

#### **IC 5-4-4**

##### **Chapter 4. Insufficiency, Release, and Liability of Sureties**

#### **IC 5-4-4-1**

##### **Officers ceasing to do business; insufficient sureties; proceedings against officer**

Sec. 1. Whenever the clerk of the circuit court with jurisdiction in the county where an officer resides determines or a voter eligible to vote for an officer files an affidavit with the clerk stating that:

- (1) the sureties for the official bond of an officer have ceased to do business in Indiana;
- (2) the security for an official bond of an officer has become insufficient; or
- (3) the penalty has become inadequate to secure the faithful performance of the duties of an officer's office by the diminution of the penalty by suit, an increase of liabilities from the enactment of statutes after the commencement of an officer's term, or other sufficient cause;

the clerk shall issue a writ to the sheriff commanding the officer to appear before the judge of the circuit court with jurisdiction in the county in which the officer resides ten (10) days after the service of process and answer the complaint. The summons shall be served, return made, and fees charged as in the case of other summons.

*(Formerly: Acts 1852, IRS, c.12, s.1.) As amended by P.L.1-1990, SEC.52.*

#### **IC 5-4-4-2**

##### **Notice of hearing to judge**

Sec. 2. Such clerk, on the return of the process served, shall immediately notify such judge of the time and place of hearing such complaint, and such judge shall attend thereupon.

*(Formerly: Acts 1852, IRS, c.12, s.2.)*

#### **IC 5-4-4-3**

##### **Hearings; dismissal; new bond**

Sec. 3. At the time set therefor, whether the officer complained against appear or not, upon being satisfied of the legal service of such process, such judge shall hear and determine such complaint; and if he decide against the same, he shall dismiss it at the costs of the petitioner, unless such petitioner be such clerk, in which case he shall dismiss it without costs; but if he decide that such bond has become insufficient by the removal of the sureties, or that they are unable to discharge the penalty thereof, or that such penalty is inadequate to secure the official liabilities of such officer, such judge shall require a new bond, with sufficient additional sureties to his approval, to be executed and filed by such officer with him within ten (10) days thereafter, and tax the costs of such proceedings against him.

*(Formerly: Acts 1852, IRS, c.12, s.3.)*

**IC 5-4-4-4****Failure to file bond; vacating office**

Sec. 4. If such officer fail to file such bond within the time and in the manner prescribed in the preceding section, such judge shall declare his office vacant, and forthwith notify the governor thereof.  
*(Formerly: Acts 1852, IRS, c.12, s.4.)*

**IC 5-4-4-5****Repealed**

*(Repealed by P.L.1-1990, SEC.53.)*

**IC 5-4-4-6****Repealed**

*(Repealed by P.L.1-1990, SEC.53.)*

**IC 5-4-4-7****Failure to comply with order of court; vacating office**

Sec. 7. If the order of the court is not complied with, such judge shall declare such office vacant, and forthwith notify the governor thereof.  
*(Formerly: Acts 1852, IRS, c.12, s.7.)*

**IC 5-4-4-8****Release of surety**

Sec. 8. Whenever any surety in an official bond shall petition such judge, in writing, to be released therefrom, he shall cause a summons to be personally served on the officer complained of, by the sheriff of the county, commanding him to appear before such judge, ten days after the service thereof, and give additional bond and sureties; which summons shall be served on such officer in person, return thereof made, and fees thereon charged, as in case of a summons from the circuit court.  
*(Formerly: Acts 1852, IRS, c.12, s.8.)*

**IC 5-4-4-9****Release of surety; notice to judge**

Sec. 9. Such clerk, upon the return of the process provided for in section 8 of this chapter, shall notify the judge of the circuit court as is provided for in section 2 of this chapter.  
*(Formerly: Acts 1852, IRS, c.12, s.9.) As amended by P.L.25-1986, SEC.14.*

**IC 5-4-4-10****Taxation of costs**

Sec. 10. If, on the day set for the hearing of such complaint, such officer give a new bond and sureties to be approved of such judge, the costs of the proceeding shall be taxed against such petitioner; but if such officer fail to give such additional bond and sureties, such judge shall declare his office vacant, forthwith notify the governor thereof, and tax the costs of the proceeding against such officer.

*(Formerly: Acts 1852, IRS, c.12, s.10.)*

#### **IC 5-4-4-11**

##### **Filing new bond**

Sec. 11. Whenever a new bond is filed with such judge, as herein provided for, he shall forthwith file the same with the officer who by law has the custody thereof.

*(Formerly: Acts 1852, IRS, c.12, s.11.)*

#### **IC 5-4-4-12**

##### **Complaint against clerk of circuit court; duties assumed by auditor**

Sec. 12. If the officer against whom a complaint is filed under section 1 of this chapter is the clerk of the circuit court, the duties required to be performed by the clerk under this chapter shall be discharged by the auditor of the county.

*(Formerly: Acts 1852, IRS, c.12, s.12.) As amended by P.L.1-1990, SEC.54.*

#### **IC 5-4-4-13**

##### **Liabilities of old and new sureties**

Sec. 13. Where a new bond shall be required of any officer, the sureties of the old bond shall be liable only for the acts of such officer up to the time of the execution of such new bond; and the sureties of such new bond shall be liable only for the acts of such officer after the date of its execution.

*(Formerly: Acts 1852, IRS, c.12, s.13.)*

#### **IC 5-4-4-14**

##### **Liabilities of new sureties on old bond**

Sec. 14. Any officer required to execute a bond as provided herein, in consequence of the insufficiency of the sureties, may procure other sureties, to sign the old bond at the time set for the hearing of such petition, and if such judge shall deem such new sureties sufficient, no new bond shall be required; but such old bond, with the names of the new sureties subscribed thereto, shall be directed to be filed with the proper keeper of such bond; and such new sureties shall be liable for all the official acts of such officer from the original date of the execution of such bond; and such bond, thus signed by the additional sureties, shall be valid against the principal, the original and the new sureties; and all the sureties shall be jointly and severally liable for the official acts of such principal from the date of the original execution of such bond.

*(Formerly: Acts 1852, IRS, c.12, s.14.)*

#### **IC 5-4-4-15**

##### **Examination of official bonds; proceedings on insufficiency**

Sec. 15. The board of commissioners of each county shall examine all the official bonds filed in the office of the clerk of the circuit court and in the office of the auditor of such county, and also the bond of such clerk; and if the penalty of any such bond is

inadequate, or the sureties thereof are insufficient, or have removed from the state, except in case of the bond of the clerk, such board shall direct such clerk to cause the necessary proceedings to be had as herein provided to procure new bond or additional sureties. And in case of such clerk's bond, such board shall cause the auditor of such county to institute such proceedings; and in case such clerk or auditor fail to comply with the order of such board, they shall be liable on their bonds for any damage occasioned by such neglect growing out of any malfeasance or nonfeasance or default in office of the officers complained against. Such board may at any time institute such examination, of its own motion, as to the bond of any such officer, or may make such examination on petition of any taxpayer.

*(Formerly: Acts 1852, 1RS, c.12, s.15; Acts 1873, c.13, s.1.)*