March 8, 2013

ENGROSSED
SENATE BILL No. 589

DIGEST OF SB 589 (Updated March 5, 2013 11:02 am - DI 96)

Citations Affected: IC 16-39; IC 25-1; IC 25-6.1; IC 25-22.5; IC 25-28.5; IC 25-34.1; IC 30-2.

Synopsis: Occupational licensing issues. Permits professional licensing boards to include consumer restitution orders in cease and desist orders issued against persons who commit unlicensed practice. Permits medical and professional licensing boards to include orders requiring repayment of certain costs relating to cease and desist proceedings. Includes within the cease and desist statute failure to obtain a certificate required for sellers of preneed funeral services and

(Continued next page)

Effective: July 1, 2013; July 1, 2014.

Mishler, Head

(HOUSE SPONSORS — FRIZZELL, BROWN C)

January 15, 2013, read first time and referred to Committee on Commerce, Economic Development & Technology.
February 5, 2013, amended, reported favorably — Do Pass.
February 7, 2013, read second time, ordered engrossed.
February 8, 2013, engrossed.
February 12, 2013, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 26, 2013, read first time and referred to Committee on Employment, Labor and Pensions.
March 7, 2013, reported — Do Pass.

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merchandise. Allows the state board of funeral and cemetery service to issue a cease and desist order against a person who solicits or sells preneed funeral services and merchandise if the person has not obtained a preneed certificate from the board, even if the person possesses an active funeral director license, funeral home license, embalmer license, or cemetery registration. Authorizes the division of consumer protection in the attorney general's office to obtain mental health records without a court order if access to or inspection of the records is necessary for the investigation of a consumer protection or licensing complaint. Amends the law governing the auctioneer consumer recovery fund, real estate recovery fund, and plumbing recovery fund to provide that petitions requesting payment from the funds are filed with the respective licensing commission instead of with the court in which the underlying judgment against the licensee was entered. Prohibits a person from misrepresenting the effect a purchase of prepaid funeral services and merchandise may have on the purchaser's eligibility for Medicaid.

C o p y

March 8, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

C o p y

ENGROSSED
SENATE BILL No. 589

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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

SECTION 1. IC 16-39-2-6, AS AMENDED BY P.L.1-2007, SECTION 136, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) Without the consent of the patient, the patient's mental health record may only be disclosed as follows:

(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))~~ **IC 12-7-2-127);** 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 the rules of the division of mental health and addiction, the rules of the division of disability and rehabilitative services, or the rules of the provider.

(5) To the division of mental health and addiction for the purpose of data collection, research, and monitoring managed care providers (as defined in ~~IC 12-7-2-127(b))~~ **IC 12-7-2-127)** who are operating under a contract with the division of mental health and addiction.

(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

C o p y

under the following statutes:
(A) IC 12-10-3-10.
(B) IC 12-24-17-5.
(C) IC 16-41-2-3.
(D) IC 31-25-3-2.
(E) IC 31-33-5-4.
(F) 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.

C o p y

(16) To the statewide waiver ombudsman established under IC 12-11-13, in the performance of the ombudsman's duties.

(17) To the division of consumer protection created by IC 4-6-9-1, if disclosure is necessary for purposes relating to the investigation of complaints under IC 25-1-7-2 and IC 25-1-7-14. Mental health records released under this subdivision must be maintained in confidence by the division and used only for the purposes for which they were received.

(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) A person who discloses information under subsection (a)(7) or (a)(15) in good faith is immune from civil and criminal liability.

SECTION 2. IC 25-1-7-14, AS AMENDED BY P.L.155-2011, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 14. (a) Notwithstanding any other law, if the board of a regulated occupation believes that a person who is not licensed, certified, or registered under this title is engaged in or is believed to be engaged in activities for which a license, certification, or registration is required under this title, the board may do the following:

(1) File a complaint with the attorney general, who shall investigate and may file:

(A) with notice; or

(B) without notice, if the attorney general determines that **the** person is engaged in activities that may affect an individual's health or safety;

a motion for a cease and desist order with the appropriate board. For purposes of this subdivision, the board may designate a board member or an employee of the Indiana professional licensing agency to act on behalf or in the name of the board.

(2) Upon review of the attorney general's motion for a cease and desist order, the board may issue an order requiring the affected person to show cause why the person should not be ordered to cease and desist from such activities. The show cause order must set forth a time and place for a hearing at which the affected person may appear and show cause as to why the person should not be subject to licensing, certification, or registration under this title. For purposes of this subdivision, the board may designate a board member to act on behalf or in the name of the board.

(b) If the board, after a hearing, determines that the activities in which the person is engaged are subject to licensing, certification, or

C o p y

registration under this title, the board may issue a cease and desist order that must describe the person and activities that are the subject of the order.

(c) A hearing conducted under this section must comply with the requirements under IC 4-21.5.

(d) A cease and desist order issued under this section is enforceable in the circuit or superior courts. A person who is enjoined under a cease and desist order and who violates the order shall be punished for contempt of court.

(e) A cease and desist order issued under this section does not relieve any person from prosecution under any other law.

(f) In addition to the powers specified in subsections (a) through (e), the state board of funeral and cemetery service may:

(1) file complaints under subsection (a)(1);

(2) issue show cause orders under subsection (a)(2); and

(3) hold hearings and issue cease and desist orders under subsection (b);

in relation to persons who are engaged in or believed to be engaged in activities for which a certificate of authority is required under IC 30-2-13.

(g) Cease and desist orders may be issued by the state board of funeral and cemetery service under subsection (f) for failure to possess a certificate of authority even if the person has a valid:

(1) funeral home license;

(2) funeral director license;

(3) embalmer license; or

(4) cemetery registration.

(h) A cease and desist order issued under this section by a board defined in IC 25-1-11-1 may also include an order for the person to pay consumer restitution to a person who suffered damages as a result of the activities that were the basis for the cease and desist order.

(i) A cease and desist order issued under this section may also include an order for repayment of the costs of the proceedings. The person's ability to pay must be considered when costs are assessed. These costs are limited to costs for the following:

(1) Court reporters.

(2) Transcripts.

(3) Certification of documents.

(4) Photo duplication.

(5) Witness attendance and mileage fees.

(6) Postage.

C o p y

(7) Expert witnesses.
(8) Depositions.
(9) Notarizations.
(10) Administrative law judges.
(11) Real estate review appraisals.

SECTION 3. IC 25-6.1-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) If any aggrieved person obtains a final judgment in any court against any licensee to recover damages for failure to meet the obligations of a licensee under this article and the rules adopted under this article (with or without findings by the auctioneer commission) that results in an actual cash loss to the aggrieved person, the person may, upon termination of all proceedings including appeals and proceedings supplemental to judgment for collection purposes, file a verified application ~~in the court in which the judgment was entered~~ **with the commission** for an order directing payment out of the auctioneer recovery fund of the amount of actual and direct loss in the transaction that remains unpaid upon the judgment. The amount of actual and direct loss may include court costs but may not include attorney's fees or punitive damages awarded. The amount that may be paid from the auctioneer recovery fund may not exceed twenty thousand dollars ($20,000) per judgment and an aggregate lifetime limit of fifty thousand dollars ($50,000) with respect to any one (1) licensee.

(b) This section applies only to a final judgment that awards damages for an act by the licensee described in subsection (a) that arises directly out of any transaction:

(1) that occurred when the licensee was licensed;
(2) for which a license was required under IC 25-6.1; and
(3) that occurred after December 31, 1987.

SECTION 4. IC 25-6.1-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) If the payment in full of two (2) or more pending valid claims that have been filed by aggrieved persons against a single licensee would exceed the fifty thousand ~~dollars~~ **dollar** ($50,000) limit set forth in section 4 of this chapter, the fifty thousand dollars ($50,000) shall be distributed among the aggrieved persons in the ratio that their respective claims bear to the aggregate of all valid claims or in any other manner that ~~a court of record~~ **the commission** may determine equitable. This money shall be distributed among the persons entitled to share in it without regard to the order of priority in which their respective judgments have been obtained or their claims have been filed.

(b) ~~Upon petition of the commission, the court may require~~ **The**

C o p y

commission shall consider pending applications filed by all claimants and prospective claimants against one (1) licensee ~~to be joined in one (1) action,~~ **jointly** to the end that the respective rights of all the claimants to the commission may be equitably adjudicated and settled.

(c) On June 30 and December 31 of each year, the auctioneer commission shall identify each claim that the ~~court~~ **commission** orders to be paid during the six (6) month period that ended on that day. The commission shall pay the part of each claim that is so identified within fifteen (15) days after the end of the six (6) month period in which the claim is ordered paid. However, if the balance in the fund is insufficient to pay the full payable amount of each claim that is ordered to be paid during a six (6) month period, the commission shall pay a prorated portion of each claim that is ordered to be paid during the period. Any part of the payable amount of a claim left unpaid due to the prorating of payments under this subsection must be paid (subject to the fifty thousand dollar ($50,000) limit described in section 4 of this chapter) before the payment of claims ordered to be paid during the following six (6) month period.

SECTION 5. IC 25-6.1-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. **(a)** When any person files an application for an order directing payment from the auctioneer recovery fund, the commission shall ~~be made a party defendant to the proceedings. The court shall conduct a hearing on~~ **promptly review and consider** the application, and it may issue an order directing payment out of the auctioneer recovery fund, as provided in section 9 of this chapter, subject to the limitation of section 4 of this chapter, if the ~~court~~ **commission** finds:

(1) that there is no collusion between the judgment creditor and the judgment debtor;

(2) that the judgment creditor is making application not more than one (1) year after the termination of all proceedings in connection with the judgment, including appeals and proceedings supplemental to judgment for collection purposes;

~~(3) that the judgment creditor has caused to be issued a writ of execution on the judgment and the officer executing the writ has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale under the execution was insufficient to satisfy the judgment;~~

~~(4)~~ **(3)** that the judgment creditor has diligently pursued ~~the~~ **all available** creditor's remedies, **including proceedings**

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supplemental, against **the licensee who is the subject of the application filed under section 4 of this chapter, against** all the judgment debtors, and **against** all other persons liable to the creditor in the transaction for which the creditor seeks recovery from the auctioneer recovery fund, **but that the diligent pursuit did not result in satisfaction of the judgment;**

~~(5)~~ **(4)** that the failure to meet the obligations of a licensee under this article and the rules adopted under this article arose directly out of a transaction that occurred when the judgment debtor was licensed and acted in a capacity for which a license is required under this article and that the transaction occurred after December 31, 1987; and

~~(6)~~ **(5)** that, in the event of a default judgment or a judgment entered upon stipulation of the parties, the judgment debtor's acts constituted failure to meet the obligations of a licensee under this article and the rules adopted under this article.

(b) A person who is dissatisfied by:

(1) an order issued under subsection (a) directing payment out of the auctioneer recovery fund; or

(2) a denial of an application filed under section 4 of this chapter;

may petition for review under IC 4-21.5-3-7.

SECTION 6. IC 25-6.1-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. Upon ~~a final~~ **an** order of the ~~court~~ **commission** directing that payment be made out of the auctioneer recovery fund, the commission shall, subject to sections 4 through 5 of this chapter, make the payment out of the auctioneer recovery fund as provided in section 5 of this chapter.

SECTION 7. IC 25-6.1-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. **(a)** If the commission is required to make any payment from the auctioneer recovery fund in settlement of a claim or toward the satisfaction of ~~a judgment~~ **an order** under this chapter, the commission shall suspend the judgment debtor's license. The licensee is not eligible to be licensed again as either an auctioneer, auction company, or auction house until the licensee has repaid in full the amount paid from the auctioneer recovery fund with interest of twelve percent (12%) per annum.

(b) A license suspension issued under this section must be done in accordance with IC 4-21.5-3-6. The licensee may petition for review under IC 4-21.5-3-7.

SECTION 8. IC 25-6.1-8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. When ~~upon order~~

C o p y

~~of any court,~~ the commission has **ordered and** caused payment to be made from the auctioneer recovery fund to a judgment creditor, the commission is subrogated to the rights of the judgment creditor with respect to the amount paid.

SECTION 9. IC 25-22.5-1-1.1, AS AMENDED BY P.L.90-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1.1. As used in this article:

(a) "Practice of medicine or osteopathic medicine" means any one (1) or a combination of the following:

(1) Holding oneself out to the public as being engaged in:

(A) the diagnosis, treatment, correction, or prevention of any disease, ailment, defect, injury, infirmity, deformity, pain, or other condition of human beings;

(B) the suggestion, recommendation, or prescription or administration of any form of treatment, without limitation;

(C) the performing of any kind of surgical operation upon a human being, including tattooing, except for tattooing (as defined in IC 35-42-2-7), in which human tissue is cut, burned, or vaporized by the use of any mechanical means, laser, or ionizing radiation, or the penetration of the skin or body orifice by any means, for the intended palliation, relief, or cure; or

(D) the prevention of any physical, mental, or functional ailment or defect of any person.

(2) The maintenance of an office or a place of business for the reception, examination, or treatment of persons suffering from disease, ailment, defect, injury, infirmity, deformity, pain, or other conditions of body or mind.

(3) Attaching the designation "doctor of medicine", "M.D.", "doctor of osteopathy", "D.O.", "osteopathic medical physician", "physician", "surgeon", or "physician and surgeon", either alone or in connection with other words, or any other words or abbreviations to a name, indicating or inducing others to believe that the person is engaged in the practice of medicine or osteopathic medicine (as defined in this section).

(4) Providing diagnostic or treatment services to a person in Indiana when the diagnostic or treatment services:

(A) are transmitted through electronic communications; and

(B) are on a regular, routine, and nonepisodic basis or under an oral or written agreement to regularly provide medical services.

In addition to the exceptions described in section 2 of this chapter, a nonresident physician who is located outside Indiana does not

C o p y

practice medicine or osteopathy in Indiana by providing a second opinion to a licensee or diagnostic or treatment services to a patient in Indiana following medical care originally provided to the patient while outside Indiana.

(b) "Board" refers to the medical licensing board of Indiana.

(c) "Diagnose or diagnosis" means to examine a patient, parts of a patient's body, substances taken or removed from a patient's body, or materials produced by a patient's body to determine the source or nature of a disease or other physical or mental condition, or to hold oneself out or represent that a person is a physician and is so examining a patient. It is not necessary that the examination be made in the presence of the patient; it may be made on information supplied either directly or indirectly by the patient.

(d) "Drug or medicine" means any medicine, compound, or chemical or biological preparation intended for internal or external use of humans, and all substances intended to be used for the diagnosis, cure, mitigation, or prevention of diseases or abnormalities of humans, which are recognized in the latest editions published of the United States Pharmacopoeia or National Formulary, or otherwise established as a drug or medicine.

(e) "Licensee" means any individual holding a valid unlimited license issued by the board under this article.

(f) "Prescribe or prescription" means to direct, order, or designate the use of or manner of using a drug, medicine, or treatment, by spoken or written words or other means.

(g) "Physician" means any person who holds the degree of doctor of medicine or doctor of osteopathy or its equivalent and who holds a valid unlimited license to practice medicine or osteopathic medicine in Indiana.

(h) "Medical school" means a nationally accredited college of medicine or of osteopathic medicine approved by the board.

(i) "Physician assistant" means an individual who:

(1) is supervised by a physician;

(2) graduated from ~~a~~ **an approved** physician assistant program ~~accredited by an accrediting agency (as defined in IC 25-27.5-2-4.5);~~ **described in IC 25-27.5-2-2;**

(3) passed the examination administered by the National Commission on Certification of Physician Assistants (NCCPA) and maintains certification; and

(4) has been licensed by the physician assistant committee under IC 25-27.5.

(j) "Agency" refers to the Indiana professional licensing agency

C o p y

under IC 25-1-5.

SECTION 10. IC 25-28.5-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) If any aggrieved person obtains a final judgment in any court against any plumbing contractor to recover damages for a violation under IC 25-1-11 or the plumbing codes of the state (with or without a finding by the Indiana plumbing commission) that results in an actual cash loss to the aggrieved person, the person may, upon termination of all proceedings, including appeals and proceedings supplemental to judgment for collection purposes, file a verified application ~~in the court in which the judgment was entered~~ **with the plumbing commission** for an order directing payment out of the plumbers recovery fund of the amount of actual and direct loss in the transaction that remains unpaid upon the judgment. The amount of actual and direct loss may include court costs but may not include attorney's fees or punitive damages awarded. The amount that may be paid from the plumbers recovery fund may not exceed twenty thousand dollars ($20,000) per judgment and an aggregate lifetime limit of fifty thousand dollars ($50,000) with respect to any one (1) licensee.

(b) This section applies only to a final judgment that awards damages for an act by the plumbing contractor described in subsection (a) that arises directly out of any transaction:

(1) that occurred when the plumbing contractor was licensed;

(2) for which a license was required under IC 25-28.5; and

(3) that occurred after December 31, 1987.

SECTION 11. IC 25-28.5-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) If the payment in full of two (2) or more pending valid claims that have been filed by aggrieved persons against a single plumbing contractor would exceed the fifty thousand dollar ($50,000) limit set forth in section 4 of this chapter, the fifty thousand dollars ($50,000) shall be distributed among the aggrieved persons in the ratio that their respective claims bear to the aggregate of all valid claims or in any other manner that ~~a court of record~~ **the plumbing commission** may determine equitable. This money shall be distributed among the persons entitled to share in it without regard to the order of priority in which their respective judgments have been obtained or their claims have been filed.

(b) ~~Upon petition of~~ The **plumbing** commission ~~the court may require~~ **shall consider pending applications filed by** all claimants and prospective claimants against a single plumbing ~~contractor to be joined in one (1) action,~~ **licensee jointly** to the end that the respective rights of all the claimants to the **plumbing** commission may be equitably

C o p y

adjudicated and settled.

(c) On June 30 and December 31 of each year, the plumbing commission shall identify each claim that the ~~court~~ **plumbing commission** orders to be paid during the six (6) month period that ended on that day. The **plumbing** commission shall pay the part of each claim that is so identified within fifteen (15) days after the end of the six (6) month period in which the claim is ordered paid. However, if the balance in the fund is insufficient to pay the full payable amount of each claim that is ordered to be paid during a six (6) month period, the **plumbing** commission shall pay a prorated portion of each claim that is ordered to be paid during the period. Any part of the payable amount of a claim left unpaid due to the prorating of payments under this subsection must be paid (subject to the fifty thousand dollar ($50,000) limit described in section 4 of this chapter) before the payment of claims ordered to be paid during the following six (6) month period.

SECTION 12. IC 25-28.5-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. An order for payment from the plumbers recovery fund may not be issued unless the action to recover from the plumbers recovery fund was commenced within two (2) years after the termination of all proceedings against the plumbing contractor for a violation under IC 25-1-11 or the plumbing codes of the state, including appeals and proceedings supplemental to judgment. When any person commences an action for a judgment that may result in an order for payment from the fund, the ~~plumbing contractor against whom the action has been taken~~ **person** shall notify the **plumbing** commission in writing of the commencement of the action.

SECTION 13. IC 25-28.5-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. **(a)** When any person files an application for an order directing payment from the plumbers recovery fund, the **plumbing** commission shall ~~be made a party defendant to the proceedings. The court shall conduct a hearing on~~ **promptly review and consider** the application, and it may issue an order directing payment out of the plumbers recovery fund, as provided in section 9 of this chapter, subject to the limitation of section 4 of this chapter, if the ~~court~~ **plumbing commission** finds:

(1) that there is no collusion between the judgment creditor and the judgment debtor;

(2) that the judgment creditor is making application not more than one (1) year after the termination of all proceedings in connection with the judgment, including appeals and proceedings

C o p y

supplemental to judgment for collection purposes;

~~(3) that the judgment creditor has caused to be issued a writ of execution on the judgment and the officer executing the writ has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale under the execution was insufficient to satisfy the judgment;~~

~~(4)~~ **(3)** that the judgment creditor has diligently pursued ~~the~~ **all available** creditor's remedies, **including proceedings supplemental, against the licensee who is the subject of the application filed under section 4 of this chapter,** against all the judgment debtors, and **against** all other persons liable to the creditor in the transaction for which the creditor seeks recovery from the plumbers recovery fund, **but that the diligent pursuit did not result in satisfaction of the judgment;**

~~(5)~~ **(4)** that a violation under IC 25-1-11 or the plumbing codes of the state arose directly out of a transaction that occurred when the judgment debtor was licensed and acted in a capacity for which a license is required under this article and that the transaction occurred after December 31, 1987; and

~~(6)~~ **(5)** that, in the event of a default judgment or a judgment entered upon stipulation of the parties, the judgment debtor's acts constituted a violation under IC 25-1-11 or the plumbing codes of the state.

(b) A person who is dissatisfied by:

(1) an order issued under subsection (a) directing payment from the plumbers recovery fund; or

(2) a denial of an application filed under section 4 of this chapter;

may petition for review under IC 4-21.5-3-7.

SECTION 14. IC 25-28.5-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. Upon a final order of the ~~court~~ **plumbing commission** directing that payment be made out of the plumbers recovery fund, the **plumbing** commission shall, subject to sections 4 through 5 of this chapter, make the payment out of the plumbers recovery fund as provided in section 5 of this chapter.

SECTION 15. IC 25-28.5-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. **(a)** If the **plumbing** commission is required to make any payment from the plumbers recovery fund in settlement of a claim or toward the satisfaction of ~~a judgment~~ **an order** under this chapter, the **plumbing** commission shall suspend the judgment debtor's license. The licensee is not eligible to be

C o p y

licensed again as either a plumbing contractor or journeyman plumber until the licensee has repaid in full the amount paid from the plumbers recovery fund with interest of twelve percent (12%) per annum.

(b) A license suspension issued under this section must be done in accordance with IC 4-21.5-3-6. The licensee may petition for review under IC 4-21.5-3-7.

SECTION 16. IC 25-28.5-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. When ~~upon order of any court,~~ the **plumbing** commission has **ordered and** caused payment to be made from the plumbers recovery fund to a judgment creditor, the **plumbing** commission is subrogated to the rights of the judgment creditor with respect to the amount paid.

SECTION 17. IC 25-34.1-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) If any aggrieved person obtains a final judgment in any court against a licensee to recover damages for any act of:

(1) embezzlement of money or property; or

(2) unlawfully obtaining money or property by false pretenses, use of a device, trickery, or forgery;

that results in an actual cash loss to the aggrieved person (as opposed to loss in market value), the person may, upon termination of all proceedings including appeals and proceedings supplemental to judgment for collection purposes, file a verified application ~~in the court in which the judgment was entered~~ **with the commission** for an order directing payment out of the real estate recovery fund of the amount of actual and direct loss in the transaction that remains unpaid upon the judgment. The amount of actual and direct loss may include court costs but may not include attorney's fees or punitive damages awarded. The amount that may be paid from the real estate recovery fund may not exceed twenty thousand dollars ($20,000) per judgment and an aggregate lifetime limit of fifty thousand dollars ($50,000) with respect to any one (1) licensee.

(b) This section applies only to a final judgment that awards damages for an act by the licensee described in subsections (a)(1) through (a)(2) that arises directly out of any transaction:

(1) that occurred when the licensee was licensed;

(2) for which a license was required under IC 25-34.1; and

(3) that occurred after December 31, 1987.

SECTION 18. IC 25-34.1-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) If the payment in full of two (2) or more pending valid claims that have been filed by aggrieved persons against a single licensee would exceed the fifty

C o p y

thousand dollar ($50,000) limit set forth in section 4 of this chapter, the fifty thousand dollars ($50,000) shall be distributed among the aggrieved persons in the ratio that their respective claims bear to the aggregate of all valid claims or in any other manner that ~~a court of record~~ **the commission** may determine equitable. This money shall be distributed among the persons entitled to share in it without regard to the order of priority in which their respective judgments have been obtained or their claims have been filed.

(b) ~~Upon petition of~~ The commission ~~the court may require~~ **shall consider pending applications filed by** all claimants and prospective claimants against one (1) licensee ~~to be joined in one (1) action,~~ **jointly** to the end that the respective rights of all the claimants to the commission may be equitably adjudicated and settled.

(c) On June 30 and December 31 of each year, the real estate commission shall identify each claim that the ~~court~~ **commission** orders to be paid during the six (6) month period that ended on that day. The commission shall pay the part of each claim that is so identified within fifteen (15) days after the end of the six (6) month period in which the claim is ordered paid. However, if the balance in the fund is insufficient to pay the full payable amount of each claim that is ordered to be paid during a six (6) month period, the commission shall pay a prorated portion of each claim that is ordered to be paid during the period. Any part of the payable amount of a claim left unpaid due to the prorating of payments under this subsection must be paid (subject to the fifty thousand dollar ($50,000) limit described in section 4 of this chapter) before the payment of claims ordered to be paid during the following six (6) month period.

SECTION 19. IC 25-34.1-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. **(a)** When any person files an application for an order directing payment from the real estate recovery fund, the commission shall ~~be made a party defendant to the proceedings. The court shall conduct a hearing on~~ **promptly review and consider** the application, and it may issue an order directing payment out of the real estate recovery fund, as provided in section 9 of this chapter, subject to the limitation of section 4 of this chapter, if the ~~court~~ **commission** finds:

(1) that there is no collusion between the judgment creditor and the judgment debtor;

(2) that the judgment creditor is making application not more than one (1) year after the termination of all proceedings in connection with the judgment, including appeals and proceedings supplemental to judgment for collection purposes;

C o p y

~~(3) that the judgment creditor has caused to be issued a writ of execution on the judgment and the officer executing the writ has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale under the execution was insufficient to satisfy the judgment;~~

~~(4)~~ **(3)** that the judgment creditor has diligently pursued ~~the~~ **all available** creditor's remedies, **including proceedings supplemental,** against **the licensee who is the subject of the application filed under section 4 of this chapter, against** all the judgment debtors, and **against** all other persons liable to the creditor in the transaction for which the creditor seeks recovery from the real estate recovery fund, **but that the diligent pursuit did not result in satisfaction of the judgment;**

~~(5)~~ **(4)** that the embezzlement of money or property, or the unlawfully obtaining of money or property by false pretenses, use of a device, trickery, or forgery, arose directly out of a transaction that occurred when the judgment debtor was licensed and acted in a capacity for which a license is required under this article and that the transaction occurred after December 31, 1987; and

~~(6)~~ **(5)** that, in the event of a default judgment or a judgment entered upon stipulation of the parties, the judgment debtor's acts constituted embezzlement of money or property, or the unlawful obtaining of money or property by false pretenses, use of a device, trickery, or forgery.

(b) A person who is dissatisfied by:

(1) an order issued under subsection (a) directing payment out of the real estate recovery fund; or

(2) a denial of an application filed under section 4 of this chapter;

may petition for review under IC 4-21.5-3-7.

SECTION 20. IC 25-34.1-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. Upon ~~a final~~ **an** order of the ~~court~~ **commission** directing that payment be made out of the real estate recovery fund, the commission shall, subject to sections 4 through 5 of this chapter, make the payment out of the real estate recovery fund as provided in section 5 of this chapter.

SECTION 21. IC 25-34.1-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. **(a)** If the commission is required to make any payment from the real estate recovery fund in settlement of a claim or toward the satisfaction of ~~a judgment~~ **an order** under this chapter, the commission shall suspend

C o p y

the judgment debtor's license and, if the judgment debtor is licensed under IC 25-34.1-3-3.1, the license of the individual designated broker, under this article. The licensee is not eligible to be licensed again either as a broker or a salesperson until the licensee has repaid in full the amount paid from the real estate recovery fund with interest of twelve percent (12%) per annum.

(b) A license suspension issued under this section must be done in accordance with IC 4-21.5-3-6. The licensee may petition for review under IC 4-21.5-3-7.

SECTION 22. IC 25-34.1-7-10, AS AMENDED BY P.L.127-2012, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. **(a)** If the commission is required to make any payment from the real estate recovery fund in settlement of a claim or toward the satisfaction of ~~a judgment~~ **an order** under this chapter, the commission shall suspend the judgment debtor's license and, if the judgment debtor is licensed under IC 25-34.1-3-4.1, the license of the individual designated broker, under this article. The licensee is not eligible to be licensed again as a broker until the licensee has repaid in full the amount paid from the real estate recovery fund with interest of twelve percent (12%) per annum.

(b) A license suspension issued under this section must be done in accordance with IC 4-21.5-3-6. The licensee may petition for review under IC 4-21.5-3-7.

SECTION 23. IC 25-34.1-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. When ~~upon order of any court,~~ the commission has **ordered and** caused payment to be made from the real estate recovery fund to a judgment creditor, the commission is subrogated to the rights of the judgment creditor with respect to the amount paid.

SECTION 24. IC 30-2-13-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 35. **(a)** It is a violation of this chapter for a seller to misrepresent the character, quality, durability, or suitability for a specific or an intended purpose of services or merchandise offered for sale to a purchaser.

(b) It is a violation of this chapter for a person to misrepresent the effect a purchase of prepaid services or merchandise may have on the purchaser's eligibility for Medicaid.

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Commerce, Economic Development and Technology, to which was referred Senate Bill No. 589, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 9, line 17, delete "laser hair removal and".

and when so amended that said bill do pass.

(Reference is to SB 589 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 7, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred Senate Bill 589, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

GUTWEIN, Chair

Committee Vote: yeas 11, nays 1.

C o p y