



Reprinted
April 2, 2013

ENGROSSED SENATE BILL No. 589

DIGEST OF SB 589 (Updated April 1, 2013 6:46 pm - 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.

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 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. 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.

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

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Mishler, Head

(HOUSE SPONSORS — FRIZZELL, BROWN C, NIEZGODSKI)

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.

March 25, 2013, read second time, amended, ordered engrossed.

March 26, 2013, engrossed. Call withdrawn.

March 28, 2013, returned to second reading.

April 1, 2013, re-read second time, amended, ordered engrossed.

ES 589—LS 7192/DI 14+



Reprinted
April 2, 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.

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:

- 1 SECTION 1. IC 16-39-2-6, AS AMENDED BY P.L.1-2007,
2 SECTION 136, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) Without the consent of the
4 patient, the patient's mental health record may only be disclosed as
5 follows:
6 (1) To individuals who meet the following conditions:
7 (A) Are employed by:
8 (i) the provider at the same facility or agency;
9 (ii) a managed care provider (as defined in
10 ~~IC 12-7-2-127(b)) IC 12-7-2-127~~); or
11 (iii) a health care provider or mental health care provider, if
12 the mental health records are needed to provide health care
13 or mental health services to the patient.
14 (B) Are involved in the planning, provision, and monitoring of
15 services.
16 (2) To the extent necessary to obtain payment for services
17 rendered or other benefits to which the patient may be entitled, as

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- 1 provided in IC 16-39-5-3.
- 2 (3) To the patient's court appointed counsel and to the Indiana
- 3 protection and advocacy services commission.
- 4 (4) For research conducted in accordance with IC 16-39-5-3 and
- 5 the rules of the division of mental health and addiction, the rules
- 6 of the division of disability and rehabilitative services, or the rules
- 7 of the provider.
- 8 (5) To the division of mental health and addiction for the purpose
- 9 of data collection, research, and monitoring managed care
- 10 providers (as defined in ~~IC 12-7-2-127(b)~~ **IC 12-7-2-127**) who
- 11 are operating under a contract with the division of mental health
- 12 and addiction.
- 13 (6) To the extent necessary to make reports or give testimony
- 14 required by the statutes pertaining to admissions, transfers,
- 15 discharges, and guardianship proceedings.
- 16 (7) To a law enforcement agency if any of the following
- 17 conditions are met:
 - 18 (A) A patient escapes from a facility to which the patient is
 - 19 committed under IC 12-26.
 - 20 (B) The superintendent of the facility determines that failure
 - 21 to provide the information may result in bodily harm to the
 - 22 patient or another individual.
 - 23 (C) A patient commits or threatens to commit a crime on
 - 24 facility premises or against facility personnel.
 - 25 (D) A patient is in the custody of a law enforcement officer or
 - 26 agency for any reason and:
 - 27 (i) the information to be released is limited to medications
 - 28 currently prescribed for the patient or to the patient's history
 - 29 of adverse medication reactions; and
 - 30 (ii) the provider determines that the release of the
 - 31 medication information will assist in protecting the health,
 - 32 safety, or welfare of the patient.
 - 33 Mental health records released under this clause must be
 - 34 maintained in confidence by the law enforcement agency
 - 35 receiving them.
- 36 (8) To a coroner or medical examiner, in the performance of the
- 37 individual's duties.
- 38 (9) To a school in which the patient is enrolled if the
- 39 superintendent of the facility determines that the information will
- 40 assist the school in meeting educational needs of a person with a
- 41 disability under 20 U.S.C. 1400 et seq.
- 42 (10) To the extent necessary to satisfy reporting requirements

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- 1 under the following statutes:
- 2 (A) IC 12-10-3-10.
- 3 (B) IC 12-24-17-5.
- 4 (C) IC 16-41-2-3.
- 5 (D) IC 31-25-3-2.
- 6 (E) IC 31-33-5-4.
- 7 (F) IC 34-30-16-2.
- 8 (G) IC 35-46-1-13.
- 9 (11) To the extent necessary to satisfy release of information
- 10 requirements under the following statutes:
- 11 (A) IC 12-24-11-2.
- 12 (B) IC 12-24-12-3, IC 12-24-12-4, and IC 12-24-12-6.
- 13 (C) IC 12-26-11.
- 14 (12) To another health care provider in a health care emergency.
- 15 (13) For legitimate business purposes as described in
- 16 IC 16-39-5-3.
- 17 (14) Under a court order under IC 16-39-3.
- 18 (15) With respect to records from a mental health or
- 19 developmental disability facility, to the United States Secret
- 20 Service if the following conditions are met:
- 21 (A) The request does not apply to alcohol or drug abuse
- 22 records described in 42 U.S.C. 290dd-2 unless authorized by
- 23 a court order under 42 U.S.C. 290dd-2(b)(2)(c).
- 24 (B) The request relates to the United States Secret Service's
- 25 protective responsibility and investigative authority under 18
- 26 U.S.C. 3056, 18 U.S.C. 871, or 18 U.S.C. 879.
- 27 (C) The request specifies an individual patient.
- 28 (D) The director or superintendent of the facility determines
- 29 that disclosure of the mental health record may be necessary
- 30 to protect a person under the protection of the United States
- 31 Secret Service from serious bodily injury or death.
- 32 (E) The United States Secret Service agrees to only use the
- 33 mental health record information for investigative purposes
- 34 and not disclose the information publicly.
- 35 (F) The mental health record information disclosed to the
- 36 United States Secret Service includes only:
- 37 (i) the patient's name, age, and address;
- 38 (ii) the date of the patient's admission to or discharge from
- 39 the facility; and
- 40 (iii) any information that indicates whether or not the patient
- 41 has a history of violence or presents a danger to the person
- 42 under protection.

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

3 (b) After information is disclosed under subsection (a)(15) and if the
4 patient is evaluated to be dangerous, the records shall be interpreted in
5 consultation with a licensed mental health professional on the staff of
6 the United States Secret Service.

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

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

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

18 (A) with notice; or

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

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

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

35 (b) If the board, after a hearing, determines that the activities in
36 which the person is engaged are subject to licensing, certification, or
37 registration under this title, the board may issue a cease and desist
38 order that must describe the person and activities that are the subject
39 of the order.

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

42 (d) A cease and desist order issued under this section is enforceable

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1 in the circuit or superior courts. A person who is enjoined under a
 2 cease and desist order and who violates the order shall be punished for
 3 contempt of court.

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

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

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

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

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

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

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

18 **(1) funeral home license;**

19 **(2) funeral director license;**

20 **(3) embalmer license; or**

21 **(4) cemetery registration.**

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

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

31 **(1) Court reporters.**

32 **(2) Transcripts.**

33 **(3) Certification of documents.**

34 **(4) Photo duplication.**

35 **(5) Witness attendance and mileage fees.**

36 **(6) Postage.**

37 **(7) Expert witnesses.**

38 **(8) Depositions.**

39 **(9) Notarizations.**

40 **(10) Administrative law judges.**

41 **(11) Real estate review appraisals.**

42 SECTION 3. IC 25-6.1-8-4 IS AMENDED TO READ AS

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

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

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

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

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

42 (c) On June 30 and December 31 of each year, the auctioneer



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1 commission shall identify each claim that the ~~court~~ **commission** orders
 2 to be paid during the six (6) month period that ended on that day. The
 3 commission shall pay the part of each claim that is so identified within
 4 fifteen (15) days after the end of the six (6) month period in which the
 5 claim is ordered paid. However, if the balance in the fund is
 6 insufficient to pay the full payable amount of each claim that is ordered
 7 to be paid during a six (6) month period, the commission shall pay a
 8 prorated portion of each claim that is ordered to be paid during the
 9 period. Any part of the payable amount of a claim left unpaid due to the
 10 prorating of payments under this subsection must be paid (subject to
 11 the fifty thousand dollar (\$50,000) limit described in section 4 of this
 12 chapter) before the payment of claims ordered to be paid during the
 13 following six (6) month period.

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

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

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

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

35 ~~(4)~~ **(3)** that the judgment creditor has diligently pursued ~~the~~ **all**
 36 **available** creditor's remedies, **including proceedings**
 37 **supplemental**, against ~~the licensee who is the subject of the~~
 38 **application filed under section 4 of this chapter**, against all the
 39 judgment debtors, and **against** all other persons liable to the
 40 creditor in the transaction for which the creditor seeks recovery
 41 from the auctioneer recovery fund, **but that the diligent pursuit**
 42 **did not result in satisfaction of the judgment;**



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1 ~~(5)~~ **(4)** that the failure to meet the obligations of a licensee under
 2 this article and the rules adopted under this article arose directly
 3 out of a transaction that occurred when the judgment debtor was
 4 licensed and acted in a capacity for which a license is required
 5 under this article and that the transaction occurred after December
 6 31, 1987; and
 7 ~~(6)~~ **(5)** that, in the event of a default judgment or a judgment
 8 entered upon stipulation of the parties, the judgment debtor's acts
 9 constituted failure to meet the obligations of a licensee under this
 10 article and the rules adopted under this article.

11 **(b) A person who is dissatisfied by:**

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

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

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

17 SECTION 6. IC 25-6.1-8-9 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. Upon a ~~final~~ **an**
 19 order of the ~~court~~ **commission** directing that payment be made out of
 20 the auctioneer recovery fund, the commission shall, subject to sections
 21 4 through 5 of this chapter, make the payment out of the auctioneer
 22 recovery fund as provided in section 5 of this chapter.

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

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

35 SECTION 8. IC 25-6.1-8-11 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. When ~~upon order~~
 37 ~~of any court~~, the commission has **ordered and** caused payment to be
 38 made from the auctioneer recovery fund to a judgment creditor, the
 39 commission is subrogated to the rights of the judgment creditor with
 40 respect to the amount paid.

41 SECTION 9. IC 25-22.5-1-1.1, AS AMENDED BY P.L.90-2007,
 42 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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- 1 JULY 1, 2013]: Sec. 1.1. As used in this article:
 2 (a) "Practice of medicine or osteopathic medicine" means any one
 3 (1) or a combination of the following:
 4 (1) Holding oneself out to the public as being engaged in:
 5 (A) the diagnosis, treatment, correction, or prevention of any
 6 disease, ailment, defect, injury, infirmity, deformity, pain, or
 7 other condition of human beings;
 8 (B) the suggestion, recommendation, or prescription or
 9 administration of any form of treatment, without limitation;
 10 (C) the performing of any kind of surgical operation upon a
 11 human being, including tattooing, except for tattooing (as
 12 defined in IC 35-42-2-7), in which human tissue is cut, burned,
 13 or vaporized by the use of any mechanical means, laser, or
 14 ionizing radiation, or the penetration of the skin or body orifice
 15 by any means, for the intended palliation, relief, or cure; or
 16 (D) the prevention of any physical, mental, or functional
 17 ailment or defect of any person.
 18 (2) The maintenance of an office or a place of business for the
 19 reception, examination, or treatment of persons suffering from
 20 disease, ailment, defect, injury, infirmity, deformity, pain, or other
 21 conditions of body or mind.
 22 (3) Attaching the designation "doctor of medicine", "M.D.",
 23 "doctor of osteopathy", "D.O.", "osteopathic medical physician",
 24 "physician", "surgeon", or "physician and surgeon", either alone
 25 or in connection with other words, or any other words or
 26 abbreviations to a name, indicating or inducing others to believe
 27 that the person is engaged in the practice of medicine or
 28 osteopathic medicine (as defined in this section).
 29 (4) Providing diagnostic or treatment services to a person in
 30 Indiana when the diagnostic or treatment services:
 31 (A) are transmitted through electronic communications; and
 32 (B) are on a regular, routine, and nonepisodic basis or under
 33 an oral or written agreement to regularly provide medical
 34 services.
 35 In addition to the exceptions described in section 2 of this chapter,
 36 a nonresident physician who is located outside Indiana does not
 37 practice medicine or osteopathy in Indiana by providing a second
 38 opinion to a licensee or diagnostic or treatment services to a
 39 patient in Indiana following medical care originally provided to
 40 the patient while outside Indiana.
 41 (b) "Board" refers to the medical licensing board of Indiana.
 42 (c) "Diagnose or diagnosis" means to examine a patient, parts of a

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1 patient's body, substances taken or removed from a patient's body, or
 2 materials produced by a patient's body to determine the source or
 3 nature of a disease or other physical or mental condition, or to hold
 4 oneself out or represent that a person is a physician and is so examining
 5 a patient. It is not necessary that the examination be made in the
 6 presence of the patient; it may be made on information supplied either
 7 directly or indirectly by the patient.

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

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

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

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

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

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

27 (1) is supervised by a physician;

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

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

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

36 (j) "Agency" refers to the Indiana professional licensing agency
 37 under IC 25-1-5.

38 SECTION 10. IC 25-28.5-2-4 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) If any aggrieved
 40 person obtains a final judgment in any court against any plumbing
 41 contractor to recover damages for a violation under IC 25-1-11 or the
 42 plumbing codes of the state (with or without a finding by the Indiana

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

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

- 17 (1) that occurred when the plumbing contractor was licensed;
- 18 (2) for which a license was required under IC 25-28.5; and
- 19 (3) that occurred after December 31, 1987.

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

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

38 (c) On June 30 and December 31 of each year, the plumbing
 39 commission shall identify each claim that the ~~court~~ **plumbing**
 40 **commission** orders to be paid during the six (6) month period that
 41 ended on that day. The **plumbing** commission shall pay the part of
 42 each claim that is so identified within fifteen (15) days after the end of

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1 the six (6) month period in which the claim is ordered paid. However,
 2 if the balance in the fund is insufficient to pay the full payable amount
 3 of each claim that is ordered to be paid during a six (6) month period,
 4 the **plumbing** commission shall pay a prorated portion of each claim
 5 that is ordered to be paid during the period. Any part of the payable
 6 amount of a claim left unpaid due to the prorating of payments under
 7 this subsection must be paid (subject to the fifty thousand dollar
 8 (\$50,000) limit described in section 4 of this chapter) before the
 9 payment of claims ordered to be paid during the following six (6)
 10 month period.

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

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

- 32 (1) that there is no collusion between the judgment creditor and
 33 the judgment debtor;
- 34 (2) that the judgment creditor is making application not more than
 35 one (1) year after the termination of all proceedings in connection
 36 with the judgment, including appeals and proceedings
 37 supplemental to judgment for collection purposes;
- 38 (3) that the judgment creditor has caused to be issued a writ of
 39 execution on the judgment and the officer executing the writ has
 40 made a return showing that no personal or real property of the
 41 judgment debtor liable to be levied upon in satisfaction of the
 42 judgment could be found or that the amount realized on the sale

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1 under the execution was insufficient to satisfy the judgment;
 2 ~~(4)~~ **(3)** that the judgment creditor has diligently pursued ~~the~~ **all**
 3 **available** creditor's remedies, **including proceedings**
 4 **supplemental, against the licensee who is the subject of the**
 5 **application filed under section 4 of this chapter**, against all the
 6 judgment debtors, and **against** all other persons liable to the
 7 creditor in the transaction for which the creditor seeks recovery
 8 from the plumbers recovery fund, **but that the diligent pursuit**
 9 **did not result in satisfaction of the judgment;**
 10 ~~(5)~~ **(4)** that a violation under IC 25-1-11 or the plumbing codes of
 11 the state arose directly out of a transaction that occurred when the
 12 judgment debtor was licensed and acted in a capacity for which
 13 a license is required under this article and that the transaction
 14 occurred after December 31, 1987; and
 15 ~~(6)~~ **(5)** that, in the event of a default judgment or a judgment
 16 entered upon stipulation of the parties, the judgment debtor's acts
 17 constituted a violation under IC 25-1-11 or the plumbing codes of
 18 the state.

19 **(b) A person who is dissatisfied by:**

- 20 **(1) an order issued under subsection (a) directing payment**
- 21 **from the plumbers recovery fund; or**
- 22 **(2) a denial of an application filed under section 4 of this**
- 23 **chapter;**

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

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

31 SECTION 15. IC 25-28.5-2-10 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. **(a)** If the **plumbing**
 33 commission is required to make any payment from the plumbers
 34 recovery fund in settlement of a claim or toward the satisfaction of a
 35 ~~judgment~~ **an order** under this chapter, the **plumbing** commission shall
 36 suspend the judgment debtor's license. The licensee is not eligible to be
 37 licensed again as either a plumbing contractor or journeyman plumber
 38 until the licensee has repaid in full the amount paid from the plumbers
 39 recovery fund with interest of twelve percent (12%) per annum.

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

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

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

- 11 (1) embezzlement of money or property; or
 12 (2) unlawfully obtaining money or property by false pretenses, use
 13 of a device, trickery, or forgery;

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

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

- 30 (1) that occurred when the licensee was licensed;
 31 (2) for which a license was required under IC 25-34.1; and
 32 (3) that occurred after December 31, 1987.

33 SECTION 18. IC 25-34.1-7-5 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) If the payment in
 35 full of two (2) or more pending valid claims that have been filed by
 36 aggrieved persons against a single licensee would exceed the fifty
 37 thousand dollar (\$50,000) limit set forth in section 4 of this chapter, the
 38 fifty thousand dollars (\$50,000) shall be distributed among the
 39 aggrieved persons in the ratio that their respective claims bear to the
 40 aggregate of all valid claims or in any other manner that ~~a court of~~
 41 ~~record~~ **the commission** may determine equitable. This money shall be
 42 distributed among the persons entitled to share in it without regard to



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1 the order of priority in which their respective judgments have been
2 obtained or their claims have been filed.

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

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

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

- 31 (1) that there is no collusion between the judgment creditor and
32 the judgment debtor;
- 33 (2) that the judgment creditor is making application not more than
34 one (1) year after the termination of all proceedings in connection
35 with the judgment, including appeals and proceedings
36 supplemental to judgment for collection purposes;
- 37 (3) that ~~the judgment creditor has caused to be issued a writ of~~
38 ~~execution on the judgment and the officer executing the writ has~~
39 ~~made a return showing that no personal or real property of the~~
40 ~~judgment debtor liable to be levied upon in satisfaction of the~~
41 ~~judgment could be found or that the amount realized on the sale~~
42 ~~under the execution was insufficient to satisfy the judgment;~~

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1 (4) (3) that the judgment creditor has diligently pursued ~~the~~ **all**
2 **available** creditor's remedies, **including proceedings**
3 **supplemental**, against **the licensee who is the subject of the**
4 **application filed under section 4 of this chapter, against** all the
5 judgment debtors, and **against** all other persons liable to the
6 creditor in the transaction for which the creditor seeks recovery
7 from the real estate recovery fund, **but that the diligent pursuit**
8 **did not result in satisfaction of the judgment;**
9 (5) (4) that the embezzlement of money or property, or the
10 unlawfully obtaining of money or property by false pretenses, use
11 of a device, trickery, or forgery, arose directly out of a transaction
12 that occurred when the judgment debtor was licensed and acted
13 in a capacity for which a license is required under this article and
14 that the transaction occurred after December 31, 1987; and
15 (6) (5) that, in the event of a default judgment or a judgment
16 entered upon stipulation of the parties, the judgment debtor's acts
17 constituted embezzlement of money or property, or the unlawful
18 obtaining of money or property by false pretenses, use of a device,
19 trickery, or forgery.

20 **(b) A person who is dissatisfied by:**

- 21 **(1) an order issued under subsection (a) directing payment out**
- 22 **of the real estate recovery fund; or**
- 23 **(2) a denial of an application filed under section 4 of this**
- 24 **chapter;**

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

26 SECTION 20. IC 25-34.1-7-9 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. Upon ~~a final~~ **an**
28 order of the ~~court~~ **commission** directing that payment be made out of
29 the real estate recovery fund, the commission shall, subject to sections
30 4 through 5 of this chapter, make the payment out of the real estate
31 recovery fund as provided in section 5 of this chapter.

32 SECTION 21. IC 25-34.1-7-10 (*CURRENT VERSION*) IS
33 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:
34 Sec. 10. **(a)** If the commission is required to make any payment from
35 the real estate recovery fund in settlement of a claim or toward the
36 satisfaction of ~~a judgment~~ **an order** under this chapter, the commission
37 shall suspend the judgment debtor's license and, if the judgment debtor
38 is licensed under IC 25-34.1-3-3.1, the license of the individual
39 designated broker, under this article. The licensee is not eligible to be
40 licensed again either as a broker or a salesperson until the licensee has
41 repaid in full the amount paid from the real estate recovery fund with
42 interest of twelve percent (12%) per annum.

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

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

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

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

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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.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 589 be amended to read as follows:

Page 16, line 38, after "IC 25-34.1-7-10" insert "*(CURRENT VERSION)*".

Page 17, line 10, after "25-34.1-7-10" insert "*(DELAYED VERSION)*".

Page 17, delete lines 30 through 37.

(Reference is to ESB 589 as printed March 8, 2013.)

FRIZZELL

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HOUSE MOTION

Mr. Speaker: I move that House Bill 589 be returned to the second reading calendar forthwith for the purpose of amendment.

FRIZZELL

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 589 be amended to read as follows:

Page 4, delete lines 3 through 8.

(Reference is to ESB 589 as reprinted March 26, 2013.)

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