

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1262

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 4-22-2-37.1, AS AMENDED BY P.L.4-2005, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 37.1. (a) This section applies to a rulemaking action resulting in any of the following rules:

- (1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.
- (2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.
- (3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.
- (4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.
- (5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.
- (6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.
- (7) A rule adopted by the Indiana utility regulatory commission to

C
O
P
Y

HEA 1262 — Concur+



address an emergency under IC 8-1-2-113.

(8) An emergency rule jointly adopted by the water pollution control board and the budget agency under IC 13-18-13-18.

(9) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(10) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.

(11) An emergency rule adopted by the Indiana transportation finance authority under IC 8-21-12.

(12) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(13) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(14) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(15) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(16) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(17) An emergency rule adopted by the Indiana gaming commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(18) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(19) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(20) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(21) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(22) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

(23) An emergency rule adopted by the Indiana state board of animal health under IC 15-2.1-18-21.

(24) An emergency rule adopted by the board of directors of the

C
o
p
y



Indiana education savings authority under IC 21-9-4-7.

(25) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-34.

(26) An emergency rule adopted by the department of local government finance under IC 6-1.1-4-33.

(27) An emergency rule adopted by the boiler and pressure vessel rules board under IC 22-13-2-8(c).

(28) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-37(l) or an emergency rule adopted by the department of local government finance under IC 6-1.1-4-36(j) or IC 6-1.1-22.5-20.

(29) An emergency rule adopted by the board of the Indiana economic development corporation under IC 5-28-5-8.

(30) A rule adopted by the department of financial institutions under IC 34-55-10-2.5.

(b) The following do not apply to rules described in subsection (a):

- (1) Sections 24 through 36 of this chapter.
- (2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

- (1) accept the rule for filing; and
- (2) file stamp and indicate the date and time that the rule is accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

- (1) The effective date of the statute delegating authority to the agency to adopt the rule.
- (2) The date and time that the rule is accepted for filing under subsection (e).
- (3) The effective date stated by the adopting agency in the rule.

C
O
P
Y



(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in subsections (j) and (k), a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(14), (a)(25), (a)(26), or (a)(28), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. The extension period for a rule adopted under subsection (a)(29) may not exceed the period for which the original rule was in effect. A rule adopted under subsection (a)(14) may be extended for two (2) extension periods. Subject to subsection (j), a rule adopted under subsection (a)(25), (a)(26), or (a)(28) may be extended for an unlimited number of extension periods. Except for a rule adopted under subsection (a)(14), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

- (1) sections 24 through 36 of this chapter; or
- (2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(9), or (a)(13), or **(a)(30)** expires on the earlier of the following dates:

- (1) The expiration date stated by the adopting agency in the rule.
- (2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

(j) A rule described in subsection (a)(25) or (a)(26) expires not later than January 1, 2006.

(k) A rule described in subsection (a)(29) expires on the expiration date stated by the board of the Indiana economic development corporation in the rule.

SECTION 2. IC 34-6-2-33.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 33.5. "Debt", for purposes of sections 44.3, 44.4, 71.9, 73.5, 73.7, and 135.5 of this chapter and IC 34-55-10, means a legally or an equitably enforced monetary obligation or liability of an individual arising out of contract, tort, or otherwise.

SECTION 3. IC 34-6-2-44.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 44.3. "Exempt", for purposes of IC 34-55-10, means protected from a judicial lien, process, or proceeding to collect a

C
O
P
Y



debt.

SECTION 4. IC 34-6-2-44.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 44.4. "Exemption", for purposes of IC 34-55-10, means protection from a judicial lien, process, or proceeding to collect a debt.**

SECTION 5. IC 34-6-2-71.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 71.9. "Judicial lien", for purposes of sections 44.3, 44.4, and 73.7 of this chapter, means a lien on property obtained by a judgment, levy, or another legal or equitable process or proceeding instituted to collect a debt.**

SECTION 6. IC 34-6-2-73.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 73.5. "Levy", for purposes of section 71.9 of this chapter and IC 34-55-10, means the seizure of property under a writ of attachment, a garnishment, an execution, or a similar legal or equitable process issued to collect a debt.**

SECTION 7. IC 34-6-2-73.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 73.7. "Lien", for purposes of section 71.9 of this chapter and IC 34-55-10, means a security interest, judicial lien, statutory lien, common law lien, or another interest in property to secure the payment of a debt or the performance of an obligation.**

SECTION 8. IC 34-6-2-135.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 135.5. "Security interest", for purposes of section 73.7 of this chapter, means an interest in property created by a contract to secure the payment of a debt or the performance of an obligation.**

SECTION 9. IC 34-55-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: 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.

SECTION 10. IC 34-55-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) This section does not apply to judgments obtained before October 1, 1977.

C
O
P
Y



(b) The amount of each exemption under subsection (c) applies until a rule is adopted by the department of financial institutions under section 2.5 of this chapter.

~~(b)~~ **(c)** 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: **exempt:**

(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):~~ **fifteen thousand dollars (\$15,000)**. The exemption under this ~~subsection~~ **subdivision** 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):~~ **eight thousand dollars (\$8,000)**.

(3) Intangible personal property, including choses in action, **deposit accounts, and cash** (but excluding debts owing and income owing), of ~~one hundred dollars (\$100):~~ **three hundred dollars (\$300)**.

(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:~~ **The exemption under this subdivision does not apply to a debt for which the debtor and the debtor's spouse are jointly liable.**

(6) An interest, whether vested or not, that the judgment debtor has in a retirement plan **or fund** to the extent of:

(A) contributions, or portions of contributions, that were made to the retirement plan **or fund by or on behalf of the debtor or the debtor's spouse:**

(i) ~~by or on behalf of the debtor and~~

(ii) **(i)** which were not subject to federal income taxation to the debtor at the time of the contribution; **or**

(ii) which are made to an individual retirement account in the manner prescribed by Section 408A of the Internal Revenue Code of 1986;

**C
O
P
Y**



(B) earnings on contributions made under clause (A) that are not subject to federal income taxation at the time of the judgment; levy; and

(C) roll-overs of contributions made under clause (A) that are not subject to federal income taxation at the time of the judgment: levy.

(7) Money that is in a medical care savings account established under IC 6-8-11.

(8) Any interest the debtor has in a qualified tuition program, as defined in Section 529(b) of the Internal Revenue Code of 1986, but only to the extent funds in the program are not attributable to:

(A) excess contributions, as described in Section 529(b)(6) of the Internal Revenue Code of 1986, and earnings on the excess contributions;

(B) contributions made by the debtor within one (1) year before the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the contributions; or

(C) the excess over five thousand dollars (\$5,000) of aggregate contributions made by the debtor for all programs under this subdivision and education savings accounts under subdivision (9) having the same designated beneficiary:

(i) not later than one (1) year before; and

(ii) not earlier than two (2) years before;

the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the aggregate contributions.

(9) Any interest the debtor has in an education savings account, as defined in Section 530(b) of the Internal Revenue Code of 1986, but only to the extent funds in the account are not attributable to:

(A) excess contributions, as described in Section 4973(e) of the Internal Revenue Code of 1986, and earnings on the excess contributions;

(B) contributions made by the debtor within one (1) year before the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the contributions; or

(C) the excess over five thousand dollars (\$5,000) of aggregate contributions made by the debtor for all

C
O
P
Y



accounts under this subdivision and qualified tuition programs under subdivision (8) having the same designated beneficiary:

- (i) not later than one (1) year before; and
- (ii) not earlier than two (2) years before;

the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the excess contributions.

(10) The debtor's interest in a refund or a credit received or to be received under section 32 of the Internal Revenue Code of 1986.

(c) The total value of the property exempted under subsection (b)(1) through (b)(3) may not exceed ten thousand dollars (\$10,000).

(d) A bankruptcy proceeding that results in the ownership by the bankruptcy estate of a debtor's interest in property held in a tenancy by the entirety does not result in a severance of the tenancy by the entirety.

(e) 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.

SECTION 11. IC 34-55-10-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.5. (a) The department of financial institutions shall adopt a rule under IC 4-22-2 establishing the amount for each exemption under section 2(c)(1) through 2(c)(3) of this chapter to take effect not earlier than January 1, 2010, and not later than March 1, 2010.

(b) The department of financial institutions shall adopt a rule under IC 4-22-2 establishing new amounts for each exemption under section 2(c)(1) through 2(c)(3) of this chapter every six (6) years after exemption amounts are established under subsection (a). The rule establishing new exemption amounts under this subsection must take effect not earlier than January 1 and not later than March 1 of the sixth calendar year immediately following the most recent adjustments to the exemption amounts.

(c) The department of financial institutions shall determine the amount of each exemption under subsections (a) and (b) based on changes in the Consumer Price Index for All Urban Consumers, published by the United States Department of Labor, for the most

COPY



recent six (6) year period.

(d) The department of financial institutions shall round the amount of an exemption determined under subsections (a) and (b) to the nearest fifty dollars (\$50).

(e) A rule establishing amounts for exemptions under this section may not reduce an exemption amount below the exemption amount on July 1, 2005.

SECTION 12. IC 34-55-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. The judgment debtor may designate real property, personal property, or both, as the exempted property.

SECTION 13. IC 34-55-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. For the appraisal of any property to be exempted under this chapter, two (2) disinterested householders of the neighborhood appraisers 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.

SECTION 14. IC 34-55-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: 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."

SECTION 15. IC 34-55-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: 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 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.

SECTION 16. IC 34-55-10-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: 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

C
o
p
y



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.

SECTION 17. IC 34-55-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: 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. **If the value of a debtor's interest in property for which an exemption is claimed exceeds the amount of the exemption, the property may be sold. However, the debtor must be paid an amount equal to the debtor's exemption in the property from the proceeds of the sale.**

(b) In making the sale under subsection (a), the officer may not receive **accept** 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. **exempt value of the property. If indebtedness secured by a valid lien is chargeable against the proceeds of the sale, a bid may not be accepted if the bid is less than the sum of the amount of the indebtedness secured by the lien and the exempt value of the property.**

SECTION 18. IC 34-55-10-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: 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 property shall be divided to exempt the principal dwelling house or homestead of the judgment debtor.

SECTION 19. IC 34-55-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: 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.

C
O
P
Y



SECTION 20. THE FOLLOWING ARE REPEALED [EFFECTIVE
JULY 1, 2005]: IC 34-55-10-7; IC 34-55-10-10.

**C
o
p
y**



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

C
O
P
Y

HEA 1262 — Concur+

