purposes of IC 34-13-2, IC 34-13-3, IC 34-13-4, and IC 34-30-14, mean a person presently or formerly acting on behalf of a governmental entity, whether temporarily or permanently or with or without compensation, including members of boards, committees, commissions, authorities, and other instrumentalities of governmental entities, volunteer firefighters (as defined in IC 36-8-12-2), and elected public officials.

(b) The term also includes attorneys at law whether employed by the governmental entity as employees or independent contractors and physicians licensed under IC 25-22.5 and optometrists who provide medical or optical care to confined

C o p y

offenders (as defined in IC 11-8-1) within the course of their employment by or contractual relationship with the department of correction. However, the term does not include:

(1) an independent contractor (other than an attorney at law, a physician, or an optometrist described in this section);

(2) an agent or employee of an independent contractor;

(3) a person appointed by the governor to an honorary advisory or honorary military position; or

(4) a physician licensed under IC 25-22.5 with regard to a claim against the physician for an act or omission occurring or allegedly occurring in the physician's capacity as an employee of a hospital.

Sec. 39. "Enterprise", for purposes of IC 34-24-2, has the meaning set forth in IC 35-45-6-1.

Sec. 40."Equine", for purposes of IC 34-31-5, means a horse, pony, mule, donkey, or hinny.

Sec. 41. (a)"Equine activity", for purposes of IC 34-31-5, includes the following:

(1) Equine shows, fairs, competitions, performances, or parades that involve equines and any of the equine disciplines, including dressage, hunter and jumper horse shows, grand prix jumping, three (3) day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, English and western performance riding, endurance trail riding and western games, and hunting.

(2) Equine training or teaching activities.

(3) Boarding equines.

(4) Riding, driving, inspecting, or evaluating an equine, whether or not monetary consideration or anything of value is exchanged.

(5) Rides, trips, hunts, or other equine activities of any type (even if informal or impromptu) that are sponsored by an equine activity sponsor.

(6) Placing or replacing horseshoes on an equine.

(b) The term does not include being a spectator at an equine activity.

Sec. 42."Equine activity sponsor", for purposes of IC 34-31-5, means a person who sponsors, organizes, or provides facilities for an equine activity.

Sec. 43."Equine professional", for purposes of IC 34-31-5, means a person who, for compensation:

(1) instructs a participant on riding, driving, or being a

C o p y

passenger upon an equine;

(2) rents to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine; or

(3) rents equipment or tack to a participant.

Sec. 44.(a) "Evaluation of patient care", for purposes of IC 34-30-15, relates to:

(1) the accuracy of diagnosis;

(2) the propriety, appropriateness, quality, or necessity of care rendered by a professional health care provider; and

(3) the reasonableness of the utilization of services, procedures, and facilities in the treatment of individual patients.

(b)The term does not relate to charges for services or to methods used in arriving at diagnoses.

Sec. 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:

(1) Unreasonable failure to avoid an injury or to mitigate damages.

(2) 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, 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.

Sec. 46. "Fees or other expenses", for purposes of IC 34-52-2, include:

(1) the reasonable expenses of expert witnesses that are found by a court under IC 34-52-2 to be necessary for the preparation of the petitioner's case;

(2) the reasonable costs of any:

(A) study;

(B) analysis;

(C) engineering report; or

(D) test project;

that are found by a court under IC 34-52-2 to be necessary

C o p y

for the preparation of the petitioner's case;

(3) any reasonable discovery expenses, that are found by a court under IC 34-52-2 to be necessary for the preparation of the petitioner's case; and

(4) reasonable attorney's fees.

Sec. 47."Food item", for purposes of IC 34-30-5, means any item that may be ingested as a normal part of the human diet. The term includes food that was prepared for serving by a food source (as defined in section 48 of this chapter) but not served by the food source.

Sec. 48."Food source", for purposes of IC 34-30-5, means any of the following:

(1) A restaurant.

(2) A cafeteria.

(3) A hospital.

(4) A hotel.

(5) A caterer.

(6) A public or private school, college, or university.

(7) A fraternal organization or veterans organization.

(8) Any other person that prepares and serves food to individuals in the ordinary course of that person's business.

Sec. 49. "Governmental entity", for purposes of IC 34-13-2, IC 34-13-3, and IC 34-13-4, means the state or a political subdivision of the state.

Sec. 50."Grant recipient", for purposes of IC 34-57-3, means a nonprofit corporation or an organization that administers a community dispute resolution center under IC 34-57-3.

Sec. 51. (a)"Gratuitously renders emergency care", for purposes of IC 34-30-12-1, means the giving of emergency care:

(1) that was volunteered without legal obligation on the part of the person rendering the emergency care; and

(2) for which the person rendering the emergency care does not expect remuneration.

(b) Emergency care may not be considered to be gratuitously rendered emergency care solely because of the failure to send a bill for the emergency care.

Sec. 52. "Hazardous substance", for purposes of IC 34-30-6, means:

(1) a material or waste that has been determined to be hazardous or potentially hazardous to any individual, to property, or to the environment by the United States

C o p y

Environmental Protection Agency, the federal Nuclear Regulatory Commission, the United States Department of Transportation, the solid waste management board, or the United States Occupational Safety and Health Agency or any agent or designee of any of the above mentioned boards, agencies, or commission; or

(2) any substance that may be potentially hazardous to any person, to property or to the environment.

Sec. 53. "Health care", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-13.

Sec. 54. "Health care provider", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-14.

Sec. 55."Health care services", for purposes of IC 34-30-13, has the meaning set forth in IC 27-13-1-18(a).

Sec. 56. "Health facility", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-15.

Sec. 57."Hitchhiker", for purposes of IC 34-30-11, means a passenger who has solicited a ride in violation of IC 9-21-17-16.

Sec. 58."Homeowners association", for purposes of section 127 of this chapter, means a corporation or other entity that:

(1) is organized and operated exclusively for the benefit of two (2) or more persons who each own a dwelling in fee simple; and

(2) acts, in accordance with the articles, bylaws, and other documents governing the entity, to:

(A) acquire, transfer, manage, repair, maintain, or engage in construction on or in the land and improvements on the land related to the use of the dwellings owned by the members of the corporation;

(B) purchase insurance to cover a casualty or an activity on or in the land and improvements on the land;

(C) engage in an activity incidental to an activity described in clause (A) or (B); or

(D) engage in more than one (1) of the activities described in clauses (A) through (C).

Sec. 59. "Hospital", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-16.

Sec. 60. "Hospital medical record", for purposes of IC 34-43-1, means the hospital's clinical record maintained on each hospital patient.

Sec. 61. "Illegal drug", for purposes of IC 34-24-4, means a

C o p y

drug that is illegal to distribute under state law.

Sec. 62. "Illegal drug market", for purposes of IC 34-24-4, means the support system of illegal drug related operations, from production to retail sales, through which an illegal drug reaches a drug user.

Sec. 63. "Illegal drug market target community", for purposes of IC 34-24-4, means the following areas where a person participates in the illegal drug market:

(1) The county in which the person's place of participation is located if the person violates a statute concerning possession or dealing of an illegal drug that is punishable as a Class D felony.

(2) The county described in subdivision (1) plus all counties with a border contiguous to the county if the person violates a statute concerning possession or dealing of an illegal drug that is punishable as a Class C felony.

(3) The counties described in subdivision (2) plus all counties with a border contiguous to those counties if the person violates a statute concerning possession or dealing of an illegal drug that is punishable as a Class B felony.

(4) Indiana if the person violates a statute in Indiana concerning possession or dealing of an illegal drug that is punishable as a Class A felony.

Sec. 64."In good faith", for purposes of IC 34-30-15, refers to an act taken:

(1) without malice;

(2) after a reasonable effort to obtain the facts of the matter; and

(3) in the reasonable belief that the action taken is warranted by the facts known.

Sec. 65. "Incapacitated", for purposes of IC 34-13-3, has the meaning set forth in IC 29-3-1-7.5.

Sec. 66."Indecent nuisance", for purposes of IC 34-19-2, means a:

(1) place (as defined in section 107 of this chapter) in or upon which prostitution (as described in IC 35-45-4);

(2) public place (as defined in section 125 of this chapter) in or upon which deviate sexual conduct (as defined in IC 35-41-1) or sexual intercourse (as defined in IC 35-41-1); or

(3) public place (as defined in section 125 of this chapter) in

C o p y

or upon which the fondling of the genitals of a person;

is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose.

Sec. 67. "Individual drug user", for purposes of IC 34-24-4, means an individual whose illegal drug use is the basis of an action brought under IC 34-24-4 (or IC 34-1-70 before its repeal).

Sec. 68."Industrial operation", for purposes of IC 34-19-1-4, includes any facility used for the:

(1) manufacture of a product from other products;

(2) transformation of a material from one (1) form to another;

(3) mining of a material and related mine activities; or

(4) storage or disposition of a product or material.

Sec. 69."Inherent risks of equine activities", for purposes of IC 34-31-5, means the dangers or conditions that are an integral part of equine activities, including the following:

(1) The propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around the equine.

(2) The unpredictability of an equine's reaction to such things as sound, sudden movement, unfamiliar objects, people, or other animals.

(3) Hazards such as surface and subsurface conditions.

(4) Collisions with other equines or objects.

(5) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within the participant's ability.

Sec. 70. "Insured", for purposes of IC 34-53, means a person insured by an insurer.

Sec. 71. (a) "Insurer", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-17.

(b) "Insurer", for purposes of IC 34-53, has the meaning set forth in IC 27-1-2-3.

Sec. 72. "Law", as for example "the law relating to other civil actions", for purposes of IC 34-13-5, means the statutes, including but not limited to IC 34-13-5 (and IC 34-4-17 before its repeal), and any applicable rules of the Indiana supreme court on any subject.

Sec. 73."Law enforcement costs", for purposes of IC 34-24-1, means:

C o p y

(1) expenses incurred by the law enforcement agency that makes a seizure under IC 34-24-1 (or IC 34-4-30.1 before its repeal) for the criminal investigation associated with the seizure;

(2) repayment of the investigative fund of the law enforcement agency that makes a seizure under IC 34-24-1 to the extent that the agency can specifically identify any part of the money as having been expended from the fund; and

(3) expenses of the prosecuting attorney associated with the costs of proceedings associated with the seizure and the offenses related to the seizure.

Sec. 74. (a)"Locality", for purposes of IC 34-19-1-4, means the specific area of land upon which an:

(1) agricultural operation (as defined in section 7 of this chapter); or

(2) industrial operation (as defined in section 68 of this chapter);

is conducted.

(b)"Locality", for purposes of IC 34-19-1-5, means the following:

(1) The specific area of land upon which a public use airport operation (as defined in section 126 of this chapter) is conducted.

(2) The airport imaginary surfaces as described in IC 8-21-10-8.

Sec. 75. (a) "Loss", for purposes of IC 34-13-3, means injury to or death of a person or damage to property.

(b) "Loss", for purposes of IC 34-30-6, means injury to or death of a human being or damage to property or to the environment.

Sec. 76. "Malpractice", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-18.

Sec. 77. (a) "Manufacturer", for purposes of IC 34-20, means a person or an entity who designs, assembles, fabricates, 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:

(1) has actual knowledge of a defect in a product;

(2) creates and furnishes a manufacturer with specifications relevant to the alleged defect for producing the product or

C o p y

who otherwise exercises some significant control over all or a portion of the manufacturing process;

(3) 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;

(4) is owned in whole or significant part by the manufacturer; or

(5) 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.

Sec. 78."Mediation", for purposes of IC 34-57-3, means a process where at least two (2) disputing parties choose to be guided to a mutually agreeable solution with the aid of a mediator.

Sec. 79."Mediator", for purposes of IC 34-57-3, means a neutral and impartial person who assists in the resolution of a dispute through the mediation process.

Sec. 80."Mental health service provider", for purposes of IC 34-30-16, means any of the following:

(1) A physician licensed under IC 25-22.5.

(2) A hospital licensed under IC 16-21.

(3) A private institution licensed under IC 12-25.

(4) A psychologist licensed under IC 25-33.

(5) A school psychologist licensed by the Indiana state board of education.

(6) A university or college counseling center under the direction of a licensed psychologist, physician, or mental health professional.

(7) A registered nurse or licensed practical nurse licensed under IC 25-23.

(8) A clinical social worker licensed under IC 25-23.6-5-2.

(9) A partnership, a limited liability company, a corporation, or a professional corporation (as defined in IC 23-1.5-1-10) whose partners, members, or shareholders are mental health service providers described in subdivisions (1) through (6).

(10) A community mental health center (as defined in IC 12-7-2-38).

(11) A program for the treatment, care, or rehabilitation of alcohol abusers or drug abusers that is:

(A) certified under IC 12-23-1-6; or

(B) created and funded under IC 12-23-14.

C o p y

(12) A state institution (as defined in IC 12-7-2-184).

(13) A managed care provider (as defined in IC 12-7-2-127(b)).

Sec. 81. "Midwife", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-19.

Sec. 82. "Migrant health center", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-20.

Sec. 83."Minor", for purposes of IC 34-28-3, means a person less than eighteen (18) years of age.

Sec. 84. "Motor vehicle", for purposes of IC 34-40-4, has the meaning set forth in IC 9-13-2-105(a).

Sec. 85."Moving traffic violation", for purposes of IC 34-28-5, means a violation of:

(1) a statute defining an infraction; or

(2) an ordinance;

that applies when a motor vehicle is in motion.

Sec. 86. "Municipal corporation", for purposes of IC 34-13-5, means:

(1) a:

(A) local subdivision of the state; or

(B) public instrumentality or public corporate body created by state law;

including but not limited to cities, towns, townships, counties, school corporations, special taxing districts, conservancy districts, and any other local public instrumentality or corporation that has the right to sue and be sued;

(2) a corporate or other entity that leases a public improvement to a municipal corporation; or

(3) the governing body of a municipal corporation and its members and officers in their official capacity.

Sec. 87."News service", for purposes of IC 34-15-4, means an entity that is either a membership association or a corporation with subscribers that:

(1) gathers and transmits news to its members or subscribers; and

(2) maintains an office in Indiana.

Sec. 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.

Sec. 89. "Offender", for purposes of IC 34-13-3-7, means a

C o p y

person who is committed to the department of correction or was committed to the department of correction.

Sec. 90. "Offeror", for purposes of IC 34-50, means a party to a civil action who makes a qualified settlement offer (as defined in section 128 of this chapter) to a recipient (as defined in section 129 of this chapter) who is an opposing party in the civil action.

Sec. 91.(a) "Operator", for purposes of IC 34-30-3, means a person who is an owner, a lessee, a tenant, or an occupant of land or premises that are used in the production of agricultural products.

(b)"Operator", for purposes of IC 34-31-6, means a person or an entity that owns, manages, controls, directs, or has operational responsibility for a roller skating rink.

Sec. 92. "Paramedic", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-21.

Sec. 93.(a) "Parents", for purposes of IC 34-28-3, means:

(1) the child's birth mother and father who:

(A) is listed as the father on the birth certificate;

(B) is presumed by law under IC 31-14-7 to be the child's father; or

(C) has established paternity with a court order;

(2) in the case of adoption, the adopting father and mother of a child;

(3) where custody of a child has been awarded in a court proceeding to someone other than the mother or father, the court appointed guardian or custodian of the child;

(4) where the child's parents are divorced, the parent to whom the divorce decree or modification awards physical custody or control of the child; or

(5) if the child's parents are living apart, the parent to whom physical custody or control of the child has been awarded by a court order.

(b) The term does not include a natural or adopting parent who has given written consent for the child to be adopted by another (if the child has been adopted by another), nor does the term include a child's parent who has lost custody of the child under subsection (a)(3), (a)(4), or (a)(5).

Sec. 94."Partially emancipated minor", for purposes of IC 34-28-3, means a minor who has been given certain limited authority to contract under IC 34-28-3.

Sec. 95."Participant", for purposes of IC 34-31-5, means a

C o p y

person, whether an amateur or a professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

Sec. 96."Participate", for purposes of IC 34-28-3, means any action a person takes:

(1) according to license or authority of the entity that sanctions a professional automobile or motorcycle racing event; or

(2) by direction or authority of the race organizer of a sanctioned event;

including participation as a driver, mechanic, pit crew member, or unpaid volunteer in and around the pit and race track area.

Sec. 97. (a) "Participate in the illegal drug market", for purposes of IC 34-24-4, means to:

(1) distribute;

(2) possess with an intent to distribute;

(3) commit an act intended to facilitate the marketing or distribution of; or

(4) agree to distribute;

an illegal drug.

(b) The term does not include the purchase or receipt of an illegal drug for personal use only.

Sec. 98. "Patient", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-22.

Sec. 99.(a) "Peer review committee", for purposes of IC 34-30-15, means a committee that:

(1) has the responsibility of evaluation of:

(A) qualifications of professional health care providers;

(B) patient care rendered by professional health care providers; or

(C) the merits of a complaint against a professional health care provider that includes a determination or recommendation concerning the complaint, and the complaint is based on the competence or professional conduct of an individual health care provider, whose competence or conduct affects or could affect adversely the health or welfare of a patient or patients; and

(2) meets the following criteria:

(A) The committee is organized:

(i) by a state, regional, or local organization of professional health care providers or by a nonprofit

Copy

foundation created by the professional organization for purposes of improvement of patient care;

(ii) by the professional staff of a hospital, another health care facility, a nonprofit health care organization (under section 117(23) of this chapter), or a professional health care organization;

(iii) by state or federal law or regulation;

(iv) by a governing board of a hospital, a nonprofit health care organization (under section 117(23) of this chapter), or professional health care organization;

(v) as a governing board or committee of the board of a hospital, a nonprofit health care organization (under section 117(23) of this chapter), or professional health care organization;

(vi) by an organization, a plan, or a program described in section 117(16) through 117(17) of this chapter;

(vii) as a hospital or a nonprofit health care organization (under section 117(23) of this chapter) medical staff or a section of that staff; or

(viii) as a governing board or committee of the board of a professional health care provider (as defined in section 117(16) through 117(17) of this chapter).

(B) At least fifty percent (50%) of the committee members are:

(i) individual professional health care providers, the governing board of a hospital, the governing board of a nonprofit health care organization (under section 117(23) of this chapter), or professional health care organization, or the governing board or a committee of the board of a professional health care provider (as defined in section 117(16) through 117(17) of this chapter); or

(ii) individual professional health care providers and the committee is organized as an interdisciplinary committee to conduct evaluation of patient care services.

(b) However, "peer review committee" does not include a medical review panel created under IC 34-18-10 (or IC 27-12-10

C o p y

before its repeal).

Sec. 100."Performance", for purposes of IC 34-30-4, means the acts of a qualified director pertaining to the setting of policy and the controlling or overseeing of the activities or functional responsibilities of the entity served by the qualified director.

Sec. 101. "Period of illegal drug use", for purposes of IC 34-24-4, means the time:

(1) of an individual drug user's first use of an illegal drug to the accrual of the cause of action under this chapter; and

(2) that is presumed to begin two (2) years before the cause of action accrues unless a defendant in the action proves otherwise by clear and convincing evidence.

Sec. 102. "Periodic payments agreement", for purposes of IC 34-18-14, has the meaning set forth in IC 34-18-14-2.

Sec. 103. (a) "Person", for purposes of IC 34-14, has the meaning set forth in IC 34-14-1-13.

(b)"Person", for purposes of IC 34-19-2, has the meaning set forth in IC 35-41-1.

(c) "Person", for purposes of IC 34-24-4, means:

(1) an individual;

(2) a governmental entity;

(3) a corporation;

(4) a firm;

(5) a trust;

(6) a partnership; or

(7) an incorporated or unincorporated association that exists under or is authorized by the laws of this state, another state, or a foreign country.

(d) "Person", for purposes of IC 34-26-2, includes individuals at least eighteen (18) years of age and emancipated minors.

(e) "Person", for purposes of IC 34-26-4, has the meaning set forth in IC 35-41-1-22.

(f) "Person", for purposes of IC 34-30-5, means any of the following:

(1) An individual.

(2) A corporation.

(3) A partnership.

(4) An unincorporated association.

(5) The state (as defined in IC 34-6-2-140).

(6) A political subdivision (as defined in IC 34-6-2-110).

(7) Any other entity recognized by law.

C o p y

(g) "Person", for purposes of IC 34-30-6, means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity that:

(1) has qualifications or experience in:

(A) storing, transporting, or handling a hazardous substance or compressed gas;

(B) fighting fires;

(C) emergency rescue; or

(D) first aid care; or

(2) is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

(h) "Person", for purposes of IC 34-30-18, includes:

(1) an individual;

(2) an incorporated or unincorporated organization or association;

(3) the state of Indiana;

(4) a political subdivision (as defined in IC 36-1-2-13);

(5) an agency of the state or a political subdivision; or

(6) a group of such persons acting in concert.

(i) "Person", for purposes of sections 42, 43, 69, and 95 of this chapter, means an individual, an incorporated or unincorporated organization or association, or a group of such persons acting in concert.

Sec. 104. "Personnel of a peer review committee", for purposes of IC 34-30-15, means not only members of the committee but also all of the committee's employees, representatives, agents, attorneys, investigators, assistants, clerks, staff, and any other person or organization who serves a peer review committee in any capacity.

Sec. 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.

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

Sec. 106. "Physician", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-23.

Sec. 107. "Place", for purposes of IC 34-19-2, includes any part of a building or structure or the ground.

Sec. 108. "Place of illegal drug activity", for purposes of IC 34-24-4, means each county in which:

(1) an individual drug user possesses or uses an illegal drug; or

C o p y

(2) the individual drug user:
(A) resides;
(B) attends school; or
(C) is employed;
during the period of the individual drug user's illegal drug use;
unless a defendant in an action brought under IC 34-24-4 proves otherwise by clear and convincing evidence.

Sec. 109. "Place of participation", for purposes of IC 34-24-4, means each county in which:
(1) a person participates in the illegal drug market; or
(2) the person:
(A) resides;
(B) attends school; or
(C) is employed;
during the period of the person's participation in the illegal drug market.

Sec. 110. "Political subdivision", for purposes of IC 34-13-3, means a:
(1) county;
(2) township;
(3) city;
(4) town;
(5) separate municipal corporation;
(6) special taxing district;
(7) state college or university;
(8) city or county hospital;
(9) school corporation;
(10) board or commission of one (1) of the entities listed in subdivisions (1) through (9);
(11) drug enforcement task force operated jointly by political subdivisions;
(12) community correctional service program organized under IC 12-12-1; or
(13) solid waste management district established under IC 13-21 or IC 13-9.5-2 (before its repeal).

Sec. 111. "Position of the agency", for purposes of IC 34-52-2, means the litigation stance taken by the state in a civil action subject to IC 34-52-2.

Sec. 112."Practitioner", for purposes of IC 34-30-14, means a person described in IC 16-42-19-5 who acts within the scope of the

C o p y

practitioner's practice.

Sec. 113."Prejudgment interest", for purposes of IC 34-51-4, means interest on the amount of a judgment that is computed for a period preceding the date that the court returns a verdict or finding in the proceeding.

Sec. 113.5. "Prior civil law and procedure", for purposes of IC 34-7, refers to the statutes that are repealed or amended in the recodification act of the 1998 regular session of the general assembly as the statutes existed before the effective date of the applicable or corresponding provision of the recodification act of the 1998 regular session of the general assembly.

Sec. 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.

(b) 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.

Sec. 115. "Product liability action", for purposes of IC 34-20, means an action that is brought:

(1) against a manufacturer or seller of a product; and

(2) for or on account of physical harm;

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

Sec. 116."Professional health care organization", for purposes of IC 34-30-15, refers to an organization described in section 117(14) of this chapter.

Sec. 117."Professional health care provider", for purposes of IC 34-30-15, means:

(1) a physician licensed under IC 25-22.5;

(2) a dentist licensed under IC 25-14;

(3) a hospital licensed under IC 16-21;

(4) a podiatrist licensed under IC 25-29;

(5) a chiropractor licensed under IC 25-10;

(6) an optometrist licensed under IC 25-24;

(7) a psychologist licensed under IC 25-33;

(8) a pharmacist licensed under IC 25-26;

(9) a health facility licensed under IC 16-28-2;

(10) a registered or licensed practical nurse licensed under IC 25-23;

(11) a physical therapist licensed under IC 25-27;

(12) a home health agency licensed under IC 16-27-1;

C o p y

(13) a community mental health center (as defined in IC 12-7-2-38);

(14) a health care organization whose members, shareholders, or partners are:

(A) professional health care providers described in subdivisions (1) through (13);

(B) professional corporations comprised of health care professionals (as defined in IC 23-1.5-1-8); or

(C) professional health care providers described in subdivisions (1) through (13) and professional corporations comprised of persons described in subdivisions (1) through (13);

(15) a private psychiatric hospital licensed under IC 12-25;

(16) a preferred provider organization (including a preferred provider arrangement or reimbursement agreement under IC 27-8-11);

(17) a health maintenance organization (as defined in IC 27-13-1-19) or a limited service health maintenance organization (as defined in IC 27-13-34-4);

(18) a respiratory care practitioner certified under IC 25-34.5;

(19) an occupational therapist certified under IC 25-23.5;

(20) a state institution (as defined in IC 12-7-2-184);

(21) a clinical social worker who is licensed under IC 25-23.6-5-2;

(22) a managed care provider (as defined in IC 12-7-2-127(b)); or

(23) a nonprofit health care organization affiliated with a hospital that is owned or operated by a religious order, whose members are members of that religious order.

Sec. 118."Professional staff", for purposes of IC 34-30-15, means:

(1) all individual professional health care providers authorized to provide health care in a hospital or other health care facility; or

(2) the multidisciplinary staff of a community mental health center (as defined in IC 12-7-2-38).

Sec. 119."Program", for purposes of IC 34-57-3, refers to the community dispute resolution centers program established under IC 34-57-3-2.

Sec. 120. (a) "Property", for purposes of IC 34-24-2, has the

C o p y

meaning set forth in IC 35-41-1-23.

(b) "Property", for purposes of IC 34-30-9, includes the following:

(1) Real property.

(2) Private ways.

(3) Waters.

(4) A structure located on property listed in subdivisions (1) through (3).

Sec. 121."Prosecuting official", for purposes of IC 34-19-2, refers to public officials who have concurrent jurisdiction to enforce this chapter, including:

(1) the attorney general;

(2) the prosecuting attorney of the circuit in which an indecent nuisance exists;

(3) the corporation counsel or city attorney of the city (if any) in which an indecent nuisance exists; or

(4) an attorney representing the county in which an indecent nuisance exists.

Sec. 122. "Psychiatric hospital", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-24.

Sec. 123. "Public employee", for purposes of IC 34-13-2, IC 34-13-3, and IC 34-13-4, has the meaning set forth in section 38 of this chapter.

Sec. 124. (a) "Public lawsuit", for purposes of IC 34-13-5, means:

(1) any action in which the validity, location, wisdom, feasibility, extent, or character of construction, financing, or leasing of a public improvement by a municipal corporation is questioned directly or indirectly, including but not limited to suits for declaratory judgments or injunctions to declare invalid or to enjoin the construction, financing, or leasing; and

(2) any action to declare invalid or enjoin the creation, organization, or formation of any municipal corporation.

(b) The definition of "public lawsuit", as used in IC 34-13-5, shall not be construed to broaden any right of action as is validly limited by applicable law.

Sec. 125."Public place", for purposes of IC 34-19-2, means any place (as defined in section 107 of this chapter) to which the public is invited by special or an implied invitation.

Sec. 126."Public use airport operation", for purposes of

C o p y

IC 34-19-1-5, includes any facility used as a public use airport for the landing, take-off, storage, or repair of aircraft.

Sec. 127."Qualified director", for purposes of IC 34-30-4, means any of the following individuals:

(1) An individual who serves without compensation for personal services as a member of a board or commission of the state or a political subdivision for the purpose of setting policy, controlling, or otherwise overseeing the activities or functional responsibilities of that board or commission.

(2) An individual who serves without compensation for personal services as a director or an officer for the purpose of setting policy, controlling, or otherwise overseeing the activities or functional responsibilities of a nonprofit corporation operating under IC 12-29, except IC 12-29-3-6 or an agency providing services under IC 12-12-3, or a nonprofit corporation that has one (1) of the following purposes:

(A) Religion.

(B) Charity.

(C) Benevolence.

(D) Providing goods or services at no charge to the general public.

(E) Education.

(F) Scientific activity.

(G) Developing or providing hospital services.

(H) Medical research.

(I) Developing or providing ambulance services or emergency medical treatment services.

(3) An individual who serves without compensation for personal services as a director for the purpose of setting policy, controlling, or otherwise overseeing the activities or functional responsibilities of an organization that acts as an advocate for its members and that has as its members individuals or organizations that are:

(A) members of a particular trade or industry; or

(B) members of the business community of a particular municipality or area of the state.

(4) An individual who serves without compensation for personal services as a director of a national, regional, or local fraternity or sorority that is connected with, and under the supervision of, a college, university, or other educational

C o p y

institution located within Indiana.

(5) An individual who serves the purpose of setting policy, controlling, or otherwise overseeing the activities or functional responsibilities of a homeowners association (as defined in section 58 of this chapter).

(6) An individual who serves without compensation for personal services as a director for the purpose of setting policy, controlling, or otherwise overseeing the activities or functional responsibilities of the Special Olympics or the Pan American Games.

"Compensation", for purposes of this section, has the meaning set forth in section 28(a) of this chapter.

Sec. 128. "Qualified settlement offer", for purposes of IC 34-50, means an offer of full and final settlement to resolve all claims and defenses at issue between the offeror (as defined in section 90 of this chapter) and the recipient (as defined in section 129 of this chapter).

Sec. 129. "Recipient", for purposes of IC 34-50, means a party to a civil action who receives a qualified settlement offer (as defined in section 128 of this chapter) from an offeror (as defined in section 90 of this chapter) who is an opposing party in the civil action.

Sec. 130. "Representative", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-25.

Sec. 131."Retirement plan", for purposes of IC 34-55-10, includes:

(1) a stock bonus, a pension, a profit sharing, an annuity, or a similar plan or arrangement, including a retirement plan for self-employed individuals or a simplified employee pension plan;

(2) a government or church retirement plan or contract; or

(3) an individual retirement annuity or individual retirement account;

that is intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986, as amended.

Sec. 132. "Risk", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-26.

Sec. 133. "Risk manager", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-27.

Sec. 134."Roller skater", for purposes of IC 34-31-6, means a

C o p y

person, including an invitee, who wears roller skates while in a roller skating rink for the purpose of recreational or competitive roller skating, whether or not the person pays consideration for entrance to the roller skating rink.

Sec. 135."Roller skating rink", for purposes of IC 34-31-6, means a building, facility, or other property where an area specifically designed for use by the public for recreational or competitive roller skating is present.

Sec. 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.

Sec. 137."Session of the general assembly", for purposes of IC 34-13-1-6, does not include a regular technical session.

Sec. 138."Sheriff", for purposes of IC 34-47-4, means the sheriff of the county in which a court issues a writ of attachment under IC 34-47-4 (or IC 34-4-9 before its repeal).

Sec. 139."Sports or leisure activity", for purposes of IC 34-30-19, means:

(1) an athletic or sports competition, exhibition, or event; and

(2) an activity conducted for a recreational purpose.

Sec. 140. "State", for purposes of IC 34-13-3 means Indiana and its state agencies.

Sec. 141. "State agency", for purposes of IC 34-13-3, means:

(1) a board;

(2) a commission;

(3) a department;

(4) a division;

(5) a governmental subdivision, including a soil and water conservation district;

(6) a bureau;

(7) a committee;

(8) an authority;

(9) a military body; or

(10) other instrumentality;

of the state. However, the term does not include a political subdivision.

Sec. 142."Stepchild", for purposes of IC 34-30-11, includes a stepchild of any age.

Sec. 143. “Tort”, for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-28.

C o p y

Sec. 144. "Trial", for purposes of IC 34-35-5, includes the impaneling of the jury, the actual trial, or other evidentiary hearing where witnesses are sworn and testify, hearings on motions for summary judgment, and entries of final disposition of a cause of action.

Sec. 145. "Unit", for purposes of IC 34-24-1 and IC 34-24-2, has the meaning specified in IC 36-1-2-23.

Sec. 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.

Sec. 147. "User", for purposes of IC 34-20, has the same meaning as the term "consumer", which is set forth in section 29 of this chapter.

Sec. 148."Vehicle", for purposes of IC 34-24-3, has the meaning set forth in IC 35-41-1-28.

Sec. 149. "Vicinity of the locality", for purposes of IC 34-19-1-5, means the following:

(1) Three (3) miles from the locality (as defined in section 74(b) of this chapter) of a public use airport operation (as defined in section 126 of this chapter) that serves regularly scheduled air carrier or military turbojet aircraft.

(2) One and one-half (1.5) miles from the locality of a public use airport operation (as defined in section 126 of this chapter) that does not serve regularly scheduled air carrier or military turbojet aircraft.

Sec. 150."Volunteer", for purposes of IC 34-30-19, means an individual who, without compensation, engages in or provides other personal services for a sports or leisure activity such as baseball, basketball, football, soccer, hockey, volleyball, cheerleading, or other similar sports or leisure activities involving children who are less than sixteen (16) years of age.

Sec. 151."Weekly newspaper", for purposes of IC 35-15-4, means a newspaper that publishes one (1), two (2), three (3), or four (4) issues each week.

SECTION 2. IC 34-7 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 7. GENERAL PROVISIONS

C o p y

Chapter 1. Effect of Recodification Act of the 1998 Regular Session of the General Assembly

Sec. 1. The purpose of the recodification act of the 1998 regular session of the general assembly is to recodify prior civil law and procedure in a style that is clear, concise, and easy to interpret and apply. Except to the extent that:

(1) the recodification act of the 1998 regular session of the general assembly is amended to reflect the changes made in a provision of another bill that adds to, amends, or repeals a provision in the recodification act of the 1998 regular session of the general assembly; or

(2) the minutes of meetings of the code revision commission during 1997 expressly indicate a different purpose;

the substantive operation and effect of the prior civil law and procedure continue uninterrupted as if the recodification act of the 1998 regular session of the general assembly had not been enacted.

Sec. 2. Subject to section 1 of this chapter, sections 3 through 9 of this chapter shall be applied to the statutory construction of the recodification act of the 1998 regular session of the general assembly.

Sec. 3. (a) The recodification act of the 1998 regular session of the general assembly does not affect:

(1) any rights or liabilities accrued;

(2) any penalties incurred;

(3) any violations committed;

(4) any proceedings begun;

(5) any bonds, notes, loans, or other forms of indebtedness issued, incurred, or made;

(6) any tax levies made or authorized;

(7) any funds established;

(8) any patents issued;

(9) the validity, continuation, or termination of any contracts or leases executed;

(10) the validity, continuation, scope, termination, suspension, or revocation of:

(A) permits;

(B) licenses;

(C) certificates of registration;

(D) grants of authority; or

(E) limitations of authority; or

(11) the validity of court decisions entered regarding the

Copy

constitutionality of any provision of the prior civil law and procedure;

before the effective date of the recodification act of the 1998 regular session of the general assembly (July 1, 1998). Those rights, liabilities, penalties, offenses, proceedings, bonds, notes, loans, other forms of indebtedness, tax levies, funds, patents, contracts, leases, permits, licenses, certificates of registration, grants of authority, or limitations of authority continue and shall be imposed and enforced under prior civil law and procedure as if the recodification act of the 1998 regular session of the general assembly had not been enacted.

(b) The recodification act of the 1998 regular session of the general assembly does not:

(1) extend, or cause to expire, a permit, license, certificate of registration, or other grant or limitation of authority; or

(2) in any way affect the validity, scope, or status of a license, permit, certificate of registration, or other grant or limitation of authority;

issued under the prior civil law and procedure.

(c) The recodification act of the 1998 regular session of the general assembly does not affect the revocation, limitation, or suspension of a permit, license, certificate of registration, or other grant or limitation of authority based in whole or in part on violations of the prior civil law and procedure or the rules adopted under the prior civil law and procedure.

Sec. 4. The recodification act of the 1998 regular session of the general assembly shall be construed as a recodification of prior civil law and procedure statutes. Except as provided in section 1(1) and 1(2) of this chapter, if the literal meaning of the recodification act of the 1998 regular session of the general assembly (including a literal application of an erroneous change to an internal reference) would result in a substantive change in the prior civil law and procedure, the difference shall be construed as a typographical, spelling, or other clerical error that must be corrected by:

(1) inserting, deleting, or substituting words, punctuation, or other matters of style in the recodification act of the 1998 regular session of the general assembly; or

(2) using any other rule of statutory construction;

as necessary or appropriate to apply the recodification act of the 1998 regular session of the general assembly in a manner that does

C o p y

not result in a substantive change in the law. The principle of statutory construction that a court must apply the literal meaning of an act if the literal meaning of the act is unambiguous does not apply to the recodification act of the 1998 regular session of the general assembly to the extent that the recodification act of the 1998 regular session of the general assembly is not substantively identical to the prior civil law and procedure.

Sec. 5. Subject to section 8 of this chapter, a reference in a statute or rule to a statute that is repealed and replaced in the same or a different form in the recodification act of the 1998 regular session of the general assembly shall be treated after the effective date of the new provision as a reference to the new provision.

Sec. 6. A citation reference in the recodification act of the 1998 regular session of the general assembly to another provision of the recodification act of the 1998 regular session of the general assembly shall be treated as including a reference to the provision of prior civil law and procedure that is substantively equivalent to the provision of the recodification act of the 1998 regular session of the general assembly that is referred to by the citation reference.

Sec. 7. (a) As used in the recodification act of the 1998 regular session of the general assembly, a reference to rules adopted under any provision of this title or under any other provision of the recodification act of the 1998 regular session of the general assembly refers to either:

(1) rules adopted under the recodification act of the 1998 regular session of the general assembly; or

(2) rules adopted under the prior civil law and procedure until those rules have been amended, repealed, or superseded.

(b) Rules adopted under the prior civil law and procedure continue in effect after June 30, 1998, until the rules are amended, repealed, or suspended.

Sec. 8. (a) A reference in the recodification act of the 1998 regular session of the general assembly to a citation in the prior civil law and procedure before its repeal is added in certain sections of the recodification act of the 1998 regular session of the general assembly only as an aid to the reader.

(b) The inclusion or omission in the recodification act of the 1998 regular session of the general assembly of a reference to a citation in the prior civil law and procedure before its repeal does not affect:

C o p y

(1) any rights or liabilities accrued;
(2) any penalties incurred;
(3) any violations committed;
(4) any proceedings begun;
(5) any bonds, notes, loans, or other forms of indebtedness issued, incurred, or made;
(6) any tax levies made;
(7) any funds established;
(8) any patents issued;
(9) the validity, continuation, or termination of contracts or leases executed;
(10) the validity, continuation, scope, termination, suspension, or revocation of:
(A) permits;
(B) licenses;
(C) certificates of registration;
(D) grants of authority; or
(E) limitations of authority; or
(11) the validity of court decisions entered regarding the constitutionality of any provision of the prior civil law and procedure;

before the effective date of the recodification act of the 1998 regular session of the general assembly (July 1, 1998). Those rights, liabilities, penalties, offenses, proceedings, bonds, notes, loans, other forms of indebtedness, tax levies, funds, patents, contracts, leases, licenses, permits, certificates of registration, and other grants of authority continue and shall be imposed and enforced under prior civil law and procedure as if the recodification act of the 1998 regular session of the general assembly had not been enacted.

(c) The inclusion or omission in the recodification act of the 1998 regular session of the general assembly of a citation to a provision in the prior civil law and procedure statutes does not affect the use of a prior conviction, violation, or noncompliance under the prior civil law and procedure as the basis for revocation of a license, permit, certificate of registration, or other grant of authority under the recodification act of the 1998 regular session of the general assembly, as necessary or appropriate to apply the recodification act of the 1998 regular session of the general assembly in a manner that does not result in a substantive change in the law.

C o p y

Sec. 9. Sections 1 through 8 of this chapter apply to IC 34-18 concerning medical malpractice, which, before it was recodified in the recodification act of the 1998 regular session of the general assembly effective July 1, 1998, appeared at IC 27-12 in the Indiana Code.

Chapter 2. General Policy Provisions

Sec. 1. This title does not in any way affect the rights of any purchaser in good faith, for a valuable consideration without actual notice, or the rights of any owner of any portion of the class of lands described in IC 34-1-18-1 before its repeal in 1989.

Chapter 3. Construction of Statutes

Sec. 1. This title shall be liberally construed and shall not be limited by any rules of strict construction.

Chapter 4. Scope of Title

Sec. 1. This title is not intended to be an exhaustive compilation of all causes of action and procedures in the Indiana Code. In addition to the causes of action and procedures that appear in this title, other causes of action and procedures may appear in other titles of the Indiana Code.

Sec. 2. Statutes outside IC 34 providing causes of action or procedures include the following:

(1) IC 4-21.5-5 (Judicial review of administrative agency actions).

(2) IC 22-3-4 (Worker's compensation administration and procedures).

(3) IC 22-4-17 (Unemployment compensation system, employee's claims for benefits).

(4) IC 22-4-32 (Unemployment compensation system, employer's appeal process).

(5) IC 22-9 (Civil rights actions).

(6) IC 31-14 (Paternity).

(7) IC 31-15 (Dissolution of marriage and legal separation).

(8) IC 31-16 (Support of children and other dependants).

(9) IC 31-17 (Custody and visitation).

(10) IC 31-19 (Adoption).

(11) IC 32-15 (Real Property).

(12) IC 33-1-3 (Attorney Liens)

Chapter 5. Computation of Time

Sec. 1. The time within which an act is to be done, as provided in this title, shall be computed by excluding the first day and including the last. If the last day is Sunday, that Sunday shall be

C o p y

excluded.

Chapter 6. Extensions of Time During Emergencies

Sec. 1. This chapter applies to a proceeding:

(1) pending before a court, a body, or an official, that exists under the constitution or laws of Indiana;

(2) in which certain limitations of time are or may be fixed by law or rule for doing any acts in the proceeding; and

(3) if an emergency exists or arises by reason of:

(A) war;

(B) insurrection;

(C) pestilence; or

(D) act of God;

which prevents the performance of an act that is essential to conserve substantial rights.

Sec. 2. The court, judge, body, or official has authority to:

(1) find and declare:

(A) the existence of an emergency; and

(B) the time during which the emergency existed; and

(2) enter the finding and declaration in the record.

Sec. 3. In computing the time within which the act is required to be done under the limitations fixed by law or rule, the time during which such emergency existed shall be excluded, and shall not be considered.

Sec. 4. If a court, judge, body, or official described in section 2 of this chapter is not able to act for any reason, the supreme court of Indiana upon petition:

(1) may grant a finding and declaration of an emergency in place of the presiding court, judge, body, or official; and

(2) shall certify its order to the presiding court, judge, body, or official.

Sec. 5. The supreme court may regulate all procedures described in this chapter by rules.

SECTION 3. IC 34-8 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 8. RULES OF PROCEDURE

Chapter 1. Authority of Courts to Adopt Rules of Procedure

Sec. 1. The purpose of this chapter is to enable the supreme court to:

(1) simplify and abbreviate the pleadings and proceedings;

(2) expedite the decision of causes;

C o p y

(3) remedy abuses and imperfections that exist in the practice;

(4) abolish unnecessary forms and technicalities in pleading and practice; and

(5) abolish fictions and unnecessary process and proceedings.

Sec. 2. All statutes relating to practice and procedure in any of the courts of Indiana are in force and effect only as provided in this chapter.

Sec. 3. The supreme court has authority to adopt, amend, and rescind rules of court that govern and control practice and procedure in all the courts of Indiana. These rules must be promulgated and take effect under the rules adopted by the supreme court, and thereafter all laws in conflict with the supreme court's rules have no further force or effect.

Sec. 4. Other Indiana courts may establish rules for their own government, supplementary to and not conflicting with the rules prescribed by the supreme court or any statute.

Chapter 2. Indiana Rules of Trial Procedure

Sec. 1. The general assembly of the state of Indiana affirms the inherent power of the supreme court of Indiana to adopt, amend, and rescind rules of court affecting matters of procedure, and the general assembly reaffirms the power given to the supreme court to adopt, amend, and rescind rules of court, including the rules of court adopted in this chapter, as set forth by IC 34-8-1-1. However, the power of the supreme court to adopt, amend, and rescind rules of court does not preclude the creation, by statute, of alternatives to the change of venue.

Sec. 2. The general assembly adopts, and incorporates into the Indiana Code, the Indiana rules of trial procedure:

(1) as enacted by the general assembly in Acts 1969, c.191, s.1, and amended by P.L.319-1975, SECTION 1; and

(2) as accepted by the Indiana supreme court as being in effect on December 31, 1983.

SECTION 4. IC 34-9 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 9. PARTIES

Chapter 1. Representation of Parties by Attorneys

Sec. 1. (a) Except as provided under subsection (c), a civil action may be prosecuted or defended by a party:

(1) in person; or

C o p y

(2) represented by an attorney.

(b) If the state of Indiana is a party to a civil action filed on the small claims docket of a circuit court, superior court, or county court, the state of Indiana is not required to appear by attorney.

(c) A corporation and any organization required to make application to the secretary of state under IC 25-11-1-3 must appear by attorney in all cases. However, corporations organized under:

(1) IC 23-1;

(2) IC 23-1.5;

(3) IC 23-7-1.1 (before its repeal on August 1, 1991); or

(4) IC 23-17;

are not required to appear by attorney in civil cases filed on a small claims docket of a circuit, superior, or county court.

Chapter 2. Appointment of Guardian Ad Litem for Minor Parties

Sec. 1. All courts have the authority to:

(1) appoint a guardian ad litem to defend the interests of any person under eighteen (18) years of age impleaded in a suit; and

(2) permit any person, as next friend, to prosecute a suit in a minor's behalf.

Chapter 3. Survival of Cause of Action After Death of Party

Sec. 1. (a) If an individual who is entitled or liable in a cause of action dies, the cause of action survives and may be brought by or against the representative of the deceased party except actions for:

(1) libel;

(2) slander;

(3) malicious prosecution;

(4) false imprisonment;

(5) invasion of privacy; and

(6) personal injuries to the deceased party;

which survive only to the extent provided in this chapter.

(b) An action under this chapter may be brought, or the court, on motion, may allow the action to be continued by or against the legal representatives or successors in interest of the deceased. The action is considered a continued action and accrues to the representatives or successors at the time the action would have accrued to the deceased if the deceased had survived.

Sec. 2. If an action is continued against the legal

Copy

representatives or successors of a defendant, a notice shall be served on them as in the case of an original notice.

Sec. 3. (a) If an action commenced against the decedent before the decedent's death, the action is continued by substituting the decedent's personal representatives, as in other actions surviving the defendant's death.

(b) If the action is brought after the death of a defendant, then the action is prosecuted as are other claims against the decedent's estate.

Sec. 4. (a) This section applies when a person:

(1) receives personal injuries caused by the wrongful act or omission of another; and

(2) subsequently dies from causes other than those personal injuries.

(b) The personal representative of the decedent who was injured may maintain an action against the wrongdoer to recover all damages resulting before the date of death from those injuries that the decedent would have been entitled to recover had the decedent lived. The damages inure to the exclusive benefit of the decedent's estate.

Sec. 5. (a) This section applies when:

(1) a person obtains a judgment for personal injuries against a person, company, or corporation in a trial court;

(2) the person, company, or corporation against whom or which the judgment was obtained appeals to the supreme court or the court of appeals; and

(3) the judgment is reversed by the supreme court or the court of appeals, with a new trial granted to the appellant.

(b) If a person who obtains a judgment dies:

(1) pending the appeal; or

(2) before a new trial after the reversal;

the claim for personal injuries survives and may be prosecuted by the representative of the decedent, as other claims are prosecuted for and on behalf of decedents' estates.

SECTION 5. IC 34-10 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 10. ACCESS TO COURTS BY INDIGENT PERSONS

Chapter 1. Proceeding As An Indigent Person

Sec. 1. An indigent person who does not have sufficient

C o p y

means to prosecute or defend an action may apply to the court in which the action is intended to be brought, or is pending, for leave to prosecute or defend as an indigent person.

Sec. 2. If the court is satisfied that a person who makes an application described in section 1 of this chapter does not have sufficient means to prosecute or defend the action, the court shall:

(1) admit the applicant to prosecute or defend as an indigent person; and

(2) assign an attorney to defend or prosecute the cause.

All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

Chapter 2. Annulling Leave to Proceed as An Indigent Person

Sec. 1. This chapter applies to a person who was assigned representation as an indigent person under IC 34-10-1.

Sec. 2. If the person described in section 1 of this chapter is guilty of:

(1) any improper conduct; or

(2) any unjustifiable delay in the progress of the action;

the court may annul the order. The indigent person shall subsequently be deprived of all benefit of the order permitting the person to prosecute or defend as an indigent person.

SECTION 6. IC 34-11 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 11. LIMITATION OF ACTIONS

Chapter 1. Statutes of Limitation Generally

Sec. 1. This article is not intended to be an exhaustive compilation of all statutes of limitation in the Indiana Code. In addition to the statutes of limitation that appear in this article, other statutes of limitation may appear outside this article.

Sec. 2. (a) A cause of action that:

(1) arises on or after September 1, 1982; and

(2) is not limited by any other statute;

must be brought within ten (10) years.

(b) A cause of action that:

(1) arises before September 1, 1982; and

(2) is not limited by any other statute;

must be brought within fifteen (15) years.

(c) This section does not apply whenever a different limitation is prescribed by statute.

C o p y

Chapter 2. Specific Statutes of Limitation

Sec. 1. An action relating to the terms, conditions, and privileges of employment except actions based upon a written contract (including, but not limited to, hiring or the failure to hire, suspension, discharge, discipline, promotion, demotion, retirement, wages, or salary) must be brought within two (2) years of the date of the act or omission complained of.

Sec. 2. An action against the state of Indiana relating to the terms, conditions, and privileges of employment (including, but not limited to, hiring, suspension, discharge, discipline, promotion, demotion, retirement, wages, or salary) must be brought within two (2) years of the date of the act or omission complained of. This section does not:

(1) expand the time for initiating any action, including any available administrative remedies; or

(2) excuse the exhaustion of administrative remedies where required by the administrative orders and procedures law (IC 4-21.5).

Sec. 3. An action of any kind for damages, whether brought in contract or tort, based upon professional services rendered or which should have been rendered, may not be brought, commenced, or maintained, in any of the courts of Indiana against physicians, dentists, surgeons, hospitals, sanitariums, or others, unless the action is filed within two (2) years from the date of the act, omission, or neglect complained of.

Sec. 4. An action for:

(1) injury to person or character,

(2) injury to personal property; or

(3) a forfeiture of penalty given by statute;

must be commenced within two (2) years after the cause of action accrues.

Sec. 5. An action for the recovery of real property sold by executors, administrators, guardians, or commissioners of a court, upon a judgment, specifically directing the sale of property sought to be recovered, brought by a party to the judgment, the party's heirs, or any person claiming a title under a party, acquired after the date of the judgment, must be commenced within five (5) years after the sale is confirmed.

Sec. 6. An action against:

(A) a sheriff;

(B) another public officer; or

Copy

(C) the officer and the officer's sureties on a public bond;

growing out of a liability incurred by doing an act in an official capacity, or by the omission of an official duty, must be commenced within five (5) years after the cause of action accrues. However, an action may be commenced against the officer or the officer's legal representatives, for money collected in an official capacity and not paid over, at any time within six (6) years after the cause of action accrues.

Sec. 7. The following actions must be commenced within six (6) years after the cause of action accrues:

(1) Actions on accounts and contracts not in writing.

(2) Actions for use, rents, and profits of real property.

(3) Actions for injuries to property other than personal property, damages for detention of personal property and for recovering possession of personal property.

(4) Actions for relief against frauds.

Sec. 8. An action for the recovery of real property sold on execution, brought by the execution debtor, the execution debtor's heirs, or any person claiming under the execution debtor by title acquired after the date of the judgment, must be commenced within six (6) years after the sale. However, an action described in this section must be commenced within ten (10) years after the sale, if the sale occurred before September 1, 1982.

Sec. 9. An action upon promissory notes, bills of exchange, or other written contracts for the payment of money executed after August 31, 1982, must be commenced within six (6) years after the cause of action accrues. An action upon promissory notes, bills of exchange, and other written contracts for the payment of money executed on or after September 19, 1881, and before September 1, 1982, must be commenced within ten (10) years after the cause of action accrues. However, all contracts described in this section that have been executed before September 19, 1881, may be enforced within the time only as they have to run, before being barred under the law in effect at the time of their executions limiting the commencement of actions, and not afterward.

Sec. 10. An action to enforce a child support obligation must be commenced not later than ten (10) years after:

(1) the eighteenth birthday of the child; or

(2) the emancipation of the child;

whichever occurs first.

C o p y

Sec. 11. An action upon contracts in writing other than those for the payment of money, and including all mortgages other than chattel mortgages, deeds of trust, judgments of courts of record, and for the recovery of the possession of real estate, must be commenced within ten (10) years after the cause of action accrues. However, an action upon contracts in writing other than those for the payment of money entered into before September 1, 1982, not including chattel mortgages, deeds of trust, judgments of courts of record, or for the recovery of the possession of real estate, the action must be commenced within twenty (20) years after the cause of action accrues.

Sec. 12. Every judgment and decree of any court of record of the United States, of Indiana, or of any other state shall be considered satisfied after the expiration of twenty (20) years.

Chapter 3. Accrual of Cause of Action; Time from Which Limitation Period Runs

Sec. 1. In an action brought to recover a balance due upon a mutual, open, and current account between the parties, the cause of action is considered to have accrued from the date of the last item proved in the account on either side.

Chapter 4. Tolling of Statute of Limitations: Nonresident Defendant

Sec. 1. The time during which the defendant is a nonresident of the state is not computed in any of the periods of limitation except during such time as the defendant by law maintains in Indiana an agent for service of process or other person who, under the laws of Indiana, may be served with process as agent for the defendant.

Sec. 2. When:

(1) a cause of action arose outside of Indiana against a nonresident defendant;

(2) the defendant does not maintain an agent in Indiana for service of process or other person who, under the laws of Indiana, could be served with process as agent for the defendant; and

(3) the cause is fully barred by the laws both of the place where the defendant resides and of the place where the cause of action arose;

the bar of the cause of action under subdivision (3) is a defense.

Sec. 3. This chapter shall not be construed to amend or alter present laws relating to the application of various statutes of

C o p y

limitations to persons under legal disabilities or to members of the armed services of the United States.

Chapter 5. Tolling of Statute of Limitations: Concealment

Sec. 1. If a person liable to an action conceals the fact from the knowledge of the person entitled to bring the action, the action may be brought at any time within the period of limitation after the discovery of the cause of action.

Chapter 6. Tolling of Statute of Limitations: Legal Disabilities

Sec. 1. A person who is under legal disabilities when the cause of action accrues may bring the action within two (2) years after the disability is removed.

Sec. 2. A contract, sale, release, or conveyance executed by a person after reaching the person's eighteenth birthday may not be avoided by the person on the grounds that, at the time the agreement was executed, the person was acting under a legal disability by reason of the person's age. A person who executes an agreement after reaching the person's eighteenth birthday may not assert legal disability by reason of age as a defense in an action to enforce a contract against the person.

Chapter 7. Survival of Cause of Action After Death of Party

Sec. 1. If any person entitled to bring, or liable to, any action, dies before the expiration of the time limited for the action, the cause of action:

(1) survives to or against the person's representatives; and

(2) may be brought at any time after the expiration of the time limited within eighteen (18) months after the death of the person.

Chapter 8. Limitations on New Action After Failure of Original Suit

Sec. 1. (a) This section applies if a plaintiff commences an action and the plaintiff fails in the action from any cause except:

(1) negligence in the prosecution of the action;

(2) the action abates or is defeated by the death of a party; or

(3) a judgment is arrested or reversed on appeal.

(b) If subsection (a) applies, a new action may be brought not later than the later of:

(1) three (3) years after the date of the determination under subsection (a); or

(2) the last date an action could have been commenced under the statute of limitations governing the original action;

and be considered a continuation of the original action commenced

C o p y

by the plaintiff.

Chapter 9. Acknowledgment, New Promise, and Partial Payment

Sec. 1. An acknowledgment or promise is not evidence of a new or continuing contract, for the purpose of taking the case out of the operation of this article, unless the acknowledgment or promise is:

(1) in writing; and

(2) signed by the party to be charged by the acknowledgment or promise.

Sec. 2. The acknowledgment or promise of one (1) joint contractor or executor or administrator does not render any other joint contractor, executor, or administrator liable under this chapter.

Sec. 3. This chapter does not take away or lessen the effect of any payment made by any person. However, no endorsement or memorandum of any payment made:

(1) upon any instrument of writing; and

(2) by or on behalf of the party to whom the payment is purported to be made;

is considered sufficient to exempt the case from this chapter.

Sec. 4. (a) This section applies to:

(1) a joint debtor; and

(2) the representatives of a joint debtor;

in whose favor the statute of limitations has operated.

(b) A person described under subsection (a) is not liable to:

(1) a joint debtor or surety; or

(2) the representatives of a joint debtor or surety;

upon payment by the joint debtor or surety, or the representative of the debt, or any part of it.

SECTION 7. IC 34-12 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 12. PROHIBITED CAUSES OF ACTION

Chapter 1. Failure to Abort

Sec. 1. A person may not maintain a cause of action or receive an award of damages on the person's behalf based on the claim that but for the negligent conduct of another, the person would have been aborted.

Chapter 2. Certain Domestic Relations Actions

Sec. 1. (a) The following civil causes of action are abolished:

(1) Breach of promise to marry.

C o p y

(2) Alienation of affections.
(3) Criminal conversation.
(4) Seduction of any female person of at least eighteen (18) years of age.

(b) This section does not affect a cause of action described in subsection (a) that accrued before June 10, 1935.

Sec. 2. (a) No act done after June 10, 1935, within Indiana operates to give rise, either within or outside Indiana, to any of the causes of action abolished by this chapter.

(b) No contract to marry that is made after June 10, 1935, within Indiana operates to give rise, either within or outside Indiana, to any cause of action for breach of contract or promise to marry.

(c) The intent of this section is to fix the effect, status, and character of acts and contracts described in subsections (a) and (b) and to render them ineffective to support or give rise to any causes of action within or outside Indiana.

Sec. 3. It is unlawful after June 10, 1935, for any person, either as litigant or attorney, to:
(1) file;
(2) cause to be filed;
(3) threaten to file; or
(4) threaten to cause to be filed;
in any court in Indiana any pleading or paper setting forth or seeking to recover upon any cause of action abolished or barred by this chapter, whether the cause of action arose within or outside Indiana.

Sec. 4. It is unlawful for any person, either as litigant or attorney, to file, cause to be filed, threaten to file, or threaten to cause to be filed in any court of Indiana, any pleading or paper naming or describing in such manner as to identify any person as corespondent or participant in misconduct of the adverse party in any:
(1) action for:
(A) divorce;
(B) separate maintenance;
(C) annulment of marriage; or
(D) custody or care of children; or
(2) citation or proceeding ancillary or subsequent to an action described in subdivision (1).

Sec. 5. (a) Except as provided in subsection (b), in cases

Copy

described in section 4 of this chapter, it is sufficient for such pleader to designate any corespondent or third party in general language that is not sufficient for identification. The general language operates with the same legal effect as complete naming and identification of the person.

(b) The adverse party may file a motion to make the pleading or paper more specific by stating the name, identity, or other facts. The granting of the motion, in whole or in part, rests in the sound discretion of the court, and, if ordered granted, the pleader shall amend the pleading or paper to set forth the information specifically required by the order, but no further.

Sec. 6. (a) An attorney who appears in a proceeding described in section 4 of this chapter on behalf of a party to the proceeding who is asserting misconduct by the adverse party shall not ask of any witness any question intended or calculated to disclose the name or identity of any third person charged as corespondent or participant in the misconduct.

(b) A party or witness testifying on behalf of a party asserting misconduct by the adverse party shall not name or identify any third person charged as a corespondent or participant in any such misconduct.

(c) If the court in the exercise of a sound discretion so orders, counsel for any party charged with an act of misconduct with a third person may be permitted to cross-examine a witness who has testified to the act of misconduct concerning the identity of the third person. Within limits as the court may prescribe, the witness may answer the questions asked.

(d) In all testimony in proceedings described in section 4 of this chapter, designation of the corespondent or other alleged participant in misconduct by general language not sufficient for identification operates with the same legal effect as complete identification.

(e) The discretion vested in the court by this section shall be exercised in a manner to avoid injustice to litigants, while at the same time avoiding, so far as possible, the public revelation of the name or identity of the third person. To this end the court may impound pleadings or other documents in the case and hear testimony in chambers.

(f) This section shall not be construed to change the grounds for divorce or impair the substantive rights of parties in cases described in this section. This section shall be construed to regulate

C o p y

pleading, practice, and testimony in cases described in this section so as to eliminate extortion and public scandal.

(g) This section also applies to the taking of testimony by deposition or commission as to proceedings before the court.

(h) Any willful violation of this section by any attorney, party, or witness constitutes a direct contempt of the court having jurisdiction of the proceeding in which the violation occurs, and may be punished by the court with a fine of not more than five hundred dollars ($500) as the court considers proper. However, if the adverse party intends to file a motion under section 5(b) of this chapter to make any pleading or paper more specific by stating the name, identity, or other fact descriptive of any corespondent or participant in misconduct of the adverse party in any action or proceeding described in section 4 of this chapter, any party who has given notice of the taking of a deposition shall be notified of this intention in writing before the time fixed for taking the deposition, and the notice may be served upon either the party or the party's attorney.

Sec. 7. (a) All contracts and instruments executed after June 10, 1935, within Indiana in payment, satisfaction, settlement, or compromise of any claim or cause of action abolished or barred by this chapter, whether the claim or cause of action arose within or outside Indiana, are declared to be contrary to the public policy of Indiana and void.

(b) It is unlawful to cause, induce, or procure any person to:

(1) execute a contract or instrument described in subsection (a);

(2) cause, induce, or procure any person to give, pay, transfer, or deliver any money or thing of value in payment, satisfaction, settlement, or compromise of a claim or cause of action described in subsection (a); or

(3) receive, take, or accept any money or thing of value in payment, satisfaction, settlement, or compromise of a claim or cause of action described in subsection (a).

(c) It is unlawful to commence or cause to be commenced, either as litigant or attorney, in any court of Indiana, any proceeding or action seeking to enforce or recover upon a contract or instrument described in subsection (a), knowing it to be void, whether the contract or instrument was executed within or outside Indiana.

(d) This section does not apply to:

C o p y

(1) the payment, satisfaction, settlement, or compromise of any:

(A) causes of action that are not abolished or barred by this chapter; or

(B) contracts or instruments executed before June 10, 1935; or

(2) the bona fide holder in due course of any negotiable instrument executed after June 10, 1935.

Sec. 8. A person who knowingly violates section 3, 4, 5, or 7 of this chapter commits a Class D felony.

SECTION 8. IC 34-13 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE 13 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 13. CAUSES OF ACTION: CLAIMS AGAINST THE GOVERNMENT

Chapter 1. Contract Claims Against the State

Sec. 1. (a) Any person having a claim against the state arising out of an express or implied contract may bring suit within ten (10) years after accrual of the claim.

(b) The claim brought under this section shall be tried to the court, not a jury.

Sec. 2. (a) This section applies only to a claim against the state arising:

(1) out of an express or implied contract; and

(2) after June 1, 1980, and before July 1, 1987.

(b) Notwithstanding section 1 of this chapter, a person having a claim against the state arising out of an express or implied contract may bring suit not more than fifteen (15) years after the accrual of the claim.

(c) A claim brought under this section (or IC 34-4-16-1.2 before its repeal) shall be tried to the court, not a jury.

(d) This section expires July 1, 2002.

Sec. 3. This chapter does not authorize any person to bring suit against the state of Indiana upon any obligation described in Article 10, Section 7 of the Constitution of the state of Indiana.

Sec. 4. The attorney general, in person or by deputy, shall defend and represent the interests of the state in any action brought under this chapter (or IC 34-4-16 before its repeal).

Sec. 5. In all actions against the state, either party may appeal directly to the supreme court, under the same rules, regulations, and restrictions that govern in cases of appeals from the circuit

C o p y

courts of this state to the supreme court of the state in civil causes, except that the state may appeal without bond.

Sec. 6. Whenever, by final decree or judgment, a sum of money is adjudged to be due any person from the state, an execution shall not issue but the judgment shall draw interest at an annual rate of six percent (6%) from the date of the adjournment of the next ensuing session of the general assembly until an appropriation is made by law for the payment and the judgment is paid.

Sec. 7. Whenever, in the opinion of the governor, the interests of the state require it, the governor may employ counsel to assist the attorney general in the defense of any suit brought against the state and may pay that counsel out of any funds at the governor's disposal appropriated for that purpose.

Chapter 2. Contract Claims Against Public Employees

Sec. 1. A present or former public employee is not personally liable on contracts entered into within the scope of the employee's employment for a governmental entity unless it is clearly otherwise indicated in writing.

Sec. 2. If requested to do so, the attorney general shall defend a present or former state employee against any claim or suit brought against the state employee with regard to a contract entered into for the employee's governmental entity. The attorney general may employ other counsel to aid in defending or settling the claim or suit.

Sec. 3. (a) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee whose conduct gave rise to the claim resulting in that judgment or settlement.

(b) The governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when:

(1) the act or omission causing the loss is within the scope of the employee's employment; and

(2) the:

(A) governor, in the case of a claim or suit against a state employee; or

(B) the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;

determines that paying the judgment, compromise, or settlement is in the best interest of the governmental entity.

C o p y

(c) The governmental entity shall pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(d) This chapter shall not be construed as:

(1) a waiver of the eleventh amendment to the Constitution of the United States;

(2) consent by the state of Indiana or its employees to be sued in any federal court; or

(3) consent to be sued in any state court beyond the boundaries of Indiana.

Chapter 3. Tort Claims Against Governmental Entities and Public Employees

Sec. 1. (a) This chapter applies only to a claim or suit in tort.

(b) The provisions of this chapter also apply to IC 34-30-14.

Sec. 2. This chapter applies to a claim or suit in tort against any of the following:

(1) A member of the bureau of motor vehicles commission established under IC 9-15-1-1.

(2) An employee of the bureau of motor vehicles commission who is employed at a license branch under IC 9-16, except for an employee employed at a license branch operated under a contract with the commission under IC 9-16.

Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from:

(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 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 initiation of a judicial or an administrative proceeding;

(6) 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;

C o p y

(7) 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;

(8) 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;

(9) the act or omission of anyone other than the governmental entity or the governmental entity's employee;

(10) 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;

(11) 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;

(12) entry upon any property where the entry is expressly or impliedly authorized by law;

(13) misrepresentation if unintentional;

(14) 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;

(15) 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;

(16) 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, or a community corrections program under IC 11-12;

(17) design of a highway (as defined in IC 9-13-2-73), if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a

C o p y

responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition;

(18) development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system; or

(19) 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 20-8.1-5.1-7(b).

Sec. 4. The combined aggregate liability of all governmental entities and of all public employees, acting within the scope of their employment and not excluded from liability under section 3 of this chapter, does not exceed three hundred thousand dollars ($300,000) for injury to or death of one (1) person in any one (1) occurrence and does not exceed five million dollars ($5,000,000) for injury to or death of all persons in that occurrence. A governmental entity is not liable for punitive damages.

Sec. 5. (a) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee whose conduct gave rise to the claim resulting in that judgment or settlement. A lawsuit alleging that an employee acted within the scope of the employee's employment must be exclusive to the complaint and bars an action by the claimant against the employee personally. However, if the governmental entity answers that the employee acted outside the scope of the employee's employment, the plaintiff may amend the complaint and sue the employee personally. An amendment to the complaint by the plaintiff under this subsection must be filed not later than one hundred eighty (180) days from the date the answer was filed and may be filed notwithstanding the fact that the statute of limitations has run.

(b) A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:

(1) criminal;

(2) clearly outside the scope of the employee's employment;

(3) malicious;

(4) willful and wanton; or

(5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

C o p y

(c) Subject to the provisions of sections 4, 14, 15, and 16 of this chapter, the governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when:

(1) the act or omission causing the loss is within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss; and

(2) the:

(A) governor in the case of a claim or suit against a state employee; or

(B) governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;

determines that paying the judgment, compromise, or settlement is in the best interest of the governmental entity.

(d) The governmental entity shall provide counsel for and pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(e) This chapter shall not be construed as:

(1) a waiver of the eleventh amendment to the Constitution of the United States;

(2) consent by the state of Indiana or its employees to be sued in any federal court; or

(3) consent to be sued in any state court beyond the boundaries of Indiana.

Sec. 6. (a) Except as provided in sections 7 and 9 of this chapter, a claim against the state is barred unless notice is filed with the attorney general or the state agency involved within two hundred seventy (270) days after the loss occurs. However, if notice to the state agency involved is filed with the wrong state agency, that error does not bar a claim if the claimant reasonably attempts to determine and serve notice on the right state agency.

(b) The attorney general, by rule adopted under IC 4-22-2, shall prescribe a claim form to be used to file a notice under this section. The claim form must specify:

(1) the information required; and

(2) the period of time that a potential claimant has to file a

C o p y

claim.

(c) Copies of the claim form prescribed under subsection (b) shall be available from each:

(1) state agency; and

(2) operator of a state vehicle.

Sec. 7. (a) An offender must file an administrative claim with the department of correction to recover compensation for the loss of the offender's personal property alleged to have occurred during the offender's confinement as a result of an act or omission of the department or any of its agents, former officers, employees, or contractors. A claim must be filed within one hundred eighty (180) days after the date of the alleged loss.

(b) The department of correction shall evaluate each claim filed under subsection (a) and determine the amount due, if any. If the amount due is not more than five thousand dollars ($5,000), the department shall approve the claim for payment and recommend to the office of the attorney general payment under subsection (c). The department shall submit all claims in which the amount due exceeds five thousand dollars ($5,000), with any recommendation the department considers appropriate, to the office of the attorney general. The attorney general, in acting upon the claim, shall consider recommendations of the department to determine whether to deny the claim or recommend the claim to the governor for approval of payment.

(c) Payment of claims under this section shall be made in the same manner as payment of claims under IC 34-4-16.5-22.

(d) The department of correction shall adopt rules under IC 4-22-2 necessary to carry out this section.

Sec. 8. (a) Except as provided in section 9 of this chapter, a claim against a political subdivision is barred unless notice is filed with:

(1) the governing body of that political subdivision; and

(2) the Indiana political subdivision risk management commission created under IC 27-1-29;

within one hundred eighty (180) days after the loss occurs.

(b) A claim against a political subdivision is not barred for failure to file notice with the Indiana political subdivision risk management commission created under IC 27-1-29-5 if the political subdivision was not a member of the political subdivision risk management fund established under IC 27-1-29-10 at the time the act or omission took place.

C o p y

Sec. 9. If a person is incapacitated and cannot give notice as required in section 6 or 8 of this chapter, the person's claim is barred unless notice is filed within one hundred eighty (180) days after the incapacity is removed.

Sec. 10. The notice required by sections 6, 8, and 9 of this chapter must describe in a short and plain statement the facts on which the claim is based. The statement must include the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, the amount of the damages sought, and the residence of the person making the claim at the time of the loss and at the time of filing the notice.

Sec. 11. Within ninety (90) days of the filing of a claim, the governmental entity shall notify the claimant in writing of its approval or denial of the claim. A claim is denied if the governmental entity fails to approve the claim in its entirety within ninety (90) days, unless the parties have reached a settlement before the expiration of that period.

Sec. 12. The notices required by sections 6, 8, 9, and 11 of this chapter must be in writing and must be delivered in person or by registered or certified mail.

Sec. 13. A person may not initiate a suit against a governmental entity unless the person's claim has been denied in whole or in part.

Sec. 14. Except as provided in section 20 of this chapter, the governor may compromise or settle a claim or suit brought against the state or its employees.

Sec. 15. Except as provided in section 20 of this chapter, the attorney general:

(1) shall advise the governor concerning the desirability of compromising or settling a claim or suit brought against the state or its employees;

(2) shall perfect a compromise or settlement which is made by the governor;

(3) shall submit to the governor on or before January 31 of each year a report concerning the status of each claim or suit pending against the state as of January 1 of that year; and

(4) shall defend, as chief counsel, the state and state employees as required under IC 4-6-2. However, the attorney general may employ other counsel to aid in defending or settling those claims or suits.

Copy

Sec. 16. Except as provided in section 20 of this chapter, the governing body of a political subdivision may compromise, settle, or defend against a claim or suit brought against the political subdivision or its employees.

Sec. 17. A court that has rendered a judgment against a governmental entity may order that governmental entity to:

(1) appropriate funds for the payment of the judgment if funds are available for that purpose; or

(2) levy and collect a tax to pay the judgment if there are insufficient funds available for that purpose.

Sec. 18. (a) A claim or suit settled by, or a judgment rendered against, a governmental entity shall be paid by the governmental entity not later than one hundred eighty (180) days after the date of settlement or judgment, unless there is an appeal, in which case not later than one hundred eighty (180) days after a final decision is rendered.

(b) If payment is not made within one hundred eighty (180) days after the date of settlement or judgment, the governmental entity is liable for interest from the date of settlement or judgment at an annual rate of six percent (6%). The governmental entity is liable for interest at that rate and from that date even if the case is appealed, provided the original judgment is upheld.

Sec. 19. Section 18 of this chapter does not apply if there is a structured settlement under section 23 of this chapter.

Sec. 20. (a) A political subdivision may purchase insurance to cover the liability of itself or its employees. Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be purchased with other types of insurance. If such a policy is purchased, the terms of the policy govern the rights and obligations of the political subdivision and the insurer with respect to the investigation, settlement, and defense of claims or suits brought against the political subdivision or its employees covered by the policy. However, the insurer may not enter into a settlement for an amount that exceeds the insurance coverage without the approval of the mayor, if the claim or suit is against a city, or the governing body of any other political subdivision, if the claim or suit is against such political subdivision.

(b) The state may not purchase insurance to cover the liability of the state or its employees. This subsection does not prohibit any of the following:

(1) The requiring of contractors to carry insurance.

C o p y

(2) The purchase of insurance to cover losses occurring on real property owned by the public employees' retirement fund or the Indiana state teachers' retirement fund.

(3) The purchase of insurance by a separate body corporate and politic to cover the liability of itself or its employees.

(4) The purchase of casualty and liability insurance for foster parents (as defined in IC 27-1-30-4) on a group basis.

Sec. 21. In any action brought against a governmental entity in tort, the court may allow attorney's fees as part of the costs to the governmental entity prevailing as defendant, if the court finds that plaintiff:

(1) brought the action on a claim that is frivolous, unreasonable, or groundless;

(2) continued to litigate the action after plaintiff's claim clearly became frivolous, unreasonable, or groundless; or

(3) litigated its action in bad faith.

This award of fees does not prevent a governmental entity from bringing an action against the plaintiff for abuse of process arising in whole or in part on the same facts, but the defendant may not recover such attorney's fees twice.

Sec. 22. (a) For purposes of this chapter, the following shall be treated as political subdivisions:

(1) A community action agency (as defined in IC 12-14-23-2).

(2) An individual or corporation rendering public transportation services under a contract with a commuter transportation district created under IC 8-5-15.

(3) A volunteer fire company (as defined in IC 36-8-12-2) that is acting under:

(A) a contract with a unit or a fire protection district; or

(B) IC 36-8-17.

(b) The treatment provided for under subsection (a)(2) shall be accorded only in relation to a loss that occurs in the course of rendering public transportation services under contract with a commuter transportation district.

Sec. 23. (a) With the consent of the claimant, a political subdivision may compromise or settle a claim or suit by means of a structured settlement under this section.

(b) A political subdivision may discharge settlement of a claim or suit brought under this chapter by:

(1) an agreement requiring periodic payments by the political subdivision over a specified number of years;

C o p y

(2) the purchase of an annuity;

(3) by making a "qualified assignment" of the liability of the political subdivision as defined by the provisions of 26 U.S.C. 130(c);

(4) payment in a lump sum; or

(5) any combination of subdivisions (1) through (4).

(c) The present value of a structured settlement shall not exceed the statutory limits set forth in section 4 of this chapter; however, the periodic or annuity payments may exceed these statutory limits. The present value of any periodic payments may be determined by discounting the periodic payments by the same percentage as that found in Moody's Corporate Bond Yield Average Monthly Average Corporates, as published by Moody's Investors Service, Incorporated.

Sec. 24. There is appropriated from the state general fund sufficient funds to:

(1) settle claims and satisfy tort judgments obtained against the state; and

(2) pay expenses authorized by this chapter, including:

(A) liability insurance premiums;

(B) interest on claims and judgments; and

(C) expenses incurred by the attorney general in employing other counsel to aid in defending or settling claims or civil actions against the state.

Sec. 25. The attorney general shall present vouchers for the items or expenses described in section 24 of this chapter to the auditor of state. The auditor shall issue warrants on the treasury for the amounts presented.

Chapter 4. Civil Rights Claims Against Public Employees

Sec. 1. If a present or former public employee is or could be subject to personal civil liability for a loss occurring because of a noncriminal act or omission within the scope of the public employee's employment which violates the civil rights laws of the United States, the governmental entity shall, subject to IC 34-13-3-4, IC 34-13-3-14, IC 34-13-3-15, and IC 34-13-3-16, pay any judgment, compromise, or settlement of the claim or suit when:

(1) the governor, in the case of a claim or suit against a state employee; or

(2) the governing body of the political subdivision, in the case of a claim or suit against an employee of a political

C o p y

subdivision;

determines that paying the judgment, compromise, or settlement is in the best interest of the governmental entity. The governmental entity shall also pay all costs and fees incurred by or on behalf of a public employee in defense of the claim or suit.

Sec. 2. If requested to do so, the attorney general shall defend a present or former state employee against a claim or suit under section 1 of this chapter. The attorney general may employ other counsel to aid in defending or settling the claim or suit.

Sec. 3. This chapter shall not be construed as:

(1) a waiver of the eleventh amendment to the Constitution of the United States;

(2) consent by the state of Indiana or its employees to be sued in any federal court; or

(3) consent to be sued in any state court beyond the boundaries of Indiana.

Sec. 4. In any action brought against a governmental entity under civil rights laws of the United States, the court may allow attorney's fees as part of the costs to the governmental entity prevailing as defendant if it finds that plaintiff:

(1) brought the action on a claim that is frivolous, unreasonable, or groundless;

(2) continued to litigate the action after plaintiff's claim clearly became frivolous, unreasonable, or groundless; or

(3) litigated its action in bad faith.

This award of fees does not prevent a governmental entity from bringing an action against the plaintiff for abuse of process arising in whole or in part on the same facts, but the defendant may not recover attorney's fees twice.

Chapter 5. Public Lawsuits for Testing Public Improvements of Municipal Corporations

Sec. 1. All public lawsuits shall be brought solely in conformity with and governed by the provisions of this chapter.

Sec. 2. (a) Plaintiffs in a public lawsuit may sue in their capacity either as citizens or taxpayers of the municipal corporation.

(b) A public lawsuit described in subsection (a) is a class suit (whether captioned as such or not), subject to the rights of intervention, the addition of parties, and the addition of other representatives of the same class, as is provided by law in other civil actions. Special appearances may be made in situations

C o p y

permitted by applicable law.

Sec. 3. The procedure in the trial court governing trial of the public lawsuit is the same as in other civil cases. When possible, the hearing on any interlocutory order shall be consolidated with the hearing on all other justiciable issues.

Sec. 4. A change of venue from the judge may be permitted, but no change from the county may be permitted. When a change from the judge has been requested in accordance with the time limits prescribed by law, the affidavit or motion for the change shall be immediately certified to the supreme court:

(1) by the clerk of the trial court; or

(2) upon the failure of the clerk to act promptly, by verified copy of the motion presented to the supreme court by the moving party.

Sec. 5. (a) The rules regarding the selection of a special judge in civil cases do not apply. The supreme court shall appoint the special judge in a public lawsuit.

(b) A special judge is not required to reside in the county in which the case is pending or in any adjoining county.

(c) A special judge may be a regular judge of any circuit, superior, criminal, probate, juvenile, or other lower court of Indiana, any member of the Indiana bar, or any member of the court of appeals or the supreme court where the appointment can be validly made.

Sec. 6. To expedite the trial of the case, either party may apply to the court for the appointment of a special reporter or firm of reporters to be the court reporter for the public lawsuit which the court may in its discretion approve. The moving party shall pay the cost, which may not be taxed as costs of the action.

Sec. 7. (a) At any time before the final hearing in a public lawsuit, the defendant may petition for an order of the court that the cause be dismissed unless the plaintiff posts a bond with surety to be approved by the court. The bond must be payable to the defendant for the payment of all damages and costs that may accrue by reason of the filing of the lawsuit if the defendant prevails.

(b) A hearing shall be held on a petition described in subsection (a) in the same manner as the hearing on temporary injunctions under IC 34-26-1. If, at the hearing, the court determines that the plaintiff cannot establish facts that would entitle the plaintiff to a temporary injunction, the court shall set

C o p y

the amount of bond to be filed by the plaintiff in an amount found by the judge to cover all damage and costs that may accrue to the defendants by reason of the pendency of the public lawsuit in the event the defendant prevails.

(c) If the plaintiff does not file a bond with sureties approved by the court within ten (10) days after the order to do so is entered, the suit shall be dismissed.

(d) Either plaintiff or defendant may appeal an order to post or deny bond to the Indiana supreme court within ten (10) days by notice of appeal and a statement of error in the same manner as is provided in a petition for mandate or prohibition. The supreme court may:

(1) stay the lower court order pending its own decision;

(2) set a bond to be filed by the plaintiff;

(3) modify the order of the lower court; or

(4) enter its order as a final order in a case.

(e) If no bond is filed as provided in this section:

(1) the public lawsuit shall be dismissed; and

(2) no court has further jurisdiction of the public lawsuit or any other public lawsuit involving any issue that was or could have been raised.

(f) This section does not create, nor shall it be construed as creating, any additional cause of action on the part of any municipal corporation, person, partnership, limited liability company, or corporation, unless the defendant is required to and does post bond.

Sec. 8. Appeals from any final judgment in a public lawsuit shall be governed by, and taken in the same manner and with the same time limits, as appeals from interlocutory orders of a circuit or superior court under applicable law.

Sec. 9. Extensions of time, both in the trial court and in the Indiana supreme court, shall be granted only in extreme cases. The trial of a public lawsuit and the hearing of any appeal shall be advanced by the trial court and by the Indiana supreme court respectively, without request of either party, as expeditiously as is reasonably possible.

Sec. 10. (a) A public lawsuit may not be brought, and no trial court has jurisdiction of any public lawsuit that is brought:

(1) more than ten (10) days after the first publication required by law for the sale of bonds of a municipal corporation; or

Copy

(2) in the case of a lease under IC 21-5-11, more than ten (10) days after the first publication of notice by any school building corporation for the sale of its bonds;

but in no case later than the time limited for bringing suit under applicable law.

(b) After a public lawsuit is commenced, no other lawsuit relating to the same subject matter may be commenced, and no trial court has jurisdiction of any subsequent lawsuit. No action may be brought except as provided in this chapter if it could have been the subject of a public lawsuit. This chapter does not diminish any right of intervention of any person, or the right of any person to become a named party in the public lawsuit.

(c) This section shall not be construed to extend any existing statute of limitations on the bringing of any lawsuit.

Sec. 11. As a condition precedent to bringing any public lawsuit, a plaintiff must first exhaust all the administrative remedies available to the plaintiff under applicable law, including but not limited to the filing of a remonstrance where the issues raised could have been raised by the filing under applicable law. No plaintiff may commence a public lawsuit or be named as a party in the lawsuit unless one (1) of the plaintiffs has complied with this section.

Sec. 12. Where:

(1) as a condition precedent to the construction, financing, or leasing of a public improvement, the municipal corporation is required to hold a public hearing preceded by public notice; and

(2) the hearing is held and the notice is given in accordance with applicable law;

the plaintiff in a public lawsuit is not entitled to raise any issue in the public lawsuit that the plaintiff could have but did not raise at the hearing. Any matters or issues relating to any procedural matters that were not raised and could have been redone or corrected following the hearing are declared to be irregularities and not jurisdictional to the power of the municipal corporation or its governing body in connection with the construction, financing, or leasing.

Chapter 6. Appeals from Actions of Municipalities

Sec. 1. (a) An appeal allowed by statute from any action or decision of:

(1) a board of a city;

Copy

(2) the legislative body of a city if it performs the functions of a board; or

(3) the legislative body of a town;

shall be filed as an original complaint against the city or town in the circuit or superior court of the county in which the municipality is located.

(b) The complaint on appeal must be filed not later than thirty (30) days after the date of the action or decision complained of, and one (1) or more parties appealing may join in the same complaint.

(c) The appeal may not be taken by transcript.

(d) The complaint on appeal must contain the following:

(1) The title of the cause, specifying the name of the court and the county in which the appeal is filed.

(2) Whether it is an appeal from a board or body.

(3) The name of every party plaintiff to the appeal. The municipality must be named as the only defendant. Neither the board, the body, nor the individual members of the board or body may be made parties defendant to the complaint.

(4) A statement:

(A) of the facts constituting the cause of appeal, showing the nature of the proceedings in which and the date on which the action or decision complained of was taken; and

(B) if a statute controlling the proceeding requires, that a remonstrance in writing was filed by the plaintiff with the board or body as prescribed by statute, setting out a copy of the remonstrance and showing the date on which the remonstrance was filed.

(5) A description of each lot or tract of land or other property owned or controlled by the party or parties appealing and the amount of the award of damages or the amount of the assessment of benefits complained of for each lot or tract of land or other property described in the complaint, including the action or decision of the board or body concerning the award or assessment.

(6) If an appeal authorized by statute from an action or decision of a board or body does not involve or is not limited to the question of the amount of the award of damages or the assessment of benefits, a specific allegation of the action or decision that causes the party to complain.

(7) A demand for the relief to which the plaintiff believes the

C o p y

plaintiff is entitled, stating when the plaintiff became involved and the amount of damages that should be awarded or the amount of benefits that should be assessed to or against each particular lot or tract of land or other property described in the complaint.

Sec. 2. A pleading is not required by the municipality to the complaint on appeal since the allegations of the complaint are considered to be denied. The municipality may file a motion to dismiss the complaint by presenting any question of law regarding the sufficiency of the complaint on its face. The municipality may also file a motion to dismiss the appeal:

(1) on the ground that the complaint was not filed within the time prescribed by law; or

(2) on any other jurisdictional ground affecting the subject matter or the parties.

Sec. 3. (a) If more than one (1) appeal is taken from a proceeding and the appeals are filed in the same or different courts, any party to an appeal may file in the court a motion stating that justice will be best served by consolidating the appeals. The party shall serve notice of the motion on the adverse party or the attorney of record.

(b) If the court in which the motion is filed decides that justice will be best served by the consolidation, the court shall order all of the appeals consolidated. The appeals shall be heard at the same time by the court, and different appeals pending in different courts may all be transferred to one (1) court for the purpose of consolidation or trial. The court may hear all appeals at the same time either with or without consolidation. However, if any party appealing or the municipality objects to consolidation, they have the right to a separate trial of each appeal.

Sec. 4. (a) The decisions of the board or council appealed from are conclusive on all parties except the party appealing. The decision appealed from is considered prima facie correct and the burden of proof in all appeals is on the party appealing.

(b) All appeals shall be tried by the court without the intervention of a jury. The court shall try and hear de novo the issues of the action or decision of the board or council presented by written remonstrance or as otherwise provided by statute and raised by the appeals.

(c) The:

(1) method of arriving at the action or decision of the board

C o p y

or council in making an award of damages or assessment of benefits; and

(2) any issues not authorized by the statute to be made before the board or council, and appealed from;

may not be reviewed, considered, or adjudged by the court on appeal.

(d) The amount of benefits assessed or the damages awarded affecting any property, other than the property and the separate assessments or awards on them involved in each instance in a proceeding by a board or council from which an appeal is taken, may not be considered by the court on appeal.

(e) The court:

(1) may, on its own motion; and

(2) shall, on the motion of either party;

view and inspect any district, land, and property affected, damaged, benefited, or appropriated, including the work or thing proposed or done.

(f) The court, according to the particular statute allowing the appeal as the statute permits or prescribes the matters that may be considered, may set aside, affirm, lower, or increase an award, damages, or assessment of benefits as the court considers just and then order that action. The court also may affirm, reverse, or modify, in whole or in part, the action or decision of the board or council appealed from. The order and judgment of the court is conclusive upon all parties, and no appeal lies except upon questions affecting the jurisdiction of the court.

Sec. 5. (a) If the court finds that the action or decision of the board or council appealed from should in all things be affirmed, its judgment must state that, naming the board or council and the proceedings in which the appeal is taken. Judgment for costs shall then be rendered against the party appealing.

(b) If the court finds that the action or decision of the board or council appealed from should not be affirmed in all things, then the court shall make a general finding, setting out, however, sufficient facts to show the nature of the proceeding and the court's decision on it. The court shall then render judgment on all matters properly involved in the appeal, adjudging specifically the amount of the award of damages or the amount of the assessment of benefits found by the court to be due to each lot, parcel, or description or property involved in the appeal and adjudging that the award or assessment is payable as provided by statute.

C o p y

(c) The court shall render judgment on other matters involved where the particular appeal allowed by a statute does not relate to the award of damages or the assessment of benefits.

(d) The court shall also render judgment on the costs of the appeal as the facts and law require.

(e) If the appeal involves the amount of an award of damages or the amount of an assessment of benefits, or both, the court shall include an order, if appropriate, for the issuance of a certificate of damages, bearing legal interest from the date of issuance, to the person entitled to it upon all the terms and conditions that are provided by the applicable statute. If the appeal involves benefits, the court shall permit the assessment of benefits to be paid in full, or a written waiver may be executed and filed for paying it in ten (10) annual installments, with legal interest payable, and upon all other terms and conditions that are provided by the applicable statute. All of this must be done within thirty (30) days after the date on which the clerk of the court certifies the order and judgment for transmission to the board or council. If an assessment of benefits is not paid or a waiver executed and filed as provided before the expiration of the thirty (30) day period, the assessment becomes delinquent and is subject to all penalties and to collection as is provided by the applicable statute.

Sec. 6. A change of venue from the county is not allowed in the appeal, but a change of judge shall be allowed as provided for civil actions. A petition for rehearing may be filed by any party within fifteen (15) days after the decision, order, and judgment of the court. Pending that time and until a petition so filed is ruled upon, the order and judgment of the court may be certified to the board or council. At the time of ruling upon a petition, the court may grant time for filing an appeal bond and special bills of exceptions embracing as much of the record as is necessary to present fully any questions. The appeal must be fully perfected within sixty (60) days from the final ruling and action of the court upon the petition for a rehearing and shall be taken direct to the supreme court of Indiana, where it shall be placed upon the advance calendar of the court. The rules of trial procedure govern in all matters of procedure not otherwise provided for by this chapter.

Sec. 7. (a) If on appeal:

(1) the amount of an award of damages is increased; or

(2) the amount of an assessment of benefits is reduced;

the municipality is liable to the plaintiff for the increase in the

C o p y

award of damages and is liable to the party entitled to them for a reduction in the assessment of benefits.

(b) The amounts, costs, and expense, if the appeal is taken from the board of public works or the board of public works and safety, shall be paid by the board out of funds appropriated by the common council or city-county council for that purpose, or as otherwise provided by statute.

(c) The council shall make all necessary appropriations as provided by statute to enable the board to make all payments required by this chapter, if not otherwise provided by statute and available for these purposes.

(d) If the appeal is taken from the board of park commissioners of a city, then the amounts, costs, and expenses shall be paid by the board out of its general fund, or as otherwise provided by statute.

(e) If the appeal is taken from the legislative body, other body, or an official of a municipality, the amounts required to comply with the court's order and judgment shall be appropriated and paid in any manner authorized by statute.

Sec. 8. An appeal takes precedence over other pending litigation and shall be tried and determined by the court at as early a date as practical.

SECTION 9. IC 34-14 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 14. CAUSES OF ACTION: DECLARATORY JUDGMENT

Chapter 1. Uniform Declaratory Judgment Act

Sec. 1. Courts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding is open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. The declaration has the force and effect of a final judgment or decree.

Sec. 2. Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration

Copy

of rights, status, or other legal relations thereunder.

Sec. 3. A contract may be construed either before or after there has been a breach of the contract.

Sec. 4. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust, or of the estate of a decedent, a person under eighteen (18) years of age, or a mentally incompetent person may have a declaration of rights or legal relations:

(1) to ascertain any class of creditors, devisee, legatees, heirs, next of kin, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Sec. 5. The enumeration in sections 2, 3, or 4 of this chapter does not limit or restrict the exercise of the general powers conferred in section 1 of this chapter in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

Sec. 6. The court may refuse to render or enter a declaratory judgment or decree where the judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

Sec. 7. All orders, judgments, and decrees under this chapter may be reviewed as other orders, judgments, and decrees.

Sec. 8. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application for further relief must be by petition to a court having jurisdiction to grant the relief. If the application is deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be immediately granted.

Sec. 9. When a proceeding under this chapter involves the determination of an issue of fact, the issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

C o p y

Sec. 10. In any proceeding under this chapter, the court may make an award of costs as may seem equitable and just.

Sec. 11. When declaratory relief is sought, all persons shall be made parties who have or claim any interest that would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality shall be made a party, and shall be entitled to be heard. If the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

Sec. 12. This chapter is declared to be remedial. The purpose of this chapter is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

Sec. 13. The word "person" wherever used in this chapter shall be construed to mean any person, partnership, limited liability company, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever.

Sec. 14. The several sections and provisions of this chapter except sections 1 and 2, are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the chapter invalid or inoperative.

Sec. 15. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

Sec. 16. This chapter may be cited as the Uniform Declaratory Judgments Act.

SECTION 10. IC 34-15 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 15. CAUSES OF ACTION: DEFAMATION, LIBEL, AND SLANDER

Chapter 1. Pleadings in Actions for Libel or Slander

Sec. 1. In an action for libel or slander, it is sufficient to state generally that the defamatory matter published or spoken was about the plaintiff. If the defendant denies the allegation, the

C o p y

plaintiff must prove at trial the facts showing that the defamatory matter was published or spoken about the plaintiff.

Sec. 2. In an action for libel or slander, the defendant may allege:

(1) the truth of the matter charged as defamatory; and

(2) mitigating circumstances to reduce the damages;

and give either or both in evidence.

Chapter 2. Standard of Proof in Actions for Libel or Slander

Sec. 1. The proof of an answer of justification in cases of libel and slander is controlled by the rule that applies to the proof of issues in other civil cases.

Chapter 3. Defamation Actions Against Radio and Television Broadcasters

Sec. 1. (a) This chapter applies to a suit brought for:

(1) publishing;

(2) speaking;

(3) uttering; or

(4) conveying by words, acts, or in any other manner;

a libel or slander by any radio or television station or company in Indiana.

(b) Section 3 of this chapter does not apply to a case of libel or slander against a candidate for a public office in Indiana, unless the retraction of the charge is made in an audible or visible manner at least three (3) days before the election.

Sec. 2. At least three (3) days before filing a complaint in a suit described in section 1 of this chapter, the aggrieved party shall serve notice:

(1) in writing;

(2) on the manager of the radio or television station;

(3) at the principal office of the radio or television station; and

(4) that specifies the words or acts that the aggrieved party alleges to be false and defamatory.

Sec. 3. The plaintiff in a suit described in section 1 of this chapter may recover only actual damages if it appears, upon trial of the action, that:

(1) the words or acts were conveyed and broadcast in good faith;

(2) the falsity of the words or acts was due to mistake or misapprehension of the facts; and

(3) a full and fair retraction of any words or acts alleged to

C o p y

be erroneous was conveyed or broadcast:

(A) on a regular program of the radio or television company;

(B) within ten (10) days after the mistake or misapprehension was brought to the knowledge of the manager; and

(C) at approximately the same time and by the same sending power so as to be as visible and audible as the original acts or words complained of.

Chapter 4. Defamation Actions Against Newspaper Publishers

Sec. 1. (a) This chapter applies to a suit for the:

(1) publication of a libel by a newspaper; or

(2) transmission of a libel by a news service;

in Indiana.

(b) Section 3 of this chapter does not apply to a case of libel against a candidate for a public office in Indiana, unless the retraction is made in the manner set out in section 3 of this chapter at least three (3) days before the election.

Sec. 2. (a) Before bringing a suit described in section 1 of this chapter, the aggrieved party shall:

(1) at least four (4) days before filing the complaint against a news service;

(2) at least six (6) days before filing the complaint against a daily newspaper; or

(3) at least eleven (11) days before filing the complaint against a weekly newspaper;

serve notice in writing specifying the factual statements in the article that are alleged to be false and defamatory, and correcting the falsity of the statements by reference to the true facts.

(b) If the publication of the alleged libel was by a newspaper, the notice shall be served on the publisher at the newspaper's principal office of publication. If the transmission of the alleged libel was by a news service, the notice shall be served on the bureau chief at the news service's principal Indiana office.

Sec. 3. The plaintiff in a suit described in section 1 of this chapter may recover only actual damages if:

(1) it appears at the trial of the action that:

(A) the article was published or transmitted in good faith; and

(B) the falsity of the article was due to mistake or misapprehension of the facts;

C o p y

(2) a full and fair retraction of a factual statement alleged to be false and defamatory was published in a regular issue of the newspaper or transmitted to its members or subscribers by the news service:

(A) within three (3) days by a news service;

(B) within five (5) days, if the newspaper is a daily publication; or

(C) within ten (10) days, if the newspaper is a weekly publication;

after the mistake or misapprehension was brought to the knowledge of the publisher or bureau chief; and

(3) the retraction was published in as conspicuous a place and type as the original item appeared in the newspaper or was transmitted by a news service to all members or subscribers to whom the original item was transmitted.

Chapter 5. Actions for Certain False Charges

Sec. 1. Every charge of incest, homosexuality, bestiality, fornication, adultery, or whoredom falsely made against any person is actionable in the same manner as in the case of slanderous words charging a felony.

SECTION 11. IC 34-16 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 16. CAUSES OF ACTION: GAMBLING DEBTS AND LOSSES

Chapter 1. Gambling Debts and Losses

Sec. 1. A note, bill, bond, conveyance, contract, mortgage, or other security made in consideration of:

(1) money or other property won as the result of a wager; or

(2) the repayment of money lent at the time of a wager for the purpose of being wagered;

is void.

Sec. 2. If a person, by betting on a game or on the hands or sides of persons playing a game:

(1) loses any money or other property; and

(2) delivers any part of the money or other property;

the person may bring a civil action, within one hundred eighty (180) days, to recover the money or other property so lost and delivered.

Sec. 3. In the civil action, it is sufficient for the plaintiff to allege that the defendant has received the money or other property

C o p y

so lost and delivered.

Sec. 4. If, within the one hundred eighty (180) day period, the person fails to sue or to effectively prosecute the action, the prosecuting attorney of the county shall bring a civil action to recover the money or other property so lost and delivered, in the name of the state and for the benefit of:

(1) the person's dependent children who are less than eighteen (18) years of age and the person's spouse; or

(2) if there are no children or spouse, the common school fund.

Sec. 5. A person who is sued under this chapter (or IC 34-4-28 before is repeal) shall answer, under oath or affirmation, questions concerning the money or other property the defendant is alleged to have received.

SECTION 12. IC 34-17 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 17. CAUSES OF ACTION: INFORMATIONS

Chapter 1. Cases in Which an Information May Be Filed

Sec. 1. An information may be filed against any person or corporation in the following cases:

(1) When a person usurps, intrudes into, or unlawfully holds or exercises a public office or a franchise within Indiana or an office in a corporation created by the authority of this state.

(2) Whenever a public officer does or allows an act which, by law, works a forfeiture of the officer's office.

(3) When an association or number of persons acts within Indiana as a corporation, without being legally incorporated.

(4) When a corporation does or omits acts that amount to a surrender or forfeiture of its rights and privileges as a corporation.

(5) When a corporate franchise was procured through fraud practiced upon the state.

(6) When a corporation:

(A) exceeds or abuses the authority conferred upon the corporation by law; or

(B) exercises authority not conferred upon it by law.

Sec. 2. An information may be prosecuted to annul or vacate any letters-patent, certificate, or deed granted by the proper authorities of Indiana when there is reason to believe that:

C o p y

(1) the letters, deed, or certificate was obtained by fraud or through mistake or ignorance of a material fact; or

(2) the patentee or those claiming under the patentee:

(A) have done or omitted an act in violation of the terms on which the letters, deed, or certificate was granted; or

(B) have by any other means forfeited the interest acquired under the letters, deed, or certificate.

Sec. 3. Whenever property escheats or is forfeited to the state for the state's use, the legal title is considered to be in the state from the time of the escheat or forfeiture. An information may be filed in accordance with IC 34-17-2-3 to recover the property.

Chapter 2. Filing of Information and Summons

Sec. 1. An information described in IC 34-17-1-1 may be filed:

(1) by the prosecuting attorney in the circuit court of the proper county, upon the prosecuting attorney's own relation, whenever the prosecuting attorney:

(A) determines it to be the prosecuting attorney's duty to do so; or

(B) is directed by the court or other competent authority; or

(2) by any other person on the person's own relation, whenever the person claims an interest in the office, franchise, or corporation that is the subject of the information.

Sec. 2. (a) An information to annul or vacate any letters-patent, certificate, or deed described in IC 34-17-1-2 may be filed by:

(1) the prosecuting attorney, upon the prosecuting attorney's relation; or

(2) a private person, upon the person's relation, showing the person's interest in the subject matter.

(b) The subsequent proceeding, judgment of the court, and awarding of costs must conform to the requirements of this article and the letters-patent, deed or certificate shall be annulled or sustained according to the rights of the case.

Sec. 3. (a) Following forfeiture or escheat of property as described in IC 34-17-1-3, an information may be filed by the prosecuting attorney in the circuit court for the recovery of the property, alleging the ground on which the recovery is claimed.

(b) Proceedings and judgment are the same as in a civil action for the recovery of property.

C o p y

Sec. 4. When several persons claim to be entitled to the same office or franchise, one (1) information may be filed against any or all persons making the claim, in order to try their respective rights to the office or franchise.

Sec. 5. The information consists of a plain statement of the facts that constitute the grounds of the proceeding, addressed to the court.

Sec. 6. (a) This section applies to an information filed against a person for usurping an office.

(b) Whenever an information described in subsection (a) is filed by the prosecuting attorney, the prosecuting attorney shall also set forth the name of the person rightfully entitled to the office, if any, with an averment:

(1) of the person's right to the office; or

(2) that no person is entitled to the office and that a vacancy in the office will result.

(c) When an information described in subsection (a) is filed by any other person, the person shall state the person's interest in the matter and any damages the person has sustained.

Sec. 7. Whenever an information is filed, a summons shall issue, which shall be served and returned as in other actions. The defendant shall appear and answer, or suffer default, and subsequent proceedings are the same as in other cases.

Chapter 3. Judgment, Costs, and Enforcement

Sec. 1. In every case contesting the right to an office, judgment shall be rendered upon the rights of the parties, and for any damages the relator shows the relator is entitled to, to the time of the judgment.

Sec. 2. If judgment is rendered in favor of a person who claims to be the person entitled to hold the office:

(1) that person shall proceed to exercise the functions of the office after the person has been qualified, as required by law; and

(2) the court shall order the defendant to deliver all the funds and records in the custody or within the power of the defendant, belonging to the office from which the defendant has been removed:

(A) to the person entitled to hold the office; or

(B) if a vacancy results, to the court to hold until a person is selected to fill the vacancy.

Sec. 3. If the defendant refuses or neglects to deliver the books

Copy

and papers, pursuant to the order, the court or judge shall enforce the order by attachment and imprisonment.

Sec. 4. (a) This section applies to a judgment rendered in favor of the plaintiff.

(b) If the plaintiff did not claim damages in the information, the plaintiff may file an action for the damages at any time within one (1) year after the judgment.

Sec. 5. (a) This section applies whenever:

(1) a person is found guilty of usurping, intruding into, or unlawfully exercising:

(A) an office or a franchise within Indiana; or

(B) an office in a corporation created by the authority of this state;

(2) a public officer thus charged is found guilty of having done or suffered an act which, by law, works a forfeiture of the office; or

(3) an association or number of persons is found guilty of having acted as a corporation, without having been legally incorporated.

(b) The court shall give judgment of ouster against the defendant and:

(1) exclude the defendant from the office, franchise, or corporate rights;

(2) in cases of corporations, dissolve the corporation; and

(3) adjudge costs in favor of the plaintiff.

Sec. 6. (a) If judgment is rendered against a corporation or against any persons claiming to be a corporation, the court may cause the costs to be collected:

(1) by execution against the persons claiming to be a corporation; or

(2) by attachment against the directors or other officers of the corporation.

(b) In addition, the court shall:

(1) restrain the corporation;

(2) appoint a receiver of the corporation's property and effects;

(3) take an account; and

(4) make a distribution of property among the creditors.

(c) The prosecuting attorney shall immediately institute proceedings for these purposes.

Sec. 7. When an information is filed by the prosecuting

Copy

attorney, the prosecuting attorney is not liable for costs. However, when an information is filed upon the relation of a private person, the private person is liable for costs, unless the costs are adjudged against the defendant.

SECTION 13. IC 34-18 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 18. MEDICAL MALPRACTICE

Chapter 1. Application

Sec. 1. This article does not apply to an act of malpractice that occurred before July 1, 1975.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. A legal term or word of art that is used in this article, if not otherwise defined, has the meaning that is consistent with the common law.

Sec. 3. (a) "Advanced emergency medical technician", except as provided in subsection (b), has the meaning set forth in IC 16-18-2-6.

(b) The term does not include such a person while operating an emergency vehicle.

Sec. 4. "Ambulance service" means a person who employs:

(1) emergency medical technicians;

(2) advanced emergency medical technicians; or

(3) paramedics.

Sec. 5. "Annual aggregate" means the limitation on a health care provider's liability as provided in IC 34-18-4.

Sec. 6. "Authority" refers to the residual malpractice insurance authority established under IC 34-18-17 (or IC 27-12-17 before its repeal).

Sec. 7. "College, university, or junior college" means an institution for postsecondary school education accredited by the North Central Association.

Sec. 8. "Commissioner" refers to the insurance commissioner.

Sec. 9. "Community health center" means a provider of primary health care organized as a nonprofit corporation under IC 23-7-1.1 (before its repeal on August 1, 1991) or IC 23-17 and governed by a board of directors, at least fifty-one percent (51%) of whom are representatives of consumers.

Sec. 10. "Community mental health center" means a public or

Copy

private mental health center established under IC 12-29.

Sec. 11. "Community mental retardation center" means a public or private community mental retardation and other developmental disabilities center established under IC 12-29.

Sec. 12. "Emergency medical technician" has the meaning set forth in IC 16-18-2-112 but does not include such a person while operating an emergency vehicle.

Sec. 13. "Health care" means an act or treatment performed or furnished, or that should have been performed or furnished, by a health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

Sec. 14. "Health care provider" means any of the following:

(1) An individual, a partnership, a limited liability company, a corporation, a professional corporation, a facility, or an institution licensed or legally authorized by this state to provide health care or professional services as a physician, psychiatric hospital, hospital, health facility, emergency ambulance service (IC 16-18-2-107), dentist, registered or licensed practical nurse, physician assistant, midwife, optometrist, podiatrist, chiropractor, physical therapist, respiratory care practitioner, occupational therapist, psychologist, paramedic, emergency medical technician, or advanced emergency medical technician, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment.

(2) A college, university, or junior college that provides health care to a student, faculty member, or employee, and the governing board or a person who is an officer, employee, or agent of the college, university, or junior college acting in the course and scope of the person's employment.

(3) A blood bank, community mental health center, community mental retardation center, community health center, or migrant health center.

(4) A home health agency (as defined in IC 16-27-1-2).

(5) A health maintenance organization (as defined in IC 27-13-1-19).

(6) A health care organization whose members, shareholders, or partners are health care providers under subdivision (1).

(7) A corporation, limited liability company, partnership, or professional corporation not otherwise qualified under this

C o p y

section that:

(A) as one (1) of its functions, provides health care;

(B) is organized or registered under state law; and

(C) is determined to be eligible for coverage as a health care provider under this article for its health care function.

Coverage for a health care provider qualified under this subdivision is limited to its health care functions and does not extend to other causes of action.

Sec. 15. "Health facility" means a facility licensed under IC 16-28.

Sec. 16. "Hospital" means a public or private institution licensed under IC 16-21-2.

Sec. 17. "Insurer" means the authority or an insurance company engaged on an admitted or nonadmitted basis in making in this state Class 2(h) malpractice liability insurance under IC 27-1-5-1.

Sec. 18. "Malpractice" means a tort or breach of contract based on health care or professional services that were provided, or that should have been provided, by a health care provider, to a patient.

Sec. 19. "Midwife" means a registered nurse who holds a limited license to practice midwifery under IC 25-23-1-13.1.

Sec. 20. "Migrant health center" means a provider of primary health care organized as a nonprofit corporation under IC 23-7-1.1 (before its repeal on August 1, 1991) or IC 23-17 governed by a board of directors, at least fifty-one percent (51%) of whom are representatives of consumers and funded under Section 329 of the United States Public Health Service Act (42 U.S.C. 254b).

Sec. 21. (a) "Paramedic", except as provided in subsection (b), has the meaning set forth in IC 16-18-2-266.

(b) The term does not include such a person while operating an emergency vehicle.

Sec. 22. "Patient" means an individual who receives or should have received health care from a health care provider, under a contract, express or implied, and includes a person having a claim of any kind, whether derivative or otherwise, as a result of alleged malpractice on the part of a health care provider. Derivative claims include the claim of a parent or parents, guardian, trustee, child, relative, attorney, or any other representative of the patient including claims for loss of services, loss of consortium, expenses,

Copy

and other similar claims.

Sec. 23. "Physician" means an individual with an unlimited license to practice medicine under IC 25-22.5.

Sec. 24. "Psychiatric hospital" means a private institution licensed under IC 12-25 and public institutions under the administrative control of the director of a division as designated by IC 12-24-1-1 or IC 12-24-1-3.

Sec. 25. "Representative" means the spouse, parent, guardian, trustee, attorney, or other legal agent of the patient.

Sec. 26. "Risk" means a health care provider that must apply for malpractice liability insurance coverage under IC 34-18-17.

Sec. 27. "Risk manager" means an insurance company that is:

(1) admitted to make insurance and actively engaged in making in this state Class 2 insurance under IC 27-1-5-1; and

(2) appointed by the commissioner to manage the authority.

Sec. 28. "Tort" means a legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.

Chapter 3. Need to Qualify; Qualification Procedure

Sec. 1. A health care provider who fails to qualify under this article is not covered by this article and is subject to liability under the law without regard to this article. If a health care provider does not qualify, the patient's remedy is not affected by this article.

Sec. 2. For a health care provider to be qualified under this article, the health care provider or the health care provider's insurance carrier shall:

(1) cause to be filed with the commissioner proof of financial responsibility established under IC 34-18-4; and

(2) pay the surcharge assessed on all health care providers under IC 34-18-5.

Sec. 3. The officers, agents, and employees of a health care provider, while acting in the course and scope of their employment, may be qualified under this chapter if the following conditions are met:

(1) The officers, agents, and employees are individually named or are members of a named class in the proof of financial responsibility filed by the health care provider under IC 34-18-4.

(2) The surcharge assessed under IC 34-18-5 is paid.

Sec. 4. (a) As used in this section, "employee of a governmental entity" has the meaning set forth in IC 34-6-2-38.

C o p y

(b) As used in this section, "governmental entity" has the meaning set forth in IC 34-6-2-49.

(c) A claim against a governmental entity or an employee of a governmental entity based on an occurrence of malpractice is governed exclusively by this article if the governmental entity or employee is qualified under this article.

Sec. 5. The receipt of proof of financial responsibility and the surcharge constitutes compliance with section 2 of this chapter:

(1) as of the date on which they are received; or

(2) as of the effective date of the policy;

if this proof is filed with and the surcharge paid to the department of insurance not later than ninety (90) days after the effective date of the insurance policy. If proof of financial responsibility and the payment of the surcharge is not made within ninety (90) days after the policy effective date, compliance occurs on the date when proof is filed and the surcharge is paid.

Sec. 6. Within five (5) business days after the department of insurance receives the information required under section 2 of this chapter for the qualification of a health care provider, the commissioner shall notify the health care provider of the following:

(1) Whether the provider is qualified.

(2) If the provider is qualified, the date the provider becomes qualified.

Sec. 7. (a) The commissioner shall adopt rules under IC 4-22-2 to establish the following:

(1) Criteria for determining, upon application, whether a corporation, limited liability company, partnership, or professional corporation is subject to IC 34-18-2-14(7) and thus is eligible to qualify as a health care provider under this chapter.

(2) The minimum annual aggregate insurance amount necessary for the corporation, limited liability company, partnership, or professional corporation to become qualified under IC 34-18-2-14(7).

(b) The criteria to be established by rule under subsection (a)(1) must include the identification of the health care purpose and function of the corporation, limited liability company, partnership, or professional corporation.

(c) The minimum annual aggregate insurance amount to be set by rule under subsection (a)(2) may not exceed five hundred thousand dollars ($500,000).

C o p y

(d) The commissioner may require a corporation, limited liability company, partnership, or professional corporation that seeks to qualify under IC 34-18-2-14(7) and this chapter to provide information necessary to determine eligibility and to establish the minimum annual aggregate amount applicable to the corporation, limited liability company, partnership, or professional corporation.

Chapter 4. Establishment of Financial Responsibility

Sec. 1. Financial responsibility of a health care provider and the provider's officers, agents, and employees while acting in the course and scope of their employment with the health care provider may be established under subdivision (1), (2), or (3):

(1) By the health care provider's insurance carrier filing with the commissioner proof that the health care provider is insured by a policy of malpractice liability insurance in the amount of at least one hundred thousand dollars ($100,000) per occurrence and three hundred thousand dollars ($300,000) in the annual aggregate, except for the following:

(A) If the health care provider is a hospital, as defined in this article, the minimum annual aggregate insurance amount is as follows:

(i) For hospitals of not more than one hundred (100) beds, two million dollars ($2,000,000).

(ii) For hospitals of more than one hundred (100) beds, three million dollars ($3,000,000).

(B) If the health care provider is a health maintenance organization (as defined in IC 27-13-1-19) or a limited service health maintenance organization (as defined in IC 27-13-34-4), the minimum annual aggregate insurance amount is seven hundred thousand dollars ($700,000).

(C) If the health care provider is a health facility, the minimum annual aggregate insurance amount is as follows:

(i) For health facilities with not more than one hundred (100) beds, three hundred thousand dollars ($300,000).

(ii) For health facilities with more than one hundred (100) beds, five hundred thousand dollars ($500,000).

(2) By filing and maintaining with the commissioner cash or surety bond approved by the commissioner in the amounts

Copy

set forth in subdivision (1).

(3) If the health care provider is a hospital or a psychiatric hospital, by submitting annually a verified financial statement that, in the discretion of the commissioner, adequately demonstrates that the current and future financial responsibility of the health care provider is sufficient to satisfy all potential malpractice claims incurred by the provider or the provider's officers, agents, and employees while acting in the course and scope of their employment up to a total of one hundred thousand dollars ($100,000) per occurrence and annual aggregates as follows:

(A) For hospitals of not more than one hundred (100) beds, two million dollars ($2,000,000).

(B) For hospitals of more than one hundred (100) beds, three million dollars ($3,000,000).

The commissioner may require the deposit of security to assure continued financial responsibility.

Sec. 2. Security provided under section 1(2) of this chapter may be held in any manner mutually agreeable to the commissioner and the health care provider. The agreement must provide that the principal may not be withdrawn before receiving the written permission of the commissioner. However, any interest earned may be withdrawn at any time by the health care provider.

Sec. 3. For the purposes of section 1 of this chapter, the bed size of a hospital shall be considered to be the bed size published annually by the state department of health.

Sec. 4. To establish financial responsibility under this chapter, each individual who is a member of a partnership or professional corporation must establish financial responsibility separate from the partnership or professional corporation, as well as pay the surcharge required under IC 34-18-5. However, this section does not require a health care provider to qualify under this article.

Chapter 5. Surcharge

Sec. 1. To create a source of money for the patient's compensation fund, an annual surcharge shall be levied on all health care providers in Indiana.

Sec. 2. (a) The amount of the annual surcharge shall be set by a rule adopted by the commissioner under IC 4-22-2.

(b) The amount of the surcharge shall be determined based upon actuarial principles and actuarial studies and must be adequate for the payment of claims and expenses from the patient's

C o p y

compensation fund.

(c) The surcharge may not exceed two hundred percent (200%) of the cost to each health care provider for maintenance of financial responsibility.

(d) There is imposed a minimum annual surcharge of twenty-five dollars ($25).

Sec. 3. (a) The surcharge shall be collected on the same basis as premiums by each insurer, risk manager, or surplus lines agent.

(b) The surcharge is due and payable within thirty (30) days after the premium for malpractice liability insurance has been received by the insurer, risk manager, or surplus lines agent from a health care provider in Indiana. If a surcharge is not paid as required by this section, the insurer, risk manager, or surplus lines agent responsible for the delinquency is liable for the surcharge plus a penalty equal to ten percent (10%) of the amount of the surcharge.

(c) If the annual premium surcharge is not paid within the time limit specified in subsection (b), the certificate of authority of the insurer, risk manager, and surplus lines agents shall be suspended until the annual premium surcharge is paid.

Sec. 4. (a) The commissioner may adopt rules establishing the following:

(1) The manner of determination of the surcharge for a health care provider that establishes financial responsibility in a way other than by a policy of malpractice liability insurance.

(2) The manner of payment of the surcharge by such a health care provider.

(b) The surcharge calculation established under subsection (a) must provide comparability in rates for insured and self-insured hospitals. This surcharge may not exceed the surcharge that would be charged by the residual authority if the health care provider electing to establish financial responsibility in this manner had applied to the residual authority for insurance.

Chapter 6. Patient's Compensation Fund

Sec. 1. (a) The patient's compensation fund is created to be collected and received by the commissioner for exclusive use for the purposes stated in this article.

(b) The fund and any income from the fund shall be held in trust, deposited in a segregated account, invested, and reinvested by the commissioner as authorized by IC 27-1-13 and does not

C o p y

become a part of the state general fund.

(c) Proceeds of the annual surcharge levied on all health care providers in Indiana under IC 34-18-5 shall be deposited in the fund.

Sec. 2. The commissioner, using money from the fund as considered necessary, appropriate, or desirable, may purchase the services of persons, firms, and corporations to aid in protecting the fund against claims. All expenses of collecting, protecting, and administering the fund shall be paid from the fund.

Sec. 3. If the fund exceeds the amount of one hundred twenty-five million dollars ($125,000,000) at the end of each of two (2) consecutive six (6) month periods described in section 4 of this chapter after the payment of all claims and expenses, the commissioner shall reduce the surcharge provided in IC 34-18-5 to maintain the fund at an approximate level of one hundred twenty-five million dollars ($125,000,000).

Sec. 4. (a) Claims for payment from the patient's compensation fund that become final during the first six (6) months of the calendar year must be computed on June 30 and must be paid not later than the following July 15. Claims for payment from the fund that become final during the last six (6) months of the calendar year must be computed on December 31 and must be paid not later than the following January 15.

(b) If the balance in the fund is insufficient to pay in full all claims that have become final during a six (6) month period, the amount paid to each claimant must be prorated. Any amount left unpaid as a result of the proration must be paid before the payment of claims that become final during the following six (6) month period.

Sec. 5. The auditor of state shall issue a warrant in the amount of each claim submitted to the auditor against the fund on June 30 and December 31 of each year. The only claim against the fund shall be a voucher or other appropriate request by the commissioner after the commissioner receives:

(1) a certified copy of a final judgment against a health care provider; or

(2) a certified copy of a court approved settlement against a health care provider.

Sec. 6. (a) If an annual aggregate for a health care provider qualified under this article has been paid by or on behalf of the health care provider, all amounts that may subsequently become

C o p y

due and payable to a claimant arising out of an act of malpractice of the health care provider occurring during the year in which the annual aggregate was exhausted shall be paid from the patient's compensation fund under the following terms and conditions:

(1) A health care provider whose annual aggregate has been exhausted has no right to object to or refuse permission to settle such a claim.

(2) If a health care provider or the commissioner and claimant agree on a settlement, the following procedure must be followed:

(A) A petition shall be filed by the claimant with the court in which the action is pending against the health care provider or, if none is pending, in the circuit or superior court of Marion County, seeking approval of the agreed settlement.

(B) A copy of the petition shall be served on the commissioner and the health care provider at least ten (10) days before filing and must contain sufficient information to inform the other parties about the nature of the claim and the amount of the proposed settlement.

(C) The commissioner may agree to the settlement, or the commissioner may file written objections to the settlement. The agreement or objections shall be filed within twenty (20) days after the petition is filed.

(D) The judge of the court in which the petition is filed shall set the petition for approval or, if objections have been filed, for hearing, as soon as practicable. The court shall give notice of the hearing to the claimant, the health care provider, and the commissioner.

(E) At the hearing the commissioner, the claimant, and the health care provider may introduce relevant evidence to enable the court to determine whether or not the petition should be approved if the evidence is submitted on agreement without objections. If the commissioner and the claimant cannot agree on the amount, if any, to be paid out of the patient's compensation fund, the court shall determine the amount for which the fund is liable and render a finding and judgment accordingly. In approving a settlement or determining the amount, if any, to be paid from the patient's compensation fund, the court shall consider the

C o p y

liability of the health care provider as admitted and established.

(F) A settlement approved by the court may not be appealed. A judgment of the court fixing damages recoverable in a contested proceeding is appealable under the rules governing appeals in other civil cases tried by the court.

(b) The commissioner may adopt rules under IC 4-22-2 implementing this section.

Sec. 7. The following are exempt from IC 5-22 governing state purchasing:

(1) Technical contractual personnel and services retained by the commissioner for protecting and administering the patient's compensation fund.

(2) Purchasing of annuities for structuring settlements from the patient's compensation fund or in combination with the patient's compensation fund and the health care provider's insurer.

Chapter 7. Statute of Limitations

Sec. 1. (a) This section applies to all persons regardless of minority or other legal disability, except as provided in subsection (c).

(b) A claim, whether in contract or tort, may not be brought against a health care provider based upon professional services or health care that was provided or that should have been provided unless the claim is filed within two (2) years after the date of the alleged act, omission, or neglect, except that a minor less than six (6) years of age has until the minor's eighth birthday to file.

(c) If a patient meets the criteria stated in IC 34-18-8-6(c), the applicable limitations period is equal to the period that would otherwise apply to the patient under subsection (b) (or IC 27-12-7-1(b) before its repeal) plus one hundred eighty (180) days.

Sec. 2. Notwithstanding IC 34-18-1-1, any claim, whether in contract or tort, by a minor or other person under legal disability against a health care provider stemming from professional services or health care provided based on an alleged act, omission, or neglect that occurred before July 1, 1975, shall be brought only within the longer of the following:

(1) Two (2) years after July 1, 1975.

(2) The period described in section 1 of this chapter.

C o p y

Sec. 3. (a) The filing of a proposed complaint tolls the applicable statute of limitations to and including a period of ninety (90) days following the receipt of the opinion of the medical review panel by the claimant.

(b) A proposed complaint under IC 34-18-8 is considered filed when a copy of the proposed complaint is delivered or mailed by registered or certified mail to the commissioner.

Chapter 8. Commencement of a Medical Malpractice Action

Sec. 1. Subject to IC 34-18-10 and sections 4 through 6 of this chapter, a patient or the representative of a patient who has a claim under this article for bodily injury or death on account of malpractice may do the following:

(1) File a complaint in any court of law having requisite jurisdiction.

(2) By demand, exercise the right to a trial by jury.

Sec. 2. The following fees must accompany each proposed complaint filed:

(1) A filing fee of five dollars ($5).

(2) A processing fee of two dollars ($2) for each additional defendant after the first defendant.

Sec. 3. Except for the declaration called for in section 6(a) of this chapter, a dollar amount or figure may not be included in the demand in a malpractice complaint, but the prayer must be for such damages as are reasonable in the premises.

Sec. 4. Notwithstanding section 1 of this chapter, and except as provided in sections 5 and 6 of this chapter, an action against a health care provider may not be commenced in a court in Indiana before:

(1) the claimant's proposed complaint has been presented to a medical review panel established under IC 34-18-10 (or IC 27-12-10 before its repeal); and

(2) an opinion is given by the panel.

Sec. 5. Notwithstanding section 4 of this chapter, a claimant may commence an action in court for malpractice without the presentation of the claim to a medical review panel if the claimant and all parties named as defendants in the action agree that the claim is not to be presented to a medical review panel. The agreement must be in writing and must be signed by each party or an authorized agent of the party. The claimant must attach a copy of the agreement to the complaint filed with the court in which the action is commenced.

C o p y

Sec. 6. (a) Notwithstanding section 4 of this chapter, a patient may commence an action against a health care provider for malpractice without submitting a proposed complaint to a medical review panel if the patient's pleadings include a declaration that the patient seeks damages from the health care provider in an amount not greater than fifteen thousand dollars ($15,000). In an action commenced under this subsection (or IC 27-12-8-6(a) before its repeal), the patient is barred from recovering any amount greater than fifteen thousand dollars ($15,000), except as provided in subsection (b).

(b) A patient who:

(1) commences an action under subsection (a) (or IC 27-12-8-6(a) before its repeal) in the reasonable belief that damages in an amount not greater than fifteen thousand dollars ($15,000) are adequate compensation for the bodily injury allegedly caused by the health care provider's malpractice; and

(2) later learns, during the pendency of the action, that the bodily injury is more serious than previously believed and that fifteen thousand dollars ($15,000) is insufficient compensation for the bodily injury;

may move that the action be dismissed without prejudice and, upon dismissal of the action, may file a proposed complaint subject to section 4 of this chapter based upon the same allegations of malpractice as were asserted in the action dismissed under this subsection. In a second action commenced in court following the medical review panel's proceeding on the proposed complaint, the patient may recover an amount greater than fifteen thousand dollars ($15,000). However, a patient may move for dismissal without prejudice and, if dismissal without prejudice is granted, may commence a second action under this subsection only if the patient's motion for dismissal is filed within two (2) years after commencement of the original action under subsection (a) (or IC 27-12-8-6(a) before its repeal).

(c) If a patient:

(1) commences an action under subsection (a) (or IC 27-12-8-6(a) before its repeal);

(2) moves under subsection (b) (or IC 27-12-8-6(b) before its repeal) for dismissal of that action;

(3) files a proposed complaint subject to section 4 of this chapter based upon the same allegations of malpractice as

C o p y

were asserted in the action dismissed under subsection (b) (or IC 27-12-8-6(b) before its repeal); and

(4) commences a second action in court following the medical review panel proceeding on the proposed complaint;

the timeliness of the second action is governed by IC 34-18-7-1(c).

(d) A medical liability insurer of a health care provider against whom an action has been filed under subsection (a) (or IC 27-12-8-6(a) before its repeal) shall provide written notice to the state health commissioner as required under IC 34-18-9-2.

Chapter 9. Reporting and Review of Claims

Sec. 1. Within ten (10) days after receiving a proposed complaint under IC 34-18-8, the commissioner shall forward a copy of the complaint by registered or certified mail to each health care provider named as a defendant, at the defendant's last and usual place of residence or the defendant's office.

Sec. 2. A medical liability insurer of a health care provider against whom an action has been filed under IC 34-18-8-6(a) shall provide written notice to the commissioner within thirty (30) days after:

(1) the filing of the action; and

(2) the final disposition of the action.

Sec. 3. (a) A health care provider's insurer shall notify the commissioner of any malpractice case upon which the insurer has placed a reserve of at least fifty thousand dollars ($50,000). The insurer shall give notice to the commissioner under this subsection immediately after placing the reserve. The notice and all communications and correspondence relating to the notice are confidential and may not be made available to any person or any public or private agency.

(b) All malpractice claims settled or adjudicated to final judgment against a health care provider shall be reported to the commissioner by the plaintiff's attorney and by the health care provider or the health care provider's insurer or risk manager within sixty (60) days following final disposition of the claim. The report to the commissioner must state the following:

(1) The nature of the claim.

(2) The damages asserted and the alleged injury.

(3) The attorney's fees and expenses incurred in connection with the claim or defense.

(4) The amount of the settlement or judgment.

Sec. 4. (a) The commissioner shall forward the name of every

C o p y

health care provider, except a hospital, against whom a settlement is made or judgment is rendered under this article (or IC 27-12 before its repeal) to the appropriate board of professional registration and examination for review of the fitness of the health care provider to practice the health care provider's profession. In each case involving review of a health care provider's fitness to practice forwarded under this section, the appropriate board of professional registration and examination may, in appropriate cases, take the following disciplinary action:

(1) censure;

(2) imposition of probation for a determinate period;

(3) suspension of the health care provider's license for a determinate period; or

(4) revocation of the license.

(b) Review of the health care provider's fitness to practice shall be conducted in accordance with IC 4-21.5.

(c) The appropriate board of professional registration and examination shall report to the commissioner the board's findings, the action taken, and the final disposition of each case involving review of a health care provider's fitness to practice forwarded under this section.

Chapter 10. Medical Review Panel

Sec. 1. This chapter provides for the establishment of medical review panels to review proposed malpractice complaints against health care providers covered by this article.

Sec. 2. Not earlier than twenty (20) days after the filing of a proposed complaint, either party may request the formation of a medical review panel by serving a request by registered or certified mail upon all parties and the commissioner.

Sec. 3. (a) A medical review panel consists of one (1) attorney and three (3) health care providers.

(b) The attorney member of the medical review panel shall act as chairman of the panel and in an advisory capacity but may not vote.

(c) The chairman of the medical review panel shall expedite the selection of the other panel members, convene the panel, and expedite the panel's review of the proposed complaint. The chairman may establish a reasonable schedule for submission of evidence to the medical review panel but must allow sufficient time for the parties to make full and adequate presentation of related facts and authorities.

C o p y

Sec. 4. A medical review panel shall be selected in the following manner:

(1) Within fifteen (15) days after the filing of a request for formation of a medical review panel under section 2 of this chapter, the parties shall select a panel chairman by agreement. If no agreement on a panel chairman can be reached, either party may request the clerk of the supreme court to draw at random a list of five (5) names of attorneys who:

(A) are qualified to practice;

(B) are presently on the rolls of the supreme court; and

(C) maintain offices in the county of venue designated in the proposed complaint or in a contiguous county.

(2) Before selecting the random list, the clerk shall collect a twenty-five dollar ($25) medical review panel selection fee from the party making the request for the formation of the random list.

(3) The clerk shall notify the parties, and the parties shall then strike names alternately with the plaintiff striking first until one (1) name remains. The remaining attorney shall be the chairman of the panel.

(4) After the striking, the plaintiff shall notify the chairman and all other parties of the name of the chairman.

(5) If a party does not strike a name within five (5) days after receiving notice from the clerk:

(A) the opposing party shall, in writing, request the clerk to strike for the party; and

(B) the clerk shall strike for that party.

(6) When one (1) name remains, the clerk shall within five (5) days notify the chairman and all other parties of the name of the chairman.

(7) Within fifteen (15) days after being notified by the clerk of being selected as chairman, the chairman shall:

(A) send a written acknowledgment of appointment to the clerk; or

(B) show good cause for relief from serving as provided in section 12 of this chapter.

Sec. 5. Except for health care providers who are health facility administrators, all health care providers in Indiana, whether in the teaching profession or otherwise, who hold a license to practice in their profession shall be available for selection as members of the

C o p y

medical review panel. Health facility administrators may not be members of the medical review panel.

Sec. 6. Each party to the action has the right to select one (1) health care provider, and upon selection, the two (2) health care providers thus selected shall select the third panelist.

Sec. 7. If there are multiple plaintiffs or defendants, only one (1) health care provider shall be selected per side. The plaintiff, whether single or multiple, has the right to select one (1) health care provider and the defendant, whether single or multiple, has the right to select one (1) health care provider.

Sec. 8. If there is only one (1) party defendant who is an individual, two (2) of the panelists selected must be members of the profession identified in IC 34-18-2-14(1) of which the defendant is a member. If the individual defendant is a health care professional who specializes in a limited area, two (2) of the panelists selected must be health care professionals who specialize in the same area as the defendant.

Sec. 9. Within fifteen (15) days after the chairman is selected, both parties shall select a health care provider and the parties shall notify the other party and the chairman of their selection. If a party fails to make a selection within the time provided, the chairman shall make the selection and notify both parties. Within fifteen (15) days after their selection, the health care provider members shall select the third member within the time provided and notify the chairman and the parties. If the providers fail to make a selection, the chairman shall make the selection and notify both parties.

Sec. 10. Within ten (10) days after the selection of a panel member, written challenge without cause may be made to the panel member. Upon challenge or excuse, the party whose appointee was challenged or dismissed shall select another panelist. If the challenged or dismissed panel member was selected by the other two (2) panel members, the panel members shall make a new selection. If two (2) such challenges are made and submitted, the chairman shall within ten (10) days appoint a panel consisting of three (3) qualified panelists and each side shall, within ten (10) days after the appointment, strike one (1) panelist. The party whose appointment was challenged shall strike last, and the remaining member shall serve.

Sec. 11. When a medical review panel is formed, the chairman shall within five (5) days notify the commissioner and the parties

C o p y

by registered or certified mail of the following:

(1) The names and addresses of the panel members.

(2) The date on which the last member was selected.

Sec. 12. (a) A member of a medical review panel who is selected under this chapter shall serve unless:

(1) the parties by agreement excuse the panelist; or

(2) the panelist is excused as provided in this section for good cause shown.

(b) To show good cause for relief from serving, the attorney selected as chairman of a medical review panel must serve an affidavit upon the clerk of the supreme court. The affidavit must set out the facts showing that service would constitute an unreasonable burden or undue hardship. The clerk may excuse the attorney from serving. The attorney shall notify all parties, who shall then select a new chairman as provided in section 4 of this chapter.

(c) To show good cause for relief from serving, a health care provider member of a medical review panel must serve an affidavit upon the panel chairman. The affidavit must set out the facts showing that service would constitute an unreasonable burden or undue hardship. The chairman may excuse the member from serving and notify all parties.

Sec. 13. (a) The panel shall give its expert opinion within one hundred eighty (180) days after the selection of the last member of the initial panel. However, if:

(1) the chairman of the panel is removed under section 15 of this chapter, another member of the panel is removed under section 16 of this chapter, or any member of the panel, including the chairman, is removed by a court order; and

(2) a new member is selected to replace the removed member more than ninety (90) days after the last member of the initial panel is selected;

the panel has ninety (90) days after the selection of the new member to give an expert opinion.

(b) If the panel has not given an opinion within the time allowed under subsection (a), the panel shall submit a report to the commissioner, stating the reasons for the delay.

Sec. 14. A party, attorney, or panelist who fails to act as required by this chapter without good cause shown is subject to mandate or appropriate sanctions upon application to the court designated in the proposed complaint as having jurisdiction.

C o p y

Sec. 15. (a) The commissioner may remove the chairman of the panel if the commissioner determines that the chairman is not fulfilling the duties imposed upon the chairman by this chapter.

(b) If the chairman is removed under this section, a new chairman shall be selected under this chapter.

Sec. 16. (a) The chairman may remove a member of the panel if the chairman determines that the member is not fulfilling the duties imposed upon the panel members by this chapter.

(b) If a member is removed under this section, a new member shall be selected under this chapter.

Sec. 17. (a) The evidence in written form to be considered by the medical review panel shall be promptly submitted by the respective parties.

(b) The evidence may consist of medical charts, x-rays, lab tests, excerpts of treatises, depositions of witnesses including parties, and any other form of evidence allowable by the medical review panel.

(c) Depositions of parties and witnesses may be taken before the convening of the panel.

(d) The chairman shall ensure that before the panel gives its expert opinion under section 22 of this chapter, each panel member has the opportunity to review every item of evidence submitted by the parties.

(e) Before considering any evidence or deliberating with other panel members, each member of the medical review panel shall take an oath in writing on a form provided by the panel chairman, which must read as follows:

> **"I (swear) (affirm) under penalties of perjury that I will well and truly consider the evidence submitted by the parties; that I will render my opinion without bias, based upon the evidence submitted by the parties, and that I have not and will not communicate with any party or representative of a party before rendering my opinion, except as authorized by law.".**

Sec. 18. Neither a party, a party's agent, a party's attorney, nor a party's insurance carrier may communicate with any member of the panel, except as authorized by law, before the giving of the panel's expert opinion under section 22 of this chapter.

Sec. 19. The chairman of the panel shall advise the panel relative to any legal question involved in the review proceeding and shall prepare the opinion of the panel as provided in section 22 of

C o p y

this chapter.

Sec. 20. (a) Either party, after submission of all evidence and upon ten (10) days notice to the other side, has the right to convene the panel at a time and place agreeable to the members of the panel. Either party may question the panel concerning any matters relevant to issues to be decided by the panel before the issuance of the panel's report.

(b) The chairman of the panel shall preside at all meetings. Meetings shall be informal.

Sec. 21. (a) The panel has the right and duty to request all necessary information.

(b) The panel may consult with medical authorities.

(c) The panel may examine reports of other health care providers necessary to fully inform the panel regarding the issue to be decided.

(d) Both parties shall have full access to any material submitted to the panel.

Sec. 22. (a) The panel has the sole duty to express the panel's expert opinion as to whether or not the evidence supports the conclusion that the defendant or defendants acted or failed to act within the appropriate standards of care as charged in the complaint.

(b) After reviewing all evidence and after any examination of the panel by counsel representing either party, the panel shall, within thirty (30) days, give one (1) or more of the following expert opinions, which must be in writing and signed by the panelists:

(1) The evidence supports the conclusion that the defendant or defendants failed to comply with the appropriate standard of care as charged in the complaint.

(2) The evidence does not support the conclusion that the defendant or defendants failed to meet the applicable standard of care as charged in the complaint.

(3) There is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court or jury.

(4) The conduct complained of was or was not a factor of the resultant damages. If so, whether the plaintiff suffered:

(A) any disability and the extent and duration of the disability; and

(B) any permanent impairment and the percentage of the impairment.

C o p y

Sec. 23. A report of the expert opinion reached by the medical review panel is admissible as evidence in any action subsequently brought by the claimant in a court of law. However, the expert opinion is not conclusive, and either party, at the party's cost, has the right to call any member of the medical review panel as a witness. If called, a witness shall appear and testify.

Sec. 24. A panelist has absolute immunity from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of duties prescribed by this article.

Sec. 25. (a) Each health care provider member of the medical review panel is entitled to be paid:

(1) up to three hundred fifty dollars ($350) for all work performed as a member of the panel, exclusive of time involved if called as a witness to testify in court; and

(2) reasonable travel expense.

(b) The chairman of the panel is entitled to be paid:

(1) at the rate of two hundred fifty dollars ($250) per diem, not to exceed one thousand two hundred fifty dollars ($1,250); and

(2) reasonable travel expenses.

(c) The chairman shall keep an accurate record of the time and expenses of all the members of the panel. The record shall be submitted to the parties for payment with the panel's report.

(d) Fees of the panel, including travel expenses and other expenses of the review, shall be paid by the side in whose favor the majority opinion is written. If there is no majority opinion, each side shall pay one-half (½) of the cost.

Sec. 26. The chairman shall submit a copy of the panel's report to:

(1) the commissioner; and

(2) all parties and attorneys;

by registered or certified mail within five (5) days after the panel gives its opinion.

Chapter 11. Preliminary Determination of Affirmative Defense or Issue of Law or Fact; Discovery

Sec. 1. (a) A court having jurisdiction over the subject matter and the parties to a proposed complaint filed with the commissioner under this article may, upon the filing of a copy of the proposed complaint and a written motion under this chapter, do one (1) or both of the following:

(1) preliminarily determine an affirmative defense or issue

C o p y

of law or fact that may be preliminarily determined under the Indiana Rules of Procedure; or

(2) compel discovery in accordance with the Indiana Rules of Procedure.

(b) The court has no jurisdiction to rule preliminarily upon any affirmative defense or issue of law or fact reserved for written opinion by the medical review panel under IC 34-18-10-22(b)(1), IC 34-18-10-22(b)(2), and IC 34-18-10-22(b)(4).

(c) The court has jurisdiction to entertain a motion filed under this chapter only during that time after a proposed complaint is filed with the commissioner under this article but before the medical review panel gives the panel's written opinion under IC 34-18-10-22.

(d) The failure of any party to move for a preliminary determination or to compel discovery under this chapter before the medical review panel gives the panel's written opinion under IC 34-18-10-22 does not constitute the waiver of any affirmative defense or issue of law or fact.

Sec. 2. (a) A party to a proceeding commenced under this article, the commissioner, or the chairman of a medical review panel, if any, may invoke the jurisdiction of the court by paying the statutory filing fee to the clerk and filing a copy of the proposed complaint and motion with the clerk.

(b) The filing of a copy of the proposed complaint and motion with the clerk confers jurisdiction upon the court over the subject matter and the parties to the proceeding for the limited purposes stated in this chapter, including the taxation and assessment of costs or the allowance of expenses, including reasonable attorney's fees, or both.

(c) The moving party or the moving party's attorney shall cause as many summonses as are necessary to be issued by the clerk and served on the commissioner, each nonmoving party to the proceedings, and the chairman of the medical review panel, if any, unless the commissioner or the chairman is the moving party, together with a copy of the proposed complaint and a copy of the motion under Rules 4 through 4.17 of the Indiana Rules of Trial Procedure.

Sec. 3. (a) Each nonmoving party to the proceeding, including the commissioner and the chairman of the medical review panel, if any, shall have a period of twenty (20) days after service, or a period of twenty-three (23) days after service if service is by mail,

C o p y

to appear and file and serve a written response to the motion, unless the court, for cause shown, orders the period enlarged.

(b) The court shall enter a ruling on the motion:

(1) within thirty (30) days after the motion is heard; or

(2) if no hearing is requested, granted or ordered, within thirty (30) days after the date on which the last written response to the motion is filed.

(c) The court shall order the clerk to serve a copy of the court's ruling on the motion by ordinary mail on the commissioner, each party to the proceeding, and the chairman of the medical review panel, if any.

Sec. 4. Upon the filing of a copy of the proposed complaint and motion with the clerk of the court, all further proceedings before the medical review panel shall be stayed automatically until the court has entered a ruling on the motion.

Sec. 5. The court may enforce its ruling on any motion filed under this chapter in accordance with the Indiana Rules of Procedure, subject to the right of appeal.

Chapter 12. Liability Based on Breach of Contract; Informed Consent

Sec. 1. Liability may not be imposed on a health care provider on the basis of an alleged breach of contract, express or implied, assuring results to be obtained from any procedure undertaken in the course of health care, unless the contract is in writing and signed by that health care provider or by an authorized agent of the health care provider.

Sec. 2. If a patient's written consent is:

(1) signed by the patient or the patient's authorized representative;

(2) witnessed by an individual at least eighteen (18) years of age; and

(3) explained, orally or in the written consent, to the patient or the patient's authorized representative before a treatment, procedure, examination, or test is undertaken;

a rebuttable presumption is created that the consent is an informed consent.

Sec. 3. The explanation given in accordance with section 2(3) of this chapter must include the following information:

(1) The general nature of the patient's condition.

(2) The proposed treatment, procedure, examination, or test.

(3) The expected outcome of the treatment, procedure,

C o p y

examination, or test.

(4) The material risks of the treatment, procedure, examination, or test.

(5) The reasonable alternatives to the treatment, procedure, examination, or test.

Sec. 4. This chapter does not relieve a qualified health care provider of the duty to obtain an informed consent.

Sec. 5. This chapter does not prevent a patient, after having signed a consent, from withdrawing that consent.

Sec. 6. This chapter does not require that a patient's consent or the information described under section 3 of this chapter be in writing in all cases.

Sec. 7. Compliance with this chapter is not required to create an informed consent.

Sec. 8. A patient may refuse to receive some or all of the information described in section 3 of this chapter.

Sec. 9. Sections 2 and 3 of this chapter do not apply to a person who is mentally incapable of understanding the information required to be provided by section 3 of this chapter. This section does not require consent to health care in an emergency.

Chapter 13. Malpractice Coverage

Sec. 1. Only while malpractice liability insurance remains in force are the health care provider and the health care provider's insurer liable to a patient or the patient's representative for malpractice to the extent and in the manner specified in this article.

Sec. 2. The filing of proof of financial responsibility with the commissioner constitutes, on the part of the insurer, a conclusive and unqualified acceptance of this article.

Sec. 3. A provision in a policy attempting to limit or modify the liability of the insurer contrary to this article is void.

Sec. 4. Every policy issued under this article (or IC 27-12 before its repeal) is considered to include the following provisions, and any change made by legislation adopted by the general assembly as fully as if the change were written in the policy:

(1) The insurer assumes all obligations to pay an award imposed against its insured under this article (or IC 27-12 before its repeal).

(2) A termination of this policy by cancellation initiated by the insurance company is not effective for patients claiming against the insured covered by the policy, unless at least thirty (30) days before the taking effect of the cancellation,

C o p y

a written notice giving the date upon which termination becomes effective has been received by the insured and the commissioner at their offices.

(3) A termination of this policy by cancellation initiated by the insured is not effective for patients claiming against the insured covered by the policy, unless at least thirty (30) days before the taking effect of the cancellation, a written notice giving the date upon which termination becomes effective has been received by the commissioner at the commissioner's office.

Sec. 5. If an insurer fails or refuses to pay a final judgment, except during the pendency of an appeal, or fails, or refuses to comply with this article, in addition to any other legal remedy, the commissioner may also revoke the approval of the insurer's policy form until the insurer pays the award or judgment or has complied with the violated provisions of this article and has resubmitted its policy form and received the approval of the commissioner.

Chapter 14. Limits on Damages

Sec. 1. As used in this chapter, "cost of the periodic payments agreement" means the amount expended by the health care provider (or its insurer), the commissioner, or the commissioner and the health care provider (or its insurer), at the time the periodic payments agreement is made, to obtain the commitment from a third party to make available money for use as future payment, the total of which may exceed the limits provided in section 3 of this chapter.

Sec. 2. As used in this chapter, "periodic payments agreement" means a contract between a health care provider (or its insurer) and the patient (or the patient's estate), under which the health care provider is relieved from possible liability in consideration of:

(1) a present payment of money to the patient (or the patient's estate); and

(2) one (1) or more payments to the patient (or the patient's estate) in the future;

whether or not some or all of the payments are contingent upon the patient's survival to the proposed date of payment.

Sec. 3. (a) The total amount recoverable for an injury or death of a patient may not exceed five hundred thousand dollars ($500,000) except that, as to an act of malpractice that occurs on or after January 1, 1990, the total amount recovered for an injury or death may not exceed seven hundred fifty thousand dollars

C o p y

($750,000).

(b) A health care provider qualified under this article (or IC 27-12 before its repeal) is not liable for an amount in excess of one hundred thousand dollars ($100,000) for an occurrence of malpractice.

(c) Any amount due from a judgment or settlement that is in excess of the total liability of all liable health care providers, subject to subsections (a), (b), and (d), shall be paid from the patient's compensation fund under IC 34-18-15.

(d) If a health care provider qualified under this article (or IC 27-12 before its repeal) admits liability or is adjudicated liable solely by reason of the conduct of another health care provider who is an officer, agent, or employee of the health care provider acting in the course and scope of employment and qualified under this article (or IC 27-12 before its repeal), the total amount that shall be paid to the claimant on behalf of the officer, agent, or employee and the health care provider by the health care provider or its insurer is one hundred thousand dollars ($100,000). The balance of an adjudicated amount to which the claimant is entitled shall be paid by other liable health care providers or the patient's compensation fund, or both.

Sec. 4. (a) If the possible liability of the health care provider to the patient is discharged solely through an immediate payment, the limitations on recovery from a health care provider stated in section 3(b) and 3(d) of this chapter apply without adjustment.

(b) If the health care provider agrees to discharge its possible liability to the patient through a periodic payments agreement, the amount of the patient's recovery from a health care provider in a case under this subsection is the amount of any immediate payment made by the health care provider or the health care provider's insurer to the patient, plus the cost of the periodic payments agreement to the health care provider or the health care provider's insurer. For the purpose of determining the limitations on recovery stated in section 3(b) and 3(d) of this chapter and for the purpose of determining the question under IC 34-18-15-3 of whether the health care provider or the health care provider's insurer has agreed to settle its liability by payment of its policy limits, the sum of:

(1) the present payment of money to the patient (or the patient's estate) by the health care provider (or the health care provider's insurer); plus

C o p y

(2) the cost of the periodic payments agreement expended by the health care provider (or the health care provider's insurer);

must exceed seventy-five thousand dollars ($75,000).

(c) More than one (1) health care provider may contribute to the cost of a periodic payments agreement, and in such an instance the sum of the amounts expended by each health care provider for immediate payments and for the cost of the periodic payments agreement shall be used to determine whether the seventy-five thousand dollar ($75,000) requirement in subsection (b) has been satisfied. However, one (1) health care provider or its insurer must be liable for at least fifty thousand dollars ($50,000).

Sec. 5. (a) If the possible liability of the fund to the patient is discharged solely through a direct payment made under IC 34-18-15-1, the limitations on recovery from the patient's compensation fund established under section 3 of this chapter apply without adjustment.

(b) If an agreement is made to discharge the fund's possible liability to the patient through a periodic payments agreement, the amount of the patient's recovery from the fund is:

(1) the amount of any immediate payment made directly to the patient from the fund; plus

(2) the cost of the periodic payments agreement paid by the commissioner on behalf of the fund;

for the purposes of the limitations on recovery from the fund established under section 3 of this chapter.

Chapter 15. Payment from the Patient's Compensation Fund

Sec. 1. (a) The obligation to pay an amount from the patient's compensation fund under IC 34-18-14-3(c), IC 34-18-6-6, or section 3 of this chapter (or IC 27-12-14-3(c), IC 27-12-6-6, or IC 27-12-15-3 before their repeal) may be discharged as follows:

(1) Payment in one (1) lump amount.

(2) An agreement requiring periodic payments from the fund over a period of years.

(3) The purchase of an annuity payable to the patient.

(4) Any combination of subdivisions (1), (2), and (3).

(b) The commissioner may contract with approved insurers to insure the ability of the fund to make periodic payments under subsection (a)(2).

Sec. 2. Notwithstanding IC 34-18-6, the commissioner may:

(1) discharge the possible liability of the patient's

Copy

compensation fund to a patient through a periodic payments agreement (as defined in IC 34-18-14-2); and

(2) combine money from the fund with money of the health care provider (or its insurer) to pay the cost of the periodic payments agreement with the patient (or the patient's estate). However, the amount provided by the commissioner may not exceed eighty percent (80%) of the total amount expended for the agreement.

Sec. 3. If a health care provider or its insurer has agreed to settle its liability on a claim by payment of its policy limits of one hundred thousand dollars ($100,000), and the claimant is demanding an amount in excess of that amount, the following procedure must be followed:

(1) A petition shall be filed by the claimant in the court named in the proposed complaint, or in the circuit or superior court of Marion County, at the claimant's election, seeking:

(A) approval of an agreed settlement, if any; or

(B) demanding payment of damages from the patient's compensation fund.

(2) A copy of the petition with summons shall be served on the commissioner, the health care provider, and the health care provider's insurer, and must contain sufficient information to inform the other parties about the nature of the claim and the additional amount demanded.

(3) The commissioner and either the health care provider or the insurer of the health care provider may agree to a settlement with the claimant from the patient's compensation fund, or the commissioner, the health care provider, or the insurer of the health care provider may file written objections to the payment of the amount demanded. The agreement or objections to the payment demanded shall be filed within twenty (20) days after service of summons with copy of the petition attached to the summons.

(4) The judge of the court in which the petition is filed shall set the petition for approval or, if objections have been filed, for hearing, as soon as practicable. The court shall give notice of the hearing to the claimant, the health care provider, the insurer of the health care provider, and the commissioner.

(5) At the hearing, the commissioner, the claimant, the health

C o p y

care provider, and the insurer of the health care provider may introduce relevant evidence to enable the court to determine whether or not the petition should be approved if the evidence is submitted on agreement without objections. If the commissioner, the health care provider, the insurer of the health care provider, and the claimant cannot agree on the amount, if any, to be paid out of the patient's compensation fund, the court shall, after hearing any relevant evidence on the issue of claimant's damage submitted by any of the parties described in this section, determine the amount of claimant's damages, if any, in excess of the one hundred thousand dollars ($100,000) already paid by the insurer of the health care provider. The court shall determine the amount for which the fund is liable and make a finding and judgment accordingly. In approving a settlement or determining the amount, if any, to be paid from the patient's compensation fund, the court shall consider the liability of the health care provider as admitted and established.

(6) A settlement approved by the court may not be appealed. A judgment of the court fixing damages recoverable in a contested proceeding is appealable pursuant to the rules governing appeals in any other civil case tried by the court.

(7) A release executed between the parties does not bar access to the patient's compensation fund unless the release specifically provides otherwise.

Sec. 4. If a health care provider or the health care provider's surety or liability insurance carrier fails to pay any agreed settlement or final judgment within ninety (90) days, the agreed settlement or final judgment shall be paid from the patient's compensation fund, and the fund shall be subrogated to any and all of claimant's rights against the health care provider, the health care provider's surety or liability insurance carrier, or both, with interest, reasonable costs, and attorney's fees.

Chapter 16. Evidence of Advanced Payment; Assignability of Claim

Sec. 1. Except as provided in IC 34-18-15-3, any advance payment made by the defendant health care provider or the health care provider's insurer to or for the plaintiff or any other person may not be construed as an admission of liability for injuries or damages suffered by the plaintiff or anyone else in an action

C o p y

brought for medical malpractice.

Sec. 2. (a) Evidence of an advance payment is not admissible until there is a final judgment in favor of the plaintiff. In this case the court shall reduce the judgment to the plaintiff to the extent of the advance payment. The advance payment inures to the exclusive benefit of the defendant or the defendant's insurer making the payment.

(b) If the advance payment exceeds the liability of the defendant or the insurer making the advance payment, the court shall order any adjustment necessary to equalize the amount that each defendant is obligated to pay, exclusive of costs. An advance payment in excess of an award is not repayable by the person receiving the advance payment.

Sec. 3. A patient's claim for compensation under this article is not assignable.

Chapter 17. Residual Malpractice Insurance Authority

Sec. 1. The purpose of this chapter is to make malpractice liability insurance available to risks (as defined in this article).

Sec. 2. (a) The residual malpractice insurance authority is created.

(b) The department of insurance is designated as the residual malpractice insurance authority for the purposes of this article.

(c) The authority may engage in making malpractice liability insurance, as described in IC 27-1-5-1, Class 2(h), in Indiana.

Sec. 3. The commissioner shall appoint a risk manager for the authority. The separate, personal, or independent assets of the risk manager are not liable for or subject to use or expenditure for the purpose of providing insurance by the authority.

Sec. 4. In the administration and provision for malpractice liability insurance by the authority, the risk manager shall do the following:

(1) Obey all Indiana statutes and rules that apply to insurance described in IC 27-1-5-1, Class 2(h).

(2) Prepare and file appropriate forms with the department of insurance.

(3) Prepare and file premium rates with the department of insurance.

(4) Perform the underwriting function.

(5) Dispose of all claims and litigations arising out of insurance policies.

(6) Maintain adequate books and records.

C o p y

(7) File an annual financial statement regarding its operations under this chapter with the department of insurance on forms prescribed by the commissioner.

(8) Obtain private reinsurance for the authority, if necessary.

(9) Prepare and file for approval of the commissioner a schedule of agent's compensation.

(10) Prepare and file a plan of operations with the commissioner for approval.

Sec. 5. The risk manager shall receive, as compensation for services, a percentage of all premiums received by the risk manager under this chapter, as determined by the commissioner. The rate of compensation may be adjusted by the commissioner.

Sec. 6. If a risk, after diligent effort, has been declined by at least two (2) insurers, the risk may forward an application to the risk manager, together with evidence of the two (2) declinations.

Sec. 7. If the risk manager declines to accept the risk, notice of declination, together with the reasons, shall be sent to the applicant and the commissioner. The applicant has ten (10) days after the date of notice to file an appeal for review by the commissioner. On appeal, the commissioner shall review the decision of the risk manager and enter an appropriate order.

Sec. 8. All money appropriated by the state and any surplus of premiums over losses and expenses received by the authority shall be placed in a segregated fund and shall be invested and reinvested by the commissioner within the limitations set forth in IC 27-1-13. Investment income generated shall remain in the segregated fund.

Chapter 18. Attorney's Fees

Sec. 1. When a plaintiff is represented by an attorney in the prosecution of the plaintiff's claim, the plaintiff's attorney's fees from any award made from the patient's compensation fund may not exceed fifteen percent (15%) of any recovery from the fund.

Sec. 2. A patient has the right to elect to pay for the attorney's services on a mutually satisfactory per diem basis. The election, however, must be exercised in written form at the time of employment.

SECTION 14. IC 34-19 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 19. CAUSES OF ACTION: NUISANCES

Chapter 1. Nuisance Actions

Sec. 1. Whatever is:

C o p y

(1) injurious to health;
(2) indecent;
(3) offensive to the senses; or
(4) an obstruction to the free use of property;

so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action.

Sec. 2. (a) An action to abate or enjoin a nuisance may be brought by any person whose:

(1) property is injuriously affected; or
(2) personal enjoyment is lessened;

by the nuisance.

(b) A civil action to abate or enjoin a nuisance may also be brought by:

(1) an attorney representing the county in which a nuisance exists; or
(2) the attorney of any city or town in which a nuisance exists.

(c) A county, city, or town that brings a successful action under this section (or IC 34-1-52-2 before its repeal) to abate or enjoin a nuisance caused by the unlawful dumping of solid waste is entitled to recover reasonable attorney's fees incurred in bringing the action.

Sec. 3. Where a proper case is made, the nuisance may be enjoined or abated, and damages recovered for the nuisance.

Sec. 4. (a) The general assembly declares that it is the policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of this section to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

(b) For purposes of this section, the continuity of an agricultural or industrial operation shall be considered to have been interrupted when the operation has been discontinued for more than one (1) year.

(c) An agricultural or industrial operation or any of its

Copy

appurtenances is not and does not become a nuisance, private or public, by any changed conditions in the vicinity of the locality after the agricultural or industrial operation, as the case may be, has been in operation continuously on the locality for more than one (1) year if:

(1) there is no significant change in the hours of operation;

(2) there is no significant change in the type of operation; and

(3) the operation would not have been a nuisance at the time the agricultural or industrial operation began on that locality.

(d) This section does not apply whenever a nuisance results from the negligent operation of an agricultural or industrial operation or its appurtenances.

Sec. 5. (a) It is the purpose of this section to limit the circumstances under which a public use airport operation may be a nuisance in order to reduce the potential for the state to lose the benefits to the state's air transportation system that are provided by public use airports.

(b) A public use airport operation or any of the operation's appurtenances may not become a private or public nuisance by any changed condition in the vicinity of the locality that occurs after the public use airport operation operates continuously on the locality for more than one (1) year if the following conditions are met:

(1) The public use airport operation was not a nuisance at the time when the operation began operating at that locality.

(2) The public use airport operation is operated in accordance with the rules of the Indiana department of transportation, division of aeronautics.

(3) There is no significant change in the hours of operation of the public use airport operation.

(c) This section does not apply whenever a nuisance results from the negligent operation of a public use airport operation or the operation's appurtenances.

Chapter 2. Actions for Indecent Nuisances

Sec. 1. A person who uses, occupies, establishes, maintains, or conducts an indecent nuisance and the owner, agent, or lessee of any interest in an indecent nuisance together with the persons employed in an indecent nuisance, is guilty of maintaining an indecent nuisance and shall be enjoined as provided in this chapter.

C o p y

Sec. 2. (a) Whenever an indecent nuisance exists, a prosecuting official or any resident of the county in which the indecent nuisance exists may bring an action to abate the indecent nuisance and to perpetually enjoin the maintenance of the indecent nuisance.

(b) If a person other than a prosecuting official institutes an action under this chapter, the complainant shall execute a bond to the person against whom complaint is made, with good and sufficient surety to be approved by the court or clerk, in a sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages the party enjoined may sustain if:

(1) the action is wrongfully brought;

(2) the action is not prosecuted to final judgment;

(3) the action is dismissed;

(4) the action is not maintained; or

(5) it is finally decided that the injunction ought not to have been granted.

The party aggrieved by the issuance of the injunction has recourse against the bond for all damages suffered, including damages to the aggrieved party's property, person, or character and including reasonable attorney's fees incurred in defending the action.

(c) A person who institutes an action and executes a bond is entitled to recover such bond and reasonable attorney's fees incurred in trying the action, if the existence of an indecent nuisance is admitted or established in an action as provided in this chapter.

(d) If a prosecuting official institutes an action under this chapter (or IC 34-1-52.5 before its repeal) and the existence of an indecent nuisance is admitted or established in the action, the governmental entity that employs the prosecuting official is entitled to all reasonable attorney's fees incurred by the entity in instituting the action. The fees shall be deposited in:

(1) the state general fund, if the action is instituted by the attorney general;

(2) the operating budget of the office of the prosecuting attorney, if the action is instituted by a prosecuting attorney;

(3) the operating budget of the office of the corporation counsel or city attorney, if the action is instituted by a corporation counsel or city attorney; or

(4) the county general fund, if the action is instituted by an attorney representing the county.

Sec. 3. The indecent nuisance action shall be brought in the

C o p y

circuit or superior court of the county in which the alleged indecent nuisance is located. The action is commenced by filing a verified complaint alleging the facts constituting the indecent nuisance.

Sec. 4. (a) After filing the complaint, the complainant may apply to the court for a preliminary injunction. The court shall grant a hearing on the complainant's motion for preliminary injunction not later than ten (10) days after it is filed.

(b) Where an application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte restraining order restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the indecent nuisance is alleged to exist until the decision of the court granting or refusing a preliminary injunction and until further order of the court. However, pending the court's decision, the stock in trade may not be restrained, but an inventory and full accounting of business transactions after the restraining order may be required.

(c) The restraining order may be served by:

(1) handing to and leaving a copy of the order with a person who is:

(A) in charge of the place; or

(B) a resident of the place; or

(2) posting a copy of the order in a conspicuous place at or upon one (1) or more of the principal doors or entrances to the place.

(d) The officer serving the restraining order shall immediately make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining the indecent nuisance.

(e) Violation of a restraining order served under subsection (c) (or IC 34-1-52.5-4 before its repeal) is a contempt of court.

(f) Where a restraining order is posted as described in subsection (c), mutilation or removal of the order while it remains in force is a contempt of court, if the order contains a notice to that effect.

Sec. 5. (a) A copy of the complaint, and a notice of the time and place of the hearing on the application for a preliminary injunction shall be served upon the defendant at least five (5) days before the hearing.

(b) The owners of the place where the alleged indecent

C o p y

nuisance is located may be served by posting the papers in the manner prescribed by section 4(c) of this chapter for a restraining order.

(c) If a defendant:

(1) is granted a request for continuance; or

(2) moves for a change of venue or a change of judge;

the preliminary writ shall be granted as a matter of course.

Sec. 6. (a) The court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the preliminary injunction:

(1) before or after the commencement of the hearing on an application for a preliminary injunction; and

(2) upon:

(A) application of either of the parties; or

(B) the court's own motion.

(b) Any evidence received upon an application for a preliminary injunction that is admissible in the trial on the merits becomes a part of the record of the trial and does not need to be repeated as to the parties at the trial on the merits.

Sec. 7. (a) If, at the preliminary injunction hearing, the plaintiff proves by a preponderance of the evidence that the indecent nuisance exists as alleged in the complaint, the court shall issue a preliminary injunction, without additional bond, restraining the defendant and any other person from continuing the indecent nuisance.

(b) If a defendant is enjoined under subsection (a), and it appears that the person owning, in control, or in charge of the indecent nuisance received five (5) days notice of the hearing, the court shall:

(1) declare a temporary forfeiture of the use of the real property upon which the indecent nuisance is located and the personal property located at the site; and

(2) immediately issue an order closing the place against its use for any purpose until a final decision is rendered on the application for a permanent injunction;

unless the person owning, in control, or in charge of the indecent nuisance shows to the satisfaction of the court, by competent and admissible evidence subject to cross-examination, that the indecent nuisance complained of has been abated by the person.

Sec. 8. An order closing the place continues in effect while the restraining order is in effect. If a restraining order has not been

C o p y

issued, the order must include an order restraining the removal or interference with the personal property and contents.

Sec. 9. A restraining order under section 4 or 7 of this chapter shall be served and the inventory of the property shall be made and filed as provided in section 4(b) of this chapter.

Sec. 10. (a) The owner of real property that has been closed or is to be closed may appear after the filing of the complaint and before the hearing on the application for a permanent injunction and do the following:

(1) Pay all costs incurred.

(2) File a bond with sureties to be approved by the court:

(A) in the full value of the property to be ascertained by the court; and

(B) conditioned upon the owner immediately abating the indecent nuisance and preventing the indecent nuisance from being established or kept until the decision of the court is rendered on the application for a permanent injunction.

(b) If the defendant complies with subsection (a), and the court is satisfied:

(1) of the good faith of the owner of the real property; and

(2) that the owner did not know and, with reasonable care and diligence, could not have known that the real property was used as an indecent nuisance;

the court shall, at the time of the hearing on the application for the preliminary injunction, refrain from issuing an order closing the real property or restraining the removal or interference with the personal property. If a preliminary injunction has already been issued, the court shall discharge the order and deliver the property to the owners.

Sec. 11. The owner of the personal property that has been restrained or is to be restrained under this chapter may appear after the filing of the complaint and before the hearing on the application for a permanent injunction and petition the court to release the personal property. If the court is satisfied that the owner:

(1) has acted in good faith; and

(2) did not know and, with reasonable care and diligence, could not have known that the personal property was used as an indecent nuisance;

the court shall, at the time of the hearing on the application for the

C o p y

preliminary injunction, refrain from issuing any order restraining the removal or interference with the personal property. If the preliminary injunction has been issued, the court shall discharge the order and deliver the property to the owner.

Sec. 12. The release of any real or personal property under section 10 or 11 of this chapter does not release the property from any judgment, lien, penalty, or liability to which it is subject.

Sec. 13. An indecent nuisance action shall be set down for trial without delay and takes precedence over all other cases except crimes, election contests, or injunctions.

Sec. 14. In an indecent nuisance action, evidence of the general reputation of the place is:

(1) admissible for the purpose of proving the existence of the indecent nuisance; and

(2) presumptive evidence that each person:

(A) owning

(B) in control of; or

(C) in charge of;

the indecent nuisance, knew the indecent nuisance existed and used the place for an act that constitutes an indecent nuisance.

Sec. 15. (a) This section applies to an indecent nuisance complaint filed by a private person.

(b) The court shall not voluntarily dismiss the complaint unless:

(1) the complainant and the complainant's attorney file a sworn statement setting forth the reason why the action should be dismissed; and

(2) the dismissal is approved by the prosecuting attorney in writing or in open court.

(c) If the judge believes that the action should not be dismissed, the judge may direct the prosecuting attorney to prosecute the action to judgment at the expense of the county.

(d) If:

(1) the action is brought by a private person;

(2) the court finds that there were no reasonable grounds or probable cause for bringing said action; and

(3) the case is dismissed either:

(A) for the reason described in subdivision (2) before trial; or

(B) for want of prosecution;

C o p y

the costs may be taxed to the person who brought the case.

Sec. 16. If at the permanent injunction hearing the plaintiff proves by a preponderance of the evidence that the indecent nuisance exists as alleged in the complaint, the court shall enter a judgment that perpetually enjoins:

(1) the defendant and any other person from further maintaining the indecent nuisance at the place described in the complaint; and

(2) the defendant from maintaining an indecent nuisance elsewhere.

Sec. 17. (a) If the existence of an indecent nuisance is admitted or established as provided in section 16 of this chapter, the court shall enter an order of abatement as a part of the judgment in the case. The order of abatement must:

(1) direct the removal of all personal property and contents that:

(A) are located at the place described in the complaint;

(B) are used in conducting the indecent nuisance; and

(C) have not already been released under authority of the court as provided in sections 10 and 11 of this chapter;

(2) direct the sale of personal property that belongs to the defendants who were notified or appeared at the hearing, in the manner provided for the sale of chattels under execution; and

(3) require one (1) of the following:

(A) The renewal for one (1) year of any bond furnished by the owner of the real property, as provided in section 10 of this chapter.

(B) If no bond was furnished, continue for one (1) year any closing order issued at the time of granting the preliminary injunction.

(C) If no closing order was issued when the preliminary injunction was granted, direct the effectual closing of the place against its use for any purpose for one (1) year unless sooner released.

(b) The owner of a place that has been closed and not released under bond may appear and obtain a release in the manner and upon fulfilling the requirements provided in sections 10 and 11 of this chapter.

(c) The release of property under this section does not release

C o p y

the property from any judgment, lien, penalty, or liability to which the property may be subject.

(d) Owners of unsold personal property and contents seized under this section must:

(1) appear and claim the property within ten (10) days after an order of abatement is made; and

(2) prove to the satisfaction of the court:

(A) that the owner is innocent of any knowledge of the use of the property; and

(B) that with reasonable care and diligence the owner could not have known of the use of the property.

(e) If innocence is established under subsection (d), the unsold personal property and contents shall be delivered to the owner. Otherwise, the unsold personal property and contents shall be sold as provided in this section.

(f) The officer who removes and sells the personal property and contents is entitled to charge and receive the same fees as the officer would receive for levying upon and selling like property on execution. The court shall allow a reasonable sum to be paid for the cost of closing the place and keeping it closed.

Sec. 18. In case of:

(1) the violation of any injunction or closing order, granted under this chapter; or

(2) the violation of a restraining order; or

(3) the commission of any contempt of court in proceedings under this chapter;

the court, may summarily try and punish the offender. The trial may be upon affidavits or either party may demand the production and oral examination of the witnesses.

Sec. 19. (a) All money collected under this chapter shall be paid to the county treasurer.

(b) The proceeds of the sale of the personal property, as provided in section 17 of this chapter shall be applied in payment of the costs of the action and abatement including the complainant's costs or so much of the proceeds as may be necessary.

Sec. 20. (a) This section applies to a tenant or occupant of a building or tenement, under a lawful title, who uses the place for acts that create an indecent nuisance.

(b) The owner of a place described in subsection (a) may void the lease or other title under which the tenant or occupant holds.

C o p y

Without any act of the owner, use of the place to create an indecent nuisance causes the right of possession to revert and vest in the owner. Without process of law, the owner may make immediate entry upon the premises.

SECTION 15. IC 34-20 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 20. CAUSES OF ACTION: PRODUCTS LIABILITY

Chapter 1. General Provisions

Sec. 1. This article governs all actions that are:

(1) brought by a user or consumer;

(2) against a manufacturer or seller; and

(3) for physical harm caused by a product;

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

Sec. 2. This article shall not be construed to limit any other action from being brought against a seller of a product.

Sec. 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.

Sec. 4. This article does not apply to a cause of action that accrues before June 1, 1978.

Chapter 2. Product Liability Actions

Sec. 1. Except as provided in section 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:

(1) 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;

(2) the seller is engaged in the business of selling the product; and

(3) 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.

Sec. 2. The rule stated in section 1 of this chapter applies

C o p y

although:

(1) the seller has exercised all reasonable care in the manufacture and preparation of the product; and

(2) 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.

Sec. 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.

Sec. 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.

Chapter 3. Statute of Limitations

Sec. 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.

(b) Except as provided in section 2 of this chapter, a product liability action must be commenced:

(1) within two (2) years after the cause of action accrues; or

(2) 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.

Sec. 2. (a) A product liability action that is based on:

(1) property damage resulting from asbestos; or

(2) personal injury, disability, disease, or death resulting from exposure to asbestos;

C o p y

must be commenced within two (2) years after the cause of action accrues. The subsequent development of an additional asbestos related disease or injury is a new injury and is a separate cause of action.

(b) A product liability action for personal injury, disability, disease, or death resulting from exposure to asbestos accrues on the date when the injured person knows that the person has an asbestos related disease or injury.

(c) A product liability action for property damage accrues on the date when the injured person knows that the property damage has resulted from asbestos.

(d) This section applies only to product liability actions against:

(1) persons who mined and sold commercial asbestos; and

(2) funds that have, as a result of bankruptcy proceedings or to avoid bankruptcy proceedings, been created for the payment of asbestos related disease claims or asbestos related property damage claims.

(e) For the purposes of IC 1-1-1-8, if any part of this section is held invalid, the entire section is void.

(f) Except for the cause of action expressly recognized in this section, this section does not otherwise modify the limitation of action or repose period contained in section 1 of this chapter.

Chapter 4. Defective Products

Sec. 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:

(1) not contemplated by reasonable persons among those considered expected users or consumers of the product; and

(2) that will be unreasonably dangerous to the expected user or consumer when used in reasonably expectable ways of handling or consumption.

Sec. 2. A product is defective under this article if the seller fails to:

(1) properly package or label the product to give reasonable warnings of danger about the product; or

(2) 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.

C o p y

Sec. 3. A product is not defective under this article if it is safe for reasonably expectable handling and consumption. If an injury results from handling, preparation for use, or consumption that is not reasonably expectable, the seller is not liable under this article.

Sec. 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.

Chapter 5. Rebuttable Presumption that Product Is Not Defective

Sec. 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:

(1) 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

(2) 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.

Chapter 6. Defenses

Sec. 1. The defenses in this chapter are defenses to an action brought under this article (or IC 33-1-1.5 before its repeal).

Sec. 2. The burden of proof of any defense raised in an action under this article (or IC 33-1-1.5 before its repeal) is on the party raising the defense.

Sec. 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:

(1) knew of the defect;

(2) was aware of the danger in the product; and

(3) nevertheless proceeded to make use of the product and was injured.

Sec. 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.

C o p y

Sec. 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.

Chapter 7. Assessing Liability With Multiple Defendants

Sec. 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.

Chapter 8. Assessing Percentage of Fault

Sec. 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 34-57-2-7, IC 34-57-2-8, or IC 34-57-2-9.

(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.

Chapter 9. Indemnity

Sec. 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.

SECTION 16. IC 34-21 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 21. CAUSES OF ACTION: REPLEVIN

Chapter 1. Action for Replevin

Sec. 1. When any personal goods, including tangible personal property constituting or representing choses in action, are:

(1) wrongfully taken or unlawfully detained from the owner or person claiming possession of the property; or

(2) taken on execution or attachment, and claimed by any person other than the defendant;

the owner or claimant may bring an action for the possession of the

Copy

property.

Chapter 2. Claim for Delivery

Sec. 1. The plaintiff may, at the time of issuing the summons, or at any time before final judgment, claim the immediate delivery of property described in IC 34-21-1-1.

Sec. 2. When the plaintiff claims delivery under section 1 of this chapter, the plaintiff or someone representing the plaintiff shall file an affidavit.

Sec. 3. An affidavit filed under section 2 of this chapter must show:

(1) that the plaintiff is:

(A) the owner of the property; or

(B) lawfully entitled to the possession of the property;

(2) that:

(A) the property was not:

(i) taken for a tax, assessment, or fine, under a statute; or

(ii) seized under an execution or attachment against the property of the plaintiff; or

(B) if the property was seized under item (ii), it is exempt by statute from seizure;

(3) that the property:

(A) has been wrongfully taken and is unlawfully detained by the defendant; or

(B) is unlawfully detained;

(4) a particular description of the property;

(5) the estimated value of the property; and

(6) in what county the property is believed to be detained.

Chapter 3. Order and Hearing to Show Cause

Sec. 1. When the plaintiff files an affidavit under IC 34-21-2, the clerk shall issue an order for a time fixed by the judge directing the defendant to appear for the purpose of controverting plaintiff's affidavit or to otherwise show cause why:

(1) a prejudgment order for possession should not issue; and

(2) the property should not be delivered to plaintiff.

Sec. 2. (a) The order must set forth the date, time, and place for the hearing, and shall direct the time within which service shall be made upon the defendant.

(b) The hearing shall be scheduled not sooner than five (5) days, Sundays and holidays excluded, from the date of service.

Sec. 3. The order to show cause must inform the defendant

Copy

that:

(1) the defendant may:

(A) file affidavits on the defendant's behalf with the court;

(B) appear and present testimony on the defendant's behalf at the time of the hearing; and

(C) file with the court a written undertaking to stay the delivery of the property in accordance with this article; and

(2) if the defendant fails to appear, plaintiff may be granted a judgment of possession.

Chapter 4. Order of Possession

Sec. 1. The court may issue an order for possession after examining the complaint, affidavits, and other evidence or testimony that the court may require.

Sec. 2. The court may issue an order for possession before the hearing if probable cause appears that any of the following exist:

(1) The defendant gained possession of the property by theft or criminal conversion.

(2) The property consists of one (1) or more negotiable instruments or credit cards.

(3) By reason of specific, competent evidence shown by testimony within the personal knowledge of an affiant or witness, the property is:

(A) perishable, and will perish before any noticed hearing can be had;

(B) in immediate danger of destruction, serious harm, concealment, removal from Indiana, or sale to an innocent purchaser; or

(C) held by a person who threatens to destroy, harm, or conceal the property, remove the property from Indiana, or sell the property to an innocent purchaser.

Sec. 3. Before the court may issue an order for possession without notice under section 5 of this chapter, the plaintiff or the plaintiff's attorney must file an affidavit or certificate showing:

(1) the efforts, if any, which have been made to give notice; and

(2) the reasons why notice of the application for the order cannot be given.

Sec. 4. (a) If an order of possession was issued before a hearing under this chapter (or IC 34-1-9.1-4 before its repeal), the

C o p y

defendant or other person from whom possession of the property was taken may apply to the court for an order shortening the time for hearing on the order to show cause.

(b) The court may, upon an application described in subsection (a):

(1) shorten the time until the hearing; and

(2) direct that the matter shall be heard on not less than forty-eight (48) hours notice to the plaintiff.

Sec. 5. An order of possession issued without notice shall direct the sheriff or other executing officer to hold the property until further order of the court.

Sec. 6. Under any of the circumstances set forth in this chapter, or instead of the immediate issuance of an order of possession under this chapter, the judge may, in addition to issuing a preliminary order, issue a temporary restraining order directed to the defendant, prohibiting acts with respect to the property, as appear to be necessary for the preservation of the rights of the parties and the status of the property.

Sec. 7. Upon the hearing on the preliminary order, the court shall:

(1) consider the showing made by the parties appearing; and

(2) make a preliminary determination which party, with reasonable probability, is entitled to possession, use, and disposition of the property, pending final adjudication of the claims of the parties.

Sec. 8. If the court determines that the action is one in which a prejudgment order of possession in plaintiff's favor should issue, the court shall issue such an order.

Sec. 9. If the property claimed by the plaintiff has a peculiar value, that cannot be compensated by damages, the court may, instead of an order of possession, appoint a receiver to take possession of and hold the property until further order of the court.

Sec. 10. If the defendant fails to appear, the court may enter its final judgment with respect to possession as in other cases where there is a default for a failure to appear.

Sec. 11. The order of possession must:

(1) be directed to the sheriff or other officer charged with the execution of the order, within whose jurisdiction the property is believed to be located;

(2) describe the property to be seized; and

(3) direct the executing officer to:

C o p y

(A) seize the property if it is found;
(B) take it into custody; and
(C) deliver the property to the plaintiff, unless:
(i) the order was issued without notice; or
(ii) the defendant files a written undertaking in accordance with IC 34-21-3-3(C), within a time fixed by the court.

Sec. 12. If the order is a final judgment:
(1) the court does not need to fix a time for the defendant to file a written undertaking;
(2) the order must direct immediate delivery to the plaintiff;
(3) a copy of any written undertaking filed by the plaintiff must be attached to the order; and
(4) the order must inform the defendant that the defendant has the right to:
(A) except to the surety upon the undertaking; or
(B) file a written undertaking for the redelivery of the property as provided in IC 34-21-3-3(C).

Sec. 13. Any:
(1) order for possession;
(2) temporary restraining order;
(3) prejudgment order for possession; and
(4) other preliminary transfer of possession;
issued under this article (or IC 34-1-9.1 before its repeal) is superseded by the final judgment rendered.

Chapter 5. Bond Required

Sec. 1. (a) Except as provided in subsection (c), the court may not issue an order of possession, with or without notice, in plaintiff's favor until plaintiff has filed with the court a written undertaking:
(1) in an amount fixed by the court; and
(2) executed by a surety to be approved by the court;
to the effect that the defendant and the surety are bound to the defendant for the value of the property, as determined by court, along with other damages the defendant may suffer if the property has been wrongfully taken from the defendant.

(b) The amount of the bond may not be less than the value of the property.

(c) If the defendant has failed to appear and final judgment is entered, no written undertaking is required.

Sec. 2. At any time before the hearing on the preliminary

Copy

order, or, if final judgment has not been entered within the time fixed in the order of possession, the defendant may require the return of the property upon filing with the court a written undertaking executed by a surety to be approved by the court to the effect that the defendant is bound:

(1) as to the value of the property, as determined by the court, for the delivery of the property to the plaintiff, if such delivery is ordered; and

(2) for the payment to plaintiff of the sum as may be recovered against the defendant in the cause for the defendant's wrongful detention of the property.

Sec. 3. At the time of filing an undertaking in accordance with section 2 of this chapter, the defendant shall:

(1) serve upon the executing officer and the plaintiff or the plaintiff's attorney, a notice of filing of the undertaking; and

(2) file proof of service of the notice described in subdivision (1) with the court.

Sec. 4. If the defendant files an undertaking under section 2 of this chapter before the hearing of the order to show cause, proceedings under the order to show cause terminate, unless exception is taken to the surety.

Sec. 5. If the property is in the custody of the executing officer at the time the defendant files an undertaking under section 2 of this chapter, the property shall be redelivered to the defendant not later than five (5) days after the date of service of notice of the filing of the undertaking upon the plaintiff or the plaintiff's attorney.

Chapter 6. Indemnifying Bond Upon Request of Officer Making Levy on Personal Property

Sec. 1. (a) Whenever:

(1) any officer, by virtue of any writ of attachment or execution to the officer lawfully issued, attaches or levies upon any personal property as the property of the attachment or execution defendant; and

(2) any other person, firm, limited liability company, or corporation brings an action in replevin against the officer for the possession of any part of the property attached or levied upon;

as soon as process is served upon the officer, the officer may notify the attachment or execution plaintiff, if a resident of the officer's county, and if not a resident of the officer's county, then the

C o p y

attorney of the plaintiff, in writing, of the replevin suit, giving a general description of the property claimed by the replevin plaintiff in the suit and may demand of the attachment or execution plaintiff a bond to indemnify the officer against any loss for attorney's fees incurred in the defense of the replevin suit and payment of any judgment for damages and costs.

(b) Upon failure of the attachment or execution plaintiff to execute the bond to the officer within five (5) days from the time of service of the notice described in subsection (a), with good and sufficient surety, the officer may, deliver up any part of the property sued for in the replevin suit to the replevin plaintiff.

(c) If the bond described in subsections (a) and (b) is not given and the officer delivers the property to the replevin plaintiff, the attachment or execution plaintiff is estopped from maintaining any action whatever against the officer for the value of the property delivered up or for damages for failing to make any defense in the replevin suit. However, if the action in replevin is pending in the circuit court, the bond shall be approved by the clerk of the circuit court.

Chapter 7. Notice of Order

Sec. 1. If the defendant or the defendant's attorney is in open court at the time the order of possession is issued, a copy shall be delivered promptly to the defendant and the delivery noted in the order book.

Sec. 2. If neither the defendant nor the defendant's attorney is present, sufficient copies shall be delivered to the sheriff or other executing officer. The executing officer shall, without delay, serve upon the defendant a copy of the order of possession by:

(1) delivering the order of possession to:

(A) the defendant personally; or

(B) the defendant's agent from whose possession the property is taken;

(2) if the defendant or the defendant's agent cannot be found, by leaving it at the usual place of abode of either with some person of suitable age and discretion; or

(3) if neither the defendant nor the defendant's agent has any known usual place of abode, by mailing it to the defendant's last known address.

Chapter 8. Duties of the Executing Officer

Sec. 1. (a) Except as provided in subsection (b), the executing officer shall immediately take the property, into custody if the

C o p y

property is in the possession or control of the defendant or the defendant's agent.

(b) If the property is a housetrailer, recreational vehicle, motor or mobile home, or boat, and is being used as the principal dwelling of a defendant, at the expiration of a period of forty-eight (48) hours after the order of possession is served, the officer shall immediately remove the property's occupants and take the property into custody.

Sec. 2. If the property or any part of the property is:

(1) in a building or enclosure; and

(2) not voluntarily delivered;

the executing officer shall cause the building or enclosure to be broken open in a manner the officer reasonably believes will cause the least damage to the building or enclosure, and take possession of the property.

Sec. 3. When the executing officer has taken property as provided in this article, the executing officer shall:

(1) keep it in a secure place; and

(2) deliver it to the party entitled to the property upon receiving actual, reasonable, and necessary expenses for keeping the property.

Sec. 4. The executing officer shall:

(1) note the executing officer's proceedings in writing upon the order of possession; and

(2) return the order of possession to the court in which the action is pending;

within five (5) days after taking the property mentioned in the order.

Chapter 9. Judgment

Sec. 1. In an action to recover the possession of personal property, judgment for the plaintiff may be for:

(1) the delivery of the property, or the value of the property in case delivery is not possible; and

(2) damages for the detention.

Sec. 2. When the property has been delivered to the plaintiff, and the defendant claims a return of the property, judgment for the defendant may be for:

(1) the return of the property, or its value, in case return is not possible; and

(2) damages for the taking and withholding of the property.

Chapter 10. Jury Verdict

Copy

Sec. 1. In actions for the recovery of specific personal property, the jury must assess:

(1) the value of the property; and

(2) the damages for the taking or detention of the property; when the jury's verdict, results in a judgment for the recovery or return of the property.

SECTION 17. IC 34-22 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 22. CAUSES OF ACTION: SURETIES' REMEDIES AGAINST PRINCIPALS

Chapter 1. Remedies of Sureties Against Their Principals

Sec. 1. (a) This chapter applies to a person who is bound as surety upon a contract in writing for the:

(1) payment of money; or

(2) performance of any act.

(b) When the right of action has accrued, the surety may require, by notice in writing, the creditor or obligee to immediately institute an action upon the contract.

Sec. 2. If the creditor or obligee does not:

(1) proceed within a reasonable time to bring an action upon the contract; and

(2) prosecute the action to judgment and execution;

the surety is discharged from all liability on the contract.

Sec. 3. (a) This section applies when:

(1) an action is brought against two (2) or more defendants upon a contract; and

(2) at least one (1) or more of the defendants is a surety for the others.

(b) The surety may, upon a written complaint to the court, cause the question of suretyship to be tried and determined, upon the issue made by the parties at:

(1) the trial of the cause; or

(2) any time before or after the trial.

(c) Proceedings described in subsection (b) do not affect the proceedings of the plaintiff.

Sec. 4. (a) If the finding upon the issue described in section 3(b) of this chapter is in favor of the surety, the court shall make an order directing the sheriff to:

(1) levy the execution, first upon the property of the principal; and

Copy

(2) exhaust the property of the principal;
before making a levy upon the property of the surety.
(b) The clerk shall endorse a memorandum of the order on the execution.
Sec. 5. (a) This section applies to a:
(1) defendant-surety in a:
(A) judgment;
(B) special bail; or
(C) replevin bail;
(2) surety in a delivery bond or replevin bond; or
(3) person who is a surety in any undertaking.
(b) This section does not apply to a sheriff, officer, or surety providing bond in an official capacity who:
(1) fails to pay over money collected; or
(2) wastes property upon which the sheriff, officer, or surety has levied.
(c) When a person described in subsection (a):
(1) is compelled to pay a judgment, or part of a judgment;
(2) makes any payment which is applied to a judgment by reason of the person's suretyship; or
(3) is compelled, by reason of a default of a sheriff, officer or surety providing bond in an official capacity, to pay a judgment, or part of a judgment;
the judgment is not discharged by the payment.
(d) However, the judgment remains in force for the use of the bail, surety, officer, or other person making the payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for use by the person making the payment.
Sec. 6. A person who:
(1) is one (1) of several:
(A) judgment defendants; or
(B) replevin sureties; and
(2) paid and satisfied the plaintiff;
has the remedy provided in section 5 of this chapter against the codefendants or cosureties to collect from them the ratable proportion each is equitably bound to pay.
Sec. 7. No surety or representative of a surety shall confess judgment or suffer judgment, by default, in any case, when the surety or representative is notified that there is a valid defense, if the principal will:

Copy

(1) enter as a defendant to the action; and

(2) tender to the surety or the representative good security to indemnify him, to be approved by the court.

Sec. 8. Whenever a surety seeks a remedy against the principal for discharging a debt, or claim upon contract, in whole or in part, without any relief from valuation or appraisement laws, the remedy of the surety is also enforced without any relief from valuation or appraisement laws.

Sec. 9. Sections 1 through 8 of this chapter extend to:

(1) heirs;

(2) executors; and

(3) administrators;

of deceased persons. However, the provisions concerning sureties giving notice to the creditor do not operate against persons under legal disabilities.

Sec. 10. When a surety on a bill, note, bond, or other instrument in writing, is compelled to pay the debt or obligation of the principal debtor, the surety shall recover the rate of interest on the amount paid by the surety for the principal, as was originally provided for in the bill, note, bond, or other instrument in writing, held against the principal debtor. The judgment given to the surety bears the same rate of interest, not exceeding ten percent (10%) per year.

SECTION 18. IC 34-23 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 23. CAUSES OF ACTION: WRONGFUL DEATH

Chapter 1. Wrongful Death Generally

Sec. 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 therefor 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 deceased person resulting from said wrongful act or omission. That part of the damages which is recovered for reasonable medical,

Copy

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.

Chapter 2. Wrongful Death or Injury of a Child

Sec. 1. (a) As used in this section, "child" means an unmarried individual without dependents who is:

(1) less than twenty (20) years of age; or

(2) less than twenty-three (23) years of age and is enrolled in an institution of higher education or in a vocational school or program.

(b) 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:

(1) the father and mother jointly, or either of them by naming the other parent as a codefendant to answer as to his or her interest;

(2) in case of divorce or dissolution of marriage, the person to whom custody of the child was awarded; and

Copy

(3) a guardian, for the injury or death of a protected person.

(c) 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.

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

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

(1) for the loss of the child's services;

(2) for the loss of the child's love and companionship; and

(3) to pay the expenses of:

(A) health care and hospitalization necessitated by the wrongful act or omission that caused the child's death;

(B) the child's funeral and burial;

(C) 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;

(D) uninsured debts of the child, including debts for which a parent is obligated on behalf of the child; and

(E) the administration of the child's estate, including reasonable attorney's fees.

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

(1) the date that the child would have reached:

(A) twenty (20) years of age; or

(B) twenty-three (23) years of age, if the child was enrolled in an institution of higher education or in a vocational school or program; or

(2) the date of the child's last surviving parent's death;

whichever first occurs.

(g) Damages may be awarded under subsection (e)(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.

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

(1) the father and mother jointly if both parents had custody of the child;

(2) the custodial parent, or custodial grandparent, and the noncustodial parent of the deceased child as apportioned by

C o p y

the court according to their respective losses; or

(3) a custodial grandparent of the child if the child was not survived by a parent entitled to benefit under this section.

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

SECTION 19. IC 34-24 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 24. CIVIL PROCEEDINGS RELATED TO CRIMINAL ACTIVITIES

Chapter 1. Forfeiture of Property Used in Violation of Certain Criminal Statutes

Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).

(ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(v) Dealing in a counterfeit substance (IC 35-48-4-5).

(vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).

(vii) Dealing in paraphernalia (IC 35-48-4-8.5).

(viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars ($100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(2) All money, negotiable instruments, securities, weapons,

Copy

communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

C o p y

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

Sec. 2. (a) Property may be seized under this chapter by a law enforcement officer only if:

(1) the seizure is incident to a lawful:

(A) arrest;

(B) search; or

(C) administrative inspection;

(2) the property has been the subject of a prior judgment in favor of the state or unit in a proceeding under this chapter (or IC 34-4-30.1 before its repeal); or

(3) a court, after making an ex parte determination that there is probable cause to believe the property is subject to seizure under this chapter, issues an order for seizure.

(b) When property is seized under subsection (a), the law enforcement agency making the seizure may, pending final

C o p y

disposition:

(1) place the property under seal;

(2) remove the property to a place designated by the court; or

(3) require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(c) Property that is seized under subsection (a) (or IC 34-4-30.1-2(a) before its repeal) is not subject to replevin but is considered to be in the custody of the law enforcement agency making the seizure.

Sec. 3. (a) The prosecuting attorney for the county in which the seizure occurs may, within ninety (90) days after receiving written notice from the owner demanding return of the seized property or within one hundred eighty (180) days after the property is seized, whichever occurs first, cause an action for reimbursement of law enforcement costs and forfeiture to be brought by filing a complaint in the circuit, superior, or county court in the jurisdiction where the seizure occurred. The action must be brought:

(1) in the name of the state or the state and the unit that employed the law enforcement officers who made the seizure if the state was not the employer; and

(2) within the period that a prosecution may be commenced under IC 35-41-4-2 for the offense that is the basis for the seizure.

(b) If the property seized was a vehicle or real property, the prosecuting attorney shall serve, under the Indiana Rules of Trial Procedure, a copy of the complaint upon each person whose right, title, or interest is of record in the bureau of motor vehicles, in the county recorder's office, or other office authorized to receive or record vehicle or real property ownership interests.

(c) The owner of the seized property, or any person whose right, title, or interest is of record may, within twenty (20) days after service of the complaint under the Indiana Rules of Trial Procedure, file an answer to the complaint and may appear at the hearing on the action.

(d) If, at the end of the time allotted for an answer, there is no answer on file, the court, upon motion, shall enter judgment in favor of the state and the unit (if appropriate) for reimbursement of law enforcement costs and shall order the property disposed of in accordance with section 4 of this chapter.

C o p y

Sec. 4. (a) At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1 of this chapter. If the property seized was a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest of record in the bureau of motor vehicles knew or had reason to know that the vehicle was being used in the commission of the offense.

(b) If the prosecuting attorney fails to meet the burden of proof, the court shall order the property released to the owner.

(c) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court, subject to section 5 of this chapter, shall order delivery to the law enforcement agency that seized the property. The court's order may permit the agency to use the property for a period not to exceed three (3) years. However, the order must require that, after the period specified by the court, the law enforcement agency shall deliver the property to the county sheriff for public sale.

(d) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court shall, subject to section 5 of this chapter:

(1) determine the amount of law enforcement costs; and

(2) order that:

(A) the property, if it is not money or real property, be sold under section 6 of this chapter, by the sheriff of the county in which the property was seized, and if the property is a vehicle, this sale must occur after any period of use specified in subsection (c);

(B) the property, if it is real property, be sold in the same manner as real property is sold on execution under IC 34-55-6;

(C) the proceeds of the sale or the money be deposited in the general fund of the state, or the unit that employed the law enforcement officers that seized the property; and

(D) any excess in value of the proceeds or the money over the law enforcement costs be forfeited and transferred to the treasurer of state for deposit in the common school fund.

(e) If property that is seized under this chapter (or IC 34-4-30.1-4 before its repeal) is transferred:

C o p y

(1) after its seizure, but before an action is filed under section 3 of this chapter (or IC 34-4-30.1-3 before its repeal); or

(2) when an action filed under section 3 of this chapter (or IC 34-4-30.1-3 before its repeal) is pending;

the person to whom the property is transferred must establish an ownership interest of record as a bona fide purchaser for value. A person is a bona fide purchaser for value under this section if the person, at the time of the transfer, did not have reasonable cause to believe that the property was subject to forfeiture under this chapter.

(f) If the property seized was an unlawful telecommunications device (as defined in IC 35-45-13-6) or plans, instructions, or publications used to commit an offense under IC 35-45-13, the court may order the sheriff of the county in which the person was convicted of an offense under IC 35-45-13 to destroy as contraband or to otherwise lawfully dispose of the property.

Sec. 5. (a) If:

(1) the court has entered judgment in favor of the state, and a unit (if appropriate) concerning property that is subject to seizure under this chapter; and

(2) a person:

(A) holding a valid lien, mortgage, security interest, or interest under a conditional sales contract; or

(B) who is a co-owner of the property;

did not know of the illegal use;

the court shall determine whether the secured interest or the co-owner's interest is equal to or in excess of the appraised value of the property.

(b) Appraised value is to be determined as of the date of judgment on a wholesale basis by:

(1) agreement between the secured party or the co-owner and the prosecuting attorney; or

(2) the inheritance tax appraiser for the county in which the action is brought.

(c) If the amount:

(1) due to the secured party; or

(2) of the co-owner's interest;

is equal to or greater than the appraised value of the property, the court shall order the property released to the secured party or the co-owner.

(d) If the amount:

C o p y

(1) due the secured party; or

(2) of the co-owner's interest;

is less than the appraised value of the property, the holder of the interest or the co-owner may pay into the court an amount equal to the owner's equity, which shall be the difference between the appraised value and the amount of the lien, mortgage, security interest, interest under a conditional sales contract, or co-owner's interest. Upon such payment, the state or unit, or both, shall relinquish all claims to the property, and the court shall order the payment deposited as provided in section 4(d) of this chapter.

(e) If the seized property is a vehicle and if the security holder or the co-owner elects not to make payment as stated in subsection (d), the vehicle shall be disposed of in accordance with section 4(c) of this chapter.

Sec. 6. (a) Where disposition of property is to be made at a public sale, notice of sale shall be published in accordance with IC 34-55-6.

(b) When property is sold at a public sale under this chapter, the proceeds shall be distributed in the following order:

(1) First, to the sheriff of the county for all expenditures made or incurred in connection with the sale, including storage, transportation, and necessary repair.

(2) Second, to any person:

(A) holding a valid lien, mortgage, land contract, or interest under a conditional sales contract or the holder of other such interest; or

(B) who is a co-owner and has an ownership interest;

up to the amount of that person's interest as determined by the court.

(3) The remainder, if any, shall be transferred by the sheriff to the appropriate fund as ordered by the court in section 4(d) of this chapter.

Sec. 7. (a) If the property seized was a vehicle, a copy of the court's order under this chapter (or IC 34-4-30.1-7 before its repeal):

(1) shall be filed with the department of motor vehicles or other appropriate agency; and

(2) constitutes authority for the issuance of clear title to that vehicle in the name of the person or purchaser to whom the order authorizes delivery.

(b) If the property seized was real property, a copy of the

C o p y

court's order under this chapter (or IC 34-4-30.1-7 before its repeal):

(1) shall be filed with the county recorder; and

(2) constitutes authority for:

(A) the sale of the property in the manner provided under IC 34-55-6; and

(B) the issuance of clear title to a bona fide purchaser for value who acquires the real property at the sale.

Sec. 8. (a) A prosecuting attorney may retain an attorney to bring an action under this chapter.

(b) An attorney retained under this section is not required to be a deputy prosecuting attorney but must be admitted to the practice of law in Indiana

Chapter 2. Civil Remedies for Racketeering Activity

Sec. 1. The prosecuting attorney in a county in which the violation occurs may bring an action under this section to enjoin a violation of IC 35-45-6-2 (corrupt business influence). An action under this section may be brought in any circuit or superior court in a county in which the violation occurs. If the court finds by a preponderance of the evidence that a violation of IC 35-45-6-2 has occurred, the court may:

(1) order a defendant to divest the defendant of any interest in any enterprise or property;

(2) impose reasonable restrictions upon the future activities or investments of a defendant, including prohibiting a defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of IC 35-45-6-2;

(3) order the dissolution or reorganization of any enterprise;

(4) order the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any agency of the state;

(5) order the forfeiture of the charter of a corporation organized under the laws of Indiana, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that:

(A) the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of IC 35-45-6-2; and

(B) for the prevention of future criminal activity, the

Copy

public interest requires the charter of the corporation be forfeited and the corporation dissolved or the certificate revoked; and

(6) make any other order or judgment that the court considers appropriate.

In any order or judgment made by the court under this section, the judge shall make due provision for the rights of innocent persons, including a person having any rights, title, or interest of record in any of the property.

Sec. 2. (a) The prosecuting attorney in a county in which any of the property is located may bring an action for the forfeiture of any property:

(1) used in the course of;

(2) intended for use in the course of;

(3) derived from; or

(4) realized through;

conduct in violation of IC 35-45-6-2.

(b) An action for forfeiture may be brought in any circuit or superior court in a county in which any of the property is located.

(c) Upon a showing by a preponderance of the evidence that the property in question was used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of IC 35-45-6-2, the court shall, subject to the right, title, or interest of record of any other party in the property determined under section 4 of this chapter:

(1) order the property forfeited to the state; and

(2) specify the manner of disposition of the property including the manner of disposition if the property is not transferable for value.

(d) The court shall order forfeitures and dispositions under this section:

(1) with due provision for the rights of innocent persons; and

(2) as provided under section 4 of this chapter.

Sec. 3. When an action is filed under section 2 of this chapter, the prosecuting attorney may move for an order to have property subject to forfeiture seized by a law enforcement agency. The judge shall issue such an order upon a showing of probable cause to believe that a violation of IC 35-45-6-2 involving the property in question has occurred.

Sec. 4. (a) Property subject to forfeiture under this chapter shall be seized by a law enforcement officer upon court order.

C o p y

Seizure may be made without a court order only if:

(1) the seizure is incident to a lawful arrest or search, or to an inspection under an administrative inspection warrant; or

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding under this chapter (or IC 34-4-30.5 before its repeal).

(b) When property is seized under subsection (a), pending forfeiture and final disposition, the law enforcement officer making the seizure may:

(1) place the property under seal;

(2) remove the property to a place designated by the court; or

(3) require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(c) Property seized under subsection (a) (or IC 34-4-30.5-4(a) before its repeal) is not subject to replevin, but is considered to be in the custody of the law enforcement officer making the seizure, subject only to order of the court. However, if a seizure of property is made in accordance with, subsection (a), the prosecuting attorney shall bring an action for forfeiture under section 2 of this chapter within:

(1) thirty (30) days after receiving notice from any person claiming a right, title, or interest in the property; or

(2) one hundred eighty (180) days after the property is seized;

whichever occurs first.

(d) If an action under subsection (c) is not filed within thirty (30) days after receiving notice from any person claiming a right, title, or interest in the property, the claimant:

(1) is entitled to file a complaint seeking:

(A) replevin;

(B) foreclosure; or

(C) other appropriate remedy; and

(2) shall immediately obtain a hearing on the complaint as provided in subsection (f).

If an action is not filed within one hundred eighty (180) days after the date of the seizure, and the property has not been previously released to an innocent person under section 5 of this chapter (or IC 34-4-30.5-4.5 before its repeal), the law enforcement agency whose officer made the seizure shall return the property to its

C o p y

owner.

(e) If property is seized under subsection (a) (or IC 34-4-30.5-4(a) before its repeal) and the property is a vehicle or real property, the prosecuting attorney shall serve, within thirty (30) days after the date the property is seized and as provided by the Indiana Rules of Trial Procedure, notice of seizure upon each person whose right, title, or interest is of record in the bureau of motor vehicles, in the county recorder's office, or other office authorized to receive or record vehicle or real property ownership interests.

(f) The person whose right, title, or interest is of record may at any time file a complaint seeking:

(1) replevin;

(2) foreclosure; or

(3) another appropriate remedy;

to which the state may answer in forfeiture within the appropriate statutory period. The court shall promptly set the matter for a hearing, and in the case of replevin or foreclosure, the court shall set the hearing as provided by the applicable statutory provisions.

Sec. 5. (a) If a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract did not know the property was the object of corrupt business influence, the court shall determine whether the secured interest is equal to or in excess of the appraised value of the property.

(b) Appraised value is to be determined as of the date of judgment on a wholesale basis by:

(1) agreement between the secured party and the prosecuting attorney; or

(2) the inheritance tax appraiser for the county in which the action is brought.

(c) If the amount due to the secured party is equal to or greater than the appraised value of the property, the court shall order the property released to the secured party.

(d) If the amount due the secured party is less than the appraised value of the property, the holder of the interest may pay into the court an amount equal to the owner's equity, which shall be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon payment, the state or unit, or both, shall relinquish all claims to the property.

Sec. 6. (a) An aggrieved person may, in addition to proceeding

Copy

under section 4 of this chapter, bring an action for injunctive relief from corrupt business influence in a circuit or superior court in the county of the aggrieved person's residence, or in a county where any of the affected property or the affected enterprise is located. If the court finds, through a preponderance of the evidence, that the aggrieved person is suffering from corrupt business influence, the court shall make an appropriate order for injunctive relief. This order must be made in accordance with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that a showing of special or irreparable damage to the aggrieved person is not required. The court may order injunctive relief only after the execution of a bond by the aggrieved person for an injunction improvidently granted, in an amount established by the court. In addition, the court may order a temporary restraining order or a preliminary injunction, but only after a showing of immediate danger of significant loss or damage to the aggrieved person.

(b) An aggrieved person may bring an action against a person who has violated IC 35-45-6-2 in a circuit or superior court in the county of the aggrieved person's residence, or in a county where any of the affected property or the affected enterprise is located, for damages suffered as a result of corrupt business influence. Upon a showing by a preponderance of the evidence that the aggrieved person has been damaged by corrupt business influence, the court shall order the person causing the damage through a violation of IC 35-45-6-2 to pay to the aggrieved person:

(1) an amount equal to three (3) times his actual damages;

(2) the costs of the action;

(3) a reasonable attorney's fee; and

(4) any punitive damages awarded by the court and allowable under law.

(c) The defendant and the aggrieved person are entitled to a trial by jury in an action brought under this section (or IC 34-4-30.5-5 before its repeal).

(d) In addition to any rights provided under section 4 of this chapter, an aggrieved person has a right or claim to forfeited property or to the proceeds derived from forfeited property superior to any right or claim the state has in the same property or proceeds.

(e) If the state is an aggrieved person, the attorney general has concurrent jurisdiction with the prosecuting attorney to bring an

C o p y

action under this section.

Sec. 7. In any action brought under this chapter (or IC 34-4-30 before its repeal), the principle of collateral estoppel operates to bar relitigation of the issues previously determined in a criminal proceeding under IC 35-45-6-2.

Sec. 8. (a) A prosecuting attorney may retain an attorney to bring an action under this chapter.

(b) An attorney retained under this section is not required to be a deputy prosecuting attorney but must be admitted to the practice of law in Indiana.

Chapter 3. Treble Damages Allowed in Certain Civil Actions by Crime Victims

Sec. 1. If a person suffers a pecuniary loss as a result of a violation of IC 35-43, IC 35-42-3-3, IC 35-42-3-4, or IC 35-45-9, the person may bring a civil action against the person who caused the loss for the following:

(1) An amount not to exceed three (3) times the actual damages of the person suffering the loss.

(2) The costs of the action.

(3) A reasonable attorney's fee.

(4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1) through (3) and are incurred by the person suffering loss to:

(A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or

(B) provide witnesses to testify in court proceedings related to the recovery of a judgment under this chapter.

(5) A reasonable amount to compensate the person suffering loss for time used to:

(A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or

(B) travel to and from activities described in clause (A).

(6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and agents for time used to:

(A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or

(B) travel to and from activities described in clause (A).

Copy

(7) All other reasonable costs of collection.

Sec. 2. (a) For purposes of determining the amount of damages recoverable under section 1(1) of this chapter, there is an irrebuttable presumption that a retailer who brings a civil action under this chapter (or IC 34-4-30 before its repeal) as the result of a violation of IC 35-43-4-2 (theft) or IC 35-43-4-3 (conversion) suffers a pecuniary loss in the amount of:

(1) one hundred dollars ($100) regardless of whether:

(A) the property is returned to the retailer; or

(B) the actual retail value of the property is less than one hundred dollars ($100); or

(2) the retailer's actual damages;

whichever is greater.

(b) An individual found liable in a civil action under this chapter (or IC 34-4-30 before its repeal) for violating IC 35-43-4-2 or IC 35-43-4-3 may not be indemnified or insured for any penalties, damages, or settlement arising from the violation.

Sec. 3. It is not a defense to an action for punitive damages that the defendant is subject to criminal prosecution for the act or omission that gave rise to the civil action. However, a person may not recover both:

(1) punitive damages; and

(2) the amounts provided for under section 1 of this chapter.

Sec. 4. This chapter does not apply to a person who suffers pecuniary damages as a result of the operation of a vehicle in violation of IC 35-43-1-2 or IC 35-43-2-2, unless the damage was intentionally inflicted.

Chapter 4. Drug Dealer Liability

Sec. 1. (a) A person who knowingly participates in the illegal drug market in Indiana is liable for civil damages as provided in this chapter.

(b) A person may recover damages under this chapter for an injury that results from an individual's use of an illegal drug.

(c) A law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency or the state is not liable for participating in the illegal drug market if the participation is to further an official investigation.

Sec. 2. The following persons may bring an action for damages caused by an individual drug user's use of an illegal drug:

(1) A:

(A) parent;

Copy

(B) legal guardian;
(C) child;
(D) spouse; or
(E) sibling;
of the individual drug user.
(2) An individual who was exposed to an illegal drug in utero.
(3) An employer of the individual drug user.
(4) A medical facility, insurer, governmental entity, employer, or other entity that:
(A) funds a drug treatment program or employee assistance program for the individual drug user; or
(B) otherwise expends money on behalf of the individual drug user.
(5) A person injured as a result of the willful, reckless, or negligent actions of an individual drug user.
(6) Any neighborhood association registered with the municipal governing body, the official geographic boundaries of which encompass the location of the complained-of illegal drug dealing or use.

Sec. 3. A person who may bring an action under section 2 of this chapter may recover damages from the following persons:
(1) A person who knowingly distributed or knowingly participated in the chain of distribution of an illegal drug that was actually used by the individual drug user.
(2) A person who knowingly participated in the illegal drug market if the:
(A) individual drug user's place of illegal drug activity is within the person's illegal drug market target community;
(B) person's participation in the illegal drug market was connected with the same type of illegal drug used by the individual drug user; and
(C) person participated in the illegal drug market at any time during the individual drug user's period of illegal drug use.

Sec. 4. A person who may bring an action under section 2 of this chapter may recover the following damages:
(1) Economic damages, including costs for the following:
(A) Treatment and rehabilitation.
(B) Medical expenses.
(C) Loss of economic or educational potential.

C o p y

(D) Loss of productivity.
(E) Absenteeism.
(F) Support expenses.
(G) Accidents or injury.
(H) Any other pecuniary loss proximately caused by the illegal drug use.

(2) Noneconomic damages, including costs for the following:
(A) Physical and emotional pain and suffering.
(B) Physical impairment.
(C) Emotional distress.
(D) Medical anguish.
(E) Disfigurement.
(F) Loss of enjoyment.
(G) Loss of companionship, services, and consortium.
(H) Any other nonpecuniary loss proximately caused by the illegal drug use.

(3) Exemplary damages.
(4) Reasonable attorney's fees.
(5) Court costs, including reasonable expenses for expert testimony.

Sec. 5. (a) Except as provided in this section, an individual drug user may not bring an action for damages caused by the use of an illegal drug.

(b) An individual drug user may bring an action for damages caused by the use of an illegal drug if the individual drug user satisfies all of the following conditions:

(1) At least six (6) months before filing an action, the individual drug user personally discloses to law enforcement officers all of the information known to the individual drug user regarding all the individual drug user's sources of illegal drugs.

(2) The individual drug user does not use an illegal drug within the six (6) months immediately preceding the date the individual drug user files the action.

(3) The individual drug user does not use an illegal drug while the action is pending.

(c) An individual drug user who brings an action under this section (or IC 34-1-70-12 before its repeal) may recover damages only from a person who:

(1) distributed; or
(2) is in the chain of distribution of;

Copy

an illegal drug that was used by the individual drug user.

(d) An individual drug user who may bring an action under this section (or IC 34-1-70-12 before its repeal) may recover only the following damages:

(1) Economic damages, including costs for the following:

(A) Treatment and rehabilitation.

(B) Medical expenses.

(C) Loss of economic or educational potential.

(D) Loss of productivity.

(E) Absenteeism.

(F) Accidents or injury.

(G) Any other pecuniary loss proximately caused by the illegal drug use.

(2) Reasonable attorney's fees.

(3) Court costs, including reasonable expenses for expert testimony.

Sec. 6. A third party may not:

(1) pay damages awarded under this chapter (or IC 34-1-70 before its repeal); or

(2) provide a defense or money for a defense;

on behalf of an insured under a contract of insurance or indemnification.

Sec. 7. (a) Two (2) or more persons may join as plaintiffs in one (1) action under this chapter (or IC 34-1-70 before its repeal) if:

(1) each plaintiff's respective actions have at least one (1) place of illegal drug activity in common; and

(2) any portion of the period of illegal drug use in one (1) plaintiff's action overlaps with the period of illegal drug use for every other plaintiff's action.

(b) Two (2) or more persons may be joined in one (1) action under this chapter (or IC 34-1-70 before its repeal) as defendants if all the persons may be liable to at least one (1) plaintiff.

(c) A plaintiff does not have to be interested in obtaining and a defendant does not have to be interested in defending against all relief demanded under this chapter. Judgment may be given:

(1) for one (1) or more plaintiffs according to each plaintiff's respective rights to relief; and

(2) against one (1) or more defendants according to each defendant's respective liabilities.

Sec. 8. (a) An action by an individual drug user brought under

Copy

this chapter (or IC 34-1-70 before its repeal) is governed by the principles of comparative liability under state law. Comparative liability attributed to a plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally according to the measure of responsibility attributed to the plaintiff.

(b) The burden of proving the comparative liability of the plaintiff:

(1) is on the defendant; and

(2) must be shown by clear and convincing evidence.

(c) Comparative liability may not be attributed to a plaintiff who is not an individual drug user.

Sec. 9. (a) A person who is subject to liability under this chapter (or IC 34-1-70 before its repeal) has a right of action for contribution against another person subject to liability under this chapter (or IC 34-1-70 before its repeal).

(b) Contribution may be enforced in:

(1) the original action; or

(2) a separate action brought for that purpose.

(c) A plaintiff may seek recovery under this chapter and any other applicable law against a person whom a defendant has asserted a right of contribution.

Sec. 10. (a) Proof of participation in the illegal drug market in an action brought under this chapter (or IC 34-1-70 before its repeal) must be shown by clear and convincing evidence. Unless otherwise provided in this chapter, other elements of an action brought under this chapter must be shown by a preponderance of the evidence.

(b) A person:

(1) against whom recovery is sought; and

(2) who has a criminal conviction under:

(A) a state drug law; or

(B) the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.);

is estopped from denying participation in the illegal drug market.

(c) A conviction described in subsection (b) constitutes prima facie evidence of the person's participation in the illegal drug market during the two (2) years preceding the date of the act that was the basis for the conviction.

(d) Notwithstanding subsection (c), a person may not be prohibited from bringing an action under this chapter (or

C o p y

IC 34-1-70 before its repeal) against another person because the other person has not been convicted of a criminal drug offense.

Sec. 11. (a) Subject to subsection (c), a plaintiff in an action brought under this chapter may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. If attachment is instituted, a defendant is entitled to an immediate hearing. Attachment may be lifted if the defendant:

(1) demonstrates that the defendant's assets will be available for a potential award; or

(2) posts a bond in an amount that is sufficient to cover a potential award.

(b) A person against whom a judgment has been rendered under this chapter (or IC 34-1-70 before its repeal) may not exempt any property from process to levy or process to execute on the judgment.

(c) Any assets that are:

(1) sought to satisfy a judgment under this chapter (or IC 34-1-70 before its repeal); and

(2) involved in a forfeiture action or that have been seized for forfeiture by any state or federal agency;

may not be used to satisfy a judgment until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

Sec. 12. (a) Except as otherwise provided in this section, a claim under this chapter (or IC 34-1-70 before its repeal) may not be brought more than two (2) years after the date the cause of action accrues. A cause of action accrues under this chapter (or IC 34-1-70 before its repeal) when a person who may bring the cause of action has reason to know:

(1) of the harm from illegal drug use that is the basis for the cause of action; and

(2) that the illegal drug use is the cause of the harm.

(b) The statute of limitations under this section is tolled for a:

(1) plaintiff while the individual potential plaintiff is incapacitated by the use of an illegal drug to the extent that the individual cannot reasonably be expected to seek recovery under this chapter (or IC 34-1-70 before its repeal) or as otherwise provided by any other law; and

(2) defendant until six (6) months after the individual potential defendant is convicted of a criminal drug offense or

C o p y

as otherwise provided by law.

Sec. 13. (a) The attorney general may represent the state or a political subdivision of the state in an action brought under this chapter (or IC 34-1-70 before its repeal).

(b) On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this chapter (or IC 34-1-70 before its repeal) must be stayed until the completion of the drug investigation or prosecution that was the basis for the motion for a stay of the action.

Sec. 14. This chapter may not be construed to alter any law regarding tort immunity within a family.

SECTION 20. IC 34-25 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 25. SPECIAL PROCEEDINGS: ATTACHMENT AND GARNISHMENT

Chapter 1. General Provisions Applying to Attachment and Garnishment

Sec. 1. The execution of judgments is governed by IC 34-55.

Sec. 2. Indiana courts do not have and shall not entertain jurisdiction in any action of attachment, garnishment, or supplementary proceeding, when:

(1) the plaintiff and principal defendant are both nonresidents of Indiana; and

(2) the money sought to be reached by the attachment, garnishment, or supplementary proceedings is the personal earnings or wages due or owing to the principal defendant from a person or corporation doing business in Indiana.

Sec. 3. The plaintiff is not entitled to judgment in an action for attachment or garnishment unless:

(1) the defendant is personally served with process;

(2) the property of the defendant is attached in the county where the action is brought; or

(3) a garnishee is summoned in the county where the action is brought, who is indebted to the defendant, or has possession of property or assets subject to the attachment.

Sec. 4. The money realized from the attachment and the garnishees, under the direction of the court, and after paying all costs and expenses, shall be paid to the several creditors in proportion to the amount of their several claims as adjusted. The surplus, if any, shall be paid to the defendant.

C o p y

Chapter 2. Attachment

Sec. 1. (a) At or after the time of filing a complaint, the plaintiff may have an attachment against the property of the defendant, in the cases described in subsection (b) and in the manner described in this chapter.

(b) The plaintiff may attach property when the action is for the recovery of money and the defendant:

(1) is, or one (1) of several defendants is, a foreign corporation or a nonresident of Indiana;

(2) is, or one (1) of several defendants is, secretly leaving or has left Indiana with intent to defraud the defendant's creditors;

(3) is concealed so that a summons cannot be served upon the defendant;

(4) is removing or about to remove the defendant's property subject to execution, or a material part of the property, outside Indiana, not leaving enough behind to satisfy the plaintiff's claim;

(5) has sold, conveyed, or otherwise disposed of the defendant's property subject to execution, or permitted the property to be sold with the fraudulent intent to cheat, hinder, or delay the defendant's creditors; or

(6) is about to sell, convey, or otherwise dispose of the defendant's property subject to execution with the fraudulent intent to cheat, hinder, or delay the defendant's creditors.

(c) The plaintiff is entitled to an attachment for the causes mentioned in subsection (b)(2), (b)(4), (b)(5), and (b)(6) whether the cause of action is due or not.

Sec. 2. (a) Except as provided in subsection (b), an attachment, may not issue against any debtor while the debtor's spouse and family remain settled within the county where the debtor usually resided before the debtor's absence, if the debtor does not remain absent from Indiana more than one (1) year.

(b) This section does not apply if:

(1) the attachment is requested in a cause of action described in section 1(b)(4), 1(b)(5), or 1(b)(6) of this chapter; or

(2) an attempt is made to conceal the debtor's absence.

Sec. 3. If the spouse or family of the debtor:

(1) refuse or are unable to:

(A) account for the debtor's absence; or

Copy

(B) indicate the place where the debtor may be found; or

(2) give a false account of the debtor's absence or place where the debtor may be found;

the refusal, inability, or false account is considered an attempt to conceal the debtor's absence for the purposes of this chapter.

Sec. 4. The plaintiff or a person representing the plaintiff shall make an affidavit showing:

(1) the nature of the plaintiff's claim;

(2) that the plaintiff's claim is just;

(3) the amount that the plaintiff ought to recover; and

(4) that one (1) of the grounds for an attachment enumerated in section 1 of this chapter is present.

Sec. 5. The plaintiff or a person representing the plaintiff shall execute a written undertaking, with sufficient surety, to be approved by the clerk, payable to the defendant, to the effect that the plaintiff will:

(1) duly prosecute the proceeding in attachment; and

(2) pay all damages that may be sustained by the defendant if the proceedings of the plaintiff are wrongful and oppressive.

Sec. 6. Upon the filing of the affidavit and written undertaking in the office of the clerk, the clerk shall issue an order of attachment, which shall be directed and delivered to the sheriff. The order of attachment must require the sheriff to seize and take into possession the property of the defendant in the county that is not exempt from execution.

Sec. 7. Orders of attachment may be issued to the sheriff of any other county, and several orders of attachment may, at the option of the plaintiff, be issued at the same time or in succession. Only the costs of orders of attachment that have been executed in whole or in part shall be recovered against the defendant unless otherwise directed by the court.

Sec. 8. An order of attachment may be issued and executed on Sunday, if the plaintiff's affidavit shows that the defendant is about to abscond on that day, to the injury of the plaintiff.

Sec. 9. The sheriff shall proceed, with the assistance of a disinterested and credible householder of the county, to:

(1) attach the lands, tenements, goods, and chattels of the defendant, subject to execution; and

(2) make an inventory and appraisement of the property described in subdivision (1) and return the inventory and

C o p y

appraisement with the order.

Sec. 10. An order of attachment binds the defendant's property in the county subject to execution and becomes a lien on the property from the time of the delivery of the order to the sheriff, in the same manner as an execution.

Sec. 11. (a) The sheriff shall first take the defendant's personal property under an attachment.

(b) If the sheriff does not find enough personal property of the defendant to satisfy the plaintiff's claim and costs of the action, then the sheriff shall take the defendant's real estate under attachment.

(c) If any property of the defendant is removed from the county after an order of attachment is placed in the hands of the sheriff, the sheriff may pursue and attach the property in any county within three (3) days after the removal.

Sec. 12. The defendant or other person who has possession of attached property may have the property, or any part of the property, delivered to the defendant or person by executing and delivering to the sheriff a written undertaking, with surety, to be approved by the sheriff, payable to the plaintiff, to the effect that:

(1) the property shall be:

(A) properly kept and taken care of; and

(B) delivered to the sheriff on demand, or so much of the property as may be required to be sold on execution to satisfy any judgment that may be recovered against the defendant or person in the action; or

(2) the defendant or person will pay the appraised value of the property, not exceeding the amount of the judgment and costs.

Sec. 13. Whenever any person other than the defendant claims any property attached, the right of property may be tried as in cases of property taken in execution, and the claimant, having notice of the attachment, shall be bound to prosecute the claim as in such cases or be barred of the right.

Sec. 14. The defendant or claimant of any attached property may be required by the court to appear and give information, under oath, respecting the property.

Sec. 15. Goods attached in the hands of a consignee are subject to a lien for any debt due the consignee from the consignor.

Sec. 16. If the defendant or other person representing the defendant, at any time before judgment, executes a written

Copy

undertaking to the plaintiff with sufficient surety, to be approved by the court, clerk, or sheriff, to the effect that the defendant will:

(1) appear in the action; and

(2) perform the judgment of the court;

the attachment shall be discharged and restitution made of any property taken under the attachment or the proceeds of the property.

Sec. 17. When attached personal property is perishable in nature or expensive to keep, the court may direct the sheriff to sell the property at public auction upon reasonable notice. If the property is liable to immediate damage, the sheriff may sell the property by giving ten (10) days notice, without an order of court, and the proceeds of all sales shall be deposited with the clerk.

Sec. 18. The sheriff shall be allowed by the court the necessary expenses of keeping the attached property, to be paid by the plaintiff and taxed in the costs.

Sec. 19. (a) This section applies when the first attaching creditor dismisses the action or proceedings in attachment.

(b) A dismissal described in subsection (a) does not operate as a dismissal of the action or proceedings of any subsequent attaching creditor.

Sec. 20. (a) After appearing in the action, a defendant against whom an order of attachment has been issued may move to have:

(1) the attachment discharged; and

(2) restitution awarded for any property taken under the attachment.

(b) An appearance in the action may not operate to discharge the attachment unless the defendant files a written undertaking as required in section 16 of this chapter.

(c) If:

(1) the defendant appears in the action;

(2) judgment is rendered in favor of the plaintiff; and

(3) part of the judgment remains unsatisfied after exhausting the property attached;

the judgment is considered a judgment against the defendant personally.

(d) A judgment described in subsection (c) has the same force and effect as other judgments, and execution shall issue on the judgment accordingly for the collection of the residue.

(e) If the plaintiff's undertaking is insufficient, the plaintiff is entitled to a reasonable time to file an additional undertaking.

C o p y

Sec. 21. (a) Except as provided in subsection (b), if the judgment in the action is rendered for the defendant:

(1) the attachment shall be discharged; and

(2) the attached property or proceeds from the property shall be returned to the defendant.

(b) If the plaintiff:

(1) serves notice with the clerk or judge within seventy-two (72) hours that the plaintiff:

(A) intends to appeal from the judgment; and

(B) will file a bond, approved by the court; and

(2) files an appeal, as provided by law, within sixty (60) days from the date of the judgment;

the attachment or any bond given to release the property or thing attached shall not be discharged, and the attached property or proceeds from the property shall not be returned to the defendant until final disposition of such action.

Sec. 22. After judgment for the plaintiff or one (1) or more of several plaintiffs, attached property that remains unsold may be sold on execution, as in other cases.

Sec. 23. Every defendant is entitled to an action on the written undertaking of the plaintiff or creditor by whose proceedings in attachment the defendant is aggrieved, if it appears that the proceedings were wrongful and oppressive. The defendant shall recover damages at the discretion of the jury.

Sec. 24. In all actions in the name of the state of Indiana, or of any person, agent, or officer, for the use of the state, if process is returned indicating that the defendant was not found, an order of attachment may be issued and proceedings may be had, as in other cases, without filing an affidavit or a written undertaking.

Sec. 25. When an order of attachment is fully executed or discharged, the sheriff shall return the order to the court, with the sheriff's proceedings noted upon the order.

Chapter 3. Garnishment

Sec. 1. (a) This section applies to:

(1) all officers who may collect money by virtue of their office, including:

(A) clerks of the circuit and superior courts;

(B) sheriffs; and

(C) constables;

(2) executors;

(3) administrators;

C o p y

(4) guardians; and

(5) trustees.

(b) Persons described in subsection (a) are subject to garnishment at the suit of any creditor who has money or choses in action in the hands of the officer, executor, administrator, guardian, or trustee at the time of the service of the garnishee process, in the same manner as and to the same extent that other persons are subject to garnishment.

Sec. 2. (a) In all personal actions arising upon contract, express or implied, or upon a judgment or decree of any court, if at the time the action is commenced or at any time afterwards, whether a writ of attachment has been issued or not, the plaintiff, or a person representing the plaintiff, shall file with the clerk an affidavit that the plaintiff has good reason to believe, and does believe, that the person named in the affidavit:

(1) has property of the defendant in the person's possession or under the person's control;

(2) is indebted to the defendant;

(3) has the control or agency of any property, money, credits, or effects of the defendant; or

(4) has control over the defendant's share or interest in the stock of any association or corporation.

(b) The plaintiff shall file a written undertaking, as described in IC 34-25-2-5, payable to the defendant, with freehold surety to be approved by the clerk, stating that the plaintiff will:

(1) prosecute the proceedings in garnishment to effect; and

(2) pay to the defendant all damages the defendant may sustain if the proceedings are wrongful and oppressive.

(c) The clerk shall issue a summons notifying the person, association, or corporation to appear at the court and answer as garnishee in the action. The summons must contain the name and address of the defendant. The summons shall be served in the manner provided by the Indiana rules of trial procedure.

Sec. 3. From the day of the service of the summons, the garnishee is accountable to the plaintiff in the action for the amount of money, property, or credits in the garnishee's possession or due and owing from the garnishee to the defendant.

Sec. 4. (a) This section applies to an officer or agent of an association or corporation and every other person summoned as a garnishee.

(b) A person described in subsection (a) shall, when served, or

Copy

not later than five (5) days after being served the summons, furnish the sheriff with a certificate of:

(1) the number of shares or rights of the defendants in the stock of the corporation or association;

(2) a description of the property held by the corporation, association, or person that belongs to the defendant or is held for the benefit of the defendant; or

(3) the amount of the debt owing to the defendant by the association, corporation, or person, whether due or not.

The sheriff shall return the certificate with the summons.

(c) If the person refuses to provide the information set forth in subsection (b), the person may be required by the court to appear and be examined under oath concerning the information. Obedience to the orders may be enforced by attachment.

Sec. 5. (a) This section applies to a garnishee who is summoned and:

(1) fails to appear and provide discovery as required by law; or

(2) fails to answer or demur to the matters set forth against the garnishee in the affidavit, additional complaint, or interrogatories.

(b) When a garnishee fails to provide information as described in subsection (a):

(1) the information may be taken as confessed;

(2) judgment may be entered by default; or

(3) the garnishee may be examined under oath concerning all the matters charged in the affidavit or additional complaint.

(c) Proceedings, pleadings, and process under this section must conform to the practice in other cases, as necessary to determine the rights of the parties and render a final judgment.

Sec. 6. If the plaintiff or person representing the plaintiff files an affidavit with the clerk stating that the plaintiff or person:

(1) fears that the garnishee will abscond before judgment with intent to defraud the plaintiff; and

(2) believes that the garnishee:

(A) has money, things in action, goods, chattels, or effects of the defendant in the garnishee's possession; or

(B) is indebted to the defendant;

the clerk shall issue an order of arrest against the garnishee and hold the garnishee to bail as in a civil action.

Sec. 7. The court shall not render final judgment against the

Copy

garnishee until the action against the defendant has been determined. If the plaintiff fails to recover judgment either against the defendant or the garnishee, the garnishee shall be discharged and recover costs.

Sec. 8. The return of "no property found" upon the order of attachment does not affect the proceedings against the garnishee.

Sec. 9. (a) If the plaintiff wins judgment against the defendant and before the judgment the garnishee:

(1) delivers to the sheriff:

(A) all the defendant's goods and chattels, or other effects in the garnishee's possession subject to execution; or

(B) an inventory of the items described in subdivision (1)(A); and

(2) pays to the sheriff or into court all money due from the garnishee or belonging to the defendant;

the costs in the proceeding against the garnishee shall be paid by the defendant.

(b) If the garnishee does not appear or appears and refuses to accurately confess the matter alleged and at the trial:

(1) the plaintiff recovers judgment against the garnishee; or

(2) the garnishee admits to having possession of money, credits, or effects belonging to the defendant and refuses to pay or deliver the money, credits, or effects;

the garnishee shall pay costs.

Sec. 10. The garnishee may not be compelled to pay or perform any contract in any other manner or at any other time, than the garnishee would be bound to do for the defendant.

Sec. 11. A garnishee may pay money the garnishee owes to the defendant to the sheriff or into court and is discharged from liability to the defendant for the amount of money paid to the sheriff or into court that does not exceed the plaintiff's claim.

Sec. 12. (a) This section applies to a garnishee or an officer of a corporation summoned as a garnishee.

(b) Five (5) or more days after being served with the summons, the garnishee may be examined under oath in open court.

(c) If the examination reveals that at the time the summons was served, or after the service of the summons upon the garnishee, the garnishee or the corporation possessed any property of the defendant or was indebted to the defendant, the court may order:

(1) the delivery of the property and the payment of the

Copy

indebtedness into court; or

(2) the execution of a written undertaking by the garnishee, with sufficient sureties, to be approved by the court, payable to the plaintiff, to the effect that the indebtedness shall be paid or the property forthcoming as the court shall direct.

Sec. 13. At any time before the final judgment in the suit, any creditor of the defendant, upon filing an affidavit and written undertaking, as required of an attaching creditor, may do the following:

(1) Become a party to the action, file a complaint, and prove the claim or demand against the defendant.

(2) Have any person summoned as garnishee or held to bail who has not before been summoned or held to bail.

(3) Propound interrogatories to the garnishee and enforce answers to the interrogatories in like manner, as the creditor who is plaintiff.

Sec. 14. (a) If:

(1) judgment in the action is rendered for the plaintiff, or one (1) or more of several plaintiffs; and

(2) sufficient proof is made of the goods, chattels, rights, credits, money, and effects in the possession of the garnishee;

the court shall also give judgment in favor of the plaintiff or creditors against the garnishee, or the property of the defendant, or both, as the case may require.

(b) A judgment described in subsection (a) may be enforced by execution.

Sec. 15. (a) In addition to other proceedings, this section applies to proceedings supplementary to execution involving a depository financial institution under IC 28-9.

(b) A person, whether designated as a garnishee defendant, an income payor, or otherwise, who complies with what purports to be a garnishment, an income withholding order, or a hold or restriction on withdrawal order issued under:

(1) the Indiana Rules of Trial Procedure;

(2) this article (or IC 34-1-11 before its repeal);

(3) IC 31-16-15 (or IC 31-2-10 before its repeal) or a similar law of Indiana or another state pertaining to support or maintenance of any person; or

(4) IC 34-55-8-7 (or IC 34-1-44-7 before its repeal) concerning proceedings supplementary to execution;

is not personally liable for the amounts withheld if, for any reason,

C o p y

the order is determined by a court to be procedurally defective.

SECTION 21. IC 34-25.5 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 25.5. SPECIAL PROCEEDINGS: HABEAS CORPUS

Chapter 1. Persons Entitled to Writ of Habeas Corpus

Sec. 1. Every person whose liberty is restrained, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered from the restraint if the restraint is illegal.

Chapter 2. Application for Writ

Sec. 1. (a) Application for the writ must be made by complaint, signed and verified either by:

(1) the applicant; or

(2) some person on the applicant's behalf.

(b) The complaint must specify the following:

(1) Who is restraining the applicant's liberty, the place where the applicant is being held, and the names of all the parties, if they are known, or descriptions of them if they are not known.

(2) The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

(3) If the restraint is alleged to be illegal, the nature of the illegality.

Sec. 2. (a) Writs of habeas corpus may be granted by :

(1) the circuit or superior courts of the county in which the person applying for the writ may be restrained of his or her liberty, or by the judges of those courts; or

(2) if the judges described in subdivision (1) are:

(A) absent from their circuits; or

(B) by reason of sickness or other cause, unable or incompetent to hear and determine the application for the writ;

then by any judge of an adjoining circuit.

(b) Upon application, a writ granted under subsection (a) shall be granted without delay.

Sec. 3. The criminal circuit judges in Indiana may:

(1) issue writs of habeas corpus within their respective counties;

(2) hear and determine writs of habeas corpus in favor of all

C o p y

persons arrested and held upon any charge in violation of Indiana criminal laws; and

(3) admit to bail, or discharge the prisoner;

in the same manner, to the same extent, and under the same rules and regulations as judges of the circuit courts are authorized by law to do.

Sec. 4. The writ shall be directed to the office or party restraining the applicant, commanding the party to have the applicant before the court or judge, at the time and place the court or judge directs, to do and receive the court's order concerning the applicant.

Chapter 3. Service and Return of Writ

Sec. 1. If the writ is directed to the sheriff, the clerk shall deliver it to the sheriff without delay.

Sec. 2. If the writ is directed to any other person, the writ shall be delivered to the sheriff. The sheriff shall serve the writ by delivering the writ to the person without delay.

Sec. 3. If the person to whom a writ is directed cannot be found or refuses admittance to the sheriff, the writ may be served by:

(1) leaving the writ at the residence of the person to whom the writ is directed; or

(2) affixing the writ on some conspicuous place, either at the person's dwelling house or where the party is confined or under restraint.

Sec. 4. The sheriff or other person to whom the writ is directed shall return the writ immediately and if the person to whom the writ is directed refuses after due service to return the writ, the court shall enforce obedience by attachment.

Sec. 5. The return must be signed and verified by the person making it, who shall state the following:

(1) The authority or cause of the restraint of the applicant in the custody of the person to whom the writ is directed.

(2) If the authority is in writing, the person to whom the writ is directed shall return a copy and produce the original at the hearing.

(3) If the person to whom the writ is directed has had the applicant in custody or under restraint, and has transferred the applicant to another, the person to whom the writ is directed shall state to whom, the time, place, and cause of the applicant's transfer.

C o p y

The person to whom the writ is directed shall produce the applicant at the hearing unless prevented by sickness or infirmity, which must be shown in the return.

Sec. 6. (a) All writs and other process authorized under this article shall be issued by the clerk of the court, and, except summonses, sealed with the seal of the court.

(b) Documents described in subsection (a) shall be served and returned immediately unless the court or judge specifies a particular time for the return.

Sec. 7. A writ or other process shall not be disregarded for any defect if enough is shown to notify the officer or person to whom the writ is directed of the purpose of the process.

Sec. 8. The court may allow amendments to a writ, and temporary commitments, when necessary.

Chapter 4. Hearings

Sec. 1. The court or judge, if satisfied of the truth of the allegation of sickness or infirmity under IC 34-25.5-3-5, may:

(1) proceed to decide on the return; or

(2) adjourn the hearing:

(A) until the party can be produced; or

(B) for other good cause.

Sec. 2. The applicant may:

(1) except to the sufficiency of, or controvert the return, or any part of the return; or

(2) allege any new matter in avoidance.

The new matter must be verified except in cases of commitment on a criminal charge. The return and pleadings may be amended without causing any delay.

Sec. 3. The court or judge shall proceed in a summary way to hear and determine the cause. If no legal cause is shown for the restraint or for the continuation of the restraint, the court shall discharge the applicant.

Sec. 4. The court or judge may require and compel the attendance of witnesses and do all other acts necessary to determine the case.

Chapter 5. Issuance of Writ

Sec. 1. (a) Except as provided in subsection (b), the court or judge shall not inquire into the legality of any judgment or process by which the party is in custody, or discharge the party when the term of commitment has not expired in any of the following cases:

(1) Upon process issued by any court or judge of the United

C o p y

States where the court or judge has exclusive jurisdiction.

(2) Upon any process issued on a final judgment of a court of competent jurisdiction.

(3) For any contempt of any court, officer, or body with authority to commit.

(4) Upon a warrant issued from the circuit court upon an indictment or information.

(b) Subsection (a)(1), (a)(2), and (a)(3) do not include an order of commitment, as for contempt, upon proceedings to enforce the remedy of a party.

Sec. 2. (a) A person shall not be discharged from an order of commitment issued by any judicial or peace officer:

(1) for want of bail, or in cases not bailable, on account of a defect in the charge or process; or

(2) for alleged want of probable cause.

(b) In cases described in subsection (a), the court or judge shall:

(1) summon the prosecuting witnesses;

(2) investigate the criminal charge;

(3) discharge, let to bail, or recommit the prisoner, as may be just and legal; and

(4) recognize witnesses when proper.

Sec. 3. The writ may be used for the purpose of letting a prisoner to bail in civil and criminal actions.

Sec. 4. When any person has an interest in the detention, the prisoner shall not be discharged until the person having an interest in the detention is notified.

Sec. 5. A sheriff or other officer shall not be liable to a civil action for obeying a writ of habeas corpus or an order of discharge made pursuant to a writ of habeas corpus.

Chapter 6. Emergency Warrant

Sec. 1. Whenever it appears by affidavit that a person is illegally held in custody or restraint and there is good reason to believe that the applicant:

(1) will be carried out of the jurisdiction of the court or judge before whom the application is made; or

(2) will suffer some irreparable injury before compliance with the writ can be enforced;

the court or judge may cause a warrant to be issued, reciting the facts and directed to the sheriff or any constable of the county, commanding the sheriff or constable to take the restrained person

C o p y

and immediately bring the person before the court or judge, to be dealt with according to law.

Sec. 2. The court or judge may also, if considered necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

Sec. 3. The officer shall execute the warrant by bringing the person named in the warrant before the court or judge, and the same return and proceedings shall be required as in case of writs of habeas corpus.

Sec. 4. (a) Any writ or process authorized by this article may be issued and served on Sunday in cases of emergency.

(b) The court or judge may make any temporary orders in the cause or disposition of the party, during the progress of the proceedings, that justice may require. The custody of any party restrained may be changed from one (1) person to another by order of the court or judge.

Chapter 7. Writs in Favor of Parents, Guardians, and Spouses, and to Enforce Rights of Minors and Incapacitated Persons

Sec. 1. Writs of habeas corpus shall be granted in favor of parents, guardians, and spouses to enforce the rights and for the protection of minors and incapacitated persons whose incapacity is not caused only by a physical illness, impairment, or infirmity (as defined in IC 29-3-1-7.5). The proceedings must in all cases, conform to the provisions of this article.

SECTION 22. IC 34-26 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 26. SPECIAL PROCEEDINGS: INJUNCTIONS AND RESTRAINING ORDERS

Chapter 1. Injunctions and Restraining Orders Generally

Sec. 1. In addition to the injunctions and restraining orders discussed in this article, the following statutes also contain provisions concerning injunctions or restraining orders:

(1) IC 34-19-1 (governing nuisance actions).

(2) IC 34-19-2 (governing actions for indecent nuisance).

(3) IC 34-24-2 (governing civil remedies for racketeering activities).

Sec. 2. Restraining orders and injunctions may be granted by the supreme court or a justice of the supreme court when necessary and proper for the due exercise of the jurisdiction and powers of the supreme court.

C o p y

Sec. 3. (a) Restraining orders and injunctions may be granted by the circuit courts or the judges of the circuit courts in their respective counties.

(b) If the circuit court judges are:

(1) absent from their circuits; or

(2) by reason of sickness or other cause unable or incompetent to hear and determine the granting of a temporary injunction or restraining order;

any circuit court judge of an adjoining circuit may hear and determine the granting of a temporary injunction or restraining order.

Sec. 4. (a) The regular presiding judge in the county where the petition was filed shall hear and determine whether an injunction or restraining order issued under section 3(b) of this chapter (or IC 34-1-10-1 before its repeal) shall be made permanent.

(b) The circuit courts, or the circuit court judges may, in any county of the circuit, issue restraining orders or injunctions to operate in any other county in the circuit.

(c) All petitions for restraining orders and injunctions shall be filed in the clerk's office in the county in which the order or injunction is requested.

Sec. 5. (a) This section applies:

(1) when it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief or any part of the relief consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great injury to the plaintiff;

(2) when, during the litigation, it appears that the defendant is:

(A) doing;

(B) threatening;

(C) about to do; or

(D) procuring or suffering to be done;

some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual; or

(3) when the relief or part of the relief demanded by the plaintiff consists in restraining proceedings upon any final order or judgment.

(b) An injunction may be granted to restrain an act or

Copy

proceeding described in subsection (a) until the further order of the court. The injunction may, afterwards, be modified upon motion.

Sec. 6. When it appears:

(1) in the complaint at the commencement of the action; or

(2) during the pendency of the action by affidavit;

that the defendant threatens, or is about to remove or dispose of the defendant's property, with intent to defraud the defendant's creditors, a temporary injunction may be granted, to restrain the removal or disposition of the defendant's property.

Sec. 7. In all applications for an injunction, the complaint or as much of the complaint as pertains to the acts or proceedings to be enjoined, must be verified by affidavit. The injunction may be granted at the time of commencing the action, or at any time afterwards before judgment is rendered in the proceeding.

Sec. 8. On the hearing of an application for a restraining order or temporary injunction, each party may read affidavits or documentary or record evidence.

Sec. 9. Upon the granting or continuing of an injunction, such terms and conditions may be imposed upon the party obtaining the injunction that are considered equitable.

Sec. 10. When an injunction is granted upon the hearing, after a temporary restraining order, the plaintiff shall not be required to enter into a second written undertaking unless the original undertaking is considered insufficient. However, the plaintiff and the plaintiff's surety remain liable upon the original undertaking.

Sec. 11. It is not necessary to issue a writ of injunction. However, the clerk shall issue a copy of the order of injunction, certified by the clerk, which shall be served promptly by delivering the order to the adverse party.

Sec. 12. In applications to stay proceedings after judgment, the plaintiff shall endorse upon the complaint a release of errors in the judgment whenever required to do so by the judge or court.

Sec. 13. Money that is:

(1) collected upon a judgment that is later enjoined; and

(2) remains in the hands of the collecting officer;

shall be paid to the clerk of the court granting the injunction, subject to the order of the court.

Sec. 14. (a) This section applies when it appears to any court or judge granting an order of injunction, by affidavit, that any person has willfully disobeyed the order.

(b) After giving notice, the court or judge shall award an

C o p y

attachment for contempt against the party charged or a rule to show cause why the attachment for contempt should not issue. The attachment or rule shall be issued by the clerk of the court, and directed to the sheriff, and shall be served by the sheriff.

Sec. 15. The attachment for contempt shall be immediately served by arresting the party charged, and bringing the party into court, if in session, to be dealt with as in other cases of contempt. The court shall also take all necessary measures to secure and indemnify the plaintiff against damages in the premises.

Sec. 16. (a) If the court is not in session, the officer making the arrest shall cause the person to enter into a written undertaking, with surety to be approved by the officer. The written undertaking must contain the person's assurances to:

(1) personally appear in open court;

(2) answer the contempt; and

(3) pay to the plaintiff all damages and costs occasioned by the breach of the order.

(b) In default of the provisions in subsection (a), the person shall be committed to the jail of the county, until the person enters into a written undertaking with surety, or is otherwise legally discharged.

Sec. 17. (a) This section applies when an injunction to stay proceedings after judgment for debt or damages is dissolved.

(b) The court shall award damages, not exceeding ten percent (10%), on the judgment, as the court considers right against the party in whose favor the injunction issued.

Sec. 18. (a) This section applies if an injunction to stay proceedings after verdict or judgment in an action for the recovery or possession of real estate is dissolved.

(b) The damages assessed against the party obtaining the injunction shall include the reasonable rents and profits of the land recovered and all waste committed after granting the injunction.

Chapter 2. Protective Order to Prevent Abuse

Sec. 1. A person may petition any court of record for a protective order on behalf of that person or a member of the petitioner's household.

Sec. 2. The petition:

(1) must include the name of the petitioner and the name and address (if known) of the respondent;

(2) must include any allegation concerning the date or manner of specific acts or feared acts of abuse, harassment,

C o p y

or disruption of the peace of the petitioner or members of the petitioner's household or any allegations concerning specific damage to or the fear of damage to any property of the petitioner;

(3) must include a request that, if the court grants the protective order, the court shall order the respondent:

(A) to refrain from abusing, harassing, or disturbing the peace of the petitioner, by either direct or indirect contact;

(B) to refrain from abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;

(C) to refrain from entering the property of the petitioner, jointly owned or leased property of the petitioner and respondent if the respondent is not the sole owner or lessee, or any other property as specifically described in the petition;

(D) to refrain from damaging any property of the petitioner;

(E) if the petitioner and respondent are married and if a proceeding for dissolution of marriage or legal separation is not pending:

(i) to be evicted from the dwelling of the petitioner if the respondent is not the sole owner or lessee of the petitioner's dwelling;

(ii) to not transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner or that is an asset of the marriage;

(iii) to pay child support to the custodian of any minor children of the parties alone or with the other party;

(iv) to pay maintenance to the other party; or

(v) to perform a combination of acts listed in items (i) through (iv);

(4) must be sworn to by the petitioner;

(5) must include a request that the court set a date for a protective order hearing under this chapter;

(6) must be accompanied by a confidential form concerning protective orders prescribed or approved by the division of state court administration; and

(7) may include a request that the court order counseling or

Copy

other social services, including domestic violence education, for the petitioner, the respondent, or both.

Sec. 3. (a) This section applies if an emergency exists concerning the relief requested in section 2(3)(A), 2(3)(B), 2(3)(C), or 2(3)(D) of this chapter.

(b) The petitioner must include a statement in the petition explaining why the emergency exists and request the court to immediately issue an emergency protective order that requires the respondent to immediately refrain from doing the acts described in section 2(3)(A) through 2(3)(D) of this chapter or comply with the order.

Sec. 4. The court may:

(1) order the clerk of the court to waive any filing fees required under this chapter if the petitioner demonstrates by affidavit that the petitioner is unable to pay the fees due to all relevant circumstances; and

(2) order filing fees to be paid by the respondent after a hearing held under this chapter.

Sec. 5. If a person requests a court to issue an emergency protective order, the court shall immediately review the petition ex parte. If the court finds that there is probable cause to believe that the petitioner, a member of the petitioner's household, or the petitioner's property was or is in danger of being abused or threatened with abuse by the respondent, the court shall:

(1) issue an emergency protective order described in section 6 of this chapter; and

(2) set a date for the protective order hearing not more than thirty (30) days after the date the petition is filed with the court.

Sec. 6. The emergency protective order issued under section 5 of this chapter may direct the respondent to refrain from:

(1) abusing, harassing, or disturbing the peace of the petitioner by either direct or indirect contact;

(2) abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;

(3) entering the property of the petitioner or any other property as specifically described in the petition; or

(4) damaging any property of the petitioner.

Sec. 7. An emergency protective order issued under section 5 of this chapter (or IC 34-4-5.1-2.3 before its repeal) expires:

C o p y

(1) sixty (60) days after the date the emergency protective order is issued; or

(2) the date a court issues an order stating that the emergency protective order has expired;

whichever occurs first.

Sec. 8. When a court issues an emergency protective order under section 5 of this chapter that directs the respondent to refrain from the acts described in section 6(1), 6(2), or 6(3) of this chapter:

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the petitioner shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

Sec. 9. When a court issues an order terminating an emergency protective order, the clerk of the court shall comply with IC 5-2-9-6(g).

Sec. 10. (a) A court may not issue a joint or mutual protective order, an emergency protective order, or a restraining order under:

(1) section 2(3)(A) of this chapter;

(2) section 2(3)(B) of this chapter;

(3) section 2(3)(C) of this chapter; or

(4) section 5 of this chapter.

(b) If both parties allege injury, the parties shall do so by separate motions. The trial court shall review each motion separately, and grant or deny each motion on its individual merits. If the trial court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.

Sec. 11. (a) When a petition is filed, the clerk shall issue a summons to appear at a hearing to the respondent that:

(1) gives notice of the date, time, and place of the hearing; and

(2) informs the respondent that the respondent must appear before the court to answer the petition.

(b) The clerk shall serve the respondent with the summons to appear in accordance with Rule 4.1 of the Rules of Trial Procedure.

Sec. 12. A court shall set a date for a hearing concerning a petition described in section 2 of this chapter not more than thirty (30) days after the date the petition is filed with the court. At the

C o p y

hearing, if at least one (1) of the allegations described in the petition is proved by a preponderance of the evidence, the court:

(1) shall order the respondent:

(A) to refrain from abusing, harassing, or disturbing the peace of the petitioner, by either direct or indirect contact;

(B) to refrain from abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;

(C) to refrain from entering the property of the petitioner, jointly owned or leased property of the petitioner and the respondent if the respondent is not the sole owner or lessee, or any other property as specifically described in the petition;

(D) to refrain from damaging any property of the petitioner;

(E) if the petitioner and respondent are married and if a proceeding for dissolution of marriage or legal separation is not pending:

(i) to be evicted from the dwelling of the petitioner if the respondent is not the sole owner or lessee of the petitioner's dwelling;

(ii) to not transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner or that is an asset of the marriage;

(iii) to pay child support to the custodian of any minor children of the parties alone or with the other party;

(iv) to pay maintenance to the other party; or

(v) to perform a combination of the acts described in items (i) through (iv); and

(2) may order counseling or other social services, including domestic violence education, for the petitioner, the respondent, or both, and may order the respondent to pay the costs of obtaining counseling or other social services for the petitioner, the respondent, or both.

Sec. 13. Any part of a court order authorized under section 12 (1)(E) or 12(2) of this chapter (or IC 34-4-5.1-5(a)(1)(E) or IC 34-4-5.1-5(a)(2) before their repeal) is issued without prejudice to the rights of the parties or a child concerning any issues that may be decided in proceedings for dissolution of marriage or legal

C o p y

separation. An order authorized under section 12 of this chapter (or IC 34-4-5.1-5 before its repeal) expires:

(1) when:

(A) a petition for dissolution or legal separation (with respect to the petitioner's and the respondent's marriage) has been filed; and

(B) a temporary restraining order issued under IC 31-15-4 (or IC 31-1-11.5-7 before its repeal) is in effect while the proceeding for marriage dissolution or legal separation is pending; or

(2) not more than one (1) year after the order is issued;

whichever occurs first.

Sec. 14. If a protective order expires under section 13(2) of this chapter, the court may, at the request of a party or upon the court's own motion, extend the protective order for an additional period of not more than one (1) year.

Sec. 15. The small claims court judges in a county containing a consolidated city may by mutual agreement assign to one (1) or more divisions of the court exclusive jurisdiction over proceedings initiated under this chapter (or IC 34-4-5.1 before its repeal) in the small claims court.

Sec. 16. When a court issues a protective order under section 12(1)(A), 12(1)(B), or 12(1)(C) of this chapter or an emergency protective order under section 5 of this chapter:

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the petitioner shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

Sec. 17. (a) When a court issues a protective order under this chapter (or IC 34-4-5.1 before its repeal), the court may order the respondent to pay a reasonable amount for the cost to the moving party of maintaining a proceeding under this chapter (or IC 34-4-5.1 before its repeal) and for attorney's fees, including sums for legal services rendered before the commencement of the proceedings or after entry of judgment.

(b) The court may order the amount to be paid directly to the attorney, who may enforce the order in the attorney's name.

Chapter 3. Injunction Against Posting of Notices and Bills on Telephone and Utility Poles

Sec. 1. Upon petition by any party, the court may enjoin the posting of, or may order the removal of, handbills, notices, or other

Copy

written material on telephone or utility poles in any case in which the court finds that to allow the posting, or permit the posting to continue, would be either unsafe or unsightly.

Chapter 4. Injunction Against Distribution of Tobacco to Persons Less Than Eighteen Years of Age

Sec. 1. If a violation of IC 35-46-1-10 is being committed, any person may apply for an order enjoining the violation from the circuit court or a superior court of the county in which the violation occurs.

Sec. 2. (a) Upon a showing that a person has violated IC 35-46-1-10, the court may grant:

(1) an injunction, restraining order, or other appropriate order; and

(2) the costs and reasonable attorney's fees of the person bringing the action.

(b) The court may grant an order under subsection (a) without requiring the person bringing the action to post a bond.

SECTION 23. IC 34-27 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 27. SPECIAL PROCEEDINGS: MANDATE AND PROHIBITION

Chapter 1. Writs of Mandate and Prohibition

Sec. 1. Writs of mandate in the circuit and superior courts are abolished. Causes of action previously remedied by writs of mandate may be remedied by means of complaint and summons in the name of the state on relation of the party in interest in the circuit, superior, and probate courts as other civil actions. Such actions are to be known as actions for mandate.

Sec. 2. (a) The supreme court may issue writs of mandate and prohibition in aid of the appellate powers and functions of the supreme court.

(b) The court of appeals may issue writs of mandate and prohibition in aid of the appellate powers and functions of the court of appeals.

Sec. 3. (a) The supreme court may issue writs of mandate to any and all inferior courts compelling the performance of any duty enjoined by law upon the inferior courts, including the granting of changes of venue from the county in cases where:

(1) change of venue is allowed by law;

(2) timely, proper, and sufficient motion and affidavit have

Copy

been filed for a change of venue; and

(3) the motion for change of venue was refused.

(b) The supreme court may also issue a writ of prohibition to an inferior court to restrain and confine the inferior court to the inferior court's lawful jurisdiction.

Sec. 4. Costs shall be awarded in these proceedings as in civil actions.

Chapter 2. Writs of Prohibition

Sec. 1. The writ of prohibition commands the court and party to whom the writ is directed:

(1) to refrain from any further proceedings in the matter specified in the action until the return of the writ and further order of the court; and

(2) upon the return, to show cause why the party to whom the writ is directed is not absolutely restrained from any further proceedings in the matter.

Sec. 2. The court renders judgment by either:

(1) issuing a prohibition absolute, restraining the court and party from proceeding; or

(2) authorizing the court and party to proceed;

in the matter in question.

Chapter 3. Actions for Mandate

Sec. 1. An action for mandate may be prosecuted against any inferior tribunal, corporation, public or corporate officer, or person to compel the performance of any:

(1) act that the law specifically requires; or

(2) duty resulting from any office, trust, or station.

Sec. 2. (a) Except as provided in subsection (b), in an action for mandate, as in other civil actions:

(1) the complaint must be verified;

(2) the summons must be issued, or publication made, and proof of service and notice made; and

(3) the person, body, or tribunal defendant shall:

(A) appear and answer the complaint; or

(B) suffer default.

(b) When an emergency is shown in the complaint, the court or the judge may issue an order at the time the complaint is filed, directing a shorter time for the return of the summons and for the appearance and answer of the defendant than is provided in civil cases. The return of the summons and the time for appearance must be fixed by the court.

C o p y

Sec. 3. (a) An action for mandate shall stand for trial, and as in other civil actions, the court hearing the action may:

(1) join issues of law and fact;

(2) grant amendments, continuances, and appeals; and

(3) render final judgments.

(b) In actions for mandate, if the finding and judgments are for the plaintiff, the court rendering the final judgment shall grant the plaintiff:

(1) relief the plaintiff is entitled to under the law and facts in the action;

(2) damages, as in actions for false returns; and

(3) costs as the court directs.

Sec. 4. (a) All defendants served with process or notified by publication in an action for mandate shall:

(1) take notice of the judgment and mandate of the court in the case; and

(2) promptly perform the mandate issued by the court.

(b) Obedience to a judgment and mandate is enforceable by:

(1) attachment and fine;

(2) imprisonment; or

(3) both subdivisions (1) and (2).

SECTION 24. IC 34-28 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 28. SPECIAL PROCEEDINGS: MISCELLANEOUS CIVIL PROCEEDINGS AND REMEDIES

Chapter 1. Birth: Establishing Public Record of Time and Place

Sec. 1.(a) This section applies to a person who is a resident of Indiana.

(b) To establish a public record of the time and place of a person's birth the person must:

(1) have been a bona fide resident, for more than six (6) months, of the county where the application is filed; and

(2) file a verified application and petition in the circuit or superior court of the county.

(c) The circuit court, the superior court, or the judge of the circuit or superior court shall hear and determine the matter set out in the application and petition, without the intervention of a jury.

Sec. 2. (a) This section applies to a person who:

Copy

(1) was born in Indiana; and

(2) is not a resident of Indiana at the time of the application.

(b) The person may file a verified application in the circuit or superior court of the county of the person's birth for an order to establish a public record of the time and place of the birth of the applicant.

(c) The court or the judge shall hear and determine the matter set out in the application and petition without the intervention of a jury.

Sec. 3. The clerk of the court shall provide the forms for the petition in the same manner as other forms are provided for by law.

Sec. 4. (a) This section applies to any person, resident or nonresident, who has filed an application in any court as provided in this chapter.

(b) Except as provided in subsection (c), the applicant shall give notice of the application by one (1) insertion in a qualified newspaper of general circulation, printed and published in the county where the application is filed.

(c) If no newspaper is published in the county where the application is filed, the applicant shall give notice in the closest newspaper printed and published in an adjoining county.

(d) The notice must be in the following form:

Birth Certificate

Notice is given that _____ has filed a petition in the _____ Court of _____ County, Indiana, to have the time and place of his (her) birth determined. This petition is set for hearing on the _____ day of _____, _____.

_____

Clerk of the _____ Court.

(e) The notice shall be published at a cost not to exceed one dollar and fifty cents ($1.50), and if the applicant cannot publish the notice for that amount, notice shall be given by posting the notice at a door of the courthouse. The clerk of the court shall post the notice and file proof of its posting.

Sec. 5. Upon the filing of proof of notice by publication or posting, as provided in section 4 of this chapter, the court or judge may hear the application and enter a determination of status of the applicant as to time and place of birth.

Sec. 6. Before the court or judge has jurisdiction to determine the application, the applicant must demonstrate:

C o p y

(1) that at least two (2) freeholders, either of the county of the residence of the applicant or of the county of birth have:

(A) knowledge of the facts stated in the application; or

(B) reason to believe that the facts are true; and

(2) to the satisfaction of the court or the judge that the applicant meets the qualifications provided in this chapter for the filing of the application.

Sec. 7. (a) The applicant may appear:

(1) in person; and

(2) with or without an attorney.

(b) If the applicant appears without an attorney, the judge shall conduct the hearing of the applicant and the examination of the witnesses.

(c) The judge may continue the hearing from time to time.

(d) Except as provided in subsection (e), the determination of the court or the judge, after conclusion of the hearing, is final.

(e) Upon petition for sufficient cause, if the court or judge sets aside the former order and assigns the application for rehearing and determination, the determination of the court on rehearing is final.

Sec. 8. A copy of the decree of the court or judge certified under the seal of the clerk of the court is prima facie evidence in any court, board, council, or commission of Indiana to show time and place of birth of the person named in the decree.

Sec. 9. (a) The clerk of the court shall:

(1) make and keep an index record to be known as the birth certificate record; and

(2) enter the judgment and decree into the proper index of the record.

(b) The clerk shall also send a certified copy of the judgment and decree to the division of vital records, state department of health, Indianapolis, Indiana. The judgment and decree shall be considered to be a delayed certificate of birth under IC 16-37-2.

Sec. 10. The clerk shall collect the fee provided in IC 33-19-5-4. However, no fee may be collected if the petitioner is a resident of Indiana.

Sec. 11. Where the applicant fails to prosecute the cause for one hundred twenty (120) days after filing the application, the court or judge shall dismiss the application for want of prosecution, and the clerk of the circuit court shall destroy the application immediately following the dismissal.

C o p y

Chapter 2. Change of Name

Sec. 1. The circuit courts in Indiana may change the names of natural persons on application by petition.

Sec. 2. (a) The petition described in section (1) of this chapter may be filed with the circuit court of the county in which the person resides.

(b) In the case of a parent or guardian who wishes to change the name of a minor child, the petition must be verified, and it must state in detail the reason the change is requested. In addition, except where a parent's consent is not required under IC 31-19-9, the written consent of a parent, or the written consent of the guardian if both parents are dead, must be filed with the petition.

(c) Before a minor child's name may be changed, the parents or guardian of the child must be served with a copy of the petition as required by the Indiana trial rules.

Sec. 3. (a) Upon filing a petition for a name change, the applicant shall give notice of the petition as follows:

(1) By three (3) weekly publications in a newspaper of general circulation published in the county in which the petition is filed in court.

(2) If no newspaper is published in the county in which the petition is filed, the applicant shall give notice in a newspaper published nearest to that county in an adjoining county.

(3) The last weekly publication shall be published not less than thirty (30) days before the day the petition will be heard as indicated in the notice.

(b) In the case of a petition described in section 2(b) of this chapter, the petitioner must publish the first notice of the petition not more than seven (7) days after the date the petition is filed.

(c) In the case of a petition described in section 2(b) of this chapter, the notice required by this section must include the following:

(1) The name of the petitioner.

(2) The name of the minor child whose name is to be changed.

(3) The new name desired.

(4) The name of the court in which the action is pending.

(5) The date on which the petition was filed.

(6) A statement that any person has the right to appear at the hearing and to file objections.

(d) In the case of a person who has had a felony conviction

C o p y

within ten (10) years before filing a petition for a change of name, at least thirty (30) days before the hearing the petitioner must give notice of the filing of the petition to:

(1) the sheriff of the county in which the petitioner resides;

(2) the prosecuting attorney of the county in which the petitioner resides; and

(3) the Indiana central repository for criminal history information.

(e) The notice given to the Indiana central repository for criminal history information under subsection (d) must include the petitioner's full current name, requested name change, date of birth, address, physical description, and a full set of classifiable fingerprints.

(f) The Indiana central repository for criminal history information shall forward a copy of any criminal records of the petitioner to the court for the court's information.

(g) A copy of the court decree granting or denying such a petition shall be sent to the Indiana state police.

(h) A person who violates subsection (d) commits a Class A misdemeanor.

Sec. 4. (a) Proof of the publication required in this chapter is made by filing a copy of the published notice, verified by the affidavit of a disinterested person, and when proof of publication is made, the court shall, subject to the limitations imposed by subsections (b), (c), and (d), proceed to hear the petition and make an order and decree the court determines is just and reasonable.

(b) In the case of a petition described in section 2(b) of this chapter, the court may not hear the petition and issue a final decree until after thirty (30) days from the later of:

(1) the filing of proof of publication of the notice required under subsection (a); or

(2) the service of the petition upon the parents or guardian of the minor child.

(c) In the case of a petition described in section 2(b) of this chapter, the court shall set a date for a hearing on the petition if:

(1) written objections have been filed; or

(2) either parent or the guardian of the minor child has refused or failed to give written consent as described in section 2(b) of this chapter.

The court shall require that appropriate notice of the hearing be given to the parent or guardian of the minor child or to any person

C o p y

who has filed written objections.

(d) In deciding on a petition to change the name of a minor child, the court shall be guided by the best interest of the child rule under IC 31-17-2-8. However, there is a presumption in favor of a parent of a minor child who:

(1) has been making support payments and fulfilling other duties in accordance with a decree issued under IC 31-15, IC 31-16, or IC 17 (or IC 31-1-11.5 before its repeal); and

(2) objects to the proposed name change of the child.

(e) In the case of a person required to give notice under section 3(d) of this chapter, the petitioner must certify to the court that the petitioner has complied with the notice requirements of that subsection.

Sec. 5. (a) A copy of the decree of the court changing the name of any natural person, certified under the seal of the court by the clerk of the court, is sufficient evidence of the name of the person, and of a change having been made, in any court of Indiana.

(b) In the case of a petition described in section 2(b) of this chapter, the court shall send a copy of the final decree to the state department of health and to the local health department of the county.

(c) In the case of a petition filed by a person at least seventeen (17) years of age, the court shall send a copy of the final decree to the clerk of the circuit court or board of registration of the county where the person resides.

Chapter 3. Partial Emancipation for Minors to Participate in Automobile and Motorcycle Racing

Sec. 1. This chapter applies to a person who wishes to participate in professional automobile or motorcycle racing events.

Sec. 2. (a) This section applies to:

(1) a circuit or superior court that has jurisdiction in the county in which the minor resides or is employed; or

(2) if the minor neither resides in nor is employed in Indiana, the circuit or superior court that has jurisdiction in the county in which any party to the contract or release has its principal office in Indiana.

(b) A circuit or superior court described in subsection (a) may partially emancipate a minor under this chapter if the court finds all of the following:

(1) The minor and the minor's parents, having petitioned the court, appear before the court and agree that the minor

C o p y

should be partially emancipated to be allowed to participate in professional automobile or motorcycle racing events.

(2) The minor possesses the maturity to understand the hazards and risks involved in participating in automotive or motorcycle racing events.

(3) The minor and the minor's parents understand what it means for the minor and the minor's parents to be bound by any contracts, releases, or indemnity agreements the minor signs once the minor is partially emancipated under this chapter.

(4) If the minor intends to drive in a professional automobile or motorcycle racing event, that the minor has five (5) years experience in go-kart, automobile, or motorcycle racing.

(c) Whenever the court partially emancipates a minor under this chapter, the court shall specify the terms of the emancipation, which are limited to any of the following:

(1) The ability to contract for the purposes of participating in professional automobile and motorcycle racing events.

(2) The ability to sign liability releases or indemnity agreements required by a sanctioning entity of professional automobile or motorcycle racing events.

Sec. 3. A minor who has been partially emancipated under this chapter (or IC 34-4-44.2 before its repeal) may not avoid a contract, a liability release, or an indemnity agreement referred to in a court order issued under this chapter (or IC 34-4-44.2 before its repeal) by alleging that the minor was under a legal disability by reason of the minor's age. No parent of a minor who has been partially emancipated under this chapter (or IC 34-4-44.2 before its repeal) may seek to have a contract, a liability release, or an indemnity agreement signed by the partially emancipated minor as allowed under this chapter set aside by reason of the minor's age at the time the minor entered into the contract, regardless of whether the parent participates in the partial emancipation proceeding or fits the definition of a parent under IC 34-6-2-93.

Chapter 4. Remedies for Improper Dismissal From Employment Because of Court Attendance

Sec. 1. A person who is dismissed from employment in violation of IC 35-44-3-10 may bring a civil action, within ninety (90) days of the dismissal, against the employer who dismissed the person:

(1) to recover the wages the person lost as a result of the

C o p y

dismissal; and

(2) to obtain an order requiring reinstatement by the employer.

If the person obtains a judgment against the employer, the court shall award a reasonable attorney's fee to the person's attorney.

Chapter 5. Infraction and Ordinance Violation Enforcement Proceedings

Sec. 1. (a) An action to enforce a statute defining an infraction shall be brought in the name of the state of Indiana by the prosecuting attorney for the judicial circuit in which the infraction allegedly took place.

(b) An action to enforce an ordinance shall be brought in the name of the municipal corporation. The municipal corporation need not prove that it or the ordinance is valid unless validity is controverted by affidavit.

(c) Actions under this chapter (or IC 34-4-32 before its repeal):

(1) shall be conducted in accordance with the Indiana Rules of Trial Procedure; and

(2) must be brought within two (2) years after the alleged conduct or violation occurred.

(d) The plaintiff in an action under this chapter must prove the commission of an infraction or ordinance violation by a preponderance of the evidence.

(e) The complaint and summons described in IC 9-30-3-6 may be used for any infraction or ordinance violation.

(f) The prosecuting attorney or the attorney for a municipal corporation may establish a deferral program for deferring actions brought under this section. Actions may be deferred under this section if:

(1) the defendant in the action agrees to conditions of a deferral program offered by the prosecuting attorney or the attorney for a municipal corporation;

(2) the defendant in the action agrees to pay to the clerk of the court an initial user's fee and monthly user's fee set by the prosecuting attorney or the attorney for the municipal corporation in accordance with IC 33-19-5-2(e);

(3) the terms of the agreement are recorded in an instrument signed by the defendant and the prosecuting attorney or the attorney for the municipal corporation;

(4) the defendant in the action agrees to pay court costs of twenty-five dollars ($25) to the clerk of court if the action

Copy

involves a moving traffic offense (as defined in IC 9-13-2-110); and

(5) the agreement is filed in the court in which the action is brought.

When a defendant complies with the terms of an agreement filed under this subsection (or IC 34-4-32-1(f) before its repeal), the prosecuting attorney or the attorney for the municipal corporation shall request the court to dismiss the action. Upon receipt of a request to dismiss an action under this subsection, the court shall dismiss the action. An action dismissed under this subsection (or IC 34-4-32-1(f) before its repeal) may not be refiled.

Sec. 2. In an action for a moving traffic violation, the pleadings are as follows:

(1) A summons and complaint.

(2) Entry by a defendant of:

(A) an admission to the violation;

(B) a denial of the violation; or

(C) a declaration of nolo contendere in which the defendant consents to entry of judgment for the state without admitting to the violation.

Sec. 3. Whenever a law enforcement officer believes in good faith that a person has committed an infraction or ordinance violation, the law enforcement officer may detain that person for a time sufficient to:

(1) inform the person of the allegation;

(2) obtain the person's:

(A) name, address, and date of birth; or

(B) driver's license, if in the person's possession; and

(3) allow the person to execute a notice to appear.

Sec. 3.5. A person who knowingly or intentionally refuses to provide either the person's:

(1) name, address, and date of birth; or

(2) driver's license, if in the person's possession;

to a law enforcement officer who has stopped the person for an infraction or ordinance violation commits a Class C misdemeanor.

Sec. 4. (a) A judgment of up to ten thousand dollars ($10,000) may be entered for a violation constituting a Class A infraction.

(b) A judgment of up to one thousand dollars ($1,000) may be entered for a violation constituting a Class B infraction.

(c) A judgment of up to five hundred dollars ($500) may be entered for a violation constituting a Class C infraction.

Copy

(d) A judgment of up to twenty-five dollars ($25) may be entered for a violation constituting a Class D infraction.

(e) A judgment:

(1) up to the amount requested in the complaint; and

(2) not exceeding any limitation under IC 36-1-3-8;

may be entered for an ordinance violation.

Sec. 5. (a) A defendant against whom a judgment is entered is liable for costs. Costs are part of the judgment and may not be suspended except under IC 9-30-3-12. Whenever a judgment is entered against a person for the commission of two (2) or more civil violations (infractions or ordinance violations), the court may waive the person's liability for costs for all but one (1) of the violations. This subsection does not apply to judgments entered for violations constituting:

(1) Class D infractions; or

(2) Class C infractions for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8.

(b) If a judgment is entered:

(1) for a violation constituting:

(A) a Class D infraction; or

(B) a Class C infraction for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8; or

(2) in favor of the defendant in any case;

the defendant is not liable for costs.

(c) Except for costs, the funds collected as judgments for violations of statutes defining infractions shall be deposited in the state general fund.

(d) A judgment may be entered against a defendant under this section or section 4 of this chapter upon a finding by the court that the defendant:

(1) violated:

(A) a statute defining an infraction; or

(B) an ordinance; or

(2) consents to entry of judgment for the plaintiff upon a pleading of nolo contendere for a moving traffic violation.

Sec. 6. If a defendant fails to satisfy a judgment entered against the defendant for the violation of a traffic ordinance or for a traffic infraction by a date fixed by the court, the court may suspend the defendant's drivers license. When a court suspends a

C o p y

person's drivers license under this section, the court shall forward notice of the suspension to the bureau of motor vehicles.

Sec. 7. Any court may establish a traffic violations bureau and appoint a violations clerk who shall serve under the direction and control of the court.

Sec. 8. The violations clerk or deputy violations clerk shall:

(1) accept:

(A) written appearances;

(B) waivers of trial;

(C) admissions of violation;

(D) declarations of nolo contendere for moving traffic violations;

(E) payments of judgments (including costs) in traffic violation cases; and

(F) deferral agreements made under section 1(f) of this chapter (or IC 34-4-32-1(f) before its repeal) and deferral program fees prescribed under IC 33-19-5-2(e);

(2) issue receipts and account for any judgments (including costs) collected; and

(3) pay the judgments (including costs) collected to the appropriate unit of government as provided by law.

Sec. 9. The court shall:

(1) designate the traffic violations within the authority of the violations clerk, but these violations may not include misdemeanors or felonies;

(2) establish schedules, within limits prescribed by law, of the judgments to be imposed for first violations, designating each violation specifically;

(3) order that the schedule of judgments be prominently posted in the place where the fines are paid;

(4) establish a procedure under which any violations clerk or deputy violations clerk shall accept, receipt, and account for all money tendered for designated traffic violations; and

(5) dismiss deferred actions if a dismissal request is made under section 1(f) of this chapter (or IC 34-4-32-1(f) before its repeal).

Sec. 10. If the court is a county court, the judge shall:

(1) establish a traffic violations bureau in each county which the judge services;

(2) appoint the clerk of the court to administer the traffic violations bureau; and

C o p y

(3) except at a state police unit, appoint the dispatcher on duty at every law enforcement unit within the county to be a deputy violations clerk charged with all of the duties of a violations clerk.

Sec. 11. Any person charged with a traffic violation that is within the authority of the violations clerk may mail or deliver:

(1) the amount of the judgment (including costs) indicated on the ticket; and

(2) a signed:

(A) admission of the violation; or

(B) pleading of nolo contendere, if the action is for a moving traffic violation.

Sec. 12. Before accepting a pleading admitting to a violation or entering a declaration of nolo contendere to a violation, the violations clerk or the officer writing the ticket shall inform the person that:

(1) the person's signature to:

(A) an admission of the violation; or

(B) a pleading of nolo contendere;

will have the same effect as a judgment of a court; and

(2) the record of judgment will be sent to the commissioner of motor vehicles of Indiana or the state where the person received a license to drive.

Sec. 13. A court may permit a person to use a credit card issued by a financial institution for the purpose of paying a court cost and judgment with respect to a traffic violation that is enforced under this chapter. The state board of accounts shall allow a county to pay any applicable credit card service charge on behalf of a court that permits the use of a credit card under this section. The county fiscal body must appropriate funds to cover the costs of applicable credit card service charges before a court may permit the use of a credit card under this section.

Sec. 14. If a person named as a defendant in a summons and complaint issued under IC 5-16-9-10, before the appearance date specified in the summons and complaint, mails or delivers the following to the court having jurisdiction over the action:

(1) an admission of the violation or a plea of nolo contendere to the violation; and

(2) a fifty dollar ($50) civil judgment;

the court shall enter a judgment against the defendant for the violation. An admission or plea of nolo contendere received by the

C o p y

court under this section (or IC 34-4-32-6 before its repeal) constitutes a written appearance and the defendant is not required to personally appear before the court.

Chapter 6. Security Deposit Posted by a Nonresident Alleged to Have Violated Certain Statutes

Sec. 1. Whenever a person who is not a resident of Indiana:

(1) is arrested or stopped for a misdemeanor violation or infraction under:

(A) IC 9-31-3;

(B) IC 14-15-2 through IC 14-15-7;

(C) IC 14-16-1;

(D) IC 14-16-2; or

(E) IC 14-22; and

(2) is not immediately taken to court;

the person may, at the discretion of the officer, be released upon the deposit of a security. The security shall be the amount of the fine or judgment and costs for the violation in the form of cash, money order, or a traveler's check made payable to the clerk of the court in which the person will appear.

Sec. 2. A court having jurisdiction shall provide a list of security deposits, which shall be equal to the fine or judgment and costs of the offense, and a security deposit agreement to serve as a receipt for the deposit. A nonresident person who does not choose to deposit a security shall be processed as directed by a court having jurisdiction.

Sec. 3. The agreement for security deposit and the written promise or notice to appear in court must contain a citation of the violation, the name and address of the nonresident person accused of committing the violation, and the time and place the person must appear in court.

Sec. 4. The time specified for appearance must be at least five (5) days after the arrest or stop unless the person demands an earlier arraignment. The place specified for appearance must be in a court having jurisdiction within the county where the person was arrested or given notice to appear. The person shall be properly informed of the consequences of a guilty plea or agreed judgment.

Sec. 5. The agreement for the security must also contain a provision whereby the nonresident person agrees that the court shall take permanent possession of the deposit, and if the person fails to appear in court or is not represented in court, a guilty finding or an adverse judgment will be entered on the court's

C o p y

record in behalf of the person. Upon proper appearance or representation, the security shall be returned to the person.

Sec. 6. A nonresident person must, by the date required on the security deposit agreement, appear in court, be represented in court, or deliver to the court by mail or courier the amount of the fine or judgment and costs prescribed for the violation.

Sec. 7. A nonresident person who requests to deposit a security in the amount of the fine or judgment and costs shall, in the presence of the officer, place the amount of the fine or judgment and costs and one (1) signed copy of the security deposit agreement into a stamped, addressed envelope, which the court having jurisdiction shall supply to the officer for the person. The person shall then be released and given a copy of the security deposit agreement. The officer shall mail or deliver the stamped, self-addressed envelope to the court having jurisdiction. If the person does not appear in court or is not represented in court at the time and date specified on the receipt, the court shall:

(1) enter a guilty finding or judgment against the person; and

(2) use the security deposit to satisfy the amount of the fine or judgment and costs prescribed for the violation.

SECTION 25. IC 34-29 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 29. IMMUNITY FROM CIVIL ARREST

Chapter 1. Scope of Article

Sec. 1. This article is not intended to be an exhaustive compilation of all immunities from civil arrest in the Indiana Code. In addition to the immunities from civil arrest that appear in this article, other immunities from civil arrest may appear outside this article.

Sec. 2. Statutes outside IC 34 providing immunity from civil arrest include the following:

(1) IC 10-2-4-5 (Members of the National Guard not subject to arrest on civil process while on duty).

(2) IC 35-37-5 (Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings).

Chapter 2. Persons Immune From Civil Arrest

Sec. 1. The following persons are privileged from arrest on civil process, and from obeying any subpoena to testify:

(1) All officers of the general assembly during their attendance, at the general assembly and during the time they

Copy

are going to, and returning from the place of meeting, not to exceed one (1) day for every twenty-five (25) miles of the usually traveled route.

(2) All voters during attendance at, going to, and returning from elections.

(3) Members of the board of county commissioners, during the session of their board, and while going to and returning from the session of the board.

(4) Justices, while engaged in hearing or determining any trial.

(5) All persons while engaged in necessary attendance at a court and in going to and returning from the court.

(6) The governor, treasurer of state, secretary of state, auditor of state, and superintendent of public instruction.

(7) All persons while actually engaged in the discharge of military duty.

Sec. 2. A person shall not be arrested in any place of worship during service, except in cases of emergency.

Sec. 3. An attachment for contempt, for failure to obey the command of a subpoena to testify, is a civil process within the meaning of this article.

Chapter 3. Remedies If Arrested While Immune

Sec. 1. A person arrested contrary to this article shall be immediately discharged, on motion before the court issuing the process, or on habeas corpus.

Sec. 2. A person arrested contrary to this article may recover from the person arresting or causing the arrest:

(1) twenty dollars ($20) in damages; or

(2) a greater amount in the discretion of the jury.

SECTION 26. IC 34-30 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 30. IMMUNITY FROM CIVIL LIABILITY

Chapter 1. Scope of Article

Sec. 1. This article is not intended to be an exhaustive compilation of all sources of immunity from civil liability in the Indiana Code. In addition to the immunities from civil liability that are recognized in this article, other immunities from civil liability may be found in other provisions of the Indiana Code.

Sec. 2. As an aid to the reader, an effort has been made to list other locations in the Indiana Code where immunities from civil

C o p y

liability are recognized. This list provided in IC 34-30-2 does not take the place of traditional legal research.

Chapter 2. Statutes Outside IC 34 That Confer Immunity

Sec. 1. (a) This chapter contains a list of references to other immunity from civil liability provisions outside IC 34.

(b) Listing in this chapter does not equate to the creation of an immunity from civil liability, and failure to be listed in this chapter does not negate an immunity from civil liability recognized elsewhere in the Indiana Code.

(c) Many of the statutes granting immunity from civil liability also contain exceptions to the immunity granted. Therefore, each statute must be consulted directly to determine the extent of the immunity provided.

Sec. 2. IC 4-4-11-30 and IC 4-4-21-23 (Concerning members, officers, employees, and agents of the Indiana development finance authority for acts authorized by law).

Sec. 3. IC 4-13.5-4-4(g) (Concerning the state for monetary damages for obligations of or violation by the state office building commission).

Sec. 3.6. IC 4-21.5-3.5-4 (Concerning a mediator, co-mediator, or team mediator).

Sec. 4. IC 4-23-6-6 (Concerning medical examiners performing certain examinations or autopsies).

Sec. 5. IC 4-24-6-5 (Concerning the department of correction for the safekeeping of the property of escaped inmates).

Sec. 6. IC 4-30-15-2 (Concerning the state, the state lottery commission, and officers and employees of the state lottery commission if an annuity is assigned to a lottery prize winner).

Sec. 7. IC 5-1-4-13 (Concerning bonds or notes executed for hospital bonding authorities).

Sec. 8. IC 5-1-16-28 (Concerning bonds issued for an Indiana health facility financing authority).

Sec. 9. IC 5-1.4-2-8 (Concerning directors of and persons executing bonds or notes for a local public improvement bond bank).

Sec. 10. IC 5-1.5-2-8 (Concerning directors of and persons executing bonds or notes for the Indiana bond bank).

Sec. 11. IC 5-2-2-14(b) (Concerning the state for violations of the law enforcement academy building commission law).

Sec. 12. IC 5-11-10-1 (Concerning certain disbursing officers for disbursements).

C o p y

Sec. 13. IC 5-13-12-7 (Concerning members, officers, and employees of the board for depositories).

Sec. 14. IC 5-13-14-2 (Concerning public officers for loss of certain public funds).

Sec. 14.3. IC 5-14-3-10 (Concerning a public employee or officer of a contractor or subcontractor of a public agency for disclosure of certain confidential or erroneous information).

Sec. 15. IC 5-20-1-19 (Concerning members and officers of the Indiana housing finance authority).

Sec. 16. IC 5-21-4-6 (Concerning the state for violation of the law governing the Intelenet commission).

Sec. 17. IC 7.1-2-3-30 (Concerning members, officers, and employees of the Indiana alcoholic beverage commission).

Sec. 18. IC 7.1-2-8-2 (Concerning the alcoholic beverage commission, its chairman and chairman pro tempore, and the state for claim arising from collection of money under alcoholic beverage laws).

Sec. 19. IC 7.1-3-3-14 (Concerning beer wholesalers for operating under suspended or ineffective order of denial).

Sec. 20. IC 7.1-3-23-42 (Concerning liquor license permittees operating under stay of license suspension or revocation).

Sec. 21. IC 7.1-5-7-8 (Concerning educational institutions of higher learning for alcohol related injuries).

Sec. 22. IC 7.1-5-10-15 (Concerning alcoholic beverage permittee or permittee's agent refusing to serve alcoholic beverages to certain persons).

Sec. 23. IC 7.1-5-10-15.5 (Concerning persons who furnish an alcoholic beverage for damages caused by an impaired or intoxicated person).

Sec. 24. IC 8-1-2.2-28 (Concerning officers of, or persons acting on behalf of certain municipalities or joint agencies that operate electric utilities).

Sec. 24.4. IC 8-6-4-1(e) (Concerning a railroad company and its employees for injury or property damage resulting from certain accidents).

Sec. 25. IC 8-14.5-6-11 (Concerning the state for violations of IC 8-14.5 or for payments of bonds or notes of the Indiana transportation finance authority).

Sec. 26. IC 8-21-5-1 (Concerning guest statute for aircraft passengers).

Sec. 27. IC 9-14-4-6 (Concerning members of the driver

C o p y

licensing advisory committee).

Sec. 28. IC 9-17-2-6 (Concerning bureau of motor vehicles and license branches for invalid odometer readings on motor vehicle titles).

Sec. 29. IC 9-22-1-32 (Concerning loss of or damage to abandoned vehicles or parts).

Sec. 30. IC 9-22-3-25 (Concerning persons releasing or providing evidence or information concerning auto theft).

Sec. 31. IC 9-24-16-11 (Concerning the commissioner, employees, and agents of the bureau of motor vehicles for the validity of the information contained on nondriver identification cards).

Sec. 32. IC 9-27-5-3 (Concerning individuals participating in toxicology accident research).

Sec. 33. IC 9-30-6-6 (Concerning physicians, hospitals, and their agents for matters related to obtaining, testing, and releasing samples and information regarding blood, urine, or other bodily substances).

Sec. 34. IC 9-31-3-6 (Concerning motorboat dealers who grant temporary boat registration permits).

Sec. 35. IC 10-1-2.5-4 (Concerning officials who furnish reports, information, or statistics to the criminal justice data division).

Sec. 36. IC 10-2-4-4 (Concerning members of the national guard).

Sec. 37. IC 10-4-1-8 (Concerning the state, political subdivisions, and emergency management workers for injury, death, or property damage).

Sec. 37.2. IC 10-4-1-11 (Concerning employees of a political subdivision rendering aid in another political subdivision or out of state).

Sec. 38. IC 10-4-1-18(c) (Concerning persons owning or controlling real estate or other premises used to shelter persons during an attack, emergency, disaster, or drill).

Sec. 38.3. IC 10-4-3-1 (Concerning officers and employees of a state that is a party to the interstate earthquake emergency compact, and persons rendering aid under the compact).

Sec. 39. IC 10-7-2-1 (Concerning members of the Indiana war memorials commission).

Sec. 40. IC 12-10-3-11 (Concerning persons making or involved in a report concerning an endangered adult).

C o p y

Sec. 41. IC 12-10-3-29 (Concerning an officer, agency, or employee of a division or adult protective services unit who renders care to an endangered adult).

Sec. 42. IC 12-10-13-16.7 (Concerning a long term care facility, a home care service, or their employees for release or disclosure of records to an ombudsman).

Sec. 43. IC 12-10-13-18 (Concerning representatives of the long term care ombudsman's office).

Sec. 44. IC 12-16-4-6 (Concerning persons who aid a patient in completing an application for assistance under the hospital care for the indigent program).

Sec. 45. IC 12-16-5-2 (Concerning hospital for providing information verifying indigency of patient).

Sec. 45.3. IC 12-16-13-1 (Concerning hospital or person providing services under the hospital care for the indigent program).

Sec. 46. IC 12-19-2-2 (Concerning members of the state board, officers, and employees of the state and county departments of public welfare).

Sec. 47. IC 12-23-9-8 (Concerning a police officer who takes custody of an intoxicated person for the purpose of delivering the person to a certified treatment facility or alcoholic rehabilitation program).

Sec. 47.3. IC 12-23-12-2 (Concerning the division of mental health or its agents for exercise of discretion regarding notification or consent when a minor seeks voluntary addiction treatment).

Sec. 48. IC 12-26-2-6 (Concerning persons who participate or assist in proceedings, detention, care, or treatment of persons alleged to be mentally ill).

Sec. 49. IC 12-26-2-7 (Concerning a child's advocate for performing duties).

Sec. 50. IC 12-30-3-25 (Concerning members of county home boards, superintendents, officers, and employees of county homes).

Sec. 51. IC 12-30-7-42 (Concerning members of the board, the administrator, and officers and employees of the Allen and St. Joseph county health centers).

Sec. 51.4. IC 13-24-2-2 (Concerning persons for certain acts or omissions while providing oil discharge response assistance).

Sec. 51.6. IC 13-25-4-27 (Concerning a person who implements or completes an approved hazardous substances response action).

Sec. 51.8. IC 13-25-5-18 (Concerning a person who receives a

C o p y

certificate of completion for voluntary remediation after release or threatened release of a hazardous substance or petroleum, for certain claims arising under IC 13).

Sec. 52. IC 13-29-1-3 (Concerning members of the Midwest Interstate Low-Level Radioactive Waste Commission and its employees).

Sec. 53. IC 13-30-3-13 (Concerning a landowner for reporting illegal dumping of garbage or solid waste to the commissioner of the department of environmental management).

Sec. 54. IC 14-16-1-28 (Concerning landowners or tenants of property used by persons operating off-road recreational vehicles).

Sec. 55. IC 14-16-2-28 (Concerning landowners or tenants of property used by persons operating snowmobiles).

Sec. 56. IC 14-22-10-2 (Concerning owners of premises used by persons for certain recreational activities).

Sec. 56.3. IC 14-23-5-2 (Concerning officers and employees of the department of natural resources for fighting forest fires).

Sec. 57. IC 14-37-8-13 (Concerning persons authorized by the department of natural resources to plug abandoned oil or natural gas wells).

Sec. 58. IC 15-3-4-2 (Concerning township trustees or persons hired by them for the removal of detrimental plants upon another person's real property).

Sec. 59. IC 15-4-9-5 (Concerning administrator and state for certification of agricultural products.)

Sec. 60. IC 15-4-10-25 (Concerning the state, political subdivisions, and the members, officers, employees, and agents of the corn marketing council for debts or actions of the council).

Sec. 61. IC 15-5-1.1-31 (Concerning veterinarians or veterinary technicians who give emergency treatment to sick or injured animals).

Sec. 62. IC 15-5-1.1-33 (Concerning veterinarians who dispose of, and persons who receive from veterinarians, abandoned animals).

Sec. 63. IC 15-5-16-5 (Concerning the state and the livestock certification administrator for acts taken under the livestock certification program).

Sec. 64. IC 15-7-2-5 (Concerning the United States and the United States Secretary of Agriculture for the transfer of assets to the commissioner of agriculture on behalf of the Indiana rural rehabilitation corporation).

C o p y

Sec. 65. IC 16-21-2-6 (Concerning the governing board of a hospital, and its employees, agents, consultants, and attorneys for participation in disciplinary actions and investigations).

Sec. 66. IC 16-21-2-8 (Concerning members of a medical staff committee for conduct related to a retrospective review).

Sec. 67. IC 16-28-13-9 (Concerning persons for denying or terminating employment of an individual with a criminal history, or reporting to or participating in proceedings of the state department of health or the nurse aide registry).

Sec. 68. IC 16-31-6-1 (Concerning ambulance attendants and certified emergency medical technicians who render emergency ambulance services).

Sec. 69. IC 16-31-6-3 (Concerning paramedics and emergency medical technicians).

Sec. 70. IC 16-31-9-4(Concerning persons rendering assistance and owners and operators of food service establishments for service rendered to a person suffering from food lodged in the throat).

Sec. 71. IC 16-36-1-10 (Concerning a health care provider who acts or declines to act in reliance on the consent or refusal to consent of an individual who the provider believes is authorized to do so).

Sec. 72. IC 16-36-3-9 (Concerning the superintendent of a facility for disclosing confidential information or consenting to a medical procedure on behalf of a patient who is unable to do so).

Sec. 73. IC 16-36-4-7 (Concerning health care providers who fail to provide medical treatment to patients who refuse medical treatment).

Sec. 74. IC 16-36-4-12 (Concerning certain persons who fail to act upon a revocation of a living will declaration or a life-prolonging procedures will declaration).

Sec. 75. IC 16-36-4-13 (Concerning health care providers and their employees who participate in the withholding or withdrawal of life prolonging procedures for a patient who has executed a living will declaration).

Sec. 76. IC 16-38-2-8 (Concerning persons who report information to the cancer registry system).

Sec. 77. IC 16-38-4-14 (Concerning persons who report information to the birth problems registry).

Sec. 77.5. IC 16-39-2-6 (Concerning a person who releases mental health records under certain circumstances).

C o p y

Sec. 78. IC 16-39-7-2 (Concerning medical care providers for maintenance of x-ray film).

Sec. 79. IC 16-39-8-1 (Concerning medical care providers, their employees, agents, and representatives for entries or information made in a patient health record).

Sec. 80. IC 16-41-2-6 (Concerning physicians, hospitals, and laboratories for reporting communicable or dangerous diseases).

Sec. 81. IC 16-41-7-3 (Concerning physician who provides notification of dangerous communicable disease).

Sec. 82. IC 16-41-10-6 (Concerning a person reporting that an emergency medical services provider has been exposed to a dangerous communicable disease during the course of emergency duties).

Sec. 83. IC 16-41-11-10 (Concerning expert review panels who consult and advise health care workers who have communicable diseases).

Sec. 84. IC 16-42-11-15 (Concerning members and employees of the state egg board and the dean of agriculture of Purdue University).

Sec. 85. IC 20-8.1-12-5 (Concerning a person who reports or supervises a person who reports a violation of alcoholic beverage or controlled substance laws on school property).

Sec. 85.2. IC 20-8.1-13-3 (Concerning attendance officer or officer's designee for failure to contact a parent or guardian regarding a student's absences).

Sec. 86. IC 20-12-21.2-8 (Concerning officers and directors of a corporation designated by the governor to serve as a secondary market for education loans).

Sec. 87. IC 20-12-63-15 (Concerning members of, and persons executing bonds for, the Indiana educational facilities authority).

Sec. 88. IC 23-1-35-1 (Concerning directors of business corporations in certain circumstances).

Sec. 89. IC 23-2-2.5-46 and IC 23-2-3.1-9 (Concerning the secretary of state, commissioner and employees of the securities division of the office of the secretary of state).

Sec. 89.7. IC 23-14-31-28 (Concerning crematory authority for relying on a cremation authorization form).

Sec. 90. IC 23-14-31-47 (Concerning crematory authority for cremation of human remains).

Sec. 91. IC 23-14-55-2 (Concerning owners of cemeteries for interments made upon authorization of next of kin).

C o p y

Sec. 92. IC 23-16-3-3 and IC 23-16-3-8 (Concerning persons filing or failing to file amended certificates of limited partnership reporting the occurrence of certain events).

Sec. 93. IC 23-16-4-3 (Concerning limited partners for certain obligations of a limited partnership).

Sec. 94. IC 23-16-8-4 (Concerning assignees of a limited partnership interest for certain obligations of a limited partnership).

Sec. 95. IC 23-16-12-2(h)(2) (Concerning limited partner for failure to file certificate of limited partnership).

Sec. 96. IC 23-17-13-1 (Concerning directors of nonprofit corporations in certain circumstances).

Sec. 97. IC 25-1-3-2 (Concerning members of occupational and professional regulatory boards and officers and employees of regulatory boards).

Sec. 98. IC 25-1-3-3 (Concerning persons making sworn or written statements to a regulatory board, its directors, or staff for investigatory, hearing, or review proceedings).

Sec. 98.7. IC 25-17.6-2-7 (Concerning actions of members of board of certification for professional geologists).

Sec. 99. IC 25-22.5-6-3 (Concerning the executive director, employees, hearing officers, and board members of the health professions service bureau).

Sec. 100. IC 25-26-13-15 (Concerning pharmacy or pharmacist for release of certain information).

Sec. 101. IC 25-26-13-16 (Concerning pharmacist for refusal to honor a prescription for certain reasons).

Sec. 102. IC 26-1-7-404 (Concerning a bailee for delivery or disposal of goods under certain circumstances).

Sec. 103. IC 26-3-8-13 (Concerning owners of self-service storage facilities who return personal property to renters upon redemption in satisfaction of liens against the property).

Sec. 104. IC 27-1-3-22 (Concerning persons reporting fraudulent insurance acts).

Sec. 105. IC 27-1-7-12.5 (Concerning directors of insurance companies in certain circumstances).

Sec. 106. IC 27-1-15.5-11.1(c) (Concerning insurers and their agents and employees who provide information required by the insurance commissioner).

Sec. 106.5. IC 27-1-36-53 (Concerning the department of insurance, its commissioner, employees, or agents for exercise of

C o p y

powers and performance of duties related to risk based capital requirements).

Sec. 107. IC 27-2-7-2 (Concerning officers, directors, or trustees of an insurer for paying or contesting payment of certain fees or taxes).

Sec. 108. IC 27-2-13-4 (Concerning an insurer or authorized agency for participation in arson investigations).

Sec. 109. IC 27-2-14-4 (Concerning an insurer or authorized agency for participation in a vehicle theft investigation).

Sec. 110. IC 27-2-15-7 (Concerning an insurer for compliance with the statute concerning the set aside of insurance proceeds in arson cases).

Sec. 111. IC 27-2-15-9 (Concerning the state fire marshal, a deputy fire marshal, an enforcement authority, or an officer of a city for compliance with the statute concerning the set aside of insurance proceeds in arson cases).

Sec. 111.5. IC 27-2-19-7 (Concerning an agency, an insurer, an agent, an employee, or a representative for receiving or providing information in good faith related to insurance fraud investigation).

Sec. 112. IC 27-4-1-15 (Concerning the commissioner and employees of the department of insurance).

Sec. 113. IC 27-6-8-16 (Concerning member insurers and the property casualty insurance and guaranty association, its agents and employees).

Sec. 114. IC 27-7-6-10 (Concerning the commissioner of insurance, insurer, their representatives, agents or employees, and any other person for furnishing information concerning policy cancellations to an insurer).

Sec. 115. IC 27-8-8-14 (Concerning the Indiana life and health insurance guaranty association, its agents or employees and members of the board, the commissioner of insurance, and member insurers and their employees and agents).

Sec. 116. IC 27-8-10-8 (Concerning persons for participation in the Indiana comprehensive health insurance association).

Sec. 116.5. IC 27-8-24.3-10 (Concerning insurers for damages caused by compliance with the laws on insurance and health plan coverage for victims of abuse).

Sec. 117. IC 27-9-3-12(a) (Concerning an insurer under an order appointing liquidator).

Sec. 118. IC 27-9-4-8 (Concerning an insurer during pendency of liquidation).

C o p y

Sec. 119. IC 27-11-3-3 (Concerning officers and members of a fraternal benefit society).

Sec. 120. IC 28-1-3.1-5 (Concerning financial institutions possessed by a receiver or the department of financial institutions).

Sec. 121. IC 28-6.1-6-16 (Concerning savings banks for property left for safekeeping).

Sec. 122. IC 28-9-5-1 (Concerning a depository financial institution for placing a hold on or otherwise restricting withdrawals from certain deposit accounts and for failure to notify the depositor of the hold).

Sec. 123. IC 29-1-13-3 (Concerning personal representatives of decedents).

Sec. 124. IC 29-2-16-4 (Concerning a person for taking a decedent's body or removing organs, tissues, or other parts in reliance on a will, card, or other document of gift).

Sec. 125. IC 29-2-16-7 (Concerning a person acting under anatomical gift laws).

Sec. 126. IC 29-3-11-2 (Concerning a person who is a guardian or acting under a protective order).

Sec. 127. IC 30-2-5-6 (Concerning corporation or transfer agents in making transfers or other specified transactions).

Sec. 128. IC 30-2-5-7 (Concerning persons participating in acquisition, disposition, assignment, or transfer of a security by or to a fiduciary under certain circumstances).

Sec. 129. IC 30-2-8.5-32 (Concerning custodian and minor for obligations relating to certain custodial property).

Sec. 130. IC 30-4-3-10 (Concerning trustees for contracts or other nonnegotiable obligations with third persons made in the administration of a trust).

Sec. 131. IC 30-4-3-11 (Concerning trustees and beneficiaries of a trust in certain circumstances).

Sec. 132. IC 30-4-4-2 (Concerning third parties who receive interest in trust property).

Sec. 133. IC 31-15-6-8, IC 31-17-6-8, and IC 31-32-3-10 (Concerning a person acting as guardian ad litem or court appointed special advocate).

Sec. 133.4. IC 31-18-3-14 (Concerning civil actions against persons present in Indiana to participate in a proceeding under the Uniform Interstate Family Support Act).

Sec. 134. IC 31-33-6-1 (Concerning specified persons for making a report of child abuse or neglect).

C o p y

Sec. 135. IC 32-2-1-1 (Concerning persons for breach of certain unwritten contracts).

Sec. 136. IC 32-2-1-6 (Concerning persons making unwritten representations about another person).

Sec. 137. IC 32-8-11-6 (Concerning mortgagors for actions on mortgages for which a certificate of satisfaction has been acknowledged by the mortgagee).

Sec. 138. IC 32-8-28-1 (Concerning proprietor or manager of a hotel, apartment hotel, or inn in certain circumstances involving the safekeeping of personal property of guests).

Sec. 139. IC 32-9-1.5-29 (Concerning holders of abandoned property who deliver the property to the attorney general).

Sec. 140. IC 32-10-9-5 (Concerning township trustee for contracts to repair fences).

Sec. 141. IC 33-2-3.1-2 (Concerning a person who transmits a sworn or written statement for an investigation, hearing, or other proceeding by the disciplinary commission of the supreme court).

Sec. 142. IC 33-2-3.1-3 (Concerning executive secretary, employees, hearing officers and commissioners of the disciplinary commission of the supreme court).

Sec. 143. IC 33-2.1-4-15 (Concerning the commissioners, employees, and staff of the judicial nominating commission for any act or statement relevant to the evaluation of a candidate).

Sec. 144. IC 33-2.1-4-16 (Concerning a person or organization for providing certain information, assistance, or testimony to the judicial nominating commission).

Sec. 145. IC 33-20-5-8 (Concerning an attorney for depositing money in an interest-bearing attorney trust account).

Sec. 146. IC 33-20-6-10 (Concerning depository financial institutions for certain actions concerning attorney trust accounts).

Sec. 147. IC 35-33-10-3(26) (Concerning civil actions against persons extradited to Indiana on criminal charges).

Sec. 148. IC 35-33.5-5-6 (Concerning telephone and telegraph companies and other persons for compliance with the wiretap law).

Sec. 149. IC 35-37-6-11 (Concerning a victim counselor for testifying or producing records regarding confidential communications with a victim under certain circumstances).

Sec. 150. IC 35-42-2-2 (Concerning persons for reporting or participating in proceedings concerning hazing).

Sec. 151. IC 35-45-5-4 (Concerning public utilities for refusing to provide service or equipment after notice by a law enforcement

C o p y

agency under the gambling statutes).

Sec. 152. IC 35-46-1-14 (Concerning a person for reporting or participating in proceedings concerning neglect, battery, or exploitation).

Sec. 153. IC 36-2-14-13 (Concerning a person for ordering or performing a medical examination or autopsy under statutory authority).

Sec. 154. IC 36-7-11.2-63 (Concerning persons bringing actions to protect property under the Meridian Street Preservation law).

Sec. 155. IC 36-8-3-16 (Concerning fire chiefs and assistants for destruction of certain buildings in event of fire).

Sec. 156. IC 36-8-16-18 (Concerning service suppliers or telephone companies for loss, death, or injury related to an enhanced emergency telephone system).

Sec. 157. IC 36-9-27-33(d) (Concerning a county surveyor, the drainage board, and their representatives for damage to crops grown on drainage right-of-way).

Chapter 3. Agriculture: Immunity from Civil Liability for Allowing the Gleaning of Agricultural Products

Sec. 1. An operator that allows the land or premises of the operator to be used by another person without compensation for the purpose of gleaning agricultural products is immune from civil liability to the person if the person is injured while on the land or premises of the operator, unless the person's injury is a direct result of the gross negligence or willful or wanton misconduct of the operator.

Chapter 4. Charities: Immunity of Certain Volunteer Directors

Sec. 1. Notwithstanding any other law, a qualified director is immune from civil liability arising from the negligent performance of the director's duties.

Sec. 2. Notwithstanding any other provision of or any other law, an individual who:

(1) serves without compensation as a volunteer director of:

(A) a nonprofit corporation operating under IC 12-29-3-6; or

(B) an agency providing services under IC 12-12-3; and

(2) exercises reasonable care in the performance of the duties of a director;

is immune from civil liability arising out of the performance of those duties.

C o p y

Sec. 3. This chapter does not affect the civil liability of the entity a qualified director serves.

Chapter 5. Charities: Immunity in Connection With the Gift of Food to Charitable Entities

Sec. 1. A person who in good faith makes a gift of a food item to a charitable entity is not liable for civil damages arising from the use, condition, quality, or content of that food item, unless the damages are the result of that person's intentional, knowing, or reckless misconduct (in accordance with the definitions of intentionally, knowingly, and recklessly set out in of IC 35-41-2-2(a) through IC 35-41-2-2(c).

Chapter 6. Environment: Immunity from Liability for Certain Hazardous Discharges

Sec. 1. Except as provided in section 2 of this chapter, a person is not liable for any loss that results from an action taken or lack of an action by that person:

(1) during an emergency; and

(2) with intent to prevent or minimize harm from the emergency.

Sec. 2. This chapter does not apply to a person:

(1) whose act or omission caused in whole or in part the emergency and who would otherwise be liable for the emergency;

(2) whose act or omission constituted gross negligence or willful or wanton misconduct; or

(3) who receives payment, or is an employee of a person who receives payment, for services rendered in connection with the emergency, from a person whose act or omission caused in whole or in part the emergency. Payment does not include reimbursement for expenses.

Chapter 7. Governmental Entities: Tort Claims Act; Immunity for Certain Acts of Governmental Entities and Employees

Sec. 1. Immunity for certain acts of governmental entities and employees is governed by the Tort Claims Act (IC 34-13-3).

Chapter 8. Governmental Entities: Immunity of State and Other Persons Related to Use of an Armory

Sec. 1. If a person or entity, other than a person or entity listed in subdivisions (1) through (10), enters into a written agreement to use space in an armory for a function, the following persons and entities are not liable for civil damages for any property damage or bodily injury resulting from the serving of food or beverages at the

Copy

function held at the armory:

(1) The state.

(2) The Indiana army national guard.

(3) The Indiana air national guard.

(4) The army national guard of the United States.

(5) The air national guard of the United States.

(6) The adjutant general appointed under IC 10-2-2-4.

(7) The assistant adjutants general appointed under IC 10-2-2-5.

(8) The officers and enlisted members of the Indiana army national guard and the Indiana air national guard.

(9) The state armory board appointed under IC 10-2-2-9 and the members of that board.

(10) The local armory board appointed under IC 10-2-2-24 for the armory and the members of that board.

Chapter 9. Governmental Entities: Immunity for Certain Activities on Property Leased by a State Agency

Sec. 1. A person who goes on or through property leased to an agency for any purpose is not entitled to any assurance that the property is safe for the purpose.

Sec. 2. The owner of the property does not:

(1) assume responsibility for; or

(2) incur liability for;

any injury to person or property caused by an act or failure to act of persons using the property.

Sec. 3. This chapter does not create a duty of care or ground of liability for injury to person or property.

Chapter 10. Governmental Entities: Immunity of County Auditor for Issuance of Warrant Upon Treasurer

Sec. 1. This chapter applies to a county auditor who issues a warrant upon the county treasurer in good faith under the order or authority of the board of commissioners of the county, or because of a judgment or order of a court in the county in a case in which the county was a party and was duly served with process..

Sec. 2. (a) A civil suit may not be maintained against:

(1) the county auditor; or

(2) the county auditor's bondsmen;

for the issuance of the warrant, even if the warrant was drawn according to an order of the board of commissioners or judgment of the court that is either void or voidable.

(b) However, the validation of the act of the auditor does not

Copy

prevent the recovery of any money from any person receiving it that might have been recovered if this chapter had not been enacted.

Chapter 11. Guest Statute: Immunity of Owners or Operators of Motor Vehicle for Injury to Passengers

Sec. 1. The owner, operator, or person responsible for the operation of a motor vehicle is not liable for loss or damage arising from injuries to or the death of:

(1) the person's parent;
(2) the person's spouse;
(3) the person's child or stepchild;
(4) the person's brother;
(5) the person's sister; or
(6) a hitchhiker;

resulting from the operation of the motor vehicle while the parent, spouse, child or stepchild, brother, sister, or hitchhiker was being transported without payment in or upon the motor vehicle unless the injuries or death are caused by the wanton or willful misconduct of the operator, owner, or person responsible for the operation of the motor vehicle.

Sec. 2. This chapter may not be construed to relieve a common carrier or an owner or operator of a motor vehicle while the motor vehicle is being demonstrated to a prospective purchaser of responsibility for injuries sustained by a passenger who is being transported by the common carrier or by the owner or operator.

Chapter 12. Health Care: Immunity of Persons Rendering Emergency First Aid

Sec. 1. (a) This section does not apply to services rendered by a health care provider (as defined in IC 34-18-2-14 or IC 27-12-2-14 before its repeal) to a patient in a health care facility (as defined in IC 27-8-10-1).

(b) A person who comes upon the scene of an emergency or accident or is summoned to the scene of an emergency or accident and, in good faith, gratuitously renders emergency care at the scene of the emergency or accident is immune from civil liability for any personal injury that results from:

(1) any act or omission by the person in rendering the emergency care; or
(2) any act or failure to act to provide or arrange for further medical treatment or care for the injured person;

except for acts or omissions amounting to gross negligence or

C o p y

willful or wanton misconduct.

Sec. 2. (a) This section applies to a person who has successfully completed a course of training in cardiopulmonary resuscitation according to the standards recommended by the Division of Medical Sciences, National Academy of Sciences - National Research Council.

(b) This section does not apply to acts or omissions amounting to gross negligence or willful or wanton misconduct.

(c) An act or omission of the person while attempting to administer cardiopulmonary resuscitation, without pecuniary charge, to any person who is an apparent victim of acute cardiopulmonary insufficiency shall not impose any liability upon the person attempting the resuscitation.

Chapter 13. Health Care: Immunity of Persons Providing Voluntary Health Care

Sec. 1. Except as provided in section 2 of this chapter, a person who meets the following criteria is immune from civil liability resulting from any act or omission relating to the provision of health care services:

(1) Has licensure to provide health care services under Indiana law.

(2) Voluntarily provides without compensation health care services under IC 36-1-14.2 (within the scope of the person's license) to another person.

(3) Provides the health care services at any medical clinic or health care facility that:

(A) purchases professional liability insurance under IC 36-1-14.2; and

(B) provides the health care services without charge.

Sec. 2. A person described in section 1 of this chapter is not immune from civil liability if the damages resulting from the provision of the health care services resulted from the person's gross negligence or willful misconduct.

Chapter 14. Health Care: Immunity of Certain Persons Who Administer Medications to Pupils at School

Sec. 1. A school or school board may not:

(1) require a teacher or other school employee who is not employed as a school nurse or physician to administer medication, drugs, or tests described in section 2 of this chapter; or

(2) discipline a teacher or other school employee who:

C o p y

(A) is not employed as a school nurse or physician; and
(B) refuses to administer medication, drugs, or tests without the written:
(i) authority of a pupil's parent or guardian; or
(ii) order of a practitioner;
required under section 2 of this chapter.

Sec. 2. If compliance with sections 3 and 4 of this chapter has occurred, a school administrator, teacher, or other school employee designated by the school administrator, after consultation with the school nurse, who in good faith administers:
(1) a nonprescription medication in compliance with the written permission of the pupil's parent or guardian, except in the case of a life threatening emergency;
(2) a legend drug (as defined in IC 16-18-2-199 and including injectable insulin) in compliance with the:
(A) written order of a practitioner; and
(B) written permission of the pupil's parent or guardian, except in the case of a life threatening emergency;
(3) a blood glucose test by finger prick in compliance with the written order of a practitioner; or
(4) any combination of subdivisions (1) through (3);
to a pupil is not liable for civil damages as a result of the administration except for an act or omission amounting to gross negligence or willful and wanton misconduct.

Sec. 3. The school shall keep on file the written permission of a pupil's parent or guardian and the written order of a practitioner.

Sec. 4. (a) This section applies if a school employee:
(1) is not a practitioner or an individual licensed under IC 25-23; and
(2) is responsible for administering injectable insulin or a glucose test by finger prick.

(b) The employee must obtain from a practitioner or a registered nurse licensed under IC 25-23 the training that the practitioner or registered nurse determines is appropriate for providing the service.

(c) Before the school employee provides the service, the school must have on file a written statement from the practitioner or registered nurse that indicates the school employee has received the training required under this section.

Sec. 5. This chapter is subject to IC 34-13-3.

C o p y

Chapter 14.5. Health Care: Medical Malpractice

Sec. 1. Immunity for members of a medical review panel is governed by IC 34-18-10-24.

Sec. 2. Immunity for health care providers in certain breach of contract cases is governed by IC 34-18-12-1.

Chapter 15. Health Care: Privileged Communications of Health Care Provider Peer Review Committees

Sec. 1. (a) All proceedings of a peer review committee are confidential.

(b) All communications to a peer review committee shall be privileged communications.

(c) Neither the personnel of a peer review committee nor any participant in a committee proceeding shall reveal any content of:

(1) communications to;

(2) the records of; or

(3) the determination of;

a peer review committee outside of the peer review committee.

(d) However, the governing board of:

(1) a hospital;

(2) a professional health care organization;

(3) a preferred provider organization (including a preferred provider arrangement or reimbursement agreement under IC 27-8-11); or

(4) a health maintenance organization (as defined in IC 27-13-1-19) or a limited service health maintenance organization(as defined in IC 27-13-34-4);

may disclose the final action taken with regard to a professional health care provider without violating the provisions of this section.

Sec. 2. Except as otherwise provided in this chapter, a person who attends a peer review committee proceeding shall not be permitted or required to disclose:

(1) any information acquired in connection with or in the course of a proceeding;

(2) any opinion, recommendation, or evaluation of the committee; or

(3) any opinion, recommendation, or evaluation of any committee member.

Sec. 3. (a) Information that is otherwise discoverable or admissible from original sources is not immune from discovery or use in any proceeding merely because it was presented during

C o p y

proceedings before a peer review committee.

(b) A member, an employee, an agent of a committee or other person appearing before the committee may not be prevented from testifying:

(1) as to matters within the person's knowledge; and

(2) in accordance with the other provisions of this chapter.

(c) However, the witness cannot be questioned about this testimony or other proceedings before the committee or about opinions formed by the witness as a result of committee hearings.

Sec. 4. (a) A professional health care provider under investigation shall be permitted at any time to see any records accumulated by a peer review committee pertaining to the provider's personal practice.

(b) The provider shall be offered the opportunity to appear before the peer review committee with adequate representation to hear all charges and findings concerning the provider's practice and to offer rebuttal information.

(c) The rebuttal information shall be a part of the record before any disclosure of the charges and findings under this chapter is made.

Sec. 5. Except as provided in section 6(b) of this chapter, if charges are brought against a professional health care provider in a hospital that, if sustained by the governing board of the hospital, could result in an action against a physician required to be reported to the medical licensing board under IC 16-21-2-6 or a similar disciplinary action against any other health care provider, the professional health care provider is entitled to:

(1) one (1) evidentiary hearing before a peer review committee of the medical staff; and

(2) one (1) additional hearing on appeal before the governing board of the hospital.

Sec. 6. (a) Any appeal granted to a professional health care provider under section 5 of this chapter may be held before a committee of the board of trustees or the full board of trustees of the hospital in which the care under investigation was provided.

(b) The right to a hearing and appeal under this chapter in regard to cases involving care provided for hospitals, health care facilities, and health care organizations is confined to professional health care providers who are granted or who have applied for privileges as independent practitioners. That right is not applicable to any professional health care provider who works in the hospital

C o p y

or health care facility solely as an employee or as the employee of another independent professional health care provider.

Sec. 7. (a) This section applies to:

(1) a health maintenance organization (as defined in IC 27-13-1-19); or

(2) a limited service health maintenance organization (as defined in IC 27-13-34-4).

(b) Before:

(1) taking corrective action against a professional health care provider who is under contract with but not employed by the health maintenance organization or limited service health maintenance organization; or

(2) taking action to terminate a contract with a professional health care provider who is not employed by the health maintenance organization or limited service health maintenance organization;

based upon an evaluation of patient care rendered by the professional health care provider, the organization shall grant the health care provider affected by the action one (1) evidentiary hearing before a peer review committee of the organization and, at the health provider's request, an appeal of the peer review committee's decision.

(c) Unless otherwise agreed to by the organization and the health care provider, the appeal must be limited to a review of the record of the hearing before the peer review committee and a review of all or part of the peer review committee's decision.

(d) The appeal must be held before the governing board of the organization or, at the governing board's discretion, before a committee of the governing board.

(e) The health care provider is entitled to submit written materials in support of the appeal and, at the discretion of the governing board or committee of the board conducting the appeal, the health care provider may be allowed to present oral argument in support of the appeal.

Sec. 8. (a) Communications to, the records of, and determinations of a peer review committee may only be disclosed to:

(1) the peer review committee of:

(A) a hospital;

(B) a nonprofit health care organization (described in IC 34-6-2-117(23));

Copy

(C) a preferred provider organization (including a preferred provider arrangement or reimbursement agreement under IC 27-8-11);

(D) a health maintenance organization (as defined in IC 27-13-1-19) or a limited service health maintenance organization (as defined in IC 27-13-34-4); or

(E) another health facility;

(2) the disciplinary authority of the professional organization of which the professional health care provider under question is a member; or

(3) the appropriate state board of registration and licensure that the committee considers necessary for recommended disciplinary action;

and shall otherwise be kept confidential for use only within the scope of the committee's work, unless the professional health care provider has filed a prior written waiver of confidentiality with the peer review committee.

(b) However, if a conflict exists between this section and IC 27-13-31, the provisions of IC 27-13-31 control.

Sec. 9. Except in cases of required disclosure to the professional health care provider under investigation, no records or determinations of or communications to a peer review committee shall be:

(1) subject to subpoena or discovery; or

(2) admissible in evidence;

in any judicial or administrative proceeding, including a proceeding under IC 34-18-11 (or IC 27-12-11before its repeal), without a prior waiver executed by the committee.

Sec. 10. Except in cases as authorized in this chapter, the evidentiary privileges created by this chapter shall be invoked by all witnesses and organizations in all judicial and administrative proceedings unless the witness or organization first has a waiver of the privilege executed in writing, on behalf of the peer review committee holding the privilege, by its chairman, vice chairman, or secretary.

Sec. 11. If a waiver of the privilege is executed on behalf of the peer review committee in favor of the attorney general for the purpose of conducting an investigation under IC 25-1-7, the records of, determinations of, or communications to a peer review committee are confidential and privileged under this section, except for the attorney general's use in an investigation to identify

C o p y

information otherwise discoverable or admissible from original sources under section 3 of this chapter.

Sec. 12. This chapter does not prevent the attorney general from obtaining by subpoena as part of an investigation under IC 25-1-7 for a violation under IC 25-1-9:

(1) the application for privileges or employment completed by the professional staff member under investigation regardless of whether the member is the subject of peer review committee proceedings;

(2) except for reports prepared as part of a peer review investigation, incident reports prepared contemporaneously to document the circumstances of an accident or unusual occurrence involving a professional staff member regardless of whether the member is the subject of peer review committee proceedings; or

(3) information otherwise discoverable from original sources, that is not the communications to, records of, or determinations of a peer review committee;

from a professional health care provider.

Sec. 13. A subpoena issued by the attorney general to obtain the records necessary to an investigation shall identify with reasonable particularity the documents sought and the specific professional health care provider under investigation.

Sec. 14. The immunities granted by sections 15 through 20 of this chapter shall not extend to any person who violates the confidentiality requirements of.

Sec. 15. There is no liability on the part of, and no action of any nature shall arise against, the personnel of a peer review committee for any act, statement made in the confines of the committee, or proceeding of the committee made in good faith in regard to evaluation of patient care as that term is defined and limited in IC 34-6-2-44.

Sec. 16. Notwithstanding any other law, a peer review committee, an organization, or any other person who, in good faith and as a witness or in some other capacity, furnishes records, information, or assistance to a peer review committee that is engaged in:

(1) the evaluation of the qualifications, competence, or professional conduct of a professional health care provider; or

(2) the evaluation of patient care;

C o p y

is immune from any civil action arising from the furnishing of the records, information, or assistance, unless the person knowingly furnishes false records or information.

Sec. 17. The personnel of a peer review committee shall be immune from any civil action arising from any determination made in good faith in regard to evaluation of patient care as that term is defined and limited in IC 34-6-2-44.

Sec. 18. No restraining order or injunction shall be issued against a peer review committee or any of the personnel thereof to interfere with the proper functions of the committee acting in good faith in regard to evaluation of patient care as that term is defined and limited in IC 34-6-2-44.

Sec. 19. If the action of the peer review committee meets the standards specified by this chapter and the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. 11101 et seq., the following persons are not liable for damages under any federal, state, or local law with respect to the action:

(1) The peer review committee.

(2) Any person acting as a member or staff to the peer review committee.

(3) Any person under a contract or other formal agreement with the peer review committee.

(4) Any person who participates with or assists the peer review committee with respect to the action.

Sec. 20. Section 19 of this chapter does not apply to damages under any federal or state law relating to the civil rights of a person including:

(1) the federal Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq.; and

(2) the federal Civil Rights Act, 42 U.S.C. 1981, et seq.

Sec. 21. (a) Notwithstanding sections 1 through 14 of this chapter:

(1) a professional health care provider;

(2) a peer review committee; and

(3) the governing board of:

(A) a hospital;

(B) a preferred provider organization (including a preferred provider arrangement or reimbursement agreement under IC 27-8-11);

(C) a health maintenance organization (as defined in IC 27-13-1-19) or a limited service health maintenance

C o p y

organization (as defined in IC 27-13-34-4); or

(D) a professional health care organization;

may use information obtained by peer review committees for legitimate internal business purposes.

(b) Legitimate internal business uses of information obtained by a peer review committee include the following:

(1) Quality review and assessment.

(2) Utilization review and management.

(3) Risk management and incident reporting.

(4) Safety, prevention, and correction.

(5) Reduction of morbidity and mortality.

(6) Scientific, statistical, and educational purposes.

(7) Legal defense.

Sec. 22. Evidence of any financial incentive offered to or withheld from:

(1) a private psychiatric hospital licensed under IC 12-25; or

(2) a preferred provider organization (including a preferred provider arrangement or reimbursement agreement under IC 27-8-11);

is subject to discovery under Indiana Rules of Trial Procedure unless specifically protected by statute.

Sec. 23. In all actions to which this chapter applies, good faith shall be presumed, and malice shall be required to be proven by the person aggrieved.

Chapter 16. Health Care: Privileged Communications of Mental Health Service Providers

Sec. 1. A mental health service provider is immune from civil liability to persons other than the patient for failing to:

(1) predict; or

(2) warn or take precautions to protect from;

a patient's violent behavior unless the patient has communicated to the provider of mental health services an actual threat of physical violence or other means of harm against a reasonably identifiable victim or victims, or evidences conduct or makes statements indicating an imminent danger that the patient will use physical violence or use other means to cause serious personal injury or death to others.

Sec. 2. The duty to warn of or to take reasonable precautions to provide protection from violent behavior or other serious harm arises only under the limited circumstances specified in section 1 of this chapter. The duty is discharged by a mental health service

C o p y

provider who takes one (1) or more of the following actions:

(1) Makes reasonable attempts to communicate the threat to the victim or victims.

(2) Makes reasonable efforts to notify a police department or other law enforcement agency having jurisdiction in the patient's or victim's place of residence.

(3) Seeks civil commitment of the patient under IC 12-26.

(4) Takes steps reasonably available to the provider to prevent the patient from using physical violence or other means of harm to others until the appropriate law enforcement agency can be summoned and takes custody of the patient.

(5) Reports the threat of physical violence or other means of harm, within a reasonable period of time after receiving knowledge of the threat, to a physician or psychologist who is designated by the employer of a mental health service provider as an individual who has the responsibility to warn under this chapter.

Sec. 3. A mental health service provider who discloses information that must be disclosed to comply with sections 1 through 2 of this chapter is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

Chapter 17. Insurance: Immunity for Acts or Omissions in Making Insurance Inspections

Sec. 1. This chapter applies to all insurers, including farmers' mutual insurance companies operating under IC 27-5.

Sec. 2. Except as provided in section 3 of this chapter, an act or omission in the making of an inspection in connection with the issuance or renewal of a policy of casualty or fire and marine insurance does not subject an insurer or its:

(1) agents;

(2) employees; or

(3) service contractors;

to civil liability for any injury, death, or loss.

Sec. 3. The exemption from civil liability in section 2 of this chapter does not apply to:

(1) any injury, loss, or death that:

(A) occurs during an inspection; and

(B) is proximately caused by the negligence of the insurer or its agent, employee, or service contractor;

C o p y

(2) an inspection that is required under a written service contract; or

(3) any injury, loss, or death proximately caused by an act or omission that constitutes:

(A) a criminal offense;

(B) gross negligence; or

(C) willful or wanton misconduct.

Chapter 18. Sports: Immunity of Persons Involved in the Special Olympics

Sec. 1. (a) This chapter does not grant immunity from civil damages that are proximately caused by the negligent operation of a motor vehicle.

(b) This chapter does not affect the vicarious civil liability of the entity that the individual serves.

Sec. 2. An individual who, without compensation, contributes personal time to the Special Olympics is not liable for civil damages as a result of a negligent act or omission of the individual arising from that contribution.

Sec. 3. A person who contributes only money to the Special Olympics is not liable for civil damages as a consequence of a negligent act or omission of an individual described in section 2 of this chapter solely because of that contribution.

Chapter 19. Sports: Immunity of Certain Persons Involved in Sports or Leisure Activities

Sec. 1. This chapter does not grant immunity from civil liability to a person who engaged in intentional, willful, wanton, or reckless behavior.

Sec. 2. (a) This chapter does not grant immunity from civil damages that are proximately caused by the negligent operation of a motor vehicle.

(b) This chapter does not apply to an individual who is registered, certified, or licensed under IC 25.

(c) This chapter does not affect the vicarious civil liability of the entity the individual serves.

Sec. 3. A volunteer is not liable for civil damages that are proximately caused by a negligent act or omission in the personal services provided by:

(1) the volunteer; or

(2) another person selected, trained, supervised, or otherwise under the control of the volunteer;

in the course of a sports or leisure activity.

C o p y

Sec. 4. A governmental entity and the employees and agents of a governmental entity are not liable for civil damages that are proximately caused by:

(1) the negligent selection, training, or supervision of a volunteer providing personal services in the course of a sports or leisure activity; or

(2) a negligent act or omission in the personal services provided by:

(A) the volunteer; or

(B) another person selected, trained, supervised, or otherwise under the control of the volunteer;

in the course of a sports or leisure activity.

SECTION 27. IC 34-31 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 31. LIMITED LIABILITY

Chapter 1. Scope of Article

Sec. 1. This article is not intended to be an exhaustive compilation of all limits on civil liability in the Indiana Code. In addition to the limits on liability that are recognized in this article, other limits on civil liability may be recognized in other provisions of the Indiana Code.

Sec. 2. As an aid to the reader, an effort has been made to list other locations in the Indiana Code where limits on civil liability are recognized. This list provided in IC 34-31-2 does not take the place of traditional legal research.

Chapter 2. Statutes Outside of Title 34 That Confer Limited Liability

Sec. 1. (a) This chapter contains a list of references to other limited liability provisions outside IC 34.

(b) Listing in this chapter does not equate to the creation of a limit on civil liability, and failure to be listed in this chapter does not negate a limit on civil liability recognized elsewhere in the Indiana Code.

(c) Statutes that limit civil liability may also contain exceptions to the limitation, therefore each statute must be consulted directly to determine the applicability of the limitation on liability provided.

Sec. 2. IC 14-34-8-10 (Concerning participants in the surface coal mine reclamation bond pool fund for reclamation of areas disturbed by others).

Copy

Sec. 3. IC 16-41-31-7 (Concerning bed and breakfast establishments for loss of personal property).

Sec. 4. IC 22-3-9-6 (Concerning employers for the death of a person covered by worker's compensation).

Sec. 5. IC 22-10-12-11 (Concerning mine operators and employers for death or injury of mine rescuer during rescue attempt).

Sec. 6. IC 24-4.5-5-203 (Concerning creditors for errors made under the Uniform Consumer Credit code).

Sec. 7. IC 24-5-8-17 (Concerning sellers under the business opportunity transaction law).

Sec. 8. IC 27-8-8-5 (Concerning the Indiana life and health insurance guaranty association).

Sec. 9. IC 32-8-28-1 (Concerning proprietor or manager of a hotel, apartment hotel, or inn for guest's valuables kept in a safe).

Sec. 10. IC 34-18-14-3 (Concerning health care providers for medical malpractice).

Sec. 11. IC 36-8-12-8 (Concerning volunteer firefighters).

Chapter 3. Limited Liability of Governmental Entities and Public Employees Under Tort Claims Act

Sec. 1. The Tort Claims Act provides a cap on liability of governmental entities and public employees in certain circumstances (IC 34-13-3).

Chapter 4. Limited Liability of Parents for Damages Caused by Child

Sec. 1. Except as provided in section 2 of this chapter, a parent is liable for not more than five thousand dollars ($5,000) in actual damages arising from harm to a person or damage to property knowingly, intentionally, or recklessly caused by the parent's child if:

(1) the parent has custody of the child; and

(2) the child is living with the parent.

Sec. 2. A parent of a child who is a member of a criminal gang (as defined in IC 35-45-9-1), who actively encourages or knowingly benefits from the child's involvement in the criminal gang, is liable for actual damages arising from harm to a person or property intentionally caused by the child while participating in a criminal gang activity if:

(1) the parent has custody of the child;

(2) the child is living with the parent or guardian; and

(3) the parent failed to use reasonable efforts to prevent the

Copy

child's involvement in the criminal gang.

Chapter 5. Limited Liability Arising from Equine Activities

Sec. 1. (a) Subject to section 2 of this chapter, an equine activity sponsor or equine professional is not liable for:

(1) an injury to a participant; or

(2) the death of a participant;

resulting from an inherent risk of equine activities.

(b) Subject to section 2 of this chapter, a participant or participant's representative may not:

(1) make a claim against;

(2) maintain an action against; or

(3) recover from;

an equine activity sponsor or equine professional for injury, loss, damage, or death of the participant resulting from an inherent risk of equine activities.

Sec. 2. (a) This section does not apply to the horse racing industry.

(b) Section 1 of this chapter does not prevent or limit the liability of an equine activity sponsor or an equine professional:

(1) who:

(A) provided equipment or tack that was faulty and that caused the injury; and

(B) knew or should have known that the equipment or tack was faulty;

(2) who provided the equine and failed to make reasonable and prudent efforts based on the participant's representations of the participant's ability to:

(A) determine the ability of the participant to engage safely in the equine activity; and

(B) determine the ability of the participant to safely manage the particular equine;

(3) who:

(A) was in lawful possession and control of the land or facilities on which the participant sustained injuries; and

(B) knew or should have known of the dangerous latent condition that caused the injuries;

if warning signs concerning the dangerous latent condition were not conspicuously posted on the land or in the facilities;

(4) who committed an act or omission that:

(A) constitutes reckless disregard for the safety of the

C o p y

participant; and

(B) caused the injury; or

(5) who intentionally injured the participant.

(c) Section 1 of this chapter does not prevent or limit the liability of an equine activity sponsor or an equine professional under the product liability laws.

Sec. 3. (a) This chapter does not apply unless an equine activity sponsor or an equine professional posts and maintains in at least one (1) location on the grounds or in the building that is the site of an equine activity a sign on which is printed the warning notice set forth in section 5 of this chapter.

(b) A sign referred to in subsection (a) must be placed in a clearly visible location in proximity to the equine activity.

(c) The warning notice on a sign referred to in subsection (a) must be printed in black letters, and each letter must be at least one (1) inch in height.

Sec. 4. (a) If there is a written contract, this chapter does not apply unless the written contract entered into by an equine professional for:

(1) the providing of professional services;

(2) the providing of instruction; or

(3) the rental of:

(A) equipment or tack; or

(B) an equine;

to a participant contains in clearly readable print the warning notice set forth in section 5 of this chapter.

(b) The warning notice required by subsection (a) must be included in a written contract described in subsection (a) whether or not the contract involves equine activities on or off the location or site of the equine professional's business.

Sec. 5. The warning notice that must be printed on a sign under section 3 of this chapter and included in a written contract under section 4 of this chapter is as follows:

WARNING

Under Indiana law, an equine professional is not liable for an injury to, or the death of, a participant in equine activities resulting from the inherent risks of equine activities.

Chapter 6. Limited Liability for Operators of Roller Skating Rinks

Sec. 1. An operator shall do all of the following with respect to a roller skating rink:

Copy

(1) Post the:

(A) duties of roller skaters; and

(B) duties, obligations, and liabilities of the operator;

as prescribed in this chapter in at least three (3) conspicuous locations in the roller skating rink.

(2) Maintain the stability and legibility of all signs, symbols, and posted notices required by this chapter.

(3) When the roller skating rink is open for a session, have at least one (1) floor supervisor on duty for every one hundred seventy-five (175) roller skaters who:

(A) has received appropriate training to carry out the floor supervisor's duties; and

(B) uses reasonable care in carrying out the floor supervisor's duties.

(4) Maintain the skating surface in proper and reasonably safe condition.

(5) Clean and inspect the skating surface before each skating session.

(6) Maintain in good and safe condition the railings, kickboards, risers, floors, areas open to roller skaters, and walls surrounding the skating surface.

(7) Maintain rental skates in good mechanical condition.

(8) Comply with all applicable state and local fire safety codes, building codes, and other safety codes applicable to a roller skating rink.

(9) Use reasonable care in supervising roller skaters to comply with the requirements of section 2 of this chapter.

Sec. 2. A roller skater must do all of the following:

(1) Maintain reasonable control of the roller skater's speed and course at all times.

(2) Heed all posted signs and warnings.

(3) Maintain a proper view to avoid other roller skaters and objects.

(4) Accept the responsibility for the following:

(A) Knowing the range of the roller skater's ability to negotiate the intended direction of travel while on roller skates.

(B) Skating within the limits of the roller skater's ability.

(5) Refrain from acting in a manner that may cause or contribute to the injury of the roller skater or any other person.

C o p y

Sec. 3. (a) Roller skaters are considered to:

(1) have knowledge of; and

(2) assume;

the risks of roller skating.

(b) For purposes of this chapter, risks of roller skating include the following:

(1) Injuries that result from collisions or incidental contact with other roller skaters or other individuals who are properly on the skating surface.

(2) Injuries that result from falls caused by loss of balance.

(3) Injuries that involve objects or artificial structures that:

(A) are properly within the intended path of travel of the roller skater; and

(B) are not otherwise attributable to an operator's breach of the operator's duties under section 1 of this chapter.

Sec. 4. (a) Except as provided in subsection (b) and notwithstanding IC 34-51-2-6 concerning comparative fault, the assumption of risk under section 3 of this chapter is a complete defense to an action against an operator by a roller skater for injuries and property damage resulting from the assumed risks.

(b) The following applies if an operator has violated any one (1) of the operator's duties or responsibilities under section 1 of this chapter:

(1) The complete defense against an action against an operator under subsection (a) does not apply.

(2) The provisions of IC 34-51-2-6 apply.

SECTION 28. IC 34-32 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 32. COMMENCEMENT OF ACTION: NOTICE AND PUBLICATION

Chapter 1. Notice and Publication

Sec. 1. If notice is required by this article, the notice must be in writing, and may be served by the proper officer or any other person.

Sec. 2. Publications of legal and other official matters printed in the English language are lawful, if published in a newspaper of general circulation published in the county.

Sec. 3. (a) This section applies when notice concerning:

(1) an action;

C o p y

(2) a proceeding;
(3) a sale under execution; or
(4) any other matter
is required by law to be given by publication in a newspaper.
(b) To establish compliance, the person whose duty it was to cause the publication to be made may file an affidavit in the clerk's office.
(c) The affidavit described in subsection (b) must:
(1) be attached to a copy of the notice taken from the newspaper in which the notice was published;
(2) be the affidavit of:
(A) the printer; or
(B) a person who:
(i) is employed by the printer as a clerk or printer; and
(ii) is of competent age; and
(3) specify the county, the time, and the newspaper in which the notice was published.
SECTION 29. IC 34-33 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:
ARTICLE 33. COMMENCEMENT OF ACTION: SERVICE OF PROCESS
Chapter 1. Service of Process on Agent of a Nonresident Corporation
Sec. 1. (a) This section applies to a civil action brought in any court of this state against:
(1) a firm;
(2) a copartnership;
(3) a limited liability company;
(4) an association;
(5) a railroad; or
(6) an other corporation;
that is in the hands of a receiver who is not domiciled within Indiana.
(b) Process may be served upon an agent of the receiver or other person in charge of and authorized to transact business for and on behalf of the receiver, in Indiana, in the same manner as process is served on domestic or foreign corporations.
Chapter 2. Service of Process on Agent Representing Nonresident Directors of Corporations

C o p y

Sec. 1. (a) In an action commenced in a court of general jurisdiction in Indiana by or against any corporation incorporated under the laws of Indiana, in which one (1) or more of the directors of the corporation is:

(1) a necessary or proper party; and

(2) a nonresident of Indiana;

service of summons upon a director for the purpose of obtaining jurisdiction of the person of the director in the action is obtained by serving the summons on the resident agent of the corporation.

(b) If service of process is made upon the resident agent of a corporation, the resident agent shall forward a copy of the process by registered mail to the director at the director's last known address. Service made under this chapter is returnable in not less than thirty (30) days.

Sec. 2. (a) This section applies to a person who:

(1) is a nonresident of Indiana; and

(2) accepts an election or appointment as a director or serves as a director in a corporation organized under the laws of Indiana.

(b) By and as a condition of:

(1) accepting an election or appointment as a director; or

(2) serving as a director;

a person described in subsection (a) automatically appoints the resident agent of the corporation as the person's agent upon whom process may be served in an action commenced by or against the corporation and in which the person is a proper or necessary party.

Chapter 3. Service of Process on Nonresident Motor Vehicle Operators

Sec. 1. (a) This chapter applies to:

(1) a nonresident;

(2) a resident of Indiana who becomes a nonresident; or

(3) the authorized agent of a person described in subdivision (1) or (2);

who operates a motor vehicle upon a public street or highway or any other place in Indiana.

(b) The operation of a motor vehicle by a person described in subsection (a) is considered to be an appointment by the person of the secretary of state to be the person's attorney upon whom process may be served in any action or proceeding against the person arising from an accident or collision in which the person

Copy

may be involved while operating or permitting to be operated a motor vehicle on a street or highway or any other place in Indiana.

(c) The operation is an agreement that process against the person has the same legal force and validity as if served upon the person personally.

(d) The appointment of the secretary of state is irrevocable and binding upon the executor or administrator of the person.

Sec. 2. An action may be filed in the county :

(1) where the plaintiff resides; or

(2) where the accident or collision occurred;

at the election of the plaintiff. Service of process shall be made by leaving a copy of the action and a fee of five dollars ($5) with the secretary of state for the defendant to be served. The service is sufficient service upon the person if notice of service and a copy of the process are immediately sent by registered mail to the defendant and the defendant's return receipt is appended to the original process and filed in the court.

Sec. 3. If a defendant refuses to accept or claim registered mail, the secretary of state shall return the registered mail to the plaintiff or to the plaintiff's attorney. The mail shall be appended to the original process, together with an affidavit of the plaintiff or of the attorney or agent that the summons was delivered to the secretary of state, together with a fee of five dollars ($5), and was returned unclaimed by the United States Postal Service. The affidavit, together with the returned envelope including the summons, is considered sufficient service upon the defendant.

Sec. 4. If a nonresident dies before the commencement of an action brought under this chapter (or IC 34-2-2.5 before its repeal), service of process shall be made on the executor or administrator of the nonresident in the same manner and with the same notice as is provided for the nonresident.

Sec. 5. If a nonresident dies after an action has been commenced under this chapter (or IC 34-2-2.5 before its repeal) by service of process upon the nonresident, the court shall allow the action to be continued against the executor or administrator upon motion with notice that the court considers proper.

Sec. 6. The court in which an action is brought may order continuances that are reasonable to afford the defendant opportunity to defend the action.

SECTION 30. IC 34-34 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY

C o p y

1, 1998]:

ARTICLE 34. COMMENCEMENT OF ACTION: LIS PENDENS

Chapter 1. Lis Pendens Record

Sec. 1. Each clerk of the circuit court shall keep a book in the office of the clerk called the "lis pendens record". The lis pendens record is a public record.

Sec. 2. (a) This section applies to a suit commenced upon a bond payable to the state in any of the courts of Indiana or in a district court of the United States sitting in Indiana.

(b) The plaintiff in the case shall file with the clerk of the circuit court a written notice containing:

(1) the title of the court; and

(2) the names of all parties to the suit and a statement that the suit is upon an official bond.

Sec. 3. (a) This section applies to a person who commences a suit:

(1) in any court of Indiana or in a district court of the United States sitting in Indiana;

(2) by complaint as plaintiff or by cross-complaint as defendant; and

(3) to enforce any lien upon, right to, or interest in any real estate upon any claim not founded upon:

(A) an instrument executed by the party having the legal title to the real estate, as appears from the proper records of the county, and recorded as required by law; or

(B) a judgment of record in the county in which the real estate is situated, against the party having the legal title to the real estate, as appears from the proper records.

(b) The person shall file, with the clerk of the circuit court in each county where the real estate sought to be affected is situated, a written notice containing:

(1) the title of the court;

(2) the names of all the parties to the suit;

(3) a description of the real estate to be affected; and

(4) the nature of the lien, right, or interest sought to be enforced against the real estate.

Sec. 4. The clerk shall:

(1) record a notice filed under section 2 or 3 of this chapter in the lis pendens record; and

Copy

(2) note upon the record the day and hour when the notice was filed and recorded.

Sec. 5. (a) This section applies when a sheriff or coroner of a county in Indiana:

(1) seizes upon real estate or an interest in real estate by virtue of a writ of attachment; or

(2) levies upon real estate or an interest in real estate by virtue of an execution issued to the sheriff or coroner from any court other than the court of the county in which the sheriff or coroner resides.

(b) At the time of the seizure or levy, the sheriff or coroner shall file with the clerk of the circuit court of the county a written notice setting forth:

(1) the names of the parties to the proceedings upon which the writ of attachment or execution is founded; and

(2) a description of the land seized or levied upon.

The notice shall be recorded, as provided for in section 4 of this chapter.

(c) The sheriff or coroner shall state, in the return to the attachment or execution, that notice has been filed. The sheriff or coroner is allowed a fee of fifty cents ($0.50) to be taxed as costs for making and filing the notice. However, the sheriff or coroner is not required to file the notice until the attachment or execution plaintiff provides the money to pay the clerk for filing and recording the notice.

Sec. 6. Upon filing and recording the notices described in this chapter, the clerk shall index the notices by the names of each party whose interest in the real estate might be affected by the suit, attachment, or execution. The clerk shall maintain entries for each notice listing:

(1) the plaintiff versus the names of all the defendants; and

(2) each defendant whose real estate is sought to be affected at the suit of the plaintiff.

Sec. 7. Upon the final determination of any suit brought:

(1) for the purposes described in section 2 or 3 of this chapter; and

(2) adversely to the party seeking to enforce a lien upon, right to, or interest in the real estate;

the court rendering the judgment shall order the proper clerk to enter in the lis pendens record a satisfaction of the lien, right, or interest sought to be enforced against the real estate. When the

C o p y

entry is made, the real estate is forever discharged from the lien, right, or interest.

Sec. 8. (a) This section applies when:

(1) an attachment is dismissed, or the judgment rendered on it is satisfied; or

(2) the execution is satisfied without a sale of the lands seized or levied upon or upon a redemption of the real estate within the time allowed by law after a sale of the real estate upon execution.

(b) The clerk of the court that issued the attachment or execution shall make a certificate of the dismissal or satisfaction and:

(1) enter the certificate upon the lis pendens record, if the appropriate record is kept in that clerk's office; or

(2) forward the certificate to the county in which the real estate is located, to be recorded in the lis pendens record that county.

(c) When the certificate is entered or recorded, the real estate is discharged from the lien of attachment or execution.

Sec. 9. (a) This section applies to the following:

(1) Suits brought for the purposes described in section 2 or 3 of this chapter.

(2) The seizure of real estate under attachments, and the levy of real estate under execution, in the cases mentioned in section 5 of this chapter.

(b) Actions described under subsection (a) do not:

(1) operate as constructive notice of the pendency of the suit, or of the seizure of or levy upon the real estate; or

(2) have any force or effect as against bona fide purchasers or encumbrancers of the real estate;

until the notices required by this section are filed with the proper clerk.

Chapter 2. Recording Lis Pendens Orders

Sec. 1. This chapter applies to orders granted by any court or judge whether upon a hearing or ex parte, in any cause or proceeding, when the orders affect the disposition of real estate.

Sec. 2. Orders described in section 1 of this chapter may be recorded in the lis pendens record kept in the office of the clerk of the county in which the real estate affected is situated.

Sec. 3. An order recorded under section 2 of this chapter shall be notice of the matters set forth in the order to all persons that are

Copy

or may become interested in such real estate, and the provisions of the order take effect upon the real estate against any subsequent disposition of the real estate.

SECTION 31. IC 34-35 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 35. CHANGE OF VENUE

Chapter 1. Change of Venue Generally

Sec. 1. The court or the judge shall change the venue of any civil action upon the application of either party, made upon affidavit showing one (1) or more of the following causes:

(1) The judge has been engaged as counsel in the cause before the judge's election or appointment as judge or is otherwise interested in the cause.

(2) The judge is of kin to either party.

(3) The opposite party has an undue influence over the citizens of the county, or an odium attaches to the applicant or to the applicant's cause of action or defense, on account of local prejudice.

(4) The county is a party to the suit.

(5) Showing to the satisfaction of the court that the convenience of witnesses and the ends of justice would be promoted by the change.

(6) The judge of the court in which the action is pending is a material witness for the party applying for the change.

(7) Either party makes and files an affidavit of the bias, prejudice, or interest of the judge before whom the cause is pending.

Sec. 2. (a) This section applies when a change of venue is directed for any of the causes mentioned in section 1(3), 1(4) and 1(5) of this chapter.

(b) The court or judge shall:

(1) designate the county to which the venue shall be changed, which may be in the same or in an adjoining circuit, as is considered best for the furtherance of justice; and

(2) prescribe the time within which the applicant shall pay the costs of the change.

(c) The clerk of the court in which the suit is pending, as soon as the costs of the change are paid, shall immediately transmit:

(1) all the papers; and

(2) a transcript of all the proceedings;

C o p y

to the clerk of the court of the county to which the venue is changed.

(d) The clerk of the proper court shall:

(1) receive the papers and transcript;

(2) give a receipt for items received under subdivision (1); and

(3) docket the action in its order among the other causes of the court.

(e) The action shall stand for trial and shall be tried or otherwise disposed of in the same manner as if the cause had originated in that court.

(f) If the party fails to pay the costs of the change within the time prescribed by the court, the party:

(1) shall be taxed with all the costs made in the case up to the time of the failure to pay costs; and

(2) is not entitled to a change of venue from the county.

(g) Only one (1) change of venue shall be granted to the same party from the county, and only one (1) from the judge.

Sec. 3. (a) This section applies when the change of venue is granted for any of the causes mentioned in section 1(1), 1(2), 1(6), or 1(7) of this chapter.

(b) Except as provided in subsection (c), the court or judge shall call a judge of any circuit, superior, or other court of general jurisdiction, or any justice of the supreme court, to preside in and try the case.

(c) If it is difficult, in the opinion of the court, for any cause, to procure the attendance of a judge described in subsection (b), the court, in order to prevent delay, may appoint any competent and disinterested attorney of Indiana, in good standing, to act as judge in the cause. If the attorney appointed under this subsection consents to serve:

(1) the attorney shall be qualified as other judges;

(2) the attorney's appointment and oath shall be filed with the clerk and entered on the order book; and

(3) the attorney has authority to:

(A) hear and determine the cause until it is finally disposed of; or

(B) change the venue of the cause in proper cases.

Sec. 4. (a) When a practicing attorney is called upon to preside in the place of the regular judge as a judge pro tempore, the attorney shall be allowed the following:

C o p y

(1) The sum of twenty dollars ($20) per day for each day or part of a day actually served.

(2) For each mile necessarily traveled each day in going to and returning from the place where the court is being held, a sum for mileage equal to that sum per mile paid to state officers and employees. The rate per mile shall change each time the state government changes its rate per mile.

(b) If such judge pro tempore is a resident of another county, the judge pro tempore shall be paid an additional sum of twenty dollars ($20) for each day or part of a day actually served, making a total of forty dollars ($40).

(c) The judge pro tempore shall be paid on the presentation of:

(1) an order made by the court for the allowance, specifying the days of service and mileage, if any, supported by the affidavit of the judge pro tempore that the judge pro tempore actually served the days, and the miles traveled were necessary; and

(2) an affidavit of the regular judge stating the reason for the service of the judge pro tempore.

(d) The payment under subsection (c) shall be paid out of the county treasury for the time being, for which the county shall have credit on settlement with the treasurer of state.

(e) In change of venue from one (1) court to another court of the same county, or from one (1) judge to another judge of the same county, the compensation provided for in this section does not apply, unless the other court or judge to which the change is taken is situated in another city in the same county.

(f) A full-time judge of a circuit, superior, or county court may not be paid compensation for serving as a special judge, except reasonable expenses for meals, lodging, travel, and other incidental expenses approved by the state court administrator.

Sec. 5. (a) This section applies if a judge is prevented from presiding during any session of court by reason of:

(1) death, sickness, or other casualty; or

(2) the judge's failure to attend or appear for any period of three (3) days;

so that the court will lapse.

(b) The sheriff may adjourn the court from day to day.

(c) If the judge fails to appear under subsection (a)(2):

(1) the clerk, the sheriff, and the auditor; or

(2) in case of the absence of the clerk, the sheriff, or the

Copy

auditor, the two (2) who are present, together with the recorder of the county;

may elect any competent and reputable attorney to act as judge.

(d) If the attorney elected under subsection (c) accepts, the attorney shall qualify as other judges, and the attorney's appointment, with the reason for the appointment and the attorney's oath, shall be entered on the order book.

(e) A judge selected under this section (or IC 34-1-13-5 before its repeal) may preside until:

(1) the return of the regular judge;

(2) in case of death, until the judge's successor is named; or

(3) in case of vacancy or if the judge is required to be absent, until a successor is named by the proper authority.

Chapter 2. Change of Venue from County in Civil Actions

Sec. 1. (a) This section applies when a change of venue is taken from the county in any civil action pending in any circuit, superior, or probate court of Indiana from any county having two (2) or more adjoining counties.

(b) If the parties to the action agree in open court within three (3) days from the filing of the affidavit or motion for the change of venue upon the county to which the change of venue of the action shall be changed, it is the duty of the court to send, transfer, and venue the action to the agreed upon county.

(c) In the absence of an agreement described in subsection (b), within two (2) days the court shall submit to the parties a written list of all the counties adjoining the county from which the venue is changed. Within two (2) days of receiving the list, the parties shall alternately strike off the names of the counties except one (1). The moving party for the change of venue is the first to strike, and the action shall be sent to the county not stricken off under this procedure.

Sec. 2. (a) This section applies to a county with a population of at least one hundred thousand (100,000) that is adjoined by three (3) or fewer other counties.

(b) In addition to listing the adjoining counties, the court shall also list the two (2) nonadjoining counties, the county seats of which are nearest measured along the most direct improved and main traveled highways to the county seat of the county from which the change of venue is sought. The additional two (2) nonadjoining counties shall, together with the adjoining counties, comprise the original list from which the parties shall strike on all

Copy

initial changes of venue taken from the county in which the cause is first filed.

Sec. 3. (a) If the venue of the action has already been changed from an adjoining county, the name of the adjoining county shall not be included in the written list submitted by the court.

(b) If excluding the county from which venue was first changed results in fewer than three (3) adjoining counties, the list submitted by the court shall include the following:

(1) The adjoining county or counties.

(2) Not more than three (3) nonadjoining counties, the county seats of which are nearest to the county seat of the county from which the change of venue is sought when measured along improved and main traveled highways.

Sec. 4. Each party may strike off one (1) of the three (3) counties submitted within two (2) days after the list is submitted, and the action shall be sent to the county remaining. If either of the parties refuses or fails to strike off the names of the counties within the time limit, the clerk of the court shall strike off the names for the party.

Sec. 5. (a) This section applies in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(b) Whenever a change of venue is taken from the county in any civil action pending in any circuit, superior, or probate court of Indiana, if the parties to the action agree in open court within three (3) days from the date of the filing of the affidavit or motion for change of venue from the county to which county the change of venue of the action shall be changed, it is the duty of the court to send, transfer, and venue the action to the agreed upon county.

(c) In the absence of an agreement described in subsection (b), the nonmoving party shall, within two (2) days after receipt of notice of the filing of change of venue from the county, submit to the moving parties the names of two (2) counties which must be selected from the adjoining counties or the five (5) nonadjoining counties, the county seats of which are nearest measured along the most direct improved and main traveled highways to the county seat of the county from which the change of venue is sought.

(d) If the venue of the action has already been changed from an adjoining county, the name of the adjoining county shall not be included in the written list to be submitted by the nonmoving party under subsection (c).

C o p y

(e) The moving party shall strike one (1) of the two (2) counties submitted within two (2) days after receipt of the names of the counties, and the action shall be sent to the county remaining.

(f) If the nonmoving party fails or refuses to name the counties as provided in this section, the court shall, not later than two (2) days after the deadline has expired, name the counties. If the moving party fails or refuses to strike off the name of one (1) of the named counties within the time limit provided in this section, the clerk of the court shall strike off the names for the party within two (2) days.

Chapter 3. Change of Venue in Specific Circumstances

Sec. 1. (a) This section applies if there are multiple plaintiffs or multiple defendants in a civil action.

(b) There shall be allowed only one (1) change of venue from the county to all plaintiffs and one (1) change of venue from the county to all defendants.

(c) If a plaintiff files a change of venue from the county, all plaintiffs shall be considered the moving party, and all of the defendants shall be considered the nonmoving party. If the defendants file the change of venue from the county, all of the plaintiffs shall be considered the nonmoving party, and all of the defendants shall be considered the moving party. If there are multiple parties that constitute either the moving party or the nonmoving party, the decision of the majority of such parties is final as to naming the two (2) counties and as to the striking of one (1).

(d) If there is no majority agreement as to the naming of the two (2) counties between the nonmoving parties, the suggested counties shall be submitted to the court by the nonmoving parties and the court shall select the two (2) counties from the list to be named.

(e) If there is no majority agreement between the moving parties as to which county shall be struck, the clerk shall do the following:

(1) Place each named county on similar unidentifiable slips of paper.

(2) Place the slips of paper in a suitable container.

(3) Draw the name of one (1) county from the container without prior identification.

Both parties shall be given an opportunity to be present at the drawing of the name. The clerk shall then strike the name of the

C o p y

county that appeared on the slip of paper so that the action shall then be venued to the remaining named county.

Sec. 2. (a) This section applies in any action, proceeding, or matter, of any character or nature whatever, relating to, connected with, or involving the estate of a decedent.

(b) Except as provided in subsection (c), any of the parties to the action, proceeding, or matter are entitled to:

(1) a change of judge; or

(2) a change of venue from the county;

for the same reasons, and upon the same terms and conditions, upon which there may be a change of judge or a change of venue from the county in any civil action.

(c) This section does not authorize:

(1) a change of venue from the county of the administration of the estate of a decedent; or

(2) a change of venue from the county upon the exceptions to the final report of an administrator or executor;

and there shall be no change of venue from the county upon exceptions to the final report of an administrator or executor.

Sec. 3. (a) This section applies when any matter of a civil, statutory, or equitable nature not triable by a jury is pending.

(b) The judge before whom the cause is pending shall change the venue upon the application of either party to the cause, made upon affidavit, of either party or the party's attorney, showing any one (1) or more of the reasons named in the Indiana statutes authorizing changes of venue from the judge in civil actions.

(c) The presiding judge shall appoint a special judge to hear such cause in the manner provided by law for changes of venue in civil actions.

Chapter 4. Change of Venue in Cases on Remand

Sec. 1. (a) This section applies where:

(1) an appeal to the court of appeals or supreme court of the state of Indiana has been taken from a judgment rendered against any party; and

(2) the judgment is reversed, and the cause is remanded for a new trial.

(b) Either party in the cause is entitled to a change of venue from the county notwithstanding any changes of venue already taken, upon filing an affidavit:

(1) stating that:

(A) the opposite party has an undue influence over the

C o p y

citizens of the county;

(B) an odium attaches to the applicant, or to the applicant's cause of action or defense, on account of local prejudice; or

(C) the county is a party to the suit; or

(2) showing to the satisfaction of the court that the convenience of witnesses and the ends of justice would be promoted by the change.

(c) All laws and parts of laws defining rights and duties in order to perfect a change of venue from the county in original actions and proceedings apply with equal force to the change of venue provided by this section.

Sec. 2. (a) This section applies where:

(1) an appeal to the court of appeals or the supreme court has been taken from a judgment rendered against any party, and the judgment is reversed with the cause remanded for a new trial; or

(2) the action of the trial court in granting a new trial is affirmed on appeal.

(b) Either party in the cause is entitled to a change of venue from the judge before whom the cause is pending, notwithstanding any changes of venue previously taken, upon filing an affidavit stating that the party cannot have a fair trial of the cause before that judge because of bias or prejudice on the part of the judge before whom the cause is pending.

(c) The judge shall grant the requested change, and it is unlawful for any judge so challenged to appoint in that case as special judge any relative by blood or marriage of the judge.

Chapter 5. Reimbursement for Expenses Incurred by Change of Venue

Sec. 1. In all cases, civil, criminal, or otherwise, where there is a change of venue from one (1) county to another, the county in which the cause originated and from which the change of venue is taken shall pay to the county to which the change of venue is taken all expenses incurred by the county to which the change of venue is taken.

Sec. 2. Expenses to be paid under section 1 of this chapter include the following:

(1) The expense of keeping the prisoner, if any.

(2) The expense of transporting the prisoner to or from any penal institution.

Copy

(3) Any extraordinary expense for safekeeping the prisoner.

(4) The fee set by the venue court under IC 33-9-11-5 for pauper counsel, if counsel was appointed by that court.

(5) The expense of any mileage, meals, lodging, and per diems paid for or to jurors.

(6) The per diems paid jury commissioners for drawing any special venire.

(7) The sum of five dollars ($5) for each day or part of a day a bailiff is engaged in assisting the court in the trial of the cause.

(8) The sum of eight dollars ($8) for each day or part of a day an official court reporter takes evidence or testimony before the judge or jury concerning the cause.

(9) The sum of ten dollars ($10) per day for each day of trial for use of facilities and utilities.

(10) The sum of five dollars ($5) for notifying the jury not to attend court after having been summoned in any cause.

(11) The amount of telephone or telegraph communications made by the court or authorized by it.

(12) The per diem allowed by law to the clerk of the court for attending court.

Sec. 3. If any of the amounts specified in section 2 of this chapter are paid by any party against whom costs are taxed under IC 33-19-4-3, the amount paid shall be refunded to the county of origin.

Sec. 4. (a) Expenses shall be audited and allowed by the court to which the cause is venued. The allowance shall be certified by the court in duplicate to the auditor of the county, who shall:

(1) retain one (1) of the certificates of allowance in the auditor's office; and

(2) mail by certified mail the duplicate certificate of allowance to the auditor of the county in which the cause originated and from which such expenses are due.

(b) The auditor of the county in which the cause originated shall enter the duplicate certificate of allowance as a claim against the county in which the cause originated on the claim docket of the auditor's office for allowance by the board of county commissioners of the county at their next regular or special session. The certificate of allowance shall be allowed by the board of county commissioners unless it is contested and proved incorrect as provided in this chapter.

C o p y

Sec. 5. Of any amount allowed for per diem of an official court reporter charged as expenses against the county of origin of any case, the sum of eight dollars ($8) shall be paid to the reporter as provided in this chapter.

Sec. 6. Of the amount allowed for per diem of a bailiff charged as expenses against the county of origin of any case, the sum of five dollars ($5) shall be paid to the bailiff as provided in this chapter.

Sec. 7. Except for the clerk, not more than one (1) per diem or charge for the official reporting or for use of facilities and utilities shall be made against any county of origin of the causes for the same day. However, if two (2) or more proceedings are conducted in two (2) or more separate causes from any county or counties of origin on the same day, the court shall allocate the charges for any such cause as it may determine. The per diem for the clerk, the official court reporter, or bailiff shall be paid by the county of trial in the first instance and reimbursement for that payment may be obtained from the county of origin.

Sec. 8. The clerk is entitled to collect two dollars ($2) from the county treasury for each calendar day on which the clerk or the clerk's deputy attends a court when it is occupied with business concerning change of venue. The payment authorized under this section is not affected by the number of items filed or the business transacted by the court on that day.

Sec. 9. (a) The county auditor of each county shall keep correctly the accounts of the auditor's county with the county:

(1) from which the expenses of change of venue are due; or

(2) to which the expenses are paid.

(b) The county auditor shall transmit by registered mail all warrants issued for the payment of the expenses of change of venue to the auditor of the county entitled to the payment.

(c) Except as provided in subsection (e), payments described in subsection (b) shall be made quarterly, on the last day of March, June, September, and December in each year.

(d) The auditor of the county receiving the payment shall immediately:

(1) pay the warrants into the county treasury of the county receiving the payment;

(2) transmit to the auditor of the county making such payment the quietus for the payment, to be filed with the paid claim; and

(3) advise the clerk of the circuit court of the county

Copy

receiving the payment.

When notified of a payment under this section, the clerk shall note the payment on the clerk's record.

(e) If the date of making the quarterly settlement falls on Sunday, the settlement shall be made on the preceding day.

Sec. 10. The county council of each county shall provide for the payment of any claim filed in accordance with this chapter.

Sec. 11. (a) This section applies if:

(1) a suit is instituted by any county for the recovery of any expenses incurred by the county on account of change of venue; or

(2) a county is required to defend its claim for change of venue expenses.

(b) The court trying the cause shall allow:

(1) the necessary traveling expenses to the proper officers; and

(2) a reasonable attorney's fee;

to be taxed as a part of the costs in the cause.

Chapter 6. Collection and Payment of Fees Included in Transcript of Costs for Change of Venue Cases

Sec. 1. (a) In all cases where a change of venue is taken from one (1) county to another, the clerk of the circuit court or superior court of the county in which final disposition is made of the cause, shall, within sixty (60) days after the costs are paid, transmit by check to the clerk of the circuit court or superior court of the county in which the costs were accrued.

(b) The check described in subsection (a) must be for an amount equal to all costs which have been included in the transcript.

(c) The clerk receiving the check shall mail a receipt for the amount of the check to the clerk that sent the check. The clerk that receives the receipt shall file the receipt in the clerk's office to be a part of the permanent records of the office.

(d) The clerk who collects the costs shall set out upon the register of fees and also upon the fee book where the costs are taxed a marginal note stating the date, amount, number of check, and the clerk to whom the fees and costs were transmitted.

Sec. 2. The clerk of the circuit court shall furnish a statement with each remittance of change of venue costs. Statements described in this section must:

(1) show in detail the cause number in the county to which

Copy

remittance is made, title of case, and the items of costs paid; and

(2) be made on forms prescribed by the state board of accounts.

Chapter 7. Collection of Costs in Change of Venue Cases

Sec. 1. (a) This section applies to an action in which:

(1) a change of venue from the county is taken;

(2) an order of judgment for costs is made and entered upon dismissal or otherwise disposed of; and

(3) the costs remain unpaid for thirty (30) days from the date of finality of the order or judgment.

(b) The clerk of the circuit court of the county in which the order or judgment is made and entered, shall certify an itemized transcript of all costs accrued in the action to:

(1) the clerk of the court of the county where the action was first filed; or

(2) the clerk of the court of the county of residence of the judgment debtor, if the residence of the judgment debtor is in a county other than where the action first originated.

Sec. 2. (a) The clerk of the court to which the transcript is sent shall immediately record the order or judgment upon the judgment docket of the circuit court of the county in the same manner as other judgments are recorded. The judgment is a lien on properties and land owned by the judgment debtor in the county in the same manner and to the same extent as if the property were situated in the county where the order or judgment was rendered.

(b) The clerk transmitting the transcript shall:

(1) make a notation in the records of the court in which the action was entered and the order or judgment was recorded, showing:

(A) the name of the county and court to which the transcript was transmitted;

(B) the date of transmittal; and

(C) any other necessary notation;

(2) prepare a receipt for the receiving clerk that shows:

(A) the name of judgment debtor;

(B) title and number of cause;

(C) amount of costs;

(D) to whom the costs are due; and

(E) record reference wherein recorded by both the receiving and sending clerk; and

Copy

(3) complete, date, sign, and return the receipt to the sending clerk to be filed with other papers relating to the action.

Sec. 3. (a) This section applies after the transcript of costs is certified to the clerk of the court of:

(1) the county where the action first originated; or

(2) the county of residence of the judgment debtor.

(b) The clerk of the court of the county in which the order or judgment was rendered may not:

(1) collect costs; or

(2) issue a fee bill, execution, or statement thereafter.

(c) The clerk of the court receiving and recording the transcript shall accept payment of costs from the judgment debtor or enforce collection by execution or fee bill as provided by law.

Sec. 4. Upon collection of change of venue costs by the clerk of the court of:

(1) the county where the action first originated; or

(2) the county of residence of the judgment debtor;

the clerk shall immediately remit to the county or counties entitled to payment all costs as shown by the transcript and retain costs that are due to the clerk's own county. Clerks of courts receiving payment of costs under this section shall account for and distribute the costs as provided by law.

Sec. 5. The clerks of the courts issuing and recording the transcript shall tax as additional costs, to be paid by the judgment debtor, the fees taxed in similar matters as provided by IC 33-19.

SECTION 32. IC 34-36 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 36. JURIES

Chapter 1. Trial by Jury

Sec. 1. (a) The parties may either submit or argue a case to the jury.

(b) In the argument, the party with the burden of the issue has the opening and closing. The party who opens must disclose in the opening all the points relied on in the cause. If, in the closing, the party who closes refers to any new point or fact not disclosed in the opening, the adverse party has the right of replying to the new point or fact. The adverse party's reply closes the argument in the case.

Sec. 2. When requested by either party, the court shall take brief notes of the evidence of the parties in the order in which the

C o p y

evidence is introduced in the trial.

Sec. 3. (a) Whenever, in the opinion of the court, it is proper for the jury to have a view of:

(1) real or personal property that is the subject of litigation; or

(2) the place in which a material fact occurred;

the court may order the jury to be conducted in a body, under the charge of a sworn officer, to the place.

(b) The place shall be shown to the jury by a person appointed by the court for that purpose.

(c) While the jury is absent for the view, no person, other than the person appointed to show the place to the jury, shall speak to the jury on any subject connected with the trial.

Sec. 4. (a) When a case is submitted to the jury, the jury may:

(1) decide in court; or

(2) retire for deliberation.

(b) Except as provided in subsection (c), if the jury retires, the members of the jury must be kept together in some convenient place, under the charge of a sworn officer, until the members of the jury:

(1) agree upon a verdict; or

(2) are discharged by the court.

(c) The court may, in its discretion, permit the jury to separate temporarily and for meals.

(d) The officer in charge of the jury shall not permit any communication to be made to the jury. The officer in charge of the jury shall not communicate with the jury, except:

(1) to ask the jury if it has agreed upon a verdict; or

(2) by order of the court.

(e) The officer in charge of the jury shall not, before the verdict is rendered, communicate to any person the state of the jury's deliberations or the jury's verdict.

Sec. 5. (a) If the members of the jury are permitted to separate, either during the trial or after the cause is submitted to them, the court shall admonish the jurors that it is their duty not to:

(1) converse with each other; or

(2) permit themselves to be addressed by any other person, on any subject of the trial.

(b) If the members of the jury are permitted to separate during the trial, the court shall admonish the jurors that it is their

C o p y

duty not to form or express among themselves an opinion on the cause until the cause is finally submitted to them.

Sec. 6. If, after the jury retires for deliberation:

(1) there is a disagreement among the jurors as to any part of the testimony; or

(2) the jury desires to be informed as to any point of law arising in the case;

the jury may request the officer to conduct them into court, where the information required shall be given in the presence of, or after notice to, the parties or the attorneys representing the parties.

Sec. 7. The jury may be discharged by the court under any of the following circumstances:

(1) Sickness of a juror.

(2) Other accident or calamity requiring the discharge.

(3) Both parties consent to the discharge.

(4) The jury has been kept together until it satisfactorily appears that there is no probability of the members agreeing upon a verdict.

Sec. 8. In all cases where the jury is discharged during the trial, or after the cause is submitted to them, the case may be tried again immediately or at a future time, as the court may direct.

Sec. 9. When the jury has agreed upon a verdict, the verdict must be reduced to writing and signed by the foreman. When returned into court, the foreman shall deliver the verdict, and either party may poll the jury. If a juror dissents from the verdict, the jury shall again be sent out to deliberate.

Chapter 2. Agreement Between Parties for a Special Jury and to Limit the Size of the Jury Panel

Sec. 1. In a civil action where:

(1) the parties are entitled to a trial by jury; and

(2) either party demands a jury trial;

the sheriff shall call a jury from the regular panel, except as provided in this chapter.

Sec. 2. If the parties:

(1) agree upon the jurors to compose a special jury; and

(2) notify the court;

the court shall direct the sheriff to impanel a special jury if it can be done without unreasonable delay of the cause.

Sec. 3. When both parties desire it, the court may direct the sheriff to summon eighteen (18) or fewer competent jurors, and the plaintiff first, and then the defendant, shall strike out one (1) juror

C o p y

in turn, until each has struck off six (6) or more jurors. The remaining jurors shall try the cause. However, if the parties consent, the parties, upon being furnished with a list of jurors to be summoned, may exercise the right to strike out any part of the names before the jurors are summoned, and the remaining jurors only shall be summoned.

Chapter 3. Jurors and Challenges

Sec. 1. (a) In a civil case, the jury consists of six (6) members.

(b) At any time before the verdict is announced, the parties may stipulate that a verdict or finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Sec. 2. (a) In a civil case, the court may direct that no more than three (3) jurors be called and impanelled, in addition to the regular jury, to sit as alternate jurors.

(b) Alternate jurors shall, in the order in which they are called, replace jurors who, before the time the jury returns its verdict, become unable or disqualified to perform their duties.

(c) Alternate jurors:

(1) shall be drawn in the same manner;

(2) must have the same qualifications;

(3) are subject to the same examination and challenges;

(4) shall take the same oath; and

(5) shall perform the same function and hold the same powers and privileges;

as regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury brings in its verdict.

Sec. 3. (a) Each party in a civil case has three (3) peremptory challenges.

(b) In addition to the peremptory challenges under subsection (a), each party is entitled to:

(1) one (1) peremptory challenge if the court directs that one (1) or two (2) alternate jurors are to be impanelled; or

(2) two (2) peremptory challenges if the court directs that three (3) alternate jurors are to be impanelled.

(c) The additional peremptory challenges under subsection (b) may be used only against alternate jurors, and the peremptory challenges under subsection (a) may not be used against alternate jurors.

Sec. 4. (a) The court may:

(1) permit the parties or their attorneys to conduct the

C o p y

examination of prospective jurors; or

(2) conduct the examination itself.

(b) If the court conducts the examination of prospective jurors, the court shall permit the parties or their attorneys to supplement the examination by further inquiry.

Sec. 5. It is sufficient cause for challenge to a juror that the juror is interested in another suit, begun or contemplated, involving the same or a similar matter.

Sec. 6. Before the commencement of the trial, an oath must be administered to each juror that the juror will:

(1) well and truly try the matter in issue between the parties; and

(2) give a true verdict;

according to law and evidence.

Sec. 7. When the regular panel is exhausted or is insufficient from any cause, the sheriff shall:

(1) call the bystanders; or

(2) fill the jury in such a manner as the court may direct.

Chapter 4. Filling Regular Panel of Jurors When Persons Excused from Service

Sec. 1. (a) Where:

(1) persons drawn for jury service; or

(2) jurors;

in any circuit, superior, or probate court in Indiana have been excused from service, the judge shall immediately notify the clerk of the circuit court of that fact and of the number of jurors excused from service.

(b) The clerk shall immediately proceed to:

(1) draw from the jury box for each of the courts the number of names required by each court to fill up the regular panel; and

(2) record and certify the drawing upon the proper order book of each court.

The individuals whose names are drawn and certified under this section become members of the regular panel of the court.

(c) The names shall be drawn and the persons summoned in accordance with the provisions for the drawing and summoning of jurors. The persons whose names are drawn shall be immediately summoned to appear at once in court.

(d) The failure of the judge of any court or any clerk or other officer to perform the duties described in this section is not

C o p y

grounds for the continuance of any case. In that event, the panel may be filled from talesmen as provided by law.

(e) This section does not apply where a member of a jury is removed for cause, or peremptorily, under the laws. In that case:

(1) the panel shall be filled from talesmen as provided by law; and

(2) the bailiff of the court or the sheriff shall go outside the courthouse and summon reliable and reputable citizens for jury service.

Chapter 5. Verdicts

Sec. 1. In actions for recovery of money, the jury must assess the amount of the recovery.

Sec. 2. In actions for the recovery of property, the jury must make the assessments required under IC 34-21-10.

SECTION 33. IC 34-37 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 37. EVIDENCE: DOCUMENTARY AND OTHER WRITTEN EVIDENCE IN GENERAL

Chapter 1. Documentary Evidence in General

Sec. 1. (a) There is no difference in evidence between sealed and unsealed writings. Every writing that is not sealed has the same force and effect that it would have if sealed.

(b) A writing under seal, except conveyances of real estate or any interest in real estate, may be changed or altogether discharged by a writing not under seal.

(c) An agreement in writing, without a seal, for the compromise or settlement of a debt, is as obligatory as if a seal were affixed.

Sec. 2. The execution of an instrument is the subscribing and delivering of the instrument with or without affixing a seal.

Sec. 3. Recitals in any written instrument have no greater effect than they have had in writings not under seal.

Sec. 4. Sections 1, 2, and 3 of this chapter do not repeal or affect any Indiana statute expressly requiring a seal to a deed or other instrument.

Sec. 5. Certificates or instruments, either printed or written, purporting to be:

(1) the official act of a notary public of this state, of the District of Columbia, or of any other state or territory of the United States; and

Copy

(2) under the seal and signature of a notary public;

shall be received as presumptive evidence of the official character of the instrument and of the facts set forth in the instrument.

Sec. 6. The original affidavit and copy of a notice published in a newspaper, which are filed under IC 34-32-1-3 (or IC 34-1-18-8 before its repeal), and copies of the affidavit and notice, duly certified by the clerk, are presumptive evidence in all cases and before every court of the facts contained in the affidavit.

Sec. 7. When an affidavit taken in another state is:

(1) certified by the officer or justice of the peace taking the affidavit, under the:

(A) hand of the officer or justice of the peace; and

(B) seal of office, if the officer or justice of the peace has a seal; and

(2) attested by the clerk of the:

(A) circuit or district court; or

(B) court of common pleas;

of the county where the officer exercises the duties of office, under the hand of the clerk and seal of the court; and

the clerk certifies that the officer or justice of the peace is, by the laws of the other state, duly empowered to administer oaths and affirmations and to take affidavits, the affidavit is sufficiently authenticated and may be received and used in any Indiana court.

Sec. 8. Exemplifications or copies of records, records of deeds other instruments, office books, parts of office books, and official bonds that are kept in any public office in Indiana shall be proved or admitted as legal evidence in any court or office in Indiana:

(1) by the attestation of the custodian of the records, books, deeds, other instruments, or official bonds that the copies are true and complete copies of the records, bonds, instruments, books, bonds, or parts of the records, books, deeds, other instruments, or official bonds in the custodian's custody; and

(2) by:

(A) the annexation by the custodian of the seal of office of the custodian if there is a seal; or,

(B) if there is no official seal, by the attachment to the attestation described in subdivision (1) of the certificate of the clerk and the seal of the circuit or superior court of the proper county where the custodian resides, that the attestation is made by the proper officer.

Chapter 2. Depositions as Evidence

C o p y

Sec. 1. (a) A deposition taken and filed for the purpose of perpetuating testimony may, at any time before or after the commencement of an action, in anticipation of which the deposition may have been taken, be published by order of the court in the office of the clerk in which the order was filed, on the motion of any person or party interested in the preservation of the testimony.

(b) The court shall direct the deposition, with all the accompanying affidavits, orders, notices, and other documents, to be entered of record in the order book of the court, at the costs of the party making the motion. The record must contain a statement or recital of the date of the filing of the deposition.

Sec. 2. The record of any deposition recorded under the provisions of section 1 of this chapter (or IC 34-1-16-1 before its repeal), and copies of the record, duly certified, may be used as evidence, whenever and wherever the original deposition might be used.

Chapter 3. Handwriting Evidence

Sec. 1. In a proceeding before a court or judicial officer of Indiana in which the genuineness of the handwriting of any person is involved, any admitted or proved handwriting of the person is competent evidence as a basis for comparison by:

(1) witnesses; or

(2) the jury, court, or officer conducting the proceedings;

to prove or disprove the genuineness of the handwriting.

Chapter 4. Official Finding of Death, Missing Person, or Other Status Issued by United States Officers

Sec. 1. A written finding of presumed death made by an officer or employee of the United States authorized to make such finding under:

(1) the federal Missing Persons Act (50 U.S.C. App. 1001-17), before its repeal September 6, 1966;

(2) 5 U.S.C. 5565 to 5567; or

(3) 37 U.S.C. 555 to 557;

or a duly certified copy of such finding, shall be received in any court, office, or other place in Indiana as evidence of the death of the person found to be dead, and the date, circumstances and place of the person's disappearance.

Sec. 2. An official written report or record, or a duly certified copy of a record or report:

(1) that states that a person is:

(A) missing;

Copy

(B) missing in action;
(C) interned in a neutral country;
(D) beleaguered, besieged, or captured by an enemy;
(E) dead; or
(F) alive; and

(2) that is made by any officer or employee of the United States authorized by the statute referred to in section 1 of this chapter or by any other law of the United States to make such a report or record;

shall be received in any court, office, or other place in Indiana as evidence that the person is missing, missing in action, interned in a neutral country, beleaguered, besieged, or captured by an enemy, dead, or alive.

Sec. 3. For the purposes of sections 1 and 2 of this chapter, the following apply:

(1) Any finding, report, or record, or duly certified copy of a report or record, purporting to have been signed by an officer or employee of the United States described in section 1 or 2 of this chapter, shall prima facie be considered to have been signed and issued by the officer or employee pursuant to law.

(2) The person signing the finding, report, or record shall prima facie be considered to have acted within the scope of the person's authority.

(3) If a copy purports to have been certified by a person authorized by law to certify the copy, the certified copy shall be prima facie evidence of the person's authority to certify.

SECTION 34. IC 34-38 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 38. EVIDENCE: STATUTES AND LAWS

Chapter 1. Statutes and Laws of Indiana and the Northwest Territories

Sec. 1. The printed statute books of:

(1) Indiana;

(2) the late Territory of the United States North West of the River Ohio; and

(3) the territories of Indiana and Illinois;

purporting to be printed under the authority of the state or territory is evidence in all courts and places of the acts contained in the statute books.

C o p y

Sec. 2. The certificate of the secretary of state, under the seal of state, stating the time when any act or acts of the general assembly were deposited in:

(1) the secretary of state's office; or

(2) the office of the clerk of any circuit court in Indiana;

as appears on the certificate or receipt of the clerk, is admissible in all courts in Indiana as evidence of the facts stated in the secretary's certificate.

Chapter 2. Statutes and Laws of Other States and Countries

Sec. 1. (a) This section applies to the following:

(1) The printed statute books of the several states and territories of the United States, purporting to be printed under the authority of those states and territories.

(2) A copy of any statute or any part of a statute contained in a statute book described in subdivision (1) that is accompanied by the certificate of the secretary of state, under seal of the state, certifying that:

(A) the copy is complete and correct;

(B) the statute book from which the copy is taken is deposited in the office of the secretary or in the state library; and

(C) the secretary of state believes the book was received under the authority of the state or territory purporting to have enacted the statutes.

(b) A statute book, a copy of a statute, or a copy of part of a statute described in subsection (a) is presumptive evidence in all courts of public or private legislative acts of the state or territory purporting to have enacted the statute.

Sec. 2. Every act of the legislature of any state or territory of the United States, certified by the secretary, and having the seal of the state or territory affixed to the act, is considered authentic and shall receive full faith and credit when offered in evidence in any court in Indiana.

Sec. 3. The existence and tenor or effect of the laws of any foreign country may be proved as facts by parol evidence. However, if it appears that the law in question is contained in a written statute or code, the court may reject any evidence of the law that is not accompanied by a copy of the law as it appears in the written statute or code.

Chapter 3. Uniform Proof of Statutes Act

Sec. 1. Printed books or pamphlets purporting on their face to

C o p y

be the session or other statutes of any of the United States, a territory of the United States, or a foreign jurisdiction and to have been printed and published by the authority of the state, territory, or foreign jurisdiction, or proved to be commonly recognized in the courts of the state, territory or foreign jurisdiction, shall be received in Indiana courts as prima facie evidence of the statutes.

Sec. 2. This chapter shall be interpreted and construed as to effectuate its general purposes to make uniform the law of those states that enact it.

Sec. 3. This chapter may be cited as the Uniform Proof of Statutes Act.

Chapter 4. Uniform Judicial Notice of Foreign Law Act

Sec. 1. Every court in Indiana shall take judicial notice of the common law and statutes of every state, territory, and other jurisdiction of the United States.

Sec. 2. The court may inform itself of such laws in the manner as the court considers proper. The court may call upon counsel to aid the court in obtaining this information.

Sec. 3. The determination of these laws shall be made by the court and not by the jury, and is reviewable.

Sec. 4. Any party may also present to the trial court any admissible evidence of such laws, but, to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken of the evidence, reasonable notice shall be given to the adverse parties, either in the pleadings or otherwise.

Sec. 5. The law of a jurisdiction other than those referred to in section 1 of this chapter shall be an issue for the court, but shall not be subject to sections 1, 2, 3, and 4 of this chapter concerning judicial notice.

Sec. 6. This chapter shall be interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

Sec. 7. This chapter may be cited as the Uniform Judicial Notice of Foreign Law Act.

SECTION 35. IC 34-39 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 39. EVIDENCE: COURT DECISIONS AND RECORDS OF OTHER LEGAL PROCEEDINGS

Chapter 1. Published Decisions of the Supreme Court of Indiana

C o p y

Sec. 1. In a case in which a certified copy of a decision of the Indiana supreme court is competent evidence in any court of the state, the decisions of the supreme court:

(1) as published in official Indiana reports, as provided by Indiana laws; and

(2) when properly identified by parol or other evidence;

may be admitted into evidence in any court.

Chapter 2. Record of Judgment or Proceeding

Sec. 1. In a case where a complete record is dispensed with, the production of:

(1) the papers and entries relating to the case; and

(2) all transcripts of the case;

certified and attested with the seal of the court as complete copies of all the papers and entries of the cause, shall have the same force in evidence as a transcript of a complete record of a case.

Chapter 3. Evidence of Previous Felony Conviction in a Civil Action

Sec. 1. (a) Evidence of a final judgment that:

(1) is entered after a trial or upon a plea of guilty; and

(2) adjudges a person guilty of a crime punishable by death or imprisonment of more than one (1) year;

shall be admissible in a civil action to prove any fact essential to sustaining the judgment, and is not excluded from admission as hearsay regardless of whether the declarant is available as a witness.

(b) The pendency of an appeal may be shown but does not affect the admissibility of evidence under this section.

Chapter 4. Records and Proceedings in Foreign Jurisdictions

Sec. 1. Copies of the proceedings and judgments of any justice of the peace of any state or territory of the United States or of the District of Columbia:

(1) certified by the hand and seal of:

(A) the justice before whom the proceedings were held or judgments rendered; or

(B) the justice's successor in office, or other justices having legal custody of the proceedings or judgments;

that the copies are true and complete copies of the proceedings or judgments; and

(2) accompanied by the certificate of the clerk or prothonotary of any court of record of the county or district where the justice holds office, certifying under the seal of the

Copy

court that the justice was duly commissioned and qualified to act as a justice at the time:

(A) the proceedings were held or the judgments rendered; and

(B) the copy was taken;

are admissible as evidence in any court in Indiana.

Sec. 2. The unwritten or common law of any other of the United States or of the territories of the United States may be proved as facts by parol evidence. The books of reports of cases adjudged in the courts of other states or territories may also be admitted in evidence of the unwritten or common law.

Sec. 3. (a) The records and judicial proceedings of the several courts of record of or within the United States or the territories of the United States shall be admitted in Indiana courts as evidence when authenticated by attestation or certificate of the clerk or prothonotary, with the seal of the court annexed, together with the seal of the chief justice or one (1) or more of the judges, or the presiding magistrate of the court, that:

(1) the person who signed the attestation or certificate was, at the time of subscribing it, the clerk or prothonotary of the court; and

(2) the attestation is in due form of law.

(b) Records and judicial proceedings that have been authenticated as described in subsection (a) shall have full faith and credit given to them in any court in Indiana as by law or usage they have in the courts in which they originated.

SECTION 36. IC 34-40 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 40. EVIDENCE: RECORDS OF PUBLIC AGENCIES

Chapter 1. Prima Facie Proof of Lack of Records or Entry in Records Kept in Public Offices

Sec. 1. (a) This chapter applies to civil proceedings in which a party seeks to prove the lack of a record or entry in a record kept in a public office.

(b) This chapter does not apply to any criminal proceedings.

Sec. 2. (a) Whenever a record or book kept in a public office of this state or a political subdivision of this state is admissible for any purpose as evidence in:

(1) a civil proceeding in any court of this state; or

Copy

(2) a hearing or determination before a board, commission, or officer of this state, or a political subdivision of this state;

a written statement that meets the requirements of subsection (b), is admissible in evidence as prima facie proof of the lack of record or entry.

(b) The statement described in subsection (a) must:

(1) be signed by:

(A) an officer or person who has custody of official records or books; or

(B) a deputy of the officer or person described in clause (A);

(2) state that, after diligent search no record or entry of a specified tenor is found to exist in the records of the office of the officer or person described in subdivision (1)(A); and

(3) include the seal of the office, if there is a seal.

Sec. 3. (a) Proof of the lack of a record or entry as provided in section 2 of this chapter does not prevent the proof of:

(1) an official record or book; or

(2) the lack of an entry in an official record or book;

by any method authorized by an applicable statute, the Indiana rules of evidence, or at common law.

(b) This chapter shall be considered and construed as:

(1) being supplemental to other applicable statutes, the Indiana rules of evidence, and common law; and

(2) giving an additional means of proof of the lack of an entry.

Chapter 2. Records of the Worker's Compensation Board

Sec. 1. Copies of:

(1) all papers filed with; and

(2) all records, exhibits, awards, and orders made by;

the worker's compensation board, when certified by the secretary of the board to be true and complete copies, are competent evidence in the several courts of record in Indiana in all cases in which the original papers, records, awards, exhibits, and orders would be competent evidence.

Chapter 3. Schedules and Other Records Filed with the Interstate Commerce Commission or Its Successor Agency, or the Utility Regulatory Commission

Sec. 1. Printed copies of schedules, classifications and tariffs of rates, fares and charges, and supplements that:

(1) are filed with:

Copy

(A) the Interstate Commerce Commission or its successor agency; or

(B) the utility regulatory commission; and

(2) show:

(A) an Interstate Commerce Commission (or its successor agency) or utility regulatory commission number, which may be stated in abbreviated form, as I.C.C. or IRC No. _____; and

(B) an effective date;

are presumed to be correct copies of the original schedules, classifications, tariffs and supplements on file with the Interstate Commerce Commission (or its successor agency) or the utility regulatory commission and shall be received as good and sufficient evidence in civil actions, without certification, in any court of this state to prove the schedules, classifications, tariffs, and supplements.

Chapter 4. Prima Facie Evidence of Ownership of Motor Vehicle

Sec. 1. In a civil proceeding, a certified copy of a certificate of title is prima facie evidence of the ownership of a motor vehicle.

SECTION 37. IC 34-41 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 41. EVIDENCE: REAL ESTATE RECORDS

Chapter 1. Deeds and Other Real Estate Records

Sec. 1. Admission of a copy of a deed is governed by IC 34-37-1-8.

Sec. 2. The circumstances under which seals are required on deeds and other instruments conveying land are governed by IC 32-2-5-1 and IC 34-37-1.

Sec. 3. (a) This section applies to the following documents kept at any land office of the United States located in Indiana or at any office for the sale of canal or Michigan road lands:

(1) The register, catalog, tractbook, platbook, and description of lands.

(2) Copies of documents described in subdivision (1) that are duly certified as true and complete by the proper custodian of the document.

(3) Copies of documents described in subdivision (1) that are:

(A) duly certified by the commissioner of the department of administration as true and complete

Copy

copies from the original documents, or from copies of the original documents; and

(B) legally deposited in the land office division of the department of administration.

(b) Documents described in subsection (a) are admissible in evidence in civil actions in all courts in Indiana, and are prima facie evidence of the truth of their contents.

Sec. 4. Every certificate of purchase at a land office of the United States is evidence of legal title to the land described in the certificate.

Sec. 5. (a) The:

(1) register of the sales of the Michigan road lands located in the Indiana state archives, commission on public records; and

(2) certified copies of any entry in the register under the seal of Indiana;

are admissible in evidence in all courts and places.

(b) The register, or a certified copy of the entry of the sale of a tract of land described in the register, by any person named in the register as the purchaser of the land, is prima facie evidence that:

(1) the person designated in the register was the purchaser of the land; and

(2) the title to the land has been conveyed by the state to the purchaser in fee simple.

Sec. 6. The following documents are admissible in evidence in all courts and places, with the same force and effect as if the original were produced:

(1) The record of all:

(A) patents;

(B) certificates of purchase; and

(C) other evidence in writing of the sale of real estate;

whether issued by the United States or this state, or made by any person or corporation.

(2) All duly certified copies of the record of the documents described in subdivision (1);

Chapter 2. Recorded Patents Conveying Real Estate

Sec. 1. All:

(1) patents issued by the United States or by the state of Indiana conveying real estate in Indiana; and

Copy

(2) the records of those patents that have been duly recorded;

shall be taken and received as competent evidence in all courts in Indiana.

Sec. 2. All patents described in section 1 of this chapter that have not been recorded may be recorded as other deeds and conveyances are recorded by law. That record shall be competent evidence in all Indiana courts.

Chapter 3. General Index as Evidence of Deeds and Mortgages Lost or Destroyed

Sec. 1. This chapter applies when a deed or mortgage is recorded in the proper recorder's office of any county in Indiana and the record of the deed or mortgage is burned, lost, or destroyed.

Sec. 2. The general index of the record of an instrument described in section 1 of this chapter made:

(1) under law;

(2) in the handwriting of the county recorder; and

(3) at the date the general index was made in any county of the state;

is prima facie evidence of the proper execution and record of the deed or mortgage, as shown by the general index. However, this chapter shall not affect any litigation pending on March 6, 1883, in any of the courts of this state.

Chapter 4. Presumption of Validity of Record After Destruction of Deed

Sec. 1. This chapter applies when the record or any part of the record of any action, proceeding, order, judgment, or decree of any court in Indiana:

(1) in which title to real estate has been determined; or

(2) upon the authority of which any administrator's, executor's, guardian's, commissioner's, trustee's, receiver's or other deed of conveyance has been executed;

has been destroyed.

Sec. 2. When a record or part of a record described in section 1 of this chapter is destroyed, it shall be presumed that:

(1) the court proceedings by which the title to the real estate was established or the deed was executed and the record of which has been destroyed were in all things regular and legal; and

(2) the court making the record and rendering the judgment

Copy

or decree had jurisdiction of:

(A) the subject matter; and

(B) all the persons whose title the judgment, decree, or deed of conveyance assumes to determine or convey.

Sec. 3. In an action attacking the validity of:

(1) the title of or conveyance of real estate; or

(2) any such record, judgment, or decree;

the record of which has been destroyed, the burden of proof is upon the person attacking the validity.

Sec. 4. An action attacking the validity of:

(1) an order, decree, or judgment described in section 1 of this chapter; or

(2) the title established by or resulting from an order, decree, or judgment described in section 1 of this chapter;

must be brought not later than one (1) year after the date of the destruction of the record.

Chapter 5. Records as Evidence of Conveyances After Destruction of Original by Fire

Sec. 1. (a) This section applies to a deed that has been executed:

(1) by an administrator, executor, guardian, sheriff, or commissioner of court; and

(2) by virtue of any:

(A) order, judgment, or decree of court;

(B) will; or

(C) sale made upon any execution issued on any judgment.

(b) If the record of an order, decree of court, will, execution, or judgment described in subsection (a) is destroyed by fire in the burning of a courthouse in Indiana, the deed or the record of the deed is prima facie evidence of:

(1) all the facts recited in the deed; and

(2) the regularity and sufficiency of all the proceedings, records, and papers in virtue of which the deed was executed.

Sec. 2. Whenever:

(1) any partition of real estate in any Indiana county has been made by judgment of any court in Indiana; and

(2) the records of the court in which the proceedings for partition were held have been destroyed by fire;

a certified transcript of the judgment of partition and any record of the judgment in the recorder's office of the county in which the

C o p y

real estate is situated is admissible in evidence, without the residue of the record of the proceedings. The certified transcript and any record of the judgment are prima facie evidence of the sufficiency and regularity of all the proceedings, records, and papers in the case in which the judgment was rendered.

Chapter 6. Misrecorded Instruments

Sec. 1. This chapter applies when the records kept in the recorder's offices of the various counties:

(1) contain records of instruments purporting to be deeds, mortgages, trust deeds, assignments, releases, or other instruments entitled to record by Indiana recording statutes; and

(2) the records of instruments described in subdivision (1) have been recorded in records other than those designated by statute for the recording of instruments.

Sec. 2. The records of instruments and certified copies of records of instruments described in section 1 of this chapter are admissible in evidence after the instruments have been recorded for twenty (20) years.

Chapter 7. Wabash and Erie Canal Certificates and Deeds

Sec. 1. (a) The following documents are admissible in evidence in all courts in Indiana in all cases in which, by law, duly made and completed deeds and records are legal evidence:

(1) Certificates issued before March 7, 1903, by the general land office and the United States Department of the Interior setting forth the list of lands in Indiana without the strip of five (5) miles on each side of the Wabash and Erie Canal, from Terre Haute to Evansville, in the Vincennes land district, selected by the state of Indiana, under the Act of Congress of March 3, 1845, 5 Stat. 731, to aid the state of Indiana in extending and completing the canal, on file on March 7, 1903, in the office of the auditor of state.

(2) All copies of the certificates described in subdivision (1), duly certified to by the auditor of state, (or by the commissioner of the department of administration after June 30, 1987).

(3) All records of certified copies recorded in the recorder's office of any county in which the lands described in the documents are situated.

(4) All certified copies made by the county recorder of the record in the recorder's office.

C o p y

(b) The documents described in subsection (a) are conclusive evidence of all matters recited in those documents.

Sec. 2. (a) The following documents are admissible in evidence in all courts in Indiana in all cases in which, by law, duly made and completed deeds and records are legal evidence:

(1) The copies of all deeds on file on March 7, 1903, in the office of the auditor of state made by the board of trustees of the Wabash and Erie Canal, in records kept by such boards of trustees and afterward filed in the land office division of the department of administration.

(2) All copies of deeds duly certified to by the auditor of state (or by the commissioner of the department of administration after June 30, 1987).

(3) All records of certified copies recorded in the recorder's office in any county in which any of the lands described in the documents are situated.

(4) All duly certified copies of any record described in subdivision (3) in the recorder's office.

(b) The documents described in subsection (a) are conclusive evidence of all matters recited in those documents.

Sec. 3. All copies duly certified by the auditor of state or the commissioner of the department of administration of:

(1) the certificate and list referred to in section 1 of this chapter; and

(2) the copies of deeds referred to in section 2 of this chapter; shall, upon presentation, be recorded in the recorder's office of any county in which the lands are situated. A record made as described in this section has the same force and effect as other records duly authorized and made in a recorder's office.

SECTION 38. IC 34-42 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 42. EVIDENCE: BUSINESS RECORDS

Chapter 1. Business Records

Sec. 1. A business may cause any record kept by the business to be recorded, copied, or reproduced by any photographic, photostatic, miniature photographic, or optical imaging process that correctly, accurately, and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material. The business may subsequently dispose of the original record.

C o p y

Sec. 2. (a) A photographic, photostatic, miniature photographic, or optical image copy or reproduction is considered an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence.

(b) A facsimile, exemplification, or certified copy of a photographic or optical image copy or reproduction shall, for all purposes, be considered a facsimile, an exemplification, or a certified copy of the original record.

Sec. 3. The acts and proceedings of corporations may be proved by a sworn copy of the record of such acts and proceedings. The oath must state that the transcript is a true and full copy of the original, and that the original has remained unaltered from its date, to the best of deponent's knowledge and belief. The sworn copies shall be received as evidence in all cases where the original would be evidence.

SECTION 39. IC 34-43 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 43. EVIDENCE: MEDICAL RECORDS

Chapter 1. Hospital Medical Records

Sec. 1. (a) The recording of hospital medical records by an electronic image system or reproduction process shall, for the purposes of this chapter, be considered a photographic process.

(b) The making or recording of hospital medical records by electronic data processing systems is an original written record. Printouts or other types of retrieved information in written or printed form shall be treated as original records in all courts or administrative agencies for the purpose of its admissibility into evidence.

Sec. 2. Entries made in a hospital medical record may be authenticated by showing that:

(1) the electronic data processing equipment is standard equipment in the hospital;

(2) the entries were made in the regular course of business at or reasonably near to the happening of the event or order, opinion, or other information recorded;

(3) the security of the entries from unauthorized access can be demonstrated through the use of audit trails; and

(4) records of all original entries and subsequent access to the information are maintained.

C o p y

Sec. 3. Hospitals using systems described in this chapter to keep their hospital medical records must do so in such a manner that permits the information to be made readily available, in written or printed form, to authorized persons only.

Sec. 4. Notwithstanding the hearsay rule, but subject to all other objections, photostatic copies of hospital medical records certified under section 7 of this chapter are admissible into evidence in any civil action or administrative proceeding without testimony from the custodian of the hospital medical records.

Sec. 5. When a:

(1) subpoena coupled with a request under Rule 34 of the Indiana Rules of Trial Procedure;

(2) subpoena coupled with a patient's written authorization under IC 34-6-2-15(2) (or IC 34-3-15.5-4 before its repeal); or

(3) court order;

requiring the production of a hospital medical record is served upon any hospital employee, the hospital employee with custody of the original hospital medical record may elect, instead of personally appearing and producing the original hospital medical record, to furnish the requesting party or the party's attorney with a photostatic copy of the hospital medical record, certified in accordance with section 7 of this chapter.

Sec. 6. If the hospital has elected to proceed under section 5 of this chapter, the hospital employee with custody of the original hospital medical records shall, upon receipt of payment for the reproduction of the hospital medical records, promptly deliver, by certified mail or personal delivery, copies of the hospital medical records specified in the subpoena to the person specified in the subpoena.

Sec. 7. The hospital employee's certification of the hospital medical records under section 5 of this chapter must:

(1) be signed by the hospital employee with custody of the hospital medical records; and

(2) include:

(A) the full name of the patient;

(B) the patient's medical record number;

(C) the number of pages in the hospital medical record; and

(D) a statement in substantially the following form:

"The copies of records for which this certification

Copy

is made are true and complete reproductions of the original or microfilmed hospital medical records that are housed in _____ (name of hospital). The original records were made in the regular course of business, and it was the regular course of _____ (name of hospital) to make the records at or near the time of the matter recorded. This certification is given under IC 34-43-1-5 by the custodian of the records instead of the custodian's personal appearance.".

Sec. 8. The hospital shall:

(1) place the copies of the hospital medical records in an envelope or wrapper; and

(2) write or type on the envelope or wrapper:

(A) the words "Confidential Medical Records";

(B) the title and number of the action or proceeding; and

(C) the name and business telephone number of the hospital employee making the certification.

Sec. 9. If the hospital does not have the hospital medical records or has only a part of the hospital medical records specified in the subpoena, the hospital employee with custody of the original hospital medical records shall:

(1) execute an affidavit, either notarized or by affirmation, stating that the hospital does not have or has only a part of the subpoenaed hospital medical records; and

(2) follow the procedures in sections 5 through 8 of this chapter in delivering the part of the hospital medical records that are in the hospital's possession.

Sec. 10. (a) This section applies to a medical record or part of a record that is confidential under 42 U.S.C. 290dd-3, 42 U.S.C. 290ee-3, or the regulations adopted under those statutes.

(b) The hospital employee with custody of the original medical records shall:

(1) execute a verified affidavit:

(A) identifying the record or part of the record that is confidential; and

(B) stating that the confidential record or part of the record will only be provided under the federal procedure for production of the record; and

(2) comply with sections 5 through 8 of this chapter in delivering the record or part of the record that is not

C o p y

confidential under subdivision (1).

Sec. 11. (a) This section applies to a medical record or part of a record concerning treatment for mental illness.

(b) The hospital employee with custody of the original medical records shall:

(1) execute a verified affidavit:

(A) identifying the record or part of a record that contains the confidential information concerning the treatment of mental illness; and

(B) stating that the confidential record or part of the record will only be provided under a court order after in camera review; and

(2) comply with sections 5 through 8 of this chapter in delivering the record or part of the record that is not confidential under subdivision (1).

Sec. 12. (a) This section applies to a medical record or part of a record that contains information that is confidential under IC 16-41-8-1.

(b) The hospital employee with custody of the original medical records shall:

(1) execute a verified affidavit:

(A) identifying the record or part of a record that contains the confidential information concerning a dangerous communicable disease; and

(B) stating that the confidential record or part of the record will only be provided under a court order after in camera review under IC 16-41-8-1; and

(2) comply with sections 5 through 8 of this chapter in delivering the record or part of the record that is not confidential under.

Sec. 13. The hospital may charge the fee permitted under IC 16-39-9 to cover the costs of reproducing the hospital medical records under section 5 of this chapter.

Sec. 14. (a) Whenever the copies of the hospital medical records are personally delivered, the person receiving the hospital medical records shall give a receipt to the person delivering them.

(b) The receipt required by subsection (a) must contain:

(1) the name of the hospital that sent the hospital medical records;

(2) the patient's full name;

(3) the patient's medical record number;

C o p y

(4) the date the copies of the hospital medical records were received; and

(5) the signature of the person who receives the hospital medical records.

Sec. 15. Whenever the copies of the hospital medical records are sent by certified mail, the receipt used by the United States Postal Service is sufficient to prove delivery and receipt of the hospital medical records.

Sec. 16. The party or party's attorney of record shall dispose of copies of hospital medical records obtained under this chapter in a manner that protects the confidentiality of the medical information in the copies.

Sec. 17. Upon motion by any party to an action or proceeding, or by the person from whom discovery is sought under this chapter, and for good cause shown, the court, hearing officer, or other body conducting the proceeding may make any order that justice requires.

SECTION 40. IC 34-44 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 44. EVIDENCE: DAMAGES

Chapter 1. Collateral Source Evidence

Sec. 1. The purpose of this chapter is:

(1) 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

(2) to provide that a prevailing party not recover more than once from all applicable sources for each item of loss sustained.

Sec. 2. In a personal injury or wrongful death action, the court shall allow the admission into evidence of:

(1) proof of collateral source payments other than:

(A) payments of life insurance or other death benefits;

(B) insurance benefits for which the plaintiff or members of the plaintiff's family have paid for directly; or

(C) payments made by:

(i) the state or the United States; or

(ii) any agency, instrumentality, or subdivision of the state or the United States;

that have been made before trial to a plaintiff as

Copy

compensation for the loss or injury for which the action is brought;

(2) 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

(3) 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.

Sec. 3. Proof of payments under section 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.

Chapter 2. Advance Payments in Personal Injury and Property Damage Cases

Sec. 1. (a) This chapter applies to an action brought to recover damages for:

(1) personal injuries;

(2) wrongful death; or

(3) property damage.

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

Sec. 2. (a) An advance payment shall not be construed as an admission of liability by any person.

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

Sec. 3. If it is determined that the plaintiff is entitled to recover in an action described in section 1 of this chapter:

(1) the defendant may introduce evidence of any advance payment made; and

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

Sec. 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.

SECTION 41. IC 34-45 IS ADDED TO THE INDIANA CODE

Copy

AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 45. WITNESSES

Chapter 1. General Requirements

Sec. 1. An attachment shall not issue against a witness who has been served a copy only of the summons until the party applying for the attachment or the party's attorney makes an affidavit in the court from which the party is seeking the attachment, stating that the party or the party's attorney has reasonable cause to believe, and does believe, that the witness against whom the summons issued has knowledge of the service of the summons by copy in time to have obeyed its command.

Sec. 2. Before testifying, every witness shall be sworn to testify the truth, the whole truth, and nothing but the truth. The mode of administering an oath must be the most consistent with and binding upon the conscience of the person to whom the oath may be administered.

Sec. 3. Every person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons, and who is a party to or a witness in a civil proceeding is entitled to an interpreter to assist the person throughout the proceeding.

Sec. 4. (a) An interpreter assisting a person under section 3 of this chapter may be:

(1) retained by the party or witness; or

(2) appointed by the court before which the action is pending.

(b) If an interpreter is appointed by the court, the fee for the services of the interpreter shall be:

(1) set by the court; and

(2) paid in a manner as the court may determine.

(c) The court may inquire into the qualifications and integrity of any interpreter, and may disqualify any person from serving as an interpreter.

Sec. 5. Every interpreter for another person who is either a party or a witness in a court proceeding described in this chapter shall take the following oath:

Do you solemnly swear (or affirm) that you will justly, truly, and impartially interpret to _____ the oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such

C o p y

questions, relative to the cause now under consideration before this court so help you God (or under the pains and penalties of perjury)?

Chapter 2. Competent and Incompetent Witnesses

Sec. 1. All persons, whether parties to or interested in the suit, are competent witnesses in a civil action or proceeding, except as otherwise provided.

Sec. 2. Except as otherwise provided by statute, persons who are insane at the time they are offered as witnesses are not competent witnesses, whether or not they have been adjudged insane.

Sec. 3. (a) This section applies in all suits by or against any person adjudged to be a mentally incompetent person or against the mentally incompetent person's guardian:

(1) founded upon any contract with, or demand against the protected person;

(2) to obtain possession of the real or personal property of the protected person; or

(3) to affect the protected person's property in any manner.

(b) Except as provided in subsection (c), neither party to the transaction is a competent witness to any matter that occurred before the appointment of the incompetent person's guardian.

(c) If the party to the transaction who is under guardianship is adjudged by the court to be competent to testify, the other party to the suit shall not be excluded.

(d) This section does not apply to a contract made or transaction had before February 27, 1903.

(e) Either party to a suit under this section has the right to call and examine an adverse party as a witness. The court may require a party to a suit or other person to testify. An abuse of discretion under this subsection is reviewable on appeal.

Sec. 4. (a) This section applies to suits or proceedings:

(1) in which an executor or administrator is a party;

(2) involving matters that occurred during the lifetime of the decedent; and

(3) where a judgment or allowance may be made or rendered for or against the estate represented by the executor or administrator.

(b) Except as provided in subsection (c), a person:

(1) who is a necessary party to the issue or record; and

(2) whose interest is adverse to the estate;

C o p y

is not a competent witness as to matters against the estate.

(c) In cases where:

(1) a deposition of the decedent was taken; or

(2) the decedent has previously testified as to the matter;

and the decedent's testimony or deposition can be used as evidence for the executor or administrator, the adverse party is a competent witness as to any matters embraced in the deposition or testimony.

Sec. 5. (a) This section applies to suits by or against heirs or devisees founded on a contract with or demand against an ancestor:

(1) to obtain title to or possession of property, real or personal, of, or in right of, the ancestor; or

(2) to affect property described in subdivision (1) in any manner.

(b) Neither party to a suit described in subsection (a) is a competent witness as to any matter that occurred before the death of the ancestor.

Sec. 6. (a) This section applies:

(1) when an agent of a decedent testifies on behalf of an executor, administrator, or heirs concerning any transaction the agent had:

(A) with a party to the suit, or the party's assignor or grantor; and

(B) in the absence of the decedent; or

(2) if any witness testifies on behalf of the executor, administrator, or heirs, to any conversation or admission of a party to the suit, or the party's assignor or grantor, made in the absence of the deceased.

(b) The party against whom the evidence is adduced, or the party's assignor or grantor, is competent to testify concerning the matters described in subsection (a).

Sec. 7. (a) Except as provided in subsection (b), a person who acted as an agent in the making or continuing of a contract with any person who has died, is not a competent witness, in any suit upon or involving the contract, as to matters occurring before the death of the decedent, on behalf of the principal to the contract, against the legal representatives or heirs of the decedent.

(b) If the person is called by the decedent's heirs or legal representatives, the person is a competent witness, as to matters about which the person is interrogated by the heirs or representatives.

C o p y

Sec. 8. If the defendant in a case:

(1) is charged with unlawfully taking or detaining personal property or having done damage to personal property; and

(2) defends the charge in the defendant's pleading by asserting that the defendant is the executor, administrator, guardian, or heir, and, as such, has taken or detained the property or has done the acts charged;

a person is not competent to testify who would not be competent if the defendant were the complainant. However, when the person complaining cannot testify, the defendant shall also be excluded.

Sec. 9. When the husband or wife is a party, and not a competent witness in his or her own behalf, the other shall also be excluded.

Sec. 10. (a) In all cases in which:

(1) executors, administrators, heirs, or devisees are parties; and

(2) one (1) of the parties to the suit is incompetent under this chapter to testify against the parties described in subdivision (1);

the assignor or grantor of a party making the assignment or grant voluntarily shall be considered a party adverse to the executor or administrator, heir, or devisee.

(b) However, in all cases referred to in sections 4 through 9 of this chapter, any party to the suit has the right to call and examine any adverse party as a witness.

(c) The court may require any party to a suit or other person to testify. Any abuse of the court's discretion under this subsection is reviewable on appeal.

Sec. 11. In all actions by an executor or administrator, on contracts assigned to the decedent, when the assignor is alive and a competent witness in the cause:

(1) the executor or administrator; and

(2) the defendant or defendants;

are competent witnesses as to all matters that occurred between the assignors and the defendant or defendants before notice of the assignment.

Sec. 12. Lack of belief in a supreme being or in the Christian religion does not render a witness incompetent. However, lack of religious belief may be shown upon the trial. In all questions affecting the credibility of a witness, the general moral character of the witness may be given in evidence.

C o p y

Sec. 13. Any fact that might have been shown to render a witness incompetent may be shown to affect the credibility of the witness.

Chapter 3. Expert Witnesses

Sec. 1. This chapter applies to a witness who is an expert in any art, science, trade, profession or mystery.

Sec. 2. A witness described in section 1 of this chapter may be compelled to appear and testify in:

(1) any court in the county of the residence of the witness; or

(2) any court in an adjoining county;

to an opinion as an expert in relation to any matter whenever the opinion is material evidence relevant to an issue on trial before a court or jury.

Sec. 3. A witness compelled to appear and testify under section 2 of this chapter may be compelled to do so without payment or tender of compensation other than the per diem and mileage allowed by law to other witnesses.

Sec. 4. The same rules and regulations apply to witnesses described in section 1 of this chapter as apply to a witness who can be compelled to appear and testify to knowledge the witness has of facts relevant to the same issue.

Chapter 4. Impeachment of Witnesses

Sec. 1. (a) Except as provided in subsections (b) and (c), the party producing a witness shall not be allowed to impeach the credibility of the witness by evidence of bad character.

(b) The party producing a witness may impeach the credibility of the witness by evidence of bad character if:

(1) it was indispensable that the party produce the witness; or

(2) it is a case of manifest surprise.

(c) In all cases, the party producing the witness may contradict the witness:

(1) by other evidence; and

(2) by showing that the witness has made statements different from the present testimony of the witness.

Sec. 2. (a) This section applies when a witness, whether a party to the record or not:

(1) is cross-examined to lay the foundation for impeachment of the witness by proof of an act or statement inconsistent with the testimony of the witness;

(2) is asked if the witness did not do the act or make the

C o p y

statement; and

(3) answers that the witness does not recollect having done the act or made the statement.

(b) The party laying the foundation for impeachment has the right to introduce evidence of the act or statement in the same manner as if the witness had answered that the witness had not done the act or made the statement.

SECTION 42. IC 34-46 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 46. PRIVILEGED COMMUNICATIONS

Chapter 1. Scope of Article

Sec. 1. This article is not intended to be an exhaustive compilation of all privileged communications recognized in the Indiana Code. In addition to the privileged communications that are recognized in this article, other privileged communications may be recognized in other provisions of the Indiana Code.

Sec. 2. As an aid to the reader, an effort has been made to list other locations in the Indiana Code where privileged communications are recognized. This list provided in IC 34-46-2 does not take the place of traditional legal research.

Chapter 2. Statutes Outside of Title 34 That Confer Privilege

Sec. 1. (a) This chapter contains a list of references to other privileged communication provisions outside IC 34.

(b) Listing in this chapter does not equate to the creation of a privilege, and failure to be listed in this chapter does not negate a privileged communication recognized elsewhere in the Indiana Code.

(c) Many of the statutes granting privilege also contain exceptions to the privilege granted and therefore each statute must be consulted directly to determine the extent of the privilege provided.

Sec. 2. IC 4-21.5-3.5-18 (Concerning confidential statement to mediator in administrative proceeding).

Sec. 3. IC 4-21.5-3.5-27 (Concerning matters discussed during mediation).

Sec. 4. IC 9-30-6-6 (Concerning chemical tests on blood, urine, or other bodily substance).

Sec. 5. IC 12-10-3-11 (Concerning reports to adult protective services).

Sec. 6. IC 13-28-4-1 (Concerning environmental audit reports).

C o p y

Sec. 7. IC 14-34-9-4 (Concerning coal exploration trade secrets, and commercial or financial information).

Sec. 8. IC 16-37-4-4 (Concerning medical data regarding cause of death).

Sec. 9. IC 16-41-2-4 (Concerning reports of communicable or dangerous diseases).

Sec. 10. IC 16-41-7-3 (Concerning warning by physician of dangerous communicable disease).

Sec. 11. IC 16-41-11-10 (Concerning expert review panels who consult and advise health care workers who have communicable diseases).

Sec. 12. IC 20-1-1.9-6 (Concerning information school psychologist acquires in professional capacity).

Sec. 13. IC 20-6.1-6-15 (Concerning communications made to a school counselor).

Sec. 14. IC 20-8.1-12-2 and 20-8.1-12-4 (Concerning reports of elementary and secondary school students suspected of alcohol and controlled substance violations).

Sec. 15. IC 22-4-19-6 (Concerning department of workforce development information).

Sec. 16. IC 23-1.5-2-7 (Concerning communications involving a professional corporation or its employees).

Sec. 17. IC 25-2.1-5-8 (Concerning proceedings, records, and work papers of a quality review committee that conducts a quality review of an accounting firm).

Sec. 18. IC 25-2.1-14-1 (Concerning information relative to and in connection with any professional service as a certified public accountant, public accountant, or accounting practitioner).

Sec. 19. IC 25-23-1-31 (Concerning information pertaining to an impaired registered nurse or licensed practical nurse).

Sec. 20. IC 25-23.6-6-1 (Concerning matters communicated to a social worker or other counselor).

Sec. 21. IC 25-26-13-4.5 (Concerning information pertaining to an impaired pharmacist).

Sec. 22. IC 25-26-13-15 (Concerning pharmacist's knowledge of prescriptions, drug orders, records, and patient information).

Sec. 23. IC 25-33-1-17 (Concerning information communicated to a psychologist in the psychologist's professional capacity).

Sec. 24. IC 27-1-15.5-11.1 (Concerning certain reports provided to the insurance commissioner by insurance agents).

Sec. 25. IC 27-1-23-6 (Concerning records of certain insurers

C o p y

obtained through examination or investigation, registration statement of members of an insurance holding company, and other information filed with the insurance commissioner).

Sec. 26. IC 31-32-11-1 (Concerning the abrogation of privileged communications in child abuse and neglect proceedings).

Sec. 27. IC 31-11-5-6 (Concerning court orders requiring issuance of marriage license, memoranda, and related communications).

Sec. 28. IC 31-18-3-16(h) (Concerning disclosure of spousal communications in proceedings under Uniform Interstate Family Support Act).

Sec. 29. IC 33-2.1-5-3 and IC 33-2.1-5-4 (Concerning papers filed with and testimony before the commission on judicial qualifications).

Sec. 30. IC 33-2.1-6-6 and 33-2.1-6-7 (Concerning papers filed with and testimony before the commission on judicial qualifications).

Sec. 30.4. IC 33-5-40-53 (Concerning papers filed and testimony before the commission on judicial qualifications for St. Joseph Superior Court).

Sec. 31. IC 35-37-6-9 (Concerning communications between a victim and a victim's counselor, and the identity of facility providing temporary emergency shelter to a victim).

Sec. 32. IC 35-44-3-4 (Concerning inapplicability of obstruction of justice provisions for persons who qualify for certain privileges).

Chapter 3. Privileges of Attorneys, Physicians, Clergymen, and Spouses

Sec. 1. Except as otherwise provided by statute, the following persons shall not be required to testify regarding the following communications:

(1) Attorneys, as to confidential communications made to them in the course of their professional business, and as to advice given in such cases.

(2) Physicians, as to matters communicated to them by patients, in the course of their professional business, or advice given in such cases.

(3) Clergymen, as to the following confessions, admissions, or confidential communications:

(A) Confessions or admissions made to a clergyman in the course of discipline enjoined by the clergyman's

Copy

church.

(B) A confidential communication made to a clergyman in the clergyman's professional character as a spiritual adviser or counselor.

(4) Husband and wife, as to communications made to each other.

Sec. 2. When the husband or wife is a party, and not required to testify in his or her own behalf, the person's spouse shall also be excluded.

Chapter 4. Journalist's Privilege Against Disclosure of Information Source

Sec. 1. This chapter applies to the following persons:

(1) any person connected with, or any person who has been connected with or employed by:

(A) a newspaper or other periodical issued at regular intervals and having a general circulation; or

(B) a recognized press association or wire service;

as a bona fide owner, editorial or reportorial employee, who receives or has received income from legitimate gathering, writing, editing and interpretation of news; and

(2) any person connected with a licensed radio or television station as owner, official, or as an editorial or reportorial employee who receives or has received income from legitimate gathering, writing, editing, interpreting, announcing or broadcasting of news.

Sec. 2. A person described in section 1 of this chapter shall not be compelled to disclose in any legal proceedings or elsewhere the source of any information procured or obtained in the course of the person's employment or representation of a newspaper, periodical, press association, radio station, television station, or wire service, whether:

(1) published or not published:

(A) in the newspaper or periodical; or

(B) by the press association or wire service; or

(2) broadcast or not broadcast by the radio station or television station;

by which the person is employed.

Chapter 5. Privileged Communications of Mental Health Service Providers

Sec. 1. Privileged communications of mental health service providers are governed by IC 34-30-16.

C o p y

Chapter 6. Privileged Communications of Health Care Provider Peer Review Committees

Sec. 1. Privileged communications of health care provider peer review committees are governed by IC 34-30-15.

SECTION 43. IC 34-47 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 47. CONTEMPT OF COURT

Chapter 1. Applicability

Sec. 1. (a) Except as provided in subsection (b), (c), and IC 34-47-3-8, IC 34-47-2 and IC 34-47-3 apply to all proceedings for contempt in all courts of record in Indiana except the supreme court.

(b) Nothing in IC 34-47-2 and IC 34-47-3 shall be construed or held to embrace, limit, or control any proceeding against any officer or party for contempt for the enforcement of civil rights and remedies.

(c) IC 34-47-2 and IC 34-47-3 do not apply to any case where any person has been personally served with notice to appear and testify as a witness in any court in Indiana in any civil or criminal case. A court may proceed against a person who fails to appear as a witness for contempt of court:

(1) by attachment; and

(2) as though IC 34-47-2 and IC 34-47-3 were not in force.

The proceeding against an absent witness by attachment shall not cause a continuance of the case in which the witness was subpoenaed to testify.

Chapter 2. Direct Contempt of Court

Sec. 1. (a) Every person who disturbs the business and proceedings of a court:

(1) by creating any noise or confusion;

(2) in a court of record; and

(3) while the court is open for and engaged in the transaction of business;

is considered guilty of a direct contempt of court.

(b) This section applies to a disturbance caused:

(1) by the commission of a felony, a misdemeanor, or an other unlawful act;

(2) by talking, moving about, or by signs, or gestures; or

(3) in any other manner.

Sec. 2. Every person who:

Copy

(1) is sworn to testify as a witness, in any trial or proceeding, in any court of record, and refuses to testify in the trial or proceeding;

(2) is required by any court to be sworn in any trial or proceeding, and refuses to take an oath or affirmation; or

(3) while upon the witness stand, is purposely so demeaning as to retard or disturb the proceedings of the court;

is considered guilty of a direct contempt of court.

Sec. 3. A person:

(1) who:

(A) offers, gives, or promises any reward to;

(B) threatens to assault or injure;

(C) assaults or beats; or

(D) in any other manner influences, intimidates, or attempts to influence;

any witness to give or abstain from giving testimony in any case, or to abstain from attending as a witness in any case;

(2) who does any act to put a witness in fear, on account of any testimony that the witness may have given; or

(3) who, on account of any testimony, injures or threatens to injure a witness;

is guilty of a direct contempt of the court in which the witness may be called to testify, if the acts are done in the presence of the court.

Sec. 4. (a) Except as provided in subsection (b), when a person is arraigned for a direct contempt in any court of record in Indiana, no affidavit, charge in writing, or complaint is required to be filed against the person.

(b) The court shall distinctly state the act, words, signs, gestures, or other conduct of the defendant that is alleged to constitute the contempt. The statement shall be reduced to writing either by:

(1) the judge making the statement; or

(2) by a reporter authorized by the judge to take down the statement when the statement is made.

(c) A statement described in subsection (b), shall be substantially set forth in the order of the court on the contempt, together with any statement made in explanation, extenuation, or denial of the contempt, which the defendant may make in response to the judge's statement.

(d) The court shall pronounce judgment upon the statements set forth under subsections (b) and (c), either:

Copy

(1) acquitting and discharging the defendant; or

(2) inflicting such punishment upon the defendant as may be consistent with this chapter.

Sec. 5. (a) If the defendant is found guilty of direct contempt under section 4 of this chapter (or IC 34-4-7-7 before its repeal), the defendant has the right to appeal the judgment of the court.

(b) In all cases where the defendant may be adjudged to pay a fine of at least fifty dollars ($50), or to be imprisoned for contempt, the defendant has the right, either before or after the payment of the fine, or undergoing the imprisonment, to move the court to reconsider its opinion and judgment of the case upon:

(1) the facts before the court; or

(2) the affidavits of any or all persons who were actually present and heard or saw the conduct that was alleged to have constituted the contempt.

(c) If the defendant files a motion under subsection (b) and fails to present the affidavit of every person present in support of the motion, the court may direct the affidavits of all persons:

(1) who were present; and

(2) whose affidavits the defendant may have failed to procure;

to be procured.

(d) The defendant may move the court for:

(1) a new trial; and

(2) recision of the court's judgment against the defendant;

upon all affidavits and the original statements of the court, and the defendant, concerning the contempt.

(e) If the court overrules a motion filed by the defendant under subsection (d), the defendant may appeal as in other criminal actions.

(f) In all cases described in this section, an appeal may be made to the court of appeals.

Chapter 3. Indirect Contempt of Court

Sec. 1. A person who is guilty of any willful disobedience of any process, or any order lawfully issued:

(1) by any court of record, or by the proper officer of the court;

(2) under the authority of law, or the direction of the court; and

(3) after the process or order has been served upon the person;

Copy

is guilty of an indirect contempt of the court that issued the process or order.

Sec. 2. A person who willfully resists, hinders, or delays the execution of any lawful process, or order of any court of record is guilty of an indirect contempt of court.

Sec. 3. A person:

(1) who:

(A) offers, gives, or promises any reward to;

(B) threatens to assault or injure;

(C) assaults or beats; or

(D) in any other manner influences, intimidates, or attempts to influence;

any witness to give or abstain from giving testimony in any case, or to abstain from attending as a witness in any case;

(2) who does any act to put a witness in fear, on account of any testimony that the witness may have given; or

(3) who, on account of any testimony, injures or threatens to injure a witness;

is guilty of an indirect contempt of the court in which such witness may be called to testify, if the acts are done elsewhere, out of the presence of the court.

Sec. 4. (a) A person who falsely makes, utters, or publishes any false or grossly inaccurate report of any case, trial, or proceeding, or part of any case, trial, or proceeding is considered guilty of an indirect contempt of the court in which the case, trial, or proceeding was instituted, held, or determined, if made at any time:

(1) after the proceeding commenced;

(2) while the proceeding is pending;

(3) while the court has jurisdiction; and

(4) before the proceeding is fully determined and ended.

(b) If a report described in subsection (a) is made:

(1) pending the case, trial, or proceeding; and

(2) concerning any ruling or order of the court;

the person is considered guilty of an indirect contempt of the court making the ruling or order.

Sec. 5. (a) In all cases of indirect contempts, the person charged with indirect contempt is entitled:

(1) before answering the charge; or

(2) being punished for the contempt;

to be served with a rule of the court against which the contempt

Copy

was alleged to have been committed.

(b) The rule to show cause must:

(1) clearly and distinctly set forth the facts that are alleged to constitute the contempt;

(2) specify the time and place of the facts with reasonable certainty, as to inform the defendant of the nature and circumstances of the charge against the defendant; and

(3) specify a time and place at which the defendant is required to show cause, in the court, why the defendant should not be attached and punished for such contempt.

(c) The court shall, on proper showing, extend the time provided under subsection (b)(3) to give the defendant a reasonable and just opportunity to be purged of the contempt.

(d) A rule provided for under subsection (b) may not issue until the facts alleged to constitute the contempt have been:

(1) brought to the knowledge of the court by an information; and

(2) duly verified by the oath of affirmation of some officers of the court or other responsible person.

Sec. 6. (a) If the defendant:

(1) fails to appear in court at the time and place specified in the rule provided for in section 5 of this chapter, to answer the rule; or

(2) appears in court, but fails or refuses to answer concerning the alleged contempt;

the court may proceed at once, and without any further delay, to attach and punish the defendant for contempt.

(b) If the defendant answers to the facts set forth in the rule by:

(1) showing that, even if the facts set forth are all true, they do not constitute a contempt of the court; or

(2) denying, or explaining, or confessing and avoiding the facts, so as to show that no contempt was intended;

the court shall acquit and discharge the defendant.

(c) If the defendant's answer to the rule does not sufficiently deny, explain, or avoid the facts set forth in the rule, so as to show that no contempt has been committed, the court may proceed to attach and punish the defendant for the contempt, by:

(1) fine;

(2) imprisonment; or

(3) both fine and imprisonment.

C o p y

(d) A defendant who appeared to respond to the rule may appeal to the court of appeals in the same manner as in cases of direct contempt.

Sec. 7. (a) Except as provided in subsection (b), this section applies to all cases of indirect contempt of courts of this state, other than the supreme court or the court of appeals.

(b) This section does not apply to indirect contempts growing out of willfully resisting, hindering, delaying, or disobeying any lawful process or order of court.

(c) The court against which the alleged contempt was committed shall, at the time the rule to show cause is issued, nominate three (3) competent and disinterested persons, each of whom shall be an available judge or member of the Indiana bar, to be submitted to the parties in the action, from which the state, by the prosecuting attorney, and the defendant shall immediately strike off one (1) name each.

(d) The court shall appoint the person who remains unchallenged under subsection (c) to preside in the cause as special judge.

(e) If the prosecuting attorney, the defendant, or the defendant's attorney refuse to strike off the names under subsection (c), then the clerk of the court shall strike for them.

(f) If the person appointed under subsection (d) is an attorney and not a regular judge, and if that person consents to serve, the person shall be qualified as other judges. The person's appointment and oath shall be filed with the clerk and entered on the order book of the court. The appointed person may hear and determine the cause until the cause is disposed of.

Sec. 8. (a) Except as provided in subsection (b), this section applies to all cases of indirect contempt of the supreme court or the court of appeals.

(b) This section does not apply to indirect contempt growing out of willfully resisting, hindering, delaying, or disobeying any lawful process or order of court.

(c) The court against which the alleged contempt has been committed shall, at the time the rule to show cause is issued, nominate three (3) competent and disinterested persons, each of whom shall be an available judge or member of the Indiana bar, to be submitted to the parties in the action, from which the state, by the attorney general, and the defendant shall immediately strike off one (1) name each.

C o p y

(d) The court shall appoint the person who remains unchallenged under subsection (c) a special commissioner of the court, who shall:

(1) hear the evidence in the cause; and

(2) report in writing to the court:

(A) findings as to the guilt or innocence of the cited person; and

(B) recommendations for punishment of the cited person, if the person is found guilty of contempt as charged.

(e) A report prepared under subsection (d) shall be filed with the clerk and entered on the minutes of the court.

(f) The appointed special commissioner shall qualify by accepting the appointment and taking the same oath as a regularly qualified judge, if the special commissioner is not a regularly qualified judge. The appointment and oath shall be filed with the clerk and entered on the minutes of the court.

(g) The special commissioner appointed under subsection (d):

(1) has full authority to examine the parties in the cause, upon oath, concerning all matters contained in the citation for contempt;

(2) may require the production of all books, writings, records, and other documents applicable;

(3) may examine under oath all witnesses produced by the parties and compel their attendance at the hearings of the cause; and

(4) may do all other acts and direct all other inquiries and proceedings in the matter necessary and proper to the justice and merits of the cause and the rights of the parties.

Chapter 4. Contempt Citations and Writs of Attachment

Sec. 1. (a) This section applies to any proceeding in any court of record and of original jurisdiction authorized or empowered by law to:

(1) punish for contempts of court; or

(2) enforce its orders by contempt proceedings;

whether the contempt proceedings are civil or criminal in nature.

(b) The court may order a citation issued to the sheriff of any county for service upon the person alleged to be guilty of contempt, or in violation of any order of the court to:

(1) appear before the court at the time fixed in the citation; and

Copy

(2) show cause why the person should not be punished for contempt of court.

(c) The citation shall be served by the sheriff to whom it is addressed in the same manner as summons is served in a civil proceeding and due return shall be made to the court issuing the citation.

Sec. 2. (a) For the purpose of procuring personal jurisdiction over a person who has allegedly violated a court order or who is otherwise in contempt of court, the court may issue a writ of attachment of the body of the person.

(b) A writ of attachment issued under subsection (a) shall:

(1) be directed to a sheriff or assisting sheriff; and

(2) fix an amount of:

(A) bail, if the order that the person has allegedly violated does not concern a child support obligation; or

(B) escrow, if the order that the person has allegedly violated concerns a child support obligation.

(c) A sheriff or assisting sheriff who receives an order under this section shall immediately:

(1) serve the writ; and

(2) take the person into custody.

A sheriff may serve a writ of attachment and take the person into custody in any county.

(d) If an assisting sheriff takes a person into custody, the assisting sheriff shall notify the sheriff. The sheriff, after notification, shall immediately return the person to the county in which the writ was issued and take the person before the court that issued the writ. However, the sheriff may release the person:

(1) on bail as in criminal matters; or

(2) after any person has deposited the amount of escrow in accordance with subsection (e).

(e) The escrow shall be:

(1) deposited with the clerk of the court;

(2) an amount:

(A) fixed by the court; and

(B) not more than any delinquent child support allegedly owed by the person to another; and

(3) subject to a court ordered attachment for satisfaction of delinquent child support and interest under IC 31-14-12-1.

(f) All escrow money collected under this section (or IC 34-4-9-2.1 before its repeal) by the clerk of the court shall be

C o p y

deposited into a single account. The clerk shall:

(1) keep an accounting of all money transferred to the escrow account;

(2) issue a receipt to any person who transfers money to the clerk under this section; and

(3) transfer money from the escrow account only under an order from the court that issued the writ of attachment under subsection (a).

Sec. 3. This chapter shall be construed as supplemental to all laws:

(1) concerning contempts of courts and punishments for contempts of court; or

(2) providing for the enforcement of the lawful order of any such court.

SECTION 44. IC 34-48 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 48. RECEIVERSHIPS

Chapter 1. Appointment of Receiver

Sec. 1. A receiver may be appointed by the court in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim.

(2) In actions between partners, or persons jointly interested in any property or fund.

(3) In all actions when it is shown that the property, fund or rent, and profits in controversy, is in danger of being lost, removed, or materially injured.

(4) In actions in which a mortgagee seeks to foreclose a mortgage. However, upon motion by the mortgagee, the court shall appoint a receiver if, at the time the motion is filed, the property is not occupied by the owner as the owner's principal residence and:

(A) it appears that the property is in danger of being lost, removed, or materially injured;

(B) it appears that the property may not be sufficient to discharge the mortgaged debt;

(C) either the mortgagor or the owner of the property has agreed in the mortgage or in some other writing to the appointment of a receiver;

Copy

(D) a person not personally liable for the debt secured by the mortgage has, or is entitled to, possession of all or a portion of the property;

(E) the owner of the property is not personally liable for the debt secured by the mortgage; or

(F) all or any portion of the property is being, or is intended to be, leased for any purpose.

(5) When a corporation:

(A) has been dissolved;

(B) is insolvent;

(C) is in imminent danger of insolvency; or

(D) has forfeited its corporate rights.

(6) To protect or preserve, during the time allowed for redemption, any real estate or interest in real estate sold on execution or order of sale, and to secure rents and profits to the person entitled to the rents and profits

(7) In other cases as may be provided by law or where, in the discretion of the court, it may be necessary to secure ample justice to the parties.

Sec. 2. A court may not appoint:

(1) a party;

(2) an attorney representing a party; or

(3) another person interested in an action;

as a receiver in that action.

Sec. 3. Before beginning duties as a receiver, the receiver must:

(1) swear to perform the duties of a receiver faithfully; and

(2) with one (1) or more sureties, approved by the court or judge, execute a written undertaking, payable to such person as the court or the judge directs, to the effect that the receiver will:

(A) faithfully discharge the duties of receiver in the action; and

(B) obey the orders of the court or judge.

Sec. 4. When it is admitted by the pleading or examination of a party that the party has in the party's possession or under the party's control any money or other thing capable of delivery, which:

(1) is the subject of the litigation;

(2) is held by the party as trustee for another party; or

(3) belongs or is due to another party;

the court or the judge may order the money or thing to be

C o p y

deposited in court or with the clerk, or delivered to the other party, with or without security, subject to the further order of the court or the judge.

Sec. 5. Whenever, in the exercise of its authority, a court or judge:

(1) has ordered the deposit or delivery of money, or other thing; and

(2) the order is disobeyed;

the court or the judge, besides punishing the disobedience as contempt, may make an order requiring the sheriff to take the money or thing and deposit it or deliver it in conformity with the direction of the court or judge.

Sec. 6. Money deposited or paid into court or with the clerk in an action shall not be loaned out unless consent is obtained from all parties having an interest in or making claim to the money.

Sec. 7. The receiver may, under control of the court or the judge:

(1) bring and defend actions;

(2) take and keep possession of the property;

(3) receive rents; and

(4) collect debts;

in the receiver's own name, and generally to do such acts respecting the property as the court or judge may authorize.

Sec. 8. When the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim and may enforce the order by execution.

Sec. 9. Receivers shall not be appointed in any case until the adverse party has appeared or has had reasonable notice of the application for the appointment, except upon sufficient cause shown by affidavit.

Sec. 10. (a) In all cases commenced or pending in any Indiana court in which a receiver may be appointed or refused, the party aggrieved may, within ten (10) days after the court's decision, appeal the court's decision to the Supreme Court, without awaiting the final determination of the case.

(b) In cases where a receiver will be or has been appointed, upon the appellant filing of an appeal-bond:

(1) with sufficient surety;

(2) in the same amount as was required of the receiver; and

(3) conditioned for the due prosecution of the appeal, and the

Copy

payment of all costs or damages that may accrue to any officer or person because of the appeal;

the authority of the receiver shall be suspended until the final determination of the appeal.

Chapter 2. Proof of Appointment of Receivers Unnecessary

Sec. 1. In any suit or action by a receiver appointed by any court of record in Indiana, it is only necessary for the receiver, in the receiver's complaint or pleading, to state:

(1) the court;

(2) the cause of action in which the receiver was appointed; and

(3) the date on which the receiver was appointed.

Proof of the appointment is not required on the trial of the cause unless the appointment is specially denied, in addition to the general denial filed in the cause.

Chapter 3. Statement of Assets and Liabilities of Receiverships

Sec. 1. The clerk of the court of each county shall keep a record book suitable to enter and record statements of assets and liabilities.

Sec. 2. All claims against the assets in the hands of the receiver, which are filed with the receiver, shall be filed by the receiver with the clerk of the court in which the receivership is pending. The clerk shall record the claims with the statements under this chapter, resulting in a complete record of the assets and liabilities of the receivership.

Chapter 4. Accounting for Receiverships

Sec. 1. In all receiverships pending or begun in any court, the receiver, within such time as may be fixed by an order of the court in which the receivership is pending, shall file with the court an account or report in partial or final settlement of the liquidation or receivership proceedings.

Sec. 2. The account or report required by section 1 of this chapter must set forth all:

(1) receipts and disbursements to the date of the accounting; and

(2) other appropriate information relative to the:

(A) administration of the receivership;

(B) liquidation of the receivership; and

(C) declaration and payment of dividends.

Sec. 3. If an account is not filed within one (1) year from the date when the receiver took possession of the assets and effects of

C o p y

the receivership, any party interested may petition the court for an order requiring the filing of an account.

Sec. 4. (a) Except as provided by subsection (d), upon the filing of an account or report, the clerk of the court in which the receivership is pending shall give notice of the date the account or report is to be heard and determined by the court.

(b) The clerk shall give the notice required by subsection (a) by publication, once each week for three (3) successive weeks in two (2) newspapers of general circulation published or circulated within the county.

(c) The date in the notice that the account or report is to be heard and determined by the court shall be fixed not less than thirty (30) days after the date of the filing of the account or report.

(d) Publication is not required under this section if the receivership is ancillary to a mortgage foreclosure.

Sec. 5. (a) During the thirty (30) period described in section 4 of this chapter, any creditor, shareholder, or other interested party may file objections or exceptions in writing to the account or report.

(b) Any objections or exceptions to the matters and things contained in an account or report and to the receiver's acts reported in the report or account that are not filed within the thirty (30) day period described in section 4 of this chapter are forever barred for all purposes.

Sec. 6. At the expiration of the thirty (30) day period described in section 4 of this chapter, the court shall, without delay:

(1) proceed with the hearing and determination of the objections or exceptions;

(2) pass upon the account or report;

(3) order the payment of a partial or final dividend; and

(4) make other appropriate orders.

Chapter 5. Release and Discharge of Receiver and Surety Upon Approval of Report or Account

Sec. 1. The court's approval of a receiver's partial account or report, as provided in IC 34-48-4-1, releases and discharges the receiver and the surety on the receiver’s bond for all matters and things related or contained in the partial account or report.

Sec. 2. Upon the:

(1) court's approval of the receiver's final account or report, as provided in IC 34-48-4-1 and

(2) receiver's performance and compliance with the court's

C o p y

order made on the final report;

the receiver and the surety on the receiver's bond shall be fully and finally discharged, and the court shall declare the receivership estate finally settled and closed, subject to the right of appeal of the receiver or any creditor, shareholder, or other interested party who has filed objections or exceptions as provided in IC 34-48-4-5.

Chapter 6. Change of Venue or Judge in Proceeding Involving a Receivership Estate

Sec. 1. This chapter applies to any action, proceeding, or matter relating to or involving a receivership estate,.

Sec. 2. Except as provided in sections 3 and 4 of this chapter, any party to a proceeding described in section 1 of this chapter is entitled to a change of judge or a change of venue from the county for the same reasons and upon the same terms and conditions under which a change of judge or a change of venue from the county is permitted in any civil action.

Sec. 3. This chapter shall not be construed to authorize a change of venue from the county:

(1) concerning expenses allowed by the court incidental to the operation, management, or administration of the receivership estate;

(2) upon any petition or proceeding to remove a receiver; or

(3) upon the objections or exceptions to any partial or final account or report of any receiver.

Sec. 4. A change of venue is not permitted from the county of the administration of any receivership estate, or upon any petition or proceeding to remove a receiver, or upon objections or exceptions to a partial or final account or report of a receiver.

SECTION 45. IC 34-49 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 49. BONDS

Chapter 1. Fixing of Bond

Sec. 1. (a) This section applies whenever:

(1) any bond or undertaking is required in connection with any civil action or proceeding brought in any court of Indiana; and

(2) in the absence of any provision of law specifying the amount of the bond or undertaking.

(b) The judge of the court shall fix the penalty in an amount that the judge considers adequate, but not less than one hundred

Copy

dollars ($100).

(c) This section does not preclude a full and complete reconsideration of the sufficiency of the amount by the judge of the court in which the action or proceeding is pending upon the motion of any aggrieved party.

Sec. 2. (a) This section applies when any bond is required by law to be filed in any civil, criminal, or probate proceedings, whether in a circuit court, superior court, or a city court.

(b) The officer with whom the bond is required to be filed may accept a deposit of cash or a properly certified check or draft for the full amount of the bond instead of a bond.

(c) This section shall not be construed as mandatory on any court or officer, but as conferring a privilege that may be exercised for the convenience of litigants.

Sec. 3. Every court and officer authorized to take any bail or surety has authority to examine, on oath, the person offering to become a bail or surety, concerning the person's property, and sufficiency as a bail or surety.

Sec. 4. Any person required to give bail may deposit with the clerk the amount of money for which the person is required to give bail, and immediately be discharged from arrest.

Chapter 2. Defective Bonds

Sec. 1. An official bond entered into by any officer, or any bond, recognizance, or written undertaking taken by any officer in the discharge of the duties of the officer's office, is not void for want of form or substance, recital, or condition.

Sec. 2. The principal or surety will not be discharged because of any defects listed in section 1 of this chapter. The principal and surety shall be bound by the bond, recognizance, or written undertaking, to the full extent contemplated by the law requiring the bond, recognizance, or written undertaking. The sureties shall be bound to the amount specified in the bond or recognizance.

Sec. 3. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in the plaintiff's or relator's complaint, and recover to the same extent as if the bond, recognizance, or written undertaking were perfect in all respects.

Chapter 3. Bond for Officer Making Levy in Replevin

Sec. 1. When a suit is brought in replevin, against an officer who issued a writ of attachment or execution, under IC 34-21-6-1 (or IC 34-2-4-1 before its repeal), the officer may demand a bond

Copy

from the attachment or execution plaintiff to indemnify the officer in the replevin suit.

Chapter 4. Delivery Bonds Executed by Defendant for Personal Property

Sec. 1. When personal property is taken in an execution of judgment, the execution defendant may, under IC 34-55-5-1, deliver to the sheriff a written undertaking, payable to the execution plaintiff, with sufficient surety, to obtain the return of the personal property.

Chapter 5. Appeal Bonds

Sec. 1. Appeal bonds for appeals taken to circuit courts are governed by IC 34-56-2.

Sec. 2. Federal agencies are exempt from appeal bond requirements under IC 34-56-3.

SECTION 46. IC 34-50 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 50. SETTLEMENT OF CLAIMS

Chapter 1. Offers of Settlement

Sec. 1. (a) This chapter applies only to actions in tort brought under:

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

(2) this title.

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

Sec. 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.

Sec. 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.

Sec. 4. A qualified settlement offer must:

(1) be in writing;

(2) be signed by the offeror or the offeror's attorney of record;

(3) be designated on its face as a qualified settlement offer;

(4) be delivered to each recipient or recipient's attorney of record:

(A) by registered or certified mail; or

(B) by any method that verifies the date of receipt;

(5) set forth the complete terms of the settlement proposed

C o p y

by the offeror to the recipient in sufficient detail to allow the recipient to decide whether to accept or reject it;

(6) include the name and address of the offeror and the offeror's attorney of record, if any; and

(7) expressly revoke all prior qualified settlement offers made by the offeror to the recipient.

Sec. 5. An acceptance of a qualified settlement offer must be:

(1) unconditional;

(2) in writing;

(3) signed by the accepting recipient or the accepting recipient's attorney of record; and

(4) delivered:

(A) by registered or certified mail or by a means that verifies the date of receipt;

(B) to the offeror or the offeror's attorney of record; and

(C) not more than thirty (30) days after the recipient receives the qualified settlement offer.

Sec. 6. (a) If:

(1) a recipient does not accept a qualified settlement offer; and

(2) 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 offer. 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 judgment. 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

Copy

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).

SECTION 47. IC 34-51 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 51. DAMAGES

Chapter 1. Damages Generally

Sec. 1. Evidence of collateral source payments is governed by IC 34-44-1.

Sec. 2. Evidence of advance payments in personal injury and property damage cases is governed by IC 34-44-2.

Sec. 3. Treble damages in certain civil actions by crime victims are governed by IC 34-24-3.

Chapter 2. Compensatory Damages: Comparative Fault

Sec. 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:

(1) 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

(2) that accrued before January 1, 1985.

Sec. 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).

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

(1) fault as the basis for liability; and

(2) contributory fault.

Sec. 4. For purposes of sections 6 through 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.

Sec. 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 of this chapter.

Sec. 6. (a) In an action based on fault that is brought against:

(1) one (1) defendant; or

Copy

(2) two (2) 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.

(b) 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.

Sec. 7. (a) This section applies to an action based on fault that is:

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

(2) 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:

(1) The jury shall determine the percentage of fault of the claimant, of the defendant, and of any person who is a nonparty. 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.

(2) 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.

(3) 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.

(4) The jury next shall multiply the percentage of fault of the defendant by the amount of damages determined under subdivision (3) and shall then enter a verdict for the claimant in the amount of the product of that multiplication.

Copy

Sec. 8. (a) This section applies to an action based on fault that:

(1) is brought against two (2) or more defendants; and

(2) 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:

(1) The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a nonparty. 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.

(2) 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.

(3) 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.

(4) 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 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).

Sec. 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 of this chapter.

Sec. 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

Copy

convicted after a prosecution based on the same evidence.

Sec. 11. The court shall furnish to the jury forms of verdicts that require only the disclosure of:

(1) the percentage of fault charged against each party and nonparty; and

(2) 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.

Sec. 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.

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

(1) inform the jury of such inconsistencies;

(2) order the jury to resume deliberations to correct the inconsistencies; and

(3) instruct the jury that the jury is at liberty to change any portion or portions of the verdicts to correct the inconsistencies.

Sec. 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.

Sec. 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.

Sec. 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

Copy

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:

(1) giving the defendant a reasonable opportunity to discover the existence of a nonparty defense; and

(2) 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.

Sec. 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 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:

(1) the qualified health care provider reasonable opportunity to discover the existence of a nonparty defense; and

(2) the claimant reasonable opportunity to assert a claim against the nonparty before the expiration of the period of limitation applicable to the claim.

Sec. 18. (a) This section applies to an action based on fault that is brought by the claimant against:

(1) one (1) or more defendants who are qualified health care providers under IC 34-18; and

(2) 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.

(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 nonhealth care providers.

Sec. 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

C o p y

recovery is diminished:

(1) by comparative fault; or

(2) 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 diminished. The party holding the lien or claim shall bear a pro rata share of the claimant's attorney's fees and litigation expenses.

Chapter 3. Punitive Damages

Sec. 1. This chapter applies to all cases in which a party requests the recovery of punitive damages in a civil action.

Sec. 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.

Sec. 3. A jury in a case subject to this chapter may not be advised of:

(1) the limitation on the amount of a punitive damage award under section 4 of this chapter; or

(2) the requirement under section 6 of this chapter concerning allocation of money received in payment of a punitive damage award.

Sec. 4. A punitive damage award may not be more than the greater of:

(1) three (3) times the amount of compensatory damages awarded in the action; or

(2) fifty thousand dollars ($50,000).

Sec. 5. If a trier of fact awards punitive damages that exceed the limitation under section 4 of this chapter, the court shall reduce the punitive damage award to not more than the greater of:

(1) three (3) times the amount of compensatory damages awarded in the action; or

(2) fifty thousand dollars ($50,000).

Sec. 6. (a) Except as provided in IC 13-25-4-10, when a judgment that includes a punitive damage award is entered in a civil action, the party against whom the judgment was entered shall pay the punitive damage award to the clerk of the court where the action is pending.

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

C o p y

(1) pay the person to whom punitive damages were awarded twenty-five percent (25%) of the punitive damage award; and

(2) 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.

Chapter 4. Prejudgment Interest

Sec. 1. This chapter applies to any civil action arising out of tortious conduct.

Sec. 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).

Sec. 3. This chapter does not impose liability for prejudgment interest on any part of a judgment that is awarded as punitive damages.

Sec. 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).

Sec. 5. This chapter does not apply if:

(1) 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;

(2) the terms of the offer include payment within sixty (60) days after the offer is accepted; and

(3) the amount of the offer is at least two-thirds (2/3) of the amount of the judgment award.

Sec. 6. This chapter does not apply if:

(1) 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;

(2) the terms of the offer fail to provide for payment of the settlement offer within sixty (60) days after the offer is accepted; or

(3) the amount of the offer exceeds one and one-third (1 1/3) of the amount of the judgment awarded.

Sec. 7. The court may award prejudgment interest as part of

C o p y

a judgment.

Sec. 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:

(1) Fifteen (15) months after the cause of action accrued.

(2) Six (6) months after the claim is filed in the court if IC 34-18-8 and IC 34-18-9 do not apply.

(3) 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.

Sec. 9. The court shall compute the prejudgment interest at the simple rate of interest determined by the court. The rate set by the court may not be less than six percent (6%) per year and not more than ten percent (10%) per year.

Chapter 5. Tax Consequences of Verdict in Tort Action; Jury Instructions

Sec. 1. In a tort action for personal injuries tried by a jury, the court shall, if requested, instruct the jury that the jury may not consider the tax consequences, if any, of its verdict.

SECTION 48. IC 34-52 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 52. COSTS

Chapter 1. Recovery of Costs by A Party

Sec. 1. (a) In all civil actions, the party recovering judgment shall recover costs, except in those cases in which a different provision is made by law.

(b) In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:

(1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;

(2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or

Copy

(3) litigated the action in bad faith.

(c) The award of fees under subsection (b) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees twice.

Sec. 2. (a) This section applies to actions for money demands on contract, commenced in the circuit or superior courts.

(b) Except as provided in subsection (d), if the plaintiff recovers less than fifty dollars ($50) exclusive of costs, the plaintiff shall pay costs, unless the judgment has been reduced below fifty dollars ($50) by a set-off, or counter-claim, pleaded and proved by the defendant, in which case the party recovering judgment shall recover costs.

(c) Except as provided in subsection (d), if the judgment is reduced below fifty dollars ($50) by proof of payments, the defendant shall recover costs.

(d) If one (1) or more defendants, necessary to a full determination of the cause:

(1) are nonresidents of the county in which the suit is brought but are residents of the state of Indiana; and

(2) have been served with process in the action;

the plaintiff shall recover costs even though the judgment recovered by plaintiff is less than fifty dollars ($50).

Sec. 3. In all actions for damages solely, not arising out of contract, if the plaintiff does not recover five dollars ($5) in damages, the plaintiff shall not recover more costs than damages, except:

(1) in actions for injuries to character and false imprisonment; and

(2) where the title to real estate is in question.

Sec. 4. (a) Except as provided in subsections (b) and (c), relators, persons, and corporations for whose use an action is brought, whether such use is shown by the pleadings of the plaintiff or defendant, are liable for costs jointly with the actual parties to the action.

(b) Except as provided in subsection (c), when the state is plaintiff, the relator only is liable, and judgment for costs shall be rendered accordingly.

(c) When a state officer or prosecuting attorney, by virtue of his or her office, is a relator for the state of Indiana, the relator is not liable for costs.

Copy

Sec. 5. In actions where there are several plaintiffs or several defendants, the costs shall be apportioned according to the judgment rendered. Where there are several causes of action embraced in the same complaint, or several issues, the plaintiff shall recover costs upon the issues determined in the plaintiff's favor, and the defendant shall recover costs upon the issues determined in the defendant's favor.

Sec. 6. When the plaintiff, at the same court, brings several actions against the defendant upon demands which could have been joined in one (1) action, the plaintiff shall recover costs only in one (1) action, unless:

(1) it appears to the court that the actions affect different rights or interests; or

(2) other sufficient reasons exist why the several demands should not have been joined in one (1) action.

Sec. 7. Whenever, in any action an order is made for the payment of costs, at any time before final judgment, the court shall, upon motion of any interested person, render judgment for the costs in favor of the party entitled to receive costs.

Sec. 8. Fee bills and executions may issue for the collection of costs in the proper cases against:

(1) parties to the action;

(2) relators;

(3) persons for whose use an action is brought; and

(4) sureties on undertakings for the payment of costs.

Sec. 9. In all cases where lands are attached and judgment rendered in favor of the plaintiff in the circuit court, in which the sum claimed, or the judgment rendered is less than fifty dollars ($50), the plaintiff shall recover costs if the attachment against the land is sustained by the court.

Chapter 2. Awarding Fees and Other Expenses in Actions Involving the State

Sec. 1. (a) Subject to any other statute governing reimbursement of fees and other expenses, this chapter applies to the reimbursement of the fees and other expenses incurred in preparing for or prosecuting:

(1) a proceeding under IC 4-21.5-5 to judicially review a final order made by a state agency;

(2) an appeal from a final determination made by the worker's compensation board;

(3) an appeal of a final determination made by the department of state revenue; or

(4) an appeal of a final determination made by the

C o p y

department of workforce development or the department of workforce development unemployment insurance review board.

(b) However, this chapter does not apply to an order or other determination:

(1) under:

(A) IC 16-27-1;

(B) IC 16-28;

(C) IC 16-29-1;

(D) IC 16-30;

(E) IC 12-28-4; or

(F) IC 12-28-5;

(2) by an agency described by IC 25-1-8-1; or

(3) by the board of podiatric medicine.

Sec. 2. In addition to any other compensation awarded in a civil action involving an agency as a party, the court having jurisdiction in the case may enter an order against the agency for the payment of the reasonable fees and other expenses of a party, if the court finds that:

(1) the party files a written notice of the party's intent to seek reimbursement under this chapter (or IC 34-2-36 before its repeal) not later than thirty (30) days after the party files any pleading or other paper with the court;

(2) the party obtained final judgment in its favor;

(3) the party has obtained substantive relief that makes it probable that the party will prevail on the merits after remand of the case to the agency, if remand is necessary;

(4) the party is:

(A) a commercial or business entity (including a sole proprietorship or a partnership) with fewer than fifty (50) employees at the time of the:

(i) civil action; or

(ii) the agency action (as defined in IC 4-21.5-1-4) giving rise to the civil action;

but is not a subsidiary or affiliate of another entity that does not qualify as a small business under this clause; or

(B) an organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;

(5) to the extent that the fees and other expenses of the party are for attorney's fees or expert witness fees, the fees are based upon the number of actual hours of service performed multiplied by a reasonable fee for the service

C o p y

rendered not to exceed seventy-five dollars ($75) per hour;

(6) the party filed a claim not later than thirty (30) days after a final judgment was rendered; and

(7) section 3 of this chapter does not apply.

Sec. 3. The court may not award fees or other expenses against an agency if:

(1) the agency's only involvement in the case resulted from the agency's role as an arbiter of the legal rights, duties, immunities, privileges, or other legal interests of two (2) or more other parties;

(2) the agency as a party had a reasonable basis for its position;

(3) the position of the agency as a party became unjustified as a result of an intervening change in applicable law; or

(4) the fees or other expenses claimed were incurred to reimburse salaries or attorney's fees paid by a political subdivision, a state, the United States government, or a foreign province or country.

Sec. 4. A party may be awarded an amount under this chapter not exceeding ten thousand dollars ($10,000). However, if more than three (3) parties in a case are eligible for an award under this chapter, the total award made to all parties in the case may not exceed thirty thousand dollars ($30,000).

Sec. 5. The agency against which an order is entered under this chapter shall pay the award from any money appropriated to the agency. The court may order the auditor of state to draw a warrant upon the funds of the agency. The treasurer of state shall pay the warrant when any appropriated and unencumbered funds are available to the agency.

Sec. 6. (a) Each agency subject to an order to pay fees or expenses or that pays fees or other expenses under this chapter shall report annually to the general assembly the amount of fees and other expenses ordered or paid during the preceding fiscal year by that agency.

(b) In its report, the agency shall describe:

(1) the number, nature, and amount of the awards;

(2) the claims involved in the controversy; and

(3) any other relevant information to aid the general assembly in evaluating the scope and impact of these awards.

Chapter 3. Cost of Transcripts and Certifying the Record

Sec. 1. When in any suit pending in any court in this state it is necessary to procure a transcript of any judgment or

C o p y

proceeding, or exemplification of any record, as evidence in the action, the necessary expense of procuring the transcript or exemplification shall be taxed with the other costs in the cause, and recovered as in other cases.

Chapter 4. Stamp Tax

Sec. 1. In all actions, when United States Government stamps are required and used in original process, certificates, bonds, appraisements, deed of conveyance by sheriffs, and other instruments, the value of the stamp duties shall be taxed and collected as other costs in the action.

SECTION 49. IC 34-53 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 53. SUBROGATION

Chapter 1. Subrogation of Insurers in Personal Injury Actions

Sec. 1. This chapter applies to an insurer claiming subrogation or reimbursement rights to the proceeds of a settlement or judgment resulting from a legal proceeding commenced by an insured against a third party legally responsible for personal injury for which payment is made by the insurer.

Sec. 2. An insurer claiming subrogation or reimbursement rights under this chapter shall pay, out of the amount received from the insured, the insurer's pro rata share of the reasonable and necessary costs and expenses of asserting the third party claim. These reasonable and necessary costs and expenses include and are not limited to the following:

(1) The cost of depositions.

(2) Witness fees.

(3) Attorney's fees to the lesser of:

(A) the amount contracted by the insured for the insured's portion of the claim; or

(B) thirty-three and one-third percent (33 1/3%) of the amount of the settlement.

Sec. 3. This chapter does not prohibit an insurer with a subrogated property damage claim from settling the insurer’s subrogation claim separately by arbitration, agreement, or suit in the insurer’s own name.

SECTION 50. IC 34-54 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 54. JUDGMENTS

Chapter 1. Judgments Generally

C o p y

Sec. 1. When a judgment is to be executed without relief from appraisement laws, it shall be so ordered in the judgment.

Sec. 2. When a plaintiff has included in one (1) action demands subject to the appraisement laws, with demands made payable without any relief from appraisement laws, the court may render separate judgments upon each demand.

Sec. 3. A judgment recovered against a sheriff, constable, other public officer, administrator, executor, or other person or corporation, or the sureties of any or all of those persons:

(1) for money collected or received in a fiduciary capacity;

(2) for a breach of any official duty; or

(3) for money or other articles of value held in trust for another;

is collectible without stay of execution or benefit of the valuation or appraisement laws of Indiana.

Chapter 2. Confession of Judgment

Sec. 1. Any person indebted or against whom a cause of action exists may personally appear in a court of competent jurisdiction, and, with the consent of the creditor or person having the cause of action, confess judgment in the action. Judgment shall be entered accordingly.

Sec. 2. The debt or cause of action shall be briefly stated in a writing to be filed and copied into the judgment. The confession shall operate as a release of errors.

Sec. 3. Whenever a confession of judgment is made by power of attorney or otherwise, the party confessing shall, at the time the party confessing executes the power of attorney or confesses judgment, make affidavit stating that:

(1) the debt is just and owing; and

(2) the confession is not made for the purpose of defrauding the person's creditors.

The affidavit shall be filed with the court.

Chapter 3. Limitations on Confession of Judgment Under Power of Attorney

Sec. 1. This chapter applies to a contract, agreement, provision, or stipulation that:

(1) gives a person a power of attorney or authority as attorney for the maker or endorser of the instrument in the name of the debtor to:

(A) appear in any court of record; and

(B) waive the service of process in an action to enforce payment of money claimed to be due on the instrument;

C o p y

(2) authorizes or purports to authorize an attorney or agent, however designated, to confess judgment on the instrument for a sum of money to be ascertained in a manner other than by action of the court upon a hearing after notice to the debtor, whether with or without an attorney fee; or

(3) authorizes or purports to authorize an attorney described in subdivision (1) or (2) to:

(A) release errors and the right of appealing from a judgment described in subdivision (1) or (2); or

(B) consent to the issue of execution on the judgment.

Sec. 2. A person shall not execute or procure to be executed any contract, agreement, provision, or stipulation described in section 1 of this chapter:

(1) as part of or in connection with the execution of any negotiable instrument or other written contract to pay money; and

(2) before a cause of action on the instrument or contract has accrued.

Sec. 3. A:

(1) contract;

(2) stipulation; or

(3) power of attorney;

given or entered into before a cause of action accrues on a promise to pay is void.

Sec. 4. (a) This section applies to all cases in which the court rendering a foreign judgment obtains or attempts to obtain jurisdiction of a judgment debtor, in whole or in part, by virtue of a contract, agreement, or stipulation that is prohibited and declared void by this chapter.

(b) An Indiana court shall not issue an execution or other process to aid or enforce the collection of any judgment that may be rendered upon a judgment that:

(1) is taken in another state or foreign country; and

(2) was founded or based upon a negotiable instrument or contract containing an agreement, stipulation, or provision that is prohibited and declared void by.

(c) A judgment described in this section may not become a lien upon real estate.

Chapter 4. Cognovit Note Prohibited as a Means of Confessing Judgment or Authorizing Payment

Sec. 1. A person who knowingly:

(1) procures another to:

Copy

(A) execute as maker; or
(B) endorse or assign ;
a cognovit note;
(2) being the payee, endorsee, or assignee of the cognovit note, retains possession of the cognovit note; or
(3) attempts to recover upon or enforce within Indiana a judgment obtained in any other jurisdiction based upon a cognovit note;
commits a Class B misdemeanor.

Chapter 5. Judgments in Agreed Cases

Sec. 1. Parties may, either with or without process, by agreement, submit any matter of controversy between the parties to a court that would otherwise have jurisdiction of the cause, upon an agreed statement of facts to be made out and signed by the parties. However, it must appear by affidavit that:
(1) the controversy is real; and
(2) the proceedings are a good faith effort to determine the rights of the parties.
The court shall then proceed to try the cause and render judgment as in other cases.

Sec. 2. The record consists of the following:
(1) The statement of the case.
(2) The submission.
(3) The judgment.

Sec. 3. The judgment may be enforced in the same manner as if it had been rendered in an action. Costs may be enforced in the same manner as if the judgment had been rendered in an action. The judgment is subject to an appeal, unless otherwise provided in the submission.

Chapter 6. Satisfaction of Judgments

Sec. 1. (a) This section applies to every endorsement of payment, satisfaction, or release, in whole or in part, that is noted:
(1) on the record or margin of any judgment or decree; or
(2) on an execution or order of sale issued on a judgment and signed by the:
(A) judgment plaintiff;
(B) judgment plaintiff's attorney of record or attorney in fact; or
(C) assignee of the judgment plaintiff (whose assignment is noted on or annexed to the record of the judgment or decree and attested by the clerk);
(3) on the record of the judgment or decree; or

C o p y

(4) by the sheriff upon the execution or order of sale.

(b) An endorsement of payment, satisfaction, or release described in subsection (a) operates as a satisfaction or release of the judgment or decree, or of the part of the judgment or decree so endorsed as paid, satisfied, or released, in favor of subsequent purchasers or lienholders in good faith.

(c) When the satisfaction, payment, or release is entered by an attorney in fact, that fact shall be noted on the margin of the record or the execution.

(d) The power of attorney described in subsection (c) shall be recorded in the miscellaneous records of the recorder's office.

Sec. 2. All judgments recovered upon bonds, written undertakings, or recognizances executed in any legal proceeding, civil or criminal, are collectible without relief from valuation or appraisements laws of the state of Indiana.

Chapter 7. Assignment of Judgments

Sec. 1. (a) Judgments and decrees of a court of record for the recovery of money may be assigned by the plaintiff or complainant.

(b) The assignees successively on or attached to the entry of the judgment or decree and the assignment, when attested by the clerk of the court, vests the title to the judgment or decree in each assignee successively.

Sec. 2. Payments or satisfaction on a judgment or decree to the assignor are valid only if made before notice of assignment to the judgment debtor.

Sec. 3. In case of assignment, execution shall issue in the name of the original plaintiff or complainant, but shall be endorsed by the clerk for the use of the assignee.

Sec. 4. Any action that the plaintiff or complainant has on the judgment or decree may be maintained in the name of the assignee.

Chapter 8. Interest on Judgments

Sec. 1. This chapter does not apply to IC 6-8.1-9 concerning the rate of interest.

Sec. 2. This chapter does not apply to judgments rendered against the state in actions or proceedings duly authorized to be brought against the state in the court of claims for the payment of which no appropriation has been previously made.

Sec. 3. This chapter does not authorize actions or proceedings against the state or any agency of the state.

Sec. 4. Prejudgment interest is governed by IC 34-51-4.

Sec. 5. (a) This section applies to actions or proceedings in which:

Copy

(1) the state, a board, a commission, an agency, or an official is authorized by law to sue or be sued; and

(2) a money judgment is authorized by law to be entered and to be paid out of state funds in the custody of the state or in the custody of the board, commission, agency, or official.

(b) Interest attaches to a final judgment entered in an action or proceeding described in subsection (a):

(1) at the annual rate of six percent (6%); and

(2) beginning with the forty-fifth day after the rendition of the judgment.

Chapter 9. Effect of Refusal of Money Tender

Sec. 1. This chapter applies when:

(1) money is tendered in settlement of a demand;

(2) the settlement is refused; and

(3) the money is brought into court to keep the tender good.

Sec. 2. If the court or jury trying the case finds that a less sum is due on the demand than the amount tendered and brought into court, the person refusing the tender shall receive no more of the sum paid into court than the court or jury trying the case finds is due on the demand.

Chapter 10. Judgments Concerning Property

Sec. 1. Judgments in actions concerning the recovery of the possession of personal property are governed by IC 34-21-9.

Sec. 2. Judgments in mortgage actions are governed under IC 32-15-8.

Sec. 3. The purchase of property subject to judgment is governed by IC 32-15-9.

SECTION 51. IC 34-55 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 55. EXECUTION OF JUDGMENTS

Chapter 1. Execution of Judgments Generally

Sec. 1. When a judgment requires the payment of money or delivery of real or personal property, the judgment may be enforced by execution as provided in this chapter. When the judgment requires the performance of any other act, a certified copy of the judgment may be served upon:

(1) the party against whom the judgment is given; or

(2) the person or officer who is required by the judgment or by law to obey the judgment;

and the person's obedience to the judgment may be enforced. If the person refuses to obey the judgment, the person may be punished

Copy

by the court as for contempt.

Sec. 2. (a) After the lapse of ten (10) years after:

(1) the entry of judgment; or

(2) issuing of an execution;

an execution can be issued only on leave of court, upon motion, after ten (10) days personal notice to the adverse party, unless the adverse party is absent or a nonresident, or cannot be found.

(b) When an execution is issued on leave of court under subsection (a), service of notice may be made by publication, as in an original action, or in a manner as the court directs. Leave shall not be given unless it is established by the oath of the party or other satisfactory proof that the judgment or part of the judgment remains unsatisfied and due.

Sec. 3. There are three (3) kinds of executions:

(1) Execution against the property of the judgment debtor.

(2) Execution against the person of the judgment debtor.

(3) Execution for the delivery of the possession of real or personal property, or such delivery with damages for withholding real or personal property.

Sec. 4. Executions may be issued to the sheriffs of different counties at the same time. However, the plaintiff shall pay the costs upon all executions not necessary to the collection of the plaintiff's judgment.

Sec. 5. The execution must:

(1) issue in the name of the state;

(2) be directed to the sheriff of the county;

(3) be sealed with the seal of the court; and

(4) attested by the clerk of the court.

Sec. 6. The execution must intelligibly refer to the judgment, stating:

(1) the court where and the time when rendered;

(2) the names of the parties;

(3) the amount, if the judgment is for money; and

(4) the amount actually due on the judgment.

Sec. 7. The execution must require the sheriff to do the following:

(1) If the execution is against the property of the judgment debtor, the execution must require the sheriff to satisfy the judgment out of the property of the debtor, subject to execution.

(2) If the execution is against real or personal property in the hands of personal representatives, heirs, devisees, legatees,

C o p y

tenants of real property, or trustees, the execution must require the sheriff to satisfy the judgment out of that property.

(3) If the execution is against the body of the judgment debtor, the execution must require the sheriff to arrest the debtor and commit the debtor to the jail of the county until the debtor pays the judgment or is discharged according to law.

(4) If the execution is for the delivery of the possession of real or personal property, the execution:

(A) must require the sheriff to deliver the possession of the property, particularly describing the property to the party entitled to the property; and

(B) may at the same time require the sheriff to satisfy any costs, damages, rents, or profits recovered by the judgment out of the property of the party against whom the judgment was rendered, subject to execution.

The value of the property for which the judgment was recovered must be specified in the execution if a delivery cannot be made, and shall, in that respect, be considered an execution against property.

Sec. 8. An execution against the body shall not be issued while an execution against the property remains unreturned.

Sec. 9. An execution against the property shall not be issued while there is an execution against the body unreturned.

Sec. 10. (a) When the execution is against the property or body of the judgment debtor, the execution may be issued to the sheriff of any county in Indiana.

(b) When the execution requires the delivery of real or personal property, the execution must be issued to the sheriff of the county where the property or part of the property is located.

Sec. 11. (a) Except as provided in subsection (b), the execution shall be returned not later than ninety (90) days after the date of the execution.

(b) The judgment creditor, at the time of filing praecipe for execution, may designate any other time less than ninety (90) days for the return of the execution. In that case, the execution shall be returned within the time fixed by the judgment creditor.

Sec. 12. (a) When an execution against the property of any person is delivered to an officer to be executed, the goods and chattels of the person within the jurisdiction of the officer is bound from the time of the delivery.

C o p y

(b) If there are several executions against the same defendant in the hands of different officers, that execution, without regard to the time of its delivery under which the first levy is made, has the preference, and all liens created by the prior delivery of any other execution are divested in favor of the execution first levied.

Sec. 13. The sheriff receiving an execution shall endorse on the execution the year, month, day, and hour when the sheriff received the execution.

Sec. 14. If it appears upon the face of an execution or by the endorsement of the clerk that of those persons against whom the execution is issued, any one (1) person is surety for another, the property of the principal shall be first sold, unless the surety directs otherwise.

Sec. 15. An execution may be issued and executed on Sunday whenever an affidavit is filed by the plaintiff or another person on the plaintiff's behalf, stating that the plaintiff has reason to fear and believe that the plaintiff will lose the judgment unless process is issued on Sunday.

Sec. 16. The clerk shall endorse on the execution that the defendants are not privileged from service on Sunday.

Sec. 17. If the sheriff dies or leaves office before the return of an execution, the sheriff's successor or other officer authorized to discharge the duties of the office shall proceed in the same manner that the sheriff should have done.

Chapter 2. Stay of Execution

Sec. 1. The bail for stay of execution may be taken and approved by the clerk and the recognizance entered of record at any time before the stay of execution expires. The undertaking in the recognizance is for the payment of the judgment, interest, and costs that may accrue at or before the expiration of the stay of execution. The recognizance shall be written immediately following the entry of the judgment and signed by the bail.

Sec. 2. When bail is entered after execution is issued, the clerk shall immediately notify the sheriff of the stay of execution. The sheriff shall immediately return the execution, noting the sheriff's actions on the execution.

Sec. 3. When execution issues for want of bail before the stay of execution expires, the clerk shall endorse on the execution:

(1) the date of the judgment; and

(2) that the execution is repleviable.

Sec. 4. In a case described in section 3 of this chapter, the defendant may have a stay of execution for the remainder of the

C o p y

term of the stay of execution by putting in bail, approved by the sheriff, and endorsed on the stay and signed by the surety.

Sec. 5. The sheriff, having taken the bail, shall immediately return the execution, with the sheriff's actions noted on the execution to the clerk's office. The clerk shall copy the recognizance in the execution docket. The recognizance has the same force as if taken by the clerk.

Sec. 6. All:

(1) property levied on before stay of execution; and

(2) written undertakings for the delivery of personal property to the sheriff;

shall be relinquished by the officer upon bail for the stay of execution being entered.

Sec. 7. Every recognizance of bail, taken as provided in this chapter, has the effect of a judgment confessed, from the date of the recognizance, against the person and property of the bail.

Sec. 8. (a) An execution shall not be issued in any cause except on the written praecipe of:

(1) a party to the suit;

(2) the party's representatives or assigns; or

(3) the party's attorney of record.

(b) A fee bill shall not be issued unless the fee bill is ordered by the person to whom the fees or a part of the fees are due. However, the clerk shall receive nothing for any fee bill issued for the clerk's own fees.

Sec. 9. At the expiration of the stay, the clerk shall issue a joint execution against the property of all the judgment debtors and replevin bail. The sheriff shall first levy upon the property of the judgment defendants, if sufficient property can be found. If not, the sheriff shall, without delay, levy the execution upon the property of the bail. However, no property of the bail shall be sold while property of the original judgment debtor, subject to the execution, can be found in the county.

Sec. 10. (a) A stay of execution is not allowed upon any judgment recovered against any officer, person, or corporation, or the sureties of an officer, person, or corporation, for money received in a fiduciary capacity, or for a breach of any official duty.

(b) The clerk shall immediately issue executions upon judgments described in subsection (a), returnable in ninety (90) days, and endorsed "not repleviable". It shall be so ordered in the judgment.

C o p y

Sec. 11. When any court renders judgment against two (2) or more persons, any of whom are sureties for any other or others in the contract on which the judgment is founded, there shall be no stay of execution on the judgment if the sureties object at the time of rendering the judgment. It shall be so ordered by the court unless surety for the stay of execution will undertake specially to pay the judgment, in case the amount of the judgment cannot be levied of the principal defendant.

Sec. 12. A surety for the stay of execution may file with the clerk an affidavit, stating that the surety truly believes that the surety will be liable for the judgment, interest, and costs unless execution issues immediately. The clerk shall immediately issue execution unless other sufficient bail is entered before the clerk or sheriff as in other cases.

Sec. 13. If other sufficient bail is entered, it shall have the force of the original bail entered before the filing of the affidavit and shall discharge the original bail.

Chapter 3. Levy of Execution

Sec. 1. When an execution against the property of any person is issued to the sheriff, the sheriff shall:

(1) serve the execution upon the defendants in the county and levy the execution, if not paid, upon property; and

(2) make at least one (1) offer to sell property levied upon within sixty (60) days after the execution comes to the sheriff, if property can be found, unless otherwise directed by the plaintiff or the plaintiff's agents.

Sec. 2. Current coin and lawful money, and bank notes the plaintiff is willing to receive as money, may be levied upon and returned on execution, without sale, as so much money collected.

Sec. 3. Bills, notes, drafts, checks, or other evidences of debt, issued by any monied corporation or bank, or by Indiana or the United States, and circulating as money, may be levied upon as personal property and sold on execution.

Sec. 4. Goods and chattels pledged, assigned, or mortgaged as security for any debt or contract may be levied upon and sold on execution against the person making the pledge, assignment, or mortgage. The purchaser is entitled to the possession upon complying with the conditions of the pledge, assignment, or mortgage.

Sec. 5. (a) Shares of stock in any corporation or company may be levied upon and sold in the county where the office and books, showing the shares of stock and stockholders of the corporation or

C o p y

company, are kept.

(b) The sheriff shall transfer the stock, subject to the rights of the corporation or company.

(c) The sheriff is entitled to access to the books of any corporation or company in the sheriff's county for the purpose of making the levy. If refused access, the court shall enforce the right.

(d) The shares of stock subject to be levied upon are bound by the execution from the time of the levy. When the levy is made, the sheriff shall leave the notice of the levy with the officers of the company. The levy constitutes a lien upon the stock from the time of the levy.

Sec. 6. Any debt or cause of action, which is assignable, may be levied upon, when given up by the defendant, and sold on execution, in the same manner as other personal property.

Sec. 7. The sheriff making the sale of any debt or thing in action shall assign and deliver the debt or thing in action to the purchaser. The assignment has the same effect as if made by the execution defendant at the time of making the levy.

Sec. 8. In any action in which the assignment is declared upon or stated, it is not necessary to plead or prove any judgment or execution, by virtue of which the sale was made, nor to prove the execution of the assignment, unless the assignment is denied under oath.

Sec. 9. (a) When an execution issues against the real or personal property of any person, the sheriff shall levy the execution, first upon that part of the property designated by the person, if there is no reasonable doubt that the person is the owner of the property and if designated in time to enable the sheriff to levy and sell without unnecessary delay.

(b) If no property is designated as described in subsection (a), the sheriff shall levy the execution upon any property of the debtor that can be found, subject to execution.

(c) If the designated property is insufficient to satisfy the execution, the sheriff shall levy the execution upon other property, subject to execution, as can be most readily found, sufficient, in addition to the property designated, to satisfy the execution.

Sec. 10. In all cases where the personal estate of the debtor, subject to execution, is insufficient to satisfy the execution, the real estate is exempt from levy and sale until the personal estate is levied upon and sold, unless the debtor directs otherwise. The principal messuage, lands, or tenements of the debtor, or upon which the debtor may reside, shall not be levied upon unless other

C o p y

property cannot be found sufficient to satisfy the execution in the hands of the sheriff.

Chapter 4. Appraisement

Sec. 1. Property shall not be sold on any execution or order of sale issued out of any court for less than two-thirds (2/3) of the appraised cash value of the property, exclusive of liens and encumbrances, except where otherwise provided by law.

Sec. 2. The sheriff, immediately upon levying an execution, shall proceed to ascertain the cash value of the property levied upon.

Sec. 3. (a) For the purpose of appraising the cash value of property:

(1) two (2) disinterested householders of the neighborhood where the levy is made shall be selected as appraisers, one (1) of whom shall be selected by each of the parties or their agents; or

(2) in the absence of either party or the party's agent, or upon the failure or refusal of either party after three (3) days notice by the sheriff, to make the selection, the sheriff shall proceed to select the appraisers.

(b) The appraisers shall immediately proceed to appraise the property according to its cash value at the time, deducting liens and encumbrances. In case of their disagreement as to the value, the sheriff shall select a like disinterested appraiser, and, with the disinterested appraiser's assistance, shall complete the valuation. The appraisement of any two (2) of them shall be considered the cash value.

Sec. 4. If an appraiser fails to act or to complete the valuation, another appraiser shall be chosen, as provided in this chapter.

Sec. 5. It is not the duty of the sheriff or the appraisers to ascertain the amount of liens and encumbrances. However, either party may furnish the sheriff with a list of liens and encumbrances, with the amount and nature of each.

Sec. 6. The sheriff shall furnish the appraisers a schedule of the property levied on, with the encumbrances made known to the sheriff. The appraisers shall proceed to fix and set down opposite to each tract, lot, or parcel of real estate, and of the several articles of personal property, the cash value, deducting liens and encumbrances. The appraisers shall return the schedule to the sheriff.

Sec. 7. (a) The appraisers shall take and subscribe an oath, annexed to the appraisement, to the effect that:

C o p y

(1) the property mentioned in the schedule is, to the best of their judgment, worth the sums specified in the appraisement; and

(2) the appraisement is the fair cash value of the property at the time, exclusive of liens and encumbrances.

(b) The sheriff may administer and attest the oath described in subsection (a).

Sec. 8. (a) Subject to subsection (b), where any property is sold subject to liens and encumbrances, the purchaser may:

(1) pay the liens and encumbrances and hold the property discharged from all claims of the execution defendant; or

(2) hold the property subject to be redeemed by the execution defendant, or the execution defendant's heirs, or assigns, by paying to the purchaser, or the purchaser's heirs or assigns, the purchase money, with interest.

When redeemed, the purchaser shall have the growing crops and shall not be accountable for rents and profits, but the purchaser shall account for waste.

(b) This section does not deprive a party from the right to redeem when authorized by statute.

Sec. 9. When any property levied on remains unsold, the sheriff shall, when the sheriff returns the execution, return the appraisement with the execution, stating in the sheriff's return the failure to sell and the cause of the failure.

Sec. 10. (a) The lien of the levy upon the property shall continue, and the clerk, when directed by the plaintiff, shall immediately issue another execution:

(1) reciting the return of the former execution and the levy and failure to sell; and

(2) directing the sheriff to satisfy the judgment out of the unsold property, if the unsold property is sufficient.

(b) If the property is not sufficient, the sheriff shall satisfy the judgment out of any other property of the debtor subject to execution. However, the lien as to personal property continues only for thirty (30) days (unless a second execution is issued) from the time of the return. At that time, the property shall be released to bona fide purchasers for value and to the levies of writs on other judgments. The levy shall, as between the parties, be considered vacated. As to real property, the levy of the writ shall be discharged after six (6) months.

Sec. 11. Whenever any property levied upon remains unsold for want of buyers, the plaintiff may cause the property to be

C o p y

reoffered at any time before the return day of the execution, at the plaintiff's costs, as often as the plaintiff may direct. In case of the sale of the property, the costs of the offer and sale shall be taxed against the defendant. Either party may have a revaluation of the property, at that party's costs, after any offer to sell.

Sec. 12. Property conveyed by a debtor with intent to hinder, delay, or defraud creditors shall be sold without appraisement.

Chapter 5. Personal Property Taken in Execution of Judgment

Sec. 1. (a) Any personal property taken in execution may be returned to the execution defendant by the sheriff, upon the delivery by the defendant to the sheriff of a written undertaking described in subsection (b).

(b) The written undertaking must be:

(1) payable to the execution plaintiff, with sufficient surety to be approved by the sheriff; and

(2) to the effect that the property shall be delivered to the sheriff at a time and place named in the undertaking, to be sold:

(A) according to law; or

(B) for the payment to the sheriff of:

(i) the appraised value of the property; or

(ii) if the property has not been appraised, the fair value of the property.

Sec. 2. (a) Before the sheriff delivers any part of the property to the defendant, the sheriff shall cause the property to be appraised in the manner prescribed by law when an appraisement of the property is required.

(b) The defendant may sell or dispose of the property, paying the officer the full appraised value of the property.

Sec. 3. In case of the nondelivery of the property according to the undertaking, the sheriff shall levy upon and sell the property, or any other property of the defendant, as soon as practicable, at any time before the return day of the execution.

Sec. 4. Upon the forfeiture of the written undertaking, the officer shall immediately return it endorsed "forfeited" to the clerk's office for the use of the plaintiff.

Sec. 5. The written undertaking is valid in law. An action may be brought on the written undertaking, whenever the condition of the written undertaking is broken, and on recovery. The value of the property so taken, with damages not exceeding ten percent (10%) on the value, shall be assessed in favor of the plaintiff. However, the recovery may not exceed the amount due on the

Copy

execution, and ten percent (10%) on the principal.

Sec. 6. On judgment obtained on the written undertaking, execution shall issue immediately, without stay, returnable in thirty (30) days, and the sheriff shall not return to the execution defendant any property levied on, except upon payment of the judgment.

Chapter 6. Sale of Property on Execution

Sec. 1. The estate or interest of the judgment debtor in any real estate shall not be sold on execution until the rents and profits of the real estate has been first offered for sale at public auction for a period not exceeding seven (7) years. However, if the real estate does not sell for a sum sufficient to satisfy the execution, the estate or interest of the judgment debtor shall be sold by virtue of the execution.

Sec. 2. A sheriff shall sell property on execution in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale.

Sec. 3. Upon prior petition of the debtor or any creditor involved in the execution proceedings, the court in its order of execution shall order the property sold by the sheriff through the services of an auctioneer if the court determines that:

(1) a sale is economically feasible; or

(2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

Sec. 4. An auctioneer engaged by a sheriff under this chapter shall conduct the auctioneer's activities as appropriate to bring the highest bid for the property on execution. The advertising conducted by the auctioneer is in addition to any other notice required by law.

Sec. 5. (a) The auctioneer's fee shall be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount set out in section 3 of this chapter, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars ($100).

(b) The amount due the auctioneer for the auctioneer's expenses and fee, if any, shall be paid as a cost of the sale from the sale proceeds before the payment of any other payment from the sale proceeds.

Sec. 6. Rents and profits may be sold as other property, the appraisers setting down the value of each year separately.

C o p y

Sec. 7. If rents and profits are sold under section 6 of this chapter (or IC 34-1-39-2 before its repeal), only the number of years of rents and profits not exceeding seven (7) years shall be sold as will satisfy the execution, and no more. The sheriff shall execute a lease to the purchaser for the term sold.

Sec. 8. (a) Real estate, including chattels real, taken by virtue of an execution, shall be sold at public auction at:

(1) the courthouse of the county in which the real estate is located; or

(2) another location that is reasonably likely to draw higher bids for the real property.

(b) If the estate consists of several lots, tracts, and parcels, each lot, tract, or parcel shall be offered for sale separately. No more of any real estate shall be offered for sale than is necessary to satisfy the execution, unless the real estate is not susceptible of division.

(c) When real estate which is not susceptible of division is ordered to be sold on any decree or judgment, and the real estate is traversed by the line between two (2) counties, the real estate may be advertised and sold in either county.

Sec. 9. (a) A sale of real estate, on execution, shall be advertised by the sheriff for at least twenty (20) days successively, next before the day of sale, by:

(1) posting written or printed notices of the sale in three (3) public places in the township in which the real estate is located;

(2) posting a like advertisement at the door of the courthouse of the county; and

(3) advertising the sale for three (3) weeks successively in a newspaper:

(A) of general circulation;

(B) printed in the English language; and

(C) published in the county where the real estate is located.

(b) However, if the sheriff is not able to procure the publication of the notice in a newspaper of general circulation, published within the sheriff's county, the sheriff may dispense with the publication of the notice. The land may be sold without the required publication, but the sheriff shall, in the sheriff's return of the writ, state the sheriff's inability to procure the publication. The return has the same effect in evidence as the official returns of sheriffs in other cases.

C o p y

(c) In a notice under this section, the sheriff must include the following:

(1) A statement of the date, time, and place of the sale.

(2) A description of the location of the property that includes, for informational purposes only, the location of each property by street address, if any, or other common description of the property other than legal description. However, a misstatement in the informational statement under this subdivision does not invalidate an otherwise valid sale.

Sec. 10. Previous notice of the time and place of the sale of any personal property on execution shall be given for ten (10) days successively by posting written notices of the sale in at least three (3) of the most public places in the township where the sale is to be made.

Sec. 11. (a) Personal property shall not be sold unless the personal property is present and subject to the view of those persons attending the sale.

(b) Personal property shall be sold at public auction, in such lots and parcels as calculated to bring the highest price.

Sec. 12. If the property levied on does not sell for a sum sufficient to satisfy the execution, the sheriff shall:

(1) make a further and sufficient levy, if sufficient property can be found;

(2) proceed as upon the first levy; and

(3) return the sheriff's actions on the further levy.

Sec. 13. The clerk, upon the return of an execution unsatisfied, shall issue another execution upon the judgment, and endorse on the execution the amount of money, if any, levied by the former execution.

Sec. 14. (a) Upon the sale of real estate, by virtue of an execution, and the payment of the purchase money, the sheriff making the sale (or in case of the sheriff's death or going out of office, the sheriff's successor) or any officer authorized to discharge the duties of the office shall execute and deliver to the purchaser a deed of conveyance for the premises.

(b) A deed of conveyance delivered under subsection (a) is valid and effectual to convey all the right, title, and interest of the execution debtor to the purchaser, except any right of redemption, as provided by law.

Sec. 15. If the purchaser of real estate upon execution, who has paid the purchase money for the real estate, dies before a deed of

C o p y

conveyance is executed to the purchaser, the sheriff shall convey the real estate to the heirs or devisees of the deceased person.

Sec. 16. (a) A sheriff who:

(1) sells any real estate without giving the previous notice required by this chapter (or IC 34-1-39 before its repeal); or

(2) sells the real estate otherwise than in the manner prescribed by this chapter;

shall forfeit and pay to the injured party not less than ten dollars ($10) nor more than two hundred dollars ($200) in addition to other damages the party may have sustained.

(b) Damages under subsection (a) may be recovered from the sheriff or from the sheriff and the sheriff's sureties in an action on the sheriff's official bond.

Sec. 17. If a sheriff or the sheriff's agent making sale of property on execution directly or indirectly purchases the property, the sale is void.

Sec. 18. Whenever the purchaser of property sold on execution fails or refuses to pay the purchase money, the purchaser is liable, on motion made by the sheriff or the execution plaintiff or defendant in the proper court on five (5) days notice, to a judgment for the amount of:

(1) the purchase money;

(2) damages not exceeding ten percent (10%);

(3) interest; and

(4) costs.

No stay of execution shall be allowed upon the judgment.

Sec. 19. (a) As an alternative to the procedure set forth in section 18 of this chapter, the sheriff may reexpose and sell the property on the same or any subsequent day according to law. If the amount bid at the second sale does not equal the amount bid at the first sale and the costs of the second sale, the first purchaser is liable for:

(1) the deficiency;

(2) damages not exceeding ten percent (10%);

(3) interest; and

(4) costs;

to be recovered by a like notice and motion as provided in section 18 of this chapter.

(b) If the sheriff sells on a subsequent day, the sheriff shall readvertise as in other cases.

Sec. 20. When an execution is issued to any county other than the county in which the judgment is rendered, return may be made

C o p y

by mail. However, money may not be sent by mail, except by the direction of the party entitled to the money or that party's attorney.

Sec. 21. When property is sold on execution for more than will satisfy the execution, including interest and costs, the sheriff shall pay the overplus to the execution debtor on whom it was levied, or to the execution debtor's assigns, unless the execution debtor is notified of the existence of liens to the payment of which the overplus should be applied. In that event, the execution debtor shall return the money, which is to be disposed of as the court directs.

Chapter 7. Liability of Sheriff to Pay Money Collected on Execution

Sec. 1. When the sheriff has collected any money on execution, the sheriff shall pay over the money at the earliest opportunity, unless enjoined.

Sec. 2. If a sheriff neglects or refuses to levy upon or sell any property justly liable to execution when the levy or sale might have been done, the sheriff is liable for the value of the property, not to exceed the amount necessary to satisfy the execution.

Sec. 3. If a sheriff neglects or refuses to return any execution as required by law, or makes a false return on the execution, the sheriff is liable for the amount the sheriff might and should have levied by virtue of the execution.

Sec. 4. If a sheriff neglects or refuses on demand to pay over any money collected on execution to the execution creditor, the execution creditor's agent or attorney, or the execution debtor when entitled, the sheriff is liable for the amount withheld.

Sec. 5. In all cases described in sections 2, 3, and 4 of this chapter, the plaintiff shall, in addition to the amount of liability, recover from the sheriff:

(1) legal interest; and

(2) damages not exceeding ten percent (10%) on the principal sum recovered.

Sec. 6. (a) Recovery under section 5 of this chapter may be made by:

(1) motion against the officer in the proper court upon ten (10) days notice; or

(2) action on the bond of the sheriff.

(b) The proceedings in this section may be commenced immediately upon the default of the sheriff, either before or after the return day of the execution.

C o p y

Sec. 7. (a) Every execution shall be returned immediately upon being satisfied by the collection of the money or upon order of the plaintiff or the plaintiff's agent endorsed on the execution.

(b) When the return day of an execution falls on Sunday, the execution shall be returned on the following Monday.

Sec. 8. If:

(1) the sheriff sells the property of a nonresident or other person upon an execution issued on a judgment recovered against the person in a case where publication has been provided; and

(2) no personal notice of the pendency of the action was given to the defendant;

the plaintiff may not receive any of the proceeds of the sale until the plaintiff has filed in the clerk's office a written undertaking, with surety, to be approved by the clerk, to the effect that the plaintiff will refund the money about to be received by the plaintiff, or so much of the money as is necessary, if the judgment is afterwards annulled or set aside and the defendant shows that the plaintiff's claim is unfounded in whole or in part. However, surety to refund is not required in cases of attachment.

Sec. 9. The death of a defendant, after the execution is placed in the hands of the sheriff to be executed, does not affect the sheriff's proceedings, except that the amount of property allowed absolutely to the surviving spouse of the decedent is exempt from levy and sale under the execution.

Chapter 8. Proceedings Supplementary to Execution

Sec. 1. If an execution against the property of the judgment debtor or any of several debtors in the same judgment is returned unsatisfied, in whole or in part, the judgment creditor, after the return is made, is entitled to an order to be issued by any circuit, superior, or city court in the jurisdiction to which the execution issued that requires the judgment debtor to appear before the court to answer concerning the judgment debtor's property, income, and profits within the county to which the execution was issued.

Sec. 2. (a) If, after the issuing of an execution against property, the execution plaintiff or other person on the execution plaintiff's behalf makes and files with the clerk of any court of record of any city, county, or township an affidavit:

(1) stating to the effect that a judgment debtor, residing in the territorial jurisdiction of the court, has property, income, or profits that the judgment debtor unjustly refuses to apply

C o p y

toward the satisfaction of the judgment; and

(2) describing the property, income, or profits;

the court shall issue a subpoena requiring the judgment debtor to appear immediately before the court, at a specified time and place, to answer concerning the affidavit.

(b) Proceedings described in subsection (a) may subsequently be held for the application of the property, income, or profits of the judgment debtor toward the satisfaction of the judgment as provided upon the return of an execution.

Sec. 3. When the plaintiff or the plaintiff's agent or attorney, at the time of applying for the order or at any time afterwards, makes and files an affidavit with the court, stating that:

(1) there is danger of the debtor leaving the state or concealing himself or herself; and

(2) there is reason to believe the debtor has property, rights, credits, moneys, or effects that the debtor unjustly refuses to apply to the judgment, with intent to defraud the creditor;

the court shall issue to the sheriff of the county an order of arrest and bail.

Sec. 4. The sheriff, after taking the execution debtor into custody upon the order of arrest, shall require the execution debtor to enter into a written undertaking to the plaintiff, with surety, to be approved by the officer, that:

(1) the execution debtor will attend before the court and obey the order made by the court; and

(2) the execution debtor will not, in the meantime, dispose of any part of the execution debtor's property that is not exempt from execution.

If the execution debtor defaults on the written undertaking, the execution debtor shall be committed to prison. Upon breach of the written undertaking, the plaintiff is entitled to the amount of the value of the property unlawfully withheld or disposed of.

Sec. 5. (a) Except as provided in subsections (b) and (c):

(1) after the issuing or return of an execution against the property of the judgment debtor or any one (1) of the several debtors in the same judgment; and

(2) upon an affidavit that any person, corporation (municipal or otherwise), the state, or any subdivision or agency of the state:

(A) has property of the judgment debtor; or

(B) is or will be periodically indebted to the judgment debtor in any amount (although the amount shall be

C o p y

determined periodically as it becomes due and payable, which together with other property claimed by the judgment debtor as exempt from execution, exceeds the amount of property exempt by law);

such person, corporation, any member of the corporation, the auditor of state, or auditing officer of the municipal corporations, subdivisions, or agencies of the state may be required to appear and answer concerning the affidavit, as provided by this chapter.

(b) The persons described in this section shall not be required to appear personally in court unless the judge of the court orders their personal appearance.

(c) The court may order interrogatories to be submitted and the interrogatories to be answered by the persons described in subsection (a). The interrogatories shall be submitted by the parties. The clerk of the court shall transmit by registered mail a copy of:

(1) the interrogatories, with blanks for answer; and

(2) the order of the court ordering the interrogatories answered;

to the person, corporation, member of the corporation, the auditor of state, or the auditing officer of the municipal corporations, subdivisions, or agencies of the state required to answer the interrogatories. On receipt of the interrogatories and order, the person, corporation, member of the corporation, auditor of state, or the auditing officer of the municipal corporations, subdivisions, or agencies of the state shall answer the interrogatories and return the interrogatories to the clerk by registered mail or personally. The court may compel answers to the interrogatories.

Sec. 6. (a) Witnesses may be required to appear and testify in the proceeding provided for in this chapter.

(b) Either party may examine the other as a witness in the same manner as upon the trial of an issue, or the plaintiff may waive the answer of the debtor and rely upon other testimony.

(c) All examinations and answers under this section shall be made on the oath of the party. However, when a corporation answers, the answers shall be on the oath of an officer of the corporation.

Sec. 7. (a) After a hearing of which the judgment debtor has been notified, the court may order:

(1) any property, income, or profits of the judgment debtor not exempt from execution or process, in the hands either of

C o p y

the judgment debtor or of any other person; or

(2) any debt due to the judgment debtor;

to be applied to the satisfaction of the judgment and forbid transfers of property and choses in action.

(b) The judge may order that:

(1) the judgment or execution is a continuing lien upon the income or profits of the judgment debtor in the hands either of the judgment debtor or any other person, governmental officer, or corporation from the date the order is served upon the person, governmental officer, or corporation indebted to the judgment debtor to the extent that the lien, together with all similar liens, is permitted under IC 24-4.5-5-105; and

(2) the court may enforce all orders and decrees in the premises, by attachment or otherwise.

(c) A court in an action for proceedings supplementary to execution shall issue an order directing a depository financial institution (as defined in IC 28-9-2) to place a hold on a deposit account in which the judgment debtor has an interest, either individually or jointly with another person, whenever the conditions prescribed under IC 28-9-3-4(b)(1) through IC 28-9-3-4(b)(3) are met. An order issued under:

(1) is subject to the limitations as to duration of the restriction and the amount to be restricted as specified under IC 28-9-4-2; and

(2) may be terminated or modified to reflect valid exemptions of a depositor that the court has considered.

(d) If an order for the placing of a hold on a deposit account is issued under subsection (c), a person whose deposit account is affected may request a hearing from the court on the matter of:

(1) the person's right to claim certain funds in the person's deposit account as exempt from garnishment; and

(2) whether the hold should be removed by the court.

(e) If a court receives a request for a hearing under subsection (d), the court shall hold a hearing on the matter within five (5) days (excluding Saturdays, Sundays, and legal holidays) after the court receives the request.

(f) If a person whose deposit account is affected by the order issued under subsection (c) files an affidavit with the court stating that the funds in the account are exempt from garnishment, the court may issue an order releasing the hold on the account without first conducting a hearing.

C o p y

Sec. 8. Costs shall be awarded and taxed in a proceeding under this chapter as in other cases.

Sec. 9.All proceedings under this chapter, after the order has been made requiring parties to appear and answer, shall be summary, without further pleadings, upon the oral examination and testimony of parties and witnesses. However, the sufficiency of the order and of the affidavit first filed by the plaintiff may be tested by:

(1) demurrer;

(2) motion to dismiss; or

(3) motion to strike.

Chapter 9. Real Estate Subject to Judgment and Execution

Sec. 1. The following real estate is liable to all judgments and attachments and to be sold on execution against the debtor owing the real estate or for whose use the real estate is held:

(1) All lands of the judgment debtor, whether in possession, remainder, or reversion.

(2) All rights of redeeming mortgaged lands and all lands held by virtue of any land office certificate.

(3) Lands or any estate or interest in land held by anyone in trust for or to the use of another.

(4) All chattels real of the judgment debtor.

Sec. 2. All final judgments for the recovery of money or costs in the circuit court and other courts of record of general original jurisdiction in Indiana, whether state or federal, constitute a lien upon real estate and chattels real liable to execution in the county where the judgment has been duly entered and indexed in the judgment docket as provided by law:

(1) after the time the judgment was entered and indexed; and

(2) until the expiration of ten (10) years after the rendition of the judgment;

exclusive of any time during which the party was restrained from proceeding on the lien by an appeal, an injunction, the death of the defendant, or the agreement of the parties entered of record.

Sec. 3. Judgments on bonds payable to the state of Indiana bind the real estate of the debtor from the commencement of the action.

Sec. 4. A recognizance binds the real estate of the principal from the time it is taken. A recognizance only binds the real estate of the surety, however, from the time judgment of forfeiture is rendered.

Sec. 5. An execution against property issued to another county

C o p y

binds the real estate of the defendant from the time of the levy.

Chapter 10. Sales and Execution of Real Estate: Exemptions

Sec. 1. In accordance with section 522(b) of the Bankruptcy Code of 1978 (11 U.S.C. 522(b)), in any bankruptcy proceeding, an individual debtor domiciled in Indiana:

(1) is not entitled to the federal exemptions as provided by section 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. 522(d)); and

(2) may exempt from the property of the estate only that property specified by Indiana law.

Sec. 2. (a) This section does not apply to judgments obtained before October 1, 1977.

(b) The following property of a judgment debtor domiciled in Indiana is not subject to levy or sale on execution or any other final process from a court, for a judgment founded upon an express or implied contract or a tort claim:

(1) Real estate or personal property constituting the personal or family residence of the judgment debtor or a dependent of the judgment debtor, or estates or rights in that real estate or personal property, of not more than seven thousand five hundred dollars ($7,500). The exemption under this subsection is individually available to joint judgment debtors concerning property held by them as tenants by the entireties.

(2) Other real estate or tangible personal property of four thousand dollars ($4,000).

(3) Intangible personal property, including choses in action (but excluding debts owing and income owing), of one hundred dollars ($100).

(4) Professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor.

(5) Any interest that the judgment debtor has in real estate held as a tenant by the entireties on the date of the filing of the petition for relief under the bankruptcy code, unless a joint petition for relief is filed by the judgment debtor and spouse, or individual petitions of the judgment debtor and spouse are subsequently consolidated.

(6) An interest, whether vested or not, that the judgment debtor has in a retirement plan to the extent of:

(A) contributions, or portions of contributions, that were made to the retirement plan:

(i) by or on behalf of the debtor; and

C o p y

(ii) which were not subject to federal income taxation to the debtor at the time of the contribution;

(B) earnings on contributions made under clause (A) that are not subject to federal income taxation at the time of the judgment; and

(C) roll-overs of contributions made under clause (A) that are not subject to federal income taxation at the time of the judgment.

(7) Money that is in a medical care savings account established under IC 6-8-11.

(c) The total value of the property exempted under subsection (b)(1) through (b)(3) may not exceed ten thousand dollars ($10,000).

(d) Real estate or personal property upon which a debtor has voluntarily granted a lien is not, to the extent of the balance due on the debt secured by the lien:

(1) subject to this chapter; or

(2) exempt from levy or sale on execution or any other final process from a court.

Sec. 3. The judgment debtor may designate real property, personal property, or both as the exempted property.

Sec. 4. For the appraisal of any property to be exempted under this chapter, two (2) disinterested householders of the neighborhood shall be chosen, one (1) by the plaintiff or the plaintiff's agent or attorney, and one (1) by the judgment debtor. These two (2), in case of disagreement, shall select a third. If either party fails to select an appraiser, one (1) shall be selected by the officer holding the execution.

Sec. 5. The appraisers shall make a schedule of the real and personal property selected by the judgment debtor, describing the real estate by metes and bounds, and the personal property by separate items, affixing to each the value they agree upon. The appraisers, or a majority, shall affix to the schedule an affidavit in substance as follows: "We, the undersigned, swear that, in our opinion, the property described in the schedule above is valued justly."

Sec. 6. The schedule of real and personal property shall be delivered to the officer holding the execution or other process. The officer shall return the schedule with the execution or other process and make the schedule a part of the return. However, all second or subsequent appraisals under this chapter are at the cost of the

C o p y

party or parties asking for the reappraisal, unless the property of the judgment debtor at the time of the reappraisal is appraised at enough over and above the legal exemption to meet the costs.

Sec. 7. Each appraiser, for the appraiser's services, shall be allowed the sum of fifty cents ($0.50), to be paid by the judgment debtor.

Sec. 8. If the judgment debtor claims as exempt from execution personal property only, the officer holding the execution shall cause the property to be appraised and set apart to the judgment debtor, and shall proceed to sell such other property, if any, that is subject to execution according to law.

Sec. 9. (a) If the claim of the judgment debtor as exempt from execution includes both real and personal property, the officer holding the execution shall proceed to have the personal property appraised and set apart to the judgment debtor, and then have the real property claimed appraised. If the amount of both appraisals exceeds six hundred dollars ($600), the debtor may, within sixty (60) days after the appraisals, pay the excess or an amount sufficient to satisfy the execution. However, if the debtor fails to do so, the officer shall proceed to sell the real property as other real property is sold on execution, if the execution authorizes the sale of the property.

(b) In making the sale under subsection (a), the officer may not receive a bid unless the bid exceeds the difference between six hundred dollars ($600) and the appraisal of the personal property set apart to the judgment debtor. If the officer sells the real property, the officer shall pay over to the judgment debtor the amount of the difference, and of the remainder, apply upon the execution enough to satisfy the execution, and pay the balance, if any, to the judgment debtor or to such other party entitled to the balance.

Sec. 10. If the judgment debtor claims as exempt from the execution real property only, the real property shall be appraised, and if its appraised value exceeds six hundred dollars ($600), the real property shall be sold if there is a bid for more than six hundred dollars ($600). If sold, the officer shall pay to the judgment debtor six hundred dollars ($600), and the remainder of the purchase money shall be disposed of as provided in section 9 of this chapter.

Sec. 11. In all cases in which real property is claimed as exempt from sale on execution, if the real property is susceptible of division by metes and bounds without material injury, the real

C o p y

property shall be divided to exempt the principal dwelling house or homestead of the judgment debtor.

Sec. 12. Before a judgment debtor receives the benefit of the exemption provided by this chapter, the judgment debtor shall deliver to the officer holding the execution a schedule of all the judgment debtor's property, as required by law, if an exemption from sale on execution is claimed.

Sec. 13. In any case when the execution defendant is absent from Indiana, or is absent himself or herself from home, and an attachment or execution is directed against the execution defendant's property, the spouse may:

(1) make out and verify the schedule of the absent spouse's property, and claim and receive for the absent spouse the exemption provided in this chapter; and

(2) claim and exercise all the rights that would belong to the absent spouse if the absent spouse were present.

Sec. 14. The exemption under this chapter does not:

(1) affect any laborer's or mechanic's lien or lien for the purchase money of the real property exempted; or

(2) exempt any property from taxation or from sale for taxes.

Chapter 11. Sale and Execution of Real Estate: Payment of Taxes and Assessments

Sec. 1. (a) Whenever real estate is sold on execution or by virtue of a decretal order at judicial sale, the owner of the certificate of purchase may, during the year of redemption, pay to the clerk of the court in whose office the certificate of purchase is required to be recorded the amount of taxes and assessments becoming due and payable against the real estate during the year of redemption.

(b) The clerk shall pay and discharge the taxes and assessments, and, upon the redemption of the real estate, the amount so paid shall be paid by the redemptioner and collected by the clerk as a part of the amount necessary to redeem the real estate from sale.

Chapter 12. Collection of Judgments Against City or County

Sec. 1. (a) A judgment against a county or city may be enforced only from appropriations made for that purpose.

(b) The proper officers of the county or city may be compelled by mandamus proceedings to make the necessary provisions for appropriating, levying, and collecting by taxation the sum necessary for the payment of a judgment. In the mandamus proceedings:

C o p y

(1) the respective bodies and officers may be sued collectively by their legal names;

(2) service of process may be made on any member of the respective bodies; and

(3) all members of the respective bodies are bound by the judgment.

(c) If a city is entitled to an appeal, the appeal shall be granted without bond. A judgment against a city may not be enforced pending an appeal.

Sec. 2. (a) This section does not apply to judgments and awards arising out of actions between municipalities or in which the state may have an interest.

(b) Execution may not be made upon a judgment or award of a court or board against real or personal property owned by a city or town, or on the interest of a city or town in such property.

(c) A mandate or injunction may not be issued by a court against a city or town or the officers of a city or town concerning a judgment or award unless the judgment or award arises from or out of an action in tort or on an express contract.

Chapter 13. Collection of Judgments Against Railroad Companies

Sec. 1. (a) Whenever any judgment rendered in any court against any railroad company owning or operating a line of railroad in or running into or through Indiana remains unpaid for one (1) year after the rendition of the judgment, exclusive of the time execution of the judgment is stayed by appeal or supersedeas, the owner of the judgment may file a complaint against the railroad company alleging such facts and cause summons to be issued on the complaint as in other civil cases.

(b) When summons has been served on the railroad company defendant at least ten (10) days before the first day of the term of court at which the complaint is to be heard, the court shall order a writ to issue, directed to the sheriff of the proper county, for any agent, conductor, or employee of the railroad company, or of the lessee, receiver, or assignee of the company, named in the motion, to:

(1) appear immediately or at such time as the court may direct; and

(2) answer upon oath as to the:

(A) amount of money in the person's hands, if any, belonging to the company or to the assignee, lessee, or receiver; and

C o p y

(B) probable amount of money receivable by the agent, conductor, or employee belonging to the railroad company, lessee, assignee, or receiver.

(c) If the agent, conductor, or employee answers that one (1) or more of them have any money belonging to the company or to the assignee, lessee, or receiver or that they are in the constant receipt of money as agent, conductor, or employee, the court shall order the agent, conductor, or employee to pay into the clerk's office of the court, at such times as named by the court, the portions of the money so held or receivable, not exceeding fifty percent (50%) of the amount, as may be determined just by the court until the judgment and costs are fully paid and satisfied.

(d) This section does not affect the liens of laborers or the priority of claims and judgments of laborers, employees, and materialmen.

Sec. 2. This chapter (and IC 34-2-23 before its repeal) are not intended to repeal any law or part of law in effect on April 27, 1899, in relation to the collection of judgments against railroad companies.

SECTION 52. IC 34-56 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 56. APPEALS

Chapter 1. Judgments from Which Appeals May Be Taken

Sec. 1. Appeals may be taken by either party from all final judgments in circuit courts and superior courts.

Sec. 2. The party obtaining a judgment shall not take an appeal after receiving any money paid or collected on a judgment.

Sec. 3. A ruling or order of the court granting a motion for a new trial shall be treated as a final judgment. An appeal may be taken on the ruling or order.

Chapter 2. Appeal Bonds in Circuit Courts

Sec. 1. This chapter applies to all cases in which:

(1) an appeal is taken from:

(A) a board of county commissioners, viewers, or commissioners to assess damages; or

(B) any other person or tribunal;

to the circuit court; and

(2) the appeal bond filed in the case is defective:

(A) in substance or form; or

(B) for want of proper approval.

Sec. 2. The circuit court shall not dismiss a case on account of

C o p y

the defect or informality of the appeal bond if the appellant, when required by the court to which the appeal is taken, files in the court a sufficient bond, with surety to the acceptance of the court, in the sum required by the court.

Sec. 3. In all appealed cases described in section 1 of this chapter, when costs have accrued so as to render the sum named in the appeal bond insufficient to secure the costs, the court in which the appeal is pending shall require the appellant to give an additional bond in such sum as the court considers sufficient, with surety to the acceptance of the court. If the appellant fails or refuses to comply with this section, the court shall dismiss the appeal.

Chapter 3. Federal Agencies Exempt from Appeal Bond Requirements

Sec. 1.This chapter does not apply to and does not affect in any way the status of any:

(1) national bank or banking institution;

(2) federal building and savings association; or

(3) building and loan association;

whether organized under federal or state laws.

Sec. 2. (a) This section applies to all actions in which:

(1) an agency or instrumentality of the United States of America; or

(2) persons representing an agency or instrumentality described in subdivision (1) in any official capacity;

are entitled to take an appeal of any kind.

(b) An appeal described in subsection (a) shall be granted or taken as to the agency or instrumentality of the United States of America, or persons representing the agency or instrumentality, without bond.

(c) A proceeding may not be brought to enforce any judgment against the agency or instrumentality of the United States of America, or persons representing the agency or instrumentality, and execution of the judgment shall be stayed pending the appeal.

(d) A bond or undertaking may not be required of any agency or instrumentality of the United States of America, or persons representing the agency or instrumentality in any official capacity, in any proceeding or action by or against the agency or instrumentality or persons representing the agency or instrumentality in which any bonds or undertakings are required generally of any parties.

Chapter 4. Bill of Exceptions

Copy

Sec. 1. This chapter applies when the record does not show the decision or grounds of an objection to the decision.

Sec. 2. The party objecting must, within the time allowed, present to the judge a proper bill of exceptions.

Sec. 3. If the bill of exceptions is true, the judge shall promptly:

(1) sign the bill of exceptions; and

(2) cause it to be filed in the cause.

Sec. 4. If the bill of exceptions is not true, the judge shall correct, sign, and cause the bill of exceptions to be filed without delay.

Sec. 5. When signed by the judge and filed, the bill of exceptions becomes a part of the record. Delay of the judge in signing and filing the bill of exceptions does not deprive the party objecting of the benefit of the bill of exceptions.

Sec. 6. The date of the presentation must be stated in the bill of exceptions, and the entry must show the time granted, if beyond the time, for presenting the same.

SECTION 53. IC 34-57 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 57. ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION

Chapter 1. Arbitration: Generally

Sec. 1. This chapter applies to any controversy existing between two (2) or more parties, which might be the subject of a suit at law, except as otherwise provided in section 2 of this chapter

Sec. 2. (a) Except as provided in subsection (b), no submission to arbitration shall be made respecting the claim of any person to any estate in fee or for life to any real estate.

(b) The following controversies may be submitted to arbitration:

(1) A claim to an interest in a term for years, or for one (1) year or less, in real estate.

(2) Respecting the partition of lands between joint-tenants or tenants-in-common.

(3) Concerning the boundaries of lands.

(4) Concerning the assignment of dower.

Sec. 3. All persons, except minors and mentally incompetent persons, may, by an instrument in writing, submit a controversy for arbitration by one (1) or more persons.

Sec. 4. The arbitrator is mutually chosen by the parties to the

Copy

controversy.

Sec. 5. The parties may agree that each submission be made by a rule of any court of record designated in the instrument.

Sec. 6. When an agreement is made according to sections 1 through 5 of this chapter, the parties shall execute bonds. The bonds must contain:

(1) a condition to abide and faithfully perform the award or umpirage;

(2) the name of the arbitrator or arbitrators;

(3) the matters submitted to arbitration for determination; and

(4) an agreement to make the submission a rule of the court designated in the agreement of submission.

Sec. 7. As soon as the bonds are delivered, either party may appoint a time and place for the arbitrator to meet, by giving the opposite party and the arbitrator not less than ten (10) days written notice.

Sec. 8. Before hearing any testimony, the arbitrator or arbitrators shall swear faithfully and fairly to:

(1) hear and examine the matters in controversy; and

(2) make a just award according to the best of the arbitrator's understanding.

Sec. 9. The oath may be administered to the arbitrator and witnesses by any person authorized to administer oaths.

Sec. 10. As soon as the arbitrator is ready to proceed, the parties may exhibit their proofs. All the arbitrators must meet together, and hear the allegations of the parties, but the award of a majority is valid, unless otherwise required by the submission.

Sec. 11. The award must be:

(1) in writing;

(2) signed by the arbitrator or arbitrators who agreed to it; and

(3) attested by a subscribing witness.

Sec. 12. One (1) of the arbitrators shall deliver a true copy of the award and of the costs to:

(1) each of the parties; or

(2) the last usual place of residence of a party;

not later than fifteen (15) days after the award is signed.

Sec. 13. If either of the parties fails or refuses to comply with the award, the other party may file the award, together with the agreement of submission, in the court named in the submission.

Sec. 14. (a) If the party seeking compliance proves the

Copy

submission, the award, and that a copy of the award was duly served on the party against whom the rule is asked, the court shall:

(1) enter the submission and the award as matters of record; and

(2) grant a rule on the record against the adverse party, to show cause why judgment should not be rendered by the court upon the award.

(b) The submission may be proved by:

(1) a subscribing witness to the submission; or

(2) in case of death, insanity, or absence out of the state of the subscribing witness, as in other cases of a written instrument.

(c) The award may be proved:

(1) as a submission is proved under subsection (b); or

(2) by one (1) or more of the arbitrators.

Sec. 15. Upon the return of the rule the court shall confirm the award and render judgment upon it, unless the award is vacated, modified, or postponed, as provided in this chapter. The judgment has the same force and effect as judgments in other cases.

Sec. 16. (a) If the rule has been served ten (10) days or more on the adverse party before the time set for showing cause against the award, the court may proceed to examine and determine the rule in the adverse party's absence.

(b) If the adverse party appears, the court shall proceed to hear and determine the grounds alleged against the award, if there are any.

Sec. 17. In all cases where an award is presented to any court of record for a judgment to be entered upon the award, whether the reference was made by submission of parties, or by rule of court, the adverse party may show cause against the rendition of the judgment on any of the following grounds:

(1) The award or umpirage was obtained by fraud, corruption, partiality, or other undue means, or the arbitrator showed evidence of partiality or corruption.

(2) The arbitrator was guilty of misconduct in:

(A) refusing to postpone the hearing upon sufficient cause shown;

(B) refusing to hear evidence material and pertinent to the controversy; or

(C) any other misbehavior by which the rights of any party were prejudiced.

(3) The arbitrator exceeded the arbitrator's powers, or so imperfectly executed them that a mutual, final, and definite

Copy

award on the subject-matter submitted was not made.

Sec. 18. Any party to a submission may move the court to modify or correct the award in the following cases:

(1) When there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property referred to or mentioned in the award.

(2) When the arbitrator has awarded upon a matter that was not submitted, and does not affect the merits of the decision upon the matters which were submitted.

(3) When the award is imperfect in some matter of form, that:

(A) does not affect the controversy; and

(B) if it had been a verdict, the defect could have been properly amended or disregarded by the court.

Sec. 19. (a) The court shall hear the proofs and allegations of the parties, to invalidate and sustain the award.

(b) The court shall:

(1) confirm the award;

(2) modify and correct the award in the cases prescribed in section 18 of this chapter so as to:

(A) effect the intent of the award; and

(B) promote justice between the parties; or

(3) vacate the award for any of the causes specified in this chapter at the costs of the parties seeking to enforce the award.

(c) If the award is confirmed under subsection (b)(1), or modified under subsection (b)(2), the court shall render judgment on the original or corrected award.

Sec. 20. If the award is confirmed, judgment shall be given in favor of any party to whom any sum of money or damages has been awarded that the party recover the amount awarded. If the award orders any act to be done by either party; judgment shall be entered that the act be done according to the award.

Sec. 21. (a) The costs of the proceedings in court shall be taxed as in suits.

(b) If no provision for the fees and expenses of the arbitration is made in the award, the court shall make allowances for costs.

(c) However, if:

(1) there was a suit pending before the submission; and

(2) the costs of the suit were not noticed by the arbitrator; the court shall not allow or tax any of the costs of the suit incurred before the submission.

C o p y

Sec. 22. When the court enters a judgment on award that requires any party to perform any act other than the payment of money, the court has authority to enforce the performance by attachment, until the terms of the judgment have been complied with.

Sec. 23. If the subject matter of any suit pending in any court, could originally have been submitted to arbitration, the parties to the suit, their agent, or attorney may consent, by rule of court, to refer the matter in controversy to certain persons mutually chosen by the parties in an open court.

Sec. 24. The referees, if required by the parties, shall:

(1) be sworn in open court or before any officer authorized to administer oaths, faithfully and impartially to investigate, adjust, and report the matters submitted;

(2) proceed to investigate matters according to the submission of the parties; and

(3) report to the court at a time agreed to by the parties in the rule of reference.

Sec. 25. When the report is returned under the signatures of a majority of the referees, the report shall be entered on the order book, and shall have the same effect as the verdict of a jury.

Sec. 26. Either party may move the court for judgment on the report. If no sufficient cause is shown to the contrary, judgment shall be rendered on the report in like manner and with like force and effect as if rendered upon the verdict of a jury.

Chapter 2. Arbitration: Uniform Arbitration Act

Sec. 1. (a) A written agreement to submit to arbitration is valid, and enforceable, an existing controversy or a controversy thereafter arising is valid and enforceable, except upon such grounds as exist at law or in equity for the revocation of any contract. If the parties to such an agreement stipulate in writing, the agreement may be enforced by designated third persons, who shall in such instances have the same rights as a party under this chapter. This chapter also applies to arbitration agreement between employers and employees or between their respective representatives (unless otherwise provided in the agreement).

(b) This chapter specifically exempts from its coverage all consumer leases, sales, and loan contracts, as these terms are defined in the Uniform Consumer Credit Code (IC 24-4.5).

Sec. 2. Arbitration shall be initiated by a written notice by either party, mailed by registered or certified mail, or delivered to the other party, briefly stating a claim, the grounds for the claim

C o p y

and the amount or amounts. Issues shall be joined by written notice of admissions or denials and any counterclaims or set-offs so mailed or delivered. The statutes of limitations ceases to run from the time of any notice of claim or counterclaim.

Sec. 3. (a) On application of a party showing an agreement described in section 1 of this chapter, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. Ten (10) days notice in writing of the hearing of such application shall be served personally upon the party in default. If the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue raised without further pleading and shall order arbitration if found for the moving party; otherwise, the application shall be denied.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Ten (10) days notice in writing of the hearing of the application shall be served personally upon the party in default. Such an issue, when in substantial and bona fide dispute, shall be forthwith summarily determined without further pleadings and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (a), the application shall be made in that action or proceeding. Otherwise and subject to section 17 of this chapter, the application may be made in any court with jurisdiction.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for an order for arbitration has been made under this section (or IC 34-4-2-3 before its repeal), or, if the issue is severable, the stay may be with respect to the issue only. When the application is made in such an action or proceeding, the order for arbitration must include such a stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

(f) If the court determines that there are other issues between the parties that are not subject to arbitration and that are the

C o p y

subject of a pending action or special proceeding between the parties and that a determination of such issues is likely to make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies.

(g) On application the court may stay an arbitration proceeding on a showing that the method of appointment of arbitrators is likely to or has resulted in the appointment of a majority of arbitrators who are partial or biased in some relevant respect. The court shall then appoint one (1) or more arbitrators as provided in section 4 of this chapter.

Sec. 4. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence of such an agreement, any method of appointment of arbitrators agreed upon by the parties to the contract shall be followed. When an arbitrator appointed fails or is unable to act, a successor shall be appointed in the same manner as the original appointment. If the method of appointment of arbitrators is not specified in the agreement and can not be agreed upon by the parties, or if agreed method fails or for any reason can not be followed, or if an arbitrator appointed fails or is unable to act and a successor has not been appointed within a reasonable time, the court on application of a party shall appoint one (1) or more arbitrators, who have all the powers of an arbitrator appointed according to the agreement.

Sec. 5. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

Sec. 6. Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than thirty (30) days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

C o p y

Any party may require that the hearing be recorded in a manner sufficient for appeal.

(b) The parties are entitled to be heard and to present any and all evidence material to the controversy regardless of its admissibility under judicial rules of evidence.

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining neutral arbitrator or neutral arbitrators may continue with the hearing and determination of the controversy.

Sec. 7. A party is entitled to be represented by an attorney at any proceeding or hearing under this chapter. A waiver of the right to representation before the proceeding or hearing is ineffective.

Sec. 8. (a) The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have authority to administer oaths. In matters subject to arbitration between labor and management, neither party may subpoena or obtain an order for the production of the financial books, financial records, or documents pertaining to the income or financial condition of the other party. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party, the arbitrators may order the deposition of a witness to be taken for use as evidence, and not for discovery, if the witness can not be subpoenaed or is unable to attend the hearing. The deposition shall be taken in the manner prescribed by law for the taking of depositions in civil actions.

(c) All provisions of law compelling a person under subpoena to testify are applicable and enforceable upon application to the court.

(d) Fees for attendance as a witness are the same as for a witness in the superior court.

Sec. 9. (a) The award must be in writing and signed by the arbitrators concurring therein. It must include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

C o p y

(b) An award shall be made within the time fixed by the agreement or, if not fixed, or, if not agreed upon, within a reasonable time. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of his objection before service of a signed copy of the award on the party.

Sec. 10. On written application of a party or, if an application to the court is pending under section 12, 13, or 14 of this chapter (or IC 34-4-2-12, IC 34-4-2-13, or IC 34-4-2-14 before their repeal), on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 14(a)(1) and 14(a)(3) of this chapter, or for the purpose of clarifying the award. The application shall be made within twenty (20) days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that the opposing party must serve his objections thereto, if any, within ten (10) days from the notice. The award so modified or corrected is subject to sections 12, 13, and 14 of this chapter.

Sec. 11. The arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

Sec. 12. Upon application of a party, but not before ninety (90) days after the mailing of a copy of the award to the parties, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 13 and 14 of this chapter. Upon confirmation, the court shall enter a judgment consistent with the award and cause such entry to be docketed as if rendered in an action in the court.

Sec. 13. (a) Upon application of a party, the court shall vacate an award where:

(1) the award was procured by corruption or fraud;

(2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) the arbitrators exceeded their powers and the award can not be corrected without affecting the merits of the decision upon the controversy submitted;

(4) the arbitrators refused to postpone the hearing upon

C o p y

sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 6 of this chapter, as to prejudice substantially the rights of a party; or

(5) there was no arbitration agreement and the issue was not adversely determined in proceedings under section 3 of this chapter (or IC 34-4-2-3 before its repeal), and the party did not participate in the arbitration hearing without raising the objection;

but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety (90) days after the mailing of a copy of the award to the applicant, except that, if predicated upon corruption or fraud or other undue means, it shall be made within ninety (90) days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in subsection (a)(5), the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with section 4 of this chapter, or, if the award is vacated on grounds set forth in subsection (a)(3) or (a)(4), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 4 of this chapter. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

Sec. 14. (a) Upon application made within ninety (90) days after mailing of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form, not affecting

C o p y

the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

Sec. 15. Upon the granting of an order confirming, modifying, or correcting an award, judgment, or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

Sec. 16. Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in civil cases.

Sec. 17. The term "court" means any circuit or superior court. The making of an agreement described in section 1 of this chapter providing for arbitration in Indiana confers jurisdiction on the court to enforce the agreement under and to enter judgment on an award thereunder.

Sec. 18. An application, as provided for in section 3(a) of this chapter, shall be made to the court in the county where the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this state, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

Sec. 19. (a) An appeal may be taken from:

(1) an order denying an application to compel arbitration made under section 3 of this chapter (or IC 34-4-2-3 before its repeal);

(2) an order granting an application to stay arbitration made under section 3(b) of this chapter (or IC 34-4-2-3(b) before its repeal);

(3) an order confirming or denying confirmation of an award;

(4) an order modifying or correcting an award;

(5) an order vacating an award without directing a rehearing; or

C o p y

(6) a judgment or decree entered pursuant to the provisions of this chapter (or IC 34-4-2 before its repeal).

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Sec. 20. This chapter applies only to agreements made after August 18, 1969.

Sec. 21. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact similar arbitration statutes.

Sec. 22. This chapter may be cited as the Uniform Arbitration Act.

Chapter 3. Community Dispute Resolution

Sec. 1. This chapter applies to the following disputes:

(1) A criminal offense that a prosecuting attorney has referred to a community dispute resolution center under a diversion program under IC 33-14-1-7.

(2) A civil action that has been filed and referred by the court to a dispute resolution program for alternative dispute resolution under IC 34-57-4 (or IC 34-4-2 before its repeal).

(3) Civil disputes that do not involve an insurance claim, in which the parties voluntarily submit to community dispute resolution without filing an action in court.

Sec. 2. (a) The community dispute resolution centers program is established.

(b) The chief justice of Indiana shall do the following to the extent that sufficient funds are available:

(1) Administer and supervise the program.

(2) Select centers to receive funding from applications that are submitted under this chapter.

(3) Distribute funds for the establishment and continuance of centers on the basis of need in the community.

(4) Adopt rules that are necessary to carry out the purposes of this chapter and IC 34-57-4.

(c) The chief justice of Indiana, subject to the approval of the budget agency, may hire the personnel necessary to administer the program.

(d) The Indiana supreme court may collect an annual voluntary contribution in the amount of twenty-five dollars ($25) from each attorney admitted to practice before the Indiana supreme court. The money collected from the voluntary contributions shall be used for the program.

Sec. 3. Applications submitted for funding under this chapter

C o p y

must include the following information:

(1) The cost of operating each of the proposed centers, including the proposed compensation of employees.

(2) A description of the proposed area of service and the number of participants expected to be served.

(3) A description of available dispute resolution services and facilities within the proposed geographical area.

(4) A description of the applicant's proposed services, including a description of the following:

(A) Support of civic groups, social service agencies, and criminal justice agencies to accept and make referrals.

(B) The present availability of resources.

(C) The applicant's administrative capacity.

(5) Additional information required by the chief justice of Indiana.

Sec. 4. To be eligible for funds under this chapter, a center must do the following:

(1) Comply with this chapter and the rules adopted by the chief justice of Indiana.

(2) Provide neutral mediators who have received training in conflict resolution techniques as specified under rules adopted by the chief justice of Indiana.

(3) Provide dispute resolution without cost to a participant who is indigent and at nominal or no cost to other participants.

(4) Provide dispute resolution services to the community for parties who participate on a voluntary basis.

(5) Ensure that any arbitration services offered by the center are in compliance with IC 34-57-2.

(6) At the conclusion of the dispute resolution process do the following, if an agreement is reached:

(A) Provide a written agreement or decision setting forth the settlement of the issues and future responsibilities of each participant.

(B) If the matter was referred by the court for dispute resolution after a cause was filed, provide a written agreement or decision to the court that made the referral.

(C) If the matter was referred by a prosecuting attorney for dispute resolution, provide a written agreement or decision to the prosecuting attorney that made the referral.

C o p y

Sec. 5. Each center that receives funds under this chapter must:

(1) be operated by a grant recipient;

(2) be operated under a contract with the chief justice of Indiana; and

(3) comply with this chapter.

Sec. 6. (a) Funds available for the purposes of this chapter may be allocated for services provided by eligible centers.

(b) A center in existence before July 1, 1992, may apply for funds available under this chapter.

Sec. 7. The chief justice of Indiana may accept, apply for, and disburse public or private funds for the purposes of this chapter.

Sec. 8. (a) A grant recipient may accept funds from public or private sources for the services provided by the grant recipient.

(b) The state board of accounts, the chief justice of Indiana, or an authorized representative of the state board of accounts or the chief justice of Indiana may inspect, examine, and audit the fiscal affairs of local programs or centers.

(c) Centers must, whenever reasonably possible, make use of public facilities free or at nominal cost.

Sec. 9. A center operated under this chapter is not a state agency or an instrumentality of the state. Employees and volunteers of a center are not employees of the state.

Sec. 10. IC 34-57-2 applies to arbitration conducted under this chapter.

Sec. 11. (a) Except as provided in subsection (c), the following are not subject to subpoena or discovery or admissible in evidence in any judicial or administrative proceeding:

(1) All work product of a mediator.

(2) Any communication relating to the subject matter of the dispute made during the resolution process by a participant, mediator, or other person present at the dispute resolution.

(b) A mediator or a staff member of a center may not be compelled to testify in a judicial or an administrative proceeding with respect to a dispute that has been referred to a center for dispute resolution.

(c) Subsection (a) does not apply to a written agreement or decision provided to the participants, the court, or a prosecuting attorney under section 4(6) of this chapter (or IC 34-4-2.5-9(b) before its repeal).

Sec. 12. A center that receives funds under the program must annually provide the chief justice of Indiana with statistical data

C o p y

and other information that the chief justice of Indiana requires.

Sec. 13. The chief justice of Indiana shall prepare and submit an annual report to the governor and the general assembly that evaluates and makes recommendations concerning the operation and success of the centers funded under this chapter.

Sec. 14. Section 1(2) of this chapter does not prohibit a person who has been referred by the court to a dispute resolution program from filing a motion with the referring court for a trial de novo.

Sec. 15. (a) This section applies to a dispute described in section 1(3) of this chapter.

(b) Except as provided under subsection (c), the running of a statute of limitation ceases to run after the time:

(1) arbitration is initiated under IC 34-57-2-2 (or IC 34-4-2-2 before its repeal); or

(2) the parties sign an agreement to mediate.

(c) The statute of limitation resumes running after the earlier of the following:

(1) The date the parties enter into a written agreement under section 4(6) of this chapter (or IC 34-4-2.5-9(6) before its repeal).

(2) Six (6) months after the date that the statute of limitation was suspended under subsection (b) (or IC 34-4-2.5-20(b) before its repeal).

Chapter 4. Alternative Dispute Resolution

Sec. 1. This chapter applies to a civil action that is referred by a court to a dispute resolution center under rules adopted by the chief justice of Indiana under IC 34-57-3 (or IC 34-4-2.5 before its repeal) for alternative dispute resolution after the civil action was filed in the court.

Sec. 2. This chapter does not apply to matters covered by the Indiana Supreme Court Rules for Alternative Dispute Resolution.

Sec. 3. When a civil action is referred to a dispute resolution center under section 1 of this chapter, the court shall, except as otherwise provided under the rules adopted under IC 34-57-3 (or IC 34-4-2.5 before its repeal), suspend action on the case until the written agreement or decision from the dispute resolution center is submitted to the court under IC 34-57-3-4(6).

SECTION 54. IC 32-15 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 15. CAUSES OF ACTION CONCERNING REAL ESTATE

C o p y

Chapter 1. Statute of Limitations in Actions Concerning Real Estate Improvements or Injury to Persons or Property

Sec. 1. As used in this chapter:

(1) "Person" means any individual, partnership, association, limited liability company, corporation, business trust, joint stock company, or unincorporated organization.

(2) "Contract" means any contract either oral or written.

(3) "Tort" means any injury to person or property inflicted other than by mere breach of contract.

(4) "Date of substantial completion" means the earlier of:

(A) the date upon which construction of an improvement to real property is sufficiently completed, in accordance with a contract of construction (as modified by any additions, deletions, or other amendments) so that the owner of the real property upon which the improvement is constructed can occupy and use the premises in the manner contemplated by the terms of the contract; or

(B) the date of the first beneficial use of the improvement or any portion of the improvement.

Sec. 2. No action to recover damages whether based upon contract, tort, nuisance, or otherwise, for:

(1) any deficiency, or alleged deficiency, in the design, planning, supervision, construction, or observation of construction of an improvement to real property;

(2) an injury to property, either real or personal, arising out of any deficiency; or

(3) injury to the person, or for wrongful death, arising out of any such deficiency;

shall be brought against any person who designs, plans, supervises, or observes the construction of, or constructs an improvement to real property, unless the action is commenced within the earlier of ten (10) years from the date of substantial completion of the improvement or twelve (12) years after the completion and submission of plans and specifications to the owner if the action is for deficiency in design.

Sec. 3. (a) Notwithstanding section 2 of this chapter, in the event of an injury to a person, or of an injury to a person causing wrongful death, which injury occurs during the ninth or tenth year after substantial completion of an improvement to real property, an action in tort to recover damages for such injury to person or wrongful death may be brought within two (2) years after the date on which the injury occurred, irrespective of the date of death.

C o p y

(b) However, in no event may such an action be brought more than:

(1) twelve (12) years after the substantial completion of construction of the improvement; or

(2) fourteen (14) years after the completion and submission of plans and specifications to the owner if the action is for deficiency in design;

whichever comes first.

Sec. 4. The limitation prescribed in this chapter (or IC 34-4-20 before its repeal) shall not be asserted by way of defense by any person in actual possession or the control of real property, either as owner, tenant or otherwise, upon which an improvement has been made at the time any such deficiency in such improvement constitutes the proximate cause of the injury or wrongful death for which it is proposed to bring an action.

Chapter 2. Ejectment and Quiet Title

Sec. 1. Any person having a valid subsisting interest in real property and a right to the possession thereof, may recover the same by action to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein.

Sec. 2. Whenever it appears that the defendant is only a tenant, the landlord may be substituted, reasonable notice thereof being given.

Sec. 3. When the defendant is a nonresident, service may be had upon his agent for the property, residing in the state, with the like effect as though made upon the principal, or service may be had by publication, as in other cases.

Sec. 4. The plaintiff in his complaint shall state that he is entitled to the possession of the premises, particularly describing them, the interest he claims therein, and that the defendant unlawfully keeps him out of possession.

Sec. 5. The answer of the defendant may contain a denial of each material statement or allegation in the complaint; under which denial the defendant shall be permitted to give in evidence every defense to the action that he may have, either legal or equitable.

Sec. 6. Where the defendant makes defense, it shall not be necessary to prove him in possession of the premises.

Sec. 7. The plaintiff can not recover for the use and occupation of the premises for more than six (6) years next before the commencement of the action, but may recover in the same action,

C o p y

for use and occupation up to the time of its termination.

Sec. 8. If the interest of the plaintiff expires before the time in which he could be put in possession, he shall obtain a judgment for damages only.

Sec. 9. Where there are two (2) or more plaintiffs or defendants, any one (1) or more of the plaintiffs may recover against one (1) or more of the defendants, the premises or any part thereof, or interest therein, or damages according to the right of the parties, but the recovery shall not be for a greater interest than that claimed.

Sec. 10. An application for a new trial may be made by the party against whom judgment is rendered, his heirs, assigns or personal representatives, under the same restrictions and upon the same grounds as are provided for in other civil actions.

Sec. 11. The application for a new trial shall be filed at the time provided for the filing of such applications in other civil actions.

Sec. 12. Third persons acquiring an interest in the subject matter of the action during the pendency of the proceedings shall take their interest or interests subject to the result of the proceedings. However, this section and sections 10 and 11 of this chapter shall not apply to litigation pending on April 30, 1913.

Sec. 13. The party who, on such new trial, shows himself entitled to the lands which have thus passed to the hands of a purchaser, in good faith, may recover the proper amount of damages against the other party, either in the same or in subsequent actions.

Sec. 14. In an action against a tenant, the judgment shall be conclusive evidence against the landlord who has received notice as hereinbefore provided.

Sec. 15. The plaintiff must recover on the strength of his own title.

Sec. 16. The court, on motion, and after notice to the opposite party, may, for cause shown, grant an order allowing the party applying therefor, to enter upon the property in controversy, and make survey and admeasurement thereof for the purposes of the action.

Sec. 17. The order must describe the property, and a copy thereof must be served upon the owner or person having the occupancy and control of the land.

Sec. 18. When the plaintiff, in an action of this nature, is entitled to damages for withholding or using or injuring his

C o p y

property, the defendant may set off the value of any permanent improvements made thereon to the extent of such damages, unless he prefers to avail himself of the law for the benefit of occupying claimants.

Sec. 19. In case of wanton aggression on the part of a defendant, the jury may award exemplary damages.

Sec. 20. An action may be brought by any person, either in or out of possession, or by one having an interest in remainder or reversion, against another who claims title to, or interest in, real property adverse to him, although the defendant may not be in possession thereof, for the purpose of determining and quieting the question of title.

Sec. 21. The rules above prescribed shall, in such cases, be observed as far as they are applicable, and in partition cases, where the title to real estate is bona fide in question, upon the pleadings and evidence between the parties.

Sec. 22. If in such cases the defendant disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the defendant shall recover costs.

Sec. 23. In an action by a tenant-in-common, or joint-tenant of real property, against his cotenant, the plaintiff must show, in addition to his evidence of right, that defendant either denied plaintiff's right or did some act amounting to such denial.

Chapter 3. Occupying Claimant

Sec. 1. When an occupant of land has color of title thereto, and in good faith has made valuable improvements thereon, and is afterwards, in the proper action, found not to be the rightful owner thereof, no execution shall issue to put the plaintiff in possession of the property after filing the complaint hereinafter mentioned, until the provisions of this chapter are complied with.

Sec. 2. The complaint must set forth the grounds on which the defendant seeks relief, stating, among other things, as accurately as practicable, the value of the improvements on the lands, as well as the value of the lands aside from the improvements.

Sec. 3. All issues joined thereon shall be tried as in other cases, and the court or jury trying the cause shall assess:

(1) The value of all lasting improvements made as aforesaid on the lands in question previous to the commencement of the action for the recovery of the lands.

(2) The damages, if any, which the premises may have sustained by waste or cultivation to the time of rendering

C o p y

judgment.

(3) The fair value of the rents and profits which may have accrued, without the improvements, to the time of rendering judgment.

(4) The value of the estate which the successful claimant has in the premises, without the improvements.

(5) The taxes, with interest, paid by the defendant, and by those under whose title he claims.

Sec. 4. The plaintiff in the main action may thereupon pay the appraised value of the improvements, and the taxes paid, with interest, deducting the value of the rents and profits, and the damages sustained, as assessed on the trial, and take the property.

Sec. 5. Should he fail to do this, after a reasonable time, to be fixed by the court, the defendant may take the property, upon paying the appraised value of the land, aside from the improvements.

Sec. 6. If this be not done within a reasonable time, to be fixed by the court, the parties will be held to be tenants-in-common of all the lands, including the improvements, each holding an interest proportionate to the value of his property, as ascertained by the appraisement above contemplated.

Sec. 7. The purchaser in good faith at any judicial or tax sale, made by the proper person or officer, has color of title within the meaning of, whether such person or officer had sufficient authority to sell or not, unless the want of authority was known to the purchaser at the time of the sale; and the rights of the purchaser shall pass to his assignees or representatives.

Sec. 8. Any occupant of land who can show a connected title in law or equity, derived from the records of any public office, or who holds the same by purchase or descent from any person claiming title derived as aforesaid or by deed duly recorded, has color of title, within the meaning of this chapter.

Sec. 9. The occupying claimant may recover the value of lasting improvements made by the party under whom he claims, as well as those made by himself; and any person holding the premises as a purchaser, by an agreement in writing from the party having color of title, shall be entitled to this remedy.

Sec. 10. The plaintiff shall be entitled to an execution for the possession of his property, in accordance with the provisions of this chapter, but not otherwise.

Sec. 11. Whenever any land sold by an executor, administrator, guardian, sheriff or commissioner of court, is

C o p y

afterwards recovered in the proper action by any person originally liable, or in whose hands the land would be liable to pay the demand or judgment for which, or for whose benefit the land was sold, or any one claiming under such person, the plaintiff shall not be entitled, after the filing of the complaint, to a writ for the possession without having paid the amount justly due, as determined under the provisions of section 12 of this chapter (or IC 34-1-49-12 before its repeal) within the time therein stated.

Sec. 12. The defendants in the main action, or any of them, may file their complaint, setting forth the sale and title under it and any other matter contemplated in this chapter. Proceedings shall then be had, as aforesaid, to determine the amount of purchase money paid with interest, the value of the lasting improvements, the damages, if any, which the premises have sustained by waste or cultivation, the value of the rents and profits, and the taxes paid. If any balance remain due from the plaintiff in the main action, the court shall fix a reasonable time within which he shall pay the same, and if it not be paid within that time, the court shall order the land to be sold without relief from valuation or appraisement laws. In case of sale there shall be paid the costs of the proceedings, and the amount due the defendant, with interest, and the surplus, if any, shall be paid to the plaintiff.

Chapter 4. Actions for Waste

Sec. 1. Wrongs heretofore remediable by action of waste shall be subjects of action as other wrongs in which there may be judgment for damages, forfeiture of the estate of the party offending, and eviction from the premises. Judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession when the injury to the estate in reversion shall be adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.

Sec. 2. A person seized of an estate in remainder or reversion may maintain an action for waste or trespass, for injury to the inheritance, notwithstanding an intervening estate for life or years.

Chapter 5. Actions Again Cotenants

Sec. 1. A joint tenant, or tenant-in-common, or tenant in coparcenary, may maintain an action against his cotenant or coparcener, or their personal representatives, for receiving more than his just proportion.

Chapter 6. Mortgages Foreclosure Actions

Sec. 1. (a) When default is made in the performance of any

Copy

condition contained in a mortgage, the mortgagee, or his assigns, may proceed in the circuit court of the county where the land lies, to foreclose the equity of redemption contained in the mortgage.

(b) If the real estate is located in more than one (1) county, the court of either county shall have jurisdiction of an action for the foreclosure of the equity of redemption contained in the mortgage.

Sec. 2. When there is no express agreement in the mortgage, nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged.

Sec. 3. In rendering judgment of foreclosure, the courts shall give personal judgment against any party to the suit liable upon any agreement or agreements for the payment of any sum or sums of money secured by the mortgage, and shall order the mortgaged premises, or so much thereof as may be necessary to satisfy the mortgage, and judgment and costs of the action, to be first sold before levy of execution upon other property of the defendant. The payment of the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment.

Sec. 4. Upon the foreclosure of any recorded mortgage in any court of any county having jurisdiction in this state, and upon the payment and satisfaction of such judgment as may be rendered in such proceeding in foreclosure, the prevailing party shall immediately thereafter show satisfaction of the mortgage to be entered on the records of the recorder's office of such county. The record in foreclosure and satisfaction shall show that the whole debt, secured by the mortgage, has been paid. The recorder shall be paid a fee of not more than the amount specified in IC 36-2-7-10(b)(1) and (2) in each case of foreclosure requiring satisfaction.

Sec. 5. When there is an express written agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the order of sale that the balance due on the mortgage and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be levied on any property of the mortgage-debtor.

Sec. 6. The copy of the order of sale and judgment shall be issued and certified by the clerk, under the seal of the court, to the sheriff, who shall thereupon proceed to sell the mortgaged premises, or so much thereof as may be necessary to satisfy the judgment, interest and costs, as upon execution, and if any part of the judgment, interest, and costs remain unsatisfied, the sheriff

C o p y

shall forthwith proceed to levy the residue of the other property of the defendant. If the mortgaged property is located in more than one (1) county, a common description of the property, the sale of the property, and the location of the sale shall be advertised in each county where the property is located.

Sec. 6.5. (a) A sheriff shall sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or any creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of an auctioneer if it determines that a sale is economically feasible, or if all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer. The term "economically feasible" means a finding by the court that a reasonable probability exists that with the use of such services, a valid and enforceable bid will be made at the foreclosure for a sale price equal to or greater than the amount of the judgment and the costs and expenses necessary to its satisfaction, including the costs of the auctioneer, and no such probability exists without the use of an auctioneer.

(c) An auctioneer engaged by a sheriff under this section shall conduct his activities as appropriate to bring the highest bid for the property on foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

(d) The auctioneer's fee shall be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount set out in subsection (b), the auctioneer shall be entitled only to his advertising expenses plus one hundred dollars ($100). The amount due to the auctioneer on account of his expenses and fee, if any, shall be paid as a cost of the sale from its proceeds prior to the payment of any other payment therefrom.

(e) As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

Sec. 7. The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter, while he is foreclosing his mortgage, or prosecuting a judgment of foreclosure.

C o p y

Sec. 8. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest, or installment of the principal, and there are other installments not due, if the defendant pay into court the principal and interest due, with costs, at any time before final judgment, the complaint shall be dismissed. If such payment be made after final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue.

Sec. 9. In such cases the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interest of the parties, the court shall direct so much only of the premises to be sold as will be sufficient to pay the amount then due on the mortgage, with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected.

Sec. 10. If the mortgaged premises can not be sold in parcels, the court shall order the whole to be sold.

Sec. 11. Whenever an execution shall issue upon a judgment recovered for a debt secured by mortgage of real property, the plaintiff shall indorse thereon a brief description of the mortgaged premises, and the equity of redemption shall in no case be sold on such execution.

Sec. 12. The proceeds of a sale described in IC 32-8-16 or section 6 or 10 of this chapter shall be applied in the following order:

(1) Expenses of the offer and sale, including expenses incurred under IC 32-8-16-1.3 or section 6.5 of this chapter (or IC 34-1-53-6.5 before its repeal).

(2) The amount of any property taxes on the property sold:

(A) that are due and owing; and

(B) for which the due date has passed as of the date of the sheriff's sale.

The sheriff shall remit the amounts collected under this subdivision to the county treasurer not more than ten (10) days after the date of the sheriff's sale.

(3) Any amount of redemption where a certificate of sale is outstanding.

(4) The payment of the principal due, interest, and costs not described in subdivision (1).

C o p y

(5) The residue secured by the mortgage and not due.

(6) If the residue does not bear interest, a deduction shall be made by discounting the legal interest.

In all cases in which the proceeds of sale are more than sufficient to pay the amounts described in subdivisions (1) through (6), the surplus shall be paid to the clerk of the court to be disposed to the mortgage debtor, mortgage debtor's heirs, or mortgage debtor's assigns, as the court directs.

Chapter 7. Actions for Breach of Warranties in New Home Construction

Sec. 1. The warranties defined by this chapter (or IC 34-4-20.5 before its repeal) become effective on the warranty date attributed to a new home.

Sec. 2. As used in this chapter, "initial home buyer" means a person who executes a contract with a builder to buy a new home and who:

(1) occupies the new home as its first occupant; and

(2) occupies the new home as a residence.

Sec. 3. As used in this chapter, "major structural defect" means actual damage to the load-bearing part of a new home, including actual damage due to subsidence, expansion, or lateral movement of the soil affecting the load-bearing function, unless the subsidence, expansion, or lateral movement of the soil is caused by flood, earthquake, or some other natural disaster.

Sec. 4. As used in this chapter, "new home" means a new dwelling occupied for the first time after construction. The term does not include a detached garage, driveway, walkway, patio, boundary wall, retaining wall not necessary for the structural stability of the new home, landscaping, fence, nonpermanent construction material, off-site improvement, appurtenant recreational facility, or other similar item.

Sec. 5. As used in this chapter, "home buyer" means a purchaser of a new home and includes any owner of the new home before the expiration of the warranties defined by this chapter.

Sec. 6. As used in this chapter, "builder" means a person who constructs new homes for sale, including the construction of new homes on land owned by home buyers.

Sec. 7. As used in this chapter, "warranty date" means the date of the first occupancy of the new home as a residence by the initial home buyer.

Sec. 8. (a) In selling a completed new home, and in contracting to sell a new home to be completed, the builder may warrant to the

C o p y

initial home buyer the following:

(1) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials.

(2) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty installation of plumbing, electrical, heating, cooling, or ventilating systems, exclusive of fixtures, appliances, or items of equipment.

(3) During the four (4) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials in the roof or roof systems of the new home.

(4) During the ten (10) year period beginning on the warranty date, the new home will be free from major structural defects.

(b) The warranties provided in this section (or IC 34-4-20.5-8 before its repeal) survive the passing of legal or equitable title in the new home to a home buyer.

Sec. 9. (a) The builder may only disclaim all implied warranties if the following minimum conditions are met:

(1) The warranties defined in this chapter are expressly provided for in the written contract between a builder and an initial home buyer of a new home.

(2) The performance of the warranty obligations is backed by an insurance policy in an amount at least equal to the purchase price of the new home.

(3) The builder carries completed operations products liability insurance covering the builder's liability for reasonably foreseeable consequential damages arising from a defect covered by the warranties provided by the builder.

(b) The disclaimer shall be printed in a minimum size of 10 point boldface type setting forth that the statutory warranties of this chapter are in lieu of the implied warranties that have been disclaimed by the builder and the initial home buyer shall affirmatively acknowledge by complete signature that home buyer has read, understands, and voluntarily agrees to the disclaimer. Additionally, the initial home buyer must acknowledge the disclaimer of implied warranties by signing, at the time of execution of the contract, a separate one (1) page notice, attached to the contract, that includes and begins with the following language:

C o p y

NOTICE OF WAIVER OF IMPLIED WARRANTIES

I recognize that by accepting the express warranties and the insurance covering those warranties for the periods of time provided in this contract, I am giving up the right to any claims for implied warranties, which may be greater than the express warranties. Implied warranties are unwritten warranties relating to the reasonable expectations of a homeowner with regard to the construction of the homeowner's home, as those reasonable expectations are defined by the courts on a case by case basis.

(c) In the event there is a default of either the insurance for the performance of the warranty obligations or the completed operations products liability insurance, then the disclaimer by the builder is null and void from and after such default.

Sec. 10. (a) If a builder provides and breaches a warranty as defined under section 8 of this chapter (or IC 34-4-20.5-8 before its repeal), the home buyer may bring an action against the builder for:

(1) damages arising from the breach; or

(2) specific performance.

(b) If damages are awarded for a breach of a warranty as defined under section 8 of this chapter (or IC 34-4-20.5-8 before its repeal), the award may be for no more than:

(1) the actual damages, which are either:

(A) the amount necessary to effect repair of the defect that is the cause of the breach; or

(B) the amount of the difference between the value of the new home without the defect and the value of the new home with the defect;

(2) the reasonably foreseeable consequential damages arising from the defect covered by the warranty; and

(3) attorney's fees, if those fees are provided for in the written contract between the parties.

Sec. 11. (a) The warranties defined in this chapter (or IC 34-4-20.5 before its repeal) are in addition to any rights created by contract between the parties.

(b) The remedies provided in section 10 of this chapter (or IC 34-4-20.5-10 before its repeal) do not limit any remedies available in an action that is not predicated upon the breach of an express or implied warranty defined by this chapter (or IC 34-4-20.5 before its repeal) or otherwise existing.

Chapter 8. Judgments in Mortgage Actions

C o p y

Sec. 1. It shall not be necessary in any action upon a mortgage, or lien, to give time for the payment of money, or for doing any other act, but final judgment may, in such cases, be given in the first instance.

Sec. 2. In the foreclosure of a mortgage, the sale of the mortgaged property shall in all cases be ordered.

Chapter 9. Purchase of Property Subject to Judgment

Sec. 1. If, upon the sale of property, real or personal, the title of the purchaser is invalid as to all or any part of such property, by reason of any defect in the proceedings, or want of title, the purchaser may be subrogated to the rights of the creditor against the debtor, to the extent of the money paid and applied to the debtor's benefit; and where the judgment is entered satisfied, in whole or in part, by reason of such sale, such purchaser, upon notice to the parties to the proceeding, and upon motion, may have such satisfaction of the judgment vacated in whole or in part. Such purchaser, when the proceedings are defective, or the description of the property sold is imperfect, shall also have a lien to the same extent on the property sold as against all persons except bona fide purchasers without notice; but this section shall not be construed to require the creditor to refund the purchase-money by reason of the invalidity of any such sale.

Chapter 10. Validation of Certain Judgments Relating to Land Titles

Sec. 1. Unless requested, it shall not be necessary for the clerk to make a complete record of the proceedings in actions to quiet title. A record of the judgment in such cases, when properly recorded in the office of the county recorder, shall be sufficient.

SECTION 55. IC 33-5-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

Chapter 3.5. Terms and Powers of Superior Courts

Sec. 1. Terms and powers described in this chapter apply to superior courts except as otherwise provided in the particular statute creating the superior court for a particular county.

Sec. 2. When any superior court consists of more than one judge, there shall be held general and special terms thereof. A general term of such court may be held by a majority of the judges, and a special term by any one or more of them; and general and special terms, or one or more of them, may be held at the same time, as the judges of the court may direct; and whenever such term or terms are held, they shall be taken and deemed to have

C o p y

been held by the authority and direction of the judges.

Sec. 3. (a) The said court, at general or special term, shall have the following powers:

(1) To issue and direct all process to courts of inferior jurisdiction, and to corporations and individuals, which shall be necessary in exercising its jurisdiction, and for the regular execution of the law.

(2) To make all proper judgments, sentences, decrees, orders and injunctions.

(3) To issue all process and executions.

(4) To do such other acts as may be necessary to carry into effect the same, in conformity with the Constitution and laws of the state.

(b) The court shall, at such times as the business of the court may require it, meet in general term, and may, at any time, make such distribution and redistribution of the business of the court to special term, as it may deem proper.

(c) Each judge holding court at special term shall transact the business assigned him; but he may, in his discretion, call one or more of the judges of said court to sit with him in such special term, for the consideration of any matter pending before him.

(d) The court, at special term, shall have full power to hear and dispose of business distributed to it by the general term; and it shall, at either special or general term, have the same power, to vacate or modify its own judgments or orders, rendered at either special or general term, and to enter judgments by confession, as is, or may be, vested by law in circuit courts.

Sec. 4. The judges of said court, or either of them, shall have the same power to do the following:

(1) Grant restraining orders, injunctions and writs of ne exeat.

(2) Issue writs of habeas corpus, and of mandate and prohibition.

(3) Appoint receivers, master commissioners and commissioners to convey real property.

(4) Grant commissions for the examination of witnesses.

(5) Appoint other officers necessary to facilitate and transact the business of said court, as is now, or may hereafter be, conferred on judges of circuit courts.

Sec. 5. When any reason for a change of venue is shown to exist from any of the judges, as in other cases, the remaining judge or judges alone shall act but when all are incompetent to act, the

C o p y

case shall be transferred to the circuit court of the county.

Sec. 6. (a) In all cases where a person has the right of appeal from the circuit to the supreme court or court of appeals, an appeal may be taken direct to the supreme court or court of appeals from any order or judgment of the superior court.

(b) Appeals described in subsection (a) are governed by the law regulating appeals from the circuit court to the supreme court or court of appeals.

(c) Appeals from the special to the general term are abolished.

SECTION 56. IC 33-5-4-2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 2. In all counties with circuit and superior courts, the judge of the circuit court may, with the consent of the judge of the superior court, transfer any action, cause or proceedings filed and docketed in the circuit court to the superior court by transferring all original papers and instruments filed in the action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the superior court, provided the action, cause or proceeding could have been originally filed and docketed in the superior court, in any of the following instances:**

(1) Whenever more cases are filed in the circuit court during any year than can be disposed of with expedition.

(2) In all other cases, where, in the opinion of the circuit court judge, an early disposition of the case is required.

SECTION 57. IC 33-5-4-3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 3. In all counties with circuit and superior courts, the judge of the superior court may, with the consent of the judge of the circuit court, transfer any action, cause or proceedings filed and docketed in the superior court to the circuit court by transferring all original papers and instruments filed in the action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the circuit court, in any of the following instances:**

(1) Whenever more cases are filed in the superior court during any year than can be disposed of with expedition.

(2) In all other cases where, in the opinion of the superior court judge, an early disposition of the case is required.

SECTION 58. IC 33-5-4-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 4. Whenever a special judge has been designated in any action, cause or proceeding, and the special judge so**

C o p y

designated is the duly elected qualified and acting judge of a circuit, superior or probate court in such county having jurisdiction of the subject matter of the action, cause or proceeding, the regular judge of the court in which the action, cause or proceeding is pending may, after the designation of a special judge, with the consent of the special judge, transfer the action, cause or proceeding to the court presided over by the special judge by transferring all original papers and instruments filed in the action, cause or proceeding, without further transcript thereof, to be redocketed and disposed of as if originally filed with the court to which the action, cause or proceeding is transferred.

SECTION 59. IC 33-5.1-4 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

Chapter 4. Master Commissioners in Marion Superior Courts

Sec. 1. This chapter applies to Marion superior courts.

Sec. 2. The presiding judge of the court may appoint in writing master commissioners necessary to conduct the business of the court. A master commissioner must be a competent attorney in good standing. A master commissioner continues in office until removed by the presiding judge.

Sec. 3. A master commissioner may:

(1) administer all oaths and affirmations required by law;

(2) take and certify affidavits and depositions;

(3) issue subpoenas for witnesses whose testimony is to be taken before the master commissioner;

(4) compel the attendance of witnesses and punish contempts as the judge of the court;

(5) conduct preliminary hearings in criminal matters;

(6) issue search warrants and arrest warrants and fix bond on them; and

(7) enforce court rules.

Sec. 4. A master commissioner may hear evidence upon and report findings to the judge of the court for each matter referred to the master commissioner by the judge. However, the judge of the court shall:

(1) make the final judgment in such a matter; and

(2) in a criminal case tried by the court, conduct all sentencing hearings in such a case.

Sec. 5. A master commissioner may conduct a jury trial and receive the verdict of the jury in a civil case referred to the master commissioner by the judge of the court, but the judge shall make

C o p y

and enter the judgment on the jury verdict in such a case.

Sec. 6. A master commissioner may conduct a jury trial and receive the verdict of the jury in a criminal case referred to the master commissioner by the judge of the court, but the judge shall conduct all sentencing hearings and pronounce all final judgments in such a case.

Sec. 7. The presiding judge may limit any of the rights or powers of the commissioner prescribed in section 3, 4 or 8 of this chapter and the presiding judge may specifically determine the duties of the commissioner, within the limits prescribed in sections 3, 4, and 8 of this chapter.

Sec. 8. A master commissioner may serve as a judge pro tempore or a special judge of the court but is not entitled to additional compensation for the service.

Sec. 9. A master commissioner does not have the power of judicial mandate.

Sec. 10. A master commissioner is entitled to reasonable compensation:

(1) determined by the presiding judge; and

(2) paid by the county as an inclusion on the court's payroll voucher.

SECTION 60. IC 33-21 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

ARTICLE 21. ATTORNEYS AND THE PRACTICE OF LAW

Chapter 1. Practice of Law by Attorneys

Sec. 1. Every person, before proceeding to discharge the duties of an attorney, shall take an oath to support the Constitution of the United States and of this state, and that he will faithfully and honestly discharge the duties of an attorney-at-law; which oath shall be entered in the order-book of the court.

Sec. 2. At each term of the court, the clerk shall furnish the court with a list of the names of all the attorneys having business in such court.

Sec. 3. It shall be the duty of an attorney:

(1) To support the Constitution and laws of the United States and of this state.

(2) To maintain the respect that is due to the courts of justice and judicial officers.

(3) To counsel or maintain such actions, proceedings or defenses only as appear to him legal and just; but this section shall not be construed to prevent the defense of a person

C o p y

charged with crime, in any case.

(4) To employ for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of fact or law.

(5) To maintain inviolate the confidence, and, at every peril to himself, to preserve the secrets of his client.

(6) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

(7) Not to encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interest.

(8) Never to reject, from any consideration personal to himself, the cause of the defenseless or oppressed.

(9) To promptly account to and pay over to a client any moneys coming into the hands of the attorney and to which the client is lawfully entitled.

(10) To abstain from direct or indirect solicitation of employment to institute, prosecute, or defend against any claim, action or cause of action.

Sec. 4. An attorney has authority, until discharged or superseded by another:

(1) To bind his client in an action or special proceeding, by his agreement, filed with the clerk, or entered upon the minutes of the court, and not otherwise.

(2) To receive money claimed by his client in an action or special proceeding, during the pendency thereof or afterwards, and, upon the payment thereof, and not otherwise, to discharge the claim, or acknowledge satisfaction of the judgment.

Sec. 5. No judgment shall be rendered against any party upon the agreement of an attorney, nor any judgment by default, where the party has not been notified, or personally entered his appearance, unless the written authority of the party be first produced, and its execution proved to the satisfaction of the court.

Sec. 6. The court or judge may, on motion of either party, and on showing reasonable ground therefor, or without such motion, require an attorney to produce and prove the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear.

Copy

Sec. 7. If it be alleged by a party for whom an attorney appears, that he does so without authority, the court may, at any stage of the proceedings, relieve such party from the consequences of the attorney's act. It may, also, summarily, upon motion, compel the attorney to repair the injury consequent upon his assumption of authority.

Sec. 8. An attorney who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge or a party to an action or judicial proceeding, commits a Class B misdemeanor, and he shall also forfeit to the party injured treble damages, recoverable in a civil action.

Sec. 9. When an attorney, on request, refuses to deliver over money or papers to a person from whom or for whom he has received them, in the course of his professional employment, whether in an action or not, he may be required, after reasonable notice, on motion of any party aggrieved, by an order of the court in which an action, if any, was prosecuted or if no action was prosecuted, then by the order of any court of record, to do so, within a specified time, or show cause why he should not be punished for contempt.

Sec. 10. In cases contemplated in section 9 of this chapter, on such motion, or in an action brought by the party aggrieved, the court may suspend the attorney from practice in any of the courts of this state, for any length of time, in its discretion; judgment may also be rendered for the amount of money withheld, deducting fees, if any are due, and costs paid by the attorney, with ten percent (10%) damages, which may be enforced by execution, without the benefit of stay or appraisement laws, and returnable within thirty (30) days. The court may also render any judgment and make any order respecting papers or property withheld, that may be necessary to enforce the right of the party aggrieved, subject to any liens the attorney may have thereon for fees.

Chapter 2. Prohibition on Practicing Law by Nonattorneys

Sec. 1. The practice of law by a person who is not an attorney is prohibited under IC 33-1-5.

Chapter 3. Prohibition on Solicitation by Nonattorneys

Sec. 1. Soliciting another person to bring an action for damages by a person who is not an attorney is prohibited under IC 35-45-14.

SECTION 61. IC 35-36-6-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 11. (a) In any criminal proceeding**

Copy

wherein the defendant is charged with murder or a Class A felony to be tried before a jury in which a motion for a change of venue from the county is filed, the court may recognize but decline to grant the motion, and order that the jury be drawn from the residents of a county other than the county in which the court is located.

(b) Pursuant to an order under this section, the court may convene in any county in the state for purposes of jury selection. The venire may be drawn by the jury commissioners of a court in the jurors' home county, or may be drawn by the court itself by random selection.

(c) After a jury is selected, the trial shall be held in the county of the court's location. The verdict of the jury and the judgment based upon it have the same validity and effect as if the jury had been drawn from the county of the court's location.

SECTION 62. IC 3-6-11-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) The proprietor, manager, or association of co-owners shall retain the list required by section 5 of this chapter for at least forty (40) days after the election.

(b) The list required by section 5 of this chapter shall be submitted to each poll taker for examination within ten (10) days after a request. The proprietor, manager, or association and the poll taker may agree that the list will be mailed to the poll taker or will be available at the place of lodging or condominium. If no agreement can be reached, the list shall be made available at the place of lodging or the condominium.

(c) If the proprietor, manager, or association of co-owners does not:

(1) permit a poll taker for a political party or an independent candidate for a federal or a state office to enter the place or condominium under section 5(c) of this chapter;

(2) maintain a complete and accurate list as required under section 5 of this chapter; or

(3) provide the list required under this section to a political party upon request;

the chairman of the county election board of the county in which the place or condominium is located shall call a meeting of the board under IC 3-6-5.

(d) The secretary of the county election board shall notify the proprietor, manager, or association of the meeting by certified mail, return receipt requested.

(e) The county election board shall receive evidence concerning violations of this section and, if the board determines that reasonable

C o p y

cause exists to believe that a violation has occurred, forward a copy of the minutes of the meeting to the prosecuting attorney of the county in which the place or condominium is located for proceedings under ~~IC 34-4-32.~~ **IC 34-28-5.**

SECTION 63. IC 5-2-8-1, AS AMENDED BY P.L.22-1994, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) As used in this section:

"Abuse" has the meaning set forth in ~~IC 34-4-5.1-1.~~ **IC 34-6-2-1.**

"County law enforcement agency" includes university police officers appointed under IC 20-12-3.5.

(b) There is established in each county a county law enforcement continuing education program. The program is funded by amounts appropriated under IC 33-19-8-6.

(c) A county law enforcement agency receiving amounts based upon claims for law enforcement continuing education funds under IC 33-19-8-6 or IC 33-19-8-4 shall deposit each fee collected into the county law enforcement continuing education fund.

(d) Distribution of money in the county law enforcement continuing education fund shall be made to a county law enforcement agency without the necessity of first obtaining an appropriation from the county fiscal body.

(e) Money in excess of one hundred dollars ($100) that is unencumbered and remains in a county law enforcement continuing education fund for at least one (1) entire calendar year from the date of its deposit shall, at the end of a county's fiscal year, be deposited by the county auditor in the law enforcement training fund established under IC 5-2-1-13(b).

(f) To make a claim under IC 33-19-8-6 a law enforcement agency shall submit to the fiscal body a verified statement of cause numbers for fees collected that are attributable to the law enforcement efforts of that agency.

(g) A law enforcement agency shall submit a claim for fees under this section in the same county fiscal year in which the fees are collected under IC 33-19-5.

(h) A county law enforcement agency program shall provide to each law enforcement officer employed by the county and may provide to each law enforcement officer employed by a city or town law enforcement agency within the county continuing education concerning the following:

(1) Duties of a law enforcement officer in enforcing restraining orders, protective orders, temporary injunctions, and permanent injunctions involving abuse.

Copy

(2) Guidelines for making felony and misdemeanor arrests in cases involving abuse.

(3) Techniques for handling incidents of abuse that:

(A) minimize the likelihood of injury to the law enforcement officer; and

(B) promote the safety of a victim.

(4) Information about the nature and extent of abuse.

(5) Information about the legal rights of and remedies available to victims of abuse.

(6) How to document and collect evidence in an abuse case.

(7) The legal consequences of abuse.

(8) The impact on children of law enforcement intervention in abuse cases.

(9) Services and facilities available to victims of abuse and abusers.

(10) Verification of restraining orders, protective orders, temporary injunctions, and permanent injunctions.

(11) Policies concerning arrest or release of suspects in abuse cases.

(12) Emergency assistance to victims of abuse and criminal justice options for victims of abuse.

(13) Landlord-tenant concerns in abuse cases.

(14) The taking of an abused child into protective custody.

(15) Assessment of a situation in which a child may be seriously endangered if the child is left in the child's home.

(16) Assessment of a situation involving an endangered adult (as defined in IC 12-10-3-2).

(17) Response to a sudden, unexpected infant death.

(i) A county law enforcement agency may enter into an agreement with other law enforcement agencies to provide the continuing education required by this section and section 2(g) of this chapter.

SECTION 64. IC 5-2-8-2, AS AMENDED BY P.L.22-1994, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) As used in this section:

"Abuse" has the meaning set forth in ~~IC 34-4-5.1-1.~~ **IC 34-6-2-1.**

"City or town law enforcement agency" includes university police officers appointed under IC 20-12-3.5.

(b) There is established in each city and in each town with a city or town court a local law enforcement continuing education program. The program is funded by amounts appropriated under IC 33-19-8-4 and fees collected under IC 9-29-4-2, IC 9-29-11-1, and IC 35-47-2-3.

(c) A city or town law enforcement agency receiving amounts

Copy

based upon claims for law enforcement continuing education funds under IC 33-19-8-4 or IC 33-19-8-6 shall deposit each fee collected into the local law enforcement continuing education fund.

(d) Distribution of money in a local law enforcement continuing education fund shall be made to a city or town law enforcement agency without the necessity of first obtaining an appropriation from the fiscal body of the city or town.

(e) To make a claim under IC 33-19-8-4 a law enforcement agency shall submit to the fiscal body a verified statement of cause numbers for fees collected that are attributable to the law enforcement efforts of that agency.

(f) A law enforcement agency shall submit a claim for fees under this section in the same local fiscal year in which the fees are collected under IC 33-19-5.

(g) A city or town law enforcement agency shall provide to each law enforcement officer employed by the city or town law enforcement agency continuing education concerning the following:

(1) Duties of a law enforcement officer in enforcing restraining orders, protective orders, temporary injunctions, and permanent injunctions involving abuse.

(2) Guidelines for making felony and misdemeanor arrests in cases involving abuse.

(3) Techniques for handling incidents of abuse that:

(A) minimize the likelihood of injury to the law enforcement officer; and

(B) promote the safety of a victim.

(4) Information about the nature and extent of abuse.

(5) Information about the legal rights of and remedies available to victims of abuse.

(6) How to document and collect evidence in an abuse case.

(7) The legal consequences of abuse.

(8) The impact on children of law enforcement intervention in abuse cases.

(9) Services and facilities available to victims of abuse and abusers.

(10) Verification of restraining orders, protective orders, temporary injunctions, and permanent injunctions.

(11) Policies concerning arrest or release of suspects in abuse cases.

(12) Emergency assistance to victims of abuse and criminal justice options for victims of abuse.

(13) Landlord-tenant concerns in abuse cases.

C o p y

(14) The taking of an abused child into protective custody.

(15) Assessment of a situation in which the child may be seriously endangered if the child is left in the child's home.

(16) Assessment of a situation involving an endangered adult (as defined in IC 12-10-3-2).

(17) Response to a sudden, unexpected infant death.

(h) A city or town law enforcement agency may enter into an agreement with other county, city, or town law enforcement agencies to provide the continuing education required by this section and section 1(h) of this chapter.

SECTION 65. IC 5-2-8-5, AS AMENDED BY P.L.22-1994, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) There is established the state police training fund. The fund consists of amounts collected under IC 33-19-5-1(b)(4), IC 33-19-5-2(b)(3), and IC 33-19-5-3(b)(4) on behalf of the state police department.

(b) If the state police department files a claim under IC 33-19-8-4 or IC 33-19-8-6 against a city or town user fee fund or a county user fee fund, the fiscal officer of the city or town or the county auditor shall deposit fees collected under the cause numbers submitted by the state police department into the state police training fund established under this section.

(c) Claims against the state police training fund must be submitted in accordance with IC 5-11-10.

(d) Money in excess of one hundred dollars ($100) that is unencumbered and remains in the state police training fund for at least one (1) entire calendar year from the date of its deposit shall, at the end of the state's fiscal year, be deposited in the law enforcement training fund established under IC 5-2-1-13(b).

(e) As used in this subsection, "abuse" has the meaning set forth in ~~IC 34-4-5.1-1.~~ **IC 34-6-2-1.** As a part of the state police department's in-service training, the department shall provide to each law enforcement officer employed by the department continuing education concerning the following:

(1) Duties of a law enforcement officer in enforcing restraining orders, protective orders, temporary injunctions, and permanent injunctions involving abuse.

(2) Guidelines for making felony and misdemeanor arrests in cases involving abuse.

(3) Techniques for handling incidents of abuse that:

(A) minimize the likelihood of injury to the law enforcement officer; and

C o p y

(B) promote the safety of a victim.

(4) Information about the nature and extent of the abuse.

(5) Information about the legal rights of and remedies available to victims of abuse.

(6) How to document and collect evidence in an abuse case.

(7) The legal consequences of abuse.

(8) The impact on children of law enforcement intervention in abuse cases.

(9) Services and facilities available to victims of abuse and abusers.

(10) Verification of restraining orders, protective orders, temporary injunctions, and permanent injunctions.

(11) Policies concerning arrest or release of suspects in abuse cases.

(12) Emergency assistance to victims of abuse and criminal justice options for victims of abuse.

(13) Landlord-tenant concerns in abuse cases.

(14) The taking of an abused child into protective custody.

(15) Assessment of a situation in which a child may be seriously endangered if the child is left in the child's home.

(16) Assessment of a situation involving an endangered adult (as defined in IC 12-10-3-2).

(17) Response to a sudden, unexpected infant death.

The cost of providing continuing education under this subsection shall be paid from money in the state police training fund.

SECTION 66. IC 5-2-9-2.1, AS AMENDED BY P.L.2-1997, SECTION 32 AND P.L.37-1997, SECTION 1, IS CORRECTED AND IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2.1. (a) As used in this chapter, "order" means:

(1) a protective order issued under:

(A) ~~IC 34-4-5.1-5(a)(1)(A);~~ **IC 34-26-2-12(1)(A) (or IC 34-4-5.1-5(a)(1)(A) before its repeal);**

(B) ~~IC 34-4-5.1-5(a)(1)(B);~~ **IC 34-26-2-12(1)(B) (or IC 34-4-5.1-5(a)(1)(B) before its repeal);** or

(C) ~~IC 34-4-5.1-5(a)(1)(C);~~ **IC 34-26-2-12(1)(C) (or IC 34-4-5.1-5(a)(1)(C) before its repeal);**

that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(2) an emergency protective order issued under ~~IC 34-4-5.1-2.3(a)(1)(A), IC 34-4-5.1-2.3(a)(1)(B), or IC 34-4-5.1-2.3(a)(1)(C)~~ **IC 34-26-2-6(1), IC 34-26-2-6(2), or IC 34-26-2-6(3) (or IC 34-4-5.1-2.3(a)(1)(A),**

Copy

IC 34-4-5.1-2.3(a)(1)(B), or IC 34-4-5.1-2.3(a)(1)(C) before their repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(3) a temporary restraining order issued under IC 31-15-4-3(2), IC 31-15-4-3(3), IC 31-16-4-2(a)(2), or ~~*IC 31-6-4-2(a)(3)*~~ *IC 31-16-4-2(a)(3)* (or IC 31-1-11.5-7(b)(2) or IC 31-1-11.5-7(b)(3) before their repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(4) a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-19-5 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders a person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(5) an order issued as a condition of pretrial release or pretrial diversion that orders a person to refrain from any direct or indirect contact with another person;

(6) an order issued as a condition of probation that orders a person to refrain from any direct or indirect contact with another person;

(7) a protective order issued under IC 31-15-5 or IC 31-16-5 (or IC 31-1-11.5-8.2 before its repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(8) a protective order issued under IC 31-14-16 in a paternity action that orders the respondent to refrain from having direct or indirect contact with another person; or

(9) a protective order issued under IC 31-34-17 in a child in need of services proceeding or under IC 31-37-16 in a juvenile delinquency proceeding that orders the respondent to refrain from having direct or indirect contact with a child.

(b) Whenever an order is issued, the order must be captioned in a manner that indicates the type of order issued and the section of the Indiana Code that authorizes the protective order.

SECTION 67. IC 5-2-9-5, AS AMENDED BY P.L.1-1997, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. A depository is established in the office of each sheriff and law enforcement agency in Indiana for the purpose of collecting, maintaining, and retaining the following:

(1) Protective orders issued under ~~IC 34-4-5.1~~ **IC 34-26-2 (or IC 34-4-5.1 before its repeal)** to prevent abuse of a person.

Copy

(2) A dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-19-5 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an injunction issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that requires a person to refrain from direct or indirect contact with a child in need of services or a delinquent child.

(3) Temporary restraining orders issued under IC 31-15-4-3(2), IC 31-15-4-3(3), IC 31-16-4-2(a)(2), or IC 31-16-4-2(a)(3) (or IC 31-1-11.5-7(b)(2) or IC 31-1-11.5-7(b)(3) before their repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner.

(4) Orders issued as a condition of pretrial release or pretrial diversion that require a person to refrain from any direct or indirect contact with another person.

(5) Orders issued as a condition of probation that require a person to refrain from any direct or indirect contact with another person.

(6) Permanent protective orders issued under IC 31-15-5 or IC 31-16-5 (or IC 31-1-11.5-8.2 before its repeal) that order the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner.

SECTION 68. IC 5-8-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. Any person holding any office under the constitution or laws of this state who shall voluntarily become intoxicated within the business hours of the office, or is in the habit of becoming intoxicated by the use of intoxicating liquors, shall be removed from office under ~~IC 34-1-59.~~ **IC 34-17.**

SECTION 69. IC 5-8-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. Any appointment or election of any person lacking the qualification described in section 1 of this chapter is absolutely void and the person shall be removed from office under ~~IC 34-1-59.~~ **IC 34-17.**

SECTION 70. IC 5-11-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. A person who violates section 1 of this chapter commits a Class C infraction. If violated by an elected state officer, the officer is liable to impeachment, and if violated by any other person, the person is subject to removal for neglect of duty under the procedures described in ~~IC 34-1-59.~~ **IC 34-17.**

SECTION 71. IC 5-14-1.5-2, AS AMENDED BY P.L.50-1995, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. For the purposes of this chapter:

Copy

(a) "Public agency" means the following:

(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the state board of tax commissioners or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by a school corporation to conduct collective bargaining on behalf of that school corporation does not constitute a governing body for purposes of this chapter.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include:

(1) any social or chance gathering not intended to avoid this

Copy

chapter;

(2) any on-site inspection of any project or program;

(3) traveling to and attending meetings of organizations devoted to betterment of government; or

(4) a caucus.

(d) "Official action" means to:

(1) receive information;

(2) deliberate;

(3) make recommendations;

(4) establish policy;

(5) make decisions; or

(6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in ~~IC 34-4-15-3~~ **IC 34-6-2-87),** and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

SECTION 72. IC 5-16-9-5, AS AMENDED BY P.L.43-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) Any person who parks a motor vehicle which does not have displayed a placard of a person with a physical disability or a disabled veteran, issued under IC 9-14-5 or under the laws of another state, or a registration plate of a person with a physical disability or a disabled veteran, issued under IC 9-18-18, IC 9-18-22, or under the laws of another state, in a parking space reserved under this chapter for a vehicle of a person with a physical disability commits

Copy

a Class C infraction.

(b) Any person who knowingly parks in a parking space reserved for a person with a physical disability while displaying a placard to which neither the person nor the person's passenger is entitled commits a Class C infraction.

(c) Any person who displays for use in parking in a parking space reserved for a person with a physical disability a placard or a special license plate that was not issued under IC 9-14-5, IC 9-18-18, IC 9-18-22, or under the laws of another state commits a Class C misdemeanor.

(d) A person who, in a parking space reserved for a person with a physical disability, parks a vehicle that displays a placard or special registration plate entitling a person to park in a parking space reserved for a person with a physical disability commits a Class C infraction if that person is not, at that time, in the process of transporting a person with a physical disability or disabled veteran.

(e) Notwithstanding ~~IC 34-4-32-4(c),~~ **IC 34-28-5-4(c),** a civil judgment of not less than fifty dollars ($50) must be imposed for an infraction committed in violation of this section.

SECTION 73. IC 5-16-9-8, AS AMENDED BY P.L.43-1996, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) As used in this section, "owner" means a person in whose name a motor vehicle is registered under:

(1) IC 9-18;

(2) the laws of another state; or

(3) the laws of a foreign country.

(b) As used in this section, "lessee" means a person who has care, custody, or control of a motor vehicle under a written agreement for the rental or lease of the motor vehicle for less than sixty-one (61) days. The term does not include an employee of the owner of the motor vehicle.

(c) An owner or lessee of a motor vehicle commits a Class C infraction if the motor vehicle:

(1) is located in a parking space in a parking facility that is marked under section 2 of this chapter as a parking space reserved for a person with a physical disability; and

(2) does not display:

(A) an unexpired parking permit for a person with a physical disability issued under IC 9-14-5;

(B) an unexpired disabled veteran's registration plate issued under IC 9-18-18;

(C) an unexpired registration plate or decal for a person

C o p y

with a physical disability issued under IC 9-18-22; or

(D) an unexpired parking permit for a person with a physical disability, an unexpired disabled veteran's registration plate, or an unexpired registration plate or decal for a person with a physical disability issued under the laws of another state.

(d) It is a defense that IC 9-30-11-8 applies to the violation.

(e) It is a defense that the motor vehicle was the subject of an offense described in IC 35-43-4 at the time of the violation of this section.

(f) Notwithstanding ~~IC 34-4-32-4(c),~~ **IC 34-28-5-4(c),** a civil judgment of not less than fifty dollars ($50) must be imposed for an infraction committed in violation of this section.

SECTION 74. IC 5-16-9-10, AS AMENDED BY P.L.43-1996, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10. (a) A person enforcing this chapter may issue a complaint and summons for a violation of section 5 or 8 of this chapter or an ordinance described in section 9 of this chapter on a form other than the forms described in IC 9-30-3-6. However, the complaint must comply with the Indiana Rules of Trial Procedure.

(b) A complaint and summons issued under subsection (a) must explain the conditions described in ~~IC 34-4-32-6~~ **IC 34-28-5-14** under which a court may enter a judgment against the person named in the summons and complaint without requiring the defendant to make a personal appearance before the court.

SECTION 75. IC 5-16-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) As used in this chapter, "consultant" means an individual who, under a contract with the state or a political subdivision, does either of the following for the state or the political subdivision:

(1) Evaluates bids for contracts.

(2) Awards contracts.

The term does not include a public employee (as defined in ~~IC 34-4-16.5-2).~~ **IC 34-6-2-38).**

(b) An individual is not required to be a party to the contract with the state or the political subdivision to be a consultant under this section.

SECTION 76. IC 5-20-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. ~~Bonds.~~ (a) Bonds shall not be issued under this chapter unless these bonds are rated "A" or better by one (1) of the nationally recognized rating agencies or unless these bonds are sold in a transaction not involving any public

C o p y

offering within the meaning of Section 4(2) of the Securities Act of 1933, as amended, and rules and regulations thereunder.

(b) The exercise of any or all powers or the issue of bonds under this chapter shall be authorized by ordinance of the governing body. Notwithstanding any law to the contrary, this ordinance may be adopted at the same meeting at which it is introduced and it shall take effect immediately upon adoption. Any ordinance authorizing bonds shall be adopted only after the governing body has held a public hearing on the proposed financing after giving not less than five (5) days notice by publication in at least one (1) newspaper of general circulation in the county or municipality. This ordinance shall also set forth a legislative finding and declaration of the public purpose of the bond issue and that the ordinance is being enacted pursuant to the powers granted by this chapter. No action to contest the validity of any bonds may commence more than thirty (30) days following the adoption of the ordinance approving the bonds. However, if authorized by ordinance, any officer of the county or municipality may bring an action under ~~IC 34-4-17~~ **IC 34-13-5** or file a petition under IC 36-4-4-5 within this thirty (30) day period to determine the validity of any bonds or any agreements in connection with them. In this proceeding, no bond need be filed by the petitioner or plaintiff unless requested by the county or municipality, and any judgment shall be final unless appealed within thirty (30) days after entry of the judgment.

(c) The bonds shall bear interest at the rate or rates, may be payable at the times, may be in one (1) or more series, may bear the date or dates, may mature at the time or times not exceeding forty (40) years from their respective dates, may be payable in the medium of payment at the place or places, may carry the registration privileges, may be subject to the terms of redemption at the premiums, may be executed in the manner, may contain the terms, covenants, and conditions, may be in the form either coupon or registered, and may bear the name that the ordinance or trust indenture securing the bonds provides. The bonds may be sold at public or private sale in a manner and upon the terms provided in the ordinance. Pending the preparation of definitive bonds, interim receipts, or certificates in the form and with the provisions as provided in the ordinance may be issued to the purchaser of bonds sold pursuant to this chapter.

(d) The bonds and interim receipts or certificates are negotiable instruments under the laws of this state. Bonds and receipts and the authorization, issuance, sale, and delivery thereof are not subject to any general law concerning bonds of municipalities.

SECTION 77. IC 6-1.1-39-4 IS AMENDED TO READ AS

C o p y

FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) A person who filed a written remonstrance with the fiscal body under section 3 of this chapter and is aggrieved by the final action taken, may, within ten (10) days after that final action, file in the office of the clerk of the circuit or superior court of the county in which the action is taken a copy of the ordinance of the fiscal body and the person's remonstrance against that ordinance, together with the person's bond as provided by ~~IC 34-4-17-5,~~ **IC 34-13-5-7,** if the appeal is determined against the person. The only ground of remonstrance that the court may hear is whether the proposed economic development district designation will be of public utility and benefit. The burden of proof is on the remonstrator.

(b) An appeal under this section shall be promptly heard by the court without a jury. All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of the filing of the appeal. The court shall decide the appeal based on the record and evidence before the fiscal body, not by trial de novo, and may confirm the final action of the fiscal body or sustain the remonstrances. The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions.

SECTION 78. IC 6-3-2-3.1, AS AMENDED BY P.L.1-1996, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3.1. (a) Except as otherwise provided in subsection (b), income is not exempt from the adjusted gross income tax, or the supplemental net income tax, under section 2.8(1) of this chapter if the income is derived by the exempt organization from an unrelated trade or business, as defined in Section 513 of the Internal Revenue Code.

(b) This section does not apply to:

(1) the United States government;

(2) an agency or instrumentality of the United States government;

(3) this state;

(4) a state agency, as defined in ~~IC 34-4-16.5-2;~~ **IC 34-6-2-141;**

(5) a political subdivision, as defined in ~~IC 34-4-16.5-2;~~ **IC 34-6-2-110;** or

(6) a county solid waste management district or a joint solid waste management district established under IC 13-21 or IC 13-9.5-2 (before its repeal).

SECTION 79. IC 6-3.5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. As used in this chapter:

C o p y

"Branch office" means a branch office of the bureau of motor vehicles.

"Bus" has the meaning set forth in IC 9-13-2-17(a).

"County council" includes the city-county council of a county that contains a consolidated city of the first class.

"Political subdivision" has the meaning set forth in ~~IC 34-4-16.5-2.~~ **IC 34-6-2-110.**

"Recreational vehicle" has the meaning set forth in IC 9-13-2-150.

"Semitrailer" has the meaning set forth in IC 9-13-2-164(a).

"State agency" has the meaning set forth in IC 34-4-16.5-2.

"Tractor" has the meaning set forth in IC 9-13-2-180.

"Trailer" has the meaning set forth in IC 9-13-2-184(a).

"Truck" has the meaning set forth in IC 9-13-2-188(a).

"Wheel tax" means the tax imposed under this chapter.

SECTION 80. IC 6-6-2.5-40, AS AMENDED BY P.L.85-1995, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 40. (a) Each person operating a refinery, terminal, or bulk plant in Indiana shall prepare and provide to the driver of every vehicle receiving special fuel at the facility a shipping document setting out on its face the destination state as represented to the terminal operator by the shipper or the shipper's agent, except that an operator of a bulk plant in Indiana delivering special fuel into a vehicle with a capacity of not more than five thousand four hundred (5,400) gallons for subsequent delivery to an end consumer in Indiana is exempt from this requirement.

(b) Every person transporting special fuel in vehicles upon the Indiana public highways shall carry on board a shipping paper issued by the terminal operator or the bulk plant operator of the facility where the special fuel was obtained, which shipping paper shall set out on its face the state of destination of the special fuel transported in the vehicle, except that operators of vehicles with a capacity of not more than five thousand four hundred (5,400) gallons that have received special fuel at a bulk plant in Indiana for delivery to an end consumer in Indiana are exempt from this provision with respect to the special fuel. A person who violates this subsection commits a Class A infraction (as defined in ~~IC 34-4-32-4).~~ **IC 34-28-5-4).**

(c) Every person transporting special fuel in vehicles upon the public highways of Indiana shall provide the original or a copy of the terminal issued shipping document accompanying the shipment to the operator of the retail outlet or bulk plant to which delivery of the shipment was made. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a

C o p y

Class D felony.

(d) Each operator of a special fuel retail outlet or bulk plant shall receive, examine, and retain for a period of thirty (30) days at the delivery location the terminal issued shipping document received from the transporter for every shipment of special fuel that is delivered to that location, with record retention of the shipping paper of three (3) years required offsite. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(e) No bulk end user, retail dealer, bulk plant operator, or wholesale distributor shall knowingly accept delivery of special fuel into storage facilities in Indiana if that delivery is not accompanied by a shipping paper issued by the terminal operator or bulk plant operator, that sets out on its face Indiana as the state of destination of the special fuel. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(f) The department shall provide for relief in a case where a shipment of special fuel is legitimately diverted from the represented destination state after the shipping paper has been issued by the terminal operator or where the terminal operator failed to cause proper information to be printed on the shipping paper. These relief provisions shall include a provision requiring that the shipper or its agent provide notification before the diversion or correction to the department if an intended diversion or correction is to occur, and the relief provision shall be consistent with the refund provisions of this chapter.

(g) The supplier and the terminal operator shall be entitled to rely for all purposes of this chapter on the representation by the shipper or the shipper's agent as to the shipper's intended state of destination or tax exempt use. The shipper, the importer, the transporter, the shipper's agent, and any purchaser, not the supplier or terminal operator, shall be jointly liable for any tax otherwise due to the state as a result of a diversion of the special fuel from the represented destination state.

SECTION 81. IC 6-6-2.5-62, AS AMENDED BY P.L.61-1996, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 62. (a) No person shall import, sell, use, deliver, or store in Indiana special fuel in bulk as to which dye or a marker, or both, has not been added in accordance with section 31 of this chapter, or as to which the tax imposed by this chapter has not been paid to or accrued by a licensed supplier or licensed permissive supplier as shown by a notation on a terminal-issued shipping paper subject to the following exceptions:

(1) A supplier shall be exempt from this provision with respect

C o p y

to special fuel manufactured in Indiana or imported by pipeline or waterborne barge and stored within a terminal in Indiana.

(2) An end user shall be exempt from this provision with respect to special fuel in a vehicle supply tank when the fuel was placed in the vehicle supply tank outside of Indiana.

(3) A licensed importer, and transporter operating on the importer's behalf, that transports in vehicles with a capacity of more than five thousand four hundred (5,400) gallons, shall be exempt from this prohibition if the importer or the transporter has met all of the following conditions:

(A) The importer or the transporter before entering onto the highways of Indiana has obtained an import verification number from the department not earlier than twenty-four (24) hours before entering Indiana.

(B) The import verification number must be set out prominently and indelibly on the face of each copy of the terminal-issued shipping paper carried on board the transport truck.

(C) The terminal origin and the importer's name and address must be set out prominently on the face of each copy of the terminal-issued shipping paper.

(D) The terminal-issued shipping paper data otherwise required by this chapter is present.

(E) All tax imposed by this chapter with respect to previously requested import verification number activity on the account of the importer or the transporter has been timely remitted.

In every case, a transporter acting in good faith is entitled to rely upon representations made to the transporter by the fuel supplier or importer and when acting in good faith is not liable for the negligence or malfeasance of another person. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(b) No person shall export special fuel from Indiana unless that person has obtained an exporter's license or a supplier's license or has paid the destination state special fuel tax to the supplier and can demonstrate proof of export in the form of a destination state bill of lading. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(c) No person shall operate or maintain a motor vehicle on any public highway in Indiana with special fuel contained in the fuel supply tank for the motor vehicle that contains dye or a marker, or both, as

Copy

provided under section 31 of this chapter. This provision does not apply to persons operating motor vehicles that have received fuel into their fuel tanks outside of Indiana in a jurisdiction that permits introduction of dyed or marked, or both, special fuel of that color and type into the motor fuel tank of highway vehicles or to a person that qualifies for the federal fuel tax exemption under Section 4082 of the Internal Revenue Code and that is registered with the department as a dyed fuel user. A person who knowingly:

(1) violates; or

(2) aids and abets another person in violating;

this subsection commits a Class A infraction. However, the violation is a Class A misdemeanor if the person has committed one (1) prior unrelated violation of this subsection, and a Class D felony if the person has committed more than one (1) prior unrelated violation of this subsection.

(d) No person shall engage in any business activity in Indiana as to which a license is required by section 41 of this chapter unless the person shall have first obtained the license. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(e) No person shall operate a motor vehicle with a capacity of more than five thousand four hundred (5,400) gallons that is engaged in the shipment of special fuel on the public highways of Indiana and that is destined for a delivery point in Indiana, as shown on the terminal-issued shipping papers, without having on board a terminal-issued shipping paper indicating with respect to any special fuel purchased:

(1) under claim of exempt use, a notation describing the load or the appropriate portion of the load as Indiana tax exempt special fuel;

(2) if not purchased under a claim of exempt use, a notation describing the load or the appropriate portion thereof as Indiana taxed or pretaxed special fuel; or

(3) if imported by or on behalf of a licensed importer instead of the pretaxed notation, a valid verification number provided before entry into Indiana by the department or the department's designee or appointee, and the valid verification number may be handwritten on the shipping paper by the transporter or importer.

A person is in violation of subdivision (1) or (2) (whichever applies) if the person boards the vehicle with a shipping paper that does not meet the requirements described in the applicable subdivision (1) or (2). A person in violation of this subsection commits a Class A infraction (as

Copy

defined in ~~IC 34-4-32-4).~~ **IC 34-28-5-4).**

(f) A person may not sell or purchase any product for use in the supply tank of a motor vehicle for general highway use that does not meet ASTM standards as published in the annual Book of Standards and its supplements unless amended or modified by rules adopted by the department under IC 4-22-2. The transporter and the transporter's agent and customer have the exclusive duty to dispose of any product in violation of this section in the manner provided by federal and state law. A person who knowingly:

(1) violates; or

(2) aids and abets another in violating;

this subsection commits a Class D felony.

(g) This subsection does not apply to the following:

(1) A person that:

(A) inadvertently manipulates the dye or marker concentration of special fuel or coloration of special fuel; and

(B) contacts the department within one (1) business day after the date on which the contamination occurs.

(2) A person that affects the dye or marker concentration of special fuel by engaging in the blending of the fuel, if the blender:

(A) collects or remits, or both, all tax due as provided in section 28(g) of this chapter;

(B) maintains adequate records as required by the department to account for the fuel that is blended and its status as a taxable or exempt sale or use; and

(C) is otherwise in compliance with this subsection.

A person may not manipulate the dye or marker concentration of a special fuel or the coloration of special fuel after the special fuel is removed from a terminal or refinery rack for sale or use in Indiana. A person who knowingly violates or aids and abets another person to violate this subsection commits a Class D felony.

(h) This subsection does not apply to a person that receives blended fuel from a person in compliance with subsection (g)(2). A person may not sell or consume special fuel if the special fuel dye or marker concentration or coloration has been manipulated, inadvertently or otherwise, after the special fuel has been removed from a terminal or refinery rack for sale or use in Indiana. A person who knowingly:

(1) violates; or

(2) aids and abets another to violate;

this subsection commits a Class D felony.

Copy

(i) A person may not engage in blending fuel for taxable use in Indiana without collecting and remitting the tax due on the untaxed portion of the fuel that is blended. A person who knowingly:

(1) violates; or

(2) aids and abets another to violate;

this subsection commits a Class D felony.

SECTION 82. IC 6-6-4.1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 12. (a) Except as authorized under section 13 of this chapter, a carrier may operate a commercial motor vehicle upon the highways in Indiana only if the carrier has been issued an annual permit, cab card, and emblem under this section.

(b) The department shall issue:

(1) an annual permit; and

(2) a cab card and an emblem for each commercial motor vehicle that will be operated by the carrier upon the highways in Indiana;

to a carrier who applies for an annual permit and pays to the department an annual permit fee of twenty-five dollars ($25).

(c) The annual permit, cab card, and emblem are effective from January 1 of each year through December 31 of the same year. The department may extend the expiration date of the annual permit, cab card, and emblem for no more than sixty (60) days. The annual permit, each cab card, and each emblem issued to a carrier remain the property of this state and may be suspended or revoked by the department for any violation of this chapter or of the rules concerning this chapter adopted by the department under IC 4-22-2.

(d) As evidence of compliance with this section, and for the purpose of enforcement, a carrier shall display on each commercial motor vehicle an emblem when the vehicle is being operated by the carrier in Indiana. The carrier shall affix the emblem to the vehicle in the location designated by the department. The carrier shall display in each vehicle the cab card issued by the department. The carrier shall retain the original annual permit at the address shown on the annual permit. During the month of December, the carrier shall display the cab card and emblem that are valid through December 31 or a full year cab card and emblem issued to the carrier for the ensuing twelve (12) months. If the department grants an extension of the expiration date, the carrier shall continue to display the cab card and emblem upon which the extension was granted.

(e) If a commercial motor vehicle is operated by more than one (1) carrier, as evidence of compliance with this section and for purposes of enforcement each carrier shall display in the commercial motor

Copy

vehicle a reproduced copy of the carrier's annual permit when the vehicle is being operated by the carrier in Indiana.

(f) A person who fails to display an emblem required by this section on a commercial motor vehicle, does not have proof in the vehicle that the annual permit has been obtained, and operates that vehicle on an Indiana highway commits a Class C infraction. Each day of operation without an emblem constitutes a separate infraction. Notwithstanding ~~IC 34-4-32-4,~~ **IC 34-28-5-4,** a judgment of not less than one hundred dollars ($100) shall be entered for each Class C infraction under this subsection.

(g) A person who displays an altered, false, or fictitious cab card required by this section in a commercial motor vehicle, does not have proof in the vehicle that the annual permit has been obtained, and operates that vehicle on an Indiana highway commits a Class C infraction. Each day of operation with an altered, false, or fictitious cab card constitutes a separate infraction.

SECTION 83. IC 6-7-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 14. All jeopardy assessments issued for nonpayment of tax shall be considered a secondary lien to the seizure and forfeiture provisions of IC 16-42-20, ~~IC 34-4-30.1, IC 34-4-30.5,~~ **IC 34-24-1, IC 34-24-1,** and any federal law.

SECTION 84. IC 6-7-3-20, AS ADDED BY P.L.65-1996, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 20. The excise taxes required by this chapter are intended to be in addition to any criminal penalties under IC 35-48-4 and forfeitures under IC 16-42-20, ~~IC 34-4-30.1, or IC 34-4-30.5.~~ **IC 34-24-1, or IC 34-24-2 (or IC 34-4-30.1 or IC 34-4-30.5 before their repeal).**

SECTION 85. IC 6-8-11-19, AS ADDED BY P.L.93-1995, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 19. Money in a medical care savings account established under this chapter is exempt from execution under ~~IC 34-2-28-1.~~ **IC 34-55-10-2.**

SECTION 86. IC 8-1-2-54.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 54.1. Notwithstanding any other law, if the commission fails to conduct a formal public hearing or to issue an order within a reasonable period of time upon a complaint that complies with sections 54 or 61 of this chapter, the complainant may bring an action for mandate under ~~IC 34-1-58~~ **IC 34-27** to compel the commission to conduct the hearing or to issue the order. However, notwithstanding ~~IC 34-1-58~~ **IC 34-27** or any other

C o p y

law or rule, the action for mandate may only be filed in the court of appeals. For the purposes of IC 1-1-1-8, if any part of this section is held invalid, the entire section is void.

SECTION 87. IC 8-1-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) If a petition for rehearing is filed with the commission by a party to the proceeding before the commission, within the time allowed by the rules of the commission, the commission must rule on the petition within a reasonable period of time after the filing of the final pleading filed in support of or opposition to the petition. If the commission fails to rule on the petition within a reasonable period of time, the petitioner may bring an action for mandate under ~~IC 34-1-58~~ **IC 34-27** to compel the commission to make the ruling. However, notwithstanding ~~IC 34-1-58~~ **IC 34-27** or any other law or rule, the action for mandate may only be filed in the court of appeals. For the purposes of IC 1-1-1-8, if any part of this subsection is held invalid, the entire subsection is void.

(b) If a petition for rehearing is filed with the commission by any party to the proceeding before the commission, within the time allowed by the rules of the commission, and prior to the filing of the commission record with the clerk of the supreme court, the right to appeal under this chapter terminates thirty (30) days after the determination by the commission on such petition for rehearing. The appeal shall not be submitted prior to that determination of the petition for rehearing, and the decision of the commission on the petition shall not be assigned as error unless the final decision, ruling, or order of the commission is modified or amended as a result of the petition without further hearing ordered.

SECTION 88. IC 8-9.5-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) An association, or if an association has not been formed under section 2 of this chapter owners of twenty-five percent (25%) of the parcels of real estate in any proposed automated transit district, may file a petition with the board of public works or board of transportation. A petition of an association shall be signed by a majority of its directors. A petition shall be sufficient if it sets forth:

(1) the boundaries of the proposed automated transit district which shall include all property which petitioners believe will be specially benefited or damaged by the proposed automated transit system;

(2) the location and a general description of the proposed automated transit system;

(3) the estimated cost of the proposed automated transit system;

Copy

and

(4) as a part of the petition, or as an exhibit thereto, the names and addresses of all owners within the boundaries of the proposed district, as the same appear upon the tax duplicates in the records of the auditor of the county.

(b) The board of public works or board of transportation, upon the filing of such petition, shall fix a date for a hearing on the establishment of the proposed district. The association or petitioners, as the case may be, shall cause a notice to be mailed, at least twenty-one (21) days prior to the date fixed for hearing, by United States mail, first class postage prepaid, to all owners of real estate within the proposed district. It shall be sufficient if the notices to the owners are addressed as the names and addresses appear upon the tax duplicates in the records of the county auditor. Also, the association or petitioners shall cause a notice of the hearing and the date, place and hour thereof, to be published in accordance with IC 5-3-1.

(c) The notice to be published and mailed shall also contain a general description of the contents of the petition, specifically setting forth the boundaries of the proposed district, and shall state that all of the property in the proposed district will be assessed benefits or damages under this chapter for the proposed automated transit system, and that at the hearing all owners of real estate within the proposed district, or their representatives, may be heard upon the question of the establishment of the district. Proof of service shall be made by affidavit of the person, or persons, causing such service to be made.

(d) On the date fixed for hearing the board of public works or board of transportation shall hear all owners in the proposed district, who appear and request to be heard, upon the question of the sufficiency of the petition and notice, whether the proposed automated transit system is of public utility and benefit, whether all of the probable benefits of the proposed improvement will be equal to or exceed the estimated cost thereof, and whether the district contains all, or more or less than all, of the property specially benefited or damaged by the proposed system. After the hearing, which may be adjourned from time to time without further notice, the board of public works or board of transportation shall adopt a resolution containing the following determinations:

(1) Whether the petition is sufficient.

(2) Whether the required notice was given.

(3) Whether the proposed automated transit system is of public utility and benefit.

(4) Whether all of the probable benefits of the proposed system

C o p y

will equal or exceed the estimated cost thereof.

(5) Whether the proposed automated transit district contains all, or more, or less than all, of the property specially benefited or damaged by the proposed system.

(e) If the board of public works or board of transportation resolves affirmatively on the first four (4) questions and determines that the proposed district contains all of the property specially benefited or damaged, then it shall establish the district with the boundaries described in such petition. If it resolves negatively on any of the first four (4) questions, it may allow amendments, the issuance of additional notice, and hold such further proceedings as it deems proper, or the petition may be dismissed without prejudice to the right to file a new petition.

(f) In the event the board of public works or board of transportation determines that property not specially benefited or damaged has been included within boundaries described in the petition, then it shall redefine the boundaries of the district and in its resolution include only that property within the petition which is specially benefited or damaged and shall establish the district with the boundaries as redefined.

(g) In the event the board of public works or board of transportation determines that either:

(1) all of the property specially benefited or damaged has not been included within the boundaries described in the petition; or

(2) all of the property specially benefited or damaged has not been included within the boundaries described in the petition and some property has been included which is not specially benefited or damaged;

then in either event it shall fix a date for a further hearing. Notice shall be given of the further hearing, describing the proposed revised boundaries as provided in this section, except that notice by mail shall be given only to the owners in any area proposed to be added to the district which was not included in the initial petition. At such further hearing all owners of real estate or their representatives within the proposed district boundaries, as revised shall be entitled to be heard, and the board of public works or board of transportation shall then adopt its resolution on establishment of the automated transit district.

(h) Any resolution entered establishing an automated transit district shall also recite that all property within the district will be subject to assessment of special benefits and damages in the manner provided in this chapter.

(i) The resolution shall be deemed notice to all owners who have

C o p y

appeared, or who have been notified of the proceedings, as provided in this section, that their property will be subject to an assessment of special benefits and damages as provided in this chapter and that no further notice of such assessments, or of the hearing thereon, shall be required except the notice by publication provided for in this chapter.

(j) The resolution of the board of public works or board of transportation that establishes the automated transit district must be approved by the legislative body of the city. Thereafter, the resolution shall be final and conclusive and no attack may be made challenging the resolution on the establishment of the automated transit district, the validity of the petition, the sufficiency of notice, the existence of the automated transit district, the public utility and benefit of the proposed automated transit system, that the benefits equal or exceed the estimated cost, the boundaries of the district, or any other matters before the board of public works or board of transportation, unless an appeal is taken as provided in this section.

(k) A copy of the resolution establishing an automated transit district, certified by the clerk, shall be recorded in the miscellaneous records in the office of the recorder of the county in which the city is located.

(l) Any party aggrieved by a resolution made under the provisions of this section may appeal. Such appeal shall be taken as provided in ~~IC 34-4-17.5.~~ **IC 34-13-6.** However, in the event that fifty-one percent (51%) of the owners of property located in such automated transit district remonstrate by petition to the board of public works or board of transportation, signatures on such petition shall be verified by the auditor of such county, and if found to be valid shall cause further actions on the establishment of an automated transit district to cease.

SECTION 89. IC 8-9.5-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 17. (a) This section provides for the assessment of benefits and damages to property within the automated transit district. For the purpose of providing all or part of the cost of payment of principal and interest on bonded indebtedness, and expenses of planning, construction, operation, maintenance, and repair of the automated transit system and related parking facilities and services after the completion of the same, including as a part of such cost the general expenses of the commission, the commission may make an annual assessment of benefits and damages. The assessment shall be against the site value of the lands only.

(b) The commission shall annually prepare a schedule which describes each tract of land in the district that it determines to be

C o p y

benefited by the automated transit system, and states the percentage of the total benefit that is received by each tract of land. In order to prepare this schedule, the commission shall appoint three (3) persons, who are licensed real estate brokers, as appraisers to make an examination of the property within the improvement district. Upon request from the appraisers, the commission may retain or employ qualified personnel to render any necessary technical or consulting assistance, and may supply the appraisers with any information available or obtainable which will assist in making the assessment. Upon such examination, such appraisers shall make an assessment of all special benefits and damages, if any, which will accrue from the construction and operation of the automated transit system, as to each parcel of real estate. All property within the district (or owned or operated by the district), except common green areas, shall be conclusively presumed to be benefited by the existence of the district to the extent determined under this section as its assessed benefit. A copy of the roll of all owners of real estate, signed by all three (3) appraisers, showing the assessment of benefits and damages, if any, shall be filed by the appraisers with the commission not less than thirty (30) days after their appointment, unless the commission shall extend the time.

(c) Promptly after the filing of an assessment, the commission shall cause a notice to be mailed, by United States mail, first class postage prepaid, to each owner of real estate to be assessed. The notices shall be deposited in the mail twenty-one (21) days before the hearing date, shall set forth the amount of the proposed assessment, shall state that the proposed assessments on each parcel of real estate in the district are on file and can be seen in the office of the commission, and shall set forth the date when the commission will, at its office, receive written remonstrances against the assessment on the parcel and hear all owners of real estate assessed who have filed written remonstrances prior to the date fixed for the hearing. It shall be sufficient if the notices to the owners are addressed as the names and addresses appear upon the tax duplicates in the records of the county auditor.

(d) At the time so fixed in such notice, the commission shall hear all owners of real estate assessed who have filed written remonstrances prior to the date of the hearing. The hearing may be continued from time to time as long as may be necessary to hear such owners.

(e) The commission shall complete such assessment roll by rendering its decision by increasing, or decreasing, or by confirming each assessment by setting opposite each name, parcel and appraisers'

C o p y

assessment, the amount of the assessment as determined by the commission. If the total of the assessments exceeds the amount needed, the commission shall further make pro rata reduction in each assessment. The signing of such roll by a majority of the commission members, and the delivery thereof to the fiscal officer of the city shall constitute a final and conclusive determination of the benefits or damages, if any, assessed. However, any owner who had previously filed a written remonstrance as provided in this section with the board or any owner whose assessment was increased above the amount fixed by the appraisers, whether he filed such a written remonstrance or not, may appeal. Such appeal shall be taken as provided in ~~IC 34-4-17.5,~~ **IC 34-13-6,** and shall proceed to trial, hearing, and final judgment in the manner and with the effect as provided in ~~IC 34-4-17.5~~ **IC 34-13-6** as to all parties.

(f) If the final determination of the commission results in the total funds being inadequate to cover the cost of the improvement, the deficiency may be supplied by other sources as provided in this chapter.

(g) Each assessment shall be a lien on the real estate assessed, second only to taxes levied on such property.

(h) The commission shall annually transmit to the county auditor the schedule of assessment of benefits. The county auditor shall enter the assessment of benefits on the tax duplicates, and the county treasurer shall collect and enforce the amount of the assessed benefit in the same manner as property taxes are entered, collected, and enforced.

(i) The county treasurer charged with the duty of collecting such taxes shall, between the first and tenth days of each month, notify the commission of the amount of such special taxes collected during the preceding month, and upon the date of notification above referred to such county treasurer shall credit the amount so collected to a fund of such district to be designated as the "_____ Automated Transit District Fund", and such fund shall be used and expended for no other purpose than as stated in this section. The commission shall have full, complete, and exclusive authority to expend for and on behalf of the district all sums of money thus realized. The commission may, by resolution, authorize and make temporary loans in anticipation of the collection of the special benefit taxes actually levied and in the course of collection under this section, which loans shall mature and be paid within the year in which made, and shall bear interest payable at the maturity of the loan. Such temporary loans shall be evidenced by warrants.

C o p y

SECTION 90. IC 8-21-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) The department shall encourage, foster, and assist in the development of aeronautics in this state and shall encourage the establishment of airports, landing fields, and other navigation facilities.

(b) The department shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the advancement of aeronautics and shall seek to coordinate the aeronautical activities of these bodies.

(c) All rules prescribed by the department concerning aeronautics shall be kept in conformity with, and limited to as nearly as may be, the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder.

(d) The department shall develop and continuously update a proposed state airports system plan which will best serve the interests of the state and its political subdivisions. Such state airports system plan shall be coordinated with the national airport plan prepared by the federal agency fostering civil aviation.

(e) The department may publish and revise from time to time a state airways system plan, and maps, directories, or other materials deemed necessary may be sold by the department at a price which shall be fixed by the department. All money accruing from the sale of any such publication:

(1) shall be paid into the state treasury;

(2) shall be credited to the department; and

(3) is hereby appropriated to such department to be used for future publications by the department, without reversion to the general fund of the state at the end of any fiscal year. However, any time the balance in said fund exceeds ten thousand dollars ($10,000), such excess shall revert to the general fund of the state.

(f) The department may offer the engineering or other technical advice of the department, without charge, to any municipality or person desiring them in connection with the construction, maintenance, or operation or proposed construction, maintenance, or operation of an airport or landing field.

(g) The department may recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.

(h) The department shall have the power to approve or disapprove all purchases made by any municipality of any land to be used by said municipality for the establishment of any airport or landing field, and

Copy

the establishment by any municipality of any airport or landing field.

(i) The department may participate as party plaintiff or defendant, or as intervener on behalf of the state or any municipality or citizen thereof in any controversy having to do with any claimed encroachment by the federal government or any foreign state upon any state or individual rights pertaining to aeronautics.

(j) Municipalities are authorized to cooperate with the department in the development of aeronautics and aeronautical facilities and services of other agencies of the state to the utmost extent possible, and such agencies are authorized and directed to make available such facilities and services.

(k) The department, or any employee designated by it, shall have the power to hold investigations, and hearings concerning matters covered by this chapter and orders and rules of the department, in accordance with IC 4-21.5. All hearings so conducted shall be open to the public. The reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action, or proceeding, growing out of any matter referred to in said investigation, hearing, or report thereof, except in case of criminal or other proceedings instituted in behalf of the department or this state under the provisions of this chapter and other laws of this state.

(l) The department may render advice in the acquisition, development, operation, or maintenance of airports owned, controlled, or operated, or to be owned, controlled, or operated, by municipalities in this state.

(m) The department may not grant any exclusive right for the use of any airway, airport, landing field, or other air navigation facility under its jurisdiction. This subsection shall not prevent the making of leases in accordance with other provisions of this chapter.

(n) Gifts or grants of money for aeronautical purposes may be received by the state and shall be deposited in an aviation fund. Disbursal of such funds shall be for aeronautical purposes only or for the purpose for which they were given or granted. Gifts or grants of property for aeronautical purposes may be received by the state and shall be used for the purpose given or granted. Gifts or grants of money or property for aeronautical purposes must be administered in the same manner as other gifts and grants received by the state are administered.

(o) The department may adopt rules under IC 4-22-2 and subject to IC 8-9.5-2.6(7) for the control of aircraft accident sites in Indiana. Until representatives of appropriate federal agencies arrive on the site of an aircraft accident, state and local law enforcement agencies and accident investigation agencies shall comply with any rules adopted by

C o p y

the department under this section.

(p) The department may, with written approval of the budget agency, purchase and operate aircraft forfeited under ~~IC 34-4-30.1.~~ **IC 34-24-1 (or IC 34-4-30.1 before its repeal).** When the department acquires an aircraft, it shall pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, and advertising and court costs.

SECTION 91. IC 8-22-3.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) A person who filed a written remonstrance with the commission under section 6 of this chapter and is aggrieved by the final action taken may, within ten (10) days after that final action, file with the office of the clerk of the circuit or superior court of the county a copy of the commission's resolution and the person's remonstrance against the resolution, together with the person's bond as provided by ~~IC 34-4-17-5.~~ **IC 34-13-5-7.**

(b) An appeal under this section shall be promptly heard by the court without a jury. All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of filing of the appeal. The court shall decide the appeal based on the record and evidence before the commission, not by trial de novo, and may confirm the final action of the commission or sustain the remonstrances. The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions.

SECTION 92. IC 8-23-16-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. Subject to ~~IC 34-4-16.5, IC 34-4-16.6, and IC 34-4-16.7,~~ **IC 34-13-2, IC 34-13-3, and IC 34-13-4,** this chapter applies when a member of the department is sued for civil damages and:

(1) the department administratively determines that the civil action arose out of an act performed within the scope of the duties of the member; and

(2) a lack of defense of the action by the state would prejudice the construction, maintenance, or administration of state highways.

SECTION 93. IC 9-15-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. ~~IC 34-4-16.5~~ **IC 34-13-3** applies to a claim or suit in tort against any of the following:

(1) A member of the commission.

(2) An employee of the commission who is employed at a license branch under IC 9-16, except for an employee employed at a

Copy

license branch operated under a contract with the commission under IC 9-16-1-4.

SECTION 94. IC 9-18-2-41, AS AMENDED BY P.L.4-1994, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 41. (a) In addition to:

(1) the penalty described under section 40 of this chapter; and

(2) any judgment assessed under ~~IC 34-4-32;~~ **IC 34-28-5 (or IC 34-4-32 before its repeal);**

a person who violates section 1 of this chapter shall be assessed a judgment equal to the amount of excise tax due under IC 6-6-5 on the vehicle involved in the violation.

(b) The clerk of the court shall do the following:

(1) Collect the additional judgment described under subsection (a) in an amount specified by a court order.

(2) Transfer the additional judgment to the county auditor on a calendar year basis.

(c) The auditor shall distribute the judgments described under subsection (b) to law enforcement agencies, including the state police department, responsible for issuing citations to enforce section 1 of this chapter.

(d) The percentage of funds distributed to a law enforcement agency under subsection (c):

(1) must equal the percentage of the total number of citations issued by the law enforcement agency for the purpose of enforcing section 1 of this chapter during the applicable year; and

(2) may be used for the following:

(A) Any law enforcement purpose.

(B) Contributions to the pension fund of the law enforcement agency.

SECTION 95. IC 9-19-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) Failure to comply with section 1, 2, 3, or 4 of this chapter does not constitute fault under ~~IC 34-4-33~~ **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, 3, or 4 of this chapter may not be admitted 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 system. The defendant in such an action has the burden of proving noncompliance with this chapter and that compliance with this

C o p y

chapter would have reduced injuries, and the extent of the reduction.

SECTION 96. IC 9-19-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. Notwithstanding ~~IC 34-4-32-5(c)(1),~~ **IC 34-28-5-9(1),** a court may not designate violations of this chapter as being within the authority of the violations clerk.

SECTION 97. IC 9-19-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. If at a proceeding to enforce section 2 of this chapter the court finds that the person:

(1) has violated this chapter; and

(2) possesses or has acquired a child passenger restraint system;

the court shall enter judgment against the person. However, notwithstanding ~~IC 34-4-32-4,~~ **IC 34-28-5-4,** the person is not liable for any costs or monetary judgment if the person has no previous judgments of violation of this chapter against the person.

SECTION 98. IC 9-19-11-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) If at a proceeding to enforce section 2 of this chapter the court finds that the person:

(1) has violated this chapter; and

(2) does not possess or has not acquired a child passenger restraint system;

the court shall enter judgment against the person and shall order the person to provide proof of possession or acquisition within thirty (30) days.

(b) Notwithstanding ~~IC 34-4-32-4,~~ **IC 34-28-5-4,** if the person:

(1) complies with a court order under this section; and

(2) has no previous judgments of violation of this chapter against the person;

the person is not liable for any costs or a monetary judgment.

SECTION 99. IC 9-20-18-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 12. (a) Except as provided in subsection (b), a person who violates this article commits a Class C infraction.

(b) A violation of a weight limitation in IC 9-20-4, IC 9-20-5, IC 9-20-11, or IC 9-20-7-1 is:

(1) a Class B infraction if the total of all excesses of weight under those limitations is more than five thousand (5,000) pounds but not more than ten thousand (10,000) pounds; and

(2) a Class A infraction if the total of all excesses of weight under those limitations is more than ten thousand (10,000) pounds.

(c) This subsection does not apply to violations that occur on an

Copy

interstate highway. It is a defense to a charge of violating a weight limitation in IC 9-20-4, IC 9-20-5, or IC 9-20-11 that the total of all excesses of weight under those limitations is less than one thousand (1,000) pounds.

(d) The court may suspend the registration of a vehicle used in violating this article for not more than ninety (90) days.

(e) Upon the conviction of a person for a violation of a law regarding the weight limit of vehicles operated upon a highway, the court may recommend suspension of the person's current chauffeur's license if the violation was committed knowingly.

(f) Notwithstanding ~~IC 34-4-32-4,~~ **IC 34-28-5-4,** funds collected as judgments, except for costs, for violations under subsection (a) or (b) shall be deposited in the state highway fund.

SECTION 100. IC 9-24-17-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10. The state and any health care provider (as defined by ~~IC 27-12-2-14~~ **IC 34-18-2-15**) are not liable for damages alleged to have occurred as a result of an individual making an anatomical gift under this chapter.

SECTION 101. IC 10-1-1-25, AS AMENDED BY P.L.1-1996, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 25. (a) The superintendent may assign qualified persons who are not state police officers to supervise or operate permanent or portable weigh stations. A person assigned under this section may stop, inspect, and issue citations to operators of trucks and trailers having a declared gross weight of eleven thousand (11,000) pounds or more and buses at a permanent or portable weigh station or while operating a clearly marked Indiana state police vehicle for violations of the following:

(1) IC 6-1.1-7-10.
(2) IC 6-6-1.1-1202.
(3) IC 6-6-2.5.
(4) IC 6-6-4.1-12.
(5) IC 8-2.1.
(6) IC 9-18.
(7) IC 9-19.
(8) IC 9-20.
(9) IC 9-21-7-2 through IC 9-21-7-11.
(10) IC 9-21-8-41 pertaining to the duty to obey an official traffic control device for a weigh station.
(11) IC 9-21-8-45 through IC 9-21-8-48.
(12) IC 9-21-9.
(13) IC 9-21-15.

C o p y

(14) IC 9-24-1-1 through IC 9-24-1-3.
(15) IC 9-24-1-7.
(16) Except as provided in subsection (c), IC 9-24-1-6, IC 9-24-6-16, IC 9-24-6-17, and IC 9-24-6-18, commercial driver's license.
(17) IC 9-24-4.
(18) IC 9-24-5.
(19) IC 9-24-11-4.
(20) IC 9-24-13-3.
(21) IC 9-24-18-1 through IC 9-24-18-2.
(22) IC 9-25-4-3.
(23) IC 9-28-4.
(24) IC 9-28-5.
(25) IC 9-28-6.
(26) IC 9-29-5-11 through IC 9-29-5-13.
(27) IC 9-29-5-42.
(28) IC 9-29-6-1.
(29) IC 13-17-5-1, IC 13-17-5-2, IC 13-17-5-3, or IC 13-17-5-4.
(30) IC 13-30-2-1.

(b) For the purpose of enforcing this section, a person assigned under this section has the power to detain a person in the same manner as a law enforcement officer under ~~IC 34-4-32-2.~~ **IC 34-28-5-3.**

(c) A person assigned under this section may not enforce IC 9-24-6-14 and IC 9-24-6-15.

SECTION 102. IC 12-10-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) A person, other than a person against whom a complaint concerning an endangered adult has been made, who in good faith:

(1) makes or causes to be made a report required to be made under this chapter;
(2) testifies or participates in any investigation or administrative or judicial proceeding on matters arising from the report;
(3) makes or causes to be made photographs or x-rays of an endangered adult; or
(4) discusses a report required to be made under this chapter with the division, the adult protective services unit, a law enforcement agency, or other appropriate agency;

is immune from both civil and criminal liability arising from those actions.

(b) An individual may not be excused from testifying before a court or grand jury concerning a report made under this chapter on the basis that the testimony is privileged information, unless the individual

Copy

is an attorney, a physician, a clergyman, a husband, or a wife who is not ~~a competent witness~~ **required to testify** under ~~IC 34-1-14-5.~~ **IC 34-46-3-1.**

(c) An employer may not discharge, demote, transfer, prepare a negative work performance evaluation, or reduce benefits, pay, or work privileges, or take any other action to retaliate against an employee who in good faith files a report under this chapter.

SECTION 103. IC 12-15-35-41 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 41. The activities of the board in carrying out this chapter are covered under ~~IC 34-4-12.6.~~ **IC 34-30-15.**

SECTION 104. IC 12-20-25-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 28. (a) A determination of the management committee concerning the validity and reasonableness of a claim is a final administrative determination.

(b) A creditor aggrieved by a final determination of the management committee may appeal the determination by filing a petition with the circuit or superior court of the county in which the creditor resides or in the county in which the distressed township is located. The petition must be filed not more than thirty (30) days following the date of the management committee's determination. The court shall try the cause de novo. Except as provided in section 52(3) of this chapter, a final court judgment that orders a payment to be made to a creditor under this subsection may be collected upon and paid from the distressed township's poor relief account as provided in section 40 of this chapter. An action brought under this section is governed by ~~IC 34-4-17,~~ **IC 34-13-5,** except that a change of venue is governed by the Indiana Rules of Trial Procedure rather than ~~IC 34-4-17-4.~~ **IC 34-13-5-4.**

(c) A claim under this article that is pending in court at the time the township becomes a distressed township is stayed and the claimant must file the claim with the management committee as provided in this chapter. A claimant who has a final court judgment on a claim under this article before the township becomes a distressed township may proceed to collect on that judgment as provided by law.

(d) An action under this section is subject to the defense that the claim may violate Article 13, Section 1 of the Constitution of the State of Indiana.

SECTION 105. IC 13-17-7-5, AS ADDED BY P.L.1-1996, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. A private citizen, the commissioner, the governor, or the attorney general may initiate a civil action under:

C o p y

(1) IC 13-14-10-2;
(2) IC 13-15-3-6;
(3) IC 13-17-4;
(4) IC 13-30-1-1 through IC 13-30-1-7;
(5) IC 13-30-3-2 through IC 13-30-3-9; or
(6) ~~IC 34-1-52-2;~~ **IC 34-19-1-2;**

whichever is applicable, to enjoin or abate emissions resulting from the operation of an existing emitting facility or source.

SECTION 106. IC 13-20-16-8, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. The state or a political subdivision (as defined in ~~IC 34-4-16.5-2(f))~~ **IC 34-6-2-110)** shall dispose of used lead acid batteries in the state's or political subdivision's possession by one (1) or more of the following means:

(1) Delivery to a wholesaler or an agent of a wholesaler.
(2) Delivery to a manufacturer of lead acid batteries.
(3) Delivery to a facility that:
(A) recycles used lead acid batteries; or
(B) collects lead acid batteries for delivery to a recycling facility.
(4) Delivery to a facility operated as a secondary lead smelter under a valid permit issued by the department or the United States Environmental Protection Agency.

SECTION 107. IC 13-30-2-2, AS ADDED BY P.L.1-1996, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) A person, excluding a municipality, who owns or operates a water pollution treatment or control facility or sanitary sewer may not offer to provide service or allocate a sewer tap to a person without:

(1) having the capacity to provide the service or allocation; and
(2) reserving the capacity to provide the service or allocation;

to the property owner to whom the offer or allocation was made.

(b) A person who violates subsection (a) who:

(1) issued a written letter of intent or commitment to provide service or allocate a sewer tap to a property owner;
(2) failed to reserve the capacity to provide the service or tap; and
(3) as a result of failing to reserve that capacity, adversely affected the value of property of a property owner to whom the letter of intent was issued;

is liable for damages to the property owner.

(c) In an action brought by a property owner under this section, the

Copy

damages are equal to the value of the property as the property would have appreciated in value but for the failure of the property to have been provided sewer service or a sewer tap.

(d) Notwithstanding ~~IC 34-1-2-3,~~ **IC 34-11-1-2,** a property owner who has a continuing claim under this section may assert that claim until May 15, 1997.

SECTION 108. IC 13-30-8-1, AS ADDED BY P.L.1-1996, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. A vehicle that is used to transport hazardous waste in the commission of an offense described in IC 13-30-6-6 is subject to forfeiture under ~~IC 34-4-30.1.~~ **IC 34-24-1.**

SECTION 109. IC 14-9-8-27, AS ADDED BY P.L.2-1996, SECTION 252, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 27. (a) A conservation reserve officer may be appointed to assist the division in the enforcement of watercraft laws and for no other purpose. A conservation reserve officer must be appointed in the same manner that a conservation officer is appointed.

(b) A conservation reserve officer:

(1) may not be a conservation officer;

(2) has the police powers of a conservation officer to enforce watercraft laws, except as limited by the rules of the department;

(3) to the extent that money is appropriated for a purpose listed in this subdivision, may receive:

(A) a uniform allowance;

(B) compensation for time lost from other employment because of court appearances;

(C) insurance for life, accident, and sickness coverage;

(D) compensation for lake patrol duties that the division director assigns and approves for compensation; or

(E) any combination of benefits specified in clauses (A) through (D);

(4) is not eligible to participate in a pension program provided for conservation officers;

(5) may not be appointed until completion of the following:

(A) A minimum of forty (40) hours of general reserve officer training.

(B) A minimum of twelve (12) hours in addition to the training under subdivision (A) in the enforcement of watercraft laws.

(C) A probationary period specified by rule of the department;

C o p y

(6) may not:
(A) make an arrest;
(B) conduct a search or seizure of a person or property; or
(C) carry a firearm;
unless the conservation reserve officer successfully completes a pre-basic course under IC 5-2-1-9(f); and
(7) may be covered by the medical treatment and burial expense provisions of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7).

If compensability of an injury covered under subdivision (7) is an issue, the administrative procedures of IC 22-3-2 through IC 22-3-6 and IC 22-3-7 must be used to resolve the issue.

(c) A conservation reserve officer carrying out lake patrol duties under this chapter is immune from liability under ~~IC 34-4-12,~~ **IC 34-30-12,** notwithstanding the payment of compensation to the conservation reserve officer.

(d) The department may adopt rules under IC 4-22-2 to implement this section and to limit the authority of conservation reserve officers.

SECTION 110. IC 14-14-1-7, AS ADDED BY P.L.1-1995, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. The recreational development commission is created. The commission is a body both corporate and politic, and the exercise by the commission of the powers conferred by this chapter in the acquisition, construction, improvement, operation, and maintenance of a park project is an essential governmental function of the state. The commission is a tax supported institution within the meaning of ~~IC 34-4-16.9.~~ **"agency" for the purposes of IC 34-30-9.**

SECTION 111. IC 14-32-4-19, AS AMENDED BY P.L.136-1997, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 19. (a) The supervisors and employees of a district are subject to ~~IC 34-4-16.5.~~ **IC 34-13-3.**

(b) The supervisors of a district may employ their own counsel and legal staff.

SECTION 112. IC 14-34-15-12, AS ADDED BY P.L.1-1995, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 12. (a) In addition to other remedies available under statutory or common law, a person with an interest that is or may be adversely affected may commence a civil action on the person's own behalf to compel compliance with this article against any of the following:

(1) A person allegedly in violation of:

C o p y

(A) this article;
(B) a commission rule adopted under this article; or
(C) a notice or an order issued under:
(i) IC 13-4.1 (before its repeal); or
(ii) this article.

However, a commencement of an action under this subdivision must occur in the county in which the surface coal mining and reclamation operation complained of is located.

(2) The director or the commission to the extent permitted by the Constitution of the State of Indiana and ~~IC 34-4-16.5~~ **IC 34-13-3** if the person allegedly fails to perform an act or a duty required under this article. However, commencement of an action under this subdivision must occur in the county in which the complained of action should have taken place.

(b) A person may not commence an action under subsection (a)(1):

(1) less than sixty (60) days after notice is given by the person to:
(A) the director;
(B) the commission; and
(C) an alleged violator; or

(2) if the director or the state has commenced a civil action and is diligently prosecuting the action to require compliance with:
(A) this article;
(B) a commission rule adopted under this article; or
(C) a notice or an order issued under:
(i) IC 13-4.1 (before its repeal); or
(ii) this article.

However, any person may intervene in the action as a matter of right.

(c) A person may not commence an action under subsection (a)(2) less than sixty (60) days after the person has notified the director or the commission in writing of the intention to commence an action. However, the person may commence an action immediately after the written notification if the alleged violation:

(1) constitutes an imminent threat to the health or safety of the person; or
(2) would immediately affect a legal interest of the person.

(d) In an action commenced under subsection (a)(2):

(1) the director;
(2) the commission; or
(3) the Secretary of the United States Department of the Interior;

may intervene as a matter of right.

(e) The court may, in issuing a final order in an action brought

Copy

under subsection (a), award the costs of litigation, including attorney's and expert witness fees, to any party if the court determines the award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Indiana Rules of Trial Procedure.

(f) This section does not restrict a right that a person or class of persons has under a statute or common law to do the following:

(1) Seek enforcement of the following:

(A) This article.

(B) The rules adopted under this article.

(2) Seek any other relief, including relief against the commission.

SECTION 113. IC 15-4-10-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 25. (a) Obligations incurred by the council and other liabilities and claims against the council may be enforced only against the assets of the council in the same manner as if it were a corporation. No liabilities for the debts or actions of the council may arise against:

(1) the state;

(2) any political subdivision (as defined in ~~IC 34-4-16.5-2);~~ **IC 34-6-2-110);** or

(3) any member, officer, employee, or agent of the council in an individual capacity.

(b) The members and employees of the council may not be held responsible individually in any way to any person for errors in judgment, mistakes, or other acts either of commission or omission, as principal, agent, or employee, except for their own individual acts that result in the violation of any law.

(c) No employee of the council may be held responsible individually for the act or omission of any member of the council.

(d) Any liability of the members of the council is several and not joint. A member of the council may not be held liable for the default of any other member.

SECTION 114. IC 15-4-11-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 23. Arbitration under this chapter is not subject to ~~IC 34-4-2.~~ **IC 34-57-2.**

SECTION 115. IC 15-5-12-4, AS AMENDED BY P.L.2-1995, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. An owner of a dog is exempt under section 3 of this chapter if the dog commits an act described in section 3 of this chapter during the period that the dog is owned by:

C o p y

(1) the United States;
(2) an agency of the United States; or
(3) a governmental entity (as defined in ~~IC 34-4-16.5-2(c));~~ **IC 34-6-2-49);**

and the dog is engaged in assisting the owner or the owner's agent in the performance of law enforcement or military duties.

SECTION 116. IC 16-18-2-163, AS AMENDED BY P.L.188-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 163. (a) "Health care provider", for purposes of IC 16-21 and IC 16-41, means any of the following:

(1) An individual, a partnership, a corporation, a professional corporation, a facility, or an institution licensed or legally authorized by this state to provide health care or professional services as a licensed physician, a psychiatric hospital, a hospital, a health facility, an emergency ambulance service (IC 16-31-3), a dentist, a registered or licensed practical nurse, a midwife, an optometrist, a pharmacist, a podiatrist, a chiropractor, a physical therapist, a respiratory care practitioner, an occupational therapist, a psychologist, a paramedic, an emergency medical technician, or an advanced emergency technician, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment.

(2) A college, university, or junior college that provides health care to a student, a faculty member, or an employee, and the governing board or a person who is an officer, employee, or agent of the college, university, or junior college acting in the course and scope of the person's employment.

(3) A blood bank, community mental health center, community mental retardation center, community health center, or migrant health center.

(4) A home health agency (as defined in IC 16-27-1-2).

(5) A health maintenance organization (as defined in IC 27-13-1-19).

(6) A health care organization whose members, shareholders, or partners are health care providers under subdivision (1).

(7) A corporation, partnership, or professional corporation not otherwise qualified under this subsection that:

(A) provides health care as one (1) of the corporation's, partnership's, or professional corporation's functions;

(B) is organized or registered under state law; and

Copy

(C) is determined to be eligible for coverage as a health care provider under ~~IC 27-12~~ **IC 34-18** for the corporation's, partnership's, or professional corporation's health care function.

Coverage for a health care provider qualified under this subdivision is limited to the health care provider's health care functions and does not extend to other causes of action.

(b) "Health care provider", for purposes of IC 16-35, has the meaning set forth in subsection (a). However, for purposes of IC 16-35, the term also includes a health facility (as defined in section 167 of this chapter).

SECTION 117. IC 16-31-3-2, AS AMENDED BY P.L.186-1995, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. The commission shall establish standards for persons required to be certified by the commission to provide emergency medical services. To be certified, a person must meet the following minimum requirements:

(1) The personnel certified under this chapter must do the following:

(A) Meet the standards for education and training established by the commission by rule.

(B) Successfully complete a basic or an inservice course of education and training on sudden infant death syndrome that is certified by the Indiana emergency medical services commission (created under IC 16-31-2-1) in conjunction with the state health commissioner.

(2) Ambulances to be used must conform with the requirements of the commission and must either be:

(A) covered by insurance issued by a company licensed to do business in Indiana in the amounts and under the terms required in rules adopted by the commission, taking into consideration recommendations of the technical advisory committee; or

(B) owned by a governmental entity covered under ~~IC 34-4-16.5.~~ **IC 34-13-3.**

(3) Emergency ambulance service shall be provided in accordance with rules adopted by the commission, taking into consideration recommendations of the advisory committee concerning staffing, equipping, and operating procedures. However, the rules adopted under this chapter may not prohibit the dispatch of an ambulance to aid an emergency patient because an emergency medical technician is not immediately

Copy

available to staff the ambulance.

(4) Ambulances must be equipped with a system of emergency medical communications approved by the commission. The emergency medical communication system must properly integrate and coordinate appropriate local and state emergency communications systems and reasonably available area emergency medical facilities with the general public's need for emergency medical services.

(5) Emergency medical communications shall be provided in accordance with rules adopted by the commission, taking into consideration recommendations of the technical advisory committee concerning such matters.

(6) A nontransporting emergency medical services vehicle must conform with the commission's requirements.

SECTION 118. IC 16-34-2-1.1, AS ADDED BY P.L.187-1995, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1.1. An abortion shall not be performed except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

(1) At least eighteen (18) hours before the abortion and in the presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice nurse (as defined in IC 25-23-1-1(b)), or a midwife (as defined in ~~IC 27-12-2-19~~ **IC 34-18-2-19**) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician has orally informed the pregnant woman of the following:

(A) The name of the physician performing the abortion.

(B) The nature of the proposed procedure or treatment.

(C) The risks of and alternatives to the procedure or treatment.

(D) The probable gestational age of the fetus, including an offer to provide:

(i) a picture or drawing of a fetus;

(ii) the dimensions of a fetus; and

(iii) relevant information on the potential survival of an unborn fetus;

at this stage of development.

(E) The medical risks associated with carrying the fetus to

Copy

term.

(2) At least eighteen (18) hours before the abortion, the pregnant woman will be orally informed of the following:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care from the county office of family and children.

(B) That the father of the unborn fetus is legally required to assist in the support of the child. In the case of rape, the information required under this clause may be omitted.

(C) That adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care.

(3) The pregnant woman certifies in writing, before the abortion is performed, that the information required by subdivisions (1) and (2) has been provided.

SECTION 119. IC 16-36-1.5-4.5, AS ADDED BY P.L.149-1997, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4.5. Before providing mental health services, a physician who is licensed under IC 25-22.5 must obtain consent from each patient as provided in ~~IC 27-12-12.~~ **IC 34-18-12.**

SECTION 120. IC 16-39-2-6, AS AMENDED BY P.L.253-1997(ss), SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) Without the consent of the patient, the patient's mental health record may only be disclosed as FOLLOWS [EFFECTIVE JULY 1, 1998]:

(1) To individuals who meet the following conditions:

(A) Are employed by:

(i) the provider at the same facility or agency;

(ii) a managed care provider (as defined in IC 12-7-2-127(b)); or

(iii) a health care provider or mental health care provider, if the mental health records are needed to provide health care or mental health services to the patient.

(B) Are involved in the planning, provision, and monitoring of services.

(2) To the extent necessary to obtain payment for services rendered or other benefits to which the patient may be entitled, as provided in IC 16-39-5-3.

(3) To the patient's court appointed counsel and to the Indiana protection and advocacy services commission.

(4) For research conducted in accordance with IC 16-39-5-3 and

C o p y

the rules of the division of mental health, the rules of the division of disability, aging, and rehabilitative services, or the rules of the provider.

(5) To the division of mental health for the purpose of data collection, research, and monitoring managed care providers (as defined in IC 12-7-2-127(b)) who are operating under a contract with the division of mental health.

(6) To the extent necessary to make reports or give testimony required by the statutes pertaining to admissions, transfers, discharges, and guardianship proceedings.

(7) To a law enforcement agency if any of the following conditions are met:

(A) A patient escapes from a facility to which the patient is committed under IC 12-26.

(B) The superintendent of the facility determines that failure to provide the information may result in bodily harm to the patient or another individual.

(C) A patient commits or threatens to commit a crime on facility premises or against facility personnel.

(D) A patient is in the custody of a law enforcement officer or agency for any reason and:

(i) the information to be released is limited to medications currently prescribed for the patient or to the patient's history of adverse medication reactions; and

(ii) the provider determines that the release of the medication information will assist in protecting the health, safety, or welfare of the patient.

Mental health records released under this clause must be maintained in confidence by the law enforcement agency receiving them.

(8) To a coroner or medical examiner, in the performance of the individual's duties.

(9) To a school in which the patient is enrolled if the superintendent of the facility determines that the information will assist the school in meeting educational needs of a person with a disability under 20 U.S.C. 1400 et seq.

(10) To the extent necessary to satisfy reporting requirements under the following statutes:

(A) IC 12-10-3-10.

(B) IC 12-17-2-16.

(C) IC 12-24-17-5.

C o p y

(D) IC 16-41-2-3.
(E) IC 31-33-5-4.
(F) ~~IC 34-4-12.4-3.~~ **IC 34-30-16-2.**
(G) IC 35-46-1-13.

(11) To the extent necessary to satisfy release of information requirements under the following statutes:
(A) IC 12-24-11-2.
(B) IC 12-24-12-3, IC 12-24-12-4, and IC 12-24-12-6.
(C) IC 12-26-11.

(12) To another health care provider in a health care emergency.

(13) For legitimate business purposes as described in IC 16-39-5-3.

(14) Under a court order under IC 16-39-3.

(15) With respect to records from a mental health or developmental disability facility, to the United States Secret Service if the following conditions are met:
(A) The request does not apply to alcohol or drug abuse records described in 42 U.S.C. 290dd-2 unless authorized by a court order under 42 U.S.C. 290dd-2(b)(2)(c).
(B) The request relates to the United States Secret Service's protective responsibility and investigative authority under 18 U.S.C. 3056, 18 U.S.C. 871, or 18 U.S.C. 879.
(C) The request specifies an individual patient.
(D) The director or superintendent of the facility determines that disclosure of the mental health record may be necessary to protect a person under the protection of the United States Secret Service from serious bodily injury or death.
(E) The United States Secret Service agrees to only use the mental health record information for investigative purposes and not disclose the information publicly.
(F) The mental health record information disclosed to the United States Secret Service includes only:
(i) the patient's name, age, and address;
(ii) the date of the patient's admission to or discharge from the facility; and
(iii) any information that indicates whether or not the patient has a history of violence or presents a danger to the person under protection.

(b) After information is disclosed under subsection (a)(15) and if the patient is evaluated to be dangerous, the records shall be interpreted in consultation with a licensed mental health professional on the staff of the United States Secret Service.

C o p y

(c) A person who discloses information under subsection (a)(7) or (a)(15) in good faith is immune from civil and criminal liability.

SECTION 121. IC 16-41-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. A patient's privilege with respect to a physician under ~~IC 34-1-14-5~~ **IC 34-46-3-1** is waived regarding information reported to a local or state health officer under this chapter.

SECTION 122. IC 16-41-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) A licensed physician who diagnoses, treats, or counsels a patient with a dangerous communicable disease shall inform the patient of the patient's duty under section 1 of this chapter.

(b) A physician described in subsection (a) may notify the following:

(1) A health officer if the physician has reasonable cause to believe that a patient:

(A) is a serious and present danger to the health of others as described in section 2(a) of this chapter;

(B) has engaged in noncompliant behavior; or

(C) is suspected of being a person at risk (as defined in section 1 of this chapter).

(2) A person at risk (as defined in section 1 of this chapter) or a person legally responsible for the patient if the physician:

(A) has medical verification that the patient is a carrier;

(B) knows the identity of the person at risk;

(C) has a reasonable belief of a significant risk of harm to the identified person at risk;

(D) has reason to believe the identified person at risk has not been informed and will not be informed of the risk by the patient or another person; and

(E) has made reasonable efforts to inform the carrier of the physician's intent to make or cause the state department of health to make a disclosure to the person at risk.

(c) A physician who notifies a person at risk under this section shall do the following:

(1) Identify the dangerous communicable disease.

(2) Inform the person of available health care measures such as counseling and testing.

(d) A physician who in good faith provides notification under this section is not subject to liability in a civil, an administrative, a disciplinary, or a criminal action.

(e) A patient's privilege with respect to a physician under

Copy

~~IC 34-1-14-5~~ **IC 34-46-3-1** is waived regarding:

(1) notification under subsection (b); and

(2) information provided about a patient's noncompliant behavior in an investigation or action under this chapter, IC 16-41-2, IC 16-41-3, IC 16-41-5, IC 16-41-6, IC 16-41-8, IC 16-41-9, IC 16-41-13, IC 16-41-14, and IC 16-41-16.

(f) A physician's immunity from liability under subsection (d) applies only to the provision of information reasonably calculated to protect an identified person who is at epidemiological risk of infection.

(g) A physician who notifies a person under this section is also required to satisfy the reporting requirements under IC 16-41-2-2 through IC 16-41-2-8.

SECTION 123. IC 16-41-11-10, AS ADDED BY P.L.95-1994, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10. (a) This section does not apply to a medical review panel created under ~~IC 27-12-10~~ **IC 34-18-10 (or IC 27-12-10 before its repeal)** or a peer review committee (as defined in ~~IC 34-4-12.6-1(c)).~~ **IC 34-6-2-99).**

(b) The state department may authorize by rule expert review panels to provide confidential consultation and advice to health care workers who are:

(1) infected with the human immunodeficiency virus (HIV); or

(2) infected with the hepatitis-B virus (HBV) and are hepatitis-Be antigen (HBeAg) positive.

(c) All proceedings and communications of an authorized expert review panel are confidential and privileged communications.

(d) A member or a member of the staff of an authorized expert review panel is immune from any civil liability for any act, statement, determination, or recommendation made in good faith in the scope of the panel's duties.

SECTION 124. IC 20-5-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. In carrying out the school purposes of each school corporation, its governing body acting on its behalf shall have the following specific powers:

(1) In the name of the school corporation, to sue and be sued and to enter into contracts in matters permitted by applicable law.

(2) To take charge of, manage, and conduct the educational affairs of the school corporation and to establish, locate, and provide the necessary schools, school libraries, other libraries where permitted by law, other buildings, facilities, property, and equipment therefor.

(2.5) To appropriate from the general fund an amount, not to

C o p y

exceed the greater of three thousand dollars ($3,000) per budget year or one dollar ($1) per pupil, not to exceed twelve thousand five hundred dollars ($12,500), based upon the school corporation's previous year's average daily membership (as defined in IC 21-3-1.6-1.1) for the purpose of promoting the best interests of the school corporation by:

(A) the purchase of meals, decorations, memorabilia, or awards;

(B) provision for expenses incurred in interviewing job applicants; or

(C) developing relations with other governmental units.

(3) To acquire, construct, erect, maintain, hold, and to contract for such construction, erection, or maintenance of such real estate, real estate improvements, or any interest in either, as the governing body deems necessary for school purposes, including but not limited to buildings, parts of buildings, additions to buildings, rooms, gymnasiums, auditoriums, playgrounds, playing and athletic fields, facilities for physical training, buildings for administrative, office, warehouse, repair activities, or housing of school owned buses, landscaping, walks, drives, parking areas, roadways, easements and facilities for power, sewer, water, roadway, access, storm and surface water, drinking water, gas, electricity, other utilities and similar purposes, by purchase, either outright for cash (or under conditional sales or purchases money contracts providing for a retention of a security interest by seller until payment is made or by notes where such contract, security retention, or note is permitted by applicable law), by exchange, by gift, by devise, by eminent domain, by lease with or without option to purchase, or by lease under IC 21-5-10, IC 21-5-11, or IC 21-5-12. To repair, remodel, remove, or demolish any such real estate, real estate improvements, or interest in either, as the governing body deems necessary for school purposes, and to contract therefor. To provide for energy conservation measures through utility energy efficiency programs or under a guaranteed energy savings contract as described in IC 36-1-12.5.

(4) To acquire such personal property or any interest therein as the governing body deems necessary for school purposes, including but not limited to buses, motor vehicles, equipment, apparatus, appliances, books, furniture, and supplies, either by outright purchase for cash, or under conditional sales or purchase money contracts providing for a security interest by the

C o p y

seller until payment is made or by notes where such contract, security, retention, or note is permitted by applicable law, by gift, by devise, by loan, or by lease with or without option to purchase and to repair, remodel, remove, relocate, and demolish such personal property. All purchases and contracts delineated under the powers given under subdivision (3) and this subdivision shall be subject solely to applicable law relating to purchases and contracting by municipal corporations in general and to the supervisory control of agencies of the state as provided in section 3 of this chapter.

(5) To sell or exchange any of such real or personal property or interest therein, which in the opinion of the governing body is not necessary for school purposes, in accordance with IC 20-5-5, to demolish or otherwise dispose of such property if, in the opinion of the governing body, it is not necessary for school purposes and is worthless, and to pay the expenses for such demolition or disposition.

(6) To lease any school property for a rental which the governing body deems reasonable or to permit the free use of school property for:

(A) civic or public purposes; or

(B) the operation of a school age child care program for children aged five (5) through fourteen (14) years that operates before or after the school day, or both, and during periods when school is not in session;

if the property is not needed for school purposes. Under this subdivision, the governing body may enter into a long term lease with a nonprofit corporation, community service organization, or other governmental entity, if the corporation, organization, or other governmental entity will use the property to be leased for civic or public purposes or for a school age child care program. However, if the property subject to a long term lease is being paid for from money in the school corporation's debt service fund, then all proceeds from the long term lease shall be deposited in that school corporation's debt service fund so long as the property has not been paid for. The governing body may, at its option, use the procedure specified in IC 36-1-11-10 in leasing property under this subdivision.

(7) To employ, contract for, and discharge superintendents, supervisors, principals, teachers, librarians, athletic coaches (whether or not they are otherwise employed by the school corporation and whether or not they are licensed under

C o p y

IC 20-6.1-3), business managers, superintendents of buildings and grounds, janitors, engineers, architects, physicians, dentists, nurses, accountants, teacher aides performing noninstructional duties, educational and other professional consultants, data processing and computer service for school purposes, including but not limited to the making of schedules, the keeping and analyzing of grades and other student data, the keeping and preparing of warrants, payroll, and similar data where approved by the state board of accounts as provided below, and such other personnel or services, all as the governing body considers necessary for school purposes. To fix and pay the salaries and compensation of such persons and such services. To classify such persons or services and to adopt schedules of salaries or compensation. To determine the number of such persons or the amount of services thus employed or contracted for. To determine the nature and extent of their duties. The compensation, terms of employment, and discharge of teachers shall, however, be subject to and governed by the laws relating to employment, contracting, compensation, and discharge of teachers. The compensation, terms of employment, and discharge of bus drivers shall be subject to and shall be governed by any laws relating to employment, contracting, compensation, and discharge of bus drivers. The forms and procedures relating to the use of computer and data processing equipment in handling the financial affairs of such school corporation shall be submitted to the state board of accounts for approval to the end that such services shall be used by the school corporation when the governing body determines that it is in the best interests of the school corporation while at the same time providing reasonable accountability for the funds expended.

(8) Notwithstanding the appropriation limitation in subdivision (2.5), when the governing body by resolution deems a trip by an employee of the school corporation or by a member of the governing body to be in the interest of the school corporation, including but not limited to attending meetings, conferences, or examining equipment, buildings, and installation in other areas, to permit such employee to be absent in connection with such trip without any loss in pay and to refund to such employee or to such member his reasonable hotel and board bills and necessary transportation expenses. To pay teaching personnel for time spent in sponsoring and working with school related trips or activities.

C o p y

(9) To transport children to and from school, when in the opinion of the governing body such transportation is necessary, including but not limited to considerations for the safety of such children and without regard to the distance they live from the school, such transportation to be otherwise in accordance with the laws applicable thereto.

(10) To provide a lunch program for a part or all of the students attending the schools of the school corporation, including but not limited to the establishment of kitchens, kitchen facilities, kitchen equipment, lunch rooms, the hiring of the necessary personnel to operate such program, and the purchase of any material and supplies therefor, charging students for the operational costs of such lunch program, fixing the price per meal or per food item. To operate such lunch program as an extracurricular activity, subject to the supervision of the governing body. To participate in any surplus commodity or lunch aid program.

(11) To purchase textbooks, to furnish them without cost or to rent them to students, to participate in any textbook aid program, all in accordance with applicable law.

(12) To accept students transferred from other school corporations and to transfer students to other school corporations in accordance with applicable law.

(13) To levy taxes, to make budgets, to appropriate funds, and to disburse the money of the school corporation in accordance with the laws applicable thereto. To borrow money against current tax collections and otherwise to borrow money, in accordance with IC 20-5-4.

(14) To purchase insurance or to establish and maintain a program of self-insurance relating to the liability of the school corporation or its employees in connection with motor vehicles or property and for any additional coverage to the extent permitted and in accordance with ~~IC 34-4-16.5-18.~~ **IC 34-13-3-20.** To purchase additional insurance or to establish and maintain a program of self-insurance protecting the school corporation and members of the governing body, employees, contractors, or agents of the school corporation from any liability, risk, accident, or loss related to any school property, school contract, school or school related activity, including but not limited to the purchase of insurance or the establishment and maintenance of a self-insurance program protecting such persons against false imprisonment, false arrest, libel, or slander for acts

Copy

committed in the course of their employment, protecting the school corporation for fire and extended coverage and other casualty risks to the extent of replacement cost, loss of use, and other insurable risks relating to any property owned, leased, or held by the school corporation. To purchase insurance or to establish and maintain a program of self-insurance to benefit school corporation employees, which may include accident, sickness, health, or dental coverage, provided that any plan of self-insurance shall include an aggregate stop-loss provision.

(15) To make all applications, to enter into all contracts, and to sign all documents necessary for the receipt of aid, money, or property from the state government, the federal government, or from any other source.

(16) To defend any member of the governing body or any employee of the school corporation in any suit arising out of the performance of his duties for or employment with, the school corporation, provided the governing body by resolution determined that such action was taken in good faith. To save any such member or employee harmless from any liability, cost, or damage in connection therewith, including but not limited to the payment of any legal fees, except where such liability, cost, or damage is predicated on or arises out of the bad faith of such member or employee, or is a claim or judgment based on his malfeasance in office or employment.

(17) To prepare, make, enforce, amend, or repeal rules, regulations, and procedures for the government and management of the schools, property, facilities, and activities of the school corporation, its agents, employees, and pupils and for the operation of its governing body, which rules, regulations, and procedures may be designated by any appropriate title such as "policy handbook", "bylaws", or "rules and regulations".

(18) To ratify and approve any action taken by any member of the governing body, any officer of the governing body, or by any employee of the school corporation after such action is taken, if such action could have been approved in advance, and in connection therewith to pay any expense or compensation permitted under IC 20-5-1 through IC 20-5-6 or any other law.

(19) To exercise any other power and make any expenditure in carrying out its general powers and purposes provided in this chapter or in carrying out the powers delineated in this section which is reasonable from a business or educational standpoint in carrying out school purposes of the school corporation, including

C o p y

but not limited to the acquisition of property or the employment or contracting for services, even though such power or expenditure shall not be specifically set out herein. The specific powers set out in this section shall not be construed to limit the general grant of powers provided in this chapter except where a limitation is set out in IC 20-5-1 through IC 20-5-6 by specific language or by reference to other law.

SECTION 125. IC 20-8.1-12-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. A report is not required under sections 2 through 3 of this chapter if:

(1) a federal statute or regulation;

(2) IC 20-6.1-6-15, IC 25-33-1-17, ~~IC 34-1-14-5,~~ **IC 34-46-3-1,** or another state statute; or

(3) a rule adopted by a state agency;

imposes a duty on the employee of the school corporation or member of the administrative staff not to disclose privileged or confidential information that otherwise would have been the basis of a report.

SECTION 126. IC 21-2-5.6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. The self-insurance fund may be used to provide monies for the following purposes:

(1) the payment of any judgment rendered against the school corporation, or rendered against any officer or employee of the school corporation for which the school corporation is liable under ~~IC 34-4-16.5, IC 34-4-16.6, or IC 34-4-16.7;~~ **IC 34-13-2, IC 34-13-3, or IC 34-13-4 (or IC 34-4-16.5, IC 34-4-16.6, or IC 34-4-16.7 before their repeal);**

(2) the payment of any claim or settlement for which the school corporation is liable pursuant to ~~IC 34-4-16.5, IC 34-4-16.6, or IC 34-4-16.7;~~ **IC 34-13-2, IC 34-13-3, or IC 34-13-4 (or IC 34-4-16.5, IC 34-4-16.6, or IC 34-4-16.7 before their repeal);**

(3) the payment of any premium, management fee, claim, or settlement for which the school corporation is liable pursuant to any federal or state statute including but not limited to payments pursuant to IC 22-3 and IC 22-4; or

(4) the payment of any settlement or claim for which insurance coverage is permitted under IC 20-5-2-2(14).

SECTION 127. IC 22-8-1.1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 19. Standards: Declaratory Judgment. After promulgation of a safety standard by the commission, any question as to its applicability or legal validity may be adjudicated by an action for a declaratory judgment filed by an affected

C o p y

person or firm ~~pursuant to the provisions of IC 1971, 34-4-10.~~ **under IC 34-14-1 (or IC 34-4-10 before its repeal).**

SECTION 128. IC 23-7-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) The division may receive, investigate, and prosecute complaints concerning the activities of professional fundraiser consultants and professional solicitors who:

(1) may be subject to this chapter; or

(2) have or may have violated this chapter.

All complaints must be in writing, signed by the complainant, and filed with the division.

(b) The attorney general may subpoena witnesses, send for and compel the production of books, records, papers, and documents of professional fundraiser consultants and professional solicitors who are subject to registration under this chapter, for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any such subpoena by the attorney general.

(c) The attorney general may bring an action to enjoin a violation of this chapter. In this action, the court may order a person who has violated this chapter to pay the reasonable costs of investigation and prosecution incurred by the attorney general, may award the state civil penalties up to five hundred dollars ($500) for each violation, and may order the professional fundraiser consultant or professional solicitor to repay money unlawfully received from aggrieved solicitees. In ordering injunctive relief, the division is not required to establish irreparable harm but only a violation of a statute or that the requested order promotes the public interest. It is an affirmative defense to the assessment of civil penalties under this subsection that the defendant acted pursuant to a good faith misunderstanding concerning the requirements of this chapter.

(d) A person who knowingly or intentionally:

(1) fails to file a registration statement or other information;

(2) files a statement or other information which is materially false; or

(3) fails to make a disclosure;

as required by this chapter commits a Class A infraction.

(e) Notwithstanding ~~IC 34-4-32-1,~~ **IC 34-28-5-1,** the attorney general has concurrent jurisdiction with a prosecuting attorney to enforce this chapter.

(f) A local unit of government may adopt an ordinance which regulates professional fundraisers and solicitors if the ordinance does not conflict with this chapter.

C o p y

(g) A professional fundraiser consultant, or a professional solicitor, who has the person's principal place of business outside of Indiana, or who has organized under the laws of another state, and who solicits contributions from persons in Indiana, is subject to this chapter and shall be considered to have appointed the secretary of state as his agent. All service of process under this subsection shall be made on the secretary of state under Rule 4.10 of the Indiana Rules of Trial Procedure.

SECTION 129. IC 23-17-21-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) A mutual benefit corporation may purchase the corporation's memberships if, after the purchase is completed:

(1) the corporation would be able to pay the corporation's debts as the debts become due in the usual course of the corporation's activities; and

(2) the corporation's total assets would at least equal the sum of the corporation's total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with IC 23-17-22, IC 23-17-23, or IC 23-17-24.

(c) A corporation may, in conformity with the purposes of the corporation, make distributions to and confer benefits on a member or an affiliate that is a governmental entity (as defined under ~~IC 34-4-16.5-2)~~ **IC 34-6-2-49)** or a member or an affiliate that is another nonprofit domestic or foreign entity if, after any distribution is completed:

(1) the corporation would be able to pay the corporation's debts as the debts become due in the usual course of the corporation's activities; and

(2) the corporation's total assets would at least equal the corporation's total liabilities.

An affiliate is an entity that directly or indirectly controls, is controlled by, or is under common control with the corporation. Control includes the power to select the corporation's board of directors.

(d) Corporations may repay loans or advances in accordance with and to the extent authorized under IC 23-17-7-9.

SECTION 130. IC 24-7-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. A lessor may not take or accept a power of attorney or other authorization from the lessee, or other person acting on the lessee's behalf, to waive service of process, confess judgment, or enforce payment of money claimed by the lessor in violation of ~~IC 34-2-25 or IC 34-2-26.~~ **IC 34-54-3 or IC 34-54-4.**

C o p y

SECTION 131. IC 25-1-9-18, AS ADDED BY P.L.43-1995, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 18. (a) If the insurance commissioner forwards to the board the name of a practitioner under ~~IC 27-12-9-4(a),~~ **IC 34-18-9-4(a) (or IC 27-12-9-4(a) before its repeal),** the board shall consider whether:

(1) the practitioner has become unfit to practice under section 4 of this chapter; and

(2) a complaint should be filed under IC 25-1-7-4.

(b) If the board determines that a complaint should be filed under subsection (a), the board must report to the consumer protection division whether the board will schedule the matter:

(1) for informal negotiation under IC 25-1-7-6;

(2) on the board's agenda for a vote requesting that the attorney general prosecute the matter before the board under IC 25-1-7-7; or

(3) on the board's agenda for a vote on summary suspension of the practitioner's license pending prosecution of the matter before the board under IC 25-1-7-7.

(c) A board may designate a board member or staff member to act on behalf of the board under this section.

SECTION 132. IC 25-22.5-1-2, AS AMENDED BY P.L.227-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) This article, as it relates to the unlawful or unauthorized practice of medicine or osteopathic medicine, does not apply to any of the following:

(1) A student in training in a medical school approved by the board, or while performing duties as an intern or a resident in a hospital under the supervision of the hospital's staff or in a program approved by the medical school.

(2) A person who renders service in case of emergency where no fee or other consideration is contemplated, charged, or received.

(3) Commissioned medical officers or medical service officers of the armed forces of the United States, the United States Public Health Service, and medical officers of the United States Department of Veterans Affairs in the discharge of their official duties in Indiana.

(4) An individual who is not a licensee who resides in another state or country and is authorized to practice medicine or osteopathic medicine there, who is called in for consultation by an individual licensed to practice medicine or osteopathic medicine in Indiana.

C o p y

(5) A person administering a domestic or family remedy to a member of the person's family.

(6) A member of a church practicing the religious tenets of the church if the member does not make a medical diagnosis, prescribe or administer drugs or medicines, perform surgical or physical operations, or assume the title of or profess to be a physician.

(7) A school corporation and a school employee who acts under ~~IC 34-4-16.5-3.5.~~ **IC 34-30-14 (or IC 34-4-16.5-3.5 before its repeal).**

(8) A chiropractor practicing the chiropractor's profession under IC 25-10 or to an employee of a chiropractor acting under the direction and supervision of the chiropractor under IC 25-10-1-13.

(9) A dental hygienist practicing the dental hygienist's profession under IC 25-13.

(10) A dentist practicing the dentist's profession under IC 25-14.

(11) A hearing aid dealer practicing the hearing aid dealer's profession under IC 25-20.

(12) A nurse practicing the nurse's profession under IC 25-23. However, a registered nurse may administer anesthesia if the registered nurse acts under the direction of and in the immediate presence of a physician and holds a certificate of completion of a course in anesthesia approved by the American Association of Nurse Anesthetists or a course approved by the board.

(13) An optometrist practicing the optometrist's profession under IC 25-24.

(14) A pharmacist practicing the pharmacist's profession under IC 25-26.

(15) A physical therapist practicing the physical therapist's profession under IC 25-27.

(16) A podiatrist practicing the podiatrist's profession under IC 25-29.

(17) A psychologist practicing the psychologist's profession under IC 25-33.

(18) A speech-language pathologist or audiologist practicing the pathologist's or audiologist's profession under IC 25-35.6.

(19) An employee of a physician or group of physicians who performs an act, a duty, or a function that is customarily within the specific area of practice of the employing physician or group of physicians, if the act, duty, or function is performed under the direction and supervision of the employing physician or a

C o p y

physician of the employing group within whose area of practice the act, duty, or function falls. An employee may not make a diagnosis or prescribe a treatment and must report the results of an examination of a patient conducted by the employee to the employing physician or the physician of the employing group under whose supervision the employee is working. An employee may not administer medication without the specific order of the employing physician or a physician of the employing group. Unless an employee is licensed or registered to independently practice in a profession described in subdivisions (8) through (17), nothing in this subsection grants the employee independent practitioner status or the authority to perform patient services in an independent practice in a profession.

(20) A hospital licensed under IC 16-21 or IC 12-25.

(21) A health care organization whose members, shareholders, or partners are individuals, partnerships, corporations, facilities, or institutions licensed or legally authorized by this state to provide health care or professional services as:

(A) a physician;

(B) a psychiatric hospital;

(C) a hospital;

(D) a health maintenance organization or limited service health maintenance organization;

(E) a health facility;

(F) a dentist;

(G) a registered or licensed practical nurse;

(H) a midwife;

(I) an optometrist;

(J) a podiatrist;

(K) a chiropractor;

(L) a physical therapist; or

(M) a psychologist.

(22) A physician assistant practicing the physician assistant's profession under IC 25-27.5.

(b) A person described in subsection (a)(8) through (a)(17) is not excluded from the application of this article if:

(1) the person performs an act that an Indiana statute does not authorize the person to perform; and

(2) the act qualifies in whole or in part as the practice of medicine or osteopathic medicine.

(c) An employment or other contractual relationship between an entity described in subsection (a)(20) through (a)(21) and a licensed

Copy

physician does not constitute the unlawful practice of medicine under this article if the entity does not direct or control independent medical acts, decisions, or judgment of the licensed physician. However, if the direction or control is done by the entity under ~~IC 34-4-12.6,~~ **IC 34-30-15 (or IC 34-4-12.6 before its repeal),** the entity is excluded from the application of this article as it relates to the unlawful practice of medicine or osteopathic medicine.

(d) This subsection does not apply to a prescription or drug order for a legend drug that is filled or refilled in a pharmacy owned or operated by a hospital licensed under IC 16-21. A physician licensed in Indiana who permits or authorizes a person to fill or refill a prescription or drug order for a legend drug except as authorized in IC 16-42-19-11 through IC 16-42-19-19 is subject to disciplinary action under IC 25-1-9. A person who violates this subsection commits the unlawful practice of medicine under this chapter.

(e) A person described in subsection (a)(7) shall not be authorized to dispense contraceptives or birth control devices.

SECTION 133. IC 25-29-1-0.5, AS AMENDED BY P.L.2-1995, SECTION 99, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 0.5. (a) This article, as it relates to the unlawful or unauthorized practice of podiatric medicine, does not apply to any of the following:

(1) A student in training in a podiatric medical school approved by the board, or while performing duties as an intern or a resident in a hospital under the supervision of the hospital's podiatric staff or in a program approved by the board.

(2) An individual who renders service in case of emergency when no fee or other consideration is contemplated, charged, or received.

(3) Commissioned podiatric medical officers or podiatric medical service officers of the armed forces of the United States, the United States Public Health Service, and podiatric medical officers of the United States Department of Veterans Affairs in the discharge of their official duties in Indiana who are also licensed to practice podiatric medicine in another jurisdiction in the United States.

(4) An individual who is licensed to practice podiatric medicine in another jurisdiction, and is called in for consultation by an individual licensed to practice podiatric medicine in Indiana.

(5) An individual administering a domestic or family remedy to a member of the individual's family.

(6) A member of a church practicing the religious tenets of the

Copy

church if the member does not make a medical diagnosis, prescribe or administer drugs or medicines, perform surgical or physical operations, or assume the title of or profess to be a podiatrist.

(7) A school corporation and a school employee who acts under ~~IC 34-4-16.5-3.5.~~ **IC 34-30-14 (or IC 34-4-16.5-3.5 before its repeal).**

(8) A chiropractor practicing the chiropractor's profession under IC 25-10 or to an employee of a chiropractor acting under the direction and supervision of the chiropractor under IC 25-10-1-13.

(9) A nurse practicing the nurse's profession under IC 25-23.

(10) A pharmacist practicing the pharmacist's profession under IC 25-26.

(11) A physical therapist practicing the physical therapist's profession under IC 25-27.

(12) A physician or an osteopath practicing the physician's or osteopath's profession under IC 25-22.5.

(13) An employee, including a licensed podiatrist's assistant, of a podiatrist or group of podiatrists who performs an act, a duty, or a function that is customarily within the specific area of practice of the employing podiatrist or group of podiatrists, if the act, duty, or function is performed under the direction and supervision of the employing podiatrist or a podiatrist of the employing group within whose area of practice the act, duty, or function falls. An employee may not make a diagnosis or prescribe a treatment and must report the results of an examination of a patient conducted by the employee to the employing podiatrist or the podiatrist of the employing group under whose supervision the employee is working. An employee may not administer medication without the specific order of the employing podiatrist or a podiatrist of the employing group. Unless an employee is licensed or registered to independently practice in a profession described in subdivisions (8) through (12), nothing in this subsection grants the employee independent practitioner status or the authority to perform patient services in an independent practice in a profession.

(14) A hospital licensed under IC 16-21 or IC 12-25.

(15) A health care organization whose members, shareholders, or partners are individuals, partnerships, corporations, facilities, or institutions licensed or legally authorized by this state to provide health care or professional services as:

C o p y

(A) a podiatrist;
(B) a psychiatric hospital;
(C) a hospital;
(D) a health facility;
(E) a registered or licensed practical nurse;
(F) a physician;
(G) a chiropractor; or
(H) a physical therapist.

(b) A person described in subsection (a)(8) through (a)(12) is not excluded from the application of this article if:

(1) the person performs an act that an Indiana statute does not authorize the person to perform; and

(2) the act qualifies in whole or in part as the practice of podiatric medicine.

(c) An employment or other contractual relationship between an entity described in subsection (a)(14) through (a)(15) and a licensed podiatrist does not constitute the unlawful practice of podiatric medicine under this article if the entity does not direct or control independent medical acts, decisions, or judgment of the licensed podiatrist. However, if the direction or control is done by the entity under ~~IC 34-4-12.6,~~ **IC 34-30-15 (or IC 34-4-12.6 before its repeal),** the entity is excluded from the application of this article as it relates to the unlawful practice of podiatric medicine.

(d) This subsection does not apply to a prescription or drug order for a legend drug that is filled or refilled in a pharmacy owned or operated by a hospital licensed under IC 16-10-1. A podiatrist licensed in Indiana who permits or authorizes a person to fill or refill a prescription or drug order for a legend drug except as authorized in IC 16-6-8-3 is subject to disciplinary action under IC 25-1-9. A person who violates this subsection commits the unlawful practice of podiatric medicine under this chapter.

SECTION 134. IC 25-30-1-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 21. (a) Except as provided in subsection (b), a person who violates this chapter commits a Class A misdemeanor.

(b) A person who is not exempt under section 5 of this chapter, who does not have a private detective license, and who:

(1) engages in the private detective business;

(2) solicits or advertises for business as a private detective; or

(3) in any way represents to be a private detective;

commits a Class A infraction.

(c) In addition to any other fine imposed on the person, the court

C o p y

shall fine the person convicted of an offense under subsection (b) the amount of compensation earned by the person in the commission of the offense. Notwithstanding ~~IC 34-4-32-4(a),~~ **IC 34-28-5-4(a),** the total fine imposed under this section may exceed ten thousand dollars ($10,000) if necessary to comply with this subsection.

(d) Each transaction under subsection (b) constitutes a separate offense.

(e) A complaint for a violation of this chapter or for an injunction under section 22 of this chapter is sufficient if the complaint alleges that a person on a specific day in a specific county:

(1) acted as a private detective;

(2) solicited or advertised for business as a private detective; or

(3) represented to be a private detective;

without a private detective license.

SECTION 135. IC 26-1-3.1-420 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 420. (a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by:

(1) the issuer or acceptor of the instrument; or

(2) a payee or endorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) Notwithstanding ~~IC 34-4-30-1~~ **IC 34-24-3-1** or any other statute providing a measure of damages for conversion, in an action under subsection (a) for conversion of an instrument, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

SECTION 136. IC 26-1-10-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 102. (1) To the extent that the following statutes are inconsistent with IC 26-1-7, such statutes are repealed:

IC 32-8-35, dealing with liens for warehousing and forwarding.

C o p y

IC 26-3-4, prescribing requirements of warehouse receipts for goods stored in another state.

(2) To the extent that the following statutes are inconsistent with IC 26-1, such statutes are repealed:

IC 26-2-3, governing the rights of parties on certain negotiable and non-negotiable instruments.

IC 30-2-4-3, concerning fiduciaries.

(3) To the extent that IC 34-1-2-1 **(before its repeal),** ~~and~~ IC 34-1-2-2 **(before its repeal), and IC 34-11-2** ~~prescribing~~ **prescribe** statutes of limitations ~~are~~ inconsistent with IC 26-1-2-725, ~~such sections are repealed.~~ **IC 26-1-2-725 prevails.**

SECTION 137. IC 26-2-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) A person who knowingly violates this chapter commits a Class C infraction. Each violation of this chapter constitutes a separate infraction.

(b) In addition to any other available legal remedy, a person who violates the terms of an injunction issued under section 5 of this chapter commits a Class A infraction. Each violation of the terms of an injunction issued under section 5 of this chapter constitutes a separate infraction. Whenever the court determines that the terms of an injunction issued under section 5 of this chapter have been violated, the court shall award reasonable costs to the state.

(c) Notwithstanding ~~IC 34-4-32-1(a),~~ **IC 34-28-5-1(a),** the prosecuting attorney or the attorney general in the name of the state may bring an action to petition for the recovery of the penalties outlined in this section.

SECTION 138. IC 26-2-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. A person must elect whether to pursue a claim either under this chapter or under ~~IC 34-4-30-1.~~ **IC 34-24-3-1 (or IC 34-4-30-1 before its repeal).**

SECTION 139. IC 26-3-7-31, AS AMENDED BY P.L.125-1997, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 31. (a) Whenever it appears to the satisfaction of the director that a licensee does not have in the licensee's possession sufficient grain to cover the outstanding receipts and tickets issued or assumed by the licensee, or when a licensee refuses to submit the licensee's records or property to lawful inspection, the director may give notice to the licensee to do any of the following:

(1) Cover the shortage with grain that is fully paid for.

(2) Give additional bond, letter of credit, or cash deposit as required by the director.

(3) Submit to inspection as the director may deem necessary.

C o p y

(b) If the licensee fails to comply with the terms of the notice within five (5) business days from the date of its issuance, or within an extension of time that the director may allow, the director may petition the circuit court of the Indiana county where the licensee's principal place of business is located seeking the appointment of a receiver. If the court determines in accordance with ~~IC 34-1-12~~ **IC 34-48-1** that a receiver should be appointed, upon the request of the licensee the court may appoint the agency or its representative to act as receiver. The agency or its representative shall not be appointed as receiver except upon the request of the licensee. If the agency or its representative is appointed, any person interested in an action as described in ~~IC 34-1-12-2~~ **IC 34-48-1-2** may after twenty (20) days request that the agency or its representative be removed as receiver. If the agency or its representative is not serving as receiver, the receiver appointed shall meet and confer with representatives of the agency regarding the licensee's grain related obligations and, before taking any actions regarding those obligations, the receiver and the court shall consider the agency's views and comments.

SECTION 140. IC 27-1-20-21, AS AMENDED BY P.L.116-1994, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 21. (a) Every company doing business in this state shall file with the department on or before March 1 in each year a financial statement for the year ending December 31 immediately preceding in a format in accordance with IC 27-1-3-13. For good and sufficient cause shown, the commissioner may grant to any individual company a reasonable extension of time not to exceed ninety (90) days within which such statement may be filed. Such statement shall be verified by the oaths of the president or a vice president and the secretary or an assistant secretary of the company. The statement of an alien company shall segregate and state separately its condition and transaction in the United States and such segregated and separated statement shall be verified by the oath of its resident manager or principal representative in the United States. The commissioner of insurance may, with the approval of the commission on public records, authorize the destruction of such annual statements which have been on file for two (2) years or more and microfilm copies of which have been made and filed.

(b) A company that during the previous calendar year provided:

(1) insurance of the type described in IC 27-1-5-1, Class 2(h), to one (1) or more Indiana political subdivisions (as defined in ~~IC 34-4-16.5-2);~~ **IC 34-6-2-110);**

(2) insurance of the type described in IC 27-1-5-1, Class 2(h)

C o p y

type insurance covering liability risks related to the ownership or operation of establishments in Indiana at which alcoholic beverages are sold and consumed;

(3) recreational facilities liability insurance;

(4) lawyers professional liability insurance;

(5) product liability insurance;

(6) uninsured and underinsured motorist insurance;

(7) owners, landlords, and tenants liability insurance; or

(8) day care centers liability insurance;

shall file with the department, as an additional part of the financial statement required under subsection (a), an exhibit of premiums and losses reflecting the company's financial results exclusively in connection with that insurance.

(c) The exhibit required under subsection (b) must set forth figures indicating:

(1) direct premiums written;

(2) direct premiums earned;

(3) direct losses paid;

(4) direct losses incurred;

(5) direct losses unpaid;

(6) allocated loss adjustment expenses; and

(7) unallocated loss adjustment expenses;

for the year of the financial statement in connection with all insurance described in subsection (b).

(d) This subsection applies to insurers that provide one (1) or more of the following types of insurance during a calendar year:

(1) Child care liability insurance.

(2) Political subdivision liability insurance, including public schools.

(3) Errors and omissions liability insurance.

(4) Officers and director liability insurance.

(5) Liquor liability insurance.

An insurer covered by this subsection shall file the exhibit described in subsection (e) with the department, as an additional part of the financial statement required under subsection (a) for the calendar year in which the insurance was provided.

(e) The exhibit required under subsection (d) must report:

(1) the number of jury awards paid under the provisions of the insurance during the calendar year, and the total amount paid for all jury awards;

(2) the number of court awards (other than jury awards) paid under the provisions of the insurance during the calendar year,

Copy

and the total amount paid for all of those awards; and

(3) the number of negotiated settlements paid under the provisions of the insurance during the calendar year, and the total amount paid for all those negotiated settlements.

(f) The information described in subsection (e) shall be reported in each year after 1990.

(g) The information described in subsection (c) shall be reported in each year beginning in 1990 for the following lines of insurance:

(1) Recreational facilities liability insurance.

(2) Lawyers professional liability insurance.

(3) Product liability insurance.

(4) Uninsured and underinsured motorist insurance.

(5) Owners, landlords, and tenants liability insurance.

(6) Day care centers liability insurance.

SECTION 141. IC 27-1-29-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. As used in this chapter, "liability" means an obligation arising from a claim for the payment of money in an amount established under ~~IC 34-4-16.5~~ **IC 34-13-3 (or IC 34-4-16.5 before its repeal)** or any other claim for which coverage is provided for members of the fund under rules adopted by the commission.

SECTION 142. IC 27-1-29-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. As used in this chapter, "political subdivision" has the meaning set forth in ~~IC 34-4-16.5-2(f).~~ **IC 34-6-2-110.**

SECTION 143. IC 27-1-29-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) The commission is granted all powers necessary, convenient, or appropriate to carry out and effectuate its public and corporate purposes under this chapter and IC 27-1-29.1 including, but not limited to, and except as otherwise restricted in this chapter or IC 27-1-29.1:

(1) The power to have perpetual existence as a body corporate and politic, and an independent instrumentality, but not a state agency, exercising essential public functions.

(2) The power to sue and be sued.

(3) The power to adopt and alter an official seal.

(4) The power to make and enforce bylaws and rules for the conduct of its business, which bylaws and rules may be adopted by the commission without complying with IC 4-22-2.

(5) The power to make contracts and incur liabilities, borrow money, issue its negotiable bonds or notes in accordance with this chapter, subject to provisions for registration of negotiable

Copy

bonds and notes, and provide for and secure their payment and provide for the rights of their holders, and purchase and hold and dispose of any of its bonds or notes.

(6) The power to acquire, hold, use, and dispose of its income, revenues, funds, and money.

(7) The power to acquire, rent, lease, hold, use, and dispose of property for its purposes.

(8) The power to fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities.

(9) The power to accept gifts or grants of property, funds, money, materials, labor, supplies, or services from the United States, any governmental unit, or any person, carry out the terms or provisions or make agreements with respect to the gifts or grants, and do all things necessary, useful, desirable, or convenient in connection with procuring, accepting, or disposing of the gifts or grants.

(10) The power to do anything authorized by this article, through its officers, agents, or employees or by contracts with a person.

(11) The power to procure insurance against any losses in connection with its property, operations, or assets in amounts and from insurers as it considers desirable.

(12) The power to cooperate with and exchange services, personnel, and information with any federal, state, or local government agency.

(b) The commission may:

(1) implement a statewide program of loss control and risk management to minimize the liabilities of members of the fund;

(2) contract with any persons or entities to obtain or provide the services of risk managers, actuaries, loss control specialists, attorneys, and other professionals in carrying out its powers and duties under this chapter and to pay for those services from the fund;

(3) exercise control over the defense of members of the fund against tort claims, including the selection and retention of legal counsel, the direction of counsel in the conduct of cases, and the negotiation and acceptance or rejection of any settlement;

(4) establish procedures by which political subdivisions can gain or regain membership and relinquish membership in the fund;

(5) establish procedures and criteria for the imposition of assessments to be paid by members of the fund, and the payment of members' liabilities;

(6) establish programs for the payment of money from the fund

C o p y

to compensate members for damage to or loss of real or personal property;

(7) establish programs for the payment of:

(A) liabilities covered under ~~IC 34-4-16.5;~~ **IC 34-13-3 (or IC 34-4-16.5 before its repeal);** and

(B) liabilities that are not covered under ~~IC 34-4-16.5,~~ **IC 34-13-3 (or IC 34-4-16.5 before its repeal),** including, but not limited to, liability due to alleged violations of the Constitution of the United States or federal civil rights statutes by law enforcement officers;

(8) establish programs by which members can protect their elected officers and employees against liability arising from their alleged errors or omissions;

(9) establish procedures by which a member of the fund can settle small claims that are within the deductible provision of coverage under the fund;

(10) capitalize the fund by levying against each member of the fund an annual surcharge over and above the assessment imposed against the member under section 12 of this chapter; and

(11) establish any other programs or procedures the commission considers necessary for the implementation of this chapter.

The amount of the surcharge levied against a member of the fund for a particular year under subdivision (10) may not exceed twenty-five percent (25%) of the member's assessment for the same year.

(c) The commission shall file a report with the members of the general assembly each year concerning the operations of the commission and the condition of the fund. ~~No later than January 1, 1991, the commission shall submit a report to the general assembly including recommendations regarding the future operation of the political subdivision risk management fund established by section 10 of this chapter and the political subdivision catastrophic liability fund established by IC 27-1-29.1. This report may include a recommendation that the commission be terminated, that the commission's portfolio of coverage be sold, that all indebtedness of the commission be paid, and that administration of the funds administered by the commission be turned over to a private entity.~~

SECTION 144. IC 27-1-29-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. (a) The commission shall pay liabilities of members of the fund in accordance with rules established by the commission.

(b) Payment from the fund for any liability covered under

Copy

~~IC 34-4-16.5~~ **IC 34-13-3 (or IC 34-4-16.5 before its repeal)** or for any other liability designated under rules adopted by the commission is primary coverage in relation to the following:

(1) Any insurance policy issued to a member of the fund that, by its terms, provides coverage secondary to coverage provided through membership in the fund.

(2) A fund member's own program of self insurance.

Payment of a liability identified in this subsection must be made within the limits set forth in section 14(b) of this chapter and irrespective of the existence of an insurance policy described in subdivision (1) or of a self insurance program described in subdivision (2).

SECTION 145. IC 27-1-29-14, AS AMENDED BY P.L.256-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 14. (a) In order to be eligible for payment under this chapter, a liability of a political subdivision must arise out of a claim based upon an act or omission that takes place while the political subdivision is a member of the fund.

(b) The maximum amount payable from the fund for any liability, whether or not it is covered under ~~IC 34-4-16.5,~~ **IC 34-13-3 (or IC 34-4-16.5 before its repeal),** is:

(1) three hundred thousand dollars ($300,000) for injury, death, or damage suffered by any one (1) person as a result of the act or omission from which the liability arises; and

(2) one million dollars ($1,000,000) for all injury, death, or damage suffered by all persons as a result of the act or omission from which the liability arises.

(c) No amount may be paid from the fund in respect of punitive damages paid by or assessed against a member of the fund.

(d) No amount may be paid from the fund in the case of a liability based upon bodily injury or property damage arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water unless the discharge, dispersal, release, or escape:

(1) is caused by an act or omission of a political subdivision that is a member of the fund; and

(2) occurs as a result of:

(A) a household hazardous waste; or

(B) a conditionally exempt small quantity generator (as described in 40 CFR 261.5(a));

collection, disposal, or recycling project conducted by or

Copy

controlled by the political subdivision.

(e) The commissioner may pay a liability of a member of the fund in a series of annual payments. The amount of any annual payment under this subsection must be one hundred thousand dollars ($100,000) or more, except for the final payment in a series of payments.

(f) The commission may negotiate a structured settlement of any claim.

(g) As used in this section, "household hazardous waste" means solid waste generated by households that consists of or contains a material that is:

(1) ignitable, as described in 40 CFR 261.21;

(2) corrosive, as described in 40 CFR 261.22;

(3) reactive, as described in 40 CFR 261.23; or

(4) toxic, as described in 40 CFR 261.24.

SECTION 146. IC 27-1-29.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. As used in this chapter, "liability" means an obligation arising from:

(1) multiple claims for the payment of money that are within the limits set forth in ~~IC 34-4-16.5-4~~ **IC 34-13-3-4 (or IC 34-4-16.5-4 before its repeal)** and that arise from a single catastrophic occurrence; or

(2) any other claim for which coverage is provided for members of the fund under rules adopted by the commission.

SECTION 147. IC 27-1-29.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. As used in this chapter, "political subdivision" has the meaning set forth in ~~IC 34-4-16.5-2.~~ **IC 34-6-2-110.**

SECTION 148. IC 27-1-31-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to all lines of commercial property and casualty insurance.

(b) This chapter:

(1) does not apply to the cancellation or nonrenewal of automobile insurance policies, as restricted under IC 27-7-6; and

(2) does not affect requirements applying to:

(A) the cancellation of medical malpractice insurance policies under ~~IC 27-12-13-4;~~ **IC 34-18-13-4 (or IC 27-12-13-4 before its repeal);** or

(B) the cancellation of property or liability insurance by a creditor under IC 24-4.5-4-304.

SECTION 149. IC 27-5-9-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 21. A receiver may be

C o p y

appointed for any such corporation under ~~IC 34-1-12.~~ **IC 34-48-1.** In the event of the appointment of a receiver for any such corporation, such receiver shall be entitled to receive all securities of such company deposited with the insurance commissioner. And receivers may be appointed by the courts of this state for foreign corporations doing business in this state under this chapter, and such receivers shall have the right to the possession of any securities of such corporation in the hands of the commissioner. And receivers appointed under the provisions of this chapter shall collect or dispose of securities and pay out the funds realized therefrom as the courts appointing them may direct.

SECTION 150. IC 27-6-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) The association shall:

(i) Be obligated to the extent of the covered claims as defined herein existing at the time of the order of liquidation or arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determination. This obligation shall include only that amount of each covered claim which is less than one hundred thousand dollars ($100,000). In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the applicable limits provided in the policy from which the claim arises, nor shall the association be obligated in an amount in excess of three hundred thousand dollars ($300,000) per policy for all claims arising out of one (1) occurrence. The return of unearned premium is limited to the lesser of: eighty percent (80%) of the paid but unearned premium; or six hundred fifty dollars ($650) multiplied by the number of months or partial months remaining in the policy term, not to exceed twelve (12) months.

(1) In the case of claims arising from bodily injury, sickness, or disease, including death resulting therefrom, except claims under IC 22-3 or similar state or federal laws providing benefits for occupational injury or disease, the amount for which the association shall be obligated shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services, and any amounts actually lost by reason of the claimant's inability to work and earn wages or salary or their equivalent that would otherwise have been earned in the normal course of such injured claimant's employment, to which may be

Copy

added at the discretion of the association a sum not to exceed one thousand dollars ($1,000) for all other costs and expenses incurred by the claimant prior to the insolvency. In the case of a claim for wrongful death, the foregoing obligation of the association shall, in addition to the limits set forth above, be subject to the limitations provided by the wrongful death statutes of the state. Such amounts which are legally payable because of the death of a claimant shall be paid to the claimant's estate, to the claimant's father or mother or guardian, to the surviving spouse or children, or to the next of kin as set out in ~~IC 34-1-1-2~~ **IC 34-23-1** and ~~IC 34-1-1-8.~~ **IC 34-23-2.**

The amount for which the association shall be obligated may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself had he not been injured.

In the case of claims arising from bodily injury, sickness, or disease, including those in which death results, under IC 22-3 or similar state or federal laws providing benefits for occupational injury or disease, the association is obligated only to the extent provided under IC 22-3.

(2) A third party having a covered claim against any insured of an insolvent member insurer may file such claim in the liquidation proceeding under IC 27-9-3 if such insolvent member insurer is a domestic insurer and pursuant to the applicable provisions of law of the state of domicile if such insolvent member insurer is not a domestic insurer. The liquidator shall immediately refer said claim to the association to process as provided in this chapter unless the claimant shall within thirty (30) days from the date of filing said claim in the liquidation proceeding, file with the commissioner as liquidator a written demand that said claim be processed in liquidation proceedings as a claim not covered by this chapter.

(ii) Be deemed the insurer to the extent of its obligation on the covered claims as limited by this chapter and to this extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including those relating to reinsurance contracts and treaties entered into by the insolvent insurer. However, the association's obligation to defend any insured of the insolvent insurer or to indemnity against the costs of such defense terminates as soon as the claimant or claimants have been paid all benefits that they are entitled to under this chapter.

(iii) Allocate claims paid and expenses incurred among the three

C o p y

(3) accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligation of the association under paragraph (i) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examination under IC 27-6-8-12 and other expenses authorized by this chapter. The assessments of each member insurer shall be on a uniform percentage basis in the proportion that the net direct written premiums in this state of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. However, in addition to the pro rata assessments already described, an assessment may be made against each member insurer in a stated amount up to fifty dollars ($50) per year for the purpose of paying the administrative expenses of the association. There shall be no assessment for any account so long as assets held in such account are sufficient to cover all estimated payments for liquidation in process under such account. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year on any account an amount greater than one percent (1%) of that member insurer's net direct written premiums in this state for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one (1) year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment no dividends shall be paid to shareholders or policyholders by a company whose assessment has been deferred. A deferred assessment shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies whose assessments were increased as the result of such deferment, or at the option of any such company, shall be credited to future assessments against such company.

(iv) Investigate, adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which

C o p y

the insolvent insurer or its insured were parties to determine the extent to which such settlements, releases, and judgments may be properly contested, and as appropriate to contest them.

(v) Notify such persons as the commissioner directs under IC 27-6-8-9(b)(i).

(vi) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(vii) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter. Any unreimbursed obligation of the association to a member insurer designated a servicing facility shall constitute an admitted asset of such member insurer.

(viii) Be entitled to and permitted to examine all claims, files, and records of an insolvent insurer at such times and to such extent as necessary or appropriate to obtain information regarding covered claims individually and in the aggregate, and to establish such procedures as appropriate to obtain prompt notice of all covered claims and information pertaining thereto during the course of liquidation.

(b) The association may:

(i) Appear in, defend, and appeal any action on a covered claim but it shall have no obligation to pay any amount in excess of the provisions of IC 27-6-8-7.

(ii) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(iii) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

(iv) Sue or be sued.

(v) Negotiate and become a party to any contracts as are necessary to carry out the purpose of this chapter.

(vi) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(vii) Refund to the then member insurers in proportion to the contribution of each such member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of the calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year, provided that

C o p y

the association may retain as a reserve fund from the excess of the assets over liabilities at the end of any calendar year an amount not to exceed ten percent (10%) of such excess assets of such account. Any such reserve fund or earnings from its investment shall be used only for the payment of covered claims and authorized association expenses. Upon appropriate action by the board of directors such reserve fund shall be refunded to the then member insurers in proportion to the total contribution of each such member insurer to such account.

SECTION 151. IC 27-8-11-3, AS AMENDED BY P.L.191-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) An insurer may:

(1) enter into agreements with providers relating to terms and conditions of reimbursement for health care services that may be rendered to insureds of the insurer, including agreements relating to the amounts to be charged the insured for services rendered or the terms and conditions for activities intended to reduce inappropriate care;

(2) issue or administer policies in this state that include incentives for the insured to utilize the services of a provider that has entered into an agreement with the insurer under subdivision (1); and

(3) issue or administer policies in this state that provide for reimbursement for expenses of health care services only if the services have been rendered by a provider that has entered into an agreement with the insurer under subdivision (1).

(b) Before entering into any agreement under subsection (a)(1), an insurer shall establish terms and conditions that must be met by providers wishing to enter into an agreement with the insurer under subsection (a)(1). These terms and conditions may not discriminate unreasonably against or among providers. For the purposes of this subsection, neither differences in prices among hospitals or other institutional providers produced by a process of individual negotiation nor price differences among other providers in different geographical areas or different specialties constitutes unreasonable discrimination. Upon request by a provider seeking to enter into an agreement with an insurer under subsection (a)(1), the insurer shall make available to the provider a written statement of the terms and conditions that must be met by providers wishing to enter into an agreement with the insurer under subsection (a)(1).

(c) No hospital, physician, pharmacist, or other provider designated in IC 27-8-6-1 willing to meet the terms and conditions of agreements described in this section or section 3.1 of this chapter may

C o p y

be denied the right to enter into an agreement under subsection (a)(1) or section 3.1 of this chapter. When an insurer denies a provider the right to enter into an agreement with the insurer under subsection (a)(1) or section 3.1 of this chapter on the grounds that the provider does not satisfy the terms and conditions established by the insurer for providers entering into agreements with the insurer, the insurer shall provide the provider with a written notice that:

(1) explains the basis of the insurer's denial; and

(2) states the specific terms and conditions that the provider, in the opinion of the insurer, does not satisfy.

(d) In no event may an insurer deny or limit reimbursement to an insured under this chapter on the grounds that the insured was not referred to the provider by a person acting on behalf of or under an agreement with the insurer.

(e) No cause of action shall arise against any person or insurer for:

(1) disclosing information as required by this section; or

(2) the subsequent use of the information by unauthorized individuals.

Nor shall such a cause of action arise against any person or provider for furnishing personal or privileged information to an insurer. However, this subsection provides no immunity for disclosing or furnishing false information with malice or willful intent to injure any person, provider, or insurer.

(f) Nothing in this chapter abrogates the privileges and immunities established in ~~IC 34-4-12.6.~~ **IC 34-30-15 (or IC 34-4-12.6 before its repeal).**

SECTION 152. IC 27-8-22-1, AS ADDED BY P.L.1-1994, SECTION 139, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. As used in this chapter, "health care provider" has the meaning set forth in ~~IC 27-12-2.~~ **IC 34-18-2-15.**

SECTION 153. IC 27-9-1-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3.5. Notwithstanding the Indiana rules of trial procedure or other law to the contrary, an automatic change of judge or change of venue from the Marion County circuit court may not be granted in any action brought by or against a receiver appointed in a proceeding under this article. A change of judge or change of venue from the Marion County circuit court in such an action shall be granted only upon the filing of a verified application alleging and demonstrating one (1) or more of the specific grounds for a change of judge set forth in the Indiana rules of trial procedure or for a change of venue set forth in ~~IC 34-1-13-1.~~ **IC 34-35-1-1.**

SECTION 154. IC 27-12-3-4 IS AMENDED TO READ AS

Copy

FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) As used in this section, "employee of a governmental entity" has the meaning set forth in ~~IC 34-4-16.5.~~ **IC 34-6-2-38.**

(b) As used in this section, "governmental entity" has the meaning set forth in ~~IC 34-4-16.5.~~ **IC 34-6-2-49.**

(c) A claim against a governmental entity or an employee of a governmental entity based on an occurrence of malpractice is governed exclusively by this article if the governmental entity or employee is qualified under this article.

SECTION 155. IC 27-13-31-2, AS AMENDED BY P.L.261-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) As used in this section, "in good faith and without malice" when used to describe an action taken or a decision or recommendation made means that:

(1) a reasonable effort has been taken to obtain the facts of the matter;

(2) a reasonable belief exists that the action, decision, or recommendation is warranted by the facts known; and

(3) if the action is described in ~~IC 34-4-12.6-2(g),~~ **IC 34-30-15-7,** the action is made in compliance with ~~IC 34-4-12.6-2(g).~~ **IC 34-30-15-7.**

(b) As used in this section, "health care review committee" means a peer review committee under ~~IC 34-4-12.6-1(c).~~ **IC 34-6-2-99 (or IC 34-4-12.6-1(c) before its repeal).**

(c) In all actions to which this section applies, good faith shall be presumed and malice shall be required to be proven by the person aggrieved.

(d) A person who, in good faith and without malice:

(1) takes any action or makes a decision or recommendation as a member, an agent, or an employee of a health care review committee; or

(2) furnishes any record, information, or assistance to a health care review committee;

is not subject to liability for damages in any legal action in consequence of that action.

(e) Neither:

(1) the health maintenance organization or limited service health maintenance organization that established the health care review committee; or

(2) the officers, directors, employees, or agents of the health maintenance organization or limited service health maintenance organization;

C o p y

are liable for damages in any civil action for the activities of a person who, in good faith and without malice, takes any action or makes a decision or recommendation as a member, an agent, or an employee of a health care review committee, or furnishes any record, information, or assistance to a health care review committee.

(f) This section does not relieve any person of liability arising from treatment of a patient or an enrollee, or from a determination of the reimbursement to be provided under the terms of an insurance policy, a health maintenance organization contract, or another benefit program providing payment, reimbursement, or indemnification for health care costs based on the appropriateness of health care services delivered to an enrollee.

(g) A health care review committee shall comply with ~~IC 34-4-12.6-1(c).~~ **IC 34-6-2-99.**

SECTION 156. IC 28-9-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. Except as provided in sections 3 and 4 of this chapter, and notwithstanding ~~IC 34-1-11-21~~ **IC 34-25-3-3** or any other rule or doctrine of law that:

(1) would cause a depository financial institution to be accountable to an adverse claimant for any portion of any deposit account; or

(2) would create or impose in favor of an adverse claimant a lien, charge, encumbrance, or other right with respect to a deposit account;

a depository financial institution may, without being liable in damages to any person, honor the order or instructions of a depositor or an agent of a depositor who is authorized under records maintained by the depository financial institution to control the depositor's deposit account.

SECTION 157. IC 29-2-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. Such court shall have power to appoint guardians of the persons and estates of the children under eighteen (18) years of age of such departed person, who shall have all the powers and rights, and be subject to all the duties and liabilities, in relation to such children and their estates, which appertain to guardians of heirs under eighteen (18) years of age and their estates, under ~~IC 1971, 34-2-3.~~ **IC 34-9-2.**

SECTION 158. IC 31-11-4-6, AS ADDED BY P.L.1-1997, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. Each individual who applies for a marriage license must submit to the clerk of the circuit court:

(1) a certified copy of the individual's birth certificate;

C o p y

(2) a certified copy of a judicial decree issued under ~~IC 34-4-3~~ **IC 34-28-1 (or IC 34-4-3 before its repeal)** that establishes the date of the individual's birth;

(3) any written evidence of the individual's date of birth that is satisfactory to the clerk; or

(4) a valid operator's license or other identification issued by a state that contains the individual's date of birth and current address.

SECTION 159. IC 31-19-19-4, AS ADDED BY P.L.1-1997, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. All papers, records, and information pertaining to the adoption, whether part of:

(1) the permanent record of the court; or

(2) a file in:

(A) the division of vital records;

(B) the division of family and children or county office of family and children;

(C) a licensed child placing agency; or

(D) a **professional** health care provider (as defined in ~~IC 34-4-12.6-1);~~ **IC 34-6-2-117);**

are confidential and may be disclosed only in accordance with this chapter or IC 31-19-25.

SECTION 160. IC 31-19-21-6, AS ADDED BY P.L.1-1997, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. The following persons shall provide for the storage and indexing of consents made under this chapter to carry out IC 31-19-22:

(1) The state registrar.

(2) The division of family and children.

(3) County offices of family and children.

(4) Licensed child placing agencies.

(5) Professional health care providers (as defined in ~~IC 34-4-12.6-1).~~ **IC 34-6-2-117).**

(6) Courts.

SECTION 161. IC 31-19-22-2, AS ADDED BY P.L.1-1997, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. The state registrar, the division of family and children, a county office of family and children, a licensed child placing agency, a professional health care provider (as defined in ~~IC 34-4-12.6-1),~~ **IC 34-6-2-117),** and a court shall release identifying information in the entity's possession only if:

(1) the information is requested by a person described in

C o p y

IC 31-19-18-2(a); and

(2) the following persons have submitted a written consent under IC 31-19-21 (or IC 31-3-4-27 before its repeal) to the state registrar that allows the release of identifying information to the person requesting the information:

(A) The adult adoptee.

(B) A birth parent.

SECTION 162. IC 31-19-23-1, AS ADDED BY P.L.1-1997, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. The following persons shall release nonidentifying information concerning an adoption in the entity's possession to any person described in IC 31-19-18-2(a) upon request:

(1) The state registrar.

(2) The division of family and children.

(3) A county office of family and children.

(4) A licensed child placing agency.

(5) A professional health care provider (as defined in ~~IC 34-4-12.6-1).~~ **IC 34-6-2-117).**

(6) The attorney who arranged the adoption.

(7) A court.

SECTION 163. IC 31-19-24-1, AS ADDED BY P.L.196-1997, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) Any interested person may file a petition with any court with probate jurisdiction in Indiana requesting the release of:

(1) medical information;

(2) nonidentifying information; or

(3) identifying information;

that is not available through the state registrar.

(b) The contents of a petition must include to the best knowledge of the petitioner the following:

(1) The full name and current address of the petitioner.

(2) The adopted person's:

(A) full name;

(B) sex;

(C) date of birth;

(D) place of birth, if known; and

(E) current address, if known.

(3) The county of the adoption proceeding, if known.

(4) The name and address of the agency that placed the adopted person, if known.

(5) The full name and current address of the petitioners for

Copy

adoption, if any.

(6) The date of the adoption proceeding, if known.

(7) The full name and current address of the birth parents, if known.

(8) The nature of the:

(A) medical;

(B) identifying; or

(C) nonidentifying;

information being sought.

(9) An affirmation:

(A) by an attending physician, if medical information is sought, that indicates:

(i) the nature of the illness;

(ii) that the illness is believed to be hereditary or congenital; or

(iii) why the information to be sought or shared is necessary for diagnosis or treatment of any person;

(B) by the petitioner, if medical, identifying, or nonidentifying information is sought, that sets forth the reasons why the release of the information may be beneficial to the welfare of the adoptee or birth parent; and

(C) that the medical, identifying, or nonidentifying information sought is not available through the state registrar.

(10) A statement by the petitioner that the petitioner agrees to the payment of:

(A) a reasonable fee for the services of a confidential intermediary if a confidential intermediary is appointed under section 2 of this chapter; and

(B) reasonable fees and any actual expenses of an attorney, a child placing agency, or a **professional** health care provider (as defined in ~~IC 34-4-12.6-1)~~ **IC 34-6-2-117)** that is requested to search its records and release information under sections 2 through 11 of this chapter.

(11) A description of the medical, identifying, or nonidentifying information being sought.

SECTION 164. IC 31-19-24-3, AS ADDED BY P.L.196-1997, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. Whenever the court appoints a confidential intermediary under section 2(2) of this chapter, the court shall do the following:

(1) Consider:

Copy

(A) the highly emotional and personal issues relating to adoption;

(B) the privacy rights of both birth parents and adoptees;

(C) the reasons the medical, identifying, or nonidentifying information is being sought under section 1 of this chapter; and

(D) any irreparable harm to a birth parent, an adoptee, or both that may arise if appropriate consideration is not given to the issues described in clauses (A) through (C).

(2) Provide the confidential intermediary with an order authorizing the confidential intermediary to search certain records that may include:

(A) the division of public health statistics;

(B) the division of family and children or county office of family and children;

(C) any licensed child placing agency; or

(D) any professional health care provider (as defined in ~~IC 34-4-12.6-1).~~ **IC 34-6-2-117).**

An order under this subdivision must specify the information to be sought by the confidential intermediary.

(3) Specify the direct contact, if any, that a confidential intermediary may have with any person from whom the medical, identifying, or nonidentifying information is being sought, such as providing that the confidential intermediary may only inform the person of the existence of the adoption history program administered by the state registrar under this chapter and IC 31-19-25.

(4) Specify the limitations, if any, that the court considers necessary to prevent the confidential intermediary's search under this chapter from resulting in harm to a birth parent or an adoptee.

(5) Require the confidential intermediary to affirm under oath that the confidential intermediary agrees to act in good faith and perform its responsibilities in accordance with sections 2 through 11 of this chapter.

(6) Instruct the confidential intermediary to act as quickly as possible.

SECTION 165. IC 31-19-25-2, AS ADDED BY P.L.1-1997, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) An adoptee who is at least twenty-one (21) years of age may request identifying information by submitting a written request to the state registrar.

C o p y

(b) Except as provided in sections 3 through 10 of this chapter, upon a request for the release of identifying information under subsection (a):

(1) the state registrar;

(2) the division of family and children;

(3) a county office of family and children;

(4) a licensed child placing agency;

(5) a professional health care provider (as defined in ~~IC 34-4-12.6-1);~~ **IC 34-6-2-117);**

(6) the attorney who arranged the adoption; and

(7) a court;

shall release identifying information in the possession of the registrar, agency, professional health care provider, or court to an adoptee.

SECTION 166. IC 31-19-25-8, AS ADDED BY P.L.1-1997, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) If an adoptee who is at least twenty-one (21) years of age or a pre-adoptive sibling who is at least twenty-one (21) years of age submits a written request to be reunited with a pre-adoptive sibling under section 6 of this chapter but the pre-adoptive sibling has not made a similar inquiry, the state registrar shall:

(1) search the sealed adoption records for information concerning the pre-adoptive sibling; and

(2) if possible, contact and advise the sibling of the request unless the sibling is less than twenty-one (21) years of age.

(b) If the state registrar locates a sibling who is at least twenty-one (21) years of age, the contacted sibling shall make the final decision as to whether to release the sibling's name and present location to the requesting person.

(c) If the state registrar locates a sibling who is less than twenty-one (21) years of age, the state registrar shall contact the:

(1) sibling's birth parents if the sibling has not been adopted; or

(2) sibling's adoptive parents if the sibling has been adopted;

for the final determination regarding release of the sibling's name and present location to the requesting person.

(d) The state registrar shall notify the requesting person whenever a sibling has been located, but may not release information about the sibling's identity or present location without authorization under this section.

(e) If the sibling is deceased or cannot be identified or located under this section, the state registrar shall notify the requesting party, but may not release any information that would tend to identify the sibling.

Copy

(f) In an attempt to discover the identity and present location of a pre-adoptive sibling, the state registrar shall receive, upon request, any available adoptive information regarding the sibling's identity or location that is in the possession of any of the following:

(1) The state division of vital records.

(2) The county office of family and children.

(3) A licensed child placing agency.

(4) A professional health care provider (as defined in ~~IC 34-4-12.6-1).~~ **IC 34-6-2-117).**

SECTION 167. IC 31-32-14-1, AS ADDED BY P.L.1-1997, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. The juvenile court may punish a person for contempt of court under ~~IC 34-4-7, IC 34-4-8, or IC 34-4-9.~~ **IC 34-47.**

SECTION 168. IC 31-33-17-10, AS ADDED BY P.L.1-1997, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10. (a) Whenever a court grants a name change under ~~IC 34-4-6~~ **IC 34-28-2 (or IC 34-4-6 before its repeal)** to a person:

(1) against whom an allegation of child abuse or neglect has been substantiated; and

(2) whose name is maintained within the registry in accordance with this chapter;

the person must notify the division of family and children regarding the name change not more than ten (10) business days after the court enters a decree changing the person's name.

(b) The notice must include a copy of the decree of the court that changes the name of the person, certified under the seal of the clerk of court.

SECTION 169. IC 32-2-7-17, AS ADDED BY P.L.144-1994, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 17. (a) In an action for relief against a transfer or an obligation under this chapter, a creditor, subject to the limitations in section 18 of this chapter, may obtain any of the following:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by ~~IC 34-1-11-1~~ **IC 34-25-2-1** or any other applicable statute providing for attachment or other provisional remedy against debtors generally.

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, any of the following:

C o p y

(A) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred, its proceeds, or of other property.

(B) Appointment of a receiver to take charge of the asset transferred or of the property of the transferee.

(C) Any other relief the circumstances require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court orders, may levy execution on the asset transferred or its proceeds.

SECTION 170. IC 32-8-16-5, AS AMENDED BY P.L.56-1996, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) No sheriff or his agent making any such sale shall directly or indirectly purchase any property so sold. If the purchaser of any property sold on such foreclosure shall fail to immediately pay the purchase money, the sheriff shall resell the property either on the same day without advertisement or on a subsequent day after again advertising the same as above provided, as the judgment creditor may thereupon direct, and if the amount bid at the second sale shall not equal the amount bid at the first sale, and the costs of the second sale, the first purchaser shall be liable for the deficiency and damages thereon not exceeding ten percent (10%) and interest and costs to be recovered in the proper court by such sheriff.

(b) When property is sold, the sheriff shall pay the proceeds as provided in ~~IC 34-1-53-12.~~ **IC 32-15-6-12.** Every sale made pursuant to this chapter shall be without relief from valuation or appraisement laws and without any right of redemption therefrom.

SECTION 171. IC 32-8-37-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. This chapter does not bar a customer from bringing action for replevin under ~~IC 34-1-9.1.~~ **IC 34-21.**

SECTION 172. IC 33-3-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. No appeal shall be taken to the Supreme Court or Court of Appeals in any civil case where the amount in the controversy, exclusive of interest and costs, does not exceed fifty dollars ~~($50.00),~~ **($50)** except as provided in ~~IC 34-1-47.~~ **IC 34-56-1.**

SECTION 173. IC 33-4-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) The minor offenses and violations docket has jurisdiction over the following:

(1) All Class D felony cases.

(2) All misdemeanor cases.

(3) All infraction cases.

C o p y

(4) All ordinance violation cases.

(b) The court shall establish a traffic violations bureau in the manner prescribed by ~~IC 34-4-32-5.~~ **IC 34-28-5-7 through IC 34-28-5-13.**

SECTION 174. IC 33-4-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 9. (a) During the month of December, and at such other times as the judge deems necessary, the judge of any court of record in which jury trials are had shall by written order direct the clerk of the circuit court to draw grand jurors or petit jurors from the names selected by the jury commissioners, which names shall be drawn by the clerk in the presence of the jury commissioners, in a number equal to the number of jurors to be summoned according to the judge's orders. The names of jurors for each court having criminal jurisdiction shall be drawn first.

(b) At the time of the drawing, the clerk shall enter in the order book of the court a list of the names drawn, in the order in which they were drawn. He shall attach his certificate to attest to the accuracy of the list. The clerk shall issue venires for such jurors as the courts direct. However, the jurors called to service shall be identified long enough before the trial or grand jury session to permit counsel to study their backgrounds.

(c) Notice to or summons of persons for jury duty shall be served by the clerk of the circuit court upon order of the court.

(d) The sheriff or bailiff shall call the jurors to the jury box in the same order in which their names were drawn. Jurors shall serve for three (3) months, or for a shorter period if a shorter period is specified in the judge's written order.

(e) The provisions of this section shall be construed to supplement ~~IC 34-1-19, IC 34-1-20,~~ **IC 34-36-2, and IC 34-36-3-5 through IC 34-36-3-7,** and other statutory provisions for special juries, for juries by agreement, for juries from other counties, for struck juries, and for special venires. This section shall be construed liberally, to the effect that no indictment shall be quashed, and no trial, judgment, order, or proceeding shall be reversed or held invalid on the ground that the terms of this section have not been followed, unless it appears that the noncompliance was either in bad faith or was objected to promptly upon discovery and was probably harmful to the substantial rights of the objecting party.

SECTION 175. IC 33-5-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) The minor offenses and violations docket has jurisdiction over the following:

(1) All Class D felony cases.

C o p y

(2) All misdemeanor cases.
(3) All infraction cases.
(4) All ordinance violation cases.

(b) The court shall establish a traffic violations bureau in the manner prescribed by ~~IC 34-4-32-5.~~ **IC 34-28-5-7 through IC 34-28-5-13.**

SECTION 176. IC 33-5-10-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 21. Whenever an affidavit for a change of venue is filed in a superior court, for any of the causes embraced in ~~the first, second, sixth or seventh specification of IC 34-1-13-1~~ **IC 34-35-1-1(1), IC 34-35-1-1(2), IC 34-35-1-1(6), or IC 34-35-1-1(7),** some judge of a circuit court or superior court or a competent attorney-at-law, shall be called to hear and determine the same as provided by law for changes of venue in causes pending in the circuit court, or said cause may be certified to the Clark circuit court or a Clark superior court, in the discretion of such judge of the superior court, and the original papers shall be transferred to the court, and no transcript shall be necessary, and the circuit court shall have jurisdiction to hear and determine the cause and render judgment therein; and if the cause alleged in the affidavit is embraced in ~~the third, fourth and fifth specifications of IC 34-1-13-1,~~ **IC 34-35-1-1(3), IC 34-35-1-1(4), and IC 34-35-1-1(5),** then the change shall be granted, and the cause directed to the circuit or superior court of some other county, as provided in cases of changes of venue from the circuit court, and the court to which the case is sent shall have jurisdiction to hear and determine the cause and render judgment therein.

SECTION 177. IC 33-5-41-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. Whenever an affidavit for a change of venue is filed in said court for any of the causes embraced in ~~the first, second, sixth, or seventh specifications of IC 34-1-13-1,~~ **IC 34-35-1-1(1), IC 34-35-1-1(2), IC 34-35-1-1(6), or IC 34-35-1-1(7),** some judge of a circuit or superior court shall be called to hear and determine the same as provided by law for changes of venue in causes pending in the circuit court. And if the causes alleged in the affidavit and embraced in ~~the third, fourth, or fifth specifications of IC 34-1-13-1~~ **IC 34-35-1-1(3), IC 34-35-1-1(4), and IC 34-35-1-1(5),** then the change shall be granted, and the cause directed to the circuit court of some other county, as provided in cases of changes of venue from the circuit court, and the court to which the case is sent, shall have jurisdiction to hear and determine the cause, and render judgment therein.

SECTION 178. IC 33-5-45.5-19 IS AMENDED TO READ AS

Copy

FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 19. All judgments rendered in the small claims division of a court shall be properly recorded in the judgment docket book of the court. The judgments shall be liens on real estate in the same manner as judgments in a court of general jurisdiction become liens on real estate ~~pursuant to IC 34-1-45.~~ **under IC 34-55-9.**

SECTION 179. IC 33-5.1-2-24, AS ADDED BY P.L.16-1995, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 24. (a) When an appeal is taken from the court in criminal cases or proceedings under ~~IC 34-4-32,~~ **IC 34-28-5 (or IC 34-4-32 before its repeal),** the amount of costs charged shall be certified as a part of the transcript and shall be charged as part of the costs in the court to which the appeal or proceeding is taken. The costs are in addition to any other clerk's service fee required by law.

(b) All costs charged in the court hearing or in the court trying an appeal shall be charged and adjudged upon the hearing or trial in the appeal against a defendant who is convicted or who pleads guilty.

(c) In an appeal under this section the defendant shall pay a transcript fee of thirty-five dollars ($35) before the appeal may be transferred from the superior court.

SECTION 180. IC 33-5.1-2-26, AS ADDED BY P.L.16-1995, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 26. (a) The presiding judge may appoint one (1) full-time magistrate under IC 33-4-7.

(b) A magistrate appointed under this section may only hear:

(1) criminal proceedings brought under IC 35-48; and

(2) drug related proceedings brought under ~~IC 34-4-30.1.~~ **IC 34-24-1 (or IC 34-4-30.1 before its repeal).**

(c) The magistrate continues in office until removed by the presiding judge.

SECTION 181. IC 33-9-11.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. An order for costs assessed under section 6 of this chapter is a civil judgment subject to the exemptions allowed debtors under ~~IC 34-2-28-1.~~ **IC 34-55-10-2.** At any time after entry of the order, the defendant may petition the court that has entered the order for relief from payment. The court may release the defendant from payment of all or a part of the payment required by the order if the court finds that payment would impose a hardship upon the defendant or dependents of the defendant.

SECTION 182. IC 33-10.5-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) The judge shall formulate a plan of organization for the efficient operation of his court,

C o p y

which shall include but not be limited to provisions which will facilitate speedy disposition of cases involving motorists charged with the violation of traffic laws of the state.

(b) The organizational plan shall provide for a system of posting bond in traffic cases by designating the places where bond may be posted with due consideration given to factors of convenience to both law enforcement officers and alleged offenders.

(c) To facilitate the speedy disposition of cases involving traffic violations, the organizational plan shall provide for a standard traffic violations bureau for the county court under ~~IC 34-4-32-5.~~ **IC 34-28-5-7 through IC 34-25-5-13.** The plan shall insure, in such a case, that the defendant is advised of all rights. A judge serving more than one (1) county shall establish a traffic violations bureau in each county.

SECTION 183. IC 33-10.5-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 9. All judgments rendered in civil actions shall be properly recorded in the judgment docket book of the county court. Judgments shall be liens on real estate when entered in the county court judgment docket in the same manner as judgments in a court of general jurisdiction become liens on real estate ~~pursuant to IC 34-1-45.~~ **under IC 34-55-9.** The clerk of the county court shall keep a judgment docket in which judgments shall be entered and properly indexed in the name of the judgment defendant as judgments of circuit courts are entered and indexed.

SECTION 184. IC 33-11.6-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. The small claims court shall have no jurisdiction in actions seeking injunctive relief or involving partition of real estate, or to declare or enforce any lien thereon except as provided in section 13 of this chapter, and shall have no jurisdiction in cases in which the appointment of a receiver is asked, or in suits for dissolution or annulment of marriage. However, the court has jurisdiction to hear petitions filed under ~~IC 34-4-5.1.~~ **IC 34-26-2 (or IC 34-4-5.1 before its repeal).**

SECTION 185. IC 33-11.6-4-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. All judgments rendered in civil actions may be recorded in the judgment docket book of the proper division of the small claims court. Such a judgment shall be a lien on real estate when entered in the circuit court judgment docket in the same manner as a judgment in a court of general jurisdiction becomes a lien on real estate ~~pursuant to IC 34-1-45.~~ **under IC 34-55-9.**The clerk of the small claims court shall keep a docket in which judgments shall be entered and properly indexed in the name of

C o p y

the judgment defendant as judgments of circuit courts are entered and indexed.

SECTION 186. IC 33-11.6-4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 15. (a) The costs consist of:

(1) a township docket fee equal to five dollars ($5) plus forty-five percent (45%) of the infraction or ordinance violation costs fee under IC 33-19-5-2;

(2) bailiff's service of process by registered or certified mail fee of six dollars ($6) for each service;

(3) the cost for the personal service of process by the bailiff or other process server in the amount of eight dollars ($8) for each service, with the exception that personal service to execute a warrant for a protective order under ~~IC 34-4-5.1~~ **IC 34-26-2 (or IC 34-4-5.1 before its repeal)** shall cost a fee of twelve dollars ($12) and writs of restitution and writs of replevin shall cost a fee of twelve dollars ($12);

(4) witness fees, if any, in the amount provided by IC 33-19-1-6 to be taxed and charged in the circuit court of the county; and

(5) a redocketing fee, if any, of five dollars ($5).

The docket fee and the cost for the initial service of process shall be paid upon the institution of each case. The cost of service rendered subsequent to the initial service shall be assessed and paid after such service has been made, and the cost of witness fees shall be paid before the witnesses are called.

(b) If the amount of the township docket fee computed under subsection (a)(1) is not equal to a whole number, the amount shall be rounded to the next highest whole number.

SECTION 187. IC 33-14-1-7, AS AMENDED BY P.L.23-1994, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) A prosecuting attorney may withhold prosecution against an accused person if:

(1) the person is charged with a misdemeanor;

(2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney; and

(3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending.

(b) An agreement under subsection (a) may include conditions that the person:

(1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-19-5-1;

C o p y

(2) work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment;

(3) undergo available medical treatment or counseling and remain in a specified facility required for that purpose;

(4) support the person's dependents and meet other family responsibilities;

(5) make restitution or reparation to the victim of the crime for the damage or injury that was sustained;

(6) refrain from harassing, intimidating, threatening, or having any direct or indirect contact with the victim or a witness;

(7) report to the prosecuting attorney at reasonable times;

(8) answer all reasonable inquiries by the prosecuting attorney and promptly notify the prosecuting attorney of any change in address or employment; and

(9) participate in dispute resolution either under ~~IC 34-4-2.5~~ **IC 34-57-3** or a program established by the prosecuting attorney.

(c) An agreement under subsection (a)(2) may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

(d) The prosecuting attorney shall notify the victim when prosecution is withheld under this section.

(e) All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-19-8.

(f) If a court withholds prosecution under this section and the terms of the agreement contain conditions described in subsection (b)(6):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 188. IC 33-14-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) The drug prosecution fund is established. The council shall administer the fund. Expenditures from the fund may be made only in accordance with appropriations made by the general assembly.

(b) The council may use money from the fund to provide assistance to prosecuting attorneys to:

(1) investigate and prosecute violations of IC 35-48;

(2) bring actions for forfeiture, law enforcement costs, and correction costs under ~~IC 34-4-30.1;~~ **IC 34-24-1;**

C o p y

(3) bring actions for civil and criminal remedies for a violation of IC 35-45-6; and

(4) obtain training, equipment, and technical assistance that would enhance the ability of prosecuting attorneys to reduce illegal drug activity.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) Money in the fund at the end of a fiscal year does not revert to the state general fund.

SECTION 189. IC 33-17-1-11, AS ADDED BY P.L.32-1996, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) The clerk shall provide each person filing a petition for the issuance of a protective order under ~~IC 34-4-5.1~~ **IC 34-26-2** without the assistance of an attorney the following information:

(1) The procedure for obtaining a protective order.

(2) When a protective order becomes effective.

(3) Procedures to follow when a protective order is violated.

(b) The information required under subsection (a) must be printed in a manner that can be easily understood by a person who is not an attorney.

(c) The attorney general shall develop an appropriate form to provide the information referred to in subsection (a).

SECTION 190. IC 33-19-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. The fees prescribed by IC 33-19-5-2 are costs for purposes of ~~IC 34-4-32-4~~ **IC 34-28-5-4** and may be collected from a defendant against whom judgment is entered. Any penalty assessed is in addition to costs.

SECTION 191. IC 33-19-5-2, AS AMENDED BY P.L.204-1997, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) Except as provided in subsections (d) and (e), for each action that results in a judgment:

(1) for a violation constituting an infraction; or

(2) for a violation of an ordinance of a municipal corporation (as defined in IC 36-1-2-10);

the clerk shall collect from the defendant an infraction or ordinance violation costs fee of seventy dollars ($70).

(b) In addition to the infraction or ordinance violation costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-19-6:

(1) A document fee.

C o p y

(2) An alcohol and drug services program user fee.
(3) A law enforcement continuing education program fee.
(4) An alcohol and drug countermeasures fee.
(5) A highway work zone fee.
(6) A deferred prosecution fee (IC 33-19-6-16.2).

(c) The clerk shall transfer to the county auditor or fiscal officer of the municipal corporation the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the user fee fund established under IC 33-19-8:

(1) The alcohol and drug services program user fee.
(2) The law enforcement continuing education program fee.
(3) The deferral program fee.

(d) The defendant is not liable for any ordinance violation costs fee in an action in which:

(1) the defendant was charged with an ordinance violation subject to IC 33-6-3;
(2) the defendant denied the violation under IC 33-6-3-2;
(3) proceedings in court against the defendant were initiated under ~~IC 34-4-32;~~ **IC 34-28-5 (or IC 34-4-32 before its repeal);** and
(4) the defendant was tried and the court entered judgment for the defendant for the violation.

(e) Instead of the infraction or ordinance violation costs fee prescribed by subsection (a), the clerk shall collect a deferral program fee if an agreement between a prosecuting attorney or an attorney for a municipal corporation and the person charged with a violation entered into under ~~IC 34-4-32-1~~ **IC 34-28-5-1 (or IC 34-4-32-1 before its repeal)** requires payment of those fees by the person charged with the violation. The deferral program fee is:

(1) an initial user's fee not to exceed fifty-two dollars ($52); and
(2) a monthly user's fee not to exceed ten dollars ($10) for each month the person remains in the deferral program.

SECTION 192. IC 33-19-5-4, AS AMENDED BY P.L.1-1997, SECTION 134, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) For each civil action except:

(1) proceedings to enforce a statute defining an infraction under ~~IC 34-4-32-4;~~ **IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);**
(2) proceedings to enforce an ordinance under ~~IC 34-4-32-4;~~ **IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);**
(3) proceedings in juvenile court under IC 31-34 or IC 31-37;
(4) proceedings in paternity under IC 31-14;
(5) proceedings in small claims court under IC 33-11.6; and

Copy

(6) proceedings in actions under section 6 of this chapter;

the clerk shall collect from the party filing the action a civil costs fee of one hundred dollars ($100), except as provided in subsection (b).

(b) For each proceeding for the issuance of a protective order under ~~IC 34-4-5.1.~~ **IC 34-26-2:**

(1) the clerk shall initially collect thirty-five dollars ($35) of the civil costs fee from the party that filed the action or the court may waive the initial thirty-five dollars ($35) of the civil costs fee for the party that filed the action; and

(2) upon disposition of the protective order petition under ~~IC 34-4-5.1,~~ **IC 34-26-2,** the court may order that:

(A) the remainder of the civil costs fee, in the amount of sixty-five dollars ($65), be assessed against the respondent in the action as provided in ~~IC 34-4-5.1-2(d)~~ **IC 34-26-2-4** or against the party that filed the action; and

(B) the initial thirty-five dollar ($35) civil costs fee be reimbursed by the respondent in the action to the party that filed the action or assessed against the respondent in the action as provided in ~~IC 34-4-5.1-2(d).~~ **IC 34-26-2-4.**

(c) In addition to the civil costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

(1) A document fee.

(2) A support and maintenance fee.

SECTION 193. IC 33-19-6-15.5, AS AMENDED BY P.L.133-1996, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 15.5. In addition to any other duties, a clerk shall do the following:

(1) Collect and transfer additional judgments to a county auditor under IC 9-18-2-41.

(2) Deposit funds collected as judgments in the state highway fund under IC 9-20-18-12.

(3) Deposit funds in the conservation officers fish and wildlife fund under IC 14-22-38-4, IC 14-22-38-5, and IC 14-22-40-8.

(4) Deposit funds collected as judgments in the state general fund under ~~IC 34-4-32-4.~~ **IC 34-28-5-4.**

SECTION 194. IC 35-33.5-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) A person whose communications are intercepted, disclosed, or used in violation of this article:

(1) has a civil cause of action against a person who intercepts, discloses, uses, or procures another person to intercept, disclose,

C o p y

or use a communication in violation of this article; and

(2) is entitled to recover from that person the following:

(A) The greater of:

(i) actual damages;

(ii) liquidated damages computed at a rate of one hundred dollars ($100) each day for each day of violation; or

(iii) one thousand dollars ($1,000).

(B) Court costs.

(C) Punitive damages, when determined to be appropriate by the court.

(D) Reasonable attorney's fees.

(b) A good faith reliance on a warrant or an extension issued under this article constitutes a complete defense to a civil action brought under this section.

(c) A person described in ~~IC 34-3-5-1~~ **IC 34-46-4-1** has an affirmative defense under this section if the person was unaware that the communication was intercepted in violation of this article and:

(1) has not intercepted the communication;

(2) has not procured another person to intercept or disclose the communication; and

(3) has used a communication for the purpose of assisting the person to independently confirm information contained in a communication.

(d) An action under this section must be brought within two (2) years after the date that the interception, disclosure, or use of a communication in violation of this article initially occurs whichever is later.

SECTION 195. IC 35-38-1-7.1, AS AMENDED BY P.L.210-1997, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider:

(1) the risk that the person will commit another crime;

(2) the nature and circumstances of the crime committed;

(3) the person's:

(A) prior criminal record;

(B) character; and

(C) condition;

(4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;

(5) whether the person violated a protective order issued against the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before

C o p y

its repeal) or **IC 34-26-2 (or** IC 34-4-5.1 **before its repeal);** and

(6) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

(1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.

(2) The person has a history of criminal or delinquent activity.

(3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.

(4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.

(5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.

(6) The victim of the crime was mentally or physically infirm.

(7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.

(8) The person committed a sex crime listed in subsection (e) and:

(A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;

(B) the person had knowledge that the person was a carrier of HIV; and

(C) the person had received risk counseling as described in subsection (g).

(9) The person committed an offense related to controlled substances listed in subsection (f) if:

(A) the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact;

(B) the person had knowledge that the person was a carrier of the human immunodeficiency virus (HIV); and

(C) the person had received risk counseling as described in subsection (g).

C o p y

(10) The person committed the offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.

(c) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Child molesting (IC 35-42-4-3).

(4) Child seduction (IC 35-42-4-7).

(5) Prostitution (IC 35-45-4-2).

(6) Patronizing a prostitute (IC 35-45-4-3).

C o p y

(7) Incest (IC 35-46-1-3).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

(1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(6) Possession of a controlled substance (IC 35-48-4-7).

(7) Dealing in paraphernalia (IC 35-48-4-8.5).

(8) Possession of paraphernalia (IC 35-48-4-8.3).

(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and

(2) warned of the behavior that can transmit HIV.

SECTION 196. IC 35-38-1-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10.5. (a) The court shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(1) convicted of a sex crime listed in section 7.1(e) of this chapter and the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) as described in section 7.1(b)(8) of this chapter; or

(2) convicted of an offense related to controlled substances listed in section 7.1(f) of this chapter and the offense involved the conditions described in section 7.1(b)(9)(A) of this chapter.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

(1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and

(2) determine whether the convicted person had received risk counseling that included information on the behavior that

C o p y

facilitates the transmission of HIV.

(d) A person who, in good faith:

(1) makes a report required to be made under this section; or

(2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in ~~IC 34-4-12.4-1)~~ **IC 34-6-2-80)** who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

SECTION 197. IC 35-44-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) A person who:

(1) knowingly or intentionally induces, by threat, coercion, or false statement, a witness or informant in an official proceeding or investigation to:

(A) withhold or unreasonably delay in producing any testimony, information, document, or thing;

(B) avoid legal process summoning him to testify or supply evidence; or

(C) absent himself from a proceeding or investigation to which he has been legally summoned;

(2) knowingly or intentionally in an official criminal proceeding or investigation:

(A) withholds or unreasonably delays in producing any testimony, information, document, or thing after a court orders him to produce the testimony, information, document, or thing;

(B) avoids legal process summoning him to testify or supply evidence; or

(C) absents himself from a proceeding or investigation to which he has been legally summoned;

(3) alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation;

(4) makes, presents, or uses a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant; or

Copy

(5) communicates, directly or indirectly, with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror;

commits obstruction of justice, a Class D felony.

(b) Subdivision (a)(2)(A) does not apply to:

(1) a person who qualifies for a special privilege under ~~IC 34-3-5-1~~ **IC 34-46-4** with respect to the testimony, information, document, or thing; or

(2) a person who, as an:

(A) attorney;

(B) physician;

(C) member of the clergy; or

(D) husband or wife;

is **not required to testify** under ~~IC 34-1-14-5,~~ **IC 34-46-3-1.** ~~not competent as a witness.~~

SECTION 198. IC 35-45-10-5, AS AMENDED BY P.L.1-1997, SECTION 150, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) A person who stalks another person commits stalking, a Class D felony.

(b) The offense is a Class C felony if at least one (1) of the following applies:

(1) A person:

(A) stalks a victim; and

(B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:

(i) sexual battery (as defined in IC 35-42-4-8);

(ii) serious bodily injury; or

(iii) death.

(2) A protective order or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:

(A) IC 31-15, IC 31-16, IC 31-17, or IC 31-1-11.5 before its repeal (dissolution of marriage, legal separation, child support, and child custody).

(B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).

(C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).

(D) **IC 34-26-2 or** IC 34-4-5.1 **before its repeal** (protective order to prevent abuse).

(3) A criminal complaint of stalking that concerns an act by the

Copy

person against the same victim or victims is pending in a court and the person has been given actual notice of the complaint.

(c) The offense is a Class B felony if:

(1) the act or acts were committed while the person was armed with a deadly weapon; or

(2) the person has an unrelated conviction for an offense under this section against the same victim or victims.

(d) Notwithstanding subsection (a), the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly if the court finds mitigating circumstances. The court may consider the mitigating circumstances in IC 35-38-1-7.1(C) in making a determination under this subsection. However, the criteria listed in IC 35-38-1-7.1(C) do not limit the matters the court may consider in making its determination.

(e) Notwithstanding subsection (b), the court may enter judgment of conviction of a Class D felony and sentence accordingly if the court finds mitigating circumstances. The court may consider the mitigating circumstances in IC 35-38-1-7.1(C) in making a determination under this subsection. However, the criteria listed in IC 35-38-1-7.1(C) do not limit the matters the court may consider in making its determination.

SECTION 199. IC 35-46-1-15.1, AS AMENDED BY P.L.37-1997, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 15.1. (a) A person who knowingly or intentionally violates:

(1) a protective order issued under:

(A) **IC 34-26-2-12(1)(A) (or** IC 34-4-5.1-5(a)(1)(A) **before its repeal);**

(B) **IC 34-26-2-12(1)(B) (or** IC 34-4-5.1-5(a)(1)(B) **before its repeal);** or

(C) **IC 34-26-2-12(1)(C) (or** IC 34-4-5.1-5(a)(1)(C) **before its repeal);**

that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(2) an emergency protective order issued under **IC 34-26-2-6(1), IC 34-26-2-6(2), or IC 34-26-2-6(3) (or** IC 34-4-5.1-2.3(a)(1)(A), IC 34-4-5.1-2.3(a)(1)(B), or IC 34-4-5.1-2.3(a)(1)(C) **before their repeal)** that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(3) a temporary restraining order issued under IC 31-15-4-3(2), IC 31-15-4-3(3), IC 31-16-4-2(a)(2), or IC 31-16-4-2(a)(3) (or IC 31-1-11.5-7(b)(2) or IC 31-1-11.5-7(b)(3) before their repeal)

Copy

that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(4) an order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-19-5 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(5) an order issued as a condition of pretrial release or pretrial diversion that orders the person to refrain from any direct or indirect contact with another person;

(6) an order issued as a condition of probation that orders the person to refrain from any direct or indirect contact with another person;

(7) a protective order issued under IC 31-15-5 or IC 31-16-5 (or IC 31-1-11.5-8.2 before its repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(8) a protective order issued under IC 31-14-16 in a paternity action;

(9) a protective order issued under IC 31-34-17 in a child in need of services proceeding or under IC 31-37-16 in a juvenile delinquency proceeding that orders the respondent to refrain from having direct or indirect contact with a child; or

(10) an order issued in a state other than Indiana that is substantially similar to an order described in subdivisions (1) through (9);

commits invasion of privacy, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction for an offense under this section.

(b) In addition to any other penalty imposed for conviction of a Class A misdemeanor under this section, if the violation of the protective order results in bodily injury to the petitioner, the court shall order the defendant to be imprisoned for five (5) days. A five (5) day sentence under this subsection may not be suspended. The court may require the defendant to serve the five (5) day term of imprisonment in an appropriate facility at whatever time or intervals, consecutive or intermittent, the court determines to be appropriate. However:

(1) at least forty-eight (48) hours of the sentence must be served consecutively; and

(2) the entire five (5) day sentence must be served within six (6) months after the date of sentencing.

Copy

(c) Notwithstanding IC 35-50-6, a person does not earn credit time while serving a five (5) day sentence under subsection (b).

SECTION 200. IC 35-50-5-3, AS AMENDED BY P.L.300-1995, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) Except as provided in subsection (i), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

(1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);

(2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;

(3) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and

(4) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a) or (i) is a judgment lien that:

(1) attaches to the property of the person subject to the order;

(2) may be perfected;

(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and

(4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(1) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(2) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8.

The victim services division of the Indiana criminal justice institute shall deposit the restitution received under this subsection in the

C o p y

violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a) or (i), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-17-2-3. The clerk shall also notify the ~~Indiana~~ department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a) or (i) does not bar a civil action for:

(1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a) or (i) is not discharged by the liquidation of a person's estate by a receiver under ~~IC 34-1-12 and IC 34-2-7.~~ **IC 34-48-1, IC 34-48-4, IC 34-48-5, and IC 34-48-6 (or IC 34-1-12 and IC 34-2-7 before their repeal).**

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court shall base its restitution order upon a consideration of the amount of money that the convicted person converted, misappropriated, or received, or for which the convicted person conspired. The restitution order issued for a violation of IC 35-43-9 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for a violation of IC 35-43-9.

SECTION 201. IC 36-1-4-7.5, AS ADDED BY P.L.123-1996, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

Copy

JULY 1, 1998]: Sec. 7.5. (a) This section applies to a transaction that involves a parcel of real estate that is owned or leased by a unit and the unit or a board, an agency, a department, a commission, or other division of the unit has determined in a resolution, an ordinance, a lease, a contract, or other written instrument that the parcel of real estate:

(1) may have environmental contamination:

(A) that occurred during or before the time the unit owned or leased the parcel of real estate; and

(B) for which the unit may be liable under applicable laws; and

(2) will be used in connection with an economic development project that will:

(A) promote opportunities for employment of the citizens of the unit;

(B) attract new business enterprises to the unit; or

(C) retain or expand a business enterprise within the unit.

(b) Except as provided in IC 26-2-5-1 and notwithstanding defenses available and immunity provided in ~~IC 34-4-16.5,~~ **IC 34-13-3,** a unit may enter into a contract or lease that contains a provision, a clause, a covenant, a promise, or an agreement by the unit to defend or indemnify any person against any claim, cause of action, demand, cost, judgment, or other loss of any kind provided for under the terms of the contract.

(c) A unit may not indemnify a person against any claim, cause of action, demand, cost, judgment, or other loss resulting from environmental contamination of the parcel of real estate caused by the negligence or willful misconduct of the indemnified person occurring after the effective date of the indemnification.

(d) Nothing in this section may be construed to limit any rights that a unit may have to defend or indemnify a person under any other law.

SECTION 202. IC 36-1-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) Certain ordinances may be enforced by a municipal corporation without proceeding in court through:

(1) an admission of violation before the violations clerk under IC 33-6-3; or

(2) administrative enforcement under section 9 of this chapter.

(b) Except as provided in subsection (a), a proceeding to enforce an ordinance must be brought in accordance with ~~IC 34-4-32,~~ **IC 34-28-5,** section 4 of this chapter, or both.

C o p y

(c) An ordinance defining a moving traffic violation may not be enforced under IC 33-6-3 and must be enforced in accordance with ~~IC 34-4-32.~~ **IC 34-28-5.**

SECTION 203. IC 36-1-14.2-1, AS ADDED BY P.L.286-1995, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. A state or local governmental unit is authorized to disburse funds to a medical clinic or health care facility that provides health care to individuals without compensation. Funding obtained under this section must be used by the clinic or facility to purchase professional liability insurance to provide the clinic or facility with:

(1) medical malpractice protection; and

(2) compensation for required surcharges;

under ~~IC 27-12.~~ **IC 34-18.** However, the disbursement of funds by a state or local governmental unit does not create any liability for that unit as a result of any acts or omissions of the medical clinic or health care facility that receives the funds.

SECTION 204. IC 36-1-14.2-3, AS ADDED BY P.L.286-1995, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. A person who provides health care to an individual at a medical clinic or health care facility described in this chapter is immune from civil liability to the extent described in ~~IC 34-4-12.1.~~ **IC 34-30-13.**

SECTION 205. IC 36-5-2-4.1, AS AMENDED BY P.L.3-1997, SECTION 464, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4.1. (a) The legislative body may, by ordinance, divide the town into districts for the purpose of conducting elections of town officers.

(b) A town legislative body district must comply with the following standards:

(1) The district must be composed of contiguous territory, except for territory that is not contiguous to any other part of the town.

(2) The district must be reasonably compact.

(3) The district must contain, as nearly as is possible, equal population.

(4) The district may not cross a census block boundary except when following a precinct boundary line or when the ordinance specifies that the census block has no population and is not likely to ever have population.

(5) The district may not cross precinct lines, except as provided in subsection (c).

(c) The boundary of a town legislative body district established under subsection (a) may cross a precinct boundary line if:

Copy

(1) the legislative body provides by ordinance under section 5 of this chapter that all legislative body members are to be elected at large by the voters of the whole town; or

(2) the district would not otherwise contain, as nearly as is possible, equal population.

(d) If any territory in the town is not included in one (1) of the districts established under this section, the territory is included in the district that:

(1) is contiguous to that territory; and

(2) contains the least population of all districts contiguous to that territory.

(e) If any territory in the town is included in more than one (1) of the districts established under this section, the territory is included in the district that:

(1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;

(2) is contiguous to that territory; and

(3) contains the least population of all districts contiguous to that territory.

(f) The ordinance may be appealed in the manner prescribed by ~~IC 34-4-17.5.~~ **IC 34-13-6.** If the town is located in two (2) or more counties, the appeal may be filed in the circuit or superior court of any of those counties.

(g) This subsection does not apply to a town with an ordinance described by subsection (h). The division permitted by subsection (a) shall be made in 2002, every ten (10) years after that, subject to IC 3-11-1.5-32, and when required to assign annexed territory to a municipal legislative body district. The division may also be made in any other year.

(h) This subsection applies to a town having a population of less than three thousand five hundred (3,500). The town legislative body may adopt an ordinance providing that:

(1) town legislative body districts are abolished; and

(2) all members of the legislative body are elected at large.

(i) An ordinance described by subsection (h):

(1) may not be adopted or repealed during a year in which a municipal election is scheduled to be conducted in the town under IC 3-10-6 or IC 3-10-7; and

(2) is effective upon passage.

(j) A copy of the ordinance establishing districts under this section must be filed with the circuit court clerk of the county that contains the greatest population of the town not later than thirty (30) days after the

Copy

ordinance is adopted.

SECTION 206. IC 36-7-4-1339 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1339. (a) This section applies to a person having an interest in real property that may be subject to an impact fee ordinance if the development occurs on the property.

(b) A person may seek to:

(1) have a court determine under ~~IC 34-1-10~~ **IC 34-26-1** any question of construction or validity arising under the impact fee ordinance; and

(2) obtain a declaration of rights, status, or other legal relations under the ordinance.

(c) The validity of an impact fee ordinance adopted by a unit or the validity of the application of the ordinance in a specific impact zone may be challenged under this section on any of the following grounds:

(1) The unit has not provided for a zone improvement plan in the unit's comprehensive plan.

(2) The unit did not prepare or substantially update the unit's zone improvement plan in the year preceding the adoption of the impact fee ordinance.

(3) The unit has not identified the revenue sources the unit intends to use to implement the zone improvement plan, if identification of the revenue sources is required under section 1318(c) of this chapter.

(4) The unit has not complied with the requirements of section 1318(f) of this chapter.

(5) The unit has not made adequate revenue available to complete infrastructure improvements identified in the unit's zone improvement plan.

(6) The impact fee ordinance imposes fees on new development that will not create a need for additional infrastructure.

(7) The impact fee ordinance imposes on new development fees that are excessive in relation to the infrastructure needs created by the new development.

(8) The impact fee ordinance does not allow for reasonable credits to fee payers.

(9) The unit imposed a prohibition or delay on new development to enable the unit to complete the adoption of an impact fee ordinance.

(10) The unit otherwise fails to comply with this series in the adoption of an impact fee ordinance.

SECTION 207. IC 36-7-15.1-11 IS AMENDED TO READ AS

Copy

FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) A person who filed a written remonstrance with the commission under section 10 of this chapter and is aggrieved by the final action taken may, within ten (10) days after that final action, file with the presiding judge of the superior court a copy of the order of the commission and his remonstrance against that order, together with his bond, as provided by ~~IC 34-4-17-5,~~ **IC 34-13-5-7,** in the event the appeal is determined against him. The burden of proof is on the remonstrator, and no change of venue may be granted.

(b) An appeal under this section shall be promptly heard by the court without a jury. All the judges of the court, or a majority of the judges if not all are available, shall hear the appeal. All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of the filing of the appeal. The court shall decide the appeal based on the record and evidence before the commission, not by trial de novo. It may, by a vote of at least a majority of all the elected judges, confirm the final action of the commission or sustain the remonstrances. The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions. An appeal to the court of appeals or supreme court has priority over all other civil appeals.

SECTION 208. IC 36-7-15.2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 14. (a) A person who filed a written remonstrance with the commission under section 11 of this chapter and is aggrieved by the final action taken may, within ten (10) days after that final action, file an appeal in the office of the clerk of the circuit or superior court with a copy of the resolution of the commission and the person's remonstrance against that resolution.

(b) If an appeal is filed, the commission may petition that the appeal be dismissed unless the remonstrator posts a bond with a surety approved by the court payable to the commission for the payment of all damages and costs that may accrue by reason of the filing of the lawsuit if the commission prevails. A hearing on a petition to dismiss an appeal shall be conducted in the same manner as a hearing on a temporary injunction under ~~IC 34-1.~~ **IC 34-26.** If at the hearing the court determines that the remonstrator cannot establish facts that would entitle the remonstrator to a temporary injunction, the court shall set the amount of the bond to be filed by the remonstrator in an amount found by the judge to cover all damages and costs that may accrue to the commission because of the appeal if the commission prevails. If no bond is filed by the remonstrator with sureties approved by the court within ten (10) days after the court's order is entered, the suit shall be

Copy

dismissed, and no court has further jurisdiction of the appeal or any other lawsuit involving any issue that was or could have been raised on the appeal.

(c) The burden of proof in the appeal is on the remonstrator, and a change of venue from the county may not be granted.

(d) An appeal under this section shall be promptly heard by the court without a jury. All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of the filing of the appeal. Notwithstanding any other law, the court shall decide the appeal based on the record and evidence before the commission, not by trial de novo, and may sustain the remonstrance only if it finds that the actions of the commission in adopting the resolution were arbitrary and capricious.

(e) The court may confirm the final action of the commission or sustain the remonstrances. The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions. An appeal to the court of appeals or supreme court has priority over all other civil appeals.

(f) Either the remonstrator or the commission may appeal the court order to the Indiana supreme court within the ten (10) day period by notice of appeal on a statement of errors in the same manner as is provided in a petition for mandate or prohibition. The supreme court may stay the lower court order pending its own decision, may set a bond to be filed by the remonstrator, may modify the order of the lower ~~part,~~ **court,** or may enter its order as the final order in a case.

SECTION 209. IC 36-7-15.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 12. Any party aggrieved by a resolution adopted under this chapter may appeal. This appeal must be taken as provided in ~~IC 34-4-17.5.~~ **IC 34-13-6.**

SECTION 210. IC 36-7-15.5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 17. (a) Promptly after determining the proposed assessment for each parcel, the commission shall mail notice (first class postage prepaid) to each owner of property to be assessed. This notice must:

(1) set forth the amount of the proposed assessment;

(2) state that the proposed assessment on each parcel of real property in the improvement and maintenance district is on file and can be seen in the commission's office;

(3) state the time and place where written remonstrances against the assessment may be filed;

(4) set forth the time and place where the commission will hear any owner of assessed real property who has filed a

C o p y

remonstrance before the hearing date; and

(5) state that the commission, after hearing evidence, may increase or decrease, or leave unchanged, the assessment on any parcel.

(b) The notices must be deposited in the mail twenty (20) days before the hearing date. The notices to the owners must be addressed as the names and addresses appear on the tax duplicates and the records of the county auditor.

(c) At the time fixed in the notice, the commission shall hear any owner of assessed real property who has filed a written remonstrance before the date of the hearing. The hearing may be continued from time to time as long as is necessary to hear the owners. The commission may utilize a hearing officer (who may be an employee of the city) to hear evidence regarding any parcel of real property about which a written remonstrance has been filed and to make a written recommendation of decision to the commission.

(d) The commission shall render its decision by increasing, or decreasing, or by confirming each assessment by setting opposite each name, parcel, and proposed assessment, the amount of the assessment as determined by the commission. However, if the total of the assessments exceeds the amount needed, the commission shall make a prorated reduction in each assessment.

(e) The signing of the assessment schedule by a majority of the members of the commission, and the delivery of the schedule to the fiscal officer of the city, constitutes a final and conclusive determination of the benefits or damages, if any, that are assessed. However, any owner who had previously filed a written remonstrance (as provided in this chapter) with the commission, or any owner whose assessment was increased above the amount determined by the formula (whether the owner filed a written remonstrance or not) may appeal. This appeal must be taken as provided in ~~IC 34-4-17.5,~~ **IC 34-13-6,** and proceed to trial, hearing, and final judgment as provided in ~~IC 34-4-17.5~~ **IC 34-13-6** for all parties.

SECTION 211. IC 36-7-26-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 19. (a) A person who filed a written remonstrance with the commission under section 17 of this chapter and is aggrieved by the final action taken, may within ten (10) days after that final action, file an appeal in the office of the clerk of the circuit or superior court with a copy of the resolution of the commission and the person's remonstrance against that resolution.

(b) If an appeal is filed, the commission may petition that the appeal be dismissed unless the remonstrator posts a bond with a surety

Copy

approved by the court payable to the commission for the payment of all damages and costs that may accrue by reason of the filing of the lawsuit if the commission prevails. A hearing on a petition to dismiss an appeal shall be conducted in the same manner as a hearing on a temporary injunction under ~~IC 34-1.~~ **IC 34-26.** If at the hearing the court determines that the remonstrator cannot establish facts that would entitle the remonstrator to a temporary injunction, the court shall set the amount of the bond to be filed by the remonstrator in an amount found by the judge to cover all damages and costs that may accrue to the commission because of the appeal if the commission prevails. If no bond is filed by the remonstrator with sureties approved by the court within ten (10) days after the court's order is entered, the suit shall be dismissed, and no court has further jurisdiction of the appeal or any other lawsuit involving any issue that was or could have been raised in the appeal.

(c) The burden of proof in the appeal is on the remonstrator.

(d) An appeal under this section shall be promptly heard by the court without a jury. All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of the filing of the appeal. Notwithstanding any other law, the court shall decide the appeal based on the record and evidence before the commission, not by trial de novo, and may sustain the remonstrance only if the court finds that the actions of the commission in adopting the resolution were arbitrary and capricious.

(e) The court may confirm the final action of the commission or sustain the remonstrances. The final judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions. An appeal to the court of appeals or supreme court has priority over all other civil appeals.

(f) Either the remonstrator or the commission may appeal the court order to the Indiana supreme court within the ten (10) day period by notice of appeal on a statement of errors in the same manner as is provided in a petition for mandate or prohibition. The supreme court may stay the lower court order pending its own decision, may set a bond to be filed by the remonstrator, may modify the order of the lower court, or may enter the court's order as the final order in a case.

SECTION 212. IC 36-8-3-20, AS AMENDED BY P.L.57-1995, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 20. (a) This section applies to counties and towns as well as cities.

(b) A unit may provide by ordinance for any number of police reserve officers.

C o p y

(c) Police reserve officers shall be appointed by the same authority that appoints regular members of the department.

(d) Police reserve officers may be designated by another name specified by ordinance.

(e) Police reserve officers may not be members of the regular police department but have all of the same police powers as regular members, except as limited by the rules of the department. Each department may adopt rules to limit the authority of police reserve officers.

(f) To the extent that money is appropriated for a purpose listed in this subsection, police reserve officers may receive any of the following:

(1) A uniform allowance.

(2) Compensation for time lost from other employment because of court appearances.

(3) Insurance for life, accident, and sickness coverage.

(4) In the case of county police reserve officers, compensation for lake patrol duties that the county sheriff assigns and approves for compensation.

(g) Police reserve officers are not eligible to participate in any pension program provided for regular members of the department.

(h) A police reserve officer may not be appointed until he has completed the training and probationary period specified by rules of the department.

(i) A police reserve officer appointed by the department after June 30, 1993, may not:

(1) make an arrest;

(2) conduct a search or a seizure of a person or property; or

(3) carry a firearm;

unless the police reserve officer successfully completes a pre-basic course under IC 5-2-1-9(f).

(j) A police reserve officer may be covered by the medical treatment and burial expense provisions of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7). If compensability of the injury is an issue, the administrative procedures of IC 22-3-2 through IC 22-3-6 and IC 22-3-7 shall be used to determine the issue.

(k) A police reserve officer carrying out lake patrol duties under this chapter is immune from liability under ~~IC 34-4-12,~~ **IC 34-30-12,** notwithstanding the payment of compensation to the officer.

SECTION 213. IC 36-8-12-16, AS AMENDED BY P.L.1-1996, SECTION 93, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

Copy

JULY 1, 1998]: Sec. 16. (a) A volunteer fire department that provides service within a jurisdiction served by the department may establish a schedule of charges for the services that the department provides not to exceed the state fire marshal's recommended schedule for services. Except as provided in IC 36-8-12-13, the volunteer fire department may collect a service charge according to this schedule from the owner of property or responsible party (as defined in IC 13-11-2-191(d)) that receives service, including a service charge for extinguishing, containing, or cleaning up hazardous materials (as defined in IC 13-11-2-96(b)) if the following conditions are met:

(1) At the following times, the department gives notice under IC 5-3-1 of the amount of the service charge for each service that the department provides:

(A) Before the schedule of service charges is initiated.

(B) When there is a change in the amount of a service charge.

(2) The property owner has not sent written notice to the department to refuse service by the department to the owner's property.

(3) The department's bill for payment of the service charge:

(A) is submitted to the property owner or a responsible party in writing within thirty (30) days after the services are provided; and

(B) includes a copy of a fire incident report in the form prescribed by the state fire marshal, if the service was provided for an event that requires a fire incident report.

(b) A volunteer fire department shall use the revenue the department collects from the fire service charges under this section for:

(1) the purchase of equipment, buildings, and property for firefighting, fire protection, or other emergency services;

(2) deposit in the township firefighting fund established under IC 36-8-13-4; or

(3) to pay principal and interest on a loan under IC 22-14-5.

(c) If at least twenty-five percent (25%) of the money received by a volunteer fire department for providing fire protection or emergency services is received under one (1) or more contracts with one (1) or more political subdivisions (as defined in ~~IC 34-4-16.5-2),~~ **IC 34-6-2-110),** the legislative body of a contracting political subdivision must approve the schedule of service charges established under subsection (a) before the schedule of service charges is initiated in that political subdivision.

(d) A volunteer fire company that:

Copy

(1) has contracted with a political subdivision to provide fire protection or emergency services; and

(2) charges for services under this section;

must submit a report to the legislative body of the political subdivision before April 1 of each year indicating the amount of service charges collected during the previous calendar year and how those funds have been expended.

(e) The state fire marshal shall annually prepare and publish a recommended schedule of service charges for fire protection services.

(f) The volunteer fire company may maintain a civil action to recover an unpaid service charge under this section.

SECTION 214. IC 36-9-4-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 33. The board of directors of a public transportation corporation may contract with any person upon the terms and conditions the board considers best for the corporation including the following:

(1) Contracting for self-insurance protection of its property or liability under ~~IC 34-4-16.5.~~ **IC 34-13-3.**

(2) Engaging in commissions or entering into agreements for the mutual insurance or sharing of risks for liability or property damage.

(3) Agreeing to join with other municipal corporations for the mutual risk sharing of losses due to casualty or acts of God.

SECTION 215. IC 36-9-4-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 36. The board of directors of a public transportation corporation may, in the name of the corporation, sue or be sued in court. Service of process shall be made by service upon the secretary of the board, and notice must be served upon the secretary in the manner and form required by ~~IC 34-4-16.5.~~ **IC 34-13-3.**

SECTION 216. IC 36-9-25-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 15. (a) The board, on its own initiative, whenever any territory, by its contour and watershed, or because of the extension of sewers by the municipality, is capable of draining sewage into or connecting with the sanitary system, may incorporate any territory, whether platted or unplatted, into the district by adopting a resolution to that effect describing the reason it is to be included. A certified copy of the resolution is conclusive evidence in any proceeding that the territory described was properly incorporated and constitutes a part of the district, subject to this chapter.

(b) Immediately after the passage of a resolution under subsection (a), a notice stating the time and place for a public hearing on the

C o p y

resolution shall be published in accordance with IC 5-3-1. By the date and time of the hearing any affected person may file in the office of the board a written remonstrance to having his lands included. The board shall either confirm, modify, or rescind the resolution after the hearing. An appeal may be taken from the decision by one (1) or more persons considering themselves aggrieved or injuriously affected, as long as those appealing have filed written remonstrances, as provided in this subsection, by filing their complaint within thirty (30) days after the final decision of the board. The appeal shall be governed by ~~IC 34-4-17.5.~~ **IC 34-13-6.**

(c) If the court is satisfied upon hearing an appeal under subsection (b):

(1) that less than seventy-five percent (75%) of the persons owning property in the territory sought to be incorporated in the district have remonstrated; and

(2) that the incorporation of the territory into the district will be for its interest and will cause no manifest injury to the persons owning property in the territory;

the court shall so find and the incorporation shall be ordered. If the court is satisfied that seventy-five percent (75%) or more of the persons owning property in the territory sought to be incorporated have remonstrated, then the incorporation may not be ordered unless the court further finds from the evidence that unless it is incorporated, the health and welfare of residents of the territory or of the adjoining lands will be materially affected and that the safety and welfare of the inhabitants and property of other persons and property will be endangered.

(d) Pending an appeal under subsection (b) and during the time within which the appeal may be taken, the territory sought to be incorporated is not a part of the district. Upon the determination of the appeal, the judgment must particularly describe the resolution upon which the appeal is based. The clerk of the court shall deliver a certified copy of the judgment to the secretary of the board, who shall record it in the minute book of the board and make a cross-reference to the page upon the margin where the original resolution was recorded. If a decision is adverse to an incorporation, further proceedings may not be taken by the board to incorporate that territory within the district for a period of one (1) year after the rendition of the judgment.

SECTION 217. IC 36-9-38-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 17. (a) A resolution establishing an improvement district must also recite the following:

(1) That all real property within the district is subject to

C o p y

assessment of special benefits and damages by appraisers to be appointed by the municipal works board.

(2) That the assessments are subject to review in a hearing before the works board.

(b) The works board's resolution is considered notice to all property owners who have appeared or who have been notified of the proceedings that the owners' property is subject to an assessment of special benefits and damages under this chapter. Further notice or hearing is not required, except as provided by section 26 of this chapter.

(c) The resolution of the works board:

(1) is final and conclusive; and

(2) may not be challenged unless an appeal is made under subsection (e).

(d) A copy of the resolution establishing an improvement district, certified by the municipal clerk, shall be recorded in the miscellaneous records in the office of the recorder of the county in which the municipality is located.

(e) A person aggrieved by the adoption of a resolution establishing an improvement district may appeal in the manner prescribed by ~~IC 34-4-17.5.~~ **IC 34-13-6.**

SECTION 218. IC 36-9-38-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 27. (a) At the hearing fixed under section 26 of this chapter, the municipal works board shall hear all owners of assessed real property who have filed written remonstrances before the date of the hearing. The hearing may be continued from time to time without further notice, as necessary to hear the owners.

(b) The works board shall make a determination increasing, decreasing, or confirming each assessment by setting opposite each name, parcel, and appraisers' assessment on the assessment roll the amount of the assessment as determined by the works board. If the total of the assessments exceeds the amount needed, the works board shall make a pro rata reduction in each assessment.

(c) The signing of the assessment roll by a majority of the members of the works board and the delivery of the roll to the municipal fiscal officer constitute a final and conclusive determination of the benefits or damages assessed. However, a person may appeal the determination if:

(1) the person had previously filed a written remonstrance under this section; or

(2) the person's assessment was increased above the amount

Copy

fixed by the appraisers.

(d) An appeal must be made in the manner prescribed by ~~IC 34-4-17.5.~~ **IC 34-13-6.**

(e) If the final determination of the works board causes the total of the money available to be inadequate to cover the cost of the improvement, the deficiency may be supplied in the manner provided by section 24 of this chapter.

SECTION 219. IC 36-9-39-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 25. (a) Except as provided in subsection (b), the decision of the works board concerning all benefits is final and conclusive on all parties.

(b) An owner of an assessed lot or parcel of land who has filed a written remonstrance with the board may appeal in the manner prescribed by ~~IC 34-4-17.5.~~ **IC 34-13-6.** The appeal does not delay the delivery of the assessment roll to the municipal fiscal officer and does not affect the rights of any other property owner.

(c) If an assessment is reduced on appeal, the works board shall certify the correction to the municipal fiscal officer. The municipal fiscal officer shall then enter the proper amount of the assessment on the roll.

(d) The following applies if there is a defect in the assessment proceedings with respect to at least one (1) interested person:

(1) The defect affects the proceedings only to the extent that the defect affects the interest or property of the person or persons.

(2) Supplementary proceedings of the same general character as those described by this chapter may be had to correct or supply the defect.

SECTION 220. P.L.207-1997, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: The statute of limitations **under IC 34-24-4 (or** IC 34-1-70 **before its repeal)** for a claim based on participation in the illegal drug market that occurred before July 1, 1997, does not begin to run until July 1, 1997.

SECTION 221. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 1998]: IC 27-12; IC 33-1-1.5; IC 34-1; IC 34-2; IC 34-3; IC 34-4; IC 34-5.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1011, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 42, line 18, delete "." and insert "**after the cause of action accrues.**".

Page 42, line 22, delete "." and insert "**after the cause of action accrues.**".

Page 42, line 36, delete "." and insert "**after the cause of action accrues.**".

Page 43, line 2, delete "." and insert "**after the cause of action accrues.**".

Page 43, line 37, delete "cause of".

Page 60, line 10, delete "subsection (a)".

Page 133, line 29, after "keeping" delete "the".

Page 163, line 2, after "attach" delete "the".

Page 202, line 1, after "authority" insert "**for acts authorized by law**".

Page 202, between lines 4 and 5, begin a new paragraph and insert:

"**Sec. 3.6. IC 4-21.5-3.5-4 (Concerning a mediator, co-mediator, or team mediator).**".

Page 202, between lines 28 and 29, begin a new paragraph and insert:

"**Sec. 14.3. IC 5-14-3-10 (Concerning a public employee or officer of a contractor or subcontractor of a public agency for disclosure of certain confidential or erroneous information).**".

Page 203, line 10, after "by" insert "**an**".

Page 203, line 13, delete ", certain electric utility programs" and insert "**certain municipalities or joint agencies that operate electric utilities**".

Page 203, between lines 13 and 14, begin a new paragraph and insert:

"**Sec. 24.4. IC 8-6-4-1(e) (Concerning a railroad company and its employees for injury or property damage resulting from certain accidents).**".

Page 203, line 15, delete "for obligations" and insert "**of bonds or notes**".

Page 204, between lines 8 and 9, begin a new paragraph and insert:

C o p y

"**Sec. 37.2. IC 10-4-1-11 (Concerning employees of a political subdivision rendering aid in another political subdivision or out of state).**".

Page 204, line 9, delete "IC 10-4-1-18" and insert "**IC 10-4-1-18(c)**".

Page 204, between lines 11 and 12, begin a new paragraph and insert:

"**Sec. 38.3. IC 10-4-3-1 (Concerning officers and employees of a state that is a party to the interstate earthquake emergency compact, and persons rendering aid under the compact).**".

Page 204, between lines 18 and 19, begin a new paragraph and insert:

"**Sec. 42. IC 12-10-13-16.7 (Concerning a long term care facility, a home care service, or their employees for release or disclosure of records to an ombudsman).**".

Page 204, line 19, delete "Sec. 42. IC 12-10-13-19" and insert "**Sec. 43. IC 12-10-13-18**".

Page 204, delete lines 21 through 22.

Page 204, between lines 27 and 28, begin a new paragraph and insert:

"**Sec. 45.3. IC 12-16-13-1 (Concerning hospital or person providing services under the hospital care for the indigent program).**".

Page 204, between lines 34 and 35, begin a new paragraph and insert:

"**Sec. 47.3. IC 12-23-12-2 (Concerning the division of mental health or its agents for exercise of discretion regarding notification or consent when a minor seeks voluntary addiction treatment).**".

Page 205, line 3, after "board," insert "**the administrator,**".

Page 205, line 4, delete "officers," and insert "**and officers**".

Page 205, between lines 5 and 6, begin a new paragraph and insert:

"**Sec. 51.4. IC 13-24-2-2 (Concerning persons for certain acts or omissions while providing oil discharge response assistance).**

Sec. 51.6. IC 13-25-4-27 (Concerning a person who implements or completes an approved hazardous substances response action).

Sec. 51.8. IC 13-25-5-18 (Concerning a person who receives a certificate of completion for voluntary remediation after release or threatened release of a hazardous substance or petroleum, for certain claims arising under IC 13).".

Page 205, line 13, before "vehicles" insert "**recreational**".

Page 205, between lines 17 and 18, begin a new paragraph and

C o p y

insert:

"**Sec. 56.3. IC 14-23-5-2 (Concerning officers and employees of the department of natural resources for fighting forest fires).**".

Page 206, delete lines 3 through 4.

Page 206, line 5, delete "Sec. 66." and insert "**Sec. 65.**".

Page 206, line 8, delete "Sec. 67." and insert "**Sec. 66.**".

Page 206, between lines 9 and 10, begin a new paragraph and insert:

"**Sec. 67. IC 16-28-13-9 (Concerning persons for denying or terminating employment of an individual with a criminal history, or reporting to or participating in proceedings of the state department of health or the nurse aide registry).**".

Page 206, line 26, after "who" insert "**fail to provide medical treatment to patients who refuse medical treatment).**".

Page 206, delete line 27.

Page 206, between lines 38 and 39, begin a new paragraph and insert:

"**Sec. 77.5. IC 16-39-2-6 (Concerning a person who releases mental health records under certain circumstances).**".

Page 207, delete lines 5 through 7, begin a new paragraph and insert:

"**Sec. 80. IC 16-41-2-6 (Concerning physicians, hospitals, and laboratories for reporting communicable or dangerous diseases).**".

Page 207, between lines 22 and 23, begin a new paragraph and insert:

"**Sec. 85.2. IC 20-8.1-13-3 (Concerning attendance officer or officer's designee for failure to contact a parent or guardian regarding a student's absences).**".

Page 207, between lines 32 and 33, begin a new paragraph and insert:

"**Sec. 89.7. IC 23-14-31-28 (Concerning crematory authority for relying on a cremation authorization form).**".

Page 207, line 38, after "filing" insert "**or failing to file**".

Page 207, line 39, delete "occurance" and insert "**occurrence**".

Page 208, between lines 15 and 16, begin a new paragraph and insert:

"**Sec. 98.7. IC 25-17.6-2-7 (Concerning actions of members of board of certification for professional geologists).**".

Page 208, line 23, delete "of" and insert "**or**".

Page 208, line 28, delete "for".

Page 208, between lines 34 and 35, begin a new paragraph and insert:

C o p y

"**Sec. 106.5. IC 27-1-36-53 (Concerning the department of insurance, its commissioner, employees, or agents for exercise of powers and performance of duties related to risk based capital requirements).**".

Page 209, between lines 9 and 10, begin a new paragraph and insert:

"**Sec. 111.5. IC 27-2-19-7 (Concerning an agency, an insurer, an agent, an employee, or a representative for receiving or providing information in good faith related to insurance fraud investigation).**".

Page 209, between lines 24 and 25, begin a new paragraph and insert:

"**Sec. 116.5. IC 27-8-24.3-10 (Concerning insurers for damages caused by compliance with the laws on insurance and health plan coverage for victims of abuse).**".

Page 210, between lines 25 and 26, begin a new paragraph and insert:

"**Sec. 133.4. IC 31-18-3-14 (Concerning civil actions against persons present in Indiana to participate in a proceeding under the Uniform Interstate Family Support Act).**".

Page 211, line 19, after "Concerning" insert "**civil actions against**".

Page 211, line 20, delete "for certain periods of time".

Page 212, line 2, after "buildings" insert "**in event of fire**".

Page 218, between lines 3 and 4, begin a new paragraph and insert:

"**Chapter 14.5. Health Care: Medical Malpractice**

Sec. 1. Immunity for members of a medical review panel is governed by IC 34-18-10-24.

Sec. 2. Immunity for health care providers in certain breach of contract cases is governed by IC 34-18-12-1.".

Page 223, line 23, delete "P.L.99-660," and insert "**42 U.S.C. 11101 et seq.,**".

Page 237, line 31, after "against" delete "the".

Page 238, line 19, after "recording" delete "the".

Page 259, line 24, after "attestation of" delete "the".

Page 260, line 29, delete "Federal" and insert "**federal**".

Page 261, line 37, delete "**territory northwest of the Ohio River;**" and insert "**Territory of the United States North West of the River Ohio;**".

Page 265, line 9, after "justice" delete "was".

Page 267, line 8, after "or" insert "**the**".

C o p y

Page 267, line 8, after "Commission" insert "**or Its Successor Agency,**".

Page 267, line 13, after "Commission" insert "**or its successor agency**".

Page 267, line 16, after "Commission" insert "**(or its successor agency)**".

Page 267, line 22, after "Commerce Commission" insert "**(or its successor agency)**".

Page 272, line 10, delete "March 31, 1845," and insert "**March 3, 1845, 5 Stat. 731,**".

Page 280, line 3, after "party" delete "is".

Page 287, between lines 26 and 27, begin a new paragraph and insert:

"**Sec. 30.4. IC 33-5-40-53 (Concerning papers filed and testimony before the commission on judicial qualifications for St. Joseph Superior Court).**".

Page 322, line 29, delete "Judgement" and insert "**Judgment**".

and when so amended that said bill do pass.

(Reference is to House Bill 1011 as introduced.)

VILLALPANDO, Chair

Committee Vote: yeas 13, nays 0.

Copy

COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill 1011, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1011 as printed January 21, 1998.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

Copy