

SENATE BILL No. 589

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-39-2-6; IC 25-1-7-14; IC 25-6.1-8; IC 25-22.5-1-1.1; IC 25-28.5-2; IC 25-34.1-7; IC 30-2-13-35.

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. 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. Amends the medical practice act to provide that laser hair removal constitutes the practice of medicine. Prohibits a person from misrepresenting the effect a purchase of prepaid funeral services and merchandise may have on the purchaser's eligibility for Medicaid.

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

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January 15, 2013, read first time and referred to Committee on Commerce, Economic Development & Technology.



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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.

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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



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

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

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

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

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

24 (A) with notice; or

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

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

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

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

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

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

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

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

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

- 14 (1) file complaints under subsection (a)(1);
 15 (2) issue show cause orders under subsection (a)(2); and
 16 (3) hold hearings and issue cease and desist orders under
 17 subsection (b);

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

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

- 24 (1) funeral home license;
 25 (2) funeral director license;
 26 (3) embalmer license; or
 27 (4) cemetery registration.

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

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

- 37 (1) Court reporters.
 38 (2) Transcripts.
 39 (3) Certification of documents.
 40 (4) Photo duplication.
 41 (5) Witness attendance and mileage fees.
 42 (6) Postage.

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1 **(7) Expert witnesses.**

2 **(8) Depositions.**

3 **(9) Notarizations.**

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

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

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

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

27 (1) that occurred when the licensee was licensed;

28 (2) for which a license was required under IC 25-6.1; and

29 (3) that occurred after December 31, 1987.

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

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

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

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

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

- 29 (1) that there is no collusion between the judgment creditor and
 30 the judgment debtor;
 31 (2) that the judgment creditor is making application not more than
 32 one (1) year after the termination of all proceedings in connection
 33 with the judgment, including appeals and proceedings
 34 supplemental to judgment for collection purposes;
 35 (3) that the judgment creditor has caused to be issued a writ of
 36 execution on the judgment and the officer executing the writ has
 37 made a return showing that no personal or real property of the
 38 judgment debtor liable to be levied upon in satisfaction of the
 39 judgment could be found or that the amount realized on the sale
 40 under the execution was insufficient to satisfy the judgment;
 41 ~~(4)~~ **(3)** that the judgment creditor has diligently pursued ~~the all~~
 42 **available** creditor's remedies, **including proceedings**



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

7 ~~(5)~~ **(4)** that the failure to meet the obligations of a licensee under
 8 this article and the rules adopted under this article arose directly
 9 out of a transaction that occurred when the judgment debtor was
 10 licensed and acted in a capacity for which a license is required
 11 under this article and that the transaction occurred after December
 12 31, 1987; and

13 ~~(6)~~ **(5)** that, in the event of a default judgment or a judgment
 14 entered upon stipulation of the parties, the judgment debtor's acts
 15 constituted failure to meet the obligations of a licensee under this
 16 article and the rules adopted under this article.

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

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

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

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

23 SECTION 6. IC 25-6.1-8-9 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. Upon a ~~final~~ **an**
 25 order of the ~~court~~ **commission** directing that payment be made out of
 26 the auctioneer recovery fund, the commission shall, subject to sections
 27 4 through 5 of this chapter, make the payment out of the auctioneer
 28 recovery fund as provided in section 5 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (A) are transmitted through electronic communications; and

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

42 In addition to the exceptions described in section 2 of this chapter,

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1 a nonresident physician who is located outside Indiana does not
 2 practice medicine or osteopathy in Indiana by providing a second
 3 opinion to a licensee or diagnostic or treatment services to a
 4 patient in Indiana following medical care originally provided to
 5 the patient while outside Indiana.

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

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

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

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

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

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

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

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

- 34 (1) is supervised by a physician;
- 35 (2) graduated from ~~a~~ **an approved** physician assistant program
 36 ~~accredited by an accrediting agency (as defined in~~
 37 ~~IC 25-27.5-2-4.5);~~ **described in IC 25-27.5-2-2;**
- 38 (3) passed the examination administered by the National
 39 Commission on Certification of Physician Assistants (NCCPA)
 40 and maintains certification; and
- 41 (4) has been licensed by the physician assistant committee under
 42 IC 25-27.5.

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

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

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

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

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

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

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1 of all the claimants to the **plumbing** commission may be equitably
2 adjudicated and settled.

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

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

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

- 39 (1) that there is no collusion between the judgment creditor and
40 the judgment debtor;
41 (2) that the judgment creditor is making application not more than
42 one (1) year after the termination of all proceedings in connection

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1 with the judgment, including appeals and proceedings
 2 supplemental to judgment for collection purposes;
 3 ~~(3)~~ (3) that the judgment creditor has caused to be issued a writ of
 4 execution on the judgment and the officer executing the writ has
 5 made a return showing that no personal or real property of the
 6 judgment debtor liable to be levied upon in satisfaction of the
 7 judgment could be found or that the amount realized on the sale
 8 under the execution was insufficient to satisfy the judgment;
 9 ~~(4)~~ (3) that the judgment creditor has diligently pursued ~~the~~ all
 10 available creditor's remedies, including proceedings
 11 supplemental, against the licensee who is the subject of the
 12 application filed under section 4 of this chapter, against all the
 13 judgment debtors, and against all other persons liable to the
 14 creditor in the transaction for which the creditor seeks recovery
 15 from the plumbers recovery fund, but that the diligent pursuit
 16 did not result in satisfaction of the judgment;
 17 ~~(5)~~ (4) that a violation under IC 25-1-11 or the plumbing codes of
 18 the state arose directly out of a transaction that occurred when the
 19 judgment debtor was licensed and acted in a capacity for which
 20 a license is required under this article and that the transaction
 21 occurred after December 31, 1987; and
 22 ~~(6)~~ (5) that, in the event of a default judgment or a judgment
 23 entered upon stipulation of the parties, the judgment debtor's acts
 24 constituted a violation under IC 25-1-11 or the plumbing codes of
 25 the state.

26 (b) A person who is dissatisfied by:

- 27 (1) an order issued under subsection (a) directing payment
- 28 from the plumbers recovery fund; or
- 29 (2) a denial of an application filed under section 4 of this
- 30 chapter;

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

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

38 SECTION 15. IC 25-28.5-2-10 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) If the ~~plumbing~~
 40 commission is required to make any payment from the plumbers
 41 recovery fund in settlement of a claim or toward the satisfaction of a
 42 judgment ~~an order~~ under this chapter, the ~~plumbing~~ commission shall

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1 suspend the judgment debtor's license. The licensee is not eligible to be
 2 licensed again as either a plumbing contractor or journeyman plumber
 3 until the licensee has repaid in full the amount paid from the plumbers
 4 recovery fund with interest of twelve percent (12%) per annum.

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

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

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

- 18 (1) embezzlement of money or property; or
 19 (2) unlawfully obtaining money or property by false pretenses, use
 20 of a device, trickery, or forgery;

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

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

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

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

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

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

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

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

- 38 (1) that there is no collusion between the judgment creditor and
 39 the judgment debtor;
 40 (2) that the judgment creditor is making application not more than
 41 one (1) year after the termination of all proceedings in connection
 42 with the judgment, including appeals and proceedings

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1 supplemental to judgment for collection purposes;
2 ~~(3)~~ that the judgment creditor has caused to be issued a writ of
3 execution on the judgment and the officer executing the writ has
4 made a return showing that no personal or real property of the
5 judgment debtor liable to be levied upon in satisfaction of the
6 judgment could be found or that the amount realized on the sale
7 under the execution was insufficient to satisfy the judgment;
8 ~~(4)~~ **(3)** that the judgment creditor has diligently pursued **the all**
9 **available** creditor's remedies, **including proceedings**
10 **supplemental**, against **the licensee who is the subject of the**
11 **application filed under section 4 of this chapter**, against all the
12 judgment debtors, and **against** all other persons liable to the
13 creditor in the transaction for which the creditor seeks recovery
14 from the real estate recovery fund, **but that the diligent pursuit**
15 **did not result in satisfaction of the judgment;**
16 ~~(5)~~ **(4)** that the embezzlement of money or property, or the
17 unlawfully obtaining of money or property by false pretenses, use
18 of a device, trickery, or forgery, arose directly out of a transaction
19 that occurred when the judgment debtor was licensed and acted
20 in a capacity for which a license is required under this article and
21 that the transaction occurred after December 31, 1987; and
22 ~~(6)~~ **(5)** that, in the event of a default judgment or a judgment
23 entered upon stipulation of the parties, the judgment debtor's acts
24 constituted embezzlement of money or property, or the unlawful
25 obtaining of money or property by false pretenses, use of a device,
26 trickery, or forgery.
27 **(b) A person who is dissatisfied by:**
28 **(1) an order issued under subsection (a) directing payment out**
29 **of the real estate recovery fund; or**
30 **(2) a denial of an application filed under section 4 of this**
31 **chapter;**
32 **may petition for review under IC 4-21.5-3-7.**
33 SECTION 20. IC 25-34.1-7-9 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. Upon ~~a final~~ **an**
35 order of the ~~court~~ **commission** directing that payment be made out of
36 the real estate recovery fund, the commission shall, subject to sections
37 4 through 5 of this chapter, make the payment out of the real estate
38 recovery fund as provided in section 5 of this chapter.
39 SECTION 21. IC 25-34.1-7-10 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. **(a)** If the
41 commission is required to make any payment from the real estate
42 recovery fund in settlement of a claim or toward the satisfaction of a

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

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

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

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

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

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

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

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