
ENGROSSED

SENATE BILL No. 385

DIGEST OF SB 385 (Updated February 17, 1998 8:10 pm - DI 93)
Citations Affected: IC 33-4; IC 33-10.1; IC 33-17; IC 33-19; IC 36-4;
IC 36-5.

Synopsis: Senior judge appointments and city court clerks. Specifies that a senior judge may be appointed for a county court, a probate court, or the court of appeals. (Current law also allows a senior judge to be appointed for a circuit court or superior court.) Specifies that the clerk of a third class city or clerk-treasurer of a town serves as the clerk of the city or town court if the judge does not perform the duties of court clerk or appoint a court clerk. Grants immunity to a clerk of the circuit court for errors in the disbursement of child support funds that: (1) arise without the clerk's knowledge or approval; and (2) result from an action by the ISETS staff or an ISETS technological error. Adds the service of court clerk to the list of duties of clerks of second and third class cities and clerk-treasurers of towns. (The introduced version of this bill was prepared by the commission on courts.)

Effective: July 1, 1998.

Bray, Alexa, Randolph
(HOUSE SPONSORS — AYRES, VILLALPANDO)

January 12, 1998, read first time and referred to Committee on Judiciary.
January 22, 1998, amended, reported favorably — Do Pass.
January 26, 1998, reassigned to Committee on Finance. Placed back on second reading.
January 27, 1998, read second time, ordered engrossed.
January 28, 1998, engrossed.
January 29, 1998, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 4, 1998, read first time and referred to Committee on Courts and Criminal Code.
February 17, 1998, amended, reported — Do Pass.

SEA 385—Concur+



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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.

SENATE ENROLLED ACT No. 385

AN ACT to amend the Indiana Code concerning courts and court officers.

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

SECTION 1. IC 33-4-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) A circuit court may apply to the supreme court for the appointment of a senior judge to serve the court.

(b) A superior court, **a county court, a probate court, or the court of appeals** may apply to the supreme court for the appointment of a senior judge to serve the court.

(c) The application submitted under this section must include the following:

- (1) Reasons for the request.
- (2) Estimated duration of the need for a senior judge.

SECTION 2. IC 33-4-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. Upon approving the request by a circuit court, ~~or~~ a superior court, **a county court, a probate court, or the court of appeals** for a senior judge, the supreme court may appoint a senior judge to serve that court for the duration specified in the application submitted under section 1 of this chapter.

SECTION 3. IC 33-4-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. The supreme court

SEA 385—Concur+



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may not require a senior judge to accept an assignment to serve a circuit **court, or a superior court, a county court, a probate court, or the court of appeals.** If a senior judge declines an assignment to serve, the supreme court may offer the senior judge subsequent assignments to serve a circuit **court, or a superior court, a county court, a probate court, or the court of appeals.**

SECTION 4. IC 33-10.1-6-1.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1.1. **(a) The officers of a city court are a judge, a clerk, and a bailiff. However, in third class cities, the judge may act as clerk and perform all duties of the clerk of the court or appoint a clerk of the court. If the judge does not act as clerk of the court or appoint a clerk of the court, the city clerk elected under IC 36-4-10 shall perform the duties of the clerk of the city court.**

(b) The clerk is an officer of a town court. The judge of a town court may act as clerk and perform all duties of the clerk of the court or appoint a clerk of the court. If the judge does not act as a clerk of the court or appoint a clerk of the court, the town clerk-treasurer elected under IC 36-5-6-4 shall perform the duties of the clerk of the town court.

(c) The clerk and bailiff may not receive any fees or compensation other than their respective salaries.

SECTION 5. IC 33-10.1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. **(a) In second class cities, the city clerk is the clerk of the city court. and The city clerk of a third class city is the clerk of the city court if the judge does not serve as clerk or appoint a clerk under section 1.1 of this chapter. A city clerk of a second or third class city or an appointed clerk in a third class city who serves as the clerk of the city court shall give bond as prescribed in this chapter. The clerk may administer oaths. The clerk of a city or town court shall:**

- (1) issue all process of the court, affix the seal of the court to it, and attest it;**
- (2) keep a complete record and docket of all cases, showing what persons were arrested and brought before the court, how the cases were disposed of, and giving an account of the fees, fines, penalties, forfeitures, judgments, executions, decrees, and orders in the same manner, as nearly as may be, as such records are kept by the clerk of the circuit court; and**
- (3) collect all fees, fines, penalties and forfeitures, judgments, executions, and money accruing to the city or town from the enforcement of ordinances.**



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(b) At the close of each week the clerk shall make out and deliver to the city controller a written report of all cases in which the clerk has received or collected any fines or forfeitures due the city **or town**. The clerk shall then pay over the money to the controller and take a receipt for them. At the end of each month the clerk shall make out and deliver to the county treasurer of the county in which the city **or town** is located a written report of all cases in which the clerk has received or collected any fines or forfeitures due the state during the month and then pay to the county treasurer all fines or forfeitures collected, taking a receipt for them. In those cities where the county treasurer rather than the city controller receives city money for deposit, the clerk shall report and deliver the money to the county treasurer.

(c) The clerk shall deposit all court costs collected by the clerk in accordance with IC 33-19-1-3. The clerk shall distribute the state and county share of court costs collected in accordance with IC 33-19-7-4.

SECTION 6. IC 33-17-1-4, AS AMENDED BY P.L.284-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) **As used in this section, "Indiana support enforcement tracking system (ISETS)" refers to the statewide automated system for the collection, disbursement, and distribution of child support payments established by the division of family and children.**

~~(a)~~ (b) The clerk may receive funds:

- (1) in payment of judgments; and
- (2) ordered to be paid into the court by the judge.

~~(b)~~ (c) Except as provided in subsection ~~(c)~~; (d), the clerk is liable, with his sureties, on his official bond for all funds received to any person who is entitled to demand and receive those funds from him.

~~(c)~~ (d) The clerk is not personally liable or liable in the clerk's official capacity on the clerk's official bond for funds received if the clerk:

- (1) through error or in accordance with the best information available to the clerk, disbursed the funds to a person the clerk reasonably believed to be entitled to receive the funds and to comply with a:

- (A) child support order; or
- (B) garnishment order;

- (2) **inappropriately disbursed or misapplied child support funds, arising without the knowledge or approval of the clerk, that resulted from:**

- (A) **an action by an employee of, or a consultant to, the division of family and children;**



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**(B) an ISETS technological error; or
(C) information generated by ISETS.**

~~(2)~~ (3) disbursed funds that the clerk reasonably believed were available for disbursement but that were not actually available for disbursement;

~~(3)~~ (4) disbursed child support funds paid to the clerk by a personal check that was later dishonored by a financial institution; and

~~(4)~~ (5) did not commit a criminal offense as a part of the disbursement.

~~(d)~~ (e) If the clerk improperly disburses funds in the manner described by subsection ~~(c)~~; (d), the clerk shall do the following:

(1) Deduct an amount equal to the amount of funds improperly disbursed from fees collected under IC 33-19-6-5.

(2) Credit each account from which funds were improperly disbursed with the amount of funds improperly disbursed under subsection ~~(c)~~; (d).

(3) Notify the prosecuting attorney of the county of:

(A) the amount of the improper disbursement;

(B) the person from whom the amount of the improper disbursement should be collected; and

(C) any other information to assist the prosecuting attorney to collect the amount of the improper disbursement.

(4) Record each action taken under this subsection on a form prescribed by the state board of accounts.

~~(e)~~ (f) If:

(1) fees collected under IC 33-19-6-5 are credited to an account under subsection ~~(d)~~(2) (e)(2) because a check or money order was dishonored by a financial institution or was the subject of a stop payment order; and

(2) a person subsequently pays to the clerk all or part of the amount of the check or money order that was dishonored or the subject of a stop payment order;

the clerk shall reimburse the account containing fees collected under IC 33-19-6-5 using the amount the person paid to the clerk.

SECTION 7. IC 33-19-1-3, AS AMENDED BY P.L.4-1994, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) Except for the state share prescribed by IC 33-19-7-1 for semiannual distribution, and as provided under ~~IC 33-17-1-4(d)~~ IC 33-17-1-4(e) and IC 33-19-6-1.5, within thirty (30) days after the clerk collects a fee, the clerk shall forward the fee to:

(1) the county auditor, if the clerk is a clerk of a circuit court; or



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(2) the city or town fiscal officer, if the clerk is the clerk of a city or town court.

(b) If part of the fee is collected on behalf of another person for service as a juror or witness, the county auditor or city or town fiscal officer shall forward that part of the fee to the person within forty-five (45) days after the auditor or fiscal officer receives the claim for the fee.

(c) Except for amounts deposited in a user fee fund established under IC 33-19-8, the county auditor shall distribute fees received from the clerk to:

(1) the county treasurer for deposit in the county general fund, if the fee belongs to the county; and

(2) the fiscal officer of a city or town, if the fee belongs to the city or town under IC 33-19-7-3.

(d) Except for amounts deposited in a user fee fund established under IC 33-19-8, the city or town fiscal officer shall deposit all fees received from a clerk in the treasury of the city or town.

(e) The clerk shall forward the state share of each fee to the state treasury at the clerk's semiannual settlement for state revenue.

SECTION 8. IC 33-19-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) This section applies to an action in which a final court order requires a person to pay support or maintenance payments through the clerk.

(b) The clerk shall collect a fee in addition to support and maintenance payments. The fee is:

(1) twenty dollars (\$20) for the calendar year in which the initial order is entered, unless the first payment is due after June 30 of that calendar year;

(2) ten dollars (\$10) for the calendar year in which the initial order was entered, if the first payment is due after June 30 of that calendar year; and

(3) in each subsequent year in which the initial order or a modified order is in effect, twenty dollars (\$20) if the fee is paid before February 1, or thirty dollars (\$30) if paid after January 31.

(c) The fee required under subsection (b) is due at the time that the first support or maintenance payment for the calendar year in which the fee must be paid is due.

(d) The clerk may not deduct the fee from a support or maintenance payment.

(e) Except as provided under ~~IC 33-17-1-4(d)~~, **IC 33-17-1-4(e)**, the clerk shall forward the fee collected under this section to the county auditor in accordance with IC 33-19-1-3(a).

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SECTION 9. IC 36-4-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. The clerk shall do the following:

- (1) Serve as clerk of the city legislative body under IC 36-4-6-9 and maintain custody of its records.
- (2) Maintain all records required by law.
- (3) Keep the city seal.
- (4) As soon as a successor is elected and qualified, deliver to the successor all the records and property of the clerk's office.
- (5) Perform other duties prescribed by law.
- (6) Administer oaths when necessary in the discharge of the clerk's duties, without charging a fee.
- (7) Take depositions, without charging a fee.
- (8) Take acknowledgement of instruments that are required by statute to be acknowledged, without charging a fee.
- (9) Serve as clerk of the city court under IC 33-10.1-6-2, if the judge of the court does not serve as clerk of the court or appoint a clerk of the court under IC 33-10.1-6-1.1.**

SECTION 10. IC 36-4-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) This section applies to third class cities.

(b) The clerk shall appoint the number of deputies and employees needed for the effective operation of the office, with the approval of the city legislative body. The clerk's deputies and employees serve at the clerk's pleasure.

(c) If a city owns a utility and the clerk is directly responsible for the billing and collection of that utility's rates and charges, the clerk shall appoint those employees who are also responsible for that billing and collection. These employees serve at the clerk's pleasure.

(d) Whenever the city court judge does not serve as clerk of the city court or appoint a clerk to serve as clerk of the city court under IC 33-10.1-6-1.1, the clerk shall serve as clerk of the city court.

SECTION 11. IC 36-5-6-6, AS AMENDED BY P.L.10-1997, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) The clerk-treasurer shall do the following:

- (1) Receive and care for all town money and pay the money out only on order of the town legislative body.
- (2) Keep accounts showing when and from what sources the clerk-treasurer has received town money and when and to whom the clerk-treasurer has paid out town money.
- (3) Prescribe payroll and account forms for all town offices.

SEA 385—Concur+



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(4) Prescribe the manner in which creditors, officers, and employees shall be paid.

(5) Manage the finances and accounts of the town and make investments of town money.

(6) Prepare for the legislative body the budget estimates of miscellaneous revenue, financial statements, and the proposed tax rate.

(7) Maintain custody of the town seal and the records of the legislative body.

(8) Issue all licenses authorized by statute and collect the fees fixed by ordinance.

(9) Serve as clerk of the legislative body by attending its meetings and recording its proceedings.

(10) Administer oaths, take depositions, and take acknowledgment of instruments that are required by statute to be acknowledged, without charging a fee.

(11) Serve as clerk of the town court under IC 33-10.1-6-2, if the judge of the court does not serve as clerk of the court or appoint a clerk of the court under IC 33-10.1-6-1.1.

~~(H)~~ (12) Perform all other duties prescribed by statute.

(b) A clerk-treasurer is not liable, in an individual capacity, for any act or omission occurring in connection with the performance of the requirements set forth in subsection (a), unless the act or omission constitutes gross negligence or an intentional disregard of the requirements.

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