Journal of the House

State of Indiana

113th General Assembly — First Regular Session

Fifty-second Meeting Day — **Thursday Morning** — **April 24, 2003**

The House convened at 9:00 a.m. with the Speaker in the Chair.

The invocation was offered by Pastor Bob Campbell, First United Methodist Church, Shelbyville, the guest of Representative W. Roland Stine.

The Pledge of Allegiance to the Flag was led by Representative Stine.

The Speaker ordered the roll of the House to be called:

T. Adams
Aguilera
Alderman
Austin
Avery
Ayres
Bardon
Becker
Behning
Bischoff
Borror
Bosma
Bottorff
C. Brown
T. Brown
Buck
Budak ⏏
Buell
Burton
Cheney
Cherry
Chowning
Cochran
Crawford
Crooks
Day
Denbo
Dickinson
Dobis
Duncan
Dvorak
Espich
Foley
Frenz
Friend
Frizzell
Fry
GiaQuinta ⏏
Goodin
Grubb
Gutwein
Harris
Hasler
Heim
Herrell
Hinkle
Hoffman
Kersey
Klinker
Koch
Kromkowski
Kruse
Kuzman
LaPlante
L. Lawson
Lehe
Leonard
Liggett
J. Lutz
Lytle ⏏
Mahern
Mangus
Mays
McClain
Moses
Murphy
Neese
Noe
Orentlicher
Oxley
Pelath
Pflum
Pierce
Pond
Porter
Reske
Richardson
Ripley
Robertson
Ruppel
Saunders
Scholer
V. Smith
Stevenson
Stilwell
Stine
Stutzman
Summers
Thomas
Thompson
Torr
Turner
Ulmer
Weinzapfel
Welch
Whetstone
Wolkins
D. Young
Yount
Mr. Speaker

Roll Call 630: 97 present; 3 excused. The Speaker announced a quorum in attendance. [*NOTE*: ⏏ *indicates those who were excused*.]

MESSAGE FROM THE GOVERNOR

Mr. Speaker and Members of the House: On April 23, 2003, I signed House Enrolled Joint Resolution 7.

FRANK O'BANNON
Governor

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has concurred in the House amendments to Engrossed Senate Bill 395.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report on Engrossed Senate Bills 238–1 and 340–1.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed Senate Concurrent Resolution 4 and the same is herewith transmitted to the House for further action.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed House Concurrent Resolution 73 and the same is herewith returned to the House.

MARY C. MENDEL
Principal Secretary of the Senate

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT
EHB 1552–1; filed April 23, 2003, at 5:03 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1552 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 6-1.1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. Land may be classified as a forest plantation if it is cleared land which has growing on it a good stand of timber producing trees as that concept is understood by ~~competent foresters.~~ **a district forester or a professional forester.**

SECTION 2. IC 6-1.1-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Land may be classified as native forest land if it ~~has never been plowed or cultivated and~~ contains at least forty (40) square feet of basal area per acre or at least ~~one thousand (1,000)~~ **four hundred (400)** timber producing trees, of any size, per acre.

SECTION 3. IC 6-1.1-6-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 3.5. (a) Open areas may exist within the confines of a parcel of land identified as a native forest or a forest plantation if the open areas do not exceed the lesser of five (5) acres or ten percent (10%) of the total area to be classified under this chapter and if the open areas contain any of the following:**

(1) Nonforest areas containing a good stand of vegetation capable of supporting wildlife that is conducive to wildlife management. A good stand of vegetation must include a diverse stand of vegetation other than monotypic stands or tall fescue (Festuca arundinacea). However, the state forester may allow tall fescue to be used for erosion control.

(2) Nonforest wetland areas.

(3) A body of water that:

(A) is less than two (2) acres in size; or

(B) has an average depth less than four (4) feet.

A parcel may contain more than one (1) isolated body of water.

(b) A parcel may not be converted from native forest land or a forest plantation to a non-forest area without a special permit issued under section 17 of this chapter.

SECTION 4. IC 6-1.1-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. For purposes of this chapter, the following types of trees are not considered timber producing trees: dogwoods (Cornus); water-beech (Carpinus); ironwood (Ostrya); red bud (Cercis); ~~sassafras; persimmon;~~ pawpaw; black haw; ~~willows (Salix);~~ pomaceous trees; ~~and~~ Christmas trees which are grown for commercial purposes; **and other trees listed by the state forester.**

SECTION 5. IC 6-1.1-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. A parcel of land may not be classified as native forest land or a forest plantation unless it contains at least ten (10) **contiguous** acres. ~~but~~ The parcel may be of any shape ~~whatsoever. This section does not apply to land classified before July 26, 1967.~~ **but must be at least fifty (50) feet in width.**

SECTION 6. IC 6-1.1-6-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 5.5. (a) A landowner may file an application with the state forester under section 11 of this chapter to have classified as native forest land or a forest plantation a parcel of land that:**

(1) consists of at least one (1) acre;

(2) meets the requirements of section 3 of this chapter; and

(3) is contiguous to a parcel of land owned by the landowner that is already classified as native forest land or a forest plantation.

(b) A parcel of land described in subsection (a) must be:

(1) described and platted under section 9 of this chapter; and

(2) assessed under section 10 of this chapter.

SECTION 7. IC 6-1.1-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. A parcel of land may not be classified as native forest land or as a forest plantation if a dwelling or other building is situated on the parcel. ~~However, this section does not apply if the building is utilized by the landowner for the purpose of maintaining a sugar camp or operating a sawmill.~~

SECTION 8. IC 6-1.1-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. A parcel of land may not be classified as native forest land or as a forest plantation if it is grazed by ~~a~~ domestic ~~animal. However, this section does not apply to domestic fowl if they do not have a detrimental effect on timber production.~~ **animals or confined nondomesticated animals.**

SECTION 9. IC 6-1.1-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) A person who wishes to have a parcel of land classified as native forest land or as a forest plantation must have ~~it surveyed~~ **the parcel described** by a registered land surveyor. The ~~surveyor shall make the survey~~ **parcel must be described** by metes and bounds **or other professionally accepted practices** and ~~he shall~~ **must** locate the parcel with reference to ~~some~~ **an** established corner. In addition, the ~~surveyor shall~~ **description must** identify the parcel by section, township, range, and county references. The surveyor shall prepare plats of the parcel in ink, and ~~he~~ **the surveyor** shall prepare the plats on the scale, and in the number, prescribed by the department of natural resources.

(b) The registered land surveyor may use an aerial photograph in order to ~~obtain~~ **prepare** a description of the parcel. However, the surveyor's description must be accurate and it must meet the requirements specified in subsection (a) of this section. If an aerial photograph is used, that fact shall be noted on the application referred to in section 11 of this chapter.

SECTION 10. IC 6-1.1-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. ~~(a) A person who wishes to have a parcel of land classified as native forest land or as a forest plantation must have the land assessed by the county assessor of the county in which the land is located.~~

~~(b)~~ **(a)** The county assessor shall assess the land at its fair market value, including any mineral, stone, oil, or gas value it may have; but, the county assesssor shall not consider the standing timber on the land in making the assessment. In addition to assessing the specific parcel of land, the county assessor shall also assess, at its fair market value, all of the remaining land (exclusive of improvements) which is situated in the section in which the land proposed for classification lies and which is not within a city or town. In making these assessments, the county assessor shall value each quarter section separately and shall designate the assessment for each quarter section.

~~(c)~~ **(b)** If the assessment made by the county assessor is not satisfactory to the owner, ~~he~~ **the owner** may appeal the assessment to a board consisting of the assessor, auditor, and treasurer of the county in which the land proposed for classification is located. The decision of the board is final.

SECTION 11. IC 6-1.1-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. ~~(a)~~ A person who wishes to have a parcel of land classified as native forest land or as a forest plantation must file an application in duplicate with the state forester on the forms prescribed by the state forester. The application must include the ~~following items:~~

~~(1) The plats referred to in section 9 of this chapter.~~

~~(2) The assessment required under section 10 of this chapter entered in ink by the county assessor.~~

~~(3) The~~ signature of the owner, the registered land surveyor, **the state forester,** and the county assessor.

~~(b) If an error or omission affecting the eligibility of the application is discovered by the state forester or county assessor, the state forester or county assessor shall promptly notify the applicant of the deficiency and allow the applicant to amend the application.~~

SECTION 12. IC 6-1.1-6-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. If in ~~his~~ **the state forester's** opinion an application filed under section 11 of this chapter and the land to be classified comply with the provisions of this chapter, the state forester shall approve the application. In addition, ~~he~~ **the state forester** shall notify the auditor ~~and the recorder~~ of the county in which the land is located that the application has been approved and ~~he shall~~ return one (1) approved application form to the applicant.

SECTION 13. IC 6-1.1-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. Land which is classified under this chapter as native forest land or as a forest plantation shall be assessed at one dollar ~~($1.00)~~ **($1)** per acre for general property taxation purposes.

SECTION 14. IC 6-1.1-6-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16. (a) The natural resources commission shall, by rule, establish minimum standards of good timber **and wildlife** management.

(b) The department of natural resources shall prescribe a ~~timber~~ management plan for each classified forest **parcel.**

(c) The management plan must be followed for the owner to be in compliance with this chapter.

SECTION 15. IC 6-1.1-6-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. ~~(a) The state forester may issue special permits for the establishment of small lake~~

~~areas, wildlife food plots, or similar uses that have the primary purpose of wildlife production or fire protection.~~ The state forester may ~~also~~ issue special permits for other purposes if the land use authorized by the permit is not inconsistent with this chapter. The maximum amount of land to be utilized in the manner authorized by a special permit may not exceed ~~one (1) acre.~~ **the lesser of the following:**

(1) Ten percent (10%) of the total acreage.

(2) Five (5) acres.

~~(b) The landowner shall record a special permit in the office of the recorder of the county in which the land is situated.~~

SECTION 16. IC 6-1.1-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. The owner of a parcel of land which is classified as native forest land or as a forest plantation shall ~~mark~~ **post four (4) signs on** the parcel. ~~with four (4) signs.~~ The owner shall place the signs on the boundaries of, and on different sides of, the parcel at the points which are the most conspicuous to the public **or at the property corners.** The department of natural resources shall furnish the signs and shall designate the size and the wording of the signs.

SECTION 17. IC 6-1.1-6-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. At least once every five (5) years the state forester, or ~~his~~ **the state forester's** deputy, shall inspect each parcel of land which is classified as native forest land, or as a forest plantation. On each inspection trip the **state** forester, or ~~his~~ **the state forester's** deputy, shall, if possible, have the owner go over the parcel with him and shall point out to the owner any needed improvement. In addition, ~~he~~ **the state forester** shall give the owner a written report of the inspection and ~~his~~ **the state forester's** recommendations. A permanent record of each inspection shall be maintained in the office of the state forester.

SECTION 18. IC 6-1.1-6-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 20. If the owner of land which is classified as native forest land or as a forest plantation wishes to have the land withdrawn from the classification, ~~he~~ **the owner** shall have the county assessor of the county in which the land is situated assess the land. The county assessor shall ~~make the assessment in the manner prescribed in section 10(b) of this chapter.~~ **determine the taxes that are required under section 24 of this chapter.** The owner shall then file a withdrawal request in duplicate with the state forester on forms prescribed by the state forester. The state forester shall withdraw the land from the classification on receipt of the withdrawal forms.

SECTION 19. IC 6-1.1-6-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 21. The state forester shall withdraw land which is classified as native forest land or as a forest plantation from the classification if ~~he~~ **the state forester** finds that the provisions of this chapter are not being complied with and that the owner of the land refuses to make the changes necessary for compliance. If the state forester withdraws land under this section, ~~he~~ **the state forester** shall have the county assessor of the county in which the land is situated assess the land. The county assessor shall ~~make the assessment in the manner prescribed in section 10(b) of this chapter.~~ **determine the taxes that are required under section 24 of this chapter.** In addition, the state forester shall immediately notify the owner that the land has been withdrawn.

SECTION 20. IC 6-1.1-6-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 22. If an assessment made by a county assessor under section 20 or section 21 of this chapter is not satisfactory to the owner, ~~he~~ **the owner** may appeal the assessment in the manner prescribed in section ~~10(c)~~ **10(b)** of this chapter.

SECTION 21. IC 6-1.1-6-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23. If land classified as native forest land or as a forest plantation is withdrawn from the classification, the state forester shall immediately notify the ~~recorder and the~~ auditor of the county in which the land is situated that the land has been withdrawn. In addition, when land is withdrawn, the owner of the land shall make a notation of the withdrawal in the records of the county recorder.

SECTION 22. IC 6-1.1-6-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 24. (a) If land that is classified as native forest land or as a forest plantation is withdrawn from the classification, the owner shall pay an amount equal to the sum of:

(1) the total property taxes that, if it were not for the classification, would have been assessed on the land during the period of classification or the ten (10) year period immediately preceding the date on which the land is withdrawn from the classification, whichever is lesser; plus

(2) interest on the property taxes at the rate of ten percent (10%) **simple interest** per year.

(b) The liability imposed by this section is a lien upon the land withdrawn from the classification. When the amount is collected, it shall be paid into the county general fund. If the amount is not paid, it shall be treated in the same manner the delinquent taxes on real property are treated.

(c) The county auditor shall determine the tax owed under subsection (a) using the assessment required in section 10(a) of this chapter.

SECTION 23. IC 6-1.1-6-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 26. The expense of the ~~survey~~ **surveyor's plat** required by section 9 of this chapter shall be paid by the applicant. The expense of ~~an assessment which is required under this chapter~~ **a recording** shall be paid ~~from the county general fund of the county in which the parcel is located. For his services in making an assessment which is required under this chapter, the county assessor shall receive his necessary expenses.~~ **by the applicant.**

SECTION 24. IC 6-1.1-6.2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. ~~For the purpose of property taxation certain~~ **This chapter applies to** ~~parcels~~ **a parcel** of land ~~may be~~ classified as **a** windbreak and assessed as provided in this chapter **before July 1, 2003.**

SECTION 25. IC 6-1.1-6.2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A person who wishes to have a parcel of land **that is** classified as a windbreak **withdrawn from classification under section 15 of this chapter** must have the land assessed by the county assessor of the county in which the land is located.

(b) If the assessment made by the county assessor is not satisfactory to the owner, the owner may appeal the assessment to a board consisting of the assessor, auditor, and treasurer of the county in which the land ~~proposed for classification~~ is located. The decision of the board is final.

SECTION 26. IC 6-1.1-6.5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 2.5. (a) A landowner may file an application with the department of natural resources under section 5 of this chapter to have a parcel of land classified as a wildlife habitat if:**

(1) the parcel consists of at least one (1) acre;

(2) the parcel is contiguous to a parcel of land owned by the landowner that is already classified as a wildlife habitat;

(3) the parcel contains a good stand of vegetation that is capable of supporting wildlife species;

(4) the parcel is conducive to wildlife management;

(5) the parcel does not contain a dwelling or other usable building;

(6) no part of the parcel lies within a licensed shooting preserve; and

(7) the landowner enters into an agreement with the department of natural resources establishing standards of wildlife management for the parcel as that concept is understood by competent wildlife biologists.

(b) A parcel of land described in subsection (a) must be surveyed and platted under section 3 of this chapter.

SECTION 27. IC 14-8-2-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 16.5. "Automated point of sale licensing system", for purposes of IC 14-22, has the meaning set forth in IC 14-22-12-7.5(a).**

SECTION 28. IC 14-8-2-65 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 65. "Dealer" has the

following meaning:

(1) For purposes of IC 14-16-1, the meaning set forth in IC 14-16-1-2.

~~(2) For purposes of IC 14-16-2, the meaning set forth in IC 14-16-2-2.~~

~~(3)~~ **(2)** For purposes of IC 14-24, **the term** means a person who grows or buys nursery stock for the purpose of reselling or reshipping the stock in Indiana.

SECTION 29. IC 14-8-2-87.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 87.7. "Farmland", for purposes of IC 14-22-11-1, has the meaning set forth in IC 14-22-11-1.**

SECTION 30. IC 14-8-2-107, AS AMENDED BY P.L.145-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 107. "Fund" has the following meaning:

(1) For purposes of IC 14-9-5, the meaning set forth in IC 14-9-5-1.

(2) For purposes of IC 14-9-8-21, the meaning set forth in IC 14-9-8-21.

(3) For purposes of IC 14-9-9, the meaning set forth in IC 14-9-9-3.

(4) For purposes of IC 14-12-1, the meaning set forth in IC 14-12-1-1.

(5) For purposes of IC 14-12-2, the meaning set forth in IC 14-12-2-2.

(6) For purposes of IC 14-12-3, the meaning set forth in IC 14-12-3-2.

(7) For purposes of IC 14-13-1, the meaning set forth in IC 14-13-1-2.

(8) For purposes of IC 14-13-2, the meaning set forth in IC 14-13-2-3.

(9) For purposes of ~~IC 14-19-4,~~ **IC 14-16-1,** the meaning set forth in ~~IC 14-19-4-1.~~ **IC 14-16-1-30.**

(10) For purposes of ~~IC 14-19-5,~~ **IC 14-19-8,** the meaning set forth in ~~IC 14-19-5-1.~~ **IC 14-19-8-1.**

(11) For purposes of IC 14-20-1, the meaning set forth in IC 14-20-1-3.

(12) For purposes of IC 14-20-11, the meaning set forth in IC 14-20-11-2.

(13) For purposes of IC 14-22-3, the meaning set forth in IC 14-22-3-1.

(14) For purposes of IC 14-22-4, the meaning set forth in IC 14-22-4-1.

(15) For purposes of IC 14-22-5, the meaning set forth in IC 14-22-5-1.

(16) For purposes of IC 14-22-8, the meaning set forth in IC 14-22-8-1.

(17) For purposes of IC 14-22-34, the meaning set forth in IC 14-22-34-2.

(18) For purposes of IC 14-23-3, the meaning set forth in IC 14-23-3-1.

(19) For purposes of IC 14-23-8, the meaning set forth in IC 14-23-8-1.

(20) For purposes of IC 14-25-2-4, the meaning set forth in IC 14-25-2-4.

(21) For purposes of IC 14-25-10, the meaning set forth in IC 14-25-10-1.

(22) For purposes of IC 14-25-11-19, the meaning set forth in IC 14-25-11-19.

(23) For purposes of IC 14-25.5, the meaning set forth in IC 14-25.5-1-3.

(24) For purposes of IC 14-28-5, the meaning set forth in IC 14-28-5-2.

(25) For purposes of IC 14-31-2, the meaning set forth in IC 14-31-2-5.

(26) For purposes of IC 14-25-12, the meaning set forth in IC 14-25-12-1.

(27) For purposes of IC 14-33-14, the meaning set forth in IC 14-33-14-3.

(28) For purposes of IC 14-33-21, the meaning set forth in IC 14-33-21-1.

(29) For purposes of IC 14-34-6-15, the meaning set forth in IC 14-34-6-15.

(30) For purposes of IC 14-34-14, the meaning set forth in IC 14-34-14-1.

(31) For purposes of IC 14-37-10, the meaning set forth in IC 14-37-10-1.

SECTION 31. IC 14-8-2-188 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 188. "Operate" has the following meaning:

(1) For purposes of IC 14-15, the act of navigating, driving, steering, sailing, rowing, paddling, or otherwise moving or exercising physical control over the movement of a watercraft.

(2) For purposes of IC 14-16-1, the meaning set forth in IC 14-16-1-4.

~~(3) For purposes of IC 14-16-2, the meaning set forth in IC 14-16-2-3.~~

SECTION 32. IC 14-8-2-190 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 190. "Operator" has the following meaning:

(1) For purposes of IC 14-16-1, the meaning set forth in IC 14-16-1-5.

~~(2) For purposes of IC 14-16-2, the meaning set forth in IC 14-16-2-4.~~

~~(3)~~ **(2)** For purposes of IC 14-34, except IC 14-34-4-8 and IC 14-34-8-4, a person, partnership, limited liability company, or corporation engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth by coal mining within twelve (12) consecutive months in one (1) location.

~~(4)~~ **(3)** For purposes of IC 14-34-4-8, the meaning set forth in IC 14-34-4-8.

~~(5)~~ **(4)** For purposes of IC 14-34-8-4, the meaning set forth in IC 14-34-8-4.

~~(6)~~ **(5)** For purposes of IC 14-36-1, the meaning set forth in IC 14-36-1-9.

~~(7)~~ **(6)** For purposes of IC 14-37, a person who:

(A) is issued a permit under IC 14-37; or

(B) is engaging in an activity for which a permit is required under IC 14-37.

SECTION 33. IC 14-8-2-195, AS AMENDED BY P.L.148-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 195. "Owner" has the following meaning:

(1) For purposes of IC 14-11-4, the meaning set forth in IC 14-11-4-2.

(2) For purposes of IC 14-15, a person who has the legal title to a watercraft.

(3) For purposes of IC 14-16-1, the meaning set forth in IC 14-16-1-6.

~~(4) For purposes of IC 14-16-2, the meaning set forth in IC 14-16-2-5.~~

~~(5)~~ **(4)** For purposes of IC 14-25-4, the meaning set forth in IC 14-25-4-4.

~~(6)~~ **(5)** For purposes of IC 14-27-7, the meaning set forth in IC 14-27-7-1.

~~(7)~~ **(6)** For purposes of IC 14-27-7.5, the meaning set forth in IC 14-27-7.5-4.

~~(8)~~ **(7)** For purposes of IC 14-36, the term includes the following:

(A) Owners in fee.

(B) Life tenants.

(C) Tenants for years.

(D) Holders of remainder of reversionary interests.

(E) Holders of leaseholds or easements.

(F) Holders of mineral rights.

~~(9)~~ **(8)** For purposes of IC 14-37, a person who has the right to drill into and produce from a pool and to appropriate the oil and gas produced from the pool for:

(A) the person or others; or

(B) the person and others.

~~(10)~~ **(9)** For the purposes of IC 14-22-10-2, the meaning set

forth in IC 14-22-10-2(c).

SECTION 34. IC 14-10-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) The department may adopt emergency rules under IC 4-22-2-37.1 to carry out the duties of the department under the following:

(1) IC 14-9.
(2) This article.
(3) IC 14-11.
(4) IC 14-12-2.
(5) IC 14-14.
(6) IC 14-17-3.
(7) IC 14-18, except IC 14-18-6 and IC 14-18-8.
(8) IC 14-19-1 ~~IC 14-19-4,~~ and ~~IC 14-19-5.~~ **IC 14-19-8.**
(9) IC 14-20-1.
(10) IC 14-21.
(11) IC 14-22-3, IC 14-22-4, and IC 14-22-5.
(12) IC 14-23-1.
(13) IC 14-25, except IC 14-25-8-3, IC 14-25-11, and IC 14-25-13.
(14) IC 14-26.
(15) IC 14-27.
(16) IC 14-28.
(17) IC 14-29.
(18) IC 14-35-1, IC 14-35-2, and IC 14-35-3.

(b) A rule adopted under subsection (a) expires not later than one (1) year after the rule is accepted for filing by the secretary of state.

SECTION 35. IC 14-16-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. It is the general intent and purpose of the general assembly in enacting this chapter to promote:

(1) safety for persons and property;
(2) responsible enjoyment in and connected with the use and operation of off-road vehicles **and snowmobiles;** and
(3) understanding consistent with the rights of all the citizens of Indiana.

SECTION 36. IC 14-16-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. As used in this chapter, "dealer" means a person engaged in the commercial sale of off-road vehicles **or snowmobiles.**

SECTION 37. IC 14-16-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) As used in this chapter, "off-road vehicle" means a motor driven vehicle capable of cross country travel:

(1) without benefit of a road; ~~or trail;~~ and
(2) on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain.

(b) The term includes the following:

(1) A multi-wheel drive or low pressure tire vehicle.
(2) An amphibious machine.
(3) A ground effect air cushion vehicle.
(4) Other means of transportation deriving motive power from a source other than muscle or wind.

(c) The term does not include the following:

(1) A farm vehicle being used for farming.
(2) A vehicle used for military or law enforcement purposes.
(3) A construction, mining, or other industrial related vehicle used in performance of the vehicle's common function.
(4) A snowmobile.
(5) A registered aircraft.
(6) Any other vehicle properly registered by the bureau of motor vehicles.
(7) Any watercraft that is registered under Indiana statutes.
(8) A golf cart vehicle.

SECTION 38. IC 14-16-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. As used in this chapter, "operator" means an individual who:

(1) operates; or
(2) is in actual physical control of;

an off-road vehicle **or a snowmobile.**

SECTION 39. IC 14-16-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. As used in this chapter, "owner" means a person, other than a lienholder, who:

(1) has the property in or title to; and
(2) is entitled to the use or possession of;

an off-road vehicle **or a snowmobile.**

SECTION 40. IC 14-16-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. As used in this chapter, "vehicle" refers to an off-road vehicle **or a snowmobile.**

SECTION 41. IC 14-16-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) Except as otherwise provided, ~~an off-road vehicle~~ **the following** may not be operated on public property unless registered:

(1) An off-road vehicle.
(2) A snowmobile.

(b) **Except as provided under subsection (c), an off-road vehicle that is purchased after December 31, 2003, must be registered under this chapter.**

(c) Registration is not required for **the following vehicles:**

(1) A vehicle that is exclusively operated in a special event of limited duration that is conducted according to a prearranged schedule under a permit from the governmental unit having jurisdiction.
(2) A vehicle being operated by a nonresident of Indiana as authorized under section 19 of this chapter.
(3) A vehicle being operated for purposes of testing or demonstration with temporary placement of numbers as set forth in section 16 of this chapter.
(4) A vehicle the operator of which has in the operator's possession a bill of sale from a dealer or private individual that includes the following:
(A) The purchaser's name and address.
(B) A date of purchase that is not more than thirty-one (31) days preceding the date that the operator is required to show the bill of sale.
(C) The make, model, and vehicle number of the vehicle provided by the manufacturer as required by section 13 of this chapter.

SECTION 42. IC 14-16-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The owner of each vehicle required to be registered under this chapter must do the following **every three (3) years:**

(1) File an application for registration with the department on forms provided by the department.
(2) Sign the application.
(3) **If the off-road vehicle is purchased after December 31, 2003, include a copy of the bill of sale.**
(4) Include a signed affidavit in which the applicant swears or affirms that the information set forth in the application by the applicant is correct.
(5) Pay a fee of ~~six~~ **thirty** dollars ~~($6).~~ **($30).**

(b) Upon receipt of an application in approved form, the department shall enter the application upon the department's records and issue to the applicant **the following:**

(1) A certificate of registration containing the following:
~~(1)~~ **(A)** The number awarded to the vehicle.
~~(2)~~ **(B)** The name and address of the owner.
~~(3)~~ **(C)** Other information that the department considers necessary.
(2) Two (2) decals indicating the vehicle's registration number and the year in which the registration will expire that must be attached to the vehicle as provided in section 11.5 of this chapter.

(c) A certificate of registration must:

(1) be pocket size;
(2) accompany the vehicle; and
(3) be made available for inspection upon demand by a law enforcement officer.

SECTION 43. IC 14-16-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. The revenues obtained under this chapter shall be ~~dedicated to the department for the following purposes:~~

~~(1) Enforcement.~~
~~(2) Constructing and maintaining vehicle trails.~~ **deposited into the off-road vehicle and snowmobile fund under**

IC 14-16-1-30.

SECTION 44. IC 14-16-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. ~~(a) The owner of a vehicle who has been issued a certificate of registration for the vehicle shall paint on or attach in a permanent manner to each side of the forward half of the vehicle the identification number in block characters of good proportion, not less than three (3) inches in height, reading from left to right. The numbers must contrast with the background so as to be distinctly visible and legible.~~

~~(b)~~ **(a)** The department may adopt rules for the size and placement of ~~identification numbers~~ **registration decals** upon vehicles. ~~to which, because of structural design, the identification number cannot be attached as provided in this section.~~

~~(c)~~ **(b)** Not earlier than ninety (90) days before the expiration date of a certificate, a registration renewal decal or other device may be issued indicating that the certificate of registration is in full force and effect. The department shall adopt rules under IC 4-22-2 prescribing the display of the decal or other device.

~~(d)~~ **(c)** An initial certificate of registration and a renewal of a certificate awarded under this chapter expires three (3) years from the date of purchase of the certificate unless the certificate is canceled.

~~(e)~~ **(d)** The department may:

(1) award a certificate of number directly; or

(2) authorize a person to act as the department's agent for the awarding.

SECTION 45. IC 14-16-1-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 11.5. (a) The owner of a vehicle shall attach the decals issued under section 9 of this chapter on the forward half of the vehicle. All decals shall be maintained in a legible condition and displayed only for the period for which the registration is valid.**

(b) If a registration decal is lost or destroyed, the owner may apply for a duplicate on forms provided by the department. An application submitted under this subsection must be accompanied by a fee established by the department for each decal. Upon receipt of a proper application and the required fee, the department shall issue a duplicate registration decal to the owner.

SECTION 46. IC 14-16-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) The owner of a vehicle **required to be registered under this chapter** shall notify the department within fifteen (15) days if any of the following conditions exist:

(1) The vehicle is destroyed or abandoned.

(2) The vehicle is sold or an interest in the vehicle is transferred wholly or in part to another person.

(3) The owner's address no longer conforms to the address appearing on the certificate of registration.

(b) The notice must consist of a surrender of the certificate of registration on which the proper information shall be noted on a place to be provided.

(c) If the surrender of the certificate is required because the vehicle is destroyed or abandoned, the department shall cancel the certificate and enter that fact in the records. The number then may be reassigned.

(d) If the surrender is required because of a change of address on the part of the owner, the department shall record the new address. Upon payment of a fee ~~of one dollar ($1),~~ **established by the department,** a certificate of registration bearing the new information shall be returned to the owner.

(e) The transferee of a vehicle registered under this chapter shall, within fifteen (15) days after acquiring the vehicle, make application to the department for transfer to the transferee of the certificate of registration issued to the vehicle. The transferee shall provide the transferee's name and address and the number of the vehicle and pay to the department a fee ~~of one dollar ($1).~~ **established by the department.** Upon receipt of the application and fee, the department shall transfer the certificate of registration issued for the vehicle to the new owner. Unless the application is made and the fee paid within fifteen (15) days, the vehicle is considered to be without a certificate of registration and a person may not operate the vehicle until a certificate is issued.

SECTION 47. IC 14-16-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. If a certificate of registration is lost, mutilated, or illegible, the owner of the vehicle may obtain a duplicate of the certificate upon application and payment of a fee ~~of one dollar ($1).~~ **established by the department.**

SECTION 48. IC 14-16-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16. (a) A dealer or manufacturer may obtain certificates of registration for use in the testing or demonstrating of vehicles upon the following:

(1) Application to the department upon forms provided by the department.

(2) Payment of ~~ten dollars ($10)~~ **a fee established by the department** for each of the first two (2) registration certificates. Additional certificates that the dealer requires may be issued ~~at a cost of five dollars ($5) each.~~ **for a fee established by the department.**

(b) An applicant may use a certificate issued under this section only in the testing or demonstrating of vehicles by temporary placement of the numbers on the vehicle being tested or demonstrated. A certificate issued under this section may be used on only one (1) vehicle at any given time. The temporary placement of numbers must conform to the requirements of this chapter or rules adopted under this chapter.

(c) A certificate issued under this section is valid for three (3) years.

SECTION 49. IC 14-16-1-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 22. A county, city, or town may pass an ordinance regulating the operation of vehicles if the ordinance meets substantially the minimum requirements of this chapter. However, a county, city, or town may not adopt an ordinance that does any of the following:

(1) Imposes a fee for a license.

(2) Specifies accessory equipment to be carried on the vehicles.

(3) Requires a vehicle operator to possess a driver's license issued under IC 9-24-11 while operating an off-road vehicle or snowmobile.

SECTION 50. IC 14-16-1-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23. **(a)** An individual shall not operate a vehicle under any of the following conditions:

(1) At a rate of speed greater than is reasonable and proper having due regard for existing conditions **or in a manner that unnecessarily endangers the person or property of another.**

(2) While:

(A) under the influence of intoxicating liquor; or

(B) unlawfully under the influence of a narcotic or other habit forming or dangerous depressant or stimulant drug.

(3) During the hours from thirty (30) minutes after sunset to thirty (30) minutes before sunrise without displaying a lighted headlight and a lighted taillight.

(4) In a forest nursery, a planting area, or public land posted or reasonably identified as an area of forest or plant reproduction and when growing stock may be damaged.

(5) On the frozen surface of public waters within:

(A) one hundred (100) feet of an individual not in or upon a vehicle; or

(B) one hundred (100) feet of a fishing shanty or shelter;

except at a speed of not more than five (5) miles per hour.

(6) Unless the vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke.

(7) Within one hundred (100) feet of a dwelling between midnight and 6:00 a.m., except on the individual's own property or property under the individual's control or as an invited guest.

(8) On any property without the consent of the landowner or tenant.

(9) While transporting on or in the vehicle a firearm unless the firearm is:

(A) unloaded; and

(B) securely encased or equipped with and made inoperative by a manufactured keylocked trigger housing mechanism.

(10) On or across a cemetery or burial ground.
(11) Within one hundred (100) feet of a slide, ski, or skating area, except for the purpose of servicing the area.
(12) On a railroad track or railroad right-of-way, except railroad personnel in the performance of duties.
(13) In or upon a flowing river, stream, or creek, except for the purpose of crossing by the shortest possible route, unless the river, stream, or creek is of sufficient water depth to permit movement by flotation of the vehicle at all times.
(14) An individual shall not operate a vehicle while a bow is present in or on the vehicle if the nock of an arrow is in position on the string of the bow.

(b) Subsection (a)(9) does not apply to a person who is carrying a handgun if the person:
(1) has been issued an unlimited handgun license to carry a handgun under IC 35-47-2; or
(2) is not required to possess a license to carry a handgun under IC 35-47-2-2.

SECTION 51. IC 14-16-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 24. (a) The operator of a vehicle involved in an accident resulting in ~~injuries~~ **serious bodily injury** to or death of an individual or property damage in an estimated amount of at least ~~one~~ **seven** hundred **fifty** dollars ~~($100)~~ **($750)** shall immediately, by the quickest means of communication, notify at least one (1) of the following:
(1) A state police officer or conservation officer.
(2) The sheriff's office of the county where the accident occurred.
(3) The office of the police department of the municipality where the accident occurred.
(b) The police agency receiving the notice shall do the following:
(1) Complete a report of the accident on forms prescribed by the director.
(2) Forward the report to the director.

SECTION 52. IC 14-16-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 25. (a) All law enforcement officers in Indiana ~~including every enforcement officer of the department,~~ shall enforce this chapter.
(b) The attorney general and prosecuting attorneys have concurrent power to approve, file, and prosecute an affidavit charging a violation of this chapter.

SECTION 53. IC 14-16-1-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 26. **(a)** The department shall do the following:
(1) Prescribe the form of accident reports and registration certificates and the form of application for the certificates.
(2) Conduct a campaign of education with respect to safety in the operation of vehicles in connection with the use and enjoyment of the public and private land of Indiana and with respect to Indiana laws relating to vehicles.
(3) Construct and maintain vehicle trails on public and private land consistent with the intent of this chapter.

(b) Notwithstanding any other law, the department may purchase land for off-road vehicle and snowmobile trails only from a willing seller of the land.

SECTION 54. IC 14-16-1-29, AS AMENDED BY P.L.158-2002, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 29. (a) **Except as provided in subsection (b),** a person who violates ~~section 17, 23(2), or 24 of this chapter commits a Class B misdemeanor.~~
~~(b) A person who violates section 8, 9, 11, 12, 13, 14, 18, 19, 20, 21, 23(1), 23(3), 23(4), 23(5), 23(6), 23(7), 23(8), 23(9), 23(10), 23(11), 23(12), 23(13), 23(14), or 27 of~~ this chapter commits a Class C infraction.

(b) A person who violates section 18, 23(1), 23(2), or 24 of this chapter commits a Class B misdemeanor.

SECTION 55. IC 14-16-1-30 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 30. (a) As used in this section, "fund" refers to the off-road vehicle and snowmobile fund established by subsection (b).**
(b) The off-road vehicle and snowmobile fund is established. The fund shall be administered by the department.
(c) The fund consists of the revenues obtained under this chapter, appropriations, and donations. Money in the fund shall be used for the following purposes:
(1) Enforcement and administration of this chapter.
(2) Constructing and maintaining off-road vehicle trails.
(3) Constructing and maintaining snowmobile trails.
(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.
(e) Money in the fund at the end of the state fiscal year does not revert to the state general fund.

SECTION 56. IC 14-19-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:
Chapter 8. State Parks and Reservoirs Special Revenue Fund
Sec. 1. As used in this chapter, "fund" refers to the state parks and reservoirs special revenue fund established by section 2 of this chapter.
Sec. 2. (a) The state parks and reservoirs special revenue fund is established.
(b) The fund shall be administered by the department.
Sec. 3. (a) The fund consists of the following:
(1) All revenues accruing to the department from the operation of the state parks.
(2) All revenues accruing to the department from the operation of reservoirs.
(3) Other sources as specified by law.
(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.
Sec. 4. The money in the fund may be expended by the director exclusively for the operation of the state parks and reservoirs. The director shall submit, in accordance with IC 4-12-1, a suggested budget for appropriations and expenditures from the fund. The director shall use money appropriated by the general assembly from the fund to the department in accordance with this chapter and the terms of the appropriation.
Sec. 5. Unencumbered parts of appropriations made for a state fiscal year from the fund revert to the fund at the end of that state fiscal year unless otherwise specified by statute. Money in the fund does not revert to the state general fund at the end of a state fiscal year.

SECTION 57. IC 14-22-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Except as provided in subsection (b), the money in the fund shall be used for the following purposes:
(1) Protecting and propagating game, fish, and birds in Indiana.
(2) Paying the operational expenses of the following:
(A) The fish and wildlife division.
(B) The law enforcement division.
(3) Maintaining the automated point of sale licensing system implemented under IC 14-22-12-7.5. However, the amount that may be used under this subdivision during a fiscal year may not exceed the amount transferred on July 1 of that fiscal year under IC 14-22-4-6.
(b) Money in the fund that is attributable to money deposited under IC 33-19-7-5 shall be used to administer the following:
(1) The turn in a poacher program established under IC 14-9-8-23.
(2) The reward system established under the program.

SECTION 58. IC 14-22-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) On July 1 of each year:
(1) all of the accumulated earnings in the fund; plus
(2) two and one-half percent (2 ½%) of the money in the fund, less the accumulated earnings;
shall be transferred to the fish and wildlife fund **to maintain the automated point of sale licensing system implemented under IC 14-22-12-7.5. Any unused part of the transfer under this subsection may be used for the other purposes specified in**

IC 14-22-3-5(a).

(b) The money in the fund may be used for no other purpose.

SECTION 59. IC 14-22-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. A person may not:

(1) fish, hunt, trap, or chase; ~~or~~

(2) shoot with any kind of firearm **or archery equipment;**

(3) search for or gather any plant life (defined as the members of the kingdoms Fungi and Plantae); or

(4) search for or gather any artifacts (as defined in IC 14-21-1-2);

upon privately owned land without having the consent of the owner or tenant of the land.

SECTION 60. IC 14-22-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) **As used in this section, "farmland" means agricultural land that is:**

(1) devoted or best adaptable for the production of crops, fruits, timber, and the raising of livestock; or

(2) assessed as agricultural land for property tax purposes.

(b) An individual may not take or chase, with or without dogs, a wild animal without having a license, except as follows:

(1) An individual who is a resident or nonresident of Indiana while participating in a field trial that has been sanctioned by the director is not required to possess a license while participating in the trial.

(2) Subject to subsection ~~(c),~~ **(d),** an owner of farmland located in Indiana who is a resident or nonresident of Indiana and the spouse and children living with the owner may hunt, fish, and trap without a license on the land that the owner owns.

(3) A lessee of farmland who farms that land and is a resident of Indiana and the spouse and children living with the lessee may hunt, fish, and trap without a license on the leased land. This subdivision does not apply to land that is:

(A) owned, leased, or controlled by; and

(B) leased from;

the department.

(4) An individual who:

(A) is less than thirteen (13) years of age;

(B) does not possess a bow or firearm; and

(C) is accompanying an individual who:

(i) is at least eighteen (18) years of age; and

(ii) holds a valid license;

may chase a wild animal without having a license.

~~(b)~~ **(c)** The exceptions provided in this section do not apply to a commercial license issued under this article.

~~(c)~~ **(d)** The right of a nonresident who owns farmland in Indiana (and of the spouse and children who reside with the nonresident) to hunt, fish, and trap on the farmland without a license under subsection ~~(a)(2)~~ **(b)(2)** is subject to the following conditions:

(1) The nonresident may hunt, fish, and trap on the farmland without a license only if the state in which the nonresident resides allows residents of Indiana who own land in that state to hunt, fish, and trap on their land without a license.

(2) While hunting, fishing, or trapping on the farmland, the nonresident must keep proof that the nonresident owns the farmland (for example, a tax receipt identifying the nonresident as owner) in a place where the proof is readily accessible by the nonresident.

SECTION 61. IC 14-22-12-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 7.5. (a) As used in this section, "automated point of sale licensing system" means a system designed to dispense hunting, fishing, and trapping licenses.**

(b) Before July 1, 2005, the department shall develop and implement an automated point of sale licensing system for use in Indiana for the sale of hunting, fishing, and trapping licenses to residents and nonresidents of Indiana.

(c) The department shall adopt rules under IC 4-22-2 to implement this section.

SECTION 62. IC 14-22-12-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. ~~(a) Except as provided in subsection (b),~~ Each license agent who is authorized to sell licenses under this article shall retain a seventy-five cent ($0.75) service fee for each license sold.

~~(b) The subagents of the clerk of the circuit court are entitled to a fifty cent ($0.50) service fee for each license sold. The remaining twenty-five cents ($0.25) of the service fee shall be retained by the clerk of the circuit court or the distributing agent who distributes licenses to the subagents.~~

SECTION 63. IC 14-22-12-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. ~~(a) Each clerk of the circuit court or agent selling licenses under this article shall report to the director within five (5) days after the close of each quarter the following:~~

~~(1) The number of each respective kind of licenses sold during the preceding quarter.~~

~~(2) The serial numbers of the licenses.~~

~~(3) The number of unsold licenses of each kind remaining in the possession of the clerk or agent.~~

~~(b) At the time of making the report, the clerk or agent shall remit all money collected for the licenses.~~

~~(c)~~ The clerk of the circuit court in each county shall retain as the property of the county the service fees provided by section 8 of this chapter from the sale of licenses sold by the clerk. The clerk shall pay the fees promptly into the county general fund as other fees are paid. ~~subject to section 12 of this chapter.~~

SECTION 64. IC 14-22-12-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. **(a)** Agents designated by the director and serving directly under the director's supervision must ~~be bonded in the same manner and to the same effect as subagents.~~ **execute a bond meeting the following requirements:**

(1) The bond is payable to the state in an amount:

(A) not less than five thousand dollars ($5,000); but

(B) sufficient to cover the value of licenses distributed to the agent.

(2) The surety is approved by the director.

(3) The bond is conditioned on the proper selling of the licenses and proper accounting for all money due to the state.

(b) An agent's obligations under this section expire on the earlier of:

(1) the date on which the agent begins offering hunting, fishing, and trapping licenses for sale under an automated point of sale licensing system implemented under section 7.5 of this chapter; or

(2) July 1, 2005.

SECTION 65. IC 14-22-39-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A conservation officer may issue a summons for a violation committed within the view of the conservation officer. ~~if the defendant promises to appear by signing the summons~~

(b) A defendant who fails to appear as commanded by the summons

~~(1)~~ is in contempt of court. ~~and~~

~~(2) may be fined not more than twenty dollars ($20).~~

(c) Upon a failure to appear, the court shall issue a warrant for the arrest of the defendant.

(d) This subsection applies to a warrant issued under subsection (c) for the arrest of a defendant who is an Indiana resident. If the warrant is not executed within thirty (30) days after issue, the court shall promptly forward the court copy of the summons to the bureau of motor vehicles indicating that the defendant failed to appear in court as ordered. The court shall then mark the case as failure to appear on the court's records.

(e) This subsection applies to a warrant issued under subsection (c) for the arrest of a defendant who is not an Indiana resident. If the warrant is not executed within thirty (30) days after issue, the court shall promptly forward the court copy of the summons to the bureau of motor vehicles. The bureau of motor vehicles shall notify the bureau of motor vehicles commission of the state of the nonresident defendant of the defendant's failure to appear and also of any action taken by the bureau of motor vehicles relative to the Indiana driving privileges of the defendant. The court shall then mark the case

as failure to appear on the court's records.

(f) If the bureau of motor vehicles receives a copy of the summons or a summons for failure to appear in court, the bureau of motor vehicles shall suspend the driving privileges of the defendant until the defendant appears in court and the case has been disposed of. The order of suspension may be served upon the defendant by mailing the order by certified mail, return receipt requested, to the defendant at the last address shown for the defendant in the records of the bureau of motor vehicles. The order takes effect on the date the order is mailed.

(g) For nonresidents of Indiana, the order of suspension shall be mailed to the defendant at the address given to the arresting conservation officer by the defendant as shown by the signed summons. The order takes effect on the date of mailing. A copy of the order shall also be sent to the bureau of motor vehicles of the state of the nonresident defendant. If:

(1) the defendant's failure to appear in court has been certified to the bureau of motor vehicles under this chapter; and

(2) the defendant subsequently appears in court to answer the charges against the defendant;

the court shall proceed to hear and determine the case in the same manner as other cases pending in the court. Upon final determination of the case, the court shall notify the bureau of motor vehicles of the determination upon forms prescribed by the bureau of motor vehicles. The notification shall be made by the court within ten (10) days after the final determination of the case, and the original copy of the summons must accompany the notification.

SECTION 66. IC 14-24-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The department shall collect the following fees:

(1) For each license issued to a dealer, ~~thirty~~ **fifty** dollars ~~($30).~~ **($50).** However, a certified nurseryman who has paid an inspection fee may obtain a dealer's license for ~~ten~~ **twenty** dollars ~~($10).~~ **($20).**

(2) For the inspection of a nursery, ~~twenty~~ **fifty** dollars ~~($20)~~ **($50)** plus an additional fee of ~~one dollar and fifty cents ($1.50)~~ **three dollars ($3)** for each acre of land containing nursery stock.

~~(3) For the sale of a directory of persons licensed by the division to a person who is not licensed, three dollars ($3).~~

(b) The fees collected under this section shall be deposited in the ~~state general~~ **entomology and plant pathology** fund **established by section 3 of this chapter.**

SECTION 67. IC 14-24-10-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4. The department shall publish on the Internet a directory of persons who have obtained nursery certificates and nursery dealer licenses from the division under IC 14-24-5 and IC 14-24-7.**

SECTION 68. IC 14-25-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) As used in this section, "fund" refers to the water resources development fund created by this section.

(b) The water resources development fund is created. Money paid to the state under a contract entered into under this chapter shall be deposited in the fund.

(c) The proceeds of the fund do not revert to the state general fund but constitute a revolving fund to be used exclusively for the purposes of this chapter.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from the investments shall be deposited in the fund.

(e) ~~The budget agency shall make fund allotments from the fund to the commission~~ **Money in the fund may be used** for any of the following purposes:

(1) The development of new reservoirs.

(2) The investigation, development, and improvement of existing reservoirs.

(3) The acquisition of easements or purchase in fee simple of land and property to be used as reservoir sites.

(4) The financing, construction, operation, and maintenance of reservoir impoundments or parts of impoundments for water supply storage and uses, either independently or in cooperation with any person.

(5) The investigation of water resource availability, quality, and water supply needs.

(6) Watershed protection.

(7) River enhancement.

(8) The preparation of a compilation and mapping of all community public water supplies under IC 14-25-7-13(d).

(9) The operation of the division of water.

(f) The ~~commission~~ **department** shall administer the fund.

SECTION 69. IC 14-26-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) Upon written application by the owner of land abutting a public freshwater lake and payment of a nonrefundable fee of ~~twenty-five~~ **one hundred** dollars ~~($25),~~ **($100),** the department may issue a permit to:

(1) change the shoreline; or

(2) alter the bed;

of a public freshwater lake after investigating the merits of the application.

(b) As a condition precedent to granting a permit, an applicant must, in writing, do the following:

(1) Acknowledge that all additional water area created is a part of the lake.

(2) Dedicate the additional area to the general public use.

SECTION 70. IC 14-26-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. (a) This section applies to impoundments of the Tippecanoe River that are formed by a dam or control structure owned and operated by a public utility for the generation of hydroelectric power. **However, this section does not restrict the department's ability to regulate the safety or maintenance of a dam or other control structure under IC 14-27-7.5.**

(b) As used in this section, "alterations to the shoreline" does not include the making of canals or inlets.

(c) As used in this section, "construction" includes the building of a pier.

(d) Notwithstanding any other law, the department may not regulate or interfere with alterations to the shoreline of or construction on the impoundments.

SECTION 71. IC 14-26-2-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16. (a) As used in this section, "water supply reservoir" means a body of water formed by a dam wholly owned and operated by a municipality or a public utility (as defined in IC 8-1-2-1) for the purpose of providing water utility service to the public. The term does not include the following:

(1) Tributary streams that drain into the body of water.

(2) Wetlands associated with those streams.

(b) Notwithstanding any other law, the department may not regulate the following activities conducted within the one hundred (100) year flood level of a water supply reservoir:

(1) Sediment removal, dredging for the purpose of providing water supply storage, seawall construction, or the maintenance of water intake structures.

(2) Restoration or stabilization of the shoreline.

(c) This section does not restrict the department's ability to regulate the safety or maintenance of a dam or other control structure under ~~IC 14-27-7.~~ **IC 14-27-7.5.**

SECTION 72. IC 14-27-7.5-9, AS AMENDED BY P.L.1-2003, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The owner of a high hazard structure shall:

(1) have a professional engineer licensed under IC 25-31 make ~~a technical~~ **an engineering** inspection of the high hazard structure ~~and prepare or revise the emergency action plan for the structure~~ at least one (1) time every two (2) years;

(2) submit a report of the inspection in a form approved by the department to the department. The report must include at least the following information:

(A) An evaluation of the structure's condition, spillway

capacity, operational adequacy, and structural integrity.

(B) A determination of whether deficiencies exist that could lead to the failure of the structure, and recommendations for maintenance, repairs, and alterations to the structure to eliminate deficiencies, including a recommended schedule for necessary upgrades to the structure.

(b) If after an inspection under subsection (a) the licensed professional engineer who conducted the inspection determines that maintenance, repairs, or alterations to a high hazard structure are necessary to remedy deficiencies in the structure, the owner shall perform the recommended maintenance, repairs, or alterations.

(c) The department shall issue a notice of violation under section 11 of this chapter to the owner of a high hazard structure who fails to:

(1) have the structure inspected under subsection (a);

(2) perform recommended maintenance, repairs, or alterations to the structure under subsection (b); or

(3) biennially submit the inspection report prepared under subsection (a).

(d) The department may make ~~a technical~~ **an engineering** inspection of a high hazard structure to ensure compliance with this chapter.

SECTION 73. IC 14-27-7.5-10, AS ADDED BY P.L.148-2002, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) The department shall make ~~a technical~~ **an engineering** inspection of:

(1) a significant hazard structure at least one (1) time every three (3) years; and

(2) a low hazard structure at least one (1) time every five (5) years;

or at more frequent intervals if the exigencies of the case require.

(b) The department shall place in the files of the department a report of each inspection conducted under subsection (a).

(c) The department shall charge the following for engineering inspections:

(1) For a significant hazard structure under subsection (a)(1), a fee of two hundred dollars ($200).

(2) For a low hazard structure under subsection (a)(2), a fee of one hundred dollars ($100).

SECTION 74. IC 14-27-7.5-14, AS ADDED BY P.L.148-2002, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. The department and the department's agents, engineers, geologists, and other employees may, for purposes of determining the department's jurisdiction and performing the ~~technical~~ **engineering** inspections provided in sections 9 and 10 of this chapter, enter upon any land or water in Indiana without liability for trespass. The owner of a structure shall do the following:

(1) Cooperate with the department and the department's agents, engineers, geologists, and other employees in the conduct of the inspections.

(2) Facilitate access to the structure.

(3) Furnish upon request the plans, specifications, operating and maintenance data, or other information that is pertinent to the structure.

SECTION 75. IC 14-28-1-22, AS AMENDED BY P.L.154-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7 ½) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.

(b) This section does not apply to the following:

(1) A reconstruction or maintenance project (as defined in IC 36-9-27) on a stream or an open regulated drain if the total length of the stream or open drain is not more than ten (10) miles.

(2) A construction or reconstruction project on a state or county highway bridge in a rural area that crosses a stream having an upstream drainage area of not more than fifty (50) square miles and the relocation of utility lines associated with the construction or reconstruction project if confined to an area not more than one hundred (100) feet from the limits of the highway construction right-of-way.

(3) The performance of an activity described in subsection (c)(1) or (c)(2) by a surface coal mining operation that is operated under a permit issued under IC 14-34.

(4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.

(5) An activity in a boundary river floodway to which section 26.5 of this chapter applies.

(c) A person who desires to:

(1) erect, make, use, or maintain a structure, an obstruction, a deposit, or an excavation; or

(2) suffer or permit a structure, an obstruction, a deposit, or an excavation to be erected, made, used, or maintained;

in or on a floodway must file with the director a verified written application for a permit accompanied by a nonrefundable fee of ~~fifty~~ **two hundred** dollars ~~($50).~~ **($200).**

(d) The application for a permit must set forth the material facts together with plans and specifications for the structure, obstruction, deposit, or excavation.

(e) An applicant must receive a permit from the director for the work before beginning construction. The director shall issue a permit only if in the opinion of the director the applicant has clearly proven that the structure, obstruction, deposit, or excavation will not do any of the following:

(1) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.

(2) Constitute an unreasonable hazard to the safety of life or property.

(3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(f) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the structure, obstruction, deposit, or excavation. The director may incorporate in and make a part of an order of authorization conditions and restrictions that the director considers necessary for the purposes of this chapter.

(g) A permit issued under this section:

(1) is void if construction is not commenced within two (2) years after the issuance of the permit; and

(2) to:

(A) the Indiana department of transportation or a county highway department if there is any federal funding for the project; or

(B) an electric utility for the construction of a power generating facility;

is valid for five (5) years from the date of issuance and remains valid indefinitely if construction is commenced within five (5) years after the permit is issued.

(h) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

(2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected.

(i) The permit holder shall post and maintain a permit issued under this section at the authorized site.

(j) For the purposes of this chapter, the lowest floor of a building, including a residence or abode, that is to be constructed or reconstructed in the one hundred (100) year floodplain of an area protected by a levee that is:

(1) inspected; and

(2) found to be in good or excellent condition;

by the United States Army Corps of Engineers shall not be lower than the one hundred (100) year frequency flood elevation plus one (1) foot.

SECTION 76. IC 14-31-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) To obtain a

ginseng dealer's license, a person must do the following:

(1) Apply to the department for the license in the manner prescribed by the department.

(2) Pay a license fee of ~~twenty-five~~ **one hundred** dollars ~~($25)~~ **($100)** before August 15 of each year.

(b) A ginseng dealer's license expires annually on August 31.

SECTION 77. IC 14-37-4-6, AS AMENDED BY P.L.48-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) A person must submit the following with an application for a permit:

(1) A bond under IC 14-37-6.

(2) A permit fee of ~~one~~ **two** hundred **fifty** dollars ~~($100)~~ **($250)** payable to the department. **However, a person may apply for an expedited review of the application for a permit, except for a Class II or noncommercial well, by submitting a permit fee of seven hundred fifty dollars ($750).**

(b) Permit fees collected under this section must be deposited in the oil and gas fund established by IC 6-8-1-27.

SECTION 78. IC 14-37-4-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 14. To transfer the ownership of a permit for a well for oil or gas purposes, a person must submit the following:**

(1) A transfer fee of fifteen dollars ($15) payable to the department for each well. However, if an applicant submits more than fifty (50) applications simultaneously, the transfer fee for each application in excess of fifty (50) is ten dollars ($10).

(2) The name and mailing address of the seller and buyer on a form prescribed by the commission.

SECTION 79. IC 25-36.5-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. The application fee or renewal fee for a registration certificate to operate as a timber buyer, is ~~eighty~~ **one hundred five** dollars ~~($80).~~ **($105).** The fee for a certificate stating that a registration certificate has been issued and security filed is twenty dollars ($20). All fees collected by the department accrue to the use of the department for its administrative purposes.

SECTION 80. IC 25-36.5-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. (a) An individual who acts as the agent of a timber buyer must have an agent's license and carry the agent's card that verifies the license.

(b) An agent's license may be granted only:

(1) to qualified individuals;

(2) at the written application of the timber buyer who the agent is to represent; and

(3) under that timber buyer's registration certificate.

(c) The application for an agent's license must contain the agent's full name, address, and other information as required by the department on forms supplied by the department. Each timber buyer is responsible for all of the agent's activities performed while acting under the timber buyer's registration certificate as they pertain to this chapter.

(d) An application fee of ~~five~~ **ten** dollars ~~($5)~~ **($10)** for each agent shall be charged for the license and agent's card. However, each timber buyer shall designate a qualified individual to be licensed as its principal agent at no additional charge.

(e) An agent's license may be revoked by the department under IC 4-21.5 if the agent does not comply with this section.

(f) An agent may have a license to represent only one (1) timber buyer; however, upon surrendering the agent's card and license under one (1) timber buyer, an individual may be licensed as an agent of another timber buyer.

(g) A timber buyer may not be licensed as an agent except as the principal agent of that timber buyer.

(h) A timber buyer may not effect or attempt to effect a purchase except through an agent.

(i) A timber buyer may terminate an agency relationship by notifying in writing the agent and the department. Termination of an agency relationship revokes the agent's license.

(j) A person who acts as an agent without a license commits a Class B misdemeanor.

SECTION 81. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2003]: IC 6-1.1-6-8; IC 6-1.1-6.2-4; IC 6-1.1-6.2-6; IC 6-1.1-6.2-7; IC 6-1.1-6.2-8; IC 14-16-2; IC 14-19-4; IC 14-19-5.

SECTION 82. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 14-22-12-10; IC 14-22-12-12; IC 14-22-12-13.

SECTION 83. P.L.148-2002, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: (a) As used in this SECTION, "department" refers to the department of natural resources.

(b) Notwithstanding IC 14-27-7.5-8, as added by this act, and IC 14-27-7, as amended by this act, the department may continue to issue permits for dams under ~~IC 14-27-7~~ **IC 14-28-1** until the rules concerning permitting under IC 14-27-7.5 become effective.

(c) Notwithstanding IC 14-27-7.5, as added by this act, a permit for a dam issued under ~~IC 14-27-7~~ **IC 14-28-1** remains valid until the expiration of the permit.

(d) This SECTION expires June 30, 2007.

SECTION 84. P.L.155-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 13. (a) Notwithstanding IC 14-34-13-1 and IC 14-34-13-2, the following reclamation fee schedule applies with respect to coal mining operations for the period beginning April 1, 2002, and ending June 30, ~~2003.~~ **2005:**

(1) All operators of surface coal mining operations subject to IC 14-34 shall pay to the department of natural resources for deposit in the natural resources reclamation division fund established by IC 14-34-14-2 a reclamation fee of five and five-tenths cents ($0.055) per ton of coal produced.

(2) All operators of underground coal mining operations subject to IC 14-34 shall pay to the department of natural resources for deposit in the natural resources reclamation division fund established by IC 14-34-14-2 a reclamation fee of three cents ($0.03) per ton of coal produced.

(b) After June 30, ~~2003,~~ **2005,** the reclamation fees paid by coal mining operators are the amounts per ton specified in IC 14-34-13-1 and IC 14-34-13-2, as amended by this act.

(c) This SECTION expires January 1, ~~2004.~~ **2006.**

SECTION 87. [EFFECTIVE JUNE 30, 2003] **(a) On July 1, 2003:**

(1) any money in the state parks special revenue fund under IC 14-19-4 before its repeal by this act; and

(2) any money in the reservoirs special revenue fund under IC 14-19-5 before its repeal by this act;

shall be transferred by the department of natural resources to the state parks and reservoirs special revenue fund established by IC 14-19-8-2, as added by this act.

(b) This SECTION expires July 2, 2003.

SECTION 88. [EFFECTIVE JULY 1, 2003] **(a) A certificate of registration purchased under IC 14-16-2, before its repeal by this act, is valid for three (3) years after the date of purchase. A valid certificate of registration purchased under IC 16-14-2, before its repeal by this act, satisfies the requirements of IC 14-16-1, as amended by this act.**

(b) This SECTION expires July 1, 2006.

SECTION 89. [EFFECTIVE JULY 1, 2003] **(a) Notwithstanding IC 14-22-4-6, as amended by this act, on July 1, 2003, an amount not to exceed twenty-five percent (25%) of the money in the lifetime hunting, fishing, and trapping license trust fund established by IC 14-22-4-2 shall be transferred to the fish and wildlife fund established by IC 14-22-3-2 to develop and implement the automated point of sale licensing system under IC 14-22-12-7.5, as added by this act.**

(b) This SECTION expires June 30, 2006.

SECTION 90. **An emergency is declared for this act.**

(Reference is to EHB 1552 as reprinted April 9, 2003.)

BISCHOFF	WEATHERWAX
MANGUS	R. YOUNG
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1730–1; filed April 23, 2003, at 5:15 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1730 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 4-23-28 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 28. Commission on Hispanic/Latino Affairs

Sec. 1. As used in this chapter, "commission" refers to the commission on Hispanic/Latino affairs established by section 2 of this chapter.

Sec. 2. The commission on Hispanic/Latino affairs is established.

Sec. 3. (a) The commission shall do the following:

(1) Identify and research issues affecting the Hispanic/Latino communities.

(2) Promote cooperation and understanding between the Hispanic/Latino communities and other communities throughout Indiana.

(3) Report to the legislative council and the governor concerning Hispanic/Latino issues, including the following:

(A) Conditions causing exclusion of Hispanics/Latinos from the larger Indiana community.

(B) Measures to stimulate job skill training and related workforce development.

(C) Measures to sustain cultural diversity while improving race and ethnic relations.

(D) Public awareness of issues affecting the Hispanic/Latino communities.

(E) Measures that could facilitate easier access to state and local government services by Hispanics/Latinos.

(F) Challenges and opportunities arising out of the growth of the Hispanic/Latino population.

(b) The commission may study other topics:

(1) as assigned by the governor;

(2) as assigned by the legislative council; or

(3) as directed by the commission's chairperson.

Sec. 4. (a) The commission consists of twenty (20) members appointed as follows:

(1) Two (2) members of the senate who may not be affiliated with the same political party, to be appointed by the president pro tempore of the senate.

(2) Two (2) members of the house of representatives who may not be affiliated with the same political party, to be appointed by the speaker of the house of representatives.

(3) Four (4) members of the Hispanic/Latino community who are not members of the general assembly, to be appointed by the president pro tempore of the senate.

(4) Four (4) members of the Hispanic/Latino community who are not members of the general assembly, to be appointed by the speaker of the house of representatives.

(5) The secretary of family and social services or a designee of the secretary who is a Hispanic or Latino employee of the office of the secretary of family and social services.

(6) The commissioner of the state department of health or a designee of the commissioner who is a Hispanic or Latino employee of the state department of health.

(7) The state superintendent of public instruction or a designee of the superintendent who is a Hispanic or Latino employee of the department of education.

(8) The commissioner of the department of correction or a designee of the commissioner who is a Hispanic or Latino employee of the department of correction.

(9) The director of the civil rights commission or a designee of the director who is a Hispanic or Latino employee of the civil rights commission.

(10) The director of the department of commerce or a designee of the director who is a Hispanic or Latino employee of the department of commerce.

(11) A Hispanic or Latino business person, appointed by the governor.

(12) The commissioner of workforce development or a designee of the commissioner who is a Hispanic or Latino employee of the department of workforce development, who shall serve as an ex officio member of the commission.

In making their appointments under this section, the president pro tempore of the senate and the speaker of the house of representatives shall attempt to have the greatest possible number of counties represented on the commission.

(b) If a legislative member of the commission ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the commission.

(c) A member of the commission may be removed at any time by the appointing authority who appointed the member.

(d) If a vacancy on the commission occurs, the appointing authority who appointed the former member whose position has become vacant shall appoint an individual to fill the vacancy.

Sec. 5. (a) The commission shall meet on call of the chairperson and at other times that the commission determines.

(b) The chairperson may designate subcommittees to meet between commission meetings and report back to the full commission.

Sec. 6. (a) At the first meeting of the commission each year, the members shall elect:

(1) one (1) member to be the commission's chairperson; and

(2) one (1) member to be the commission's vice chairperson.

(b) A vacancy in the office of chairperson or vice chairperson shall be filled by a member of the commission selected by vote of the remaining members. The term of office of a person chosen under this subsection to fill a vacancy in the office of chairperson or vice chairperson expires at the first meeting of the commission the following year.

Sec. 7. (a) The department of workforce development shall provide staff and administrative support to the commission.

(b) The expenses of the commission shall be paid from appropriations made to the department of workforce development.

Sec. 8. The affirmative votes of a majority of the members appointed to the commission are required for the commission to take action on any measure, including final reports.

Sec. 9. (a) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the commission who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each member of the commission who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.

Sec. 10. (a) Funding for the commission shall be derived from funds appropriated to the department of workforce development.

(b) If money is appropriated under subsection (a), the money does not revert to the state general fund at the end of a state

fiscal year but remains available to the department of workforce development until the purpose for which it was appropriated is fulfilled.

Sec. 11. (a) The commission on Hispanic/Latino affairs special fund is established to provide money for special projects of the commission.

(b) The fund shall be administered by the treasurer of state.

(c) Expenses of administering the fund shall be paid from money in the fund.

(d) The fund consists of gifts, contributions, and money donated to the commission.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(f) Interest accrues to the fund.

(g) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(h) Money in the fund is appropriated continuously for the purpose stated in subsection (a).

SECTION 2. IC 2-5-27 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 3. **An emergency is declared for this act**.

(Reference is to EHB 1730 as printed March 28, 2003.)

AGUILERA	WYSS
RUPPEL	MRVAN
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1437–1; filed April 23, 2003, at 5:16 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1437 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 10-13-3-36, AS ADDED BY SEA 257-2003, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 36. (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a nonprofit organization:

(1) that has been in existence for at least ten (10) years; and

(2) that:

(A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization;

(B) is a home health agency licensed under IC 16-27-1;

(C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39); or

(D) is a supervised group living facility licensed under IC 12-28-5.

(b) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the division of family and children or a county office of family and children if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 12-17.4.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, special education cooperative, or non-public school (as defined in IC 20-10.1-1-3) as part of a background investigation of an employee or adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the health professions bureau established by IC 25-1-5-3 if the request is:

(1) made through the computer gateway that is administered by the intelenet commission under IC 5-21-2 and known as accessIndiana; and

(2) part of a background investigation of a practitioner or an individual who has applied for a license issued by a board (as defined in IC 25-1-9-1).

SECTION 2. IC 25-1-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. The board may order a practitioner to submit to a reasonable physical or mental examination, **at the practitioner's own expense,** if the practitioner's physical or mental capacity to practice safely is at issue in a disciplinary proceeding.

SECTION 3. IC 25-1-9-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. Practitioners who have been subjected to disciplinary sanctions may be required by a board to pay for the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

(1) Court reporters.

(2) Transcripts.

(3) Certification of documents.

(4) Photoduplication.

(5) Witness attendance and mileage fees.

(6) Postage.

(7) Expert witnesses.

(8) Depositions.

(9) Notarizations.

(10) Administrative law judges.

SECTION 4. IC 25-23-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) There is established the Indiana state board of nursing consisting of ~~eight (8)~~ **nine (9)** members appointed by the governor, each to serve a term of four (4) years subject to death, resignation, or removal by the governor.

(b) ~~Five (5)~~ **Six (6)** of the board members must be registered nurses who are committed to advancing and safeguarding the nursing profession as a whole. Two (2) of the board's members must be licensed practical nurses. One (1) member of the board, to represent the general public, must be a resident of this state and not be associated with nursing in any way other than as a consumer.

~~(b)~~ **(c)** Each appointed board member may serve until the member's successor has been appointed and qualified. Any vacancy occurring in the membership of the board for any cause shall be filled by appointment by the governor for the unexpired term. Members of the board may be appointed for more than one (1) term. However, no person who has served as a member of the board for more than six (6) consecutive years may be reappointed. Reappointments of persons who have served six (6) consecutive years as a member of the board may be made after three (3) years have elapsed.

SECTION 5. IC 25-23-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) The board shall meet annually. At its first meeting of the calendar year, it shall elect from the membership a president, a vice president, and a secretary. It shall hold such other meetings during the year as may be necessary for the transaction of its business.

~~(b) Three (3) registered nurse members, including one (1) officer of the board, constitute a quorum for consideration of all matters pertaining to registered nursing. A majority vote of the quorum is required for action of the board.~~

~~(c) One (1) licensed practical nurse member and three (3) registered nurse members of the board, including one (1) officer, constitute a quorum for consideration of all matters pertaining to practical nursing. A majority vote of the quorum is required for action of the board.~~

(b) Five (5) members of the board constitute a quorum. An affirmative vote of a majority of the members appointed to the board is required for action of the board.

SECTION 6. IC 25-23-1-7, AS AMENDED BY P.L.181-2002,

SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) The board shall do the following:

(1) Adopt under IC 4-22-2 rules necessary to enable it to carry into effect this chapter.

(2) Prescribe standards and approve curricula for nursing education programs preparing persons for licensure under this chapter.

(3) Provide for surveys of such programs at such times as it considers necessary.

(4) Accredit such programs as meet the requirements of this chapter and of the board.

(5) Deny or withdraw accreditation from nursing education programs for failure to meet prescribed curricula or other standards.

(6) Examine, license, and renew the license of qualified applicants.

(7) Issue subpoenas, compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings.

(8) Cause the prosecution of all persons violating this chapter and have power to incur necessary expenses for these prosecutions.

(9) Adopt rules under IC 4-22-2 that do the following:

(A) Prescribe standards for the competent practice of registered, practical, and advanced practice nursing.

(B) Establish with the approval of the medical licensing board created by IC 25-22.5-2-1 requirements that advanced practice nurses must meet to be granted authority to prescribe legend drugs and to retain that authority.

(C) Establish, with the approval of the medical licensing board created by IC 25-22.5-2-1, requirements for the renewal of a practice agreement under section 19.4 of this chapter, which shall expire on October 31 in each odd-numbered year.

(10) Keep a record of all its proceedings.

(11) Collect and distribute annually demographic information on the number and type of registered nurses and licensed practical nurses employed in Indiana.

(12) Adopt rules and administer the interstate nurse licensure compact under IC 25-23.2.

(b) The board may do the following:

(1) Create ad hoc subcommittees representing the various nursing specialties and interests of the profession of nursing. Persons appointed to a subcommittee serve for terms as determined by the board.

(2) Utilize the appropriate subcommittees so as to assist the board with its responsibilities. The assistance provided by the subcommittees may include the following:

(A) Recommendation of rules necessary to carry out the duties of the board.

(B) Recommendations concerning educational programs and requirements.

(C) Recommendations regarding examinations and licensure of applicants.

(3) Appoint nurses to serve on each of the ad hoc subcommittees.

(4) Withdraw from the interstate compact under ~~IC 25-32.2.~~ **IC 25-23.2.**

(c) Nurses appointed under subsection (b) must:

(1) be committed to advancing and safeguarding the nursing profession as a whole; and

(2) represent nurses who practice in the field directly affected by a subcommittee's actions.

SECTION 7. IC 25-23-1-19.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 19.8. (a) Before December 31 of an even-numbered year, the bureau or the bureau's designee shall randomly audit at least one percent (1%) but not more than ten percent (10%) of the practice agreements of advanced practice nurses with authority to prescribe legend drugs under section 19.5 of this chapter to determine whether the practice agreement meets the requirements of this chapter or rules adopted by the board.**

(b) The bureau shall establish an audit procedure, which may include the following:

(1) Requiring the advanced practice nurse to provide the bureau with a copy of verification of attendance at or completion of a continuing education course or program the advanced practice nurse attended during the previous two (2) years.

(2) Requiring the advanced practice nurse and the licensed practitioner who have entered into a practice agreement to submit information on a form prescribed by the bureau that must include a sworn statement signed by the advanced practice nurse and the licensed practitioner that the parties are operating within the terms of the practice agreement and the requirements under this chapter or rules adopted by the board.

(3) Reviewing patient health records and other patient information at the practice location or by requiring the submission of accurate copies to determine if the parties are operating within the terms of the practice agreement and the requirements under this chapter or rules adopted by the board.

(4) After a reasonable determination that the advanced practice nurse and the licensed practitioner who have entered into a practice agreement are not operating within the terms of the practice agreement, requiring the parties to appear before the bureau or the bureau's designee to provide evidence of compliance with the practice agreement.

(c) Not more than sixty (60) days after the completion of the audit required in subsection (a), the bureau shall provide the board with the following:

(1) A summary of the information obtained in the audit.

(2) A statement regarding whether an advanced practice nurse and a licensed practitioner who have entered into a practice agreement that is audited under subsection (a) are operating within the terms of the practice agreement.

The bureau shall also provide a copy of the information described in this subsection to the board that regulates the licensed practitioner.

(d) The bureau may cause to be served upon the advanced practice nurse an order to show cause to the board as to why the board should not impose disciplinary sanctions under IC 25-1-9-9 on the advanced practice nurse for the advanced practice nurse's failure to comply with:

(1) an audit conducted under this section; or

(2) the requirements of a practice agreement under this chapter.

(e) The board shall hold a hearing in accordance with IC 4-21.5 and state the date, time, and location of the hearing in the order served under subsection (d).

(f) The board that regulates the licensed practitioner may cause to be served upon the licensed practitioner an order to show cause to the board as to why the board should not impose disciplinary sanctions under IC 25-1-9-9 on the licensed practitioner for the licensed practitioner's failure to comply with:

(1) an audit conducted under this section; or

(2) the requirements of a practice agreement under this chapter.

(g) The board that regulates the licensed practitioner shall hold a hearing in accordance with IC 4-21.5 and state the date, time, and location of the hearing in the order served under subsection (f).

(h) An order to show cause issued under this section must comply with the notice requirements of IC 4-21.5.

(i) The licensed practitioner may divulge health records and other patient information to the bureau or the bureau's designee. The licensed practitioner is immune from civil liability for any action based upon release of the patient information under this section.

SECTION 8. IC 25-29-6-1 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. A license to practice podiatric medicine expires ~~four (4) years after the license is issued~~ **on a date established by the bureau under IC 25-1-5-4 in each odd-numbered year.**

SECTION 9. IC 34-30-2-99.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 99.4. IC 25-23-1-19.8(i) (Concerning licensed practitioners who release health records and patient information to the health professions bureau).**

(Reference is to EHB 1437 as printed April 4, 2003.)

WELCH	RIEGSECKER
BECKER	BREAUX
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
ESB 187–1; filed April 23, 2003, at 5:54 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 187 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 20-1-21-4, AS AMENDED BY HEA 1120-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Not earlier than January 15 or later than January 31 of each year, the governing body of a school corporation shall publish an annual performance report of the school corporation, in compliance with the procedures identified in section 8 of this chapter. The report must be published one (1) time annually under IC 5-3-1.

(b) The department shall make each school corporation's annual performance report, **including a full and comprehensive report of disaggregated student achievement data,** available on the department's Internet web site.

(c) The governing body of a school corporation ~~may~~ **shall** make the school corporation's annual performance report, **including a full and comprehensive report of disaggregated student achievement data,** available on the school corporation's Internet web site. **The disaggregated student achievement data may be provided through an Internet link to the department's web site.**

~~(c)~~ **(d)** The governing body of a school corporation shall provide a copy of the annual performance report to any person who requests a copy. The governing body may not charge a fee for providing the copy.

(e) A full and comprehensive report of disaggregated student achievement data shall be available to any person who requests a copy. The governing body may not charge a fee for providing the copy.

SECTION 2. IC 20-1-21-7, AS AMENDED BY HEA 1120-2003, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. A report must contain the following:

(1) The information listed in section 9 of this chapter for each of the preceding three (3) years.

(2) Additional components determined under section 8(4) of this chapter.

(3) Additional information or explanation that the governing body wishes to include, including the following:

(A) Results of assessments of students under programs other than the ISTEP program that a school corporation uses to determine if students are meeting or exceeding academic standards. ~~in grades that are not tested under the ISTEP program.~~

(B) The number and types of staff professional development programs.

(C) The number and types of partnerships with the community, business, or higher education.

(D) Levels of parental participation.

SECTION 3. IC 20-1-21-9, AS AMENDED BY HEA 1120-2003, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. The report must include the following information:

(1) Student enrollment.

(2) Graduation rate (as defined in IC 20-8.1-15-6).

(3) Attendance rate.

(4) The following test scores, including the number and percentage of students meeting academic standards:

(A) ISTEP test scores.

(B) Scores for assessments under IC 20-10.1-16-15, if appropriate.

~~(C) For a freeway school, scores on a locally adopted assessment program, if appropriate.~~

(5) Average class size.

(6) The number and percentage of students in the following groups or programs:

(A) Alternative education, if offered.

(B) Vocational education.

(C) Special education.

(D) Gifted or talented, if offered.

(E) Remediation.

(F) Limited English language proficiency.

(G) Students receiving free or reduced price lunch under the national school lunch program.

(7) Advanced placement, including the following:

(A) For advanced placement tests, the **number and** percentage of students:

(i) scoring three (3), four (4), and five (5); and

(ii) taking the test.

(B) For the Scholastic Aptitude Test:

(i) test scores for all students taking the test;

(ii) test scores for students completing the academic honors diploma program; and

(iii) the **number and** percentage of students taking the test.

(8) Course completion, including the number and percentage of students completing the following programs:

(A) Academic honors diploma.

(B) Core 40 curriculum.

(C) Vocational programs.

(9) The percentage of grade 8 students enrolled in algebra I.

(10) The percentage of graduates who pursue higher education.

(11) School safety, including the number of students receiving suspension or expulsion for the possession of alcohol, drugs, or weapons.

(12) Financial information and various school cost factors, including the following:

(A) Expenditures per pupil.

(B) Average teacher salary.

(C) Remediation funding.

(13) Technology accessibility and use of technology in instruction.

(14) Interdistrict and intradistrict student mobility rates, if that information is available.

(15) The number and percentage of each of the following within the school corporation:

(A) Teachers who are certificated employees (as defined in IC 20-7.5-1-2).

(B) Teachers who teach the subject area for which the teacher is certified and holds a license.

(C) Teachers with national board certification.

(16) The percentage of grade 3 students reading at ~~or above~~ grade 3 level.

(17) The number of students expelled, including the number participating in other recognized education programs during their expulsion.

(18) Chronic absenteeism, which includes the number of students who have been absent more than ten (10) days from school within a school year without being excused.

(19) Other indicators of performance as recommended by the

education roundtable (IC 20-1-20.5-3).

SECTION 4. IC 20-8.1-15-10, AS ADDED BY HEA 1120-2003, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. The graduation rate for a cohort in a high school is the percentage determined under STEP SEVEN of the following formula:

STEP ONE: Determine the grade 9 enrollment at the beginning of the reporting year three (3) years before the reporting year for which the graduation rate is being determined.

STEP TWO: Add:

(A) the number determined under STEP ONE; and

(B) the number of students who:

(i) have enrolled in the high school after the date on which the number determined under STEP ONE was determined; and

(ii) have the same expected graduation year as the cohort.

STEP THREE: Add:

(A) the sum determined under STEP TWO; and

(B) the number of retained students from earlier cohorts who became members of the cohort for whom the graduation rate is being determined.

STEP FOUR: Add:

(A) the sum determined under STEP THREE; and

(B) the number of students who:

(i) began the reporting year in a cohort that expects to graduate during a future reporting year; and

(ii) graduate during the current reporting year.

STEP FIVE: Subtract from the sum determined under STEP FOUR the number of students who have left the cohort for any of the following reasons:

(A) Transfer to another public or nonpublic school.

(B) Removal by the student's parents under IC 20-8.1-3-34 to provide instruction equivalent to that given in the public schools.

(C) Withdrawal because of a long term medical condition or death.

(D) Detention by a law enforcement agency or the department of correction.

(E) Placement by a court order or the division of family and children.

(F) Enrollment in a virtual school.

(G) Graduation before the beginning of the reporting year.

(H) Students who have ~~left school and whose location cannot be determined.~~ **attended school in Indiana for less than one (1) year and whose location cannot be determined.**

(I) Students who cannot be located within the boundaries of the school corporation and have been reported to the Indiana clearinghouse for missing and exploited children.

STEP SIX: Determine the total number of students who have graduated during the current reporting year.

STEP SEVEN: Divide:

(A) the number determined under STEP SIX; by

(B) the remainder determined under STEP FIVE.

SECTION 5. [EFFECTIVE JULY 1, 2003] **(a) Notwithstanding IC 20-1-21-4, as amended by this act, the governing body of a school corporation is not required to publish an annual performance report of the school corporation in calendar year 2003. However, the annual performance report of a school corporation that is published in January 2004 must include the information that would have been included in the annual performance report published in 2003 if IC 20-1-21-4 had not been amended by this act.**

(b) This SECTION expires February 1, 2004.

SECTION 6. **An emergency is declared for this act.**

(Reference is to ESB 187 as reprinted April 11, 2003.)

LUBBERS	PORTER
BREAUX	POND
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT

ESB 482–1; filed April 23, 2003, at 5:55 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 482 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 35-50-6-3.3, AS AMENDED BY P.L.90-2000, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3.3. (a) In addition to any credit time a person earns under subsection (b) or section 3 of this chapter, a person earns credit time if the person:

(1) is in credit Class I;

(2) has demonstrated a pattern consistent with rehabilitation; and (3) successfully completes requirements to obtain one (1) of the following:

(A) A general educational development (GED) diploma under IC 20-10.1-12.1, if the person has not previously obtained a high school diploma.

(B) A high school diploma.

(C) An associate's degree from an approved institution of higher learning (as defined under IC 20-12-21-3).

(D) A bachelor's degree from an approved institution of higher learning (as defined under IC 20-12-21-3).

(b) In addition to any credit time that a person earns under subsection (a) or section 3 of this chapter, a person may earn credit time if, while confined by the department of correction, the person:

(1) is in credit Class I;

(2) demonstrates a pattern consistent with rehabilitation; and

(3) successfully completes requirements to obtain at least one (1) of the following:

(A) A certificate of completion of a vocational education program approved by the department of correction.

(B) A certificate of completion of a substance abuse program approved by the department of correction.

(C) A certificate of completion of a literacy and basic life skills program approved by the department of correction.

(c) The department of correction shall establish admissions criteria and other requirements for programs available for earning credit time under subsection (b). A person may not earn credit time under both ~~subsection~~ **subsections** (a) and ~~subsection~~ (b) for the same program of study.

(d) The amount of credit time a person may earn under this section is the following:

(1) Six (6) months for completion of a state of Indiana general educational development (GED) diploma under IC 20-10.1-12.1. (2) One (1) year for graduation from high school.

(3) One (1) year for completion of an associate's degree.

(4) Two (2) years for completion of a bachelor's degree.

(5) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more vocational education programs approved by the department of correction.

(6) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more substance abuse programs approved by the department of correction.

(7) Not more than a total of six (6) months credit, as determined by the department of correction, for the completion of one (1) or more literacy and basic life skills programs approved by the department of correction.

However, a person who does not have a substance abuse problem that qualifies the person to earn credit in a substance abuse program may earn not more than a total of twelve (12) months of credit, as determined by the department of correction, for the completion of one (1) or more vocational education programs approved by the

department of correction. If a person earns more than six (6) months of credit for the completion of one (1) or more vocational education programs, the person is ineligible to earn credit for the completion of one (1) or more substance abuse programs.

(e) Credit time earned by a person under this section is subtracted from the release date that would otherwise apply to the person after subtracting all other credit time earned by the person.

(f) A person does not earn credit time under subsection (a) unless the person completes at least a portion of the degree requirements after June 30, 1993.

(g) A person does not earn credit time under subsection (b) unless the person completes at least a portion of the program requirements after June 30, 1999.

(h) ~~Subsection (c) applies only to a person who completes at least a portion of the degree or program requirements under subsection (a) or (b) after June 30, 1999.~~ Credit time earned by a person under subsection (a) for a diploma or degree completed before July 1, 1999, shall be subtracted from:

(1) the **release date that would otherwise apply to the person after subtracting all other credit time earned by the person, if the person has not been convicted of an offense described in subdivision (2); or**

(2) the period of imprisonment imposed on the person by the sentencing court, **if the person has been convicted of one (1) of the following crimes:**

(A) Rape (IC 35-42-4-1).
(B) Criminal deviate conduct (IC 35-42-4-2).
(C) Child molesting (IC 35-42-4-3).
(D) Child exploitation (IC 35-42-4-4(b)).
(E) Vicarious sexual gratification (IC 35-42-4-5).
(F) Child solicitation (IC 35-42-4-6).
(G) Child seduction (IC 35-42-4-7).
(H) Sexual misconduct with a minor as a Class A felony, Class B felony, or Class C felony (IC 35-42-4-9).
(I) Incest (IC 35-46-1-3).
(J) Sexual battery (IC 35-42-4-8).
(K) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.
(L) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.
(M) An attempt or a conspiracy to commit a crime listed in clauses (A) through (L).

(i) The maximum amount of credit time a person may earn under this section is the lesser of:

(1) four (4) years; or
(2) one-third (1/3) of the person's total applicable credit time.

(j) The amount of credit time earned under this section is reduced to the extent that application of the credit time would otherwise result in:

(1) postconviction release (as defined in IC 35-40-4-6); or
(2) assignment of the person to a community transition program;

in less than forty-five (45) days after the person earns the credit time.

(k) A person may earn credit time for multiple degrees at the same education level under subsection (d) only in accordance with guidelines approved by the department of correction. The department of correction may approve guidelines for proper sequence of education degrees under subsection (d).

(Reference is to ESB 482 as reprinted April 8, 2003.)

WATERMAN	V. SMITH
ROGERS	FOLEY
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1788–1; filed April 23, 2003, at 5:56 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1788 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 6-7-1-17, AS AMENDED BY P.L.192-2002(ss), SECTION 136, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) Distributors who hold certificates and retailers shall be agents of the state in the collection of the taxes imposed by this chapter and the amount of the tax levied, assessed, and imposed by this chapter on cigarettes sold, exchanged, bartered, furnished, given away, or otherwise disposed of by distributors or to retailers. Distributors who hold certificates shall be agents of the department to affix the required stamps and shall be entitled to purchase the stamps from the department at a discount of one and two-tenths percent (1.2%) of the amount of the tax stamps purchased, as compensation for their labor and expense.

(b) The department may permit distributors who hold certificates and who are admitted to do business in Indiana to pay for revenue stamps within thirty (30) days after the date of purchase. However, the privilege is extended upon the express condition that:

(1) except as provided in subsection (c), a bond or letter of credit satisfactory to the department, in an amount not less than the sales price of the stamps, is filed with the department; and
(2) proof of payment is made of all local property, state income, and excise taxes for which any such distributor may be liable.

The bond or letter of credit, conditioned to secure payment for the stamps, shall be executed by the distributor as principal and by a corporation duly authorized to engage in business as a surety company or financial institution in Indiana.

(c) If

~~(1) there is an increase in the amount of the tax imposed upon cigarettes under this chapter; and~~
~~(2)~~ a distributor has at least five (5) consecutive years of good credit standing with the state, ~~as of the effective date of the tax increase described in subdivision (1);~~

~~the amount of the bond required by subsection (b)(1) remains the same as before the increase in the tax on cigarettes took effect.~~ **the distributor shall not be required to post a bond or letter of credit under subsection (b).**

SECTION 2. IC 6-7-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. Every distributor, upon the receipt of cigarettes taxed under this chapter, shall cause each individual package to have the requisite denomination and amount of stamps firmly affixed. Every retailer, upon receipt of cigarettes not having the proper amount of stamps firmly affixed, to each individual package, or stamped by a meter stamping machine, by a distributor shall stamp or firmly affix stamps immediately on each individual package. Provided, however, that any distributor engaged in interstate business, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Every distributor, at the time of shipping or delivering any cigarettes, shall make a duplicate invoice, showing complete details of each transaction, and shall retain the duplicate subject to the inspection by the department or its agent. **Every distributor shall include with each shipment or delivery of cigarettes an invoice showing complete details of the transactions. Every retailer shall retain for not less than two (2) weeks the invoice included with each shipment or delivery of cigarettes subject to inspection by the department or its agent. A retailer may request a duplicate invoice from a distributor.**

SECTION 3. IC 6-7-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. The department:

(1) may revoke or suspend a license issued under this chapter for any violation of this chapter **or IC 6-7-1-18** by the licensee; and
(2) may not issue a license under this chapter to an applicant within six (6) months after the revocation of that applicant's license.

SECTION 4. IC 7.1-6-2-6, AS AMENDED BY P.L.1-2002, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) The **Richard D. Doyle**

youth tobacco education and enforcement fund is established. The fund shall be administered by the commission.

(b) Expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the fund shall be used for the following purposes:

(1) For youth smoking prevention education. The commission may contract with the state department of health or the office of the secretary of family and social services for youth smoking prevention education programs.

(2) For education and training of retailers who sell tobacco products. The commission may contract with education and training programs of the office of the secretary of family and social services, the division of mental health and addiction, enforcement officers, or a program approved by the commission.

(3) For the commission, for enforcement of youth tobacco laws.

SECTION 5. IC 7.1-6-2-8, AS ADDED BY P.L.204-2001, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) This section applies whenever a civil penalty payable to the **Richard D. Doyle** youth tobacco education and enforcement fund is imposed.

(b) The person liable for the civil penalty shall pay the full amount of the civil penalty to the commission within thirty (30) days after final judgment.

(c) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for a late penalty equal to the greater of the following:

(1) Twenty-five percent (25%) of the amount of the civil penalty imposed under IC 35-46-1.

(2) The lesser of the following:

(A) Twenty-five dollars ($25) multiplied by the number of days that have elapsed after the date that the civil penalty was imposed by a court.

(B) Five thousand dollars ($5,000).

(d) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for interest on the unpaid amount of the:

(1) civil penalty imposed by a court; and

(2) late penalty imposed under this section.

The interest rate is the adjusted rate of interest as determined under IC 6-8.1-10-1 payable from the date that payment of the amount was due.

(e) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for the reasonable documented out-of-pocket expenses incurred in pursuing collection efforts.

(f) The commission shall collect the following:

(1) Civil penalties imposed by a court.

(2) Late penalties imposed under this section.

(3) Interest imposed under this section.

(4) Reasonable documented out-of-pocket expenses incurred in pursuing collection efforts.

(g) Late penalties and interest imposed under this section shall be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund established by section 6 of this chapter.

SECTION 6. IC 16-18-2-323.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 323.1. "School bus", for purposes of IC 16-41-37, has the meaning set forth in IC 16-41-37-2.3.**

SECTION 7. IC 16-18-2-323.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 323.4. "School week", for purposes of IC 16-41-37, has the meaning set forth in IC 16-41-37-2.7.**

SECTION 8. IC 16-41-37-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 2.3. As used in this chapter, "school bus" means a motor vehicle that is:**

(1) designed and constructed for the accommodation of at least ten (10) passengers;

(2) owned or operated by a public or governmental agency, or privately owned and operated for compensation; and

(3) used for the transportation of school children to and from the following:

(A) School.

(B) School athletic games or contests.

(C) Other school functions.

SECTION 9. IC 16-41-37-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 2.7. As used in this chapter, "school week" means a normal Monday through Friday week that contains three (3) or more days that each contain more than four (4) hours of classroom instruction.**

SECTION 10. IC 16-41-37-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. A person who smokes:

(1) in a public building, except in an area designated as a smoking area under section 5 of this chapter;

(2) in the retail area of a grocery store or drug store that is designated as a nonsmoking area by the store's proprietor; ~~or~~

(3) in the dining area of a restaurant that is designated and posted as the restaurant's nonsmoking area by the restaurant's proprietor; **or**

(4) in a school bus during a school week or while the school bus is being used for a purpose described in section 2.3(3) of this chapter;

commits a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) previous unrelated judgments for violating this section that are accrued within the twelve (12) months immediately preceding the violation.

SECTION 11. IC 24-3-2-2, AS AMENDED BY P.L.204-2001, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. Unless the context in this chapter requires otherwise, the term:

(a) "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material; provided the definition in this paragraph shall not be construed to include cigars.

(b) "Person" or the term "company", used in this chapter interchangeably, means and includes any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, bank, consignee, firm, partnership, limited liability company, joint vendor, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, municipal corporation, or other political subdivision of the state engaged in private or proprietary activities or business, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(c) "Distributor" shall mean and include every person who sells, barters, exchanges, or distributes cigarettes in the state of Indiana to retail dealers for the purpose of resale, or who purchases for resale cigarettes from a manufacturer of cigarettes or from a wholesaler, jobber, or distributor outside the state of Indiana who is not a distributor holding a registration certificate issued under the provisions of IC 6-7-1.

(d) "Retailer" shall mean every person, other than a distributor, who purchases, sells, offers for sale, or distributes cigarettes to consumers or to any person for any purpose other than resale, irrespective of quantity or amount or the number of sales.

(e) "Sell at retail", "sale at retail", and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration made in the ordinary course of trade or usual conduct of the seller's business to the purchaser for consummation or use.

(f) "Sell at wholesale", "sale at wholesale", and "wholesale sales" shall mean and include any transfer of title to cigarettes for a valuable consideration made in the ordinary course of trade or usual conduct

of a distributor's business.

(g) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or distributor, as the case may be, or the replacement cost of cigarettes to the retailer or distributor, as the case may be, within thirty (30) days prior to the date of sale, in the quantity last purchased, whichever is the lower, less all trade discounts and customary discounts for cash, plus the cost at full face value of any stamps which may be required by IC 6-7-1, if not included by the manufacturer in his selling price to the distributor.

(h) "Department" shall mean the alcohol and tobacco commission **or** its duly authorized assistants and employees. ~~and any other board, commission, agency, or other entity of the state of Indiana which may be designated by the governor to administer and enforce the provisions of this chapter; and the governor is hereby vested with power and authority to designate and to transfer to another department, board, commission, agency, or other entity of the state of Indiana the administration and enforcement of the provisions of this chapter.~~

(i) "Cost to the retailer" shall mean the basic cost of cigarettes to the retailer, plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses paid or incurred and must include without limitation labor (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising; however, any retailer who, in connection with the retailer's purchase, receives not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or in part, discounts ordinarily allowed on purchases by a distributor shall, in determining costs to the retailer pursuant to this section, add the cost to the distributor, as defined in paragraph (j), to the basic cost of cigarettes to said retailer as well as the cost of doing business by the retailer. In the absence of proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be eight percent (8%) of the basic cost of cigarettes to the retailer. In the absence of proof of a lesser or higher cost of doing business, the cost of doing business by the retailer, who in connection with the retailer's purchase receives not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or in part, the discounts ordinarily allowed upon purchases by a distributor, shall be presumed to be eight percent (8%) of the sum of the basic cost of cigarettes plus the cost of doing business by the distributor.

(j) "Cost to the distributor" shall mean the basic cost of cigarettes to the distributor, plus the cost of doing business by the distributor as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include without limitation labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. In the absence of proof of a lesser or higher cost of doing business by the distributor making the sale, the cost of doing business by the wholesaler shall be presumed to be four percent (4%) of the basic cost of cigarettes to the distributor, plus cartage to the retail outlet, if performed or paid for by the distributor, which cartage cost, in the absence of proof of a lesser or higher cost, shall be deemed to be one-half of one percent (0.5%) of the basic cost of cigarettes to the distributor.

(k) "Registration certificate" refers to the registration certificate issued to cigarette distributors by the department of state revenue under IC 6-7-1-16.

SECTION 12. IC 24-3-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) It is a ~~Class C~~ **Class A** infraction for a retailer or distributor, with intent to injure competitors or destroy or substantially lessen competition, to offer to sell or sell at retail or wholesale cigarettes at less than the cost to him. The registration certificate held by such a distributor under IC 6-7-1 may be revoked by the department for the balance of the term thereof.

(b) Evidence of offering to sell or sale of cigarettes by any retailer or distributor at less than the cost to him is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

(c) Notwithstanding IC 34-28-5-5(c), a judgment for a violation of this section shall be deposited in the enforcement and administration fund established under IC 7.1-4-10-1.

SECTION 13. IC 24-3-2-4.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.7. (a) A retailer shall produce an invoice or other documentary evidence proving that the retailer obtained cigarettes or a tobacco product (as defined in IC 6-7-2-5) from a distributor that holds a valid registration certificate.**

(b) Each day a retailer fails to produce an invoice or other evidence under subsection (a) constitutes a separate violation of this section.

(c) This subsection applies in addition to or instead of any other civil or criminal penalty. The department or the department of state revenue may impose on a retailer that violates subsection (a) a civil penalty that does not exceed the greater of:

(1) five hundred percent (500%) of the retail value of the cigarettes described in subsection (a); or

(2) five thousand dollars ($5,000);

for each violation.

(d) In addition to any other penalty described in this section, the department or the department of state revenue may seize the cigarettes or other tobacco products for which the retailer is unable to produce the invoice or documentary evidence described in subsection (a). The seized cigarettes or other tobacco products shall be forfeited to the state and destroyed.

(e) Civil penalties collected under this chapter shall be deposited as follows:

(1) Seventy percent (70%) to the enforcement and administration fund established under IC 7.1-4-10.

(2) Thirty percent (30%) to the state general fund for the use of the department of state revenue.

SECTION 14. IC 24-3-3-13, AS ADDED BY P.L.223-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. **(a) Subsection (b) applies unless and until all or any part of subsection (b) is held to be unconstitutional or otherwise unenforceable. If all or any part of subsection (b) or the application of all or any part of subsection (b) to a person, an entity, or a circumstance is held to be unconstitutional or invalid by a court, the unconstitutionality or invalidity does not affect other provisions of this chapter, and subsection (c) controls. Subsection (c) applies unless and until all or any part of subsection (c) is held to be unconstitutional or otherwise unenforceable. If all or any part of subsection (c) or the application of all or any part of subsection (c) to a person, an entity, or a circumstance is held to be unconstitutional or invalid by a court, the unconstitutionality or invalidity does not affect other provisions of this chapter, and subsection (d) controls.**

(b) A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on such funds as earned. The funds shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

(A) in the order in which they were placed into escrow; and

(B) only to the extent and at the time necessary to make payments required under such a judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount the tobacco product manufacturer is required to place in escrow on account of units sold in Indiana in a particular year exceeds the master settlement agreement payments the tobacco product manufacturer would have been required to make on account of units sold in Indiana if the tobacco product manufacturer were a participating manufacturer, as

determined under section IX(i) of the master settlement agreement and after final determination of all adjustments, the excess payments shall be released from escrow and shall revert to the tobacco product manufacturer.

(3) To the extent not released from escrow under subdivision (1) or (2), funds shall be released from escrow and revert back to the tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

(c) This subsection applies only if subsection (b) is held to be unconstitutional or otherwise unenforceable. A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on the funds as earned. The funds shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

(A) in the order in which they were placed into escrow; and

(B) only to the extent and at the time necessary to make payments required under such a judgment or settlement.

(2) To the extent not released from escrow under subdivision (1), funds shall be released from escrow and revert back to the tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

(d) This subsection applies only if subsections (b) and (c) are held to be unconstitutional or otherwise unenforceable. A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

(A) in the order in which they were placed into escrow; and

(B) only to the extent and at the time necessary to make payments required under such a judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(I)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(I)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to the tobacco product manufacturer.

(3) To the extent not released from escrow under subdivision (1) or (2), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

SECTION 15. IC 24-3-5.4 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 5.4. Master Settlement Agreement Protection Act

Sec. 1. As used in this chapter, "brand family" means cigarettes that are:

(1) sold under the same trademark; and

(2) differentiated from one another by means of modifiers such as menthol, lights, kings, or 100s.

The term includes the use of a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indicia of product identification that is identical or similar to or identifiable with a previously known brand of cigarettes.

Sec. 2. As used in this chapter, "cigarette" has the meaning set forth in IC 24-3-3-5.

Sec. 3. As used in this chapter, "commission" means the alcohol and tobacco commission created by IC 7.1-2-1-1.

Sec. 4. As used in this chapter, "department" means the department of state revenue.

Sec. 5. As used in this chapter, "distributor" means a person that:

(1) purchases cigarettes on which the tax under IC 6-7-1 is not paid; and

(2) stores, sells, or otherwise disposes of the cigarettes.

Sec. 6. As used in this chapter, "master settlement agreement" has the meaning set forth in IC 24-3-3-6.

Sec. 7. As used in this chapter, "nonparticipating manufacturer" means a tobacco product manufacturer that is not a participating manufacturer.

Sec. 8. As used in this chapter, "participating manufacturer" has the meaning set forth in IC 24-3-3-12(1).

Sec. 9. As used in this chapter, "qualified escrow fund" has the meaning set forth in IC 24-3-3-7.

Sec. 10. As used in this chapter, "stamping agent" means a person that may affix a stamp to a package of cigarettes under IC 6-7-1-15.

Sec. 11. As used in this chapter, "tobacco product manufacturer" has the meaning set forth in IC 24-3-3-10.

Sec. 12. As used in this chapter, "units sold" has the meaning set forth in IC 24-3-3-11.

Sec. 13. (a) Not later than April 30 of each year, a tobacco product manufacturer whose cigarettes are sold in Indiana, whether directly or through a distributor, retailer, or similar intermediary, shall certify to the department and the attorney general that, as of the date of the certification, the tobacco product manufacturer is:

(1) a participating manufacturer; or

(2) in full compliance with IC 24-3-3.

The department shall prescribe the form of the certification.

(b) A participating manufacturer shall include in a certification under subsection (a) a list of the participating manufacturer's brand families. The participating manufacturer shall update the list by filing a supplemental certification with the department and the attorney general not less than thirty (30) days before the participating manufacturer adds a brand family or otherwise modifies the list of brand families.

(c) A nonparticipating manufacturer shall include in a certification under subsection (a) a list of the nonparticipating manufacturer's brand families, including the following:

(1) A separate listing of each brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.

(2) A separate listing of the number of units sold for each brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.

(3) An indication of any brand family that was sold in Indiana during the calendar year before the year in which the certification is filed and that is not sold in Indiana as of the date of the certification.

(4) The name and address of any other manufacturer of a brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.

(d) A nonparticipating manufacturer shall file a supplemental certification with the attorney general not less than thirty (30) days before the nonparticipating manufacturer adds to or otherwise modifies its list of brand families.

(e) A nonparticipating manufacturer shall certify the following in a certification under subsection (a):

(1) The nonparticipating manufacturer:

(A) is registered to do business in Indiana; or

(B) has appointed an agent for service of process and provided notice under section 16 of this chapter.

(2) The nonparticipating manufacturer has:

(A) established and continues to maintain a qualified escrow fund; and

(B) executed a qualified escrow agreement that:

(i) the attorney general has approved; and

(ii) governs the qualified escrow fund.

(3) The nonparticipating manufacturer is in full compliance with:

(A) this section; and

(B) IC 24-3-3.

(4) The name, address, and telephone number of the financial institution that holds the nonparticipating manufacturer's qualified escrow fund.

(5) The account number and any subaccount numbers of the nonparticipating manufacturer's qualified escrow fund.

(6) The amounts and dates of deposits that the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in Indiana during the calendar year before the year in which the certification is filed, including any verification required by the attorney general.

(7) The amounts and dates of withdrawals or transfers of funds that the nonparticipating manufacturer made from a qualified escrow fund into which the nonparticipating manufacturer made or makes escrow payments under IC 24-3-3.

(f) A tobacco product manufacturer shall not include a brand family in the tobacco product manufacturer's certification under subsection (a) unless:

(1) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is considered the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the master settlement agreement for the year in which the certification is filed in the volume and shares determined under the master settlement agreement; or

(2) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is considered to be the nonparticipating manufacturer's cigarettes for purposes of IC 24-3-3-12(2).

(g) This section does not limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of IC 24-3-3.

(h) A nonparticipating manufacturer shall maintain all invoices and documentation of sales and any other relevant information for a period of five (5) years unless otherwise required by law to maintain the invoices, documentation of sales, or other relevant information for more than five (5) years.

Sec. 14. (a) Not later than July 1 of each year, the attorney general shall make available to the public by publishing on accessIndiana (as defined in IC 5-21-1-1.5) a directory listing all brand families listed in certifications filed under section 13 of this chapter.

(b) A directory described in subsection (a) shall not include the name or brand families of a nonparticipating manufacturer:

(1) that fails to comply with section 13 of this chapter; or

(2) whose certification fails to comply with section 13(c) or 13(e) of this chapter, unless the attorney general determines that the failure has been remedied.

(c) The directory may not include a tobacco product manufacturer or a brand family if the attorney general concludes that:

(1) in the case of a nonparticipating manufacturer, all escrow payments required under IC 24-3-3-12 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(2) all outstanding final judgments, including interest on the judgments, for violations of IC 24-3-3 have not been fully satisfied for the tobacco product manufacturer or brand family.

(d) The attorney general shall update the directory as necessary to correct mistakes or to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.

(e) The attorney general shall post in the directory and transmit by electronic mail or other means to each distributor or stamping agent notice of any removal from the directory of a tobacco product manufacturer or brand family not later than thirty (30) days before the attorney general removes the tobacco product manufacturer or brand family from the directory.

(f) Unless otherwise provided in an agreement between a tobacco product manufacturer and a distributor or stamping agent, a distributor or stamping agent is entitled to a refund from a tobacco product manufacturer for any money paid by the distributor or stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer or brand family that:

(1) are in the possession of the distributor or stamping agent on; or

(2) the distributor or stamping agent receives from a retailer after;

the date on which the tobacco product manufacturer or brand family is removed from the directory.

(g) Unless otherwise provided in an agreement between a retailer and a distributor, stamping agent, or tobacco product manufacturer, a retailer is entitled to a refund from a distributor, stamping agent, or tobacco product manufacturer for any money paid by the retailer to the distributor, stamping agent, or tobacco product manufacturer for any cigarettes of the tobacco product manufacturer or brand family that are in the possession of the retailer on the date on which the tobacco product manufacturer or brand family is removed from the directory.

(h) The attorney general shall not restore a tobacco product manufacturer or brand family to the directory until the tobacco product manufacturer pays a distributor, stamping agent, or retailer any refund due under subsection (f) or (g).

(i) A distributor or stamping agent shall provide and update as necessary an electronic mail address to the attorney general for purposes of receiving a notification required by this chapter.

Sec. 15. A person may not:

(1) affix a stamp to a package or other container of cigarettes; or

(2) sell or offer or possess for sale in Indiana cigarettes;

of a tobacco product manufacturer or brand family that is not listed in a directory under section 14 of this chapter.

Sec. 16. (a) A foreign nonparticipating manufacturer that has not registered to do business in Indiana shall, as a condition precedent to having the foreign nonparticipating manufacturer's brand families listed in a directory under section 14 of this chapter, appoint and engage without interruption the services of an agent in Indiana to act as the foreign nonparticipating manufacturer's agent for the service of process. Service on an agent under this section constitutes legal and valid service of process on the foreign nonparticipating manufacturer that appointed and engaged the services of the agent. The foreign nonparticipating manufacturer shall provide the following information to the department and the attorney general:

(1) The name, address, and telephone number of the agent.

(2) Proof of the appointment of the agent.

(3) The availability of the agent.

(4) Any other information required by the department or the attorney general.

(b) A foreign nonparticipating manufacturer shall provide notice to the department and the attorney general not less than thirty (30) days before the foreign nonparticipating manufacturer terminates the authority of an agent appointed under this section. The foreign nonparticipating manufacturer shall provide proof to the satisfaction of the attorney general of the appointment of a new agent not less than five (5) days before the foreign nonparticipating manufacturer terminates an existing agency appointment.

(c) If an agent terminates an agency appointment, the foreign

nonparticipating manufacturer shall:

(1) notify the department and the attorney general of the termination not more than five (5) days after the termination; and

(2) provide proof to the satisfaction of the attorney general of the appointment of a new agent.

(d) A foreign nonparticipating manufacturer that:

(1) sells products in Indiana; and

(2) has not appointed an agent under this section;

is considered to have appointed the secretary of state as the foreign nonparticipating manufacturer's agent. The appointment of the secretary of state under this subsection as the foreign nonparticipating manufacturer's agent does not satisfy the condition precedent to having the foreign nonparticipating manufacturer's brand families listed in a directory under section 14 of this chapter.

Sec. 17. (a) This section applies after July 31, 2003.

(b) Not later than January 20, April 20, July 20, and October 20 of a calendar year, a distributor or stamping agent shall submit the following information to the department, the commission, and the attorney general:

(1) A list by brand family of the total number of cigarettes for which the distributor or stamping agent affixed stamps or otherwise paid taxes during the immediately preceding three (3) months.

(2) Any other information required by the department or the attorney general.

The distributor or stamping agent shall maintain and make available to the department, the commission, and the attorney general for a period of five (5) years all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information that the distributor or stamping agent relied on in reporting to the department, the commission, and the attorney general.

(c) The attorney general may require a distributor or a tobacco product manufacturer to submit additional information to determine whether a tobacco product manufacturer is in compliance with this chapter. The additional information may include samples of the packaging or labeling of each of the tobacco product manufacturer's brand families.

Sec. 18. The department and the commission shall disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing this chapter. The department, the commission, and the attorney general:

(1) shall share with each other the information received under this chapter; and

(2) may share the information received under this chapter with other federal, state, or local agencies only for purposes of enforcing this chapter or a corresponding law in another state.

Sec. 19. The attorney general may require a nonparticipating manufacturer to provide from the financial institution that holds the nonparticipating manufacturer's qualified escrow fund for purposes of complying with this chapter proof of:

(1) the amount of money in the qualified escrow fund being held on behalf of the state;

(2) the dates of any deposits into the qualified escrow fund; and

(3) the dates and amounts of any withdrawals from the qualified escrow fund.

Sec. 20. The department or the attorney general may adopt rules under IC 4-22-2 to implement this chapter, including rules to:

(1) require a tobacco product manufacturer subject to section 13(c) of this chapter to make required escrow deposits in installments during the calendar year in which the sales covered by the deposits are made; or

(2) produce information sufficient to enable the attorney general to determine the adequacy of the amount of an installment deposit described in subdivision (1).

Sec. 21. (a) This section applies in addition to or instead of any other civil or criminal penalty.

(b) The department may revoke or suspend the license of a distributor, a stamping agent, or any other person that violates section 15 of this chapter.

(c) Each:

(1) stamp affixed;

(2) sale of cigarettes; or

(3) offer or possession of cigarettes for sale;

in violation of section 15 of this chapter constitutes a separate violation.

(d) The department or the commission may impose a civil penalty that does not exceed the greater of:

(1) five hundred percent (500%) of the retail value of the cigarettes sold; or

(2) five thousand dollars ($5,000);

for each violation of section 15 of this chapter.

Sec. 22. Whenever the department or the commission discovers any cigarettes that have been sold, offered for sale, or possessed for sale in Indiana in violation of section 15 of this chapter, the department or the commission may seize and take possession of the cigarettes. The seized cigarettes shall be forfeited to the state. The department or the commission shall destroy the seized cigarettes.

Sec. 23. The attorney general may seek an injunction to:

(1) restrain a threatened or an actual violation of section 15 of this chapter by a stamping agent; and

(2) compel the stamping agent to comply with sections 15, 17(b), and 17(c) of this chapter.

Sec. 24. (a) A person shall not:

(1) sell or distribute; or

(2) acquire, hold, own, possess, transport, import, or cause to be imported;

cigarettes that the person knows or should know are intended for distribution or sale in Indiana in violation of section 15 of this chapter.

(b) A person who violates this section commits a Class C misdemeanor.

Sec. 25. A person who violates section 15 of this chapter engages in an unfair and deceptive business practice.

Sec. 26. A determination by the attorney general to not list in or to remove from a directory under section 14 of this chapter a brand family or a tobacco product manufacturer is subject to review only by the Marion County circuit court.

Sec. 27. The department shall not issue a registration certificate under IC 6-7-1-16(a) to a distributor unless the distributor certifies in writing that the distributor will comply with this chapter.

Sec. 28. In an action brought by the state to enforce this chapter, the state may recover:

(1) the costs of investigation;

(2) expert witness fees;

(3) the costs of the action; and

(4) attorney's fees.

Sec. 29. If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the treasurer of state for deposit in the Indiana tobacco master settlement agreement fund under IC 4-12-1-14.3.

Sec. 30. All:

(1) civil penalties imposed under; and

(2) judgments for violations of;

this chapter shall be deposited in the enforcement and administration fund established under IC 7.1-4-10-1.

SECTION 16. IC 35-46-1-10, AS AMENDED BY P.L.204-2001, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) A person who knowingly:

(1) sells or distributes tobacco to a person less than eighteen (18) years of age; or

(2) purchases tobacco for delivery to another person who is less than eighteen (18) years of age;

commits a Class C infraction. For a sale to take place under this section, the buyer must pay the seller for the tobacco product.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a person accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph, showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1, or a similar card issued under the laws of another state or the federal government, showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused person sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

(1) agriculture;
(2) processing;
(3) transporting;
(4) wholesaling; or
(5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 17. IC 35-46-1-10.2, AS AMENDED BY P.L.1-2001, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars ($50).

(2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of one hundred dollars ($100).

(3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars ($250).

(4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of five hundred dollars ($500).

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours for each specific business location.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

(1) agriculture;
(2) processing;
(3) transporting;
(4) wholesaling; or
(5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 18. IC 35-46-1-11.3, AS AMENDED BY P.L.204-2001, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.3. (a) This section does not apply to advertisements that are less than fourteen (14) square feet and posted:

(1) at street level in the window or on the exterior of a business property or establishment where tobacco products are manufactured, distributed, or sold; or

(2) on vehicles.

(b) This section does not apply to advertisements that are placed on a fixed, permanent marquee sign that is located on the retailer's property where tobacco products are sold.

(c) A person may not advertise or cause to be advertised tobacco products on a billboard or an outdoor advertisement where the tobacco advertising occupies an area that exceeds fourteen (14) square feet. The alcohol and tobacco commission may adopt rules under IC 4-22-2 to determine how to measure the tobacco product advertising on a sign that contains both tobacco product advertising and advertising that is not tobacco related. The rules may not allow the frame of the sign or other structural parts that only serve to support the sign to be included in the tobacco advertising measurement.

(d) A person who violates this section commits a Class C infraction. An advertisement that is in violation of this section must be removed not more than ten (10) days after a citation or summons has been issued. Notwithstanding IC 34-28-5-4(c), if an advertisement that is in violation of this section is not removed not more than ten (10) days after a citation or summons has been issued, a civil judgment for an infraction committed under this section must include a civil penalty of one hundred dollars ($100) for each day that the advertisement was in violation of this section.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 19. IC 35-46-1-11.5, AS AMENDED BY P.L.1-2001, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.5. (a) Except for a coin machine that is placed in or directly adjacent to an entranceway or an

exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than eighteen (18) years of age, this section does not apply to a coin machine that is located in the following:

(1) That part of a licensed premises (as defined in IC 7.1-1-3-20) where entry is limited to persons who are at least eighteen (18) years of age.

(2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) years of age.

(3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.

(4) Riverboats where entry is limited to persons who are at least twenty-one (21) years of age and on which lawful gambling is authorized.

(b) As used in this section, "coin machine" has the meaning set forth in IC 35-43-5-1.

(c) Except as provided in subsection (a), an owner of a retail establishment may not:

(1) distribute or sell tobacco by use of a coin machine; or

(2) install or maintain a coin machine that is intended to be used for the sale or distribution of tobacco.

(d) An owner of a retail establishment who violates this section commits a Class C infraction. A citation or summons issued under this section must provide notice that the coin machine must be moved within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the owner of the retail establishment has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars ($50).

(2) If the owner of the retail establishment has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars ($250).

(3) If the owner of the retail establishment has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days for the same machine, the coin machine shall be removed or impounded by a law enforcement officer having jurisdiction where the violation occurs.

An owner of a retail establishment may not be issued a citation or summons for a violation of this section more than once every two (2) business days for each business location.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

SECTION 20. IC 35-46-1-11.7, AS AMENDED BY P.L.1-2001, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.7. (a) A retail establishment that has as its primary purpose the sale of tobacco products may not allow an individual who is less than eighteen (18) years of age to enter the retail establishment.

(b) An individual who is less than eighteen (18) years of age may not enter a retail establishment described in subsection (a).

(c) A retail establishment described in subsection (a) must conspicuously post on all entrances to the retail establishment a sign in boldface type that states "NOTICE: It is unlawful for a person less than 18 years old to enter this store.".

(d) A person who violates this section commits a Class C infraction. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the person has not been cited for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars ($50).

(2) If the person has had one (1) violation in the previous ninety (90) days, a civil penalty of one hundred dollars ($100).

(3) If the person has had two (2) violations in the previous ninety (90) days, a civil penalty of two hundred fifty dollars ($250).

(4) If the person has had three (3) or more violations in the previous ninety (90) days, a civil penalty of five hundred dollars ($500).

A person may not be cited more than once every twenty-four (24) hours.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

SECTION 21. [EFFECTIVE JULY 1, 2003] **(a) Notwithstanding IC 24-3-5.4-13(a), as added by this act, a tobacco manufacturer shall file a certification under IC 24-3-5.4-13, as added by this act, not later than August 15, 2003.**

(b) Notwithstanding IC 24-3-5.4-14(a), as added by this act, the attorney general shall publish a directory under IC 24-3-5.4-14, as added by this act, not later than October 1, 2003.

(c) This SECTION expires December 31, 2003.

(Reference is to EHB 1788 as reprinted April 1, 2003.)

HASLER	WEATHERWAX
MURPHY	LEWIS
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
ESB 186–1; filed April 23, 2003, at 6:22 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 186 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 1, delete lines 1 through 17

Page 2, delete lines 1 through 27.

Renumber all SECTIONS consecutively.

(Reference is to ESB 186 as printed March 28, 2003.)

LUBBERS	PORTER
ROGERS	BEHNING
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1047–1; filed April 23, 2003, at 6:30 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1047 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 33-4-3-7, AS AMENDED BY P.L.2-2002, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. The small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than ~~three~~ **six** thousand dollars ~~($3,000)~~ **($6,000).** The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds ~~three~~ **six** thousand dollars ~~($3,000)~~ **($6,000)** in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed ~~three~~ **six** thousand dollars ~~($3,000)~~ **($6,000).**

(3) Emergency possessory actions between a landlord and tenant under IC 32-31-6.

SECTION 2. IC 33-5-2-4, AS AMENDED BY P.L.2-2002, SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. ~~(a) Except as provided in~~

~~subsection (b),~~ The small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than ~~three~~ **six** thousand dollars ~~($3,000)~~ **($6,000).** The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds ~~three thousand dollars ($3,000)~~ **six thousand dollars ($6,000)** in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed ~~three~~ **six** thousand dollars ~~($3,000).~~ **($6,000).**

(3) Emergency possessory actions between a landlord and tenant under IC 32-31-6.

~~(b) This subsection applies to a county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000). The small claims docket has jurisdiction over the following:~~

~~(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than six thousand dollars ($6,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds six thousand dollars ($6,000) in order to bring it within the jurisdiction of the small claims docket.~~

~~(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars ($6,000).~~

~~(3) Emergency possessory actions between a landlord and tenant under IC 32-31-6.~~

SECTION 3. IC 33-10.1-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A clerk of a city court in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) shall deposit all court costs collected by the clerk in accordance with IC 33-19-1-3. The fees received by the controller from the clerk shall be paid into the city treasury at the time of the semiannual settlement for city revenue.

(b) If the party instituting an action or proceeding recovers judgment, the judgment must also include as costs an amount equal to the small claims costs fee **and the small claims service fee** prescribed under IC 33-19-5-5.

(c) Money paid in advance for costs remaining unexpended at the time an action or proceeding is terminated, whether by reason of dismissal or otherwise, shall be returned to the party or parties making payment. However, this section does not apply to civil actions or proceedings instituted by or on behalf of the state or any of its political subdivisions.

SECTION 4. IC 33-10.5-7-1, AS AMENDED BY P.L.2-2002, SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Each judge of the county court shall maintain the following dockets:

(1) An offenses and violations docket.

(2) A small claims docket for the following:

(A) All cases where the amount sought or value of the property sought to be recovered is ~~three~~ **six** thousand dollars ~~($3,000)~~ **($6,000)** or less. The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of his claim over ~~three~~ **six** thousand dollars ~~($3,000)~~ **($6,000)** to bring it within the jurisdiction of the small claims docket.

(B) All possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed ~~three~~ **six** thousand dollars ~~($3,000)~~ **($6,000).**

(C) Emergency possessory actions between a landlord and tenant under IC 32-31-4.

(3) A plenary docket for all other civil cases.

SECTION 5. IC 33-11.6-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. The court shall have original and concurrent jurisdiction with the circuit and superior courts in all civil cases founded on contract or tort in which the debt or damage claimed does not exceed six thousand dollars ($6,000), not including interest or ~~attorney~~ **attorney's** fees.

SECTION 6. IC 33-11.6-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. The court shall have original and concurrent jurisdiction with the circuit and superior courts in possessory actions between landlord and tenant in which the past due rent at the time of filing does not exceed six thousand dollars ($6,000). The court shall also have original and concurrent jurisdiction with the circuit and superior courts in actions for the possession of property where the value of the property sought to be recovered does not exceed six thousand dollars ($6,000). These jurisdictional limitations shall not be affected by interest and ~~attorney~~ **attorney's** fees.

SECTION 7. IC 33-19-5-5, AS AMENDED BY P.L.164-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) For each small claims action the clerk shall collect from the party filing the action a:

(1) small claims costs fee of thirty-five dollars ($35); **and**

(2) small claims service fee of five dollars ($5) for each defendant named or added in the small claims action.

However, a clerk may not collect a small claims costs fee **or small claims service fee** for a small claims action filed by or on behalf of the attorney general.

(b) In addition to a small claims costs fee **and small claims service fee** collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

(1) A document fee.

(2) A document storage fee (IC 33-19-6-18.1).

(3) An automated record keeping fee (IC 33-19-6-19).

SECTION 8. IC 33-19-7-1, AS AMENDED BY P.L.39-2002, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The clerk of a circuit court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

(1) IC 33-19-5-1(a) (criminal costs fees).

(2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).

(3) IC 33-19-5-3(a) (juvenile costs fees).

(4) IC 33-19-5-4(a) (civil costs fees).

(5) ~~IC 33-19-5-5(a)~~ **IC 33-19-5-5(a)(1)** (small claims costs fees).

(6) IC 33-19-5-6(a) (probate costs fees).

(7) IC 33-19-6-16.2 (deferred prosecution fees).

(b) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state user fee fund established under IC 33-19-9-2 the following:

(1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).

(2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

(3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(7).

(4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-19-5-1(b)(8).

(5) One hundred percent (100%) of the highway work zone fees collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).

(6) One hundred percent (100%) of the safe schools fee collected under IC 33-19-6-16.3.

(7) One hundred percent (100%) of the automated record keeping fee (IC 33-19-6-19).

(c) The clerk of a circuit court shall monthly distribute to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established

under IC 5-2-11.

(d) The clerk of a circuit court shall monthly distribute to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(8). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall monthly distribute to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-19-6-20. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-19-6-1.5 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance under subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(f) The clerk of the circuit court shall semiannually distribute to the auditor of state for deposit in the sexual assault victims assistance fund established under IC 16-19-13-6 one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-19-6-21.

(g) The clerk of a circuit court shall monthly distribute to the county auditor the following:

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in the Indiana support enforcement tracking system (ISETS) collected under IC 33-19-6-5.

(2) The percentage share of the support and maintenance fees for cases designated as IV-D child support cases in ISETS collected under IC 33-19-6-5 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall monthly distribute to the office of the secretary of family and social services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS collected under IC 33-19-6-5 that is not reimbursable to the county at the applicable federal financial participation rate.

(h) The clerk of a circuit court shall monthly distribute to the county auditor one hundred percent (100%) of the small claims service fee under IC 33-19-5-5(a)(2) for deposit in the county general fund.

SECTION 9. IC 33-19-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. The clerk of a circuit court shall forward the county share of fees collected to the county auditor in accordance with IC 33-19-1-3(a). The auditor shall retain as the county share twenty-seven percent (27%) of the amount of fees collected under the following:

(1) IC 33-19-5-1(a) (criminal costs fees).

(2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).

(3) IC 33-19-5-3(a) (juvenile costs fees).

(4) IC 33-19-5-4(a) (civil costs fees).

(5) ~~IC 33-19-5-5(a)~~ **IC 33-19-5-5(a)(1)** (small claims costs fees).

(6) IC 33-19-5-6(a) (probate costs fees).

(7) IC 33-19-6-16.2 (deferred prosecution fees).

SECTION 10. IC 33-19-7-3, AS AMENDED BY P.L.98-2000, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The qualified municipality share to be distributed to each city and town maintaining a law enforcement agency that prosecutes at least fifty percent (50%) of its ordinance violations in a circuit, superior, or county court located in the county is three percent (3%) of the amount of fees collected under the following:

(1) IC 33-19-5-1(a) (criminal costs fees).

(2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).

(3) IC 33-19-5-3(a) (juvenile costs fees).

(4) IC 33-19-5-4(a) (civil costs fees).

(5) ~~IC 33-19-5-5(a)~~ **IC 33-19-5-5(a)(1)** (small claims costs fees).

(6) IC 33-19-5-6(a) (probate costs fees).

(7) IC 33-19-6-16.2 (deferred prosecution fees).

(b) The county auditor shall determine the amount to be distributed to each city and town qualified under subsection (a) as follows:

STEP ONE: Determine the population of the qualified city or town.

STEP TWO: Add the populations of all qualified cities and towns determined under STEP ONE.

STEP THREE: Divide the population of each qualified city and town by the sum determined under STEP TWO.

STEP FOUR: Multiply the result determined under STEP THREE for each qualified city and town by the amount of the qualified municipality share.

(c) The county auditor shall semiannually distribute to each city and town described in subsection (a) the amount computed for that city or town under STEP FOUR of subsection (b).

SECTION 11. IC 33-19-7-4, AS AMENDED BY P.L.1-2002, SECTION 141, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The clerk of a city or town court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund fifty-five percent (55%) of the amount of fees collected under the following:

(1) IC 33-19-5-1(a) (criminal costs fees).

(2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).

(3) IC 33-19-5-4(a) (civil costs fees).

(4) ~~IC 33-19-5-5~~ **IC 33-19-5-5(a)(1)** (small claims costs fees).

(5) IC 33-19-6-16.2 (deferred prosecution fees).

(b) Once each month the city or town fiscal officer shall distribute to the county auditor as the county share twenty percent (20%) of the amount of fees collected under the following:

(1) IC 33-19-5-1(a) (criminal costs fees).

(2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).

(3) IC 33-19-5-4(a) (civil costs fees).

(4) ~~IC 33-19-5-5~~ **IC 33-19-5-5(a)(1)** (small claims costs fees).

(5) IC 33-19-6-16.2 (deferred prosecution fees).

(c) The city or town fiscal officer shall retain twenty-five percent (25%) as the city or town share of the fees collected under the following:

(1) IC 33-19-5-1(a) (criminal costs fees).

(2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).

(3) IC 33-19-5-4(a) (civil costs fees).

(4) ~~IC 33-19-5-5~~ **IC 33-19-5-5(a)(1)** (small claims costs fees).

(5) IC 33-19-6-16.2 (deferred prosecution fees).

(d) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state user fee fund established under IC 33-19-9 the following:

(1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-19-5-1(b)(5).

(2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

(3) One hundred percent (100%) of the highway work zone fees collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).

(4) One hundred percent (100%) of the safe schools fee collected under IC 33-19-6-16.3.

(5) One hundred percent (100%) of the automated record keeping fee (IC 33-19-6-19).

(e) The clerk of a city or town court shall monthly distribute to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-19-5-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established

under IC 5-2-11.

(f) The clerk of a city or town court shall distribute monthly to the city or town fiscal officer (as defined in IC 36-1-2-7) one hundred percent (100%) of the late payment fees collected under IC 33-19-6-20. The city or town fiscal officer (as defined in IC 36-1-2-7) shall deposit fees distributed by a clerk under this subsection in the city or town general fund.

(Reference is to HB 1047 as reprinted April 8, 2003.)

GRUBB	LONG
ULMER	HOWARD
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1707–1; filed April 23, 2003, at 6:53 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1707 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 20-1-1.1-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 11. (a) As used in this section, and for purposes of compliance with Title I of the Elementary and Secondary Education Act of 2002 (20 U.S.C. 6319 et seq.), "paraprofessional" means an employee of a school corporation who provides instructional support in a program supported with Title I, Part A funds.**

(b) The department shall identify and disseminate to school corporations the criteria for meeting paraprofessional requirements under 20 U.S.C. 6319 et seq., including the following requirements:

(1) A paraprofessional must have a high school diploma or its equivalent.

(2) A paraprofessional must meet the conditions of employment determined by the school corporation.

(3) This subdivision applies to a paraprofessional who was hired after January 8, 2002. In addition to the requirements set forth in subdivisions (1) through (2), at the time the paraprofessional is hired, the paraprofessional must have:

(A) completed at least two (2) years of study at an institution of higher education;

(B) obtained at least an associate's degree; or

(C) met a rigorous standard of quality and demonstrated knowledge of and the ability to assist in instructing in the academic areas of reading, writing, and mathematics through a formal academic assessment determined by the department in consultation with the professional standards board.

(4) This subdivision applies to a paraprofessional who was hired before January 9, 2002. The paraprofessional must meet the requirements of subdivision (3) before January 9, 2006.

(c) A school corporation:

(1) shall use federal funds to support ongoing training and professional development to meet the requirements of this section; and

(2) may use federal funds for the payment of fees for the assessments required under this section.

SECTION 2. [EFFECTIVE JULY 1, 2003] **(a) Because the general assembly has determined that:**

(1) the provisions of P.L.221-1999 are a comprehensive and thorough education reform plan that set high academic standards in a manner uniquely tailored for Indiana; and

(2) certain provisions of the federal Elementary and Secondary Education Act of 2002 may overlap with P.L.221-1999 in a manner that causes an unnecessary amount of bureaucracy and administrative confusion;

if the United States Department of Education authorizes states to seek waivers from provisions of the federal Elementary and Secondary Education Act of 2002, the Indiana department of education may, after consulting with the state board of education and the education roundtable, seek waivers for those provisions of the federal Elementary and Secondary Education Act of 2002 that conflict with P.L.221-1999.

(b) This SECTION expires June 30, 2008.

(Reference is to EHB 1707 as reprinted April 9, 2003.)

KLINKER	ALTING
SCHOLER	SIPES
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
ESB 172–1; filed April 23, 2003, at 7:29 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 172 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 2, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 2. IC 9-30-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) If it appears from the records maintained in the bureau that a person's driving record makes the person a habitual violator under section 4 of this chapter, the bureau shall mail a notice to the person's last known address that informs the person that the person's driving privileges will be suspended in thirty (30) days because the person is a habitual violator according to the records of the bureau.

(b) Thirty (30) days after the bureau has mailed a notice under this section, the bureau shall suspend the person's driving privileges for:

(1) **except as provided in subdivision (2),** ten (10) years if the person is a habitual violator under section 4(a) of this chapter;

(2) **life if the person is a habitual violator under section 4(a) of this chapter and has two (2) or more violations under section 4(a)(4) through 4(a)(7) of this chapter;**

(3) ten (10) years if the person is a habitual violator under section 4(b) of this chapter; or

~~(3)~~ **(4)** five (5) years if the person is a habitual violator under section 4(c) of this chapter.

(c) The notice must inform the person that the person may be entitled to relief under section 6 of this chapter or may seek judicial review of the person's suspension under this chapter.".

Renumber all SECTIONS consecutively.

(Reference is to ESB 172 as reprinted April 11, 2003.)

M. YOUNG	OXLEY
HOWARD	BOSMA
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
ESB 280–1; filed April 23, 2003, at 7:29 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 280 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 2-7-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) One (1) activity report shall be filed not later than ~~July 31,~~ **May 31,** covering

the period from ~~January 1 through June 30.~~ **November 1 of the immediately preceding calendar year through April 30.** The other activity report shall be filed not later than ~~January 31, covering the period from July 1 through December 31 of the immediately preceding calendar year.~~ **November 30, covering the period from May 1 through October 31. The commission shall provide a copy of an activity report to a member of the general assembly at the request of the member.**

(b) Subject to subsections (c) and (d), the commission shall impose a penalty of ten dollars ($10) per day for each day that the person fails to file any report required by this chapter until the report is filed.

(c) The penalty shall not exceed one hundred dollars ($100) per report.

(d) The commission may waive the penalty if the commission determines that the circumstances make imposition of the penalty inappropriate.

SECTION 2. IC 2-7-3-6, AS AMENDED BY P.L.205-1999, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) A lobbyist shall file a written report with respect to a member of the general assembly whenever either of the following occurs:

(1) The lobbyist has made a purchase described in IC 2-2.1-3-2(a)(7) with respect to that member. This subdivision does not apply to purchases made after December 31, 1998, by a lobbyist from a legislator's retail business made in the ordinary course of business at prices that are available to the general public. For purposes of this subdivision, a legislator's business is considered a retail business if the business is a retail merchant as defined in IC 6-2.5-1-8.

(2) The lobbyist has made a gift described in IC 2-2.1-3-2(a)(8) to that member.

(b) A report required by subsection (a) must state the following:

(1) The name of the lobbyist.

(2) Whether the report covers a purchase described in IC 2-2.1-3-2(a)(7) or a gift described in IC 2-2.1-3-2(a)(8).

(c) A lobbyist shall file a copy of a report required by this section with ~~both of~~ **all** the following:

(1) The commission.

(2) The member of the general assembly with respect to whom the report is made.

(3) The principal clerk of the house of representatives, if the legislator is a member of the Indiana house of representatives.

(4) The secretary of the senate, if the legislator is a member of the Indiana senate.

(d) A lobbyist shall file a report required by subsection (a) not ~~more~~ **later** than ~~thirty (30)~~ **seven (7)** days after making the purchase or giving the gift.

(e) Not later than January 7, a lobbyist who has filed a report under this section regarding a member of the general assembly shall provide to that member a cumulative report listing all purchases and gifts for that member during the immediately preceding calendar year.

SECTION 3. [EFFECTIVE JULY 1, 2003] **(a) A lobbyist's activity report required to be filed not later than November 30, 2003, by IC 2-7-3-2, as amended by this act, shall, notwithstanding IC 2-7-3-2, as amended by this act, cover the period from July 1, 2003, through October 31, 2003.**

(b) This SECTION expires July 1, 2004.

(Reference is to ESB 280 as printed April 7, 2003.)

MILLER	MAHERN
SIPES	BUELL
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1573–1; filed April 23, 2003, at 7:46 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1573 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-10.2-3-7.5, AS AMENDED BY P.L.118-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7.5. (a) A surviving dependent or surviving spouse of a member who dies in service is entitled to a survivor benefit if:

(1) the member dies after March 31, 1990;

(2) the member has:

(A) at least ten (10) years of creditable service, if the member died in service as a member of the general assembly;

(B) at least fifteen (15) years of creditable service, if the member died in service in any other position covered by the retirement fund; or

(C) at least ten (10) years but not more than fourteen (14) years of creditable service if the member:

(i) was at least sixty-five (65) years of age; and

(ii) died in service in a position covered by the teachers' retirement fund; and

(3) the surviving dependent or surviving spouse qualifies for a survivor benefit under subsection (b) or (c).

(b) If a member described in subsection (a) dies with a surviving spouse who was married to the member for at least two (2) years, the surviving spouse is entitled to a survivor benefit equal to the monthly benefit that would have been payable to the spouse under the joint and survivor option of IC 5-10.2-4-7 upon the member's death following retirement at:

(1) fifty (50) years of age; or

(2) the actual date of death;

whichever is later. However, benefits payable under this subsection are subject to subsections (e) and (g).

(c) If a member described in subsection (a) dies without a surviving spouse who was married to the member for at least two (2) years, but with a surviving dependent, the surviving dependent is entitled to a survivor benefit in a monthly amount equal to the actuarial equivalent of the monthly benefit that would have been payable to the spouse (assuming the spouse would have had the same birth date as the member) under the joint and survivor option of IC 5-10.2-4-7 upon the member's death following retirement at:

(1) fifty (50) years of age; or

(2) the actual date of death;

whichever is later. If there are two (2) or more surviving dependents, the actuarial equivalent of the benefit described in this subsection shall be calculated and, considering the dependents' attained ages, an equal dollar amount shall be determined as the monthly benefit to be paid to each dependent. Monthly benefits under this subsection are payable until the date the dependent becomes eighteen (18) years of age or dies, whichever is earlier. However, if a dependent is permanently and totally disabled (using disability guidelines established by the Social Security Administration) at the date the dependent reaches eighteen (18) years of age, the monthly benefit is payable until the date the dependent is no longer disabled (using disability guidelines established by the Social Security Administration) or dies, whichever is earlier. Benefits payable under this subsection are subject to subsections (e) and (g).

(d) Except as provided in subsections (e) and (h), the surviving spouse or surviving dependent of a member who is entitled to a survivor benefit under subsection (b) or (c) or section 7.6 of this chapter may elect to receive a lump sum payment of the total amount credited to the member in the member's annuity savings account or an amount equal to the member's federal income tax basis in the member's annuity savings account as of December 31, 1986. A surviving spouse or surviving dependent who makes such an election is not entitled to an annuity as part of the survivor benefit under subsection (b) or (c) or section 7.6 of this chapter to the extent of the lump sum payment.

(e) If a member described in subsection (a) or section 7.6(a) of this

chapter is survived by a designated beneficiary who is not a surviving spouse or surviving dependent entitled to a survivor benefit under subsection (b) or (c) or section 7.6 of this chapter, the following provisions apply:

(1) If the member is survived by one (1) designated beneficiary, the designated beneficiary is entitled to receive in a lump sum or over a period of up to five (5) years, as elected by the designated beneficiary, the amount credited to the member's annuity savings account, less any disability benefits paid to the member.

(2) If the member is survived by two (2) or more designated beneficiaries, the designated beneficiaries are entitled to receive in a lump sum or over a period of up to five (5) years, as elected by the designated beneficiary, equal shares of the amount credited to the member's annuity savings account, less any disability benefits paid to the member.

(3) If the member is also survived by a spouse or dependent who is entitled to a survivor benefit under subsection (b) or (c) or section 7.6 of this chapter, the surviving spouse or dependent is not entitled to an annuity or a lump sum payment as part of the survivor benefit, **unless the surviving spouse or dependent is also a designated beneficiary.**

(f) If a member dies:

(1) without a surviving spouse or surviving dependent who qualifies for survivor benefits under subsection (b) or (c) or section 7.6 of this chapter; and

(2) without a surviving designated beneficiary who is entitled to receive the member's annuity savings account under subsection (e);

the amount credited to the member's annuity savings account, less any disability benefits paid to the member, shall be paid to the member's estate.

(g) Survivor benefits payable under this section or section 7.6 of this chapter shall be reduced by any disability benefits paid to the member.

(h) Additional annuity contributions, if any, shall not be included in determining survivor benefits under subsection (b) or (c) or section 7.6 of this chapter, but are payable in a lump sum payment to:

(1) the member's surviving designated beneficiary; or

(2) the member's estate, if there is no surviving designated beneficiary.

(i) Survivor benefits provided under this section or section 7.6 of this chapter are subject to IC 5-10.2-2-1.5.

(j) A benefit specified in this section shall be forfeited and credited to the member's retirement fund if no person entitled to the benefit claims it within three (3) years after the member's death. However, the board may honor a claim that is made more than three (3) years after the member's death if the board finds, in the board's discretion, that:

(1) the delay in making the claim was reasonable or other extenuating circumstances justify the award of the benefit to the claimant; and

(2) paying the claim would not cause a violation of the applicable Internal Revenue Service rules.

SECTION 2. IC 5-10.2-4-7, AS AMENDED BY P.L.246-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) Benefits provided under this section are subject to IC 5-10.2-2-1.5.

(b) A member who retires is entitled to receive monthly retirement benefits, which are guaranteed for five (5) years or until the member's death, whichever is later. A member may select in writing any of the following nonconflicting options for the payment of the member's retirement benefits instead of the five (5) year guaranteed retirement benefit payments. The amount of the optional payments shall be determined under rules of the board and shall be the actuarial equivalent of the benefit payable under sections 4, 5, and 6 of this chapter.

(1) Joint and Survivor Option.

(A) The member receives a decreased retirement benefit during the member's lifetime, and there is a benefit payable after the member's death to a designated beneficiary during the lifetime of the beneficiary, which benefit equals, at the option of the member, either the full decreased retirement benefit or two-thirds (2/3) or one-half (½) of that benefit.

(B) If the member dies before retirement, the designated beneficiary may receive only the amount credited to the member in the annuity savings account unless the designated beneficiary is entitled to survivor benefits under IC 5-10.2-3.

(C) If the designated beneficiary dies before the member retires, the selection is automatically canceled and the member may make a new beneficiary election and may elect a different form of benefit under this subsection.

~~(D) If:~~

~~(i) the designated beneficiary dies while the member is receiving benefits; or~~

~~(ii) the member is receiving benefits, the member marries, either for the first time or following the death of the member's spouse, after the member's first benefit payment is made, and the member's designated beneficiary is not the member's current spouse or the member has not designated a beneficiary;~~

~~the member may elect to change the member's designated beneficiary or form of benefit under this subsection and to receive an actuarially adjusted and recalculated benefit for the remainder of the member's life or for the remainder of the member's life and the life of the newly designated beneficiary. If the member's new election is the joint and survivor option, the member shall indicate whether the designated beneficiary's benefit shall equal, at the option of the member, either the member's full recalculated retirement benefit or two-thirds (2/3) or one-half (½) of this benefit. The cost of recalculating the benefit shall be borne by the member and shall be included in the actuarial adjustment.~~

(2) Benefit with No Guarantee. The member receives an increased lifetime retirement benefit without the five (5) year guarantee specified in this subsection.

(3) Integration with Social Security. If the member retires before the age of eligibility for Social Security benefits, in order to provide a level benefit during the member's retirement the member receives an increased retirement benefit until the age of Social Security eligibility and decreased retirement benefits after that age.

(4) Cash Refund Annuity. The member receives a lifetime annuity purchasable by the amount credited to the member in the annuity savings account, and the member's designated beneficiary receives a refund payment equal to:

(A) the total amount used in computing the annuity at the retirement date; minus

(B) the total annuity payments paid and due to the member before the member's death.

~~(c) A selection under subsection (b) may be made or revoked by the member on or before:~~

~~(1) the retirement date selected under section 1 of this chapter; or~~

~~(2) the date on which a retirement date is selected under section 1 of this chapter;~~

~~whichever is later.~~

(c) If:

(1) the designated beneficiary dies while the member is receiving benefits; or

(2) the member is receiving benefits, the member marries, either for the first time or following the death of the member's spouse, after the member's first benefit payment is made, and the member's designated beneficiary is not the member's current spouse or the member has not designated a beneficiary;

the member may elect to change the member's designated beneficiary or form of benefit under subsection (b) and to receive an actuarially adjusted and recalculated benefit for the remainder of the member's life or for the remainder of the member's life and the life of the newly designated beneficiary. The member may not elect to change to a five (5) year guaranteed form of benefit. If the member's new election is the joint and survivor option, the member shall indicate whether the

designated beneficiary's benefit shall equal, at the option of the member, either the member's full recalculated retirement benefit or two-thirds (2/3) or one-half (½) of this benefit. The cost of recalculating the benefit shall be borne by the member and shall be included in the actuarial adjustment.

(d) Except as provided in subsection (c), a member who files for regular or disability retirement may not change:

(1) the member's retirement option under subsection (b);

(2) the selection of a lump sum payment under section 2 of this chapter; or

(3) the beneficiary designated on the member's application for benefits if the member selects the joint and survivor option under subsection (b)(1);

after the first day of the month in which benefit payments are scheduled to begin. For purposes of this subsection, it is immaterial whether a benefit check has been sent, received, or negotiated.

~~(d)~~ **(e)** A member may direct that the member's retirement benefits be paid to a revocable trust that permits the member unrestricted access to the amounts held in the revocable trust. The member's direction is not an assignment or transfer of benefits under IC 5-10.3-8-10 or IC 21-6.1-5-17.

SECTION 3. IC 5-10.2-5-33 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 33. (a) The pension portion (plus postretirement increases to the pension portion) provided by employer contributions of the monthly benefit payable after December 31, 2003, to a member of the public employees' retirement fund (or to a survivor or beneficiary of a member of the public employees' retirement fund) who retired or was disabled before January 1, 2003, shall be increased by two percent (2%).**

(b) The monthly amount of the increase described in subsection (a) payable to a member of the public employees' retirement fund (or to a survivor or beneficiary of a member of the public employees' retirement fund) may not be less than five dollars ($5).

(c) The increases specified in this section:

(1) are based upon the date of the member's latest retirement or disability;

(2) do not apply to benefits payable in a lump sum; and

(3) are in addition to any other increase provided by law.

SECTION 4. IC 5-10.2-5-34 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 34. (a) This section does not apply to a member of the public employees' retirement fund (or to a survivor or beneficiary of a member of the public employees' retirement fund) whose creditable service was earned only as an elected official.**

(b) In addition to any other cost of living increase provided under this chapter, the pension portion (plus postretirement increases to the pension portion) provided by employer contributions of the monthly benefit payable after December 31, 2003, to a member of the public employees' retirement fund (or to a survivor or beneficiary of a member of the public employees' retirement fund) who was a retired member of the fund with at least ten (10) years of creditable service and was entitled to receive a monthly benefit on December 1, 2003, may not be less than one hundred eighty dollars ($180).

(c) The increases specified in this section:

(1) are based upon the date of the member's latest retirement or disability;

(2) do not apply to benefits payable in a lump sum; and

(3) are in addition to any other increase provided by law.

SECTION 5. IC 21-6.1-5-9, AS AMENDED BY P.L.195-1999, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The first pension benefit payment after retirement shall be made not more than ninety (90) days after the completion and filing of the member's application for retirement benefits.

(b) After the first pension benefit payment, each person entitled to benefits shall receive the retirement benefits in installments payable by the tenth day of each month.

~~(c) The last retirement benefit payment must be prorated to terminate at the member's death.~~

SECTION 6. [EFFECTIVE JULY 1, 2003] **IC 21-6.1-5-9, as amended by this act, applies to retirement benefits payable by the Indiana state teachers' retirement fund after June 30, 2003.**

(Reference is to EHB 1573 as printed April 8, 2003.)

KROMKOWSKI	R. MEEKS
SCHOLER	HUME
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
ESB 166–1; filed April 23, 2003, at 8:06 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 166 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 6-1.1-18.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 5. (a) As used in this section, "base year" for a civil taxing unit means the most recent calendar year:

(1) in which the civil taxing unit is located in an adopting county, as determined under section 4 of this chapter; and

(2) that is immediately preceded by a calendar year in which the civil taxing unit either:

(A) was not located in an adopting county, as determined under section 4 of this chapter; or

(B) did not impose an ad valorem property tax levy.

If the civil taxing unit was located in an adopting county in calendar year 1979, as determined under section 4 of this chapter, the civil taxing unit's base year is calendar year 1979 or the year determined above, whichever is later.

(b) **As used in this section, "initial certified distribution" means the amount of certified shares received by a civil taxing unit in the year determined under subsection (e).**

(c) If the county adjusted gross income tax was not in effect on January 1 of the calendar year immediately preceding the ensuing calendar year in the county in which a particular civil taxing unit is located, then the civil taxing unit's base year certified share is the amount of certified shares to be received by the civil taxing unit during its base year.

~~(c)~~ **(d)** If the county adjusted gross income tax was in effect on January 1 of the calendar year immediately preceding the ensuing calendar year in the county in which a particular civil taxing unit is located, then the civil taxing unit's base year certified share is the amount of ~~certified shares received by~~ the civil taxing ~~unit in its base year~~ **unit's initial certified distribution** multiplied by a fraction:

(1) The numerator of the fraction equals the remainder of the county adjusted gross income tax rate of the county in which the civil taxing unit is located and that is imposed on January 1 of the ensuing calendar year minus one quarter of one percent (1/4%).

(2) The denominator of the fraction equals the remainder of the county adjusted gross income tax rate of the county in which the civil taxing unit is located and that is imposed on January 1 of the civil taxing unit's base year minus one quarter of one percent (1/4%).

(e) This subsection applies to a civil taxing unit that is located in a county that:

(1) adopts the county adjusted gross income tax after December 31, 2002; and

(2) had a county adjusted gross income tax in effect on January 1 of the calendar year immediately preceding the ensuing calendar year.

Until the department of state revenue, after reviewing the

recommendation of the budget agency, notifies the department of local government finance that a full transition to certification of distributions as provided in IC 6-3.5-1.1-9(a)(1) through IC 6-3.5-1.1-9(a)(2) has occurred for the calendar year, the initial certified distribution to be used under subsection (e) for the civil taxing unit shall be the amount of the certified shares certified for the civil taxing unit in the most current calendar year preceding the ensuing calendar year. For the calendar year for which a full transition to certification of distributions as provided in IC 6-3.5-1.1-9(a)(1) through IC 6-3.5-1.1-9(a)(2) has occurred and each subsequent calendar year, the initial certified distribution to be used under subsection (e) for the civil taxing unit is the amount of certified shares certified for the civil taxing unit in the calendar year in which a full transition to certification of distributions as provided in IC 6-3.5-1.1-9(a)(1) through IC 6-3.5-1.1-9(a)(2) initially occurred for the civil taxing unit. The department of state revenue, after reviewing the recommendation of the budget agency, shall provide the notice to the department of local government finance as required under this subsection.

SECTION 2. IC 6-1.1-21.8-4, AS ADDED BY P.L.157-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The board shall determine the terms of a loan made under this chapter. However, the interest charged on the loan may not exceed the percent of increase in the United States Department of Labor Consumer Price Index for Urban Wage Earners and Clerical Workers during the most recent twelve (12) month period for which data is available as of the date that the unit applies for a loan under this chapter. **In the case of a qualified taxing unit that is not a school corporation or a public library (as defined in IC 20-14-1-2),** a loan must be repaid not later than ten (10) years after the date on which the loan was made. **In the case of a qualified taxing unit that is a school corporation or a public library (as defined in IC 20-14-1-2), a loan must be repaid not later than eleven (11) years after the date on which the loan was made. A school corporation or a public library (as defined in IC 20-14-1-2) is not required to begin making payments to repay a loan until after June 30, 2004.** The total amount of all the loans made under this chapter may not exceed twenty-eight million dollars ($28,000,000). The board may disburse the proceeds of a loan in installments. However, not more than one-third (1/3) of the total amount to be loaned under this chapter may be disbursed at any particular time without the review of the budget committee and the approval of the budget agency.

(b) A loan made under this chapter shall be repaid only from:

(1) property tax revenues of the qualified taxing unit that are subject to the levy limitations imposed by IC 6-1.1-18.5 or IC 6-1.1-19; or

(2) any other source of revenues (other than property taxes) that is legally available to the qualified taxing unit.

The payment of any installment of principal constitutes a first charge against the property tax revenues described in subdivision (1) that are collected by the qualified taxing unit during the calendar year the installment is due and payable.

(c) The obligation to repay a loan made under this chapter is not a basis for the qualified taxing unit to obtain an excessive tax levy under IC 6-1.1-18.5 or IC 6-1.1-19.

(d) Whenever the board receives a payment on a loan made under this chapter, the board shall deposit the amount paid in the counter-cyclical revenue and economic stabilization fund.

(e) This section does not prohibit a qualified taxing unit from repaying a loan made under this chapter before the date specified in subsection (a) if a taxpayer described in section 3 of this chapter resumes paying property taxes to the qualified taxing unit.

(f) Interest accrues on a loan made under this chapter until the date the board receives notice from the county auditor that the county has adopted at least one (1) of the following:

(1) The county adjusted gross income tax under IC 6-3.5-1.1.

(2) The county option income tax under IC 6-3.5-6.

(3) The county economic development income tax under IC 6-3.5-7.

Notwithstanding subsection (a), interest may not be charged on a loan made under this chapter if a tax described in this subsection is adopted before a qualified taxing unit applies for the loan.

SECTION 3. IC 6-3.5-1.1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 9. (a) Revenue derived from the imposition of the county adjusted gross income tax shall, in the manner prescribed by this section, be distributed to the county that imposed it. The amount to be distributed to a county during an ensuing calendar year equals the amount of county adjusted gross income tax revenue that the department, after reviewing the recommendation of the ~~state~~ budget agency, ~~estimates will be received from that county during the twelve (12) month period beginning July 1 of the immediately preceding calendar year and ending June 30 of the ensuing calendar year.~~ **determines has been:**

(1) received from that county for a taxable year ending before the calendar year in which the determination is made; and

(2) reported on an annual return or amended return processed by the department in the state fiscal year ending before July 1 of the calendar year in which the determination is made;

as adjusted (as determined after review of the recommendation of the budget agency) for refunds of county adjusted gross income tax made in the state fiscal year.

(b) Before ~~July~~ **August** 2 of each calendar year, the department, after reviewing the recommendation of the ~~state~~ budget agency, shall ~~estimate and~~ certify to the county auditor of each adopting county the amount ~~of county adjusted gross income tax revenue that will be collected from that county during the twelve (12) month period beginning July 1 of that calendar year and ending June 30 of the immediately succeeding calendar year.~~ **determined under subsection (a) plus the amount of interest in the county's account that has accrued and has not been included in a certification made in a preceding year.** The amount certified is the county's "certified distribution" for the immediately succeeding calendar year. The amount certified ~~may~~ **shall** be adjusted under ~~subsection~~ **subsections** (c), ~~or~~ (d), **(e), (f), and (g). The department shall provide with the certification an informative summary of the calculations used to determine the certified distribution.**

~~(c) the department may certify to an adopting county an amount that is greater than the estimated twelve (12) month revenue collection if the department, after reviewing the recommendation of the state budget agency, determines that there will be a greater amount of revenue available for distribution from the county's account established under section 8 of this chapter.~~

~~(d)~~ **(c)** The department ~~may~~ **shall** certify an amount less than the ~~estimated twelve (12) month revenue collection~~ **amount determined under subsection (b)** if the department, after reviewing the recommendation of the ~~state~~ budget agency, determines that ~~a part of those collections need to be distributed during the current calendar year so that the county will receive its full certified distribution for the current calendar year.~~ **the reduced distribution is necessary to offset overpayments made in a calendar year before the calendar year of the distribution. The department, after reviewing the recommendation of the budget agency, may reduce the amount of the certified distribution over several calendar years so that any overpayments are offset over several years rather than in one (1) lump sum.**

(d) The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to correct for any clerical or mathematical errors made in any previous certification under this section. The department, after reviewing the recommendation of the budget agency, may reduce the amount of the certified distribution over several calendar years so that any adjustment under this subsection is offset over several years rather than in one (1) lump sum.

(e) The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide the county with the distribution required under section 10(b) of this chapter.

(f) This subsection applies to a county that initially imposes a tax under this chapter in the same calendar year in which the department makes a certification under this section. The

department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide for a distribution in the immediately following calendar year and in each calendar year thereafter. The department shall provide for a full transition to certification of distributions as provided in subsection (a)(1) through (a)(2) in the manner provided in subsection (c).

(g) The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide the county with the distribution required under section 3.3 of this chapter beginning not later than the tenth month after the month in which additional revenue from the tax authorized under section 3.3 of this chapter is initially collected.

SECTION 4. IC 6-3.5-1.1-11, AS AMENDED BY HEA 1155, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 11. (a) Except for:

(1) revenue that must be used to pay the costs of operating a jail and juvenile detention center under section 2.5(d) of this chapter;

(2) revenue that must be used to pay the costs of:

(A) financing, constructing, acquiring, improving, renovating, or equipping facilities and buildings;

(B) debt service on bonds; or

(C) lease rentals;

under section 2.8 of this chapter;

(3) revenue that must be used to pay the costs of construction, improvement, renovation, or remodeling of a jail and related buildings and parking structures under section 2.7, 2.9, or 3.3 of this chapter;

(4) revenue that must be used to pay the costs of operating and maintaining a jail and justice center under section 3.5(d) of this chapter; or

(5) revenue that must be used to pay the costs of constructing, acquiring, improving, renovating, or equipping a county courthouse under section 3.6 of this chapter;

the certified distribution received by a county treasurer shall, in the manner prescribed in this section, be allocated, distributed, and used by the civil taxing units and school corporations of the county as certified shares and property tax replacement credits.

(b) Before ~~August 2~~ **August 10** of each calendar year, each county auditor shall determine the part of the certified distribution for the next succeeding calendar year that will be allocated as property tax replacement credits and the part that will be allocated as certified shares. The percentage of a certified distribution that will be allocated as property tax replacement credits or as certified shares depends upon the county adjusted gross income tax rate for resident county taxpayers in effect on August 1 of the calendar year that precedes the year in which the certified distribution will be received **by two (2) years.** The percentages are set forth in the following table:

COUNTY ADJUSTED GROSS INCOME TAX RATE	PROPERTY TAX REPLACEMENT CREDITS	CERTIFIED SHARES
0.5%	50%	50%
0.75%	33 1/3%	66 2/3%
1%	25%	75%

(c) The part of a certified distribution that constitutes property tax replacement credits shall be distributed as provided under sections 12, 13, and 14 of this chapter.

(d) The part of a certified distribution that constitutes certified shares shall be distributed as provided by section 15 of this chapter.

SECTION 5. IC 6-3.5-1.1-21, AS AMENDED BY P.L.178-2002, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 21. Before ~~July~~ **October** 2 of each year, the department shall submit a report to each county auditor indicating the ~~following:~~

~~(1) The~~ balance in the county's adjusted gross income tax account as of the ~~end of the preceding year.~~ **cutoff date specified by the budget agency.**

~~(2) The required six (6) month balance, or three (3) month balance if the county has adopted an ordinance under section 9.5 of this chapter before the end of the preceding year.~~

SECTION 6. IC 6-3.5-1.1-21.1, AS ADDED BY P.L.178-2002, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 21.1. (a) If, after receiving a recommendation from the budget agency, the department determines that a sufficient balance ~~existed at the end of the preceding year~~ **exists in a county account** in excess of the ~~required six (6) or three (3) month balance,~~ **amount necessary, when added to other money that will be deposited in the account after the date of the recommendation, to make certified distributions to the county in the ensuing year,** the department ~~may~~ **shall** make a supplemental distribution to a county from the county's adjusted gross income tax account.

(b) A supplemental distribution described in subsection (a) must be:

(1) made in January of the ensuing calendar year; and

(2) allocated and, **subject to subsection (d),** used in the same manner as certified distributions.

(c) A determination under this section must be made before ~~July~~ **October** 2.

(d) This subsection applies to that part of a distribution made under this section that is allocated and available for use in the same manner as certified shares. The civil taxing unit receiving the money shall deposit the money in the civil taxing unit's rainy day fund established under IC 36-1-8-5.1.

SECTION 7. IC 6-3.5-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 2. (a) A county income tax council is established for each county in Indiana. The membership of each county's county income tax council consists of the fiscal body of the county and the fiscal body of each city or town that lies either partially or entirely within that county.

(b) Using procedures described in this chapter, a county income tax council may adopt ordinances to:

(1) impose the county option income tax in its county;

(2) subject to section 12 of this chapter, rescind the county option income tax in its county;

(3) increase the county option income tax rate for the county;

(4) freeze the county option income tax rate for its county;

(5) increase the homestead credit in its county; **or**

(6) subject to section 12.5 of this chapter, decrease the county option income tax rate for the county. ~~or~~

~~(7) subject to section 17.5 of this chapter, elect to reduce the required balance in the county special account.~~

(c) An ordinance adopted in a particular year under this chapter to impose or rescind the county option income tax or to increase its tax rate is effective July 1 of that year.

SECTION 8. IC 6-3.5-6-17, AS AMENDED BY P.L.178-2002, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 17. (a) ~~Except as provided in section 2.5 of this chapter,~~ Revenue derived from the imposition of the county option income tax shall, in the manner prescribed by this section, be distributed to the county that imposed it. The amount that is to be distributed to a county during an ensuing calendar year equals the amount of county option income tax revenue that the department, after reviewing the recommendation of the ~~state~~ budget agency, ~~estimates will be~~ **determines has been:**

(1) received from that county ~~during the twelve (12) month period beginning July 1 of the immediately preceding~~ **for a taxable year ending in a** calendar year ~~and ending June 30 of the ensuing calendar year.~~ **preceding the calendar year in which the determination is made; and**

(2) reported on an annual return or amended return processed by the department in the state fiscal year ending before July 1 of the calendar year in which the determination is made;

as adjusted (as determined after review of the recommendation of the budget agency) for refunds of county option income tax made in the state fiscal year.

(b) Before ~~June 16~~ **August 2** of each calendar year, the department, after reviewing the recommendation of the ~~state~~ budget agency, shall ~~estimate and~~ certify to the county auditor of each

adopting county the amount ~~of county option income tax revenue that will be collected from that county during the twelve (12) month period beginning July 1 of that calendar year and ending June 30 of the immediately succeeding calendar year.~~ **determined under subsection (a) plus the amount of interest in the county's account that has accrued and has not been included in a certification made in a preceding year.** The amount certified is the county's "certified distribution" for the immediately succeeding calendar year. The amount certified ~~may~~ **shall** be adjusted, **as necessary,** under ~~subsection~~ **subsections** (c), ~~or~~ (d)**, and (e). The department shall provide with the certification an informative summary of the calculations used to determine the certified distribution.**

~~(c) the department may certify to an adopting county an amount that is greater than the estimated twelve (12) month revenue collection if the department, after reviewing the recommendation of the state budget agency, determines that there will be a greater amount of revenue available for distribution from the county's account established under section 16 of this chapter.~~

~~(d)~~ **(c)** The department ~~may~~ **shall** certify an amount less than the ~~estimated twelve (12) month revenue collection~~ **amount determined under subsection (b)** if the department, after reviewing the recommendation of the ~~state~~ budget agency, determines that ~~a part of those collections needs to be distributed during the current calendar year so that the county will receive its full certified distribution for the current calendar year.~~ **the reduced distribution is necessary to offset overpayments made in a calendar year before the calendar year of the distribution. The department, after reviewing the recommendation of the budget agency, may reduce the amount of the certified distribution over several calendar years so that any overpayments are offset over several years rather than in one (1) lump sum.**

(d) The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to correct for any clerical or mathematical errors made in any previous certification under this section. The department, after reviewing the recommendation of the budget agency, may reduce the amount of the certified distribution over several calendar years so that any adjustment under this subsection is offset over several years rather than in one (1) lump sum.

(e) **This subsection applies to a county that initially imposed a tax under this chapter in the same calendar year in which the department makes a certification under this section. The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide for a distribution in the immediately following calendar year and in each calendar year thereafter. The department shall provide for a full transition to certification of distributions as provided in subsection (a)(1) through (a)(2) in the manner provided in subsection (c).**

(f) One-twelfth (1/12) of each adopting county's certified distribution for a calendar year shall be distributed from its account established under section 16 of this chapter to the appropriate county treasurer on the first day of each month of that calendar year.

~~(f)~~ **(g)** ~~Except as provided in section 2.5 of this chapter,~~ Upon receipt, each monthly payment of a county's certified distribution shall be allocated among, distributed to, and used by the civil taxing units of the county as provided in sections 18 and 19 of this chapter.

~~(g)~~ **(h)** All distributions from an account established under section 16 of this chapter shall be made by warrants issued by the auditor of state to the treasurer of state ordering the appropriate payments.

SECTION 9. IC 6-3.5-6-17.2, AS ADDED BY P.L.178-2002, SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 17.2. Before ~~July 2~~ **October 2** of each year, the department shall submit a report to each county auditor indicating the ~~following:~~

~~(1) The~~ balance in the county's special account as of the ~~end of the preceding year.~~

~~(2) The required six (6) month balance or three (3) month balance, if the county has adopted an ordinance under:~~

~~(A) section 17.4 of this chapter;~~

~~(B) section 17.5 of this chapter; or~~

~~(C) section 17.6 of this chapter;~~

~~before the end of the preceding year.~~ **cutoff date set by the budget agency.**

SECTION 10. IC 6-3.5-6-17.3, AS ADDED BY P.L.178-2002, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 17.3. (a) If, after receiving a recommendation from the budget agency, the department determines that a sufficient balance ~~existed at the end of the preceding year~~ **exists in a county account** in excess of the ~~required six (6) or three (3) month balance,~~ **amount necessary, when added to other money that will be deposited in the account after the date of the recommendation, to make certified distributions to the county in the ensuing year,** the department ~~may~~ **shall** make a supplemental distribution to a county from the county's special account.

(b) A supplemental distribution described in subsection (a) must be:

(1) made in January of the ensuing calendar year; and

(2) allocated ~~and used~~ in the same manner as certified distributions **for deposit in a civil unit's rainy day fund established under IC 36-1-8-5.1.**

(c) A determination under this section must be made before ~~July 2.~~ **October 2.**

SECTION 11. IC 6-3.5-6-19, AS AMENDED BY P.L.90-2002, SECTION 297, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 19. (a) Except as provided in sections ~~17.6(d),~~ 18(e) and 18.5(b)(3) of this chapter, in determining the fractional share of distributive shares the civil taxing units of a county are entitled to receive under section 18 of this chapter during a calendar year, the department of local government finance shall consider only property taxes imposed on tangible property subject to assessment in that county.

(b) In determining the amount of distributive shares a civil taxing unit is entitled to receive under section 18(g) of this chapter, the department of local government finance shall consider only the percentage of the civil taxing unit's budget that equals the ratio that the total assessed valuation that lies within the civil taxing unit and the county that has adopted the county option tax bears to the total assessed valuation that lies within the civil taxing unit.

(c) The distributive shares to be allocated and distributed under this chapter shall be treated by each civil taxing unit as additional revenue for the purpose of fixing its budget for the budget year during which the distributive shares is to be distributed to the civil taxing unit.

(d) In the case of a civil taxing unit that includes a consolidated city its fiscal body may distribute any revenue it receives under this chapter to any governmental entity located in its county except an excluded city, a township, or a school corporation.

SECTION 12. IC 6-3.5-7-10.5, AS ADDED BY P.L.178-2002, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 10.5. Before ~~July~~ **October** 2 of each year, the department shall submit a report to each county auditor indicating the ~~following:~~

~~(1) The~~ balance in the county's special account as of the ~~end of the preceding year.~~

~~(2) The required six (6) month balance as of the end of the preceding year.~~ **cutoff date set by the budget agency.**

SECTION 13. IC 6-3.5-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 11. (a) Revenue derived from the imposition of the county economic development income tax shall, in the manner prescribed by this section, be distributed to the county that imposed it.

(b) Before ~~July~~ **August** 2 of each calendar year, the department, after reviewing the recommendation of the budget agency, shall ~~estimate and~~ certify to the county auditor of each adopting county the **sum of the** amount of county economic development income tax revenue that ~~will be collected from that county during the twelve (12) month period beginning July 1 of that calendar year and ending June 30 of the following calendar year.~~ **the department determines has been:**

(1) received from that county for a taxable year ending before the calendar year in which the determination is made; and

(2) reported on an annual return or amended return

processed by the department in the state fiscal year ending before July 1 of the calendar year in which the determination is made;

as adjusted (as determined after review of the recommendation of the budget agency) for refunds of county economic development income tax made in the state fiscal year plus the amount of interest in the county's account that has been accrued and has not been included in a certification made in a preceding year. The amount certified is the county's certified distribution, which shall be distributed on the dates specified in section 16 of this chapter for the following calendar year. The amount certified ~~may~~ **shall** be adjusted under ~~subsection~~ **subsections** (c), ~~or~~ (d), **(e), (f), and (g). The department shall provide with the certification an informative summary of the calculations used to determine the certified distribution.**

~~(c) the department may certify to an adopting county an amount that is greater than the estimated twelve (12) month revenue collection if the department, after reviewing the recommendation of the budget agency, determines that there will be a greater amount of revenue available for distribution from the county's account established under section 10 of this chapter.~~

~~(d)~~ **(c)** The department ~~may~~ **shall** certify an amount less than the ~~estimated twelve (12) month revenue collection~~ **amount determined under subsection (b)** if the department, after reviewing the recommendation of the budget agency, determines that ~~a part of those collections need to be distributed during the current calendar year so that the county will receive its full certified distribution for the current calendar year.~~ **the reduced distribution is necessary to offset overpayments made in a calendar year before the calendar year of the distribution. The department, after reviewing the recommendation of the budget agency, may reduce the amount of the certified distribution over several calendar years so that any overpayments are offset over several years rather than in one (1) lump sum.**

(d) After reviewing the recommendation of the budget agency, the department shall adjust the certified distribution of a county to correct for any clerical or mathematical errors made in any previous certification under this section. The department, after reviewing the recommendation of the budget agency, may reduce the amount of the certified distribution over several calendar years so that any adjustment under this subsection is offset over several years rather than in one (1) lump sum.

(e) The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide the county with the distribution required under section 16(b) of this chapter.

(f) The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide the county with the amount of any tax increase imposed under section 25 or 26 of this chapter to provide additional homestead credits as provided in those provisions.

(g) This subsection applies to a county that initially imposed a tax under this chapter in the same calendar year in which the department makes a certification under this section. The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide for a distribution in the immediately following calendar year and in each calendar year thereafter. The department shall provide for a full transition to certification of distributions as provided in subsection (b)(1) through (b)(2) in the manner provided in subsection (c).

SECTION 14. IC 6-3.5-7-17.3, AS ADDED BY P.L.178-2002, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2003]: Sec. 17.3. (a) If, after receiving a recommendation from the budget agency, the department determines that a sufficient balance ~~existed at the end of the preceding year that exceeded the required six (6) month balance as of the end of the preceding~~ **exists in a county account in excess of the amount necessary, when added to other money that will be deposited in the account after the date of the recommendation, to make certified distributions to the county in the ensuing** year, the department ~~may~~ **shall** make a supplemental distribution to a county from the county's special account.

(b) A supplemental distribution described in subsection (a) must be:

(1) made in January of the ensuing calendar year; and

(2) allocated ~~and used~~ in the same manner as certified distributions **for deposit in a civil unit's rainy day fund established under IC 36-1-8-5.1.**

(c) A determination under this section must be made before ~~July~~ **October** 2.

SECTION 15. IC 36-1-8-5.1, AS AMENDED BY P.L.90-2002, SECTION 461, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5.1. (a) A political subdivision may establish a rainy day fund to receive transfers of unused and unencumbered funds under:

(1) section 5 of this chapter;

(2) IC 6-3.5-1.1-21.1;

(3) IC 6-3.5-6-17.3; and

(4) IC 6-3.5-7-17.3.

(b) The rainy day fund is subject to the same appropriation process as other funds that receive tax money. Before making an appropriation from the rainy day fund, the fiscal body shall make a finding that the proposed use of the rainy day fund is consistent with the intent of the fund.

(c) In any fiscal year, a political subdivision may transfer **under section 5 of this chapter** not more than ten percent (10%) of the political subdivision's total budget for that fiscal year to the rainy day fund.

(d) The department of local government finance may not reduce the actual or maximum permissible levy of a political subdivision as a result of a balance in the rainy day fund of the political subdivision.

SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE JUNE 1, 2003]: IC 6-3.5-1.1-9.5; IC 6-3.5-6-17.4; IC 6-3.5-6-17.5; IC 6-3.5-6-17.6; IC 6-3.5-7-19.

SECTION 17. **An emergency is declared for this act.**

(Reference is to ESB 166 as reprinted April 1, 2003.)

KENLEY	COCHRAN
HUME	ESPICH
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT

EHB 1714–1; filed April 23, 2003, at 9:33 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1714 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-13-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) All taxes collected by the county treasurer shall be deposited as one (1) fund in the several depositories selected for the deposit of county funds and, except as provided in subsection (b), remain in the depositories until distributed at the following semiannual distribution made by the county auditor.

(b) Every county treasurer who, by virtue of the treasurer's office, is the collector of any taxes for any political subdivision wholly or partly within the county shall, ~~upon~~ **not later than thirty (30) days after receipt of** a written request for funds filed with the treasurer by a proper officer of any political subdivision within the county, advance to that political subdivision a portion of the taxes collected before the semiannual distribution. The amount advanced may not exceed the lesser of:

(1) ninety-five percent (95%) of the total amount collected at the time of the advance; or

(2) ninety-five percent (95%) of the amount to be distributed at the semiannual distribution.

(c) **Every county treasurer shall, not later than thirty (30)**

days after receipt of a written request for funds filed with the treasurer by a proper officer of any political subdivision within the county, advance to that political subdivision a part of the distributions received under IC 6-1.1-21-10 from the property tax replacement fund for the political subdivision. The amount advanced may not exceed the lesser of:

(1) ninety-five percent (95%) of the amount distributed from the fund to the county treasurer for the political subdivision at the time of the advance; or

(2) ninety-five percent (95%) of the total amount to be distributed by the county treasurer to the political subdivision on the next scheduled distribution date.

~~The request for funds under subsection (b) must be filed at least thirty (30) days before the county treasurer is required to make the advance.~~

(d) Upon notice from the county treasurer of the amount to be advanced, the county auditor shall draw a warrant upon the county treasurer for the amount. The amount of the advance must be available immediately for the use of the political subdivision.

~~(d)~~ **(e)** At the semiannual distribution all the advances made to any political subdivision under subsection (b) **or (c)** shall be deducted from the total amount due any political subdivision as shown by the distribution.

SECTION 2. IC 6-1.1-3-22, AS ADDED BY P.L.192-2002(ss), SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 22. (a) Except to the extent that it conflicts with a statute **and subject to subsection (f),** 50 IAC 4.2 (as in effect January 1, 2001), ~~is~~ **which was formerly** incorporated by reference into this section, **is reinstated as a rule.**

(b) Tangible personal property within the scope of 50 IAC 4.2 (as in effect January 1, 2001) shall be assessed on the assessment dates in calendar years 2003 and thereafter in conformity with 50 IAC 4.2 (as in effect January 1, 2001).

(c) The publisher of the Indiana Administrative Code ~~may continue to~~ **shall** publish 50 IAC 4.2 (as in effect January 1, 2001) in the Indiana Administrative Code.

(d) 50 IAC 4.3 and any other rule to the extent that it conflicts with this section is void.

(e) A reference in 50 IAC 4.2 to a governmental entity that has been terminated or a statute that has been repealed or amended shall be treated as a reference to its successor.

(f) The department of local government finance may not amend or repeal the following (all as in effect January 1, 2001):

(1) 50 IAC 4.2-4-3(f).
(2) 50 IAC 4.2-4-7.
(3) 50 IAC 4.2-4-9.
(4) 50 IAC 4.2-5-7.
(5) 50 IAC 4.2-5-13.
(6) 50 IAC 4.2-6-1.
(7) 50 IAC 4.2-6-2.
(8) 50 IAC 4.2-8-9.

SECTION 3. IC 6-1.1-4-4, AS AMENDED BY P.L.90-2002, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) A general reassessment, involving a physical inspection of all real property in Indiana, shall begin July 1, 2000, and **be the basis for taxes payable in 2003.**

(b) A general reassessment, involving a physical inspection of all real property in Indiana, shall begin July 1, 2007, and each fourth year thereafter. Each reassessment **under this subsection** shall be completed on or before March 1, of the immediately following ~~even-numbered~~ **odd-numbered** year, and shall be the basis for taxes payable in the year following the year in which the general assessment is to be completed.

~~(b)~~ **(c)** In order to ensure that assessing officials and members of each county property tax assessment board of appeals are prepared for a general reassessment of real property, the department of local government finance shall give adequate advance notice of the general reassessment to the county and township taxing officials of each county.

SECTION 4. IC 6-1.1-4-4.5, AS ADDED BY P.L.198-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.5. (a) The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took effect.

(b) The system must be applied to adjust assessed values beginning with the ~~2006~~ **2005** assessment date and each year thereafter that is not a year in which a reassessment becomes effective.

(c) The system must have the following characteristics:

(1) Promote uniform and equal assessment of real property within and across classifications.

(2) Apply all objectively verifiable factors used in mass valuation techniques that are reasonably expected to affect the value of real property in Indiana.

(3) Prescribe as many adjustment percentages and whatever categories of percentages the department of local government finance finds necessary to achieve objectively verifiable updated just valuations of real property. An adjustment percentage for a particular classification may be positive or negative.

(4) Prescribe procedures, including computer software programs, that permit the application of the adjustment percentages in an efficient manner by assessing officials.

SECTION 5. IC 6-1.1-4-27.5, AS AMENDED BY P.L.151-2002, SECTION 1 and P.L.178-2002, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 27.5. (a) The auditor of each county shall establish a property reassessment fund. The county treasurer shall deposit all collections resulting from the property taxes that the county is required to levy under this section in the county's property reassessment fund.

~~(b) With respect to the general reassessment of real property which is to commence on July 1, 2004, the county council of each county shall, for property taxes due in the year in which the general reassessment is to commence and the two (2) years immediately preceding that year, levy against all the taxable property of the county an amount equal to one-third (1/3) of the estimated cost of the general reassessment.~~

~~(c)~~ **(b)** With respect to a general reassessment of real property that is to commence on July 1, ~~2008,~~ **2007,** and each fourth year thereafter, the county council of each county shall, for property taxes due in the year that the general reassessment is to commence and the three (3) years preceding that year, levy against all the taxable property in the county an amount equal to one-fourth (1/4) of the estimated cost of the general reassessment.

~~(d)~~ **(c)** The department of local government finance shall give to each county council notice, before January 1 in a year, of the tax levies required by this section for that year.

~~(e)~~ **(d)** The department of local government finance may raise or lower the property tax levy under this section for a year if the department determines it is appropriate because the estimated cost of a general reassessment, including a general reassessment to be completed for the March 1, 2002, assessment date, has changed.

~~(f)~~ **(e)** If the county council determines that there is insufficient money in the county's reassessment fund to pay all expenses (as permitted under sections 28.5 and 32 of this chapter) relating to the general reassessment of real property commencing July 1, 2000, the county may, for the purpose of paying expenses (as permitted under sections 28.5 and 32 of this chapter) relating to the general reassessment commencing July 1, 2000, use money deposited in the fund from the tax levy under this section for 2000 or a later year.

SECTION 6. IC 6-1.1-5.5-3, AS AMENDED BY P.L.90-2002, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) Before filing a conveyance document with the county auditor under IC 6-1.1-5-4, all the parties to the conveyance must complete and sign a sales disclosure form as prescribed by the department of local government finance under section 5 of this chapter. All the parties may sign one (1) form, or if all the parties do not agree on the information to be included on the completed form, each party may sign and file a separate form.

(b) Except as provided in subsection (c), the auditor shall forward each sales disclosure form to the county assessor. The county assessor shall retain the forms for five (5) years. The county assessor

shall forward the sales disclosure form data to the department of local government finance **and the legislative services agency,** in electronic format if possible. The county assessor shall forward a copy of the sales disclosure forms to the township assessors in the county. The forms may be used by the county assessing officials, ~~and~~ the department of local government finance, **and the legislative services agency** for the purposes established in IC 6-1.1-4-13.6, sales ratio studies, equalization, and any other authorized purpose.

(c) In a county containing a consolidated city, the auditor shall forward the sales disclosure form to the appropriate township assessor. The township assessor shall forward the sales disclosure form to the department of local government finance **and the legislative services agency,** in electronic format if possible. The township assessor shall forward a copy of the sales disclosure forms to the township assessors in the county. The forms may be used by the county assessing officials, ~~and~~ the department of local government finance, **and the legislative services agency** for the purposes established in IC 6-1.1-4-13.6, sales ratio studies, equalization, and any other authorized purpose.

SECTION 7. IC 6-1.1-8-44, AS ADDED BY P.L.192-2002(ss), SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 44. (a) Except to the extent that it conflicts with a statute **and subject to subsection (f),** 50 IAC 5.1 (as in effect January 1, 2001), ~~is~~ **which was formerly** incorporated by reference into this section, **is reinstated as a rule.**

(b) Tangible personal property within the scope of 50 IAC 5.1 (as in effect January 1, 2001) shall be assessed on the assessment dates in calendar years 2003 and thereafter in conformity with 50 IAC 5.1 (as in effect January 1, 2001).

(c) The publisher of the Indiana Administrative Code ~~may continue to~~ **shall** publish 50 IAC 5.1 (as in effect January 1, 2001) in the Indiana Administrative Code.

(d) 50 IAC 5.2 and any other rule to the extent that it conflicts with this section is void.

(e) A reference in 50 IAC 5.1 to a governmental entity that has been terminated or a statute that has been repealed or amended shall be treated as a reference to its successor.

(f) The department of local government finance may not amend or repeal the following (all as in effect January 1, 2001):

(1) 50 IAC 5.1-6-6.
(2) 50 IAC 5.1-6-7.
(3) 50 IAC 5.1-6-8.
(4) 50 IAC 5.1-6-9.
(5) 50 IAC 5.1-8-1.
(6) 50 IAC 5.1-9-1.
(7) 50 IAC 5.1-9-2.

SECTION 8. IC 6-1.1-12.1-4.5, AS AMENDED BY HEA 1814-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.5. (a) For purposes of this section, "personal property" means personal property other than inventory (as defined in IC 6-1.1-3-11(a)).

(b) An applicant must provide a statement of benefits to the designating body. The applicant must provide the completed statement of benefits form to the designating body before the hearing specified in section 2.5(c) of this chapter or before the installation of the new manufacturing equipment or new research and development equipment, or both, for which the person desires to claim a deduction under this chapter. The department of local government finance shall prescribe a form for the statement of benefits. The statement of benefits must include the following information:

(1) A description of the new manufacturing equipment or new research and development equipment, or both, that the person proposes to acquire.

(2) With respect to:

(A) new manufacturing equipment not used to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products; and

(B) new research and development equipment;

an estimate of the number of individuals who will be employed or whose employment will be retained by the person as a result of the installation of the new manufacturing equipment or new research and development equipment, or both, and an estimate of the annual salaries of these individuals.

(3) An estimate of the cost of the new manufacturing equipment or new research and development equipment, or both.

(4) With respect to new manufacturing equipment used to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products, an estimate of the amount of solid waste or hazardous waste that will be converted into energy or other useful products by the new manufacturing equipment.

The statement of benefits may be incorporated in a designation application. Notwithstanding any other law, a statement of benefits is a public record that may be inspected and copied under IC 5-14-3-3.

(c) The designating body must review the statement of benefits required under subsection (b). The designating body shall determine whether an area should be designated an economic revitalization area or whether the deduction shall be allowed, based on (and after it has made) the following findings:

(1) Whether the estimate of the cost of the new manufacturing equipment or new research and development equipment, or both, is reasonable for equipment of that type.

(2) With respect to:

(A) new manufacturing equipment not used to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products; and

(B) new research and development equipment;

whether the estimate of the number of individuals who will be employed or whose employment will be retained can be reasonably expected to result from the installation of the new manufacturing equipment or new research and development equipment, or both.

(3) Whether the estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed installation of new manufacturing equipment or new research and development equipment, or both.

(4) With respect to new manufacturing equipment used to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products, whether the estimate of the amount of solid waste or hazardous waste that will be converted into energy or other useful products can be reasonably expected to result from the installation of the new manufacturing equipment.

(5) Whether any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed installation of new manufacturing equipment or new research and development equipment, or both.

(6) Whether the totality of benefits is sufficient to justify the deduction.

The designating body may not designate an area an economic revitalization area or approve the deduction unless it makes the findings required by this subsection in the affirmative.

(d) Except as provided in subsection (h), an owner of new manufacturing equipment or new research and development equipment, or both, whose statement of benefits is approved after June 30, 2000, is entitled to a deduction from the assessed value of that equipment for the number of years determined by the designating body under subsection (g). Except as provided in subsection (f) and in section 2(I)(3) of this chapter, the amount of the deduction that an owner is entitled to for a particular year equals the product of:

(1) the assessed value of the new manufacturing equipment or new research and development equipment, or both, in the year of deduction under the appropriate table set forth in subsection (e); multiplied by

(2) the percentage prescribed in the table set forth in subsection (e).

(e) The percentage to be used in calculating the deduction under subsection (d) is as follows:

(1) For deductions allowed over a one (1) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd and thereafter	0%

(2) For deductions allowed over a two (2) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	50%
3rd and thereafter	0%

(3) For deductions allowed over a three (3) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	66%
3rd	33%
4th and thereafter	0%

(4) For deductions allowed over a four (4) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	75%
3rd	50%
4th	25%
5th and thereafter	0%

(5) For deductions allowed over a five (5) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	80%
3rd	60%
4th	40%
5th	20%
6th and thereafter	0%

(6) For deductions allowed over a six (6) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	85%
3rd	66%
4th	50%
5th	34%
6th	25%
7th and thereafter	0%

(7) For deductions allowed over a seven (7) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	85%
3rd	71%
4th	57%
5th	43%
6th	29%
7th	14%
8th and thereafter	0%

(8) For deductions allowed over an eight (8) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	88%
3rd	75%
4th	63%
5th	50%
6th	38%
7th	25%
8th	13%
9th and thereafter	0%

(9) For deductions allowed over a nine (9) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	88%
3rd	77%
4th	66%
5th	55%
6th	44%
7th	33%
8th	22%
9th	11%
10th and thereafter	0%

(10) For deductions allowed over a ten (10) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	90%
3rd	80%
4th	70%
5th	60%
6th	50%
7th	40%
8th	30%
9th	20%
10th	10%
11th and thereafter	0%

(f) With respect to new manufacturing equipment and new research and development equipment installed before March 2, 2001, the deduction under this section is the amount that causes the net assessed value of the property after the application of the deduction under this section to equal the net assessed value after the application of the deduction under this section that results from computing:

(1) the deduction under this section as in effect on March 1, 2001; and

(2) the assessed value of the property under 50 IAC 4.2, as in effect on March 1, 2001, or, in the case of property subject to IC 6-1.1-8, 50 IAC 5.1, as in effect on March 1, 2001.

(g) For an economic revitalization area designated before July 1, 2000, the designating body shall determine whether a property owner whose statement of benefits is approved after April 30, 1991, is entitled to a deduction for five (5) or ten (10) years. For an economic revitalization area designated after June 30, 2000, the designating body shall determine the number of years the deduction is allowed. However, the deduction may not be allowed for more than ten (10) years. This determination shall be made:

(1) as part of the resolution adopted under section 2.5 of this chapter; or

(2) by resolution adopted within sixty (60) days after receiving a copy of a property owner's certified deduction application from the ~~department of local government finance.~~ **county auditor.** A certified copy of the resolution shall be sent to the county auditor.

A determination about the number of years the deduction is allowed that is made under subdivision (1) is final and may not be changed by following the procedure under subdivision (2).

(h) The owner of new manufacturing equipment that is directly used to dispose of hazardous waste is not entitled to the deduction provided by this section for a particular assessment year if during that assessment year the owner:

(1) is convicted of a violation under IC 13-7-13-3 (repealed), IC 13-7-13-4 (repealed), or IC 13-30-6; or

(2) is subject to an order or a consent decree with respect to property located in Indiana based on a violation of a federal or state rule, regulation, or statute governing the treatment, storage, or disposal of hazardous wastes that had a major or moderate potential for harm.

SECTION 9. IC 6-1.1-12.1-5, AS AMENDED BY P.L.90-2002, SECTION 122, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A property owner who desires to obtain the deduction provided by section 3 of this chapter must file a certified deduction application, on forms prescribed by the department of local government finance, with the auditor of the county in which the property is located. Except as otherwise provided in subsection (b) or (e), the deduction application must be filed before May 10 of the year in which the addition to assessed valuation is made.

(b) If notice of the addition to assessed valuation or new assessment for any year is not given to the property owner before April 10 of that year, the deduction application required by this section may be filed not later than thirty (30) days after the date such a notice is mailed to the property owner at the address shown on the records of the township assessor.

(c) The deduction application required by this section must contain the following information:

(1) The name of the property owner.

(2) A description of the property for which a deduction is claimed in sufficient detail to afford identification.

(3) The assessed value of the improvements before rehabilitation.

(4) The increase in the assessed value of improvements resulting from the rehabilitation.
(5) The assessed value of the new structure in the case of redevelopment.
(6) The amount of the deduction claimed for the first year of the deduction.
(7) If the deduction application is for a deduction in a residentially distressed area, the assessed value of the improvement or new structure for which the deduction is claimed.

(d) A deduction application filed under subsection (a) or (b) is applicable for the year in which the addition to assessed value or assessment of a new structure is made and in the following years the deduction is allowed without any additional deduction application being filed. However, property owners who had an area designated an urban development area pursuant to a deduction application filed prior to January 1, 1979, are only entitled to a deduction for a five (5) year period. In addition, property owners who are entitled to a deduction under this chapter pursuant to a deduction application filed after December 31, 1978, and before January 1, 1986, are entitled to a deduction for a ten (10) year period.

(e) A property owner who desires to obtain the deduction provided by section 3 of this chapter but who has failed to file a deduction application within the dates prescribed in subsection (a) or (b) may file a deduction application between March 1 and May 10 of a subsequent year which shall be applicable for the year filed and the subsequent years without any additional deduction application being filed for the amounts of the deduction which would be applicable to such years pursuant to section 4 of this chapter if such a deduction application had been filed in accordance with subsection (a) or (b).

(f) ~~On verification of the correctness of a deduction application by the assessor of the township in which the property is located,~~ **Subject to subsection (I),** the county auditor shall act as follows:
(1) If a determination about the number of years the deduction is allowed has been made in the resolution adopted under section 2.5 of this chapter, the county auditor shall make the appropriate deduction.
(2) If a determination about the number of years the deduction is allowed has not been made in the resolution adopted under section 2.5 of this chapter, the county auditor shall send a copy of the deduction application to the designating body. Upon receipt of the resolution stating the number of years the deduction will be allowed, the county auditor shall make the appropriate deduction.
(3) If the deduction application is for rehabilitation or redevelopment in a residentially distressed area, the county auditor shall make the appropriate deduction.

(g) The amount and period of the deduction provided for property by section 3 of this chapter are not affected by a change in the ownership of the property if the new owner of the property:
(1) continues to use the property in compliance with any standards established under section 2(g) of this chapter; and
(2) files an application in the manner provided by subsection (e).

(h) The township assessor shall include a notice of the deadlines for filing a deduction application under subsections (a) and (b) with each notice to a property owner of an addition to assessed value or of a new assessment.

(i) Before the county auditor acts under subsection (f), the county auditor may request that the township assessor of the township in which the property is located review the deduction application.

(j) A property owner may appeal the determination of the county auditor under subsection (f) by filing a complaint in the office of the clerk of the circuit or superior court not more than forty-five (45) days after the county auditor gives the person notice of the determination.

SECTION 10. IC 6-1.1-12.1-5.4, AS AMENDED BY SEA 1814-2003, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5.4. (a) A person that desires to obtain the deduction provided by section 4.5 of this chapter must file a certified deduction application on forms prescribed by the department of local government finance with the auditor of the county in which the new manufacturing equipment or new research and development equipment, or both, is located. A person that timely files a personal property return under IC 6-1.1-3-7(a) for the year in which the new manufacturing equipment or new research and development equipment, or both, is installed must file the application between March 1 and May 15 of that year. A person that obtains a filing extension under IC 6-1.1-3-7(b) for the year in which the new manufacturing equipment or new research and development equipment, or both, is installed must file the application between March 1 and the extended due date for that year.

(b) The deduction application required by this section must contain the following information:
(1) The name of the owner of the new manufacturing equipment or new research and development equipment, or both.
(2) A description of the new manufacturing equipment or new research and development equipment, or both.
(3) Proof of the date the new manufacturing equipment or new research and development equipment, or both, was installed.
(4) The amount of the deduction claimed for the first year of the deduction.

(c) This subsection applies to a deduction application with respect to new manufacturing equipment or new research and development equipment, or both, for which a statement of benefits was initially approved after April 30, 1991. If a determination about the number of years the deduction is allowed has not been made in the resolution adopted under section 2.5 of this chapter, the county auditor shall send a copy of the deduction application to the designating body, and the designating body shall adopt a resolution under section 4.5(g)(2) of this chapter.

(d) A deduction application must be filed under this section in the year in which the new manufacturing equipment or new research and development equipment, or both, is installed and in each of the immediately succeeding years the deduction is allowed.

(e) ~~On verification of the correctness of a deduction application by the assessor of the township in which the property is located,~~ **Subject to subsection (I),** the county auditor shall:
(1) review the deduction application; and
(2) approve, deny, or alter the amount of the deduction.

Upon approval of the deduction application or alteration of the amount of the deduction, the county auditor shall make the deduction. The county auditor shall notify the county property tax assessment board of appeals of all deductions approved under this section.

(f) If the ownership of new manufacturing equipment or new research and development equipment, or both, changes, the deduction provided under section 4.5 of this chapter continues to apply to that equipment if the new owner:
(1) continues to use the equipment in compliance with any standards established under section 2(g) of this chapter; and
(2) files the deduction applications required by this section.

(g) The amount of the deduction is the percentage under section 4.5 of this chapter that would have applied if the ownership of the property had not changed multiplied by the assessed value of the equipment for the year the deduction is claimed by the new owner.

(h) A person may appeal the determination of the county auditor under subsection (e) by filing a complaint in the office of the clerk of the circuit or superior court not more than forty-five (45) days after the county auditor gives the person notice of the determination.

(i) Before the county auditor acts under subsection (e), the county auditor may request that the township assessor in which the property is located review the deduction application.

SECTION 11. IC 6-1.1-12.1-11.3, AS AMENDED BY P.L.4-2000, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.3. (a) This section applies only to the following requirements: ~~under section 3, of this chapter:~~
(1) Failure to provide the completed statement of benefits form to the designating body before the hearing required by section 2.5(c) of this chapter.
(2) Failure to submit the completed statement of benefits form

to the designating body before the initiation of the redevelopment or rehabilitation or the installation of new manufacturing equipment or new research and development equipment, or both, for which the person desires to claim a deduction under this chapter.

(3) Failure to designate an area as an economic revitalization area before the initiation of the:

(A) redevelopment;

(B) installation of new manufacturing equipment or new research and development equipment, or both; or

(C) rehabilitation;

for which the person desires to claim a deduction under this chapter.

(4) Failure to make the required findings of fact before designating an area as an economic revitalization area or authorizing a deduction for new manufacturing equipment or new research and development equipment, or both, under section 2, 3, or 4.5 of this chapter.

(5) Failure to file a:

(A) timely; or

(B) complete;

deduction application under section 5 or 5.4 of this chapter.

(b) This section does not grant a designating body the authority to exempt a person from filing a statement of benefits or exempt a designating body from making findings of fact.

(c) A designating body may by resolution waive noncompliance described under subsection (a) under the terms and conditions specified in the resolution. Before adopting a waiver under this subsection, the designating body shall conduct a public hearing on the waiver.

SECTION 12. IC 6-1.1-12.1-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 13. The department of local government finance shall adopt rules under IC 4-22-2 to implement this chapter.**

SECTION 13. IC 6-1.1-15-4, AS AMENDED BY P.L.198-2001, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) After receiving a petition for review which is filed under section 3 of this chapter, the Indiana board shall conduct a hearing at its earliest opportunity. ~~In addition,~~ The Indiana board may:

(1) assign:

(A) full;

(B) limited; or

(C) no;

evidentiary value to the assessed valuation of tangible property determined by stipulation submitted as evidence of a comparable sale; and

(2) correct any errors that may have been made, and adjust the assessment in accordance with the correction.

If the Indiana board conducts a site inspection of the property as part of its review of the petition, the Indiana board shall give notice to all parties of the date and time of the site inspection. The Indiana board is not required to assess the property in question. The Indiana board shall give notice of the date fixed for the hearing, by mail, to the taxpayer and to the appropriate township assessor, county assessor, and county auditor. The Indiana board shall give these notices at least thirty (30) days before the day fixed for the hearing. The property tax assessment board of appeals that made the determination under appeal under this section may, with the approval of the county executive, file an amicus curiae brief in the review proceeding under this section. The expenses incurred by the property tax assessment board of appeals in filing the amicus curiae brief shall be paid from the **property** reassessment fund under ~~IC 6-1.1-4-27. In addition,~~ **IC 6-1.1-4-27.5.** The executive of a taxing unit may file an amicus curiae brief in the review proceeding under this section if the property whose assessment is under appeal is subject to assessment by that taxing unit.

(b) If a petition for review does not comply with the Indiana board's instructions for completing the form prescribed under section 3 of this chapter, the Indiana board shall return the petition to the petitioner and include a notice describing the defect in the petition. The petitioner then has thirty (30) days from the date on the notice to cure the defect and file a corrected petition. The Indiana board shall deny a corrected petition for review if it does not substantially comply with the Indiana board's instructions for completing the form prescribed under section 3 of this chapter.

(c) The Indiana board shall prescribe a form for use in processing petitions for review of actions by the county property tax assessment board of appeals. The Indiana board shall issue instructions for completion of the form. The form must require the Indiana board to indicate agreement or disagreement with each item that is:

(1) indicated on the petition submitted under section 1(e) of this chapter;

(2) included in the township assessor's response under section 1(g) of this chapter; and

(3) included in the county property tax assessment board of appeals' findings, record, and determination under section 2.1(d) of this chapter.

The form must also require the Indiana board to indicate the issues in dispute and its reasons in support of its resolution of those issues.

(d) After the hearing the Indiana board shall give the petitioner, the township assessor, the county assessor, and the county auditor:

(1) notice, by mail, of its final determination;

(2) a copy of the form completed under subsection (c); and

(3) notice of the procedures they must follow in order to obtain court review under section 5 of this chapter.

(e) Except as provided in subsection (f), the Indiana board shall conduct a hearing ~~within~~ **not later than** nine (9) months after a petition in proper form is filed with the Indiana board, excluding any time due to a delay reasonably caused by the petitioner.

(f) With respect to an appeal of a real property assessment that takes effect on the assessment date on which a general reassessment of real property takes effect under IC 6-1.1-4-4, the Indiana board shall conduct a hearing ~~within~~ **not later than** one (1) year after a petition in proper form is filed with the Indiana board, excluding any time due to a delay reasonably caused by the petitioner.

(g) Except as provided in subsection (h), the Indiana board shall make a determination ~~within~~ **not later than** the later of ninety (90) days after the hearing or the date set in an extension order issued by the Indiana board.

(h) With respect to an appeal of a real property assessment that takes effect on the assessment date on which a general reassessment of real property takes effect under IC 6-1.1-4-4, the Indiana board shall make a determination ~~within~~ **not later than** the later of one hundred eighty (180) days after the hearing or the date set in an extension order issued by the Indiana board.

(i) **Except as provided in subsection (n),** the Indiana board may not extend the final determination date under subsection (g) or (h) by more than one hundred eighty (180) days. ~~The failure of~~ **If** the Indiana board **fails** to make a final determination within the time allowed by this subsection, ~~shall be treated as a final determination of~~ the ~~Indiana board to deny~~ **entity that initiated** the petition **may:**

(1) take no action and wait for the Indiana board to make a final determination; or

(2) petition for judicial review under section 5(g) of this chapter.

(j) A final determination must include separately stated findings of fact for all aspects of the determination. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. Findings must be based exclusively upon the evidence on the record in the proceeding and on matters officially noticed in the proceeding. Findings must be based upon a preponderance of the evidence.

(k) The Indiana board may limit the scope of the appeal to the issues raised in the petition and the evaluation of the evidence presented to the county property tax assessment board of appeals in support of those issues only if all persons participating in the hearing required under subsection (a) agree to the limitation. A person participating in the hearing required under subsection (a) is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.

(l) The Indiana board:

(1) may require the parties to the appeal to file not more than five (5) business days before the date of the hearing required under subsection (a) documentary evidence or summaries of statements of testimonial evidence; and

(2) may require the parties to the appeal to file not more than fifteen (15) business days before the date of the hearing required under subsection (a) lists of witnesses and exhibits to be introduced at the hearing.

(m) A party to a proceeding before the Indiana board shall provide to another party to the proceeding the information described in subsection (l) if the other party requests the information in writing at least ten (10) days before the deadline for filing of the information under subsection (l).

(n) The county assessor may:

(1) appear as an additional party if the notice of appearance is filed before the review proceeding; or

(2) with the approval of the township assessor, represent the township assessor;

in a review proceeding under this section.

(o) The Indiana board may base its final determination on a stipulation between the respondent and the petitioner. If the final determination is based on a stipulated assessed valuation of tangible property, the Indiana board may order the placement of a notation on the permanent assessment record of the tangible property that the assessed valuation was determined by stipulation. The Indiana board may:

(1) order that a final determination under this subsection has no precedential value; or

(2) specify a limited precedential value of a final determination under this subsection.

SECTION 14. IC 6-1.1-15-5, AS AMENDED BY HEA 1814-2003, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) ~~Within~~ **Not later than** fifteen (15) days after the Indiana board gives notice of its final determination under section 4 of this chapter to the party or the maximum allowable time for the issuance of a final determination by the Indiana board under section 4 of this chapter expires, a party to the proceeding may request a rehearing before the Indiana board. The Indiana board may conduct a rehearing and affirm or modify its final determination, giving the same notices after the rehearing as are required by section 4 of this chapter. The Indiana board has fifteen (15) days after receiving a petition for a rehearing to determine whether to grant a rehearing. Failure to grant a rehearing ~~within~~ **not later than** fifteen (15) days after receiving the petition shall be treated as a final determination to deny the petition. A petition for a rehearing does not toll the time in which to file a petition for judicial review unless the petition for rehearing is granted. If the Indiana board determines to rehear a final determination, the Indiana board:

(1) may conduct the additional hearings that the Indiana board determines necessary or review the written record without additional hearings; and

(2) shall issue a final determination ~~within~~ **not later than** ninety (90) days after notifying the parties that the Indiana board will rehear the final determination.

~~Failure~~ **If** of the Indiana board **fails** to make a final determination within the time allowed under subdivision (2), ~~shall be treated as a final determination affirming the original decision of the Indiana board.~~ **entity that initiated the petition for rehearing may take no action and wait for the Indiana board to make a final determination or petition for judicial review under subsection (g).**

(b) A person may petition for judicial review of the final determination of the Indiana board regarding the assessment of that person's tangible property. The action shall be taken to the tax court under IC 4-21.5-5. Petitions for judicial review may be consolidated at the request of the appellants if it can be done in the interest of justice. The property tax assessment board of appeals that made the determination under appeal under this section may, with the approval of the county executive, file an amicus curiae brief in the review proceeding under this section. The expenses incurred by the property tax assessment board of appeals in filing the amicus curiae brief shall be paid from the **property** reassessment fund under IC 6-1.1-4-27.5. In addition, the executive of a taxing unit may file an amicus curiae brief in the review proceeding under this section if the property whose assessment is under appeal is subject to assessment by that taxing unit. The department of local government finance may intervene in an action taken under this subsection if the interpretation of a rule of the department is at issue in the action. A township assessor, county assessor, member of a county property tax assessment board of appeals, or county property tax assessment board of appeals that made the original assessment determination under appeal under this section is a party to the review under this section to defend the determination.

(c) **Except as provided in subsection (g),** to initiate a proceeding for judicial review under this section, a person must take the action required by subsection (b) ~~within:~~ **not later than:**

(1) forty-five (45) days after the Indiana board gives the person notice of its final determination, unless a rehearing is conducted under subsection (a); or

(2) thirty (30) days after the Indiana board gives the person notice under subsection (a) of its final determination, if a rehearing is conducted under subsection (a) or the maximum time elapses for the Indiana board to make a determination under this section.

(d) The failure of the Indiana board to conduct a hearing within the period prescribed in section 4(f) or 4(g) of this chapter does not constitute notice to the person of an Indiana board final determination.

(e) The county executive may petition for judicial review to the tax court in the manner prescribed in this section upon request by the county assessor or elected township assessor.

(f) If the county executive determines upon a request under this subsection to not appeal to the tax court:

(1) the entity described in subsection (b) that made the original determination under appeal under this section may take an appeal to the tax court in the manner prescribed in this section using funds from that entity's budget; and

(2) the petitioner may not be represented by the attorney general in an action described in subdivision (1).

(g) If the maximum time elapses for the Indiana board to give notice of its final determination under subsection (a) or section 4 of this chapter, a person may initiate a proceeding for judicial review by taking the action required by subsection (b) at any time after the maximum time elapses. If:

(1) a judicial proceeding is initiated under this subsection; and

(2) the Indiana board has not issued a determination;

the tax court shall determine the matter de novo.

SECTION 15. IC 6-1.1-15-6, AS AMENDED BY P.L.198-2001, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) **Except with respect to a petition filed under section 5(g) of this chapter,** if a petition for judicial review is initiated by a person under section 5 of this chapter, the Indiana board shall prepare a certified record of the proceedings related to the petition.

(b) The record for judicial review **required under subsection (a)** must include the following documents and items:

(1) Copies of all papers submitted to the Indiana board during the course of the action and copies of all papers provided to the parties by the Indiana board. For purposes of this subdivision, the term "papers" includes, without limitation, all notices, petitions, motions, pleadings, orders, orders on rehearing, briefs, requests, intermediate rulings, photographs, and other written documents.

(2) Evidence received or considered by the Indiana board.

(3) A statement of whether a site inspection was conducted, and, if a site inspection was conducted, either:

(A) a summary report of the site inspection; or

(B) a videotape transcript of the site inspection.

(4) A statement of matters officially noticed.

(5) Proffers of proof and objections and rulings on them.

(6) Copies of proposed findings, requested orders, and exceptions.

(7) Either:

(A) a transcription of the audio tape of the hearing; or

(B) a transcript of the hearing prepared by a court reporter.

Copies of exhibits that, because of their nature, cannot be incorporated into the certified record must be kept by the Indiana board until the appeal is finally terminated. However, this evidence must be briefly named and identified in the transcript of the evidence and proceedings.

(c) **Except with respect to a petition filed under section 5(g) of this chapter,** if the tax court judge finds that:

(1) a report of all or a part of the evidence or proceedings at a hearing conducted by the Indiana board was not made; or

(2) a transcript is unavailable;

a party to the appeal initiated under section 5 of this chapter may, at the discretion of the tax court judge, prepare a statement of the evidence or proceedings. The statement must be submitted to the tax court and also must be served on all other parties. A party to the proceeding may serve objections or prepare amendments to the statement not later than ten (10) days after service.

SECTION 16. IC 6-1.1-18.5-13, AS AMENDED BY HEA 1814-2003, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. With respect to an appeal filed under section 12 of this chapter, the local government tax control board may recommend that a civil taxing unit receive any one (1) or more of the following types of relief:

(1) Permission to the civil taxing unit to reallocate the amount set aside as a property tax replacement credit as required by IC 6-3.5-1.1 for a purpose other than property tax relief. However, whenever this occurs, the local government tax control board shall also state the amount to be reallocated.

(2) Permission to the civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter, if in the judgment of the local government tax control board the increase is reasonably necessary due to increased costs of the civil taxing unit resulting from annexation, consolidation, or other extensions of governmental services by the civil taxing unit to additional geographic areas or persons.

(3) Permission to the civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the civil taxing unit needs the increase to meet the civil taxing unit's share of the costs of operating a court established by statute enacted after December 31, 1973. Before recommending such an increase, the local government tax control board shall consider all other revenues available to the civil taxing unit that could be applied for that purpose. The maximum aggregate levy increases that the local government tax control board may recommend for a particular court equals the civil taxing unit's share of the costs of operating a court for the first full calendar year in which it is in existence.

(4) Permission to the civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the quotient determined under STEP SIX of the following formula is equal to or greater than one and three-hundredths (1.03):

STEP ONE: Determine the three (3) calendar years that most immediately precede the ensuing calendar year and in which a statewide general reassessment of real property does not first become effective.

STEP TWO: Compute separately, for each of the calendar years determined in STEP ONE, the quotient (rounded to the nearest ten-thousandth (0.0001)) of the **sum of the** civil taxing unit's total assessed value of all taxable property **and the total assessed value of property tax deductions in the unit under IC 6-1.1-12-41 or IC 6-1.1-12-42** in the particular calendar year, divided by the **sum of the** civil taxing unit's total assessed value of all taxable property **and the total assessed value of property tax deductions in the unit under IC 6-1.1-12-41 or IC 6-1.1-12-42** in the calendar year immediately preceding the particular calendar year.

STEP THREE: Divide the sum of the three (3) quotients computed in STEP TWO by three (3).

STEP FOUR: Compute separately, for each of the calendar years determined in STEP ONE, the quotient (rounded to the nearest ten-thousandth (0.0001)) of the **sum of the** total assessed value of all taxable property in ~~the state~~ **all counties and the total assessed value of property tax deductions in all counties under IC 6-1.1-12-41 or IC 6-1.1-12-42** in the particular calendar year, divided by the **sum of the** total assessed value of all taxable property in ~~the state~~ **all counties and the total assessed value of property tax deductions in all counties under IC 6-1.1-12-41 or IC 6-1.1-12-42** in the calendar year immediately preceding the particular calendar year.

STEP FIVE: Divide the sum of the three (3) quotients computed in STEP FOUR by three (3).

STEP SIX: Divide the STEP THREE amount by the STEP FIVE amount.

~~In addition, before the local government tax control board may recommend the relief allowed under this subdivision, the civil taxing unit must show a need for the increased levy because of special circumstances, and the local government tax control board must consider other sources of revenue and other means of relief.~~ **The civil taxing unit may increase its levy by a percentage not greater than the percentage by which the STEP THREE amount exceeds the percentage by which the civil taxing unit may increase its levy under section 3 of this chapter based on the assessed value growth quotient determined under section 2 of this chapter.**

(5) Permission to the civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the civil taxing unit needs the increase to pay the costs of furnishing fire protection for the civil taxing unit through a volunteer fire department. For purposes of determining a township's need for an increased levy, the local government tax control board shall not consider the amount of money borrowed under IC 36-6-6-14 during the immediately preceding calendar year. However, any increase in the amount of the civil taxing unit's levy recommended by the local government tax control board under this subdivision for the ensuing calendar year may not exceed the lesser of:

(A) ten thousand dollars ($10,000); or

(B) twenty percent (20%) of:

(i) the amount authorized for operating expenses of a volunteer fire department in the budget of the civil taxing unit for the immediately preceding calendar year; plus

(ii) the amount of any additional appropriations authorized during that calendar year for the civil taxing unit's use in paying operating expenses of a volunteer fire department under this chapter; minus

(iii) the amount of money borrowed under IC 36-6-6-14 during that calendar year for the civil taxing unit's use in paying operating expenses of a volunteer fire department.

(6) Permission to a civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter in order to raise revenues for pension payments and contributions the civil taxing unit is required to make under IC 36-8. The maximum increase in a civil taxing unit's levy that may be recommended under this subdivision for an ensuing calendar year equals the amount, if any, by which the pension payments and contributions the civil taxing unit is required to make under IC 36-8 during the ensuing calendar year exceeds the product of one and one-tenth (1.1) multiplied by the pension payments and contributions made by the civil taxing unit under IC 36-8 during the calendar year that immediately precedes the ensuing calendar year. For purposes of this subdivision, "pension payments and contributions made by a civil taxing unit" does not include that part of the payments or contributions that are funded by distributions made to a civil taxing unit by the state.

(7) Permission to increase its levy in excess of the limitations established under section 3 of this chapter if the local government tax control board finds that:

(A) the township's poor relief ad valorem property tax rate is less than one and sixty-seven hundredths cents ($0.0167) per one hundred dollars ($100) of assessed valuation; and
(B) the township needs the increase to meet the costs of providing poor relief under IC 12-20 and IC 12-30-4.

The maximum increase that the board may recommend for a township is the levy that would result from an increase in the township's poor relief ad valorem property tax rate of one and sixty-seven hundredths cents ($0.0167) per one hundred dollars ($100) of assessed valuation minus the township's ad valorem property tax rate per one hundred dollars ($100) of assessed valuation before the increase.

(8) Permission to a civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter if:
(A) the increase has been approved by the legislative body of the municipality with the largest population where the civil taxing unit provides public transportation services; and
(B) the local government tax control board finds that the civil taxing unit needs the increase to provide adequate public transportation services.

The local government tax control board shall consider tax rates and levies in civil taxing units of comparable population, and the effect (if any) of a loss of federal or other funds to the civil taxing unit that might have been used for public transportation purposes. However, the increase that the board may recommend under this subdivision for a civil taxing unit may not exceed the revenue that would be raised by the civil taxing unit based on a property tax rate of one cent ($0.01) per one hundred dollars ($100) of assessed valuation.

(9) Permission to a civil taxing unit to increase the unit's levy in excess of the limitations established under section 3 of this chapter if the local government tax control board finds that:
(A) the civil taxing unit is:
(i) a county having a population of more than one hundred forty-eight thousand (148,000) but less than one hundred seventy thousand (170,000);
(ii) a city having a population of more than fifty-five thousand (55,000) but less than fifty-nine thousand (59,000);
(iii) a city having a population of more than twenty-eight thousand seven hundred (28,700) but less than twenty-nine thousand (29,000);
(iv) a city having a population of more than fifteen thousand four hundred (15,400) but less than sixteen thousand six hundred (16,600); or
(v) a city having a population of more than seven thousand (7,000) but less than seven thousand three hundred (7,300); and
(B) the increase is necessary to provide funding to undertake removal (as defined in IC 13-11-2-187) and remedial action (as defined in IC 13-11-2-185) relating to hazardous substances (as defined in IC 13-11-2-98) in solid waste disposal facilities or industrial sites in the civil taxing unit that have become a menace to the public health and welfare.

The maximum increase that the local government tax control board may recommend for such a civil taxing unit is the levy that would result from a property tax rate of six and sixty-seven hundredths cents ($0.0667) for each one hundred dollars ($100) of assessed valuation. For purposes of computing the ad valorem property tax levy limit imposed on a civil taxing unit under section 3 of this chapter, the civil taxing unit's ad valorem property tax levy for a particular year does not include that part of the levy imposed under this subdivision. In addition, a property tax increase permitted under this subdivision may be imposed for only two (2) calendar years.

(10) Permission for a county having a population of more than eighty thousand (80,000) but less than ninety thousand (90,000) to increase the county's levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the county needs the increase to meet the county's share of the costs of operating a jail or juvenile detention center, including expansion of the facility, if the jail or juvenile detention center is opened after December 31, 1991. Before recommending an increase, the local government tax control board shall consider all other revenues available to the county that could be applied for that purpose. An appeal for operating funds for a jail or juvenile detention center shall be considered individually, if a jail and juvenile detention center are both opened in one (1) county. The maximum aggregate levy increases that the local government tax control board may recommend for a county equals the county's share of the costs of operating the jail or juvenile detention center for the first full calendar year in which the jail or juvenile detention center is in operation.

(11) Permission for a township to increase its levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the township needs the increase so that the property tax rate to pay the costs of furnishing fire protection for a township, or a portion of a township, enables the township to pay a fair and reasonable amount under a contract with the municipality that is furnishing the fire protection. However, for the first time an appeal is granted the resulting rate increase may not exceed fifty percent (50%) of the difference between the rate imposed for fire protection within the municipality that is providing the fire protection to the township and the township's rate. A township is required to appeal a second time for an increase under this subdivision if the township wants to further increase its rate. However, a township's rate may be increased to equal but may not exceed the rate that is used by the municipality. More than one (1) township served by the same municipality may use this appeal.

(12) Permission for a township to increase its levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the township has been required, for the three (3) consecutive years preceding the year for which the appeal under this subdivision is to become effective, to borrow funds under IC 36-6-6-14 to furnish fire protection for the township or a part of the township. However, the maximum increase in a township's levy that may be allowed under this subdivision is the least of the amounts borrowed under IC 36-6-6-14 during the preceding three (3) calendar years. A township may elect to phase in an approved increase in its levy under this subdivision over a period not to exceed three (3) years. A particular township may appeal to increase its levy under this section not more frequently than every fourth calendar year.

(13) Permission to a city having a population of more than twenty-nine thousand (29,000) but less than thirty-one thousand (31,000) to increase its levy in excess of the limitations established under section 3 of this chapter if:
(A) an appeal was granted to the city under subdivision (1) in 1998, 1999, and 2000; and
(B) the increase has been approved by the legislative body of the city, and the legislative body of the city has by resolution determined that the increase is necessary to pay normal operating expenses.

The maximum amount of the increase is equal to the amount of property tax replacement credits under IC 6-3.5-1.1 that the city petitioned to have reallocated in 2001 under subdivision (1) for a purpose other than property tax relief.

SECTION 17. IC 6-1.1-20.8-3, AS AMENDED BY HEA 1814-2003, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. **(a)** The county auditor shall determine the eligibility of each applicant under this chapter and shall notify the applicant of the determination before August 15 of the year in which the application is made.

(b) A person may appeal the determination of the county auditor under subsection (a) by filing a complaint in the office of the clerk of the circuit or superior court not more than forty-five (45) days after the county auditor gives the person notice of the determination.

SECTION 18. IC 6-1.1-20.8-4 IS ADDED TO THE INDIANA

CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4. An urban enterprise association created under IC 4-4-6.1-4 may by resolution waive failure to file a:**

(1) timely; or

(2) complete;

credit application under section 2.5 of this chapter. Before adopting a waiver under this subsection, the urban enterprise association shall conduct a public hearing on the waiver.

SECTION 19. IC 6-1.1-21-4, AS AMENDED BY P.L.192-2002(ss), SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Each year the department shall allocate from the property tax replacement fund an amount equal to the sum of:

(1) each county's total eligible property tax replacement amount for that year; plus

(2) the total amount of homestead tax credits that are provided under IC 6-1.1-20.9 and allowed by each county for that year; plus

(3) an amount for each county that has one (1) or more taxing districts that contain all or part of an economic development district that meets the requirements of section 5.5 of this chapter. This amount is the sum of the amounts determined under the following STEPS for all taxing districts in the county that contain all or part of an economic development district:

STEP ONE: Determine that part of the sum of the amounts under section 2(g)(1)(A) and 2(g)(2) of this chapter that is attributable to the taxing district.

STEP TWO: Divide:

(A) that part of the subdivision (1) amount that is attributable to the taxing district; by

(B) the STEP ONE sum.

STEP THREE: Multiply:

(A) the STEP TWO quotient; times

(B) the taxes levied in the taxing district that are allocated to a special fund under IC 6-1.1-39-5.

(b) Except as provided in subsection (e), between March 1 and August 31 of each year, the department shall distribute to each county treasurer from the property tax replacement fund one-half (½) of the estimated distribution for that year for the county. Between September 1 and December 15 of that year, the department shall distribute to each county treasurer from the property tax replacement fund the remaining one-half (½) of each estimated distribution for that year. The amount of the distribution for each of these periods shall be according to a schedule determined by the property tax replacement fund board under section 10 of this chapter. The estimated distribution for each county may be adjusted from time to time by the department to reflect any changes in the total county tax levy upon which the estimated distribution is based.

(c) On or before December 31 of each year or as soon thereafter as possible, the department shall make a final determination of the amount which should be distributed from the property tax replacement fund to each county for that calendar year. This determination shall be known as the final determination of distribution. The department shall distribute to the county treasurer or receive back from the county treasurer any deficit or excess, as the case may be, between the sum of the distributions made for that calendar year based on the estimated distribution and the final determination of distribution. The final determination of distribution shall be based on the auditor's abstract filed with the auditor of state, adjusted for postabstract adjustments included in the December settlement sheet for the year, and such additional information as the department may require.

(d) All distributions provided for in this section shall be made on warrants issued by the auditor of state drawn on the treasurer of state. If the amounts allocated by the department from the property tax replacement fund exceed in the aggregate the balance of money in the fund, then the amount of the deficiency shall be transferred from the state general fund to the property tax replacement fund, and the auditor of state shall issue a warrant to the treasurer of state ordering the payment of that amount. However, any amount transferred under this section from the general fund to the property tax replacement fund shall, as soon as funds are available in the property tax replacement fund, be retransferred from the property tax replacement fund to the state general fund, and the auditor of state shall issue a warrant to the treasurer of state ordering the replacement of that amount.

(e) Except as provided in subsection (I), the department shall not distribute under subsection (b) and section 10 of this chapter the money attributable to the county's property reassessment fund if:

(1) by the date the distribution is scheduled to be made, the county auditor has not sent a certified statement required to be sent by that date under IC 6-1.1-17-1 to the department of local government finance; **or**

(2) by the deadline under IC 36-2-9-20, the county auditor has not transmitted data as required under that section.

(f) Except as provided in subsection (I), if the elected township assessors in the county, the elected township assessors and the county assessor, or the county assessor has not transmitted to the department of local government finance by October 1 of the year in which the distribution is scheduled to be made the data for all townships in the county required to be transmitted under IC 6-1.1-4-25(b), the state board or the department shall not distribute under subsection (b) and section 10 of this chapter a part of the money attributable to the county's property reassessment fund. The portion not distributed is the amount that bears the same proportion to the total potential distribution as the number of townships in the county for which data was not transmitted by ~~August 1~~ **October 1** as described in this section bears to the total number of townships in the county.

(g) Money not distributed under subsection (e) shall be distributed to the county when the county auditor sends to the department of local government finance the certified statement required to be sent under IC 6-1.1-17-1 with respect to which the failure to send resulted in the withholding of the distribution under subsection (e).

(h) Money not distributed under subsection (f) shall be distributed to the county when the elected township assessors in the county, the elected township assessors and the county assessor, or the county assessor transmits to the department of local government finance the data required to be transmitted under IC 6-1.1-4-25(b) with respect to which the failure to transmit resulted in the withholding of the distribution under subsection (f).

(i) The restrictions on distributions under subsections (e) and (f) do not apply if the department of local government finance determines that:

(1) the failure of a county auditor to send a certified statement as described in subsection (e); or

(2) the failure of an official to transmit data as described in subsection (f);

is justified by unusual circumstances.

SECTION 20. IC 6-1.1-28-6, AS AMENDED BY P.L.1-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. The county ~~auditor~~ **assessor** shall give notice of the time, place, and purpose of each annual session of the county property tax assessment board. The county ~~auditor~~ **assessor** shall give the notice two (2) weeks before the first meeting of the board by:

(1) publication in two (2) newspapers of general circulation which are published in the county and which represent different political parties; or

(2) publication in one (1) newspaper of general circulation published in the county if the requirements of clause (1) of this section cannot be satisfied; or

(3) posting in three (3) public places in each township of the county if a newspaper of general circulation is not published in the county.

SECTION 21. IC 6-1.5-1-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4. "Small claim" means an appeal:**

(1) under IC 6-1.5-4-1 of a determination of assessed valuation of tangible property by:

(A) an assessing official; or

(B) the county property tax assessment board of appeals;

that does not exceed one million dollars ($1,000,000); or

(2) under IC 6-1.5-5-1 of a final determination of assessed valuation of tangible property under:
(A) IC 6-1.1-8; or
(B) IC 6-1.1-16;
by the department of local government finance that does not exceed one million dollars ($1,000,000).

SECTION 22. IC 6-1.5-5-1, AS AMENDED BY HEA 1814-2003, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The Indiana board shall conduct impartial review of all appeals of final determinations of the department of local government finance made under the following:
(1) IC 6-1.1-8.
(2) IC 6-1.1-14-11.
(3) IC 6-1.1-16.
(4) IC 6-1.1-26-2.

(b) Each notice of final determination issued by the department of local government finance under a statute listed in subsection (a) must give the taxpayer notice of:
(1) the opportunity for review under this section; and
(2) the procedures the taxpayer must follow in order to obtain review under this section.

(c) Except as provided in subsection (e), in order to obtain a review by the Indiana board under this section, the taxpayer must file a petition for review with the appropriate county assessor ~~within~~ **not later than** forty-five (45) days after the notice of the department of local government finance's action is given to the taxpayer.

(d) The county assessor shall transmit a petition for review under subsection (c) to the Indiana board ~~within~~ **not later than** ten (10) days after ~~it~~ **the petition** is filed.

(e) In order to obtain a review by the Indiana board of an appeal of a final determination of the department of local government finance under IC 6-1.1-8-30, the public utility company must follow the procedures in IC 6-1.1-8-30.

~~(f) In order to obtain a review by the Indiana board of an appeal of a final determination of the department of local government finance under IC 6-1.1-12.1-5.4(h), the person must follow the procedures in IC 6-1.1-12.1-5.4(h).~~

SECTION 23. IC 6-1.5-5-2, AS ADDED BY P.L.198-2001, SECTION 95, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) After receiving a petition for review that is filed under a statute listed in section 1(a) of this chapter, the Indiana board shall, at its earliest opportunity:
(1) conduct a hearing; or
(2) cause a hearing to be conducted by an administrative law judge.

The Indiana board may determine to conduct the hearing under subdivision (1) on its own motion or on request of a party to the appeal.

(b) In its resolution of a petition, the Indiana board may:
(1) assign:
(A) full;
(B) limited; or
(C) no;
evidentiary value to the assessed valuation of tangible property determined by stipulation submitted as evidence of a comparable sale; and
(2) correct any errors that may have been made, and adjust the assessment in accordance with the correction.

(c) The Indiana board shall give notice of the date fixed for the hearing, by mail, to:
(1) the taxpayer;
(2) the department of local government finance; and
(3) the appropriate:
(A) township assessor;
(B) county assessor; and
(C) county auditor.

(d) The Indiana board shall give the notices required under subsection (c) at least thirty (30) days before the day fixed for the hearing.

SECTION 24. IC 6-1.5-5-4, AS ADDED BY P.L.198-2001, SECTION 95, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) An administrative law judge who conducts a hearing shall submit a written report of findings of fact and conclusions of law to the Indiana board.

(b) After reviewing the report of the administrative law judge, the Indiana board may take additional evidence or hold additional hearings.

(c) **The Indiana board may base its final determination on a stipulation between the respondent and the petitioner. If the final determination is based on a stipulated assessed valuation of tangible property, the Indiana board may order the placement of a notation on the permanent assessment record of the tangible property that the assessed valuation was determined by stipulation. The Indiana board may:**
(1) order that a final determination under this subsection has no precedential value; or
(2) specify a limited precedential value of a final determination under this subsection.

(d) If the Indiana board does not issue its final determination under subsection (c), the Indiana board shall base its final determination on:
(1) the:
(A) report of the administrative law judge; or
(B) evidence received at a hearing conducted by the Indiana board;
(2) any additional evidence taken by the Indiana board; and
(3) any records that the Indiana board considers relevant.

SECTION 25. IC 6-1.5-6-2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 2. (a) The Indiana board may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to establish procedures for the conduct of proceedings before the Indiana board under this article, including procedures for:**
(1) prehearing conferences;
(2) hearings;
(3) allowing the Indiana board, upon agreement of all parties to the proceeding, to determine that a petition does not require a hearing because it presents substantially the same issue that was decided in a prior Indiana board determination;
(4) voluntary arbitration;
(5) voluntary mediation;
(6) submission of an agreed record;
(7) upon agreement of all parties to the proceedings, joinder of petitions concerning the same or similar issues; and
(8) small claims.

(b) Rules under subsection (a)(8):
(1) may include rules that:
(A) prohibit discovery;
(B) restrict the length of a hearing; and
(C) establish when a hearing is not required; and
(2) must include rules that:
(A) permit a party to a proceeding subject to the Indiana board's procedures for small claims to elect that those procedures do not apply to the proceeding; and
(B) permit an agreement among all parties to a proceeding not subject to the Indiana board's procedures for small claims that those procedures apply to the proceeding.

SECTION 26. IC 6-3.1-23-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 1.5. As used in this chapter, "legislative body" refers to:**
(1) the legislative body of a municipality (as defined in IC 36-1-2-11) in which is located property on which remediation referred to in section 3(1) of this chapter occurs; or
(2) if the property referred to in subdivision (1) is not located in a municipality, the legislative body of the county in which the property is located.

SECTION 27. IC 6-3.1-23-3, AS ADDED BY P.L.109-2001,

SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 3. As used in this chapter, "qualified investment" means costs that:

(1) ~~are incurred~~ **result from work performed in Indiana** to conduct a voluntary remediation, **whether or not** under IC 13-25-5, that involves the remediation of a brownfield;

(2) ~~may~~ **are** not ~~be~~ recovered by a taxpayer from another person after the taxpayer has made a good faith effort to recover the costs; ~~and~~

(3) **are not paid from state financial assistance;**

(4) result in taxable income to any other Indiana taxpayer; and

(5) are approved by the department of environmental management and the Indiana development finance authority under section 12 of this chapter.

SECTION 28. IC 6-3.1-23-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 3.5. As used in this chapter, "state financial assistance" means money received by a taxpayer:**

(1) as a direct loan:

(A) under a state program; or

(B) of:

(i) loan proceeds; or

(ii) grant proceeds;

received by a political subdivision under a state program; or

(2) as a grant:

(A) under a state program; or

(B) of:

(i) loan proceeds; or

(ii) grant proceeds;

received by a political subdivision under a state program.

SECTION 29. IC 6-3.1-23-5, AS ADDED BY P.L.109-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 5. (a) A taxpayer is entitled to a credit equal to the amount determined under section 6 of this chapter against the taxpayer's state tax liability for a taxable year if the following requirements are satisfied:

(1) The taxpayer does the following:

(A) Makes a qualified investment in that taxable year.

(B) Makes a good faith attempt to recover the costs of the environmental damages from the liable parties.

(C) Submits a plan to the legislative body ~~of the political subdivision in which the property is located to redevelop~~ **that:**

(i) describes the taxpayer's proposed redevelopment of the property; ~~in a manner in which the legislative body determines to be in the best interest of the community.~~

(ii) indicates the sources and amounts of money to be used for the remediation and proposed redevelopment of the property; and

(iii) estimates the value of the remediation and proposed redevelopment.

(D) Certifies to the legislative body that the taxpayer:

(i) has never had an ownership interest in an entity that contributed; and

(ii) has not contributed;

to contamination (as defined in IC 13-11-2-43) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management and the Indiana development finance authority.

(2) The legislative body, ~~of the political subdivision in which the property is located,~~ **after holding a public hearing of which notice was given under IC 5-3-1,** adopts a resolution: ~~under section 7 of this chapter~~

(A) determining that:

(i) the estimate of the value of the remediation and proposed redevelopment included in the plan under subdivision (1)(C)(iii) is reasonable for projects of that nature; and

(ii) the plan submitted under subdivision (1)(C) is in the best interest of the community;

(B) determining that the taxpayer:

(i) has never had an ownership interest in an entity that contributed; and

(ii) has not contributed;

to contamination (as defined in IC 13-11-2-43) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management and the Indiana development finance authority; and

(C) approving the credit.

(3) The department determines under section 15 of this chapter that the taxpayer's return claiming the credit is filed with the department before the maximum amount of credits allowed under this chapter is met.

~~(b) The redevelopment plan must include a statement of public benefits, which must include the following:~~

~~(1) a description of the proposed redevelopment.~~

~~(2) An estimate of the number of individuals who will be employed or housed in the new development and an estimate of the annual salaries of the employees.~~

~~(c)~~ **(b)** In determining whether the redevelopment is in the best interest of the community, the legislative body must consider, among other things, whether the proposed development promotes:

(1) the development of ~~low to moderate income~~ housing;

(2) the development of green space;

(3) the development of high technology businesses; or

(4) the creation or retention of high paying jobs.

SECTION 30. IC 6-3.1-23-11, AS ADDED BY P.L.109-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 11. (a) If the amount determined under section 6 of this chapter in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess:

(1) over for not more than the immediately following five (5) taxable years; ~~The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.~~

~~(b) A taxpayer is not entitled to a carryback or a refund of any unused credit.~~ **or**

(2) back to the immediately preceding taxable year.

(b) The amount of excess available to be used for carryover under subsection (a)(1) is reduced to the extent it is used for:

(1) a carryover under subsection (a)(1); or

(2) a carryback under subsection (a)(2).

SECTION 31. IC 6-3.1-23-12, AS ADDED BY P.L.109-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 12. (a) To be entitled to a credit under this chapter, a taxpayer must request the department of environmental management and the Indiana development finance authority to determine if costs incurred in a voluntary remediation involving a brownfield are qualified investments.

(b) The request under subsection (a) must be made before the costs are incurred.

(c) **Upon receipt of a request under subsection (a),** the department of environmental management and the Indiana development finance authority shall: ~~certify costs incurred in a voluntary remediation as a qualified investment to the extent that~~

(1) examine the costs

~~(1) result from work performed in Indiana to conduct a voluntary remediation under IC 13-25-5 that involves the remediation of a brownfield;~~

~~(2) may not be recovered by the taxpayer from another person after the taxpayer has made a good faith effort to recover the costs; and~~

~~(3) result in taxable income to any other Indiana taxpayer;~~

~~as determined~~ under the standards adopted by the department of environmental management; **and**

(2) certify any costs that the department and the authority

determine to be a qualified investment.

(d) Upon completion of a voluntary remediation ~~that has~~ **for which costs have** been certified as a qualified investment under subsection (c), the taxpayer:

(1) shall notify the department of environmental management; and

(2) shall request ~~certification of the completion of the voluntary remediation.~~ **from the department of environmental management:**

(A) with respect to voluntary remediation conducted under IC 13-25-5, the certificate of completion issued by the commissioner under IC 13-25-5-16 for the voluntary remediation work plan under which the costs certified under subsection (c)(2) were incurred; or

(B) with respect to voluntary remediation not conducted under IC 13-25-5, a certification of the costs incurred for the voluntary remediation that are consistent with the costs certified under subsection (c)(2).

SECTION 32. IC 6-3.1-23-13, AS ADDED BY P.L.109-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 13. (a) To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department **of state revenue.**

(b) The taxpayer shall submit the following to the department of state revenue:

(1) The certification of the qualified investment by the department of environmental management and the Indiana development finance authority ~~and~~ **under section 12(c) of this chapter.**

(2) Either:

(A) an official copy of the certification ~~of the completion of the voluntary remediation by the department of environmental management~~ **referred to in section 12(d)(2)(A) of this chapter; or**

(B) the certification issued by the department of environmental management in response to a request under section 12(d)(2)(B) of this chapter.

~~(2)~~ **(3)** Proof of payment of the certified qualified investment.

~~(3) Proof~~ **(4) A copy** of the legislative body's ~~approval of the credit.~~ **resolution adopted under section 5(a)(2) of this chapter.**

~~(4)~~ **(5)** Information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 33. IC 6-3.1-23-16, AS ADDED BY P.L.109-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 16. A tax credit may not be allowed under this chapter for a taxable year that begins after December 31, ~~2003.~~ **2005.** However, this section does not affect the ability of a taxpayer to carry forward the excess of a tax credit claimed for **a** taxable ~~years 2002 or 2003~~ **year that begins before January 1, 2006,** under section 11 of this chapter.

SECTION 34. IC 36-2-9-20, AS ADDED BY P.L.178-2002, SECTION 115, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 20. The county auditor shall:

(1) maintain an electronic data file of the information contained on the tax duplicate for all:

(A) parcels; and

(B) personal property returns;

for each township in the county as of each assessment date;

(2) maintain the file in the form required by:

(A) the legislative services agency; and

(B) the department of local government finance; and

(3) transmit the data in the file with respect to the assessment date of each year before ~~October 1~~ **March 1** of the **next** year to:

(A) the legislative services agency; and

(B) the department of local government finance.

SECTION 35. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 2004]: IC 6-3.1-23-7; IC 6-3.1-23-8; IC 6-3.1-23-9; IC 6-3.1-23-10.

SECTION 36. 1814-2003, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: SECTION 42. (a) The following, all as amended by this act, apply only to property taxes first due and payable after December 31, 2004:

(1) IC 6-1.1-12.1-4.5.

(2) IC 6-1.1-12.1-4.6.

(3) IC 6-1.1-12.1-5.4.

(4) IC 6-1.1-12.1-5.8.

(5) IC 6-1.1-12.1-5.9.

~~(6) IC 6-1.1-18.5-13.~~

~~(7)~~ **(6)** IC 36-8-19-8.5.

(b) This SECTION expires January 1, 2006.

SECTION 37. [EFFECTIVE JULY 1, 2003] **(a) Notwithstanding IC 6-1.1-5.5-4(a), a person filing a sales disclosure form under IC 6-1.1-5.5 with respect to a sale of real property that occurs:**

(1) after December 31, 2003; and

(2) before January 1, 2006;

shall pay a fee of ten dollars ($10) to the county auditor.

(b) Notwithstanding IC 6-1.1-5.5-4(b) and IC 6-1.1-5.5-12(d), fifty percent (50%) of the revenue collected under:

(1) subsection (a); and

(2) IC 6-1.1-5.5-12;

for the period referred to in subsection (a) shall be deposited in the county sales disclosure fund established under IC 6-1.1-5.5-4.5. Ten percent (10%) of the revenue shall be transferred to the treasurer of state for deposit in the assessment training fund established under IC 6-1.1-5.5-4.7. Forty percent (40%) of the revenue shall be transferred to the treasurer of state for deposit in the state general fund.

(c) The department of local government finance may provide training of assessment officials and employees of the department through the Indiana chapter of the International Association of Assessing Officers on various dates and at various locations in Indiana.

(d) This SECTION expires January 1, 2007.

SECTION 38. [EFFECTIVE JULY 1, 2003] **(a) IC 6-1.1-12.1-11.3 and IC 6-1.1-18.5-13, both as amended by this act, apply only to property taxes first due and payable after December 31, 2003.**

(b) This SECTION expires January 1, 2005.

SECTION 39. [EFFECTIVE JULY 1, 2003] **(a) IC 6-1.1-12.1-5.4, as amended by this act, applies only to property taxes first due and payable after December 31, 2004.**

(b) This SECTION expires January 1, 2006.

SECTION 40. [EFFECTIVE JANUARY 1, 2004] **(a) The following, all as amended by this act, apply only to taxable years beginning after December 31, 2003:**

(1) IC 6-3.1-23-3.

(2) IC 6-3.1-23-5.

(3) IC 6-3.1-23-11.

(4) IC 6-3.1-23-12.

(5) IC 6-3.1-23-13.

(6) IC 6-3.1-23-16.

(b) IC 6-3.1-23-1.5 and IC 6-3.1-23-3.5, both as added by this act, apply only to taxable years beginning after December 31, 2003.

(c) This SECTION expires January 1, 2004.

SECTION 41. **An emergency is declared for this act**.

(Reference is to EHB 1714 as reprinted March 28, 2003.)

KLINKER	KENLEY
SCHOLER	HUME
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed House Bill 1556 because it conflicts with HEA 1814-2003 without properly

recognizing the existence of HEA 1814-2003, has had Engrossed House Bill 1556 under consideration and begs leave to report back to the House with the recommendation that Engrossed House Bill 1556 be corrected as follows:

Page 1, line 1, delete "P.L.198-2001," and insert "HEA 1814-2003,".

Page 1, line 3, delete "UPON PASSAGE]:" and insert "JULY 1,2003]:".

Page 1, line 12, delete "board." and insert "board of Indiana.".

Page 1, between lines 16 and 17, begin a new line block indented and insert:

"(10) The department of local government finance.".

Page 4, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 13. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 4-21.5-2-4, this SECTION applies instead of IC 4-21.5-2-4. Except as provided in subsection (c), this article does not apply to any of the following agencies:**

(1) The governor.

(2) The state board of accounts.

(3) The state educational institutions (as defined by IC 20-12-0.5-1).

(4) The department of workforce development.

(5) The unemployment insurance review board of the department of workforce development.

(6) The worker's compensation board.

(7) The military officers or boards.

(8) The Indiana utility regulatory commission.

(9) The department of state revenue (excluding an agency action related to the licensure of private employment agencies).

(b) This article does not apply to action related to railroad rate and tariff regulation by the Indiana department of transportation.

(c) This article applies to a protest or hearing related to the regulation of charity gaming under IC 4-32 by the department of state revenue.

(d) This SECTION expires July 1, 2003.".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1556 as printed April 8, 2003.)

PELATH, Chair
WHETSTONE, R.M.M.
LIGGETT, Author

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed Senate Bill 422 because it conflicts with HEA 1167-2003 without properly recognizing the existence of HEA 1167-2003, has had Engrossed Senate Bill 422 under consideration and begs leave to report back to the House with the recommendation that Engrossed Senate Bill 422 be corrected as follows:

Replace the effective dates in SECTIONS 6 through 11 with "[EFFECTIVE APRIL 2, 2003]".

Page 4, line 35, delete "IC 6-3-3-5" and insert "IC 6-3-3-5, AS AMENDED BY P.L.1-2003, SECTION 33,".

Page 5, line 33, after "IC 6-2.1" insert "~~(repealed)~~".

Page 5, line 35, delete "IC 6-2.1," and insert "~~IC 6-2.1 (repealed),~~".

Page 5, line 37, delete "IC 6-3-3-5.1" and insert "IC 6-3-3-5.1, AS AMENDED BY P.L.1-2003, SECTION 34,".

Page 6, line 21, after "IC 6-2.1" insert "~~(repealed)~~".

Page 6, line 25, delete"P.L.14-2000," and insert "P.L.1-2003, SECTION 35,".

Page 6, line 26, delete "SECTION 17,".

Page 8, line 9, after "tax)" insert "~~(repealed)~~".

Page 9, line 39, delete "P.L.192-2002(ss)," and insert "P.L.1-2003, SECTION 36,".

Page 9, line 40, delete "SECTION 80,".

Page 10, line 22, delete "IC 6-3" and insert "this article".

Page 11, line 9, delete "IC 6-3-3-2," and insert "IC 6-3-3-2 (repealed),"

Page 11, line 18, delete "IC 6-3-3-2," and insert "IC 6-3-3-2 (repealed),"

Page 11, line 27, delete "IC 6-3.1-18-8" and insert "IC 6-3.1-18-8, AS AMENDED BY P.L.1-2003, SECTION 38,".

Page 11, line 31, delete "IC 6-2.1," and insert "~~IC 6-2.1 (repealed),~~".

Page 11, line 35, delete "IC 6-5.5-2-7" and insert "IC 6-5.5-2-7, AS AMENDED BY P.L.1-2003, SECTION 47,".

Page 11, line 41, delete "IC 6-2.1." and insert "~~IC 6-2.1 (repealed).~~".

Page 17, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 17. [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)] **(a) Notwithstanding IC 6-3-3-5, this SECTION applies instead of IC 6-3-3-5.**

(b) At the election of the taxpayer, there shall be allowed, as a credit against the adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, an amount (subject to the applicable limitations provided by this SECTION) equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during such year to institutions of higher education located within Indiana, to any corporation or foundation organized and operated solely for the benefit of any such institution of higher education, or to the associated colleges of Indiana.

(c) In the case of a taxpayer other than a corporation, the amount allowable as a credit under this SECTION for any taxable year shall not exceed one hundred dollars ($100) in the case of a single return or two hundred dollars ($200) in the case of a joint return.

(d) In the case of a corporation, the amount allowable as a credit under this SECTION for any taxable year shall not exceed:

(1) ten percent (10%) of such corporation's total adjusted gross income tax under IC 6-3-1 through IC 6-3-7 for such year (as determined without regard to any credits against that tax); or

(2) one thousand dollars ($1,000);

whichever is less.

(e) For purposes of this SECTION, the term "institution of higher education" means any educational institution located within Indiana:

(1) which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on;

(2) which regularly offers education at a level above the twelfth grade;

(3) which regularly awards either associate, bachelors, masters, or doctoral degrees, or any combination thereof; and

(4) which is duly accredited by the North Central Association of Colleges and Schools, the Indiana state board of education, or the American Association of Theological Schools.

(f) The credit allowed by this SECTION shall not exceed the amount of the adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this SECTION) allowed by IC 6-3-1 through IC 6-3-7.

(g) This SECTION expires April 2, 2003.

SECTION 18. [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)] **(a) Notwithstanding IC 6-3-3-5.1, this SECTION applies instead of IC 6-3-3-5.1.**

(b) At the election of the taxpayer, a credit against the adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year is permitted in an amount (subject to the applicable limitations provided by this SECTION) equal to fifty

percent (50%) of the aggregate amount of contributions made by the taxpayer during the taxable year to the twenty-first century scholars program support fund established under IC 20-12-70.1-5.

(c) In the case of a taxpayer other than a corporation, the amount allowable as a credit under this SECTION for any taxable year may not exceed:

(1) one hundred dollars ($100) in the case of a single return; or

(2) two hundred dollars ($200) in the case of a joint return.

(d) In the case of a taxpayer that is a corporation, the amount allowable as a credit under this SECTION for any taxable year may not exceed the lesser of the following amounts:

(1) Ten percent (10%) of the corporation's total adjusted gross income tax under IC 6-3-1 through IC 6-3-7 for the taxable year (as determined without regard to any credits against that tax).

(2) One thousand dollars ($1,000).

(e) The credit permitted under this SECTION may not exceed the amount of the adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this SECTION) allowed by IC 6-3-1 through IC 6-3-7.

(f) This SECTION expires April 2, 2003.

SECTION 19. [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)] **(a) Notwithstanding IC 6-3-3-10, this SECTION applies instead of IC 6-3-3-10.**

(b) The following definitions apply throughout this SECTION:

(1) "Base period wages" means the following:

(A) In the case of a taxpayer other than a pass through entity, wages paid or payable by a taxpayer to its employees during the year that ends on the last day of the month that immediately precedes the month in which an enterprise zone is established, to the extent that the wages would have been qualified wages if the enterprise zone had been in effect for that year. If the taxpayer did not engage in an active trade or business during that year in the area that is later designated as an enterprise zone, then the base period wages equal zero (0). If the taxpayer engaged in an active trade or business during only part of that year in an area that is later designated as an enterprise zone, then the department shall determine the amount of base period wages.

(B) In the case of a taxpayer that is a pass through entity, base period wages equal zero (0).

(2) "Enterprise zone" means an enterprise zone created under IC 4-4-6.1.

(3) "Enterprise zone adjusted gross income" means adjusted gross income of a taxpayer that is derived from sources within an enterprise zone. Sources of adjusted gross income shall be determined with respect to an enterprise zone, to the extent possible, in the same manner that sources of adjusted gross income are determined with respect to the state of Indiana under IC 6-3-2-2.

(4) "Enterprise zone gross income" means gross income of a taxpayer that is derived from sources within an enterprise zone.

(5) "Enterprise zone insurance premiums" means insurance premiums derived from sources within an enterprise zone.

(6) "Monthly base period wages" means base period wages divided by twelve (12).

(7) "Pass through entity" means a:

(A) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(B) partnership;

(C) trust;

(D) limited liability company; or

(E) limited liability partnership.

(8) "Qualified employee" means an individual who is employed by a taxpayer and who:

(A) has his principal place of residence in the enterprise zone in which he is employed;

(B) performs services for the taxpayer, ninety percent (90%) of which are directly related to the conduct of the taxpayer's trade or business that is located in an enterprise zone;

(C) performs at least fifty percent (50%) of his services for the taxpayer during the taxable year in the enterprise zone; and

(D) in the case of an individual who is employed by a taxpayer that is a pass through entity, was first employed by the taxpayer after December 31, 1998.

(9) "Qualified increased employment expenditures" means the following:

(A) For a taxpayer's taxable year other than his taxable year in which the enterprise zone is established, the amount by which qualified wages paid or payable by the taxpayer during the taxable year to qualified employees exceeds the taxpayer's base period wages.

(B) For the taxpayer's taxable year in which the enterprise zone is established, the amount by which qualified wages paid or payable by the taxpayer during all of the full calendar months in the taxpayer's taxable year that succeed the date on which the enterprise zone was established exceed the taxpayer's monthly base period wages multiplied by that same number of full calendar months.

(10) "Qualified state tax liability" means a taxpayer's total income tax liability incurred under:

(A) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax) with respect to enterprise zone adjusted gross income;

(B) IC 27-1-18-2 (insurance premiums tax) with respect to enterprise zone insurance premiums; and

(C) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this SECTION.

(11) "Qualified wages" means the wages paid or payable to qualified employees during a taxable year.

(12 "Taxpayer" includes a pass through entity.

(c) A taxpayer is entitled to a credit against the taxpayer's qualified state tax liability for a taxable year in the amount of the lesser of:

(1) the product of ten percent (10%) multiplied by the qualified increased employment expenditures of the taxpayer for the taxable year; or

(2) one thousand five hundred dollars ($1,500) multiplied by the number of qualified employees employed by the taxpayer during the taxable year.

(d) The amount of the credit provided by this SECTION that a taxpayer uses during a particular taxable year may not exceed the taxpayer's qualified state tax liability for the taxable year. If the credit provided by this SECTION exceeds the amount of that tax liability for the taxable year it is first claimed, then the excess may be carried back to preceding taxable years or carried over to succeeding taxable years and used as a credit against the taxpayer's qualified state tax liability for those taxable years. Each time that the credit is carried back to a preceding taxable year or carried over to a succeeding taxable year, the amount of the carryover is reduced by the amount used as a credit for that taxable year. Except as provided in subsection (e), the credit provided by this SECTION may be carried forward and applied in the ten (10) taxable years that succeed the taxable year in which the credit accrues. The credit provided by this SECTION may be carried back and applied in the three (3) taxable years that precede the taxable year in which the credit accrues.

(e) A credit earned by a taxpayer in a particular taxable year shall be applied against the taxpayer's qualified state tax liability for that taxable year before any credit carryover or carryback is applied against that liability under subsection (d).

(f) Notwithstanding subsection (d), if a credit under this SECTION results from wages paid in a particular enterprise zone, and if that enterprise zone terminates in a taxable year that succeeds the last taxable year in which a taxpayer is entitled to use the credit carryover that results from those wages under subsection (d), then the taxpayer may use the credit carryover for any taxable year up to and including the taxable year in which the enterprise zone terminates.

(g) A taxpayer is not entitled to a refund of any unused credit.

(h) A taxpayer that:

(1) does not own, rent, or lease real property outside of an enterprise zone that is an integral part of its trade or business; and

(2) is not owned or controlled directly or indirectly by a taxpayer that owns, rents, or leases real property outside of an enterprise zone;

is exempt from the allocation and apportionment provisions of this SECTION.

(i) If a pass through entity is entitled to a credit under subsection (c) but does not have state tax liability against which the tax credit may be applied, an individual who is a shareholder, partner, beneficiary, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, beneficiary, or member is entitled.

The credit provided under this subsection is in addition to a tax credit to which a shareholder, partner, beneficiary, or member of a pass through entity is entitled. However, a pass through entity and an individual who is a shareholder, partner, beneficiary, or member of a pass through entity may not claim more than one (1) credit for the qualified expenditure.

(j) This SECTION expires April 2, 2003.

SECTION 20. [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)] **(a) Notwithstanding IC6-3-4-4.1, this SECTION applies instead of IC 6-3-4-4.1.**

(b) This SECTION applies to taxable years beginning after December 31, 1993.

(c) Any individual required by the Internal Revenue Code to file estimated tax returns and to make payments on account of such estimated tax shall file estimated tax returns and make payments of the tax imposed by this article to the department at the time or times and in the installments as provided by Section 6654 of the Internal Revenue Code. However, in applying Section 6654 of the Internal Revenue Code for the purposes of this article, "estimated tax" means the amount which the individual estimates as the amount of the adjusted gross income tax imposed by this article for the taxable year, minus the amount which the individual estimates as the sum of any credits against the tax provided by IC 6-3-3.

(d) Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of IC 6-3-4-8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than four hundred dollars ($400). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by IC 6-8.1-10-2.1(b).

(e) Every corporation subject to the adjusted gross income tax liability imposed by IC 6-3 shall be required to report and pay an estimated tax equal to twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year. A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(f) The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed by the department on corporations failing to make payments as required in subsection (d) or (g). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax ~~plus utility receipts tax~~ which equal or exceed:

(1) twenty percent (20%) of the final tax liability for such taxable year; or

(2) twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for such taxable year.

(g) The provisions of subsection (d) requiring the reporting and estimated payment of adjusted gross income tax shall be applicable only to corporations having an adjusted gross income tax liability which, after application of the credit allowed by IC 6-3-3-2, shall exceed one thousand dollars ($1,000) for its taxable year.

(h) If the department determines that a corporation's:

(1) estimated quarterly adjusted gross income tax liability for the current year; or

(2) average estimated quarterly adjusted gross income tax liability for the preceding year;

exceeds, before January 1, 1998, twenty thousand dollars ($20,000), and, after December 31, 1997, ten thousand dollars ($10,000), after the credit allowed by IC 6-3-3-2, the corporation shall pay the estimated adjusted gross income taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or overnight by courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(i) If a corporation's adjusted gross income tax payment is made by electronic funds transfer, the corporation is not required to file an estimated adjusted gross income tax return.

(j) This SECTION expires April 2, 2003.

SECTION 21. [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)] **(a) Notwithstanding IC 6-3.1-18-8, this SECTION applies instead of IC 6-3.1-18-8.**

(b) The credit provided under IC 6-3.1-18-7 is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under IC 6-3, this article, or IC 6-5.5. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same qualified expenditure.

(c) This SECTION expires April 2, 2003.

SECTION 22. [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)] **(a) Notwithstanding IC 6-5.5-2-7, this SECTION applies instead of IC 6-5.5-2-7.**

(b) Notwithstanding any other provision of IC 6-5.5, there is no tax imposed on the adjusted gross income or apportioned income of the following:

(1) Insurance companies subject to the tax under IC 27-1-18-2 or IC 6-3.

(2) International banking facilities (as defined in Regulation D of the Board of Governors of the Federal Reserve System).

(3) Any corporation that is exempt from income tax under Section 1363 of the Internal Revenue Code.

(4) Any corporation exempt from federal income taxation under the Internal Revenue Code, except for the corporation's unrelated business income. However, this exemption does not apply to a corporation exempt from federal income taxation under Section 501(c)(14) of the Internal Revenue Code.

(c) This SECTION expires April 2, 2003.".
(Reference is to ESB 422 as reprinted April 1, 2003.)

PELATH, Chair
WHETSTONE, R.M.M.
CRAWFORD, Sponsor

Report adopted.

RESOLUTIONS ON FIRST READING

House Resolution 89

Representative Aguilera introduced House Resolution 89:

A HOUSE RESOLUTION urging the bureau of motor vehicles to seek and hire more customer service representatives and driver examiners in its branch offices who are bilingual, in particular, Spanish-speaking individuals.

Whereas, The Hispanic and Latino population in Indiana has increased by more than 100 percent between the 1990 and 2000 census;

Whereas, Individuals who speak languages other than English are encouraged to live and work in Indiana;

Whereas, The bureau of motor vehicles issues various types of driving permits and licenses and also issues identification cards for those who are not authorized to drive;

Whereas, The branches of the bureau of motor vehicles are the state offices most frequently visited by the public for licensing and identification purposes, motor vehicle titling and registration, and voter registration;

Whereas, The public is best served by reducing the frequency of repeat visits to the bureau of motor vehicles caused by the need for additional documentation in order to complete transactions; and

Whereas, Personnel in the bureau of motor vehicles branch offices may be assisted in conducting business with the public in an expeditious manner by the ability of branch personnel to converse in languages other than English: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

SECTION 1. That the Indiana House of Representatives urges the commissioner of the bureau of motor vehicles to seek and hire more qualified bilingual individuals, in particular, Spanish-speaking individuals, for employment at the branch offices.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to the commissioner of the bureau of motor vehicles.

The resolution was read a first time and adopted by voice vote.

House Resolution 90

Representatives V. Smith introduced House Resolution 90:

A HOUSE RESOLUTION congratulating Drew Elementary School, Gary, Indiana, on its selection as a Four Star School Award winner.

Whereas, The Four Star School Award is presented by Dr. Suellen Reed, state superintendent of public instruction, to schools in recognition of attaining language arts, mathematics, and total Indiana Statewide Testing for Educational Progress (ISTEP) battery and attendance scores in the top 25% of all Indiana schools during a particular school year;

Whereas, Drew Elementary School, Gary, Indiana, has been named a Four Star School;

Whereas, The students and teachers of Drew Elementary School received this honor because of their hard work, dedication to improvement, and a strong desire to learn;

Whereas, The success of Drew Elementary School can be credited to the efforts of the principal, teachers, staff, students, and parents, working together in a unified effort to maintain the high level of competency at their school; and

Whereas, Schools such as Drew Elementary School make a strong statement about the quality of the teachers and the high scholastic standards that exist in Hoosier schools: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

SECTION 1. That the Indiana House of Representatives congratulates the students and teachers of Drew Elementary School on receiving a Four Star School Award and on the effort put forth by the students, teachers, and parents in obtaining this award and urges them to continue to strive for excellence in education throughout their lives.

SECTION 2. That the Principal Clerk of the House of Representatives transmit a copy of this resolution to Florine Lacefield, principal of Drew Elementary School.

The resolution was read a first time and adopted by voice vote.

House Resolution 91

Representative V. Smith introduced House Resolution 91:

A HOUSE RESOLUTION congratulating Banneker Achievement Center, Gary, Indiana, on its selection as a Four Star School Award winner.

Whereas, The Four Star School Award is presented by Dr. Suellen Reed, state superintendent of public instruction, to schools in recognition of attaining language arts, mathematics, and total Indiana Statewide Testing for Educational Progress (ISTEP) battery and attendance scores in the top twenty-five percent of all Indiana schools during a particular school year;

Whereas, Banneker Achievement Center, Gary, Indiana, fulfilled those requirements for the 13th consecutive time;

Whereas, The students and teachers of Banneker Achievement Center have received this honor every year because of their hard work, dedication to improvement, and a strong desire to learn;

Whereas, Students have credited the success of their school to the efforts of the principal, teachers, staff, students, and parents, working together in a unified effort to maintain the high level of competency at their school;

Whereas, Principal Sarah Givens credits the success of Banneker Achievement Center to an open line of communication that exists between teachers, students, and parents; and

Whereas, Schools such as Banneker Achievement Center make a strong statement about the quality of the teachers and the high scholastic standards that exist in Hoosier schools: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

SECTION 1. That the Indiana House of Representatives congratulates the students and teachers of Banneker Achievement Center on their 13th consecutive Four Star School Award and on the effort put forth by the students, teachers, and parents in obtaining this award and urges them to continue to strive for excellence in education throughout their lives.

SECTION 2. That the Principal Clerk of the House of Representatives transmit a copy of this resolution to Sarah Givens, principal of Banneker Achievement Center.

The resolution was read a first time and adopted by voice vote.

House Resolution 92

Representative Denbo introduced House Resolution 92:

A HOUSE RESOLUTION congratulating Bedford Elks Lodge 826 on the occasion of its 100th anniversary.

Whereas, Bedford Elks Lodge 826 celebrated its 100th anniversary on January 18, 2003;

Whereas, Since the establishment of Lodge 826 in 1903, the Bedford Elks have supported numerous worthwhile organizations and endeavors in the community, including Boys and Girls Clubs, Boy Scouts, Santa's Helpers, Christmas food baskets for the needy, Special Olympics, Lawrence County Community Foundation vocational scholarships, Lawrence County Junior Miss, United Way,

Limestone Heritage Festival, and Community Reading Program;

Whereas, The Elks are known nationally for the Elks National Foundation, which supports youth programs, scholarships, and veterans programs;

Whereas, The Elks are also known for their patriotism, having designated by resolution June 14, 1907, as Flag Day;

Whereas, The Elks petitioned President Woodrow Wilson to recognize Flag Day nationally, and in 1949, President Harry Truman, a member of the Elks, proclaimed Flag Day a day of national observance;

Whereas, The Elks have been major contributors in all times of national disasters, including the Great Chicago Fire in 1871 and the San Francisco earthquake in 1906;

Whereas, The Elks are supporters of the American military;

Whereas, After World War II, the Elks granted a total of 40,000 rehabilitation, vocational, and educational loans to disabled veterans who were ineligible for government help or were awaiting approval of their applications;

Whereas, During the Korean War, the Elks provided care packages and procured half a million pints of much needed blood; and

Whereas, Throughout their history, the Elks have remained steadfast in their support of America and Americans: Therefore,

Be it resolved by the House of Representatives
of the General Assembly of the State of Indiana:

SECTION 1. That the members of the Indiana House of Representatives commends Bedford Elks Lodge 826 for its many contributions to the community and the state.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to Bedford Elks Lodge 826.

The resolution was read a first time and adopted by voice vote.

The House recessed until the fall of the gavel.

RECESS

The House reconvened at 10:10 a.m. with the Speaker in the Chair.

RESOLUTIONS ON FIRST READING

House Resolution 93

Representatives Lytle, Saunders, and Denbo introduced House Resolution 93:

A HOUSE RESOLUTION honoring the "Orange Shirts" who have loyally supported the cause of securing a hometown casino for Orange County for several years.

Whereas, Gambling supporters in Orange County, Indiana, have been lobbying for a hometown casino for years;

Whereas, These supporters have become lovingly known as the "Orange Shirts";

Whereas, These "Orange Shirts" could be seen in the halls of the State House expressing their support for this legislation each time the bill came up for action;

Whereas, These "Orange Shirts" put hundreds of miles on their vehicles traveling to and from the State House to make sure that the legislators knew how the residents of Orange County felt about this issue;

Whereas, Members used their own funds to distribute oranges and candy bars to legislators as symbols of their belief that a casino in Orange County would help the residents "help themselves";

Whereas, These citizens of Orange County have given Representative Denbo all the support he needed in his effort to guide this legislation through the General Assembly and have won the hearts of the other 149 legislators as well;

Whereas, The "Orange Shirts" have placed into action the belief that government that involves citizens in its creation will be long-lasting and stable; and

Whereas, Democracy is founded on principles of public involvement and public participation in governmental decisions. This participation helps to unite the communities throughout our state and provide a sense of ownership and partnership with lawmakers: Therefore,

Be it resolved by the House of Representatives
of the General Assembly of the State of Indiana:

SECTION 1. That the Indiana House of Representatives expresses its admiration for the group of citizens from Orange County who faithfully lobbied the Indiana General Assembly to pass legislation that would allow gaming in Orange County and bring some much needed employment opportunities to that community.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to the loyal members of the "Orange Shirts".

The resolution was read a first time and adopted by voice vote.

House Resolution 94

Representatives Dobis and Kuzman introduced House Resolution 94:

A HOUSE RESOLUTION to welcome Teagan Elise Dobis to the world.

Whereas, Teagan Elise Dobis was born on the 18th day of April, 2003 at seven thirty-five a.m. weighing eight pounds and two ounces and measuring at twenty and a half inches;

Whereas, Teagan Elise was welcomed to the Dobis family by her parents, Aaron and Sara Dobis, her maternal grandparents Margaret and James Litty, and her paternal grandparents Darlene and Representative Chester Dobis;

Whereas, Aldous Huxley said "Children are remarkable for their intelligence and ardor, for their curiosity, their intolerance of shams, the clarity and ruthlessness of their vision," Aaron, Sara, Margaret, James, Darlene and Chester have many wonderful years to look forward to and enjoy with their newest family member, Teagan Elise and the remarkable wonder she is sure to bring: Therefore,

Be it resolved by the House of Representatives

of the General Assembly of the State of Indiana:

SECTION 1. That this body welcome Teagan Elise Dobis and congratulate Aaron and Sara Dobis on the birth of their first child and the also congratulate the grandparents Margaret and James Litty and Darlene and Chester Dobis.

SECTION 2. That the Principal Clerk of the House of Representatives transmit a copy of this resolution to Teagan Elise Dobis and her family.

The resolution was read a first time and adopted by voice vote.

House Resolution 95

Representative Denbo introduced House Resolution 95:

A HOUSE RESOLUTION honoring the 1958 Springs Valley High School boys basketball team on the 45th anniversary of its trip to the state finals.

Whereas, The French Lick and West Baden schools were consolidated in the 1957-1958 school year to form Springs Valley High School;

Whereas, In the first year of its existence, the Springs Valley Blackhawks boys basketball team became one of the greatest teams in Indiana high school basketball history;

Whereas, The Blackhawks ended the regular season undefeated;

Whereas, The Blackhawks' first step toward the state finals was an impressive 25-point sectional win over highly ranked Huntingburg, the tournament host;

Whereas, In the regional, the Blackhawks defeated Vincennes, and in the semi-state, they soundly defeated Terre Haute Gerstmeyer, a team that won semi-state championships in 1953, 1954, 1956, and 1957;

Whereas, The Blackhawks had a 17-point victory in the semi-state championship game, earning a trip to the final four;

Whereas, A trip to the final four is a feat no other team in the county performed before or since;

Whereas, Team members Bob McCracken and Marvin Pruett were named to the Indiana All-Star team in 1958 and 1959, respectively, and Rex Wells was named the Indiana Coach of the Year;

Whereas, The 1958 Blackhawk team united the communities of West Baden and French Lick with its outstanding basketball, turning fierce rivals into allies; and

Whereas, The players of the 1958 Springs Valley High School basketball team became local heroes and basketball legends who will live on in the annals of basketball forever: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

SECTION 1. That the Indiana House of Representatives remembers the outstanding 1958 Springs Valley High School basketball team on the 45th anniversary of its trip to the state championship.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to the principal of Springs Valley High School.

The resolution was read a first time and adopted by voice vote.

House Resolution 96

Representatives T. Adams, Aguilera, Alderman, Austin, Avery, Ayres, Bardon, Bauer, Becker, Behning, Bischoff, Borror, Bosma, Bottorff, C. Brown, T. Brown, Buck, Budak, Buell, Burton, Cheney, Cherry, Chowning, Cochran, Crawford, Crooks, Day, Denbo, Dickinson, Dobis, Duncan, Dvorak, Espich, Foley, Frenz, Friend, Frizzell, Fry, GiaQuinta, Goodin, Grubb, Gutwein, Harris, Hasler, Heim, Herrell, Hinkle, Hoffman, Kersey, Klinker, Koch, Kromkowski, Kruse, Kuzman, LaPlante, L. Lawson, Lehe, Leonard, Liggett, J. Lutz, Lytle, Mahern, Mangus, Mays, McClain, Moses, Murphy, Neese, Noe, Orentlicher, Oxley, Pelath, Pflum, Pierce, Pond, Porter, Reske, Richardson, Ripley, Robertson, Ruppel, Saunders, Scholer, V. Smith, Stevenson, Stilwell, Stine, Stutzman, Summers, Thomas, Thompson, Torr, Turner, Ulmer, Weinzapfel, Welch, Whetstone, Wolkins, D. Young, and Yount introduced House Resolution 96:

A HOUSE RESOLUTION honoring the life of Mrs. Jo Ann Wuensch.

Whereas, Jo Ann Wuensch departed this earthly life on December 5, 2002;

Whereas, Jo Ann was known for her dedication to community service, actively giving of her time and considerable talents to Little Sisters of the Poor;

Whereas, Jo Ann was also a dedicated employee of Kirlin's Hallmark, where she served as manager for ten years and received numerous honors from both Kirlin's and Hallmark for her outstanding service;

Whereas, Jo Ann was a graduate of Howe High School, and she attended Butler University where she was the secretary for the Dean of Education;

Whereas, Mrs. Wuensch was the devoted wife of Ronald W. Wuensch, who loved her dearly;

Whereas, Mrs. Wuensch was the loving mother of Ronna Felber, Gina Meriwether, Cheryl Mayo, Jeffrey S. Wuensch, and Christopher J. Wuensch;

Whereas, Mrs. Wuensch was the proud grandmother of nine grandchildren and proud great-grandmother of one great-grandchild;

Whereas, Jo Ann's selfless contributions to her community, her exceptional work, and her loving devotion to her friends and family, made her a beloved person who is lovingly remembered: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

SECTION 1. The Indiana House of Representatives honors the life of Mrs. Jo Ann Wuensch.

SECTION 2. The Principle Clerk of the House of Representatives is directed to transmit a copy of this resolution to Mr. Ron Wuensch.

The resolution was read a first time and adopted by voice vote.

House Resolution 97

Representatives T. Adams, Aguilera, Alderman, Austin, Avery, Ayres, Bardon, Bauer, Becker, Behning, Bischoff, Borror, Bosma, Bottorff, C. Brown, T. Brown, Buck, Budak, Buell, Burton, Cheney, Cherry, Chowning, Cochran, Crawford, Crooks, Day, Denbo, Dickinson, Dobis, Duncan, Dvorak, Espich, Foley, Frenz, Friend, Frizzell, Fry, GiaQuinta, Goodin, Grubb, Gutwein, Harris, Hasler, Heim, Herrell, Hinkle, Hoffman, Kersey, Klinker, Koch, Kromkowski, Kruse, Kuzman, LaPlante, L. Lawson, Lehe, Leonard, Liggett, J. Lutz, Lytle, Mahern, Mangus, Mays, McClain, Moses, Murphy, Neese, Noe, Orentlicher, Oxley, Pelath, Pflum, Pierce, Pond, Porter, Reske, Richardson, Ripley, Robertson, Ruppel, Saunders, Scholer, V. Smith, Stevenson, Stilwell, Stine, Stutzman, Summers, Thomas, Thompson, Torr, Turner, Ulmer, Weinzapfel, Welch, Whetstone, Wolkins, D. Young, and Yount introduced House Resolution 97:

A HOUSE RESOLUTION honoring the life of Mrs. Janeen K. Kromkowski.

Whereas, Mrs. Janeen K. Kromkowski left this earthly life on August 15, 2002;

Whereas, Janeen was a lifelong resident of South Bend, graduating from Central High School and attending Memorial School of Nursing, both in her hometown of South Bend;

Whereas, Janeen was a registered nurse, serving with compassion and distinction at Memorial Hospital of South Bend for about twenty-five years;

Whereas, Janeen's skill, patience, and compassion were greatly appreciated by patients, and families of patients, on the rehabilitation floor of Memorial Hospital, where Janeen served;

Whereas, Janeen offered her special caring, compassion and skill as a hospice volunteer;

Whereas, Mrs. Janeen Kromkowski was the loving wife of State Representative Thomas S. Kromkowski, who loved her dearly;

Whereas, Janeen was the beloved mother of daughter Julie Kromkowski McSweeney and son Greg Kromkowski;

Whereas, Janeen was the proud grandmother of Sean McSweeney, Tyler Kromkowski, Kate Margaret Kromkowski and Rex Kromkowski;

Whereas, Janeen is lovingly remembered by her family and friends as a fantastic mother who cared for her husband and children and created a warm and loving home for her family;

Whereas, Janeen's husband holds her memory close to his heart, as he lovingly remembers Janeen's tender care for the family, especially during those times when his legislative duties carried him away from home;

Whereas, The City of South Bend and this State are better places to live, thanks to the many contributions of Janeen K. Kromkowski: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

SECTION 1. That the Indiana House of Representatives honors the life of Mrs. Janeen K. Kromkowski.

SECTION 2. That the Principal Clerk of the Indiana House of Representatives is directed to transmit a copy of this resolution to State Representative Thomas S. Kromkowski, Mrs. Julie

McSweeney, and Mr. Greg Kromkowski.

The resolution was read a first time and adopted by voice vote.

House Resolution 98

Representative V. Smith introduced House Resolution 98:

A HOUSE RESOLUTION memorializing Reverend Ernest "Ernie" Butler.

Whereas, Reverend Ernest Butler passed away recently at the age of 89;

Whereas, Throughout his life, Reverend Butler was known for his bold spirit, big heart, and intense love for God;

Whereas, Reverend Butler preached at the Second Baptist Church for 43 years;

Whereas, During that time, Reverend Butler touched the lives of countless people, accepting all of them for who they were;

Whereas, Reverend Butler served as the inspiration for many young ministers, who often cited him as the reason they entered the ministry;

Whereas, Reverend Butler was mourned both by dignitaries, including Gerald Bepko and Congressman Frank McCloskey, and by common folk;

Whereas, Reverend Butler worked throughout his life to improve the lives of young Hoosiers;

Whereas, Reverend Butler created the Martin Luther King Statewide Essay Contest, which dealt with the life and teachings of Dr. King and was open to students in any Indiana middle school, junior high school, and high school; and

Whereas, Reverend Ernest Butler was a man of action whose shoes will be extremely hard to fill: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

SECTION 1. That the Indiana House of Representatives expresses our deepest sympathy to the family of Reverend Ernest Butler and hopes that they find comfort in the fact the Reverend Butler has gone to a better place.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to the family of Reverend Ernest Butler.

The resolution was read a first time and adopted by voice vote.

House Resolution 99

Representative Pelath introduced House Resolution 99:

A HOUSE RESOLUTION urging the establishment of a Stroke Prevention Task Force.

Whereas, There is a need to study existing statutes and proposed legislation related to the care of stroke patients, including emergency stroke care;

Whereas, There is a need to develop and implement a comprehensive statewide public education program on stroke prevention, targeted to high risk populations and to geographic areas where there is a high incidence of stroke: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

SECTION 1. That the legislative council is urged to establish an interim study committee to form a Stroke Prevention Task Force.

Section 2. That the committee, is established, shall operate under the direction of the legislative council and issue a final report when directed to do so by the council.

The resolution was read a first time and adopted by voice vote.

MOTIONS TO DISSENT FROM SENATE AMENDMENTS

HOUSE MOTION

Mr. Speaker: I move that the House dissent from the Senate amendments to Engrossed House Bill 1171 and that the Speaker appoint a committee to confer with a like committee from the Senate and report back to the House.

HERRELL

Motion prevailed.

CONFEREES AND ADVISORS APPOINTED

The Speaker announced the appointment of Representatives to conference committees on the following Engrossed House Bills (the Representative listed first is the Chair):

EHB 1092	Conferees:	Kersey and LaPlante
	Advisors:	Kuzman and D. Young
EHB 1171	Conferees:	Herrell and Stutzman
	Advisors:	Kuzman and Torr

The Speaker announced the following changes in appointment of Representatives as conferees and advisors:

EHB 1558	Conferees:	Becker replacing Budak
ESB 62	Conferees:	Becker replacing Budak
	Advisors:	Budak

The Speaker yielded the gavel to the Deputy Speaker Pro Tempore, Representative Harris.

MOTIONS TO CONCUR IN SENATE AMENDMENTS

HOUSE MOTION

Mr. Speaker: I move that the House reconsider its actions whereby it dissented from the Senate amendments to Engrossed House Bill 1130 and that the House now concur in the Senate amendments to said bill.

C. BROWN

Roll Call 631: yeas 51, nays 43. Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that the House concur in the Senate amendments to Engrossed House Bill 1135.

C. BROWN

Roll Call 632: yeas 56, nays 35. Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that the House concur in the Senate amendments to Engrossed House Bill 1417.

BECKER

Roll Call 633: yeas 58, nays 35. Motion prevailed.

[*Journal Clerk's note: the author of EHB 1417, Representative Budak, was excused because of illness. The coauthor, Representative Becker, moved to concur on the bill.*]

Representative Whetstone was excused.

HOUSE MOTION

Mr. Speaker: I move that the House concur in the Senate amendments to Engrossed House Bill 1469.

BORROR

Roll Call 634: yeas 92, nays 1. Motion prevailed.

RULES SUSPENSIONS

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 160.1 and 162.1 and recommends that Rule 160.1 be suspended so that the following

conference committee reports are eligible for consideration after April 14, 2003, and that House Rule 162.1 be suspended so that the following conference committee reports may be laid over on the members' desks for 12 hours, all so that the following conference committee reports may be eligible to be placed before the House for action: Engrossed House Bill 1019–1, 1219–1, and 1378–1.

PELATH, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 160.1 be suspended so that the following conference committee reports are eligible for consideration after April 14, 2003, and that House Rule 162.1 be suspended so that the following conference committee reports may be laid over on the members' desks for 12 hours, all so that the following conference committee reports may be eligible to be placed before the House for action: Engrossed House Bill 1019–1, 1219–1, and 1378–1.

PELATH

Motion prevailed.

Representative Whetstone, who had been excused, was present.

CONFERENCE COMMITTEE REPORTS

Engrossed House Bill 1378–1

The conference committee report was reread. Roll Call 635: yeas 95, nays 0. Report adopted.

Engrossed House Bill 1219–1

The conference committee report was reread. Roll Call 636: yeas 93, nays 0. Report adopted.

MOTIONS TO CONCUR IN SENATE AMENDMENTS

HOUSE MOTION

Mr. Speaker: I move that the House reconsider its actions whereby it dissented from the Senate amendments to Engrossed House Bill 1140 and that the House now concur in the Senate amendments to said bill.

C. BROWN

Roll Call 637: yeas 66, nays 25. Motion prevailed.

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT
ESB 506–1; filed April 24, 2003, at 9:50 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 506 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 6-8.1-9.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. For purposes of this chapter:

"Claimant agency" means any state department, institution, commission, committee, board, division, bureau, authority, officer, ~~or~~ official, **or clerk of a circuit court.**

"Debtor" means any person or legal entity that is delinquent in paying a debt to a claimant agency that has not been adjudicated, satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Debt" means any liquidated amount owed and due to a Title IV-D agency of another state, or to any claimant agency which has accrued through contract, subrogation, assignment for purposes of collection, tort, operation of law, or any other legal theory, regardless of whether there is an outstanding judgment for that sum.

SECTION 2. IC 11-13-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) A court or division of a court authorized to impose probation shall appoint one (1) or more probation officers, depending on the needs of the court, except that two (2) or more divisions within a court, two (2) or more courts within a county, or two (2) or more courts not in the same county may jointly appoint and employ one (1) or more probation officers for the purpose of meeting the requirements of this section.

(b) A person may be appointed as a probation officer after the effective date established by the judicial conference of Indiana only if that person meets the minimum employment qualifications adopted by the conference, except that this requirement does not apply to any person certified as a qualified probation officer before that effective date. Any uncertified person appointed as a probation officer after the effective date who fails to successfully complete the written examination established under section 8 of this chapter within six (6) months after the date of ~~his~~ **the person's** appointment is prohibited from exercising the powers of a probation officer as granted by law.

(c) Probation officers shall serve at the pleasure of the appointing court and are directly responsible to and subject to the orders of the court. The amount and time of payment of salaries of probation officers shall be fixed by the ~~court consistent with section 8 of this chapter to~~ **county, city, or town fiscal body in accordance with the salary schedule adopted by the county, city, or town fiscal body under IC 36-2-16.5. The salary of a probation officer shall** be paid out of the county, ~~or~~ city, **or town** treasury by the county auditor or city controller. Probation officers are entitled to their actual expenses necessarily incurred in the performance of their duties. Probation officers shall give a bond if the court so directs in a sum to be fixed by the court.

(d) A court, or two (2) or more courts acting jointly, may designate a probation officer to direct and supervise the work of the probation department.

SECTION 3. IC 31-31-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) **The salary of a probation officer shall be fixed by the county fiscal body in accordance with the salary schedule adopted by the county fiscal body under IC 36-2-16.5. The salary of a probation officer shall be paid by the county.**

(b) Subject to the approval of the county fiscal body, the judge shall fix and the county shall pay the salaries of ~~the probation officers and other~~ juvenile court employees **other than probation officers.**

~~(b)~~ **(c)** In addition to their annual salary, probation officers shall be reimbursed for any necessary travel expenses incurred in the performance of their duties in accordance with the law governing state officers and employees.

SECTION 4. IC 31-40-1-1.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.7. (a) A person may pay a monthly probation user's fee under section 1 or 1.5 of this chapter before the date the payment is required to be made without obtaining the prior approval of a court or a probation department. However, if a delinquent child is discharged from probation before the date the delinquent child was scheduled to be released from probation, any monthly probation user's fee paid in advance for the delinquent child may not be refunded.**

(b) A probation department may petition a court to:

(1) impose a probation user's fee on a person; or

(2) increase a person's probation user's fee;

under section 1 or 1.5 of this chapter if the financial ability of the person to pay a probation user's fee changes while the person is on probation.

(c) An order to pay a probation user's fee under section 1 or 1.5 of this chapter:

(1) is a judgment lien that:

(A) attaches to the property of the person subject to the order;

(B) may be perfected;

(C) may be enforced to satisfy any payment that is delinquent under section 1 or 1.5 of this chapter; and

(D) expires;

in the same manner as a judgment lien created in a civil proceeding;

(2) is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and

(3) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5.

(d) A delinquent child placed on probation for more than one (1) delinquent act:

(1) may be required to pay more than one (1) initial probation user's fee; and

(2) may not be required to pay more than one (1) monthly probation user's fee per month;

to either the probation department or the clerk of the court.

(e) If a court orders a person to pay a probation user's fee under section 1 or 1.5 of this chapter, the court may garnish the wages, salary, and other income earned by the person to enforce the order.

(f) If:

(1) a person is delinquent in paying the person's probation user's fees required under section 1 or 1.5 of this chapter; and

(2) the person's driver's license or permit has been suspended or revoked or the person has never been issued a driver's license or permit;

the court may order the bureau of motor vehicles to not issue a driver's license or permit to the person until the person has paid the person's delinquent probation user's fees.

SECTION 5. IC 31-40-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Subject to IC 31-40-1-3, a juvenile court may order each delinquent child who receives supervision under IC 31-37-19 or the child's parent, guardian, or custodian to pay to **either** the probation department **or the clerk of the court:**

(1) an initial probation user's fee of at least twenty-five dollars ($25) but not more than one hundred dollars ($100); ~~and~~

(2) a probation user's fee of at least ~~five~~ **ten** dollars ~~($5)~~ **($10)** but not more than ~~fifteen~~ **twenty-five** dollars ~~($15)~~ **($25)** for each month the child receives supervision; **and**

(3) an administrative fee of one hundred dollars ($100) if the delinquent child is supervised by a juvenile probation officer.

(b) **If a clerk of a court collects a probation user's fee, the clerk:**

(1) may keep not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee and shall deposit any fee kept under this subsection in the clerk's record perpetuation fund established under IC 33-19-6-1.5; and

(2) if requested to do so by the county auditor, city fiscal officer, or town fiscal officer under clause (A), (B), or (C), transfer not more than three percent (3%) of the fee to the:

(A) county auditor who shall deposit the money transferred under this subdivision into the county general fund;

(B) city general fund when requested by the city fiscal officer; or

(C) town general fund when requested by the town fiscal officer.

(c) The probation department or clerk shall collect the administrative fee under subsection (a)(3) before collecting any other fee under subsection (a). The probation department **or the clerk** shall deposit the probation user's fees **and the administrative fees** paid under subsection (a) into the county supplemental juvenile probation services fund.

(d) In addition to other methods of payment allowed by law, a probation department may accept payment of fees required under this section and section 1.5 of this chapter by credit card (as defined in IC 14-11-1-7). The liability for payment is not discharged until the probation department receives payment or credit from the institution responsible for making the payment or credit.

(e) The probation department may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or charged directly to the probation department's account, the probation department may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the money the probation department is required to collect under subsection (a).

(f) The probation department shall deposit the credit card service fees collected under subsection (e) into the county supplemental juvenile probation services fund. These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

SECTION 6. IC 31-40-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. Notwithstanding the probation user's fee amounts established under section 1 of this chapter, a court may order a person to pay a probation user's fee that exceeds the maximum amount allowed under section 1 of this chapter if:**

(1) the person was placed on probation in another state and moved or was transferred to Indiana;

(2) the other state allows a higher probation user's fee than the maximum amount allowed under section 1 of this chapter; and

(3) the probation user's fee the court orders the person to pay does not exceed the maximum amount allowed in the other state.

SECTION 7. IC 31-40-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The fiscal body of the county shall appropriate money from the county supplemental juvenile probation services fund:

(1) to the juvenile courts of the county for the use by the courts in supplementing probation services to juveniles; **and**

(2) to supplement the salaries of juvenile probation officers in accordance with the salary schedule set by the county fiscal body under IC 36-2-16.5.

(b) Money in the county supplemental juvenile probation services fund may be used only for supplementing probation services and ~~for salary increases for~~ **to supplement the salaries of** probation officers in accordance with IC 31-31-5.

SECTION 8. IC 33-19-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 6.5. Credit Card Service Fee

Sec. 1. This chapter applies to any transaction in which:

(1) the clerk is required to collect money from a person, including:

(A) bail;

(B) a fine;

(C) a civil penalty;

(D) a court fee, court cost, or user fee imposed by the court; or

(E) a fee for the preparation, duplication, or transmission of a document; and

(2) the person pays the clerk by means of a credit card, debit card, charge card, or similar method.

Sec. 2. A payment made under this chapter does not finally discharge the person's liability, and the person has not paid the liability until the clerk receives payment or credit from the institution responsible for making the payment or credit. The clerk may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the clerk or charged directly to the clerk's account, the clerk may collect a credit card service fee from the person using the bank or credit card. The fee collected under this section is a permitted additional charge to the money the clerk is required to collect under section 1(1) of this chapter.

Sec. 3. The clerk shall forward credit card service fees

collected under section 2 of this chapter to the county auditor or city or town fiscal officer in accordance with IC 33-19-1-3(a). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

SECTION 9. IC 35-33-8-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 9. In addition to any other condition of bail imposed under this chapter, a defendant who posts bail by means of a credit card shall pay the credit card service fee if a credit card service fee is imposed under IC 33-19-6.5.**

SECTION 10. IC 35-33-9-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 7. In addition to any other condition of bail imposed under this chapter, a defendant who posts bail by means of a credit card shall pay the credit card service fee if a credit card service fee is imposed under IC 33-19-6.5.**

SECTION 11. IC 35-38-2-1, AS AMENDED BY P.L.170-2002, SECTION 132, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Whenever it places a person on probation, the court shall:

(1) specify in the record the conditions of the probation; and

(2) advise the person that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(b) In addition, if the person was convicted of a felony and is placed on probation, the court shall order the person to pay to the probation department the user's fee prescribed under subsection (c). If the person was convicted of a misdemeanor, the court may order the person to pay the user's fee prescribed under subsection (d). The court may:

(1) modify the conditions (except a fee payment ~~under subsection (c)~~ **may only be modified as provided in section 1.7(b) of this chapter);** or

(2) terminate the probation;

at any time. If the person commits an additional crime, the court may revoke the probation.

(c) If a clerk of a court collects a probation user's fee, the clerk:

(1) may keep not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee and shall deposit any fee kept under this subsection in the clerk's record perpetuation fund established under IC 33-19-6-1.5; and

(2) if requested to do so by the county auditor, city fiscal officer, or town fiscal officer under clause (A), (B), or (C), transfer not more than three percent (3%) of the fee to the:

(A) county auditor, who shall deposit the money transferred under this subdivision into the county general fund;

(B) city general fund when requested by the city fiscal officer; or

(C) town general fund when requested by the town fiscal officer.

~~(c)~~ **(d)** In addition to any other conditions of probation, the court shall order each person convicted of a felony to pay:

(1) not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) as an initial probation user's fee;

(2) a monthly probation user's fee of not less than ~~five~~ **fifteen** dollars ~~($5)~~ **($15)** nor more than ~~fifteen~~ **thirty** dollars ~~($15)~~ **($30)** for each month that the person remains on probation;

(3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter; ~~and~~

(4) an alcohol abuse deterrent fee and a medical fee set by the court under IC 9-30-9-8, if the court has referred the defendant to an alcohol abuse deterrent program; **and**

(5) an administrative fee of one hundred dollars ($100);

to **either** the probation department **or the clerk.**

~~(d)~~ **(e)** In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay:

(1) not more than a fifty dollar ($50) initial probation user's fee;

(2) ~~not more than~~ a ~~ten dollar ($10)~~ monthly probation user's fee **of not less than ten dollars ($10) nor more than twenty dollars ($20)** for each month that the person remains on probation; ~~and~~

(3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter; **and**

(4) an administrative fee of fifty dollars ($50);

to **either** the probation department **or the clerk.**

~~(e)~~ **(f) The probation department or clerk shall collect the administrative fees under subsections (d)(5) and (e)(4) before collecting any other fee under subsection (d) or (e).** All money collected by the probation department **or the clerk** under this section shall be transferred to the county treasurer who shall deposit the money into the county supplemental adult probation services fund. The fiscal body of the county shall appropriate money from the county supplemental adult probation services fund:

(1) to the county, superior, circuit, or municipal court of the county that provides probation services to adults **to supplement adult probation services; and**

(2) to supplement the salaries of probation officers in accordance with the schedule adopted by the county fiscal body under IC 36-2-16.5.

~~(f)~~ **(g) The probation department or clerk shall collect the administrative fee under subsection (e)(4) before collecting any other fee under subsection (e).** All money collected by the probation department **or the clerk** of a city or town court under this section shall be transferred to the fiscal officer of the city or town ~~The fiscal officer shall~~ **for** deposit ~~the money~~ into the local supplemental adult probation services fund. The fiscal body of the city or town shall appropriate money from the local supplemental adult probation services fund to the city or town court of the city or town for the court's use in providing probation services to adults or for the court's use for other purposes as may be appropriated by the fiscal body. Money may be appropriated under this subsection only to those city or town courts that have an adult probation services program. If a city or town court does not have such a program, the money collected by the probation department must be transferred and appropriated as provided under subsection ~~(e).~~ **(f).**

~~(g)~~ **(h)** Except as provided in subsection ~~(i),~~ **(j),** the county or local supplemental adult probation services fund may be used only to supplement probation services and to ~~increase~~ **supplement** salaries for probation officers. A supplemental probation services fund may not be used to replace other funding of probation services. Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the county or local supplemental adult probation services fund.

~~(h)~~ **(i)** A person placed on probation for more than one (1) crime:

(1) may ~~not~~ be required to pay more than ~~(1)~~ one (1) initial probation user's fee; and

(2) **may not be required to pay more than** one (1) monthly probation user's fee per month;

to the probation department **or the clerk.**

~~(i)~~ **(j)** This subsection applies to a city or town located in a county having a population of more than one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000). Any money remaining in the local supplemental adult probation services fund at the end of the local fiscal year may be appropriated by the city or town fiscal body to the city or town court for use by the court for purposes determined by the fiscal body.

(k) In addition to other methods of payment allowed by law, a probation department may accept payment of fees required under this section and section 1.5 of this chapter by credit card

(as defined in IC 14-11-1-7). The liability for payment is not discharged until the probation department receives payment or credit from the institution responsible for making the payment or credit.

(l) The probation department may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or charged directly to the probation department's account, the probation department may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the money the probation department is required to collect under subsection (d) or (e).

(m) The probation department shall forward the credit card service fees collected under subsection (l) to the county treasurer or city or town fiscal officer in accordance with subsection (f) or (g). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

SECTION 12. IC 35-38-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. Notwithstanding the probation user's fee amounts established under section 1 of this chapter, a court may order a person to pay a probation user's fee that exceeds the maximum amount allowed under section 1 of this chapter if:**

(1) the person was placed on probation in another state and moved or was transferred to Indiana;

(2) the other state allows a higher probation user's fee than the maximum amount allowed under section 1 of this chapter; and

(3) the probation user's fee the court orders the person to pay does not exceed the maximum amount allowed in the other state.

SECTION 13. IC 35-38-2-1.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.7. (a) A person may pay a monthly probation user's fee under section 1 or 1.5 of this chapter before the date the payment is required to be made without obtaining the prior approval of a court or a probation department. However, if the person is discharged from probation before the date the person was scheduled to be released from probation, any monthly probation user's fee paid in advance by the person may not be refunded.**

(b) A probation department may petition a court to:

(1) impose a probation user's fee on a person; or

(2) increase a person's probation user's fee;

under section 1 or 1.5 of this chapter if the financial ability of the person to pay a probation user's fee changes while the person is on probation.

(c) An order to pay a probation user's fee under section 1 or 1.5 of this chapter:

(1) is a judgment lien that:

(A) attaches to the property of the person subject to the order;

(B) may be perfected;

(C) may be enforced to satisfy any payment that is delinquent under section 1 or 1.5 of this chapter; and

(D) expires;

in the same manner as a judgment lien created in a civil proceeding;

(2) is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and

(3) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5.

(d) If a court orders a person to pay a probation user's fee under section 1 or 1.5 of this chapter, the court may garnish the wages, salary, and other income earned by the person to enforce the order.

(e) If:

(1) a person is delinquent in paying the person's probation user's fees required under section 1 or 1.5 of this chapter; and

(2) the person's driver's license or permit has been suspended or revoked or the person has never been issued a driver's license or permit;

the court may order the bureau of motor vehicles to not issue a driver's license or permit to the person until the person has paid the person's delinquent probation user's fees.

SECTION 14. IC 36-2-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 16.5. Salary Schedule for Probation Officers

Sec. 1. This chapter applies to all counties, cities, and towns that employ probation officers.

Sec. 2. As used in this chapter, "probation officer" means a probation officer or a juvenile probation officer.

Sec. 3. In consultation with:

(1) at least one (1) judge of a court or division of a court authorized to impose probation; and

(2) at least one (1) probation officer;

the county, city, or town fiscal body shall adopt a salary schedule setting the compensation of a probation officer. The salary schedule must comply with the minimum compensation requirements for probation officers adopted by the judicial conference of Indiana under IC 11-13-1-8.

Sec. 4. The county, city, or town fiscal body shall fix the salary of a probation officer based on the salary schedule adopted under this chapter.

Sec. 5. Unless otherwise specified in the salary schedule, a probation officer is entitled to the same benefits, holidays, and hours as other county, city, or town employees.

SECTION 15. [EFFECTIVE JULY 1, 2003] **IC 31-40-1-1.7(b), IC 31-40-1-1.7(d), IC 31-40-2-1(a), IC 31-40-2-1(b), IC 31-40-2-1.5, IC 35-38-2-1(c), IC 35-38-2-1(d), IC 35-38-2-1(e), IC 35-38-2-1(i), IC 35-38-2-1.5, and IC 35-38-2-1.7(b), all as amended by this act, apply only to individuals who are placed on probation after June 30, 2003.**

SECTION 16. [EFFECTIVE JULY 1, 2003] **(a) Except as provided in subsection (b), the administrative fee deposited into:**

(1) the county supplemental juvenile probation services fund under IC 31-40-2-1;

(2) the county supplemental adult probation services fund under IC 35-38-2-1(f);

(3) the local supplemental adult probation services fund under IC 35-38-2-1(g);

as amended by this act shall be used to pay for salary increases required under the salary schedule adopted under IC 36-2-16.5 and IC 11-13-8 that became effective January 1, 2004.

(b) Administrative fees collected that exceed the amount required to pay for salary increases required under the salary schedule adopted under IC 36-2-16.5 and IC 11-13-1-8 may be used in any manner permitted under IC 31-40-2-2, IC 35-38-2-1(f), or IC 35-38-2-1(i).

(Reference is to ESB 506 as reprinted April 11, 2003.)

C. MEEKS	L. LAWSON
SIPES	FOLEY
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1630–1; filed April 24, 2003, at 9:54 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1630 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-10-8-10, AS ADDED BY P.L.91-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. **(a)** The state shall cover the **testing required under IC 16-41-6-4 and the** examinations required under IC 16-41-17-2 under a:

(1) self-insurance program established or maintained under section 7(b) of this chapter to provide group health coverage; and

(2) contract entered into or renewed under section 7(c) of this chapter to provide health services through a prepaid health care delivery plan.

(b) Payment to a hospital for a test required under IC 16-41-6-4 must be in an amount equal to the hospital's actual cost of performing the test.

SECTION 2. IC 12-15-15-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.5. Payment to a hospital for a test required under IC 16-41-6-4 must be in an amount equal to the hospital's actual cost of performing the test and may not reduce or replace the reimbursement of other services that are provided to the patient under the state Medicaid program. The total cost to the state may not be more than twenty-four thousand dollars ($24,000) in a state fiscal year.**

SECTION 3. IC 16-18-2-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23. "Approved laboratory", for purposes of **IC 16-41-6 and** IC 16-41-15, has the meaning set forth in IC 16-41-15-1.

SECTION 4. IC 16-18-2-337.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 337.8. "Standard licensed diagnostic test for HIV", for purposes of IC 16-41-6, has the meaning set forth in IC 16-41-6-0.5.**

SECTION 5. IC 16-41-6-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. As used in this chapter, "standard licensed diagnostic test for HIV" means a test recognized by the state department as a standard licensed diagnostic test for the antibody or antigen to HIV.**

SECTION 6. IC 16-41-6-1, AS AMENDED BY P.L.293-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Except as provided in subsection (b), a person may not perform a screening or confirmatory test for the antibody or antigen to ~~the human immunodeficiency virus (HIV)~~ **HIV** without the consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented. **The test for the antibody or antigen to HIV may not be performed on a woman under section 5 or 6 of this chapter if the woman refuses under section 7 of this chapter to consent to the test.**

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

SECTION 7. IC 16-41-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Subject to subsection ~~(e),~~ **(f),** if:

(1) the mother of a newborn infant has not had a test performed under ~~IC 16-41-6-2.5~~ **section 5 or 6 of this chapter;**

(2) the mother of a newborn infant has refused a test for the newborn infant to detect ~~the human immunodeficiency virus~~ HIV or the antibody or antigen to HIV; and

(3) a physician believes that testing the newborn infant is medically necessary;

the physician **overseeing the care of the newborn infant** may order a confidential test for the newborn infant in order to detect ~~the human immunodeficiency virus~~ HIV or the antibody or antigen to HIV. The test must be ordered at the earliest feasible time not exceeding forty-eight (48) hours after the birth of the infant.

(b) If the physician orders a test under subsection (a), the physician must:

(1) notify the mother of the newborn infant of the test; and

(2) provide ~~human immunodeficiency virus~~ HIV information and counseling to the mother. The information and counseling must include the following:

(A) The purpose of the test.

(B) The risks and benefits of the test.

(C) A description of the methods of HIV transmission.

(D) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk.

(E) Referral information to other HIV prevention, health care, and psychosocial services.

(c) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(d) The results of the confidential test ordered under subsection (a) must be released to the mother of the newborn infant.

(e) **If a test ordered under subsection (a) is positive, the person who provides the results of the test shall inform the mother of the newborn infant of treatment options or referral options available to the newborn infant.**

(f) If ~~the~~ **a** parent of the newborn infant objects in writing for reasons pertaining to religious beliefs, the newborn infant is exempt from the test under subsection (a).

~~(f)~~ **(g)** The state department shall adopt rules under IC 4-22-2 to carry out this section.

(h) The results of a test performed under this section are confidential.

SECTION 8. IC 16-41-6-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 5. (a) This section applies to:**

(1) a physician licensed under IC 25-22.5; or

(2) an advanced practice nurse licensed under IC 25-23;

who provides prenatal care within the scope of the provider's license.

(b) Subject to section 8 of this chapter, an individual described in subsection (a) who:

(1) diagnoses the pregnancy of a woman; or

(2) is primarily responsible for providing prenatal care to a pregnant woman;

shall order to be taken a sample of the pregnant woman's blood and shall submit the sample to an approved laboratory for a standard licensed diagnostic test for HIV.

SECTION 9. IC 16-41-6-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 6. Subject to section 8 of this chapter, if, at the time of delivery, there is no written evidence that a standard licensed diagnostic test for HIV has been performed under section 5 of this chapter, the physician or advanced practice nurse in attendance at the delivery shall order to be taken a sample of the woman's blood at the time of the delivery and shall submit the sample to an approved laboratory for a standard licensed diagnostic test for HIV.**

SECTION 10. IC 16-41-6-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 7. A pregnant woman has a right to refuse a test under section 5 or 6 of this chapter.**

SECTION 11. IC 16-41-6-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 8. (a) This section applies to a physician or an advanced practice nurse who orders an HIV test**

under section 5 or 6 of this chapter or to the physician's or nurse's designee.

(b) An individual described in subsection (a) shall:

(1) inform the pregnant woman that:

(A) the individual is required by law to order an HIV test unless the pregnant woman refuses; and

(B) the pregnant woman has a right to refuse the test; and

(2) explain to the pregnant woman:

(A) the purpose of the test; and

(B) the risks and benefits of the test.

(c) An individual described in subsection (a) shall document in the pregnant woman's medical records that the pregnant woman received the information required under subsection (b).

(d) If a pregnant woman refuses to consent to an HIV test, the refusal must be noted in the pregnant woman's medical records.

(e) If a test ordered under section 5 or 6 of this chapter is positive, an individual described in subsection (a):

(1) shall inform the pregnant woman of the test results;

(2) shall inform the pregnant woman of the treatment options or referral options available to the pregnant woman; and

(3) shall:

(A) provide the pregnant woman with a description of the methods of HIV transmission;

(B) discuss risk reduction behavior modifications with the pregnant woman, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk; and

(C) provide the pregnant woman with referral information to other HIV prevention, health care, and psychosocial services.

(f) The provisions of IC 16-41-2-3 apply to a positive HIV test under section 5 or 6 of this chapter.

(g) The results of a test performed under section 5 or 6 of this chapter are confidential.

(h) As a routine component of prenatal care, every individual described in subsection (a) is required to provide information and counseling regarding HIV and the standard serological test for HIV and to offer and recommend the standard serological test for HIV.

(i) An individual described in subsection (a) shall obtain a statement, signed by the pregnant woman, acknowledging that the pregnant woman was counseled and provided the required information set forth in subsection (b) to ensure that an informed decision has been made.

(j) A pregnant woman who refuses a test under this section must do so in writing.

SECTION 12. IC 16-41-6-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 9. The state department shall require, on the confidential part of each birth certificate and stillbirth certificate retained by the state department, in addition to the information otherwise required to be included on the certificate, the following information:**

(1) Whether a standard licensed diagnostic test for HIV was performed on the woman who bore the child.

(2) If a standard licensed diagnostic test for HIV was performed:

(A) the date the blood specimen was taken; and

(B) whether the test was performed during pregnancy or at the time of delivery.

(3) If a standard licensed diagnostic test for HIV was not performed, the reason the test was not performed.

SECTION 13. IC 16-41-6-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10. The state department shall distribute to physicians and to other individuals who are allowed by law to attend a pregnant woman information available from the federal Centers for Disease Control and Prevention that explains the treatment options available to an individual who has a positive test for HIV.**

SECTION 14. IC 16-41-6-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 11. (a) The state department shall adopt rules under IC 4-22-2 that include procedures:**

(1) to inform the woman of the test results under this chapter, whether they are positive or negative;

(2) for explaining the side effects of any treatment for HIV if the test results under this chapter are positive; and

(3) to establish a process for a woman who tests positive under this chapter to appeal the woman's status on a waiting list on a treatment program for which the woman is eligible. The rule must:

(A) include a requirement that the state department make a determination in the process described in this subdivision not later than seventy-two (72) hours after the state department receives all the requested medical information; and

(B) set forth the necessary medical information that must be provided to the state department and reviewed by the state department in the process described in this subdivision.

(b) The state department shall maintain rules under IC 4-22-2 that set forth standards to provide to women who are pregnant, before delivery, at delivery, and after delivery, information concerning HIV. The rules must include:

(1) an explanation of the nature of AIDS and HIV;

(2) information concerning discrimination and legal protections;

(3) information concerning the duty to notify persons at risk as described in IC 16-41-7-1;

(4) information about risk behaviors for HIV transmission;

(5) information about the risk of transmission through breast feeding;

(6) notification that if the woman chooses not to be tested for HIV before delivery, at delivery the child will be tested subject to section 4 of this chapter;

(7) procedures for obtaining informed, written consent for testing under this chapter;

(8) procedures for post-test counseling by a health care provider when the test results are communicated to the woman, whether the results are positive or negative;

(9) procedures for referral for physical and emotional services if the test results are positive;

(10) procedures for explaining the importance of immediate entry into medical care if the test results are positive; and

(11) procedures for explaining that giving birth by cesarean section may lessen the likelihood of passing on HIV to the child during childbirth, especially when done in combination with medications, if the test results are positive.

SECTION 15. IC 16-41-6-12 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 12. (a) The state department shall provide that an HIV test history and assessment form from the patient's medical records or an interview with the patient must be filled out. The state department shall develop the form to determine if:**

(1) the patient is HIV positive and has been informed; or

(2) the patient was tested during the current pregnancy and tested negative or was not tested during the current pregnancy and the HIV status is unknown.

(b) The form required under subsection (a) must identify what special support or assistance for continued medical care the patient might need as a result of a positive test.

(c) A copy of the form must be:

(1) kept in the patient's medical file;

(2) kept in the baby's medical file; and

(3) given to the doctor in the hospital designated to administer the newborn HIV testing program.

(d) The state department must maintain a systemwide evaluation of prenatal HIV testing in Indiana. The state

department shall prescribe the HIV test history and assessment form and a newborn blood screening form. The state department shall remove all identifying information from the maternal test history before the state department performs its analyses and shall not maintain HIV test history data with identifying information.

SECTION 16. IC 16-41-6-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 13. (a) Women who:**

(1) meet all qualifications to participate in the children's health insurance program, the AIDS drug assistance program, the health insurance assistance program, or any other health care program of the state; and

(2) test positive under section 5 or 6 of this chapter;

shall be given first priority on a waiting list for the program if a waiting list exists. If a program does not have a waiting list, the woman described in this subsection shall be automatically approved and accepted into the program.

(b) If the state department determines during the process described in section 11(a)(3) of this chapter that the treatment of a woman who tests positive under this chapter should not be interrupted because of medical necessity, the woman may enter a program described in subsection (a) regardless of the existence of a waiting list for the program.

SECTION 17. IC 27-8-24-4, AS AMENDED BY P.L.91-1999, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. **(a)** Except as provided in section 5 of this chapter, every policy or group contract that provides maternity benefits must provide minimum benefits to a mother and her newborn child that cover:

(1) a minimum length of postpartum stay at a hospital licensed under IC 16-21 that is consistent with the minimum postpartum hospital stay recommended by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists in their Guidelines for Perinatal Care; ~~and~~

(2) the examinations to the newborn child required under IC 16-41-17-2; **and**

(3) the testing of the newborn child required under IC 16-41-6-4.

(b) Payment to a hospital for a test required under IC 16-41-6-4 must be in an amount equal to the hospital's actual cost of performing the test.

SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2003]: IC 16-18-2-290.5; IC 16-41-6-2.5.

SECTION 19. [EFFECTIVE JULY 1, 2003] **(a) As used in this SECTION, "state department" refers to the state department of health established by IC 16-19-1-1.**

(b) The state department of health shall apply for any eligible funding under the federal Ryan White CARE Act (42 U.S.C. 300ff and 42 U.S.C. 201 et seq.).

(c) This SECTION expires December 31, 2006.

SECTION 20. **An emergency is declared for this act.**

(Reference is to EHB 1630 as reprinted April 11, 2003.)

WELCH	MILLLER
POND	BREAUX
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1525–1; filed April 24, 2003, at 10:31 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1525 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 35-44-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) A person who knowingly or intentionally:

(1) forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of ~~his~~ **the law enforcement officer's** duties as an officer;

(2) forcibly resists, obstructs, or interferes with the authorized service or execution of a civil or criminal process or order of a court; or

(3) flees from a law enforcement officer after the officer has, by visible or audible means, identified himself **or herself** and ordered the person to stop;

commits resisting law enforcement, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense under subsection (a) is a:

(1) Class D felony if,

~~(A) the offense is described in subsection (a)(3) and the person uses a vehicle to commit the offense; or~~

~~(B)~~ while committing any offense described in subsection (a), the person draws or uses a deadly weapon **or** inflicts bodily injury on another person; ~~or operates a vehicle in a manner that creates a substantial risk of bodily injury to another person;~~

(2) Class C felony if:

(A) the offense is described in subsection (a)(3) and the person uses a vehicle to commit the offense; or

(B) while committing any offense described in subsection (a), the person operates a vehicle in a manner that:

(i) creates a substantial risk of bodily injury to another person; or

(ii) causes serious bodily injury to another person; and

(3) Class B felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes the death of another person.

(c) For purposes of this section, a law enforcement officer includes an alcoholic beverage enforcement officer and a conservation officer of the department of natural resources.

SECTION 2. IC 35-44-3-9, AS AMENDED BY P.L.243-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001 (RETROACTIVE)]: Sec. 9. (a) As used in this section, "juvenile facility" means the following:

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) A person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally:

(1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;

(2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility; or

(3) delivers, or carries to a ~~work site~~ **worksite** with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew;

commits trafficking with an inmate, a Class A misdemeanor. However, the offense is a Class C felony if the article is a controlled substance or a deadly weapon.

(c) It is a defense to a charge under subsection (b)(1) that the article delivered to an inmate or child was:

(1) not contraband (as defined in IC 11-11-2-1) or prohibited property (as defined in IC 11-11-2-1);

(2) necessary for the health or safety of the inmate or child; and

(3) delivered because the facility had not provided the inmate or child with the article after the inmate, the child, or an employee of the facility requested the article.

SECTION 3. IC 35-46-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. **(a)** A person **at least** eighteen (18) years of age ~~or older~~ who knowingly or intentionally encourages, aids, induces, or causes a person ~~under~~ **less than** eighteen (18) years of age to commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2) commits contributing to delinquency, a Class A misdemeanor.

(b) However, ~~the~~ **an** offense **described in subsection (a)** is a Class C felony if:

(1) the:

(A) person knowingly or intentionally furnishes:

(i) an alcoholic beverage to a person less than eighteen (18) years of age in violation of IC 7.1-5-7-8 when the person knew or reasonably should have known that the person was less than eighteen (18) years of age; or

(ii) a controlled substance (as defined in IC 35-48-1-9) or a drug (as defined in IC 9-13-2-49.1) in violation of Indiana law; and

(B) consumption, ingestion, or use of the alcoholic beverage, controlled substance, or drug is the proximate cause of the death of any person; or

(2) the person **is at least eighteen (18) years of age and** knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act that would be a felony if committed by an adult under **any of the following:**

~~(1)~~ **(A)** IC 35-48-4-1.
~~(2)~~ **(B)** IC 35-48-4-2.
~~(3)~~ **(C)** IC 35-48-4-3.
~~(4)~~ **(D)** IC 35-48-4-4.
~~(5)~~ **(E)** IC 35-48-4-4.5.
~~(6)~~ **(F)** IC 35-48-4-4.6. ~~or~~
~~(7)~~ **(G)** IC 35-48-4-5.

SECTION 4. [EFFECTIVE JULY 1, 2003] **IC 35-44-3-3 and IC 35-46-1-8, both as amended by this act, apply only to offenses committed after June 30, 2003.**

SECTION 5. [EFFECTIVE JULY 1, 2003] **(a) An employee of a penal facility who was the subject of an adverse employment decision based on a violation of IC 35-44-3-9(b)(1) involving the delivery of an article that was not contraband (as defined in IC 11-11-2-1) or prohibited property (as defined in IC 11-11-2-1) after January 1, 2002, and before July 1, 2003, is entitled to a redetermination of any employment action taken in response to the violation, including but not limited to, a rehearing or reinstatement.**

(b) This SECTION expires July 1, 2008.

SECTION 6. **An emergency is declared for this act**.

(Reference is to EHB 1525 as printed April 4, 2003.)

KUZMAN	LANDSKE
DUNCAN	ANTICH
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
ESB 405–1; filed April 24, 2003, at 10:32 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 405 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 9-13-2-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 5.5. "Assembled vehicle", for purposes of IC 9-17-4, has the meaning set forth in IC 9-17-4-0.3.**

SECTION 2. IC 9-13-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. "Broker", ~~means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle and who is not:~~

~~(1) a dealer or an employee of a dealer;~~
~~(2) a distributor or an employee of a distributor; or~~
~~(3) at any point in the transaction, the bona fide owner of the vehicle involved in the transaction.~~ **for purposes of IC 9-23-3, has the meaning set forth in IC 9-23-3-0.3.**

SECTION 3. IC 9-13-2-75 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 75. **(a)** "Identification number", for purposes of IC 9-18-8-15, has the meaning set forth in IC 9-18-8-15(b).

(b) "Identification number", for purposes of IC 9-17-4, has the meaning set forth in IC 9-17-4-0.5.

SECTION 4. IC 9-13-2-151.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 151.7. "Rental company" has the meaning set forth in IC 24-4-9-7.**

SECTION 5. IC 9-13-2-177.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 177.5. "Third party", for purposes of IC 9-17-3, has the meaning set forth in IC 9-17-3-0.5.**

SECTION 6. IC 9-13-2-185 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 185. "Transfer dealer" means a person other than a dealer, manufacturer, **or** wholesale dealer ~~or broker~~ who has the necessity of transferring a minimum of twelve (12) motor vehicles during a license year as part of the transfer dealer's primary business function.

SECTION 7. IC 9-17-3-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. As used in this chapter, "third party" means a person having possession of a certificate of title for a:**

(1) motor vehicle;
(2) semitrailer; or
(3) recreational vehicle;

because the person has a lien or an encumbrance indicated on the certificate of title.

SECTION 8. IC 9-17-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) If a vehicle for which a certificate of title has been issued is sold or ~~has~~ **if** the ownership **of the vehicle is otherwise** transferred, the person who holds the certificate of title must do the following:

(1) Endorse on the certificate of title an assignment of the certificate of title with warranty of title, in a form printed on the certificate of title, with a statement describing all liens or encumbrances on the vehicle.

(2) Except as provided in subdivisions (3) and (4), deliver the certificate of title to the purchaser or transferee at the time of the sale or delivery to the purchaser or transferee of the vehicle, if the purchaser or transferee has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

(3) In the case of a sale or transfer between vehicle dealers licensed by this state or another state, deliver the certificate of title within twenty-one (21) days after the date of the sale **or transfer.**

(4) Deliver the certificate of title to the purchaser or transferee within twenty-one (21) days after the date of sale **or transfer** to the purchaser or transferee of the vehicle, if all of the following conditions exist:

(A) The seller or transferor is a vehicle dealer licensed by the state under IC 9-23.

(B) The vehicle dealer is not able to deliver the certificate of title at the time of sale **or transfer.**

(C) The vehicle dealer reasonably believes that it will be able to deliver the **certificate of** title, without a lien or an encumbrance on the **certificate of** title, within the twenty-one (21) day period.

(D) The vehicle dealer provides the purchaser or transferee with an affidavit under section 3.1 of this chapter.

(E) The purchaser or transferee has made all agreed upon initial payments for the vehicle, including delivery of a

trade-in vehicle without hidden or undisclosed statutory liens.

(b) A licensed dealer may offer for sale a vehicle for which the dealer does not possess a certificate of title, if the dealer can comply with subsection (a)(3) or (a)(4) at the time of the sale.

(c) **For purposes of this subsection, "timely deliver", with respect to a third party, means to deliver with a postmark dated or hand delivered to the purchaser or transferee not more than ten (10) business days after there is no obligation secured by the vehicle.** A vehicle dealer who fails to deliver a certificate of title within the time specified under this section is subject to the following civil penalties:

(1) One hundred dollars ($100) for the first violation.

(2) Two hundred fifty dollars ($250) for the second violation.

(3) Five hundred dollars ($500) for all subsequent violations.

Payment shall be made to the bureau and deposited in the state general fund. In addition, if a purchaser or transferee does not receive a valid certificate of title within the time specified by this section, the purchaser or transferee shall have the right to return the vehicle to the vehicle dealer ten (10) days after giving the vehicle dealer written notice demanding delivery of a valid ~~title~~ certificate **of title** and the dealer's failure to deliver a valid ~~title~~ certificate **of title** within that ten (10) day period. Upon return of the vehicle to the dealer in the same or similar condition as delivered to the purchaser or transferee under this section, the vehicle dealer shall pay to the purchaser or transferee the purchase price plus sales taxes, finance expenses, insurance expenses, and any other amount paid to the dealer by the purchaser. If the dealer's inability to timely deliver a valid certificate of title results from the acts or omissions of a third party who has failed to timely deliver a valid certificate of title to the dealer, the dealer is entitled to claim against the third party **one hundred dollars ($100). If:**

(1) the dealer's inability to timely deliver a valid certificate of title results from the acts or omissions of a third party who has failed to timely deliver the certificate of title in the third party's possession to the dealer; and

(2) the failure continues for ten (10) business days after the dealer gives the third party written notice of the failure;

the dealer is entitled to claim against the third party all damages sustained by the dealer in rescinding the dealer's sale with the purchaser or transferee, including the dealer's reasonable attorney's fees.

(d) If a vehicle for which a certificate of title has been issued by another state is sold or delivered, the person selling or delivering the vehicle must deliver to the purchaser or receiver of the vehicle a proper certificate of title with an assignment of the certificate of title in a form prescribed by the bureau.

(e) The original certificate of title and all assignments and subsequent reissues of the certificate of title shall be retained by the bureau and appropriately classified and indexed in the most convenient manner to trace title to the vehicle described in the certificate of title.

(f) A dealer shall make payment to a third party to satisfy any obligation secured by the vehicle within five (5) days after the date of sale.

SECTION 9. IC 9-17-3-3.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3.1. The affidavit required by IC 9-17-3-3(a)(4) shall be printed in the following form:

STATE OF
INDIANA)
) ss:
COUNTY OF _____)

I affirm under the penalties for perjury that all of the following are true:

(1) That I am a dealer licensed under IC 9-23-1.

(2) That I cannot deliver a valid certificate of title to the retail purchaser of the vehicle described in paragraph (3) at the time of sale of the vehicle to the retail purchaser. The identity of the previous seller or transferor is _____.

Payoff of lien was made on (date)_____. I expect to deliver a valid and transferable certificate of title ~~on or about (day)_____~~ **not later than** (date)_____ from the (State of)_____ to the purchaser.

(3) That I will undertake reasonable commercial efforts to produce the valid certificate of title. The vehicle identification number is _____.

Signed _____, Dealer

By_____

Dated _____, ____

CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AFFIDAVIT.

_____

Customer Signature

NOTICE TO THE CUSTOMER

If you do not receive a valid certificate of title within the time specified by this affidavit, you have the right to return the vehicle to the vehicle dealer ten (10) days after giving the vehicle dealer written notice demanding delivery of a valid certificate of title and after the vehicle dealer's failure to deliver a valid certificate of title within that ten (10) day period. Upon return of the vehicle to the vehicle dealer in the same or similar condition as when it was delivered to you, the vehicle dealer shall pay you the purchase price plus sales taxes, finance expenses, insurance expenses, and any other amount that you paid to the vehicle dealer.

If a lien is present on the previous owner's certificate of title, it is the responsibility of the third party lienholder to timely deliver the certificate of title in the third party's possession to the dealer not more than ten (10) business days after there is no obligation secured by the vehicle. If the dealer's inability to deliver a valid certificate of title to you within the above-described ten (10) day period results from the acts or omissions of a third party who has failed to timely deliver the certificate of title in the third party's possession to the dealer, the dealer may be entitled to claim against the third party the damages allowed by law.

SECTION 10. IC 9-17-4-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.3. As used in this chapter, "assembled vehicle" means:**

(1) a motor vehicle, excluding a motorcycle, that has had the:

(A) frame;

(B) chassis;

(C) cab; or

(D) body;

replaced; or

(2) a motorcycle that has had the:

(A) frame; or

(B) engine;

replaced.

The term includes but is not limited to glider kits, fiberglass body kits, and vehicle reproductions or replicas and includes motor vehicles that have visible and original vehicle identification numbers.

SECTION 11. IC 9-17-4-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. As used in this chapter, "identification number" means a distinguishing number assigned by the bureau to a privately assembled motor vehicle, semitrailer, or recreational vehicle.**

SECTION 12. IC 9-17-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. If a motor vehicle, semitrailer, or recreational vehicle has been built, constructed, or assembled by the person who owns the motor vehicle, semitrailer, or recreational vehicle, the person shall: ~~attach to the person's application for a certificate of title an affidavit stating that the motor vehicle, semitrailer, or recreational vehicle was built, constructed, or assembled by the person.~~

(1) indicate on a form provided by the bureau the major component parts that have been used to assemble the motor vehicle, semitrailer, or recreational vehicle;

(2) make application through the bureau for an

identification number for the motor vehicle, semitrailer, or recreational vehicle;

(3) after receipt of the identification number described in subdivision (2), stamp or attach the identification number received from the bureau in the manner provided in section 2(2) of this chapter; and

(4) apply for a certificate of title for the motor vehicle, semitrailer, or recreational vehicle from the bureau.

SECTION 13. IC 9-17-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. A certificate of title may not be issued for a privately assembled motor vehicle, semitrailer, or recreational vehicle that does not have a distinctive identification number stamped on the motor vehicle, semitrailer, or recreational vehicle or permanently attached to the motor vehicle, semitrailer, or recreational vehicle until the person who owns the motor vehicle, semitrailer, or recreational vehicle has:

(1) obtained from the bureau an identification number designated by the bureau; and

(2) stamped **or permanently attached** the identification number in a conspicuous place on the frame of the motor vehicle, semitrailer, or recreational vehicle.

SECTION 14. IC 9-17-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. A certificate of title issued under this chapter must contain the following:

(1) A description and other evidence of identification of the motor vehicle, semitrailer, or recreational vehicle as required by the bureau.

(2) A statement of any liens or encumbrances that the application shows to be on the certificate of title.

(3) The appropriate notation prominently recorded on the front of the title as follows:

(A) For a vehicle assembled using all new vehicle parts, excluding the vehicle frame, "ASSEMBLED VEHICLE".

(B) For a vehicle assembled using used parts, "REBUILT VEHICLE".

(C) For a vehicle assembled using a salvage vehicle or parts, "REBUILT SALVAGE".

SECTION 15. IC 9-17-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) Except as provided under subsection (b), a person who violates this chapter commits a Class C infraction.

(b) A person who knowingly damages, removes, covers, or alters ~~a special engine~~ **an identification** number commits a Class C felony.

SECTION 16. IC 9-17-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. A person having possession of a certificate of title for a motor vehicle, semitrailer, or recreational vehicle because the person has a lien or an encumbrance on the motor vehicle, semitrailer, or recreational vehicle must deliver ~~the certificate of title to the person who owns the motor vehicle, semitrailer, or recreational vehicle upon~~ **not more than ten (10) business days after receipt of the payment** the satisfaction or discharge of the lien or encumbrance indicated upon the certificate of title **to the person who:**

(1) is listed on the certificate of title as owner of the motor vehicle, semitrailer, or recreational vehicle; or

(2) is acting as an agent of the owner and who holds power of attorney for the owner of the motor vehicle, semitrailer, or recreational vehicle.

SECTION 17. IC 9-17-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. A manufacturer, converter manufacturer, or dealer must have:

(1) a certificate of title;

(2) an assigned certificate of title; ~~or~~

(3) a manufacturer's certificate of origin; **or**

(4) an assigned manufacturer's certificate of origin;

for a motor vehicle, semitrailer, or recreational vehicle in the manufacturer's, converter manufacturer's, or dealer's possession.

SECTION 18. IC 9-17-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) Before obtaining a manufacturer's, converter manufacturer's, or dealer's license from the bureau, a person must agree to allow a police officer or an authorized representative of the bureau to inspect:

(1) certificates of origin, certificates of title, ~~or~~ assignments of certificates of origin and certificates of title, **or other proof of ownership as determined by the bureau;** and

(2) motor vehicles, semitrailers, or recreational vehicles that are held for resale by the manufacturer, converter manufacturer, or dealer;

in the manufacturer's, converter manufacturer's, or dealer's place of business during reasonable business hours.

(b) A certificate of title, ~~and~~ a certificate of origin, **and any other proof of ownership** described under subsection (a):

(1) must be readily available for inspection by or delivery to the proper persons; and

(2) may not be removed from Indiana.

SECTION 19. IC 9-18-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. As used in this chapter, "motor vehicle part" means: ~~the~~

~~(1) engine;~~

(1) for a motorcycle:

(A) a frame; or

(B) an engine;

~~(2) frame;~~

(2) for a passenger motor vehicle, a:

(A) frame;

(B) chassis; or

(C) body;

~~(3) chassis;~~

(3) for a truck or a tractor, a:

(A) frame;

(B) chassis;

(C) cab; or

(D) body; or

(4) **for a trailer, semitrailer, or recreational vehicle, a:**

(A) chassis; or

(B) body;

of ~~a~~ **the** motor vehicle.

SECTION 20. IC 9-18-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. **(a)** Upon receipt of an application, together with the fee specified under IC 9-29 for a special identification number, the bureau shall issue to the person who submitted the application written permission to make or stamp a special identification number in a place on the motor vehicle to be designated by the bureau.

(b) If the original identification number is on the vehicle or visible, the new special identification number must be affixed so as not to cover the original identification number.

SECTION 21. IC 9-18-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The bureau may not register a motor vehicle without an identification number or issue a ~~license plate~~ **certificate of title** for the operation of a motor vehicle except as specified under this chapter.

(b) This section does not prevent a manufacturer or a manufacturer's agent, other than a dealer, from doing the manufacturer's own numbering on motor vehicles ~~of~~ **or** parts removed or changed and replacing the numbered parts.

SECTION 22. IC 9-18-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) Before issuing a ~~license plate,~~ **certificate of title,** the bureau shall require the person applying for the ~~license plate~~ **certificate of title** to sign a statement that the special identification number assigned to be placed on the motor vehicle has been put on in a workmanlike manner.

(b) The statement described under subsection (a) shall be certified by:

(1) a chief of police;

(2) a sheriff; or

(3) another convenient peace officer;

that the chief of police, sheriff, or peace officer has inspected the motor vehicle and found the identification number to be attached to the motor vehicle as required by this chapter.

(c) This section does not prevent a manufacturer or a manufacturer's agent, other than a dealer, from doing the manufacturer's own numbering on motor vehicles ~~of~~ **or** parts

removed or changed and replacing the numbered parts.

SECTION 23. IC 9-18-8-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16. (a) A person who operates a motor vehicle on which the ~~engine~~ **identification** number has been removed, defaced, destroyed, obliterated, or concealed, when application has not been made to the bureau for permission to put on a new number, commits a Class C infraction.

(b) If a person who violates subsection (a) cannot, to the satisfaction of the court, establish the person's ownership of the motor vehicle, the motor vehicle shall be confiscated by the court and sold. The proceeds from the sale shall be used to pay the fine and costs of prosecution, and the balance, if any, shall be deposited in the motor vehicle highway account fund.

(c) If the fine and costs are not paid within thirty (30) days after judgment is rendered under this section, the court shall proceed to advertise and sell the motor vehicle in the manner provided by law for the sale of personal property under execution.

(d) If at any time the motor vehicle remains in the custody of the court or the court's officers under this section the owner appears and establishes the owner's title to the motor vehicle to the satisfaction of the court, the motor vehicle shall be returned to the owner. The owner shall then make application for and may obtain ~~a special engine~~ **an identification** number **and a title** as provided in ~~IC 9-17-4-5.~~ **IC 9-17-4.** The owner may then use the motor vehicle upon proper registration.

SECTION 24. IC 9-22-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) This section applies to the following persons:

(1) An insurance company ~~or other person~~ that ~~has acquired~~ **declares** a wrecked or damaged motor vehicle, motorcycle, semitrailer, or recreational vehicle that meets at least one (1) of the criteria set forth in section 3 of this chapter and the ownership of which is not evidenced by a certificate of salvage title.

(2) An insurance company that has made and paid an agreed settlement for the loss of a stolen motor vehicle, motorcycle, semitrailer, or recreational vehicle.

(b) A person who owns or holds a lien upon a vehicle described in subsection (a) shall assign the certificate of title to the ~~person~~ **insurance company** described in subsection (a). The insurance company ~~or other person~~ shall apply to the bureau within thirty-one (31) days after receipt of the certificate of title for a certificate of salvage title for each salvage or stolen vehicle subject to this chapter. The insurance company ~~or other person~~ shall surrender the certificate of title to the department and pay the fee prescribed under IC 9-29-7 for a certificate of salvage title.

~~(c) A person who was the owner of a motor vehicle, motorcycle, semitrailer, or recreational vehicle at the time that the vehicle became wrecked or damaged may not be considered to have acquired that vehicle within the meaning of this section.~~

(c) When a self-insured entity is the owner of a salvage motor vehicle, motorcycle, semitrailer, or recreational vehicle that meets at least one (1) of the criteria set forth in section 3 of this chapter, the self-insured entity shall apply to the bureau within thirty-one (31) days after the date of loss for a certificate of salvage title in the name of the self-insured entity's name.

(d) Any other person acquiring a wrecked or damaged motor vehicle, motorcycle, semitrailer, or recreational vehicle that meets at least one (1) of the criteria set forth in section 3 of this chapter, which acquisition is not evidenced by a certificate of salvage title, shall apply to the bureau within thirty-one (31) days after receipt of the certificate of title for a certificate of salvage title.

SECTION 25. IC 9-23-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. The following persons must be licensed under this article to engage in the business of buying or selling motor vehicles:

(1) An automobile auctioneer.

~~(2) A broker.~~

~~(3)~~ **(2)** A converter manufacturer.

~~(4)~~ **(3)** A dealer.

~~(5)~~ **(4)** A distributor.

~~(6)~~ **(5)** A distributor branch.

~~(7)~~ **(6)** A distributor representative.

~~(8)~~ **(7)** A factory branch.

~~(9)~~ **(8)** A factory representative.

~~(10)~~ **(9)** A manufacturer.

~~(11)~~ **(10)** A transfer dealer.

~~(12)~~ **(11)** A wholesale dealer.

SECTION 26. IC 9-23-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. The license issued to a factory representative or distributor representative must state the name of the employer. Within ten (10) days after a change of employer, the holder shall mail the license to the bureau and indicate the name and address of the holder's new employer. The bureau shall endorse the change on the license and return the license to the licensee in care of the licensee's new employer. A factory representative, distributor representative, **or** wholesale dealer ~~or broker~~ must have a license when engaged in business and shall display the license upon request. A temporary license for a factory representative **or** distributor representative ~~or broker~~ may be issued for a period up to one hundred twenty (120) days pending investigation by the bureau of the applicant's qualification for a license.

SECTION 27. IC 9-23-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) Except as provided in ~~subsection~~ **subsections** (b) **and (c),** the bureau shall issue an offsite sales license to a dealer licensed under this chapter not later than forty-five (45) days after receipt of the application for the license. License applications under this section shall be made public upon the request of any person. The term of the offsite sales license is not to exceed ten (10) days.

(b) The bureau may not issue an offsite sales license to a dealer who does not have an established place of business within Indiana.

(c) **The bureau may not issue an offsite sales license to a licensed dealer proposing to conduct the sale outside a radius of twenty (20) miles from its established place of business. This subsection does not apply to:**

(1) new manufactured housing dealers;

(2) recreational vehicle dealers; or

(3) a rental company that is a dealer conducting a sale at a site within twenty (20) miles of any of its company owned affiliates.

(d) The requirements of section 2(c) of this chapter do not apply to the application or issuance of an offsite sales license under this section.

SECTION 28. IC 9-23-3-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.3. As used in this chapter, "broker" means a person who, for a fee, a commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new or used motor vehicle and who is not:**

(1) a dealer or an employee of a dealer;

(2) a distributor or an employee of a distributor; or

(3) at any point in the transaction, the bona fide owner of the vehicle involved in the transaction.

SECTION 29. IC 9-23-3-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. It is an unfair practice for an automobile auctioneer, a wholesale dealer, **or** a transfer dealer, ~~or a broker,~~ in connection with the auctioneer's **or** dealer's ~~or broker's~~ business, to use false, deceptive, or misleading advertising or to engage in deceptive acts or practices.

SECTION 30. IC 9-23-3-25 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 25. It is an unfair practice for a person to:**

(1) act as;

(2) offer to act as; or

(3) profess to be;

a broker in the advertising, buying, or selling of at least twelve (12) new or used vehicles per year.

SECTION 31. IC 9-25-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) If the bureau:

(1) does not receive a certificate of compliance from a person identified under IC 9-25-5-2 within forty (40) days after the date on which the bureau mailed the request for evidence of financial responsibility to the person; or

(2) receives a certificate that does not indicate that financial responsibility was in effect with respect to the motor vehicle operated by the person on the date of the accident referred to in IC 9-25-5-2;

the bureau shall take action under subsection (c).

(b) If the bureau:

(1) does not receive a certificate of compliance from a person presented with a request for evidence of financial responsibility under IC 9-25-9-1 within forty (40) days after the date on which the person was presented with the request; or

(2) receives a certificate that does not indicate that financial responsibility was in effect with respect to the motor vehicle that the person was operating when the person committed the violation described in the judgment or abstract received by the bureau under IC 9-25-9-1;

the bureau shall take action under subsection (c).

(c) Under the conditions set forth in subsection (a) or (b), the bureau shall do the following:

(1) Immediately suspend the person's current driving license or vehicle registration, or both.

(2) Demand that the person immediately surrender the person's current driving license or vehicle registration, or both, to the bureau.

(d) Except as provided in subsection (e), if subsection (a) or (b) applies to a person, the bureau shall suspend the current driving license of the person irrespective of the following:

(1) The sale or other disposition of the motor vehicle by the owner.

(2) The cancellation or expiration of the registration of the motor vehicle.

(3) An assertion by the person that the person did not own the motor vehicle and therefore had no control over whether financial responsibility was in effect with respect to the motor vehicle.

(e) The bureau shall not suspend the current driving license of a person to which subsection (a) or subsection (b) applies if the person, through a certificate of compliance or another communication with the bureau, establishes to the satisfaction of the bureau that the motor vehicle that the person was operating when the accident referred to in subsection (a) took place or when the violation referred to in subsection (b) was committed was:

(1) rented from a rental company; ~~(as defined in IC 24-4-9-7);~~ or

(2) owned by the person's employer and operated by the person in the normal course of the person's employment.

SECTION 32. IC 9-29-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. The fee for a factory representative, distributor representative, wholesale dealer, transfer dealer, **or** converter manufacturer ~~or broker~~ under IC 9-23-2 is twenty dollars ($20).

SECTION 33. IC 9-17-4-5 IS REPEALED [EFFECTIVE JULY 1, 2003].

(Reference is to ESB 405 as reprinted April 11, 2003.)

CLARK	MAHERN
LEWIS	DUNCAN
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1620–1; filed April 24, 2003, at 10:58 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1620 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 20-5-2-7, AS AMENDED BY P.L.272-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) A school corporation, including a school township, shall adopt a policy concerning criminal history information for individuals who:

(1) apply for:

(A) employment with the school corporation; or

(B) employment with an entity with which the school corporation contracts for services;

(2) seek to enter into a contract to provide services to the school corporation; or

(3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(b) A school corporation, including a school township, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section may require any of the following:

(1) The school corporation, including a school township, may request limited criminal history information concerning each applicant for noncertificated employment or certificated employment from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the school corporation.

(2) Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation to request under IC 5-2-5 limited criminal history information or a national criminal history background check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation may require the individual to provide a set of fingerprints and pay any fees required for a national criminal history background check.

(3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 5-2-5-1(1)) to the school corporation.

(4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for limited criminal history information under IC 5-2-5;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 5-2-5-1(6)) that does not appear on the limited criminal history.

(5) Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's limited criminal history. The failure to answer honestly questions asked under this subdivision is grounds for termination of the employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in ~~subdivision (4)(A) and (4)(B). The school corporation either may require that the individual or the contractor comply with the procedures described in subdivision (4)(C) or (5).~~ **subdivisions (2), (4), and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program may be required to provide the consent described in subdivision (2) or the**

information described in subdivisions (4) and (5) to either the individual's employer or the school corporation. Failure to comply with subdivisions **(2),** (4), and (5), as required by the school corporation, is grounds for termination of the contract. **An entity that enters into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program is allowed to obtain limited criminal history information or a national criminal history background check regarding the entity's applicants or employees in the same manner that a school corporation may obtain the information.**

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible for all costs associated with obtaining the limited criminal history.

(d) Information obtained under this section must be used in accordance with IC 5-2-5-6.

SECTION 2. IC 20-6.1-3-7, AS AMENDED BY P.L.37-2000, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) On the written recommendation of the state superintendent, the board may **suspend or** revoke a license for:

(1) immorality;
(2) misconduct in office;
(3) incompetency; or
(4) willful neglect of duty.

However, for each **suspension or** revocation, the board shall comply with IC 4-21.5-3.

(b) **This subsection applies when a prosecuting attorney knows that a licensed employee of a public school (as defined in IC 20-10.1-1-2) or a nonpublic school has been convicted of an offense listed in subsection (d). The prosecuting attorney shall immediately give written notice of the conviction to the following:**

(1) The state superintendent.
(2) Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee or the equivalent authority for the nonpublic school.
(3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation.

(c) The superintendent of a school corporation, **presiding officer of the governing body,** or equivalent authority for ~~an accredited~~ **a** nonpublic school shall immediately notify the state superintendent when the person knows that a current or former licensed employee of the **public** school ~~corporation~~ or ~~accredited~~ nonpublic school has been convicted of an offense listed in subsection ~~(c).~~ **(d).**

~~(c)~~ **(d)** The board, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the board to have been convicted of any of the following ~~offenses:~~ **felonies:**

(1) **Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.**
(2) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.
(3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
~~(2)~~ **(4)** Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
~~(3)~~ **(5)** Child molesting (IC 35-42-4-3).
~~(4)~~ **(6)** Child exploitation (IC 35-42-4-4(b)).
~~(5)~~ **(7)** Vicarious sexual gratification (IC 35-42-4-5).
~~(6)~~ **(8)** Child solicitation (IC 35-42-4-6).
~~(7)~~ **(9)** Child seduction (IC 35-42-4-7).
~~(8)~~ **(10)** Sexual misconduct with a minor (IC 35-42-4-9).
~~(9)~~ **(11)** Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.
(12) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).
(13) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
(14) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
(15) Dealing in a schedule V controlled substance (IC 35-48-4-4).
(16) Dealing in a counterfeit substance (IC 35-48-4-5).
(17) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10(b)).

~~(d)~~ **(e)** A license may be suspended by the state superintendent as specified in IC 20-6.1-4-13.

SECTION 3. IC 20-6.1-4-10, AS AMENDED BY P.L.228-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) An indefinite contract with a permanent teacher may be canceled in the manner specified in section 11 of this chapter ~~for~~ only **for one (1) or more of** the following grounds:

(1) Immorality.
(2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation.
(3) Neglect of duty.
(4) Incompetency.
(5) Justifiable decrease in the number of teaching positions.
(6) A conviction for
~~(A) rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age;~~
~~(B) criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age;~~
~~(C) child molesting (IC 35-42-4-3);~~
~~(D) child exploitation (IC 35-42-4-4(b));~~
~~(E) vicarious sexual gratification (IC 35-42-4-5);~~
~~(F) child solicitation (IC 35-42-4-6);~~
~~(G) child seduction (IC 35-42-4-7);~~
~~(H) sexual misconduct with a minor as a Class A or B felony (IC 35-42-4-9); or~~
~~(I) incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age; or~~
an offense listed in IC 20-6.1-3-7(d).
(7) Other good and just cause.

When the cause of cancellation is ground (1), (2), or (6), the cancellation is effective immediately. When the cause of cancellation is ground (3), (4), (5), or (7), the cancellation is effective at the end of the school term following the cancellation.

(b) An indefinite contract may not be canceled for political or personal reasons.

SECTION 4. IC 20-6.1-4-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10.5. (a) An indefinite contract with a semipermanent teacher may be canceled in the manner specified in section 11 of this chapter only for **one (1) or more of** the following grounds:

(1) Immorality.
(2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation.
(3) Neglect of duty.
(4) Substantial inability to perform teaching duties.
(5) Justifiable decrease in the number of teaching positions.
(6) Good and just cause.
(7) The cancellation is in the best interest of the school corporation.
(8) A conviction for
~~(A) rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age;~~
~~(B) criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age;~~
~~(C) child molesting (IC 35-42-4-3);~~
~~(D) child exploitation (IC 35-42-4-4(b));~~
~~(E) vicarious sexual gratification (IC 35-42-4-5);~~
~~(F) child solicitation (IC 35-42-4-6);~~
~~(G) child seduction (IC 35-42-4-7); or~~
~~(H) incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.~~

an offense listed in IC 20-6.1-3-7(d).

(b) An indefinite contract with a semipermanent teacher may not be canceled for political or personal reasons.

(c) Before the cancellation of a semipermanent teacher's indefinite contract, the principal of the school at which the teacher teaches shall provide the teacher with a written evaluation of the teacher's performance before January 1 of each year. Upon the request of a semipermanent teacher, delivered in writing to the principal within thirty (30) days after the teacher receives the evaluation required by this section, the principal shall provide the teacher with an additional written evaluation.

SECTION 5. IC 34-13-3-3, AS AMENDED BY P.L.1-2002, SECTION 144, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

(1) The natural condition of unimproved property.

(2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.

(3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.

(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

(A) a set of rules governing the use of the extreme sport area;

(B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and

(C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, **a pretrial conditional release program under IC 35-33-8,** or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73) if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b).

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;

that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.

(22) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

SECTION 6. IC 34-13-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. The combined aggregate liability of all governmental entities and of all public employees, acting within the scope of their employment and not excluded from liability under section 3 of this chapter, does not exceed three hundred thousand dollars ($300,000) for injury to or death of one (1) person in any one (1) occurrence and does not exceed five million dollars ($5,000,000) for injury to or death of all persons in that occurrence. A governmental entity **or an employee of a governmental entity acting within the scope of employment** is not liable for punitive damages.

SECTION 7. IC 34-13-3-5, AS AMENDED BY P.L.192-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Civil actions relating to acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may be brought only against the board, the committee, the commission, the authority, or the other instrumentality of a governmental entity. A member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may not be named as a party in a civil suit that concerns the acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity where the member was acting within the scope of the member's employment. For the purposes of this subsection, a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity is acting within the scope of the member's employment when the member acts as a member of the board, committee, commission, authority, or other instrumentality.

(b) A judgment rendered with respect to or a settlement made by

a governmental entity bars an action by the claimant against an employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, whose conduct gave rise to the claim resulting in that judgment or settlement. A lawsuit alleging that an employee acted within the scope of the employee's employment ~~must be exclusive to the complaint and~~ bars an action by the claimant against the employee personally. However, if the governmental entity answers that the employee acted outside the scope of the employee's employment, the plaintiff may amend the complaint and sue the employee personally. An amendment to the complaint by the plaintiff under this subsection must be filed not later than one hundred eighty (180) days from the date the answer was filed and may be filed notwithstanding the fact that the statute of limitations has run.

(c) A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:

(1) criminal;
(2) clearly outside the scope of the employee's employment;
(3) malicious;
(4) willful and wanton; or
(5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

(d) **This subsection applies when the governmental entity defends or has received proper legal notice and has the opportunity to defend an employee for losses resulting from the employee's acts or omissions.** Subject to the provisions of sections 4, 14, 15, and 16 of this chapter, the governmental entity shall pay any judgment ~~compromise, or settlement~~ of a claim or suit against an employee when ~~(1)~~ the act or omission causing the loss is within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss. ~~and~~

~~(2) the:~~

~~(A) governor in the case of a claim or suit against a state employee; or~~

~~(B) governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;~~

~~determines that paying the judgment compromise or settlement is in the best interest of the governmental entity.~~

(e) The governmental entity shall provide counsel for and pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(f) This chapter shall not be construed as:

(1) a waiver of the eleventh amendment to the Constitution of the United States;
(2) consent by the state of Indiana or its employees to be sued in any federal court; or
(3) consent to be sued in any state court beyond the boundaries of Indiana.

SECTION 8. IC 34-13-4-1, AS AMENDED BY P.L.192-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. If a present or former public employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, is or could be subject to personal civil liability for a loss occurring because of a noncriminal act or omission within the scope of the public employee's employment which violates the civil rights laws of the United States, the governmental entity **(when the governmental entity defends or has the opportunity to defend the public employee)** shall, subject to IC 34-13-3-4, IC 34-13-3-14, IC 34-13-3-15, and IC 34-13-3-16, pay:

(1) any judgment ~~compromise, or settlement~~ **(other than for punitive damages)** of the claim or suit; ~~when:~~ **or**

(2) any judgment for punitive damages, compromise, or settlement of the claim or suit if:

~~(1)~~ **(A)** the governor, in the case of a claim or suit against a state employee; or

~~(2)~~ **(B)** the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;

determines that paying the judgment **for punitive damages,** compromise, or settlement is in the best interest of the governmental entity. The governmental entity shall also pay all costs and fees incurred by or on behalf of a public employee in defense of the claim or suit.

SECTION 9. IC 34-30-2-84.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 84.5. IC 20-6.1-3-7 (Concerning a person who makes a report concerning a teacher).**

SECTION 10. IC 35-42-4-7, AS AMENDED BY P.L.228-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) As used in this section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

(b) As used in this section, "adoptive grandparent" means the parent of an adoptive parent.

(c) As used in this section, "child care worker" means a person who:

(1) provides care, supervision, or instruction to a child within the scope of the person's employment in a ~~public or private school or~~ shelter care facility; **or**

(2) is employed by a:

(A) school corporation; or
(B) nonpublic school;

attended by a child who is the victim of a crime under this chapter.

(d) As used in this section, "custodian" means any person who resides with a child and is responsible for the child's welfare.

(e) **As used in this section, "nonpublic school" has the meaning set forth in IC 20-10.1-1-3.**

(f) As used in this section, "school corporation" has the meaning set forth in IC 20-10.1-1-1.

(g) As used in this section, "stepparent" means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent.

~~(f)~~ **(h)** If a person who is:

(1) at least eighteen (18) years of age; and
(2) the:
(A) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or
(B) child care worker for;

a child at least sixteen (16) years of age but less than eighteen (18) years of age;

engages **with the child** in sexual intercourse, ~~or~~ deviate sexual conduct (as defined in IC 35-41-1-9), ~~with the child,~~ **or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult,** the person commits child seduction, a Class D felony.

(Reference is to EHB 1620 as printed March 28, 2003.)

L. LAWSON	SERVER
AYRES	SIPES
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1470–1; filed April 24, 2003, at 11:07 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1470 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning gaming.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 4-33-4-3, AS AMENDED BY HEA 1902-2003, SECTION 12, IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The commission shall do the following:

(1) Adopt rules that the commission determines necessary to protect or enhance the following:

(A) The credibility and integrity of gambling operations authorized by this article.

(B) The regulatory process provided in this article.

(2) Conduct all hearings concerning civil violations of this article. (3) Provide for the establishment and collection of license fees and taxes imposed under this article.

(4) Deposit the license fees and taxes in the state gaming fund established by IC 4-33-13.

(5) Levy and collect penalties for noncriminal violations of this article.

(6) Deposit the penalties in the state gaming fund established by IC 4-33-13.

(7) Be present through the commission's inspectors and agents during the time gambling operations are conducted on a riverboat to do the following:

(A) Certify the revenue received by a riverboat.

(B) Receive complaints from the public.

(C) Conduct other investigations into the conduct of the gambling games and the maintenance of the equipment that the commission considers necessary and proper.

(8) Adopt emergency rules under IC 4-22-2-37.1 if the commission determines that:

(A) the need for a rule is so immediate and substantial that rulemaking procedures under IC 4-22-2-13 through IC 4-22-2-36 are inadequate to address the need; and

(B) an emergency rule is likely to address the need.

(9) Adopt rules to establish and implement a voluntary exclusion program that meets the requirements of subsection (c).

(b) The commission shall begin rulemaking procedures under IC 4-22-2-13 through IC 4-22-2-36 to adopt an emergency rule adopted under subsection (a)(8) not later than thirty (30) days after the adoption of the emergency rule under subsection (a)(8).

(c) Rules adopted under subsection (a)(9) must provide the following:

(1) Except as provided by rule of the commission, a person who participates in the voluntary exclusion program agrees to refrain from entering a riverboat or other facility under the jurisdiction of the commission.

(2) That the name of a person participating in the program will be included on a list of persons excluded from all facilities under the jurisdiction of the commission.

(3) Except as provided by rule of the commission, a person who participates in the voluntary exclusion program may not petition the commission for readmittance to a facility under the jurisdiction of the commission.

(4) That the list of patrons entering the voluntary exclusion program is confidential and may only be disseminated by the commission to the owner of a facility under the jurisdiction of the commission for purposes of enforcement.

(5) That the personal information of a person who participates in the voluntary exclusion program is confidential.

(6) That an owner of a facility under the jurisdiction of the commission shall make all reasonable attempts as determined by the commission to cease all direct marketing efforts to a person participating in the program.

(7) That an owner of a facility under the jurisdiction of the commission may not cash the check of a person participating in the program or extend credit to the person in any manner. However, the voluntary exclusion program does not preclude an owner from seeking the payment of a debt accrued by a person before entering the program.

SECTION 2. IC 4-33-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) The commission may eject or exclude or authorize the ejection or exclusion of a person from riverboat gambling facilities if:

(1) **the person's name is on the list of persons voluntarily excluding themselves from all riverboats in a program established under the rules of the commission;**

(2) the person violates this article; or

~~(2)~~ **(3)** the commission determines that the person's conduct or reputation is such that the person's presence within the riverboat gambling facilities may:

(A) call into question the honesty and integrity of the gambling operations; or

(B) interfere with the orderly conduct of the gambling operations.

(b) A person, **other than a person participating in a voluntary exclusion program,** may petition the commission for a hearing on the person's ejection or exclusion under this section.

SECTION 3. IC 4-33-4-8, AS AMENDED BY HEA 1902-2003, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. If a licensee, an operating agent, or an employee of a licensee or an operating agent violates this article or engages in a fraudulent act, the commission may do any combination of the following:

(1) Suspend, revoke, or restrict the license of the licensee, or suspend, revoke, or restrict the gambling operations of an operating agent.

(2) Require the removal of a licensee or an employee of a licensee.

(3) Impose a civil penalty of not more than five thousand dollars ($5,000) against an individual who has been issued an occupational license ~~or a person who has been issued a supplier's license~~ for each violation of this article.

(4) Impose a civil penalty of not more than the greater of:

(A) ten thousand dollars ($10,000); or

(B) an amount equal to the licensee's or operating agent's daily gross receipts for the day of the violation;

against an owner or operating agent for each violation of this article.

(5) Impose a civil penalty of not more than twenty-five thousand dollars ($25,000) against a person who has been issued a supplier's license for each violation of this article.

SECTION 4. IC 4-33-16 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 16. Immunity

Sec. 1. As used in this chapter, "self-excluded person" refers to an individual whose name is on the list of persons voluntarily excluding themselves from all riverboats in a program established under the rules of the commission.

Sec. 2. Neither the state of Indiana, the commission, a licensed riverboat, nor an employee or agent of a licensed riverboat is liable to a self-excluded person or any other party in a judicial or administrative proceeding for any harm, monetary or otherwise, alleged to have arisen as a result of:

(1) a failure to withhold gaming privileges from, or restore gaming privileges to, a self-excluded person; or

(2) otherwise permitting a self-excluded person to engage in gaming activity in a licensed riverboat.

Sec. 3. A licensed riverboat or an employee of a licensed riverboat is not liable to a self-excluded person or to any other party in a judicial or administrative proceeding for any harm, monetary or otherwise, alleged to have arisen as a result of a disclosure or publication in any manner.

SECTION 5. IC 12-23-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. **(a)** For each state fiscal year, the division may not spend more than an amount equal to five percent (5%) of the total amount received by the division from the fund established under section 2 of this chapter for the administrative costs associated with the use of money received from the fund.

(b) The division shall allocate at least twenty-five percent (25%) of the funds derived from the riverboat admissions tax under IC 4-33-12-6 to the prevention and treatment of compulsive gambling.

(c) The division shall reimburse the Indiana gaming commission for the costs incurred in administering a voluntary exclusion program established under the rules of the Indiana gaming commission. The division shall pay the reimbursement from funds derived from the riverboat admissions tax under IC 4-33-12-6.

SECTION 6. IC 34-30-2-158 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 158. IC4-33-16 (Concerning actions involving a person participating in a voluntary exclusion program established under the rules of the Indiana gaming commission).**

(Reference is to EHB 1470 as reprinted April 2, 2003.)

WELCH	RIEGSECKER
WHETSTONE	L. LUTZ
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

The House recessed until the fall of the gavel.

RECESS

The House reconvened at 1:45 p.m. with the Speaker Pro Tempore, Representative Dobis, in the Chair.

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the President Pro Tempore of the Senate has appointed the following Senators a conference committee to confer on Engrossed House Bill 1092:

Conferees: Bray and Skinner

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the President Pro Tempore of the Senate has appointed the following Senators a conference committee to confer on Engrossed House Bill 1171:

Conferees: Long and Craycraft

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has concurred in the House amendments to Engrossed Senate Bills 202, 230, 337, and 386.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report on Engrossed Senate Bills 57–1, 144–1, 169–1, 176–1, 201–1, and 210–1.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1218.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1358.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1438.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1556.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1622.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has accepted and approved the Joint Rule 20 correction on Engrossed Senate Bill 420.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I hereby transmit Senate Enrolled Acts 6, 227, 308, 446, and 519 for signature.

MARY C. MENDEL
Principal Secretary of the Senate

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT
ESB 62–1; filed April 24, 2003, at 11:12 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 62 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning human services.

Delete everything after the enacting clause and insert the following:

SECTION 1. [EFFECTIVE JULY 1, 2003] **(a) As used in this SECTION, "commission" refers to the commission on abused and neglected children and their families established by subsection (b).**

(b) The commission on abused and neglected children and their families is established to develop and present an implementation plan for a continuum of services for children at risk of abuse or neglect and children who have been abused or neglected and their families.

(c) The commission consists of the following members appointed not later than August 15, 2003:

(1) One (1) prosecuting attorney or a deputy prosecuting attorney.

(2) One (1) attorney who specializes in juvenile law.

(3) One (1) representative from law enforcement.

(4) Two (2) children's advocates.

(5) One (1) guardian ad litem or court appointed special

advocate.
(6) One (1) juvenile court judge.
(7) One (1) public agency children's services caseworker.
(8) One (1) private agency children's services caseworker.
(9) The director of the division of family and children or the director's designee.
(10) One (1) counselor or social worker from Indiana's "at risk" school program.
(11) One (1) pediatrician.
(12) One (1) medical social worker.
(13) Two (2) faculty members, including:
(A) one (1) faculty member from an Indiana accredited graduate school of social work, who shall serve as the chair of the commission; and
(B) one (1) faculty member from an Indiana accredited undergraduate school of social work.
(14) One (1) county director to be appointed from the Indiana State Association of County Welfare Administrators.
(15) One (1) foster parent who is a member of a foster advocacy organization.
(16) One (1) adoptive parent who is a member of an adoptive parent advocacy organization.
(17) One (1) nonprofit family services agency provider.
(18) One (1) representative of child caring institution providers.
(19) One (1) psychologist who works with abused and neglected children.
(20) One (1) individual who has experience and training in juvenile fire setting identification and intervention.
(21) Two (2) members of the house of representatives appointed by the speaker of the house of representatives. The members appointed under this subdivision may not be members of the same political party.
(22) Two (2) members of the senate appointed by the president pro tempore of the senate. The members appointed under this subdivision may not be members of the same political party.

The speaker of the house of representatives shall appoint the members under subdivisions (2), (5), (8), (10), (15), and (17) and one (1) member under subdivision (4). The president pro tempore of the senate shall appoint the members under subdivisions (3), (11), (12), (16), (18), and (19) and one (1) member under subdivision (4). The governor shall appoint the members under subdivisions (1), (6), (7), (14), and (20) and both members under subdivision (13). Vacancies shall be filled by the appointing authority for the remainder of the unexpired term.

(d) Each member of the commission shall have an interest or experience in improving the quality of services provided to children at risk of abuse or neglect and abused or neglected children and their families in Indiana.

(e) A majority of the voting members of the commission constitutes a quorum.

(f) The Indiana accredited graduate school of social work represented by the chair of the commission shall staff the commission.

(g) The commission shall meet at the call of the chair and shall meet as often as necessary to carry out the purpose of this SECTION.

(h) The expenses of administering the commission shall be paid from the resources of the Indiana accredited graduate school of social work represented by the chair of the commission. Expenses under this subsection include the following:
(1) Photocopying and printing costs.
(2) Costs of supplies.

(i) Members of the commission are not entitled to a salary per diem or reimbursement of expenses for service on the commission.

(j) The commission's responsibilities include the following:
(1) Reviewing Indiana's public and private family services delivery system for children at risk of abuse or neglect and for children who have been reported as suspected victims of child abuse or neglect.
(2) Reviewing federal, state, and local funds appropriated to meet the service needs of children and their families.
(3) Reviewing current best practices standards for the provision of child and family services.
(4) Examining the qualifications and training of service providers, including foster parents, adoptive parents, child caring institution staff, child placing agency staff, case managers, supervisors, and administrators, and making recommendations for a training curriculum and other necessary changes.
(5) Recommending methods to improve use of available public and private funds to address the service needs described in subdivision (2).
(6) Providing information concerning identified unmet needs of children and families and providing recommendations concerning the development of resources to meet the identified needs.
(7) Suggesting policy, program, and legislative changes related to the family services described in subdivision (1) to accomplish the following:
(A) Enhancement of the quality of the services.
(B) Identification of potential resources to promote change to enhance the services.
(8) Preparing a report consisting of the commission's findings and recommendations, and the presentation of the implementation plan for a continuum of services for children at risk of abuse or neglect and for abused or neglected children and their families specified under subsection (b).

(k) In carrying out the commission's responsibilities, the commission shall consider pertinent studies on children at risk of abuse or neglect and on abused or neglected children and their families.

(l) The affirmative votes of a majority of the commission's members are required for the commission to take action on any measure, including recommendations included in the report required under subsection (j)(8).

(m) The commission shall submit the report required under subsection (j)(8) to the governor, the legislative council, and the board for the coordination of child care regulation established by IC 12-17.2-3.1-1 not later than August 15, 2004. The report must be available to the public upon request not later than December 31, 2004.

(n) This SECTION expires January 1, 2005.

(Reference is to ESB 62 as printed April 8, 2003.)

C. LAWSON	SUMMERS
BREAUX	BECKER
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1558–1; filed April 24, 2003, at 11:18 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1558 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 22-4-11-1, AS AMENDED BY P.L.290-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) For the purpose of charging employers' experience or reimbursable accounts with regular benefits paid subsequent to July 3, 1971, to any eligible individual but except as provided in IC 22-4-22 and subsection (f), such benefits paid shall

be charged proportionately against the experience or reimbursable accounts of ~~his~~ **the individual's** employers in ~~his~~ **the individual's** base period (on the basis of total wage credits established in such base period) against whose accounts the maximum charges specified in this section shall not have been previously made. Such charges shall be made in the inverse chronological order in which the wage credits of such individuals were established. However, when an individual's claim has been computed for the purpose of determining ~~his~~ **the individual's** regular benefit rights, maximum regular benefit amount, and the proportion of such maximum amount to be charged to the experience or reimbursable accounts of respective chargeable employers in the base period, the experience or reimbursable account of any employer charged with regular benefits paid shall not be credited or recredited with any portion of such maximum amount because of any portion of such individual's wage credits remaining uncharged at the expiration of ~~his~~ **the individual's** benefit period. The maximum so charged against the account of any employer shall not exceed twenty-eight percent (28%) of the total wage credits of such individual with each such employer with which wage credits were established during such individual's base period. Benefits paid under provisions of IC 22-4-22-3 in excess of the amount that the claimant would have been monetarily eligible for under other provisions of this article shall be paid from the fund and not charged to the experience account of any employer. ~~however,~~ This exception shall not apply to those employers electing to make payments in lieu of contributions who shall be charged for all benefit payments which are attributable to service in their employ. Irrespective of the twenty-eight percent (28%) maximum limitation provided for in this section, any extended benefits paid to an eligible individual based on service with a governmental entity of this state or its political subdivisions shall be charged to the experience or reimbursable accounts of the employers, and fifty percent (50%) of any extended benefits paid to an eligible individual shall be charged to the experience or reimbursable accounts of ~~his~~ **the individual's** employers in ~~his~~ **the individual's** base period, other than governmental entities of this state or its political subdivisions, in the same proportion and sequence as are provided in this section for regular benefits paid. Additional benefits paid under IC 22-4-12-4(c) **and benefits paid under IC 22-4-15-1(c)(8)** shall:

(1) be paid from the fund; and

(2) not be charged to the experience account or the reimbursable account of any employer.

(b) If the aggregate of wages paid to an individual by two (2) or more employers during the same calendar quarter exceeds the maximum wage credits (as defined in IC 22-4-4-3) then the experience or reimbursable account of each such employer shall be charged in the ratio which the amount of wage credits from such employer bears to the total amount of wage credits during the base period.

(c) When wage records show that an individual has been employed by two (2) or more employers during the same calendar quarter of the base period but do not indicate both that such employment was consecutive and the order of sequence thereof, then and in such cases it shall be deemed that the employer with whom the individual established a plurality of wage credits in such calendar quarter is the most recent employer in such quarter and its experience or reimbursable account shall be first charged with benefits paid to such individual. The experience or reimbursable account of the employer with whom the next highest amount of wage credits were established shall be charged secondly and the experience or reimbursable accounts of other employers during such quarters, if any, shall likewise be charged in order according to plurality of wage credits established by such individual.

(d) Except as provided in subsection (f), if an individual:

(1) voluntarily leaves an employer without good cause in connection with the work; or

(2) is discharged from an employer for just cause;

wage credits earned with the employer from whom the employee has separated under these conditions shall be used to compute the claimant's eligibility for benefits, but charges based on such wage credits shall be paid from the fund and not charged to the experience account of any employer. However, this exception shall not apply to those employers who elect to make payments in lieu of contributions, who shall be charged for all benefit payments which are attributable to service in their employ.

(e) Any nonprofit organization which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in this article is not liable to make the payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in IC 22-4-4-4, nor is the experience account of any other employer liable for charges for benefits paid the individual to the extent that the unemployment compensation fund is reimbursed for these benefits pursuant to Section 121 of P.L.94-566. Payments which otherwise would have been chargeable to the reimbursable or contributing employers shall be charged to the fund.

(f) If an individual:

(1) earns wages during ~~his~~ **the individual's** base period through employment with two (2) or more employers concurrently;

(2) is separated from work by one (1) of the employers for reasons that would not result in disqualification under IC 22-4-15-1; and

(3) continues to work for one (1) or more of the other employers after the end of the base period and continues to work during the applicable benefit year on substantially the same basis as during the base period;

wage credits earned with the base period employers shall be used to compute the claimant's eligibility for benefits, but charges based on the wage credits from the employer who continues to employ the individual shall be charged to the experience or reimbursable account of the separating employer.

(g) Subsection (f) does not affect the eligibility of a claimant who otherwise qualifies for benefits nor the computation of ~~his~~ benefits.

(h) Unemployment benefits paid shall not be charged to the experience account of a base period employer when the claimant's unemployment from the employer was a direct result of the condemnation of property by a municipal corporation (as defined in IC 36-1-2-10), the state, or the federal government, a fire, a flood, or an act of nature, when at least fifty percent (50%) of the employer's employees, including the claimant, became unemployed as a result. This exception does not apply when the unemployment was an intentional result of the employer or a person acting on behalf of the employer.

SECTION 2. IC 22-4-14-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) **This section does not apply to an individual who is receiving benefits as determined under IC 22-4-15-1(c)(8).**

(b) An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

(1) is physically and mentally able to work;

(2) is available for work;

(3) is found by the department to be making an effort to secure full-time work; and

(4) participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services under a profiling system established by the commissioner, unless the commissioner determines that:

(A) the individual has completed the reemployment services; or

(B) failure by the individual to participate in or complete the reemployment services is excused by the director under IC 22-4-14-2(b).

The term "effort to secure full-time work" shall be defined by the board through rule which shall take into consideration whether such individual has a reasonable assurance of reemployment and, if so, the length of the prospective period of unemployment. However, if an otherwise eligible individual is unable to work or unavailable for work on any normal work day of the week the individual shall be eligible to receive benefits with respect to such week reduced by one-third (1/3) of the individual's weekly benefit amount for each day of such inability to work or unavailability for work.

~~(b)~~ **(c)** For the purpose of this article, unavailability for work of an individual exists in, but is not limited to, any case in which, with

respect to any week, it is found:

(1) that such individual is engaged by any unit, agency, or instrumentality of the United States, in charge of public works or assistance through public employment; or any unit, agency, or instrumentality of this state, or any political subdivision thereof, in charge of any public works or assistance through public employment;

(2) that such individual is in full-time active military service of the United States, or is enrolled in civilian service as a conscientious objector to military service;

(3) that such individual is suspended for misconduct in connection with the individual's work; or

(4) that such individual is in attendance at a regularly established public or private school during the customary hours of the individual's occupation or is in any vacation period intervening between regular school terms during which the individual is a student. However, this subdivision does not apply to any individual who is attending a regularly established school, has been regularly employed and upon becoming unemployed makes an effort to secure full-time work and ~~holds himself~~ **is** available for suitable full-time work with the individual's last employer, or ~~holds himself~~ **is** available for any other full-time employment deemed suitable.

~~(c)~~ **(d)** Notwithstanding any other provisions in this section or IC 22-4-15-2, no otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the department, nor shall such individual be denied benefits with respect to any week in which the individual is in training with the approval of the department by reason of the application of the provisions of this section with respect to the availability for work or active search for work or by reason of the application of the provisions of IC 22-4-15-2 relating to failure to apply for, or the refusal to accept, suitable work. The board shall by rule prescribe the conditions under which approval of such training will be granted.

SECTION 3. IC 22-4-15-1, AS AMENDED BY P.L.290-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of ~~his~~ **the individual's** current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction will be raised to the next higher even dollar amount. The maximum benefit amount may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions; and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

(A) the employment was outside the individual's labor market;

(B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and

(C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

(8) An individual shall not be subject to disqualification if the individual voluntarily left employment or was discharged due to circumstances directly caused by domestic or family violence (as defined in IC 31-9-2-42). An individual who may be entitled to benefits based on this modification may apply to the office of the attorney general to have an address designated by the office of the attorney general to serve as the individual's address for purposes of this article under IC 5-26.5.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

(1) separation initiated by an employer for falsification of an

employment application to obtain employment through subterfuge;
(2) knowing violation of a reasonable and uniformly enforced rule of an employer;
(3) unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;
(4) damaging the employer's property through willful negligence;
(5) refusing to obey instructions;
(6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;
(7) conduct endangering safety of self or coworkers; or
(8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction or for any breach of duty in connection with work which is reasonably owed an employer by an employee.

(e) To verify that domestic or family violence has occurred, an individual who applies for benefits under subsection (c)(8) shall provide one (1) of the following:
(1) A report of a law enforcement agency (as defined in IC 5-2-5-1).
(2) A protection order issued under IC 34-26-5.
(3) A foreign protection order (as defined in IC 34-6-2-48.5).
(4) An affidavit from a domestic violence service provider verifying services provided to the individual by the domestic violence service provider.

SECTION 4. IC 22-4-15-2, AS AMENDED BY P.L.290-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for waiting period or benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:
(1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;
(2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment unit; or
(3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks.

(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction shall be raised to the next higher even dollar amount. The maximum benefit amount of the individual's current claim may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.

(e) In determining whether or not any such work is suitable for an individual, the department shall consider:
(1) the degree of risk involved to such individual's health, safety, and morals;
(2) the individual's physical fitness and prior training and experience;
(3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and
(4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved. **For an individual who is not disqualified under section 1(c)(8) of this chapter, the determination of suitable work for the individual must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic or family violence.**

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:
(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
(2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.
(4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:
(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:
(A) the individual's average weekly benefit amount for the individual's benefit year; plus
(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.
(2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.
(3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.
(4) If the position pays wages less than the higher of:
(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (The Fair Labor Standards Act of 1938), without regard to any exemption; or
(B) the state minimum wage (IC 22-2-2).

(i) The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection (g)) to which subsection (h) would not apply.

SECTION 5. IC 22-4-17-2, AS AMENDED BY P.L.290-2001,

SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) When an individual files an initial claim, the department shall promptly make a determination of ~~his~~ **the individual's** status as an insured worker in a form prescribed by the board. A written notice of the determination of insured status shall be furnished ~~him~~ **the individual** promptly. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured worker, and, if so, the week ending date of the first week of the individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the individual for weeks of unemployment in the individual's benefit period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within twenty (20) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) **Except as provided in subsection (i),** the department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. Such notice shall contain the date, the name and social security account number of the individual, the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit period. Such notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. Unless the employer, within twenty (20) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

(c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to waiting period credits or benefits, shall notify the department of such facts within twenty (20) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form prescribed by the board.

(d) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims waiting period credit or benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant left the claimant's work, or may refer such claim to an administrative law judge who shall make the initial determination with respect thereto in accordance with the procedure in IC 22-4-17-3.

(e) In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer or employers directly involved or connected with the issue raised as to the validity of such claim, the eligibility of the claimant for waiting period credit or benefits, or the imposition of a disqualification period or penalty, or the denial thereof, and of the cause for which the claimant left the claimant's work, of such determination and the reasons thereof. Except as otherwise hereinafter provided in this subsection regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant or such employer, within twenty (20) days after such notification was mailed to the claimant's or the employer's last known address, or otherwise delivered to the claimant or the employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. With respect to notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless such claimant or employer, within twenty-five (25) days after such notification was mailed to the claimant's or employer's last known address or otherwise delivered to the claimant or employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. If such hearing is desired, the request therefor shall be filed with the commissioner in writing within the prescribed periods as above set forth in this subsection and shall be in such form as the board may prescribe. In the event a hearing is requested by an employer or the department after it has been administratively determined that benefits should be allowed to a claimant, entitled benefits shall continue to be paid to said claimant unless said administrative determination has been reversed by a due process hearing. Benefits with respect to any week not in dispute shall be paid promptly regardless of any appeal.

(f) No person may participate on behalf of the department in any case in which the person is an interested party.

(g) Solely on the ground of obvious administrative error appearing on the face of an original determination, and within the benefit year of the affected claims, the commissioner, or a representative authorized by the commissioner to act in the commissioner's behalf, may reconsider and direct the deputy to revise the original determination so as to correct the obvious error appearing therein. Time for filing an appeal and requesting a hearing before an administrative law judge regarding the determinations handed down pursuant to this subsection shall begin on the date following the date of revision of the original determination and shall be filed with the commissioner in writing within the prescribed periods as above set forth in subsection (c).

(h) Notice to the employer and the claimant that the determination of the department is final if a hearing is not requested shall be prominently displayed on the notice of the determination which is sent to the employer and the claimant.

(i) If an allegation of the applicability of IC 22-4-15-1(c)(8) is made by the individual at the time of the claim for benefits, the department shall not notify the employer that a claim for benefits has been made.

SECTION 6. IC 22-4-18-1, AS AMENDED BY P.L.290-2001, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) There is created a department under IC 22-4.1-2-1 which shall be known as the department of workforce development.

(b) The department of workforce development may:

(1) Administer the unemployment insurance program, the Wagner-Peyser program, the Workforce Investment Act, the Job Training Partnership Act program, including a free public labor exchange, and related federal and state employment and training programs as directed by the governor.

(2) Formulate and implement an employment and training plan as required by the Workforce Investment Act (29 U.S.C. 2801 et seq.), the Job Training Partnership Act (29 U.S.C. 1501 et seq.), and the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

(3) Coordinate activities with all state agencies and departments that either provide employment and training related services or operate appropriate resources or facilities, to maximize Indiana's efforts to provide employment opportunities for economically disadvantaged individuals, dislocated workers, and others with substantial barriers to employment.

(4) Apply for, receive, disburse, allocate, and account for all funds, grants, gifts, and contributions of money, property, labor, and other things of value from public and private sources, including grants from agencies and instrumentalities of the state and the federal government.

(5) Enter into agreements with the United States government that may be required as a condition of obtaining federal funds related to activities of the department.

(6) Enter into contracts or agreements and cooperate with local governmental units or corporations, including profit or nonprofit corporations, or combinations of units and corporations to carry out the duties of this agency imposed by this chapter, including contracts for the establishment and administration of employment and training offices and the delegation of its administrative, monitoring, and program responsibilities and duties set forth in this article. Before

executing contracts described by this subdivision, the department shall give preferential consideration to using departmental personnel for the provision of services through local public employment and training offices. Contracting of Wagner-Peyser services is prohibited where state employees are laid off due to the diversion of Wagner-Peyser funds.

(7) Perform other services and activities that are specified in contracts for payments or reimbursement of the costs made with the Secretary of Labor or with any federal, state, or local public agency or administrative entity under the Workforce Investment Act (29 U.S.C. 2801 et seq.), the Job Training Partnership Act (29 U.S.C. 1501 et seq.), or private nonprofit organization.

(8) Enter into contracts or agreements and cooperate with entities that provide vocational education to carry out the duties imposed by this chapter.

(c) The department of workforce development may not enter into contracts for the delivery of services to claimants or employers under the unemployment insurance program. The payment of unemployment compensation must be made in accordance with 26 U.S.C. 3304.

(d) The department of workforce development may do all acts and things necessary or proper to carry out the powers expressly granted under this article, including the adoption of rules under IC 4-22-2.

(e) The department of workforce development may not charge any claimant for benefits for providing services under this article, except as provided in IC 22-4-17-12.

(f) The department of workforce development shall distribute federal funds made available for employment training in accordance with:

(1) 29 U.S.C. 2801 et seq., 29 U.S.C. 1501 et seq., and other applicable federal laws; and

(2) the plan prepared by the department under subsection (g)(1).

However, the Indiana commission on vocational and technical education within the department of workforce development shall distribute federal funds received under 29 U.S.C. 1533.

(g) In addition to the duties prescribed in subsections (a) through (f), the department of workforce development shall do the following:

(1) Implement to the best of its ability its employment training programs (as defined in IC 20-1-18.3-3), the comprehensive vocational education program in Indiana developed under the long range plan under IC 20-1-18.3-10, and the skills 2016 training program established under IC 22-4-10.5.

(2) Upon request of the budget director, prepare a legislative budget request for state and federal funds for employment training. The budget director shall determine the period to be covered by the budget request.

(3) Evaluate its programs according to criteria established by the Indiana commission on vocational and technical education within the department of workforce development under IC 20-1-18.3-13.

(4) Make or cause to be made studies of the needs for various types of programs that are related to employment training and authorized under the Workforce Investment Act and the Job Training Partnership Act.

(5) Distribute state funds made available for employment training that have been appropriated by the general assembly in accordance with:

(A) the general assembly appropriation; and

(B) the plan prepared by the department under subdivision (1).

(6) Establish, implement, and maintain a training program in the nature and dynamics of domestic and family violence for training of all employees of the department who interact with a claimant for benefits to determine whether the claim of the individual for unemployment benefits is valid and to determine that employment separations stemming from domestic or family violence are reliably screened, identified, and adjudicated and that victims of domestic or family violence are able to take advantage of the full range of job services provided by the department. The training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including using the staff of shelters for battered women in the presentation of the training. The initial training shall consist of instruction of not less than six (6) hours. Refresher training shall be required annually and shall consist of instruction of not less than three (3) hours.

SECTION 7. IC 22-4-18-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.5. (a) Before March 1 of each year, the department shall determine the number of claims filed, the number of individuals entitled to receive unemployment benefits under this article, and the amount of benefits charged to the fund for those individuals who qualified for benefits due to:**

(1) discharge; or

(2) leaving employment;

for circumstances resulting from domestic or family violence.

(b) The department shall submit its determination from the prior calendar year to the legislative council before June 30 of each year.

SECTION 8. IC 22-4-19-6, AS AMENDED BY P.L.290-2001, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) Each employing unit shall keep true and accurate records containing information the department considers necessary. These records are:

(1) open to inspection; and

(2) subject to being copied;

by an authorized representative of the department at any reasonable time and as often as may be necessary. The commissioner, the review board, or an administrative law judge may require from any employing unit any verified or unverified report, with respect to persons employed by it, which is considered necessary for the effective administration of this article.

(b) Except as provided in ~~subsection~~ **subsections** (d) **and (f),** information obtained or obtained from any person in the administration of this article and the records of the department relating to the unemployment tax, the skills 2016 assessment under IC 22-4-10.5-3, or the payment of benefits is confidential and may not be published or be open to public inspection in any manner revealing the individual's or the employing unit's identity, except in obedience to an order of a court or as provided in this section.

(c) A claimant at a hearing before an administrative law judge or the review board shall be supplied with information from the records referred to in this section to the extent necessary for the proper presentation of the subject matter of the appearance. The commissioner may make the information necessary for a proper presentation of a subject matter before an administrative law judge or the review board available to an agency of the United States or an Indiana state agency.

(d) The commissioner may release the following information:

(1) Summary statistical data may be released to the public.

(2) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the department of commerce only for the following purposes:

(A) The purpose of conducting a survey.

(B) The purpose of aiding the officers or employees of the department of commerce in providing economic development assistance through program development, research, or other methods.

(C) Other purposes consistent with the goals of the department of commerce and not inconsistent with those of the department.

(3) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the budget agency only for aiding the employees of the budget agency in forecasting tax revenues.

(4) Information obtained from any person in the administration of this article and the records of the department relating to the unemployment tax or the payment of benefits for use by the following governmental entities:

(A) department of state revenue; or
(B) state or local law enforcement agencies;
only if there is an agreement that the information will be kept confidential and used for legitimate governmental purposes.
(e) The commissioner may make information available under subsection (d)(1), (d)(2), or (d)(3) only:
(1) if:
(A) data provided in summary form cannot be used to identify information relating to a specific employer or specific employee; or
(B) there is an agreement that the employer specific information released to the department of commerce or budget agency will be treated as confidential and will be released only in summary form that cannot be used to identify information relating to a specific employer or a specific employee; and
(2) after the cost of making the information available to the person requesting the information is paid under IC 5-14-3.
(f) **In addition to the confidentiality provisions of subsection (b), any information furnished by the claimant or an agent to the department to verify a claim of domestic or family violence is confidential. This information shall not be disclosed to the employer or any other person. Disclosure is subject to the following restrictions:**
(1) The claimant must be notified before any release of information.
(2) Any disclosure is subject to redaction of unnecessary identifying information, including the claimant's address.
(g) An employee:
(1) of the department who recklessly violates subsection (a), (c), (d), ~~or~~ (e), **or (f);** or
(2) of any governmental entity listed in subsection (d)(4) of this chapter who recklessly violates subsection (d)(4) of this chapter;
commits a Class B misdemeanor.
~~(g)~~ **(h)** An employee of the department of commerce or the budget agency who violates subsection (d) or (e) commits a Class B misdemeanor.
SECTION 9. IC 31-9-2-42, AS AMENDED BY P.L.133-2002, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 42. "Domestic or family violence" means, except for an act of self defense, the occurrence of one (1) or more of the following acts committed by a family or household member:
(1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member without legal justification.
(2) Placing a family or household member in fear of physical harm without legal justification.
(3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.
For purposes of **IC 22-4-15-1 and** IC 34-26-5, domestic and family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4.
(Reference is to EHB 1558 as reprinted April 1, 2003.)

L. LAWSON	HARRISON
BECKER	BOWSER
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
ESB 435–1; filed April 24, 2003, at 11:55 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 435 respectfully reports that said two committee have conferred and agreed as follows to wit:
that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:
Page 4, line 23, delete "IC 5-2-5. IC 10-13-3." and insert "IC 10-13-3."
Page 9, line 31, delete "their" and insert "**the witness's**".
Page 11, line 18, delete "forty-five (45)" and insert "**fifteen (15)**".
(Reference is to ESB 435 as printed April 2, 2003.)

CLARK	BARDON
BRODEN	RIPLEY
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed House Bill 1331 because it conflicts with SEA 257-2003 without properly recognizing the existence of SEA 257-2003, has had Engrossed House Bill 1331 under consideration and begs leave to report back to the House with the recommendation that Engrossed House Bill 1331 be corrected as follows:
Page 1, line 1, delete "IC 10-8-2-5" and insert "IC 10-14-2-5".
(Reference is to HB1331 as reprinted March 18, 2003.)

PELATH, Chair
WHETSTONE, R.M.M.
T. ADAMS, Author

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Pursuant to House Rule 67, your Committee on Rules and Legislative Procedures has made the following corrections to Engrossed House Bill 1368:
Page 7, line 29, delete "9(c)" and insert "**10(c)**".
Page 7, line 30, delete "9(d)" and insert "**10(d)**".
Page 8, line 9, delete "9(c) or 9(d)" and insert "**10(c) or 10(d)**".
Page 8, line 26, delete "8(b)" and insert "**9(b)**".
Page 10, line 7, delete "8 or 9" and insert "**9 or 10**".
Page 10, line 18, delete "8 or 9" and insert "**9 or 10**".
(Reference is to EHB 1368 as reprinted March 28, 2003.)

PELATH, Chair
WHETSTONE, R.M.M.
FOLEY, Author

Report adopted.

MOTIONS TO CONCUR IN SENATE AMENDMENTS

HOUSE MOTION

Mr. Speaker: I move that the House reconsider its actions whereby it dissented from the Senate amendments to Engrossed House Bill 1701 and that the House now concur in the Senate amendments to said bill.

C. BROWN

Roll Call 638: yeas 77, nays 11. Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that the House reconsider its actions whereby it dissented from the Senate amendments to Engrossed House Bill 1519 and that the House now concur in the Senate amendments to said bill.

WELCH

Roll Call 639: yeas 89, nays 0. Motion prevailed.

Representative Becker was excused.

HOUSE MOTION

Mr. Speaker: I move that the House reconsider its actions whereby it dissented from the Senate amendments to Engrossed House Bill 1657 and that the House now concur in the Senate amendments to said bill.

WOLKINS

Roll Call 640: yeas 90, nays 0. Motion prevailed.

Representative Becker, who had been excused, was present.

HOUSE MOTION

Mr. Speaker: I move that the House reconsider its actions whereby it dissented from the Senate amendments to Engrossed House Bill 1757 and that the House now concur in the Senate amendments to said bill.

KLINKER

Roll Call 641: yeas 70, nays 22. Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that the House concur in the Senate amendments to Engrossed House Bill 1837.

SUMMERS

Roll Call 642: yeas 90, nays 0. Motion prevailed.

Representative D. Young was excused.

HOUSE MOTION

Mr. Speaker: I move that the House reconsider its actions whereby it dissented from the Senate amendments to Engrossed House Bill 1811 and that the House now concur in the Senate amendments to said bill.

CRAWFORD

Roll Call 643: yeas 74, nays 15. Motion prevailed. *

[**Journal Clerk's note: A short time later, Representative Crawford realized that in he had explained the Senate amendments to EHB 1815 rather than those to EHB 1811. He moved that the House reconsider its adoption of the motion to concur. Another vote was taken on April 25 and adopted. Roll Call 684: yeas 91, nays 0.*]

RULES SUSPENSION

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 160.1 and 162.1 and recommends that Rule 160.1 be suspended so that the following conference committee reports are eligible for consideration after April 14, 2003, and that House Rule 162.1 be suspended so that the following conference committee reports may be laid over on the members' desks for 3 hours, all so that the following conference committee reports may be eligible to be placed before the House for action: Engrossed House Bill 1552–1, 1605–1, 1707–1, 1714–1, and 1788–1.

PELATH, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 160.1 be suspended so that the following conference committee reports are eligible for consideration after April 14, 2003, and that House Rule 162.1 be suspended so that the following conference committee reports may be laid over on the members' desks for 3 hours, all so that the following conference committee reports may be eligible to be placed before the House for action: Engrossed House Bill 1552–1, 1605–1, 1707–1, 1714–1, and 1788–1.

PELATH

Motion prevailed.

Representative D. Young, who had been excused, was present.

CONFERENCE COMMITTEE REPORTS

Engrossed House Bill 1605–1

The conference committee report was reread. Roll Call 644: yeas 90, nays 0. Report adopted.

Engrossed House Bill 1714–1

The conference committee report was reread. Roll Call 645: yeas 93, nays 0. Report adopted.

Engrossed House Bill 1788–1

The conference committee report was reread. Roll Call 646: yeas 89, nays 7. Report adopted.

RULES SUSPENSION

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 160.1 and 162.1 and recommends that Rule 160.1 be suspended so that the following conference committee reports are eligible for consideration after April 14, 2003, and that House Rule 162.1 be suspended so that the following conference committee reports may be laid over on the members' desks for 3 hours, all so that the following conference committee reports may be eligible to be placed before the House for action: Engrossed House Bills 1047–1, 1336–1, 1437–1, 1573–1, 1730–1 and Engrossed Senate Bills 144–1, 172–1, 267–1, 482–1, and 523–1.

PELATH, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 160.1 be suspended so that the following conference committee reports are eligible for consideration after April 14, 2003, and that House Rule 162.1 be suspended so that the following conference committee reports may be laid over on the members' desks for 3 hours, all so that the following conference committee reports may be eligible to be placed before the House for action: Engrossed House Bills 1047–1, 1336–1, 1437–1, 1573–1, 1730–1 and Engrossed Senate Bills 144–1, 172–1, 267–1, 482–1, and 523–1.

PELATH

Motion prevailed.

CONFERENCE COMMITTEE REPORTS

Engrossed House Bill 1047–1

The conference committee report was reread. Representative Whetstone was excused from voting. Roll Call 647: yeas 87, nays 3. Report adopted.

Engrossed House Bill 1336–1

The conference committee report was reread. Roll Call 648: yeas 61, nays 31. Report adopted.

Engrossed House Bill 1552–1

The conference committee report was reread. Roll Call 649: yeas 84, nays 8. Report adopted.

Engrossed House Bill 1437–1

The conference committee report was reread. Roll Call 650: yeas 86, nays 3. Report adopted.

Representative D. Young was excused.

Engrossed House Bill 1573–1

The conference committee report was reread. Representatives Buell, Klinker, and Stine was excused from voting. Roll Call 651: yeas 90, nays 1. Report adopted.

Engrossed House Bill 1730–1

The conference committee report was reread. Roll Call 652: yeas 84, nays 3. Report adopted.

Engrossed Senate Bill 144–1

The conference committee report was reread. Roll Call 653:

yeas 91, nays 0. Report adopted.

[*Journal Clerk's note: Roll Call 654 was a machine test.*]

Representative Whetstone was excused.

Engrossed Senate Bill 482–1

The conference committee report was reread. Roll Call 655: yeas 56, nays 32. Report adopted.

Engrossed Senate Bill 523–1

The conference committee report was reread. Roll Call 656: yeas 91, nays 0. Report adopted.

Representative Whetstone, who had been excused, was present.

Engrossed Senate Bill 172–1

The conference committee report was reread. Roll Call 657: yeas 91, nays 1. Report adopted.

Representative D. Young, who had been excused, was present.

Engrossed Senate Bill 267–1

The conference committee report was reread. Roll Call 658: yeas 87, nays 2. Report adopted.

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT
EHB 1515–1; filed April 24, 2003, at 1:54 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1515 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

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

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 25-1-2-2.1, AS AMENDED BY P.L.162-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.1. Rather than being issued annually, the following permits, licenses, certificates of registration, or evidences of authority granted by a state agency must be issued for a period of two (2) years or for the period specified in the article under which the permit, license, certificate of registration, or evidence of authority is issued if the period specified in the article is longer than two (2) years:

(1) Certified public accountants, public accountants, and accounting practitioners.
(2) Architects and landscape architects.
(3) Dry cleaners.
(4) Professional engineers.
(5) Land surveyors.
(6) Real estate brokers.
(7) Real estate agents.
(8) Security dealers' licenses issued by the securities commissioner.
(9) Dental hygienists.
(10) Dentists.
(11) Veterinarians.
(12) Physicians.
(13) Chiropractors.
(14) Physical therapists.
(15) Optometrists.
(16) Pharmacists and assistants, drugstores or pharmacies.
(17) Motels and mobile home park licenses.
(18) Nurses.
(19) Podiatrists.
(20) Occupational therapists and occupational therapy assistants.
(21) Respiratory care practitioners.
(22) Social workers, marriage and family therapists, and mental health counselors.
(23) Real estate appraiser licenses and certificates issued by the real estate appraiser licensure and certification board.
(24) Wholesale legend drug distributors.
(25) Physician assistants.
(26) Dietitians.
(27) Hypnotists.
(28) Athlete agents.
(29) Manufactured home installers.
(30) Home inspectors.

SECTION 2. IC 25-1-2-6, AS AMENDED BY P.L.162-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) As used in this section, "license" includes all occupational and professional licenses, registrations, permits, and certificates issued under the Indiana Code, and "licensee" includes all occupational and professional licensees, registrants, permittees, and certificate holders regulated under the Indiana Code.

(b) This section applies to the following entities that regulate occupations or professions under the Indiana Code:

(1) Indiana board of accountancy.
(2) Indiana grain buyers and warehouse licensing agency.
(3) Indiana auctioneer commission.
(4) Board of registration for architects and landscape architects.
(5) State board of barber examiners.
(6) State board of cosmetology examiners.
(7) Medical licensing board of Indiana.
(8) Secretary of state.
(9) State board of dentistry.
(10) State board of funeral and cemetery service.
(11) Worker's compensation board of Indiana.
(12) Indiana state board of health facility administrators.
(13) Committee of hearing aid dealer examiners.
(14) Indiana state board of nursing.
(15) Indiana optometry board.
(16) Indiana board of pharmacy.
(17) Indiana plumbing commission.
(18) Board of podiatric medicine.
(19) Private detectives licensing board.
(20) State board of registration for professional engineers.
(21) Board of environmental health specialists.
(22) State psychology board.
(23) Indiana real estate commission.
(24) Speech-language pathology and audiology board.
(25) Department of natural resources.
(26) State boxing commission.
(27) Board of chiropractic examiners.
(28) Mining board.
(29) Indiana board of veterinary medical examiners.
(30) State department of health.
(31) Indiana physical therapy committee.
(32) Respiratory care committee.
(33) Occupational therapy committee.
(34) Social worker, marriage and family therapist, and mental health counselor board.
(35) Real estate appraiser licensure and certification board.
(36) State board of registration for land surveyors.
(37) Physician assistant committee.
(38) Indiana dietitians certification board.
(39) Indiana hypnotist committee.
(40) Attorney general (only for the regulation of athlete agents).
(41) Manufactured home installer licensing board.
(42) **Home inspectors licensing board.**
(43) Any other occupational or professional agency created after June 30, 1981.

(c) Notwithstanding any other law, the entities included in subsection (b) shall send a notice of the upcoming expiration of a

license to each licensee at least sixty (60) days prior to the expiration of the license. The notice must inform the licensee of the need to renew and the requirement of payment of the renewal fee. If this notice of expiration is not sent by the entity, the licensee is not subject to a sanction for failure to renew if, once notice is received from the entity, the license is renewed within forty-five (45) days of the receipt of the notice.

SECTION 3. IC 25-1-6-3, AS AMENDED BY P.L.162-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) There is established the Indiana professional licensing agency. The licensing agency shall perform all administrative functions, duties, and responsibilities assigned by law or rule to the executive director, secretary, or other statutory administrator of the following:

(1) Indiana board of accountancy (IC 25-2.1-2-1).
(2) Board of registration for architects and landscape architects (IC 25-4-1-2).
(3) Indiana auctioneer commission (IC 25-6.1-2-1).
(4) State board of barber examiners (IC 25-7-5-1).
(5) State boxing commission (IC 25-9-1).
(6) State board of cosmetology examiners (IC 25-8-3-1).
(7) State board of funeral and cemetery service (IC 25-15-9).
(8) State board of registration for professional engineers (IC 25-31-1-3).
(9) Indiana plumbing commission (IC 25-28.5-1-3).
(10) Indiana real estate commission (IC 25-34.1).
(11) Real estate appraiser licensure and certification board (IC 25-34.1-8-1).
(12) Private detectives licensing board (IC 25-30-1-5.1).
(13) State board of registration for land surveyors (IC 25-21.5-2-1).
(14) Manufactured home installer licensing board (IC 25-23.7).
(15) Home inspectors licensing board (IC 25-20.2-3-1).

(b) Except for appeals of denials of license renewals to the executive director authorized by section 5.5 of this chapter, nothing in this chapter may be construed to give the licensing agency policy making authority, which remains with each board.

SECTION 4. IC 25-1-7-1, AS AMENDED BY P.L.162-2002, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. As used in this chapter:

"Board" means the appropriate agency listed in the definition of regulated occupation in this section.

"Director" refers to the director of the division of consumer protection.

"Division" refers to the division of consumer protection, office of the attorney general.

"Licensee" means a person who is:

(1) licensed, certified, or registered by a board listed in this section; and
(2) the subject of a complaint filed with the division.

"Person" means an individual, a partnership, a limited liability company, or a corporation.

"Regulated occupation" means an occupation in which a person is licensed, certified, or registered by one (1) of the following:

(1) Indiana board of accountancy (IC 25-2.1-2-1).
(2) Board of registration for architects and landscape architects (IC 25-4-1-2).
(3) Indiana auctioneer commission (IC 25-6.1-2-1).
(4) State board of barber examiners (IC 25-7-5-1).
(5) State boxing commission (IC 25-9-1).
(6) Board of chiropractic examiners (IC 25-10-1).
(7) State board of cosmetology examiners (IC 25-8-3-1).
(8) State board of dentistry (IC 25-14-1).
(9) State board of funeral and cemetery service (IC 25-15-9).
(10) State board of registration for professional engineers (IC 25-31-1-3).
(11) Indiana state board of health facility administrators (IC 25-19-1).
(12) Medical licensing board of Indiana (IC 25-22.5-2).
(13) Indiana state board of nursing (IC 25-23-1).
(14) Indiana optometry board (IC 25-24).
(15) Indiana board of pharmacy (IC 25-26).
(16) Indiana plumbing commission (IC 25-28.5-1-3).
(17) Board of podiatric medicine (IC 25-29-2-1).
(18) Board of environmental health specialists (IC 25-32-1).
(19) State psychology board (IC 25-33).
(20) Speech-language pathology and audiology board (IC 25-35.6-2).
(21) Indiana real estate commission (IC 25-34.1-2).
(22) Indiana board of veterinary medical examiners (IC 15-5-1.1).
(23) Department of natural resources for purposes of licensing water well drillers under IC 25-39-3.
(24) Respiratory care committee (IC 25-34.5).
(25) Private detectives licensing board (IC 25-30-1-5.1).
(26) Occupational therapy committee (IC 25-23.5).
(27) Social worker, marriage and family therapist, and mental health counselor board (IC 25-23.6).
(28) Real estate appraiser licensure and certification board (IC 25-34.1-8).
(29) State board of registration for land surveyors (IC 25-21.5-2-1).
(30) Physician assistant committee (IC 25-27.5).
(31) Indiana athletic trainers board (IC 25-5.1-2-1).
(32) Indiana dietitians certification board (IC 25-14.5-2-1).
(33) Indiana hypnotist committee (IC 25-20.5-1-7).
(34) Indiana physical therapy committee (IC 25-27).
(35) Manufactured home installer licensing board (IC 25-23.7).
(36) **Home inspectors licensing board (IC 25-20.2-3-1).**
(37) Any other occupational or professional agency created after June 30, 1981.

SECTION 5. IC 25-1-8-1, AS AMENDED BY SEA 257-2003, SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. As used in this chapter, "board" means any of the following:

(1) Indiana board of accountancy (IC 25-2.1-2-1).
(2) Board of registration for architects and landscape architects (IC 25-4-1-2).
(3) Indiana auctioneer commission (IC 25-6.1-2-1).
(4) State board of barber examiners (IC 25-7-5-1).
(5) State boxing commission (IC 25-9-1).
(6) Board of chiropractic examiners (IC 25-10-1).
(7) State board of cosmetology examiners (IC 25-8-3-1).
(8) State board of dentistry (IC 25-14-1).
(9) State board of funeral and cemetery service (IC 25-15).
(10) State board of registration for professional engineers (IC 25-31-1-3).
(11) Indiana state board of health facility administrators (IC 25-19-1).
(12) Medical licensing board of Indiana (IC 25-22.5-2).
(13) Mining board (IC 22-10-1.5-2).
(14) Indiana state board of nursing (IC 25-23-1).
(15) Indiana optometry board (IC 25-24).
(16) Indiana board of pharmacy (IC 25-26).
(17) Indiana plumbing commission (IC 25-28.5-1-3).
(18) Board of environmental health specialists (IC 25-32-1).
(19) State psychology board (IC 25-33).
(20) Speech-language pathology and audiology board (IC 25-35.6-2).
(21) Indiana real estate commission (IC 25-34.1-2-1).
(22) Indiana board of veterinary medical examiners (IC 15-5-1.1-3).
(23) Department of insurance (IC 27-1).
(24) State police department (IC 10-11-2-4), for purposes of certifying polygraph examiners under IC 25-30-2.
(25) Department of natural resources for purposes of licensing water well drillers under IC 25-39-3.
(26) Private detectives licensing board (IC 25-30-1-5.1).
(27) Occupational therapy committee (IC 25-23.5-2-1).
(28) Social worker, marriage and family therapist, and mental health counselor board (IC 25-23.6-2-1).
(29) Real estate appraiser licensure and certification board (IC 25-34.1-8).
(30) State board of registration for land surveyors

(IC 25-21.5-2-1).
(31) Physician assistant committee (IC 25-27.5).
(32) Indiana athletic trainers board (IC 25-5.1-2-1).
(33) Board of podiatric medicine (IC 25-29-2-1).
(34) Indiana dietitians certification board (IC 25-14.5-2-1).
(35) Indiana physical therapy committee (IC 25-27).
(36) Manufactured home installer licensing board (IC 25-23.7).
(37) **Home inspectors licensing board (IC 25-20.2-3-1).**
(38) Any other occupational or professional agency created after June 30, 1981.

SECTION 6. IC 25-1-11-1, AS AMENDED BY P.L.162-2002, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. As used in this chapter, "board" means any of the following:
(1) Indiana board of accountancy (IC 25-2.1-2-1).
(2) Board of registration for architects and landscape architects (IC 25-4-1-2).
(3) Indiana auctioneer commission (IC 25-6.1-2).
(4) State board of barber examiners (IC 25-7-5-1).
(5) State boxing commission (IC 25-9-1).
(6) State board of cosmetology examiners (IC 25-8-3-1).
(7) State board of registration of land surveyors (IC 25-21.5-2-1).
(8) State board of funeral and cemetery service (IC 25-15-9).
(9) State board of registration for professional engineers (IC 25-31-1-3).
(10) Indiana plumbing commission (IC 25-28.5-1-3).
(11) Indiana real estate commission (IC 25-34.1-2-1).
(12) Real estate appraiser licensure certification board (IC 25-34.1-8).
(13) Private detectives licensing board (IC 25-30-1-5.1).
(14) Manufactured home installer licensing board (IC 25-23.7).
(15) Home inspectors licensing board (IC 25-20.2-3-1).

SECTION 7. IC 25-20.2 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

ARTICLE 20.2. HOME INSPECTIONS

Chapter 1. Application of Article

Sec. 1. (a) This article applies to an individual who conducts home inspections for compensation.

(b) This article does not apply to the following:
(1) An individual who is acting within the scope of the individual's employment as:
(A) a code enforcement official for the state or a political subdivision of the state; or
(B) a representative of a state or local housing agency or authority acting under the authority of the United States Department of Housing and Urban Development.
(2) An individual who is:
(A) either:
(i) registered as an architect under IC 25-4;
(ii) registered as a professional engineer under IC 25-31; or
(iii) licensed as a plumbing contractor or journeyman plumber under IC 25-28.5; and
(B) acting within the scope of the individual's registration or license.
(3) An individual who is licensed under IC 25-34.1 as a real estate broker, broker-salesperson, or salesperson and is acting within the scope of the individual's license.
(4) An individual who is licensed or certified under IC 25-34.1 as a real estate appraiser and is acting within the scope of the individual's license or certificate.
(5) An individual who holds a certificate of authority under IC 27-1-27-2 as a public adjuster and is acting within the scope of the individual's certificate.
(6) An individual who holds a permit, certificate, or license to:
(A) use and apply pesticides; or
(B) make diagnostic inspections and reports for wood destroying pests;
under IC 15-3-3.6 and is acting within the scope of the individual's certificate or license.
(7) An individual who holds a license from a political subdivision as a tradesperson or home builder and is acting within the scope of the individual's license.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Agency" refers to the Indiana professional licensing agency established by IC 25-1-6-3.

Sec. 3. "Applicant" means an individual who applies for a license as a home inspector.

Sec. 4. "Board" refers to the home inspectors licensing board established by IC 25-20.2-3-1.

Sec. 5. "Client" means an individual who hires or seeks to hire a licensed home inspector to obtain a home inspection or home inspection report.

Sec. 6. "Home inspection" means a visual analysis for the purpose of providing a professional opinion of the condition of a residential dwelling and the dwelling's carports or garages, any reasonably accessible installed components, and the operation of the dwelling's systems, including any controls normally operated by the owner of the dwelling, for the following components:
(1) Heating systems.
(2) Cooling systems.
(3) Electrical systems.
(4) Plumbing systems.
(5) Structural components.
(6) Foundations.
(7) Roof coverings.
(8) Exterior and interior components.
(9) Any other site aspects that affect the residential dwelling.
The term does not include a code compliance inspection.

Sec. 7. "Home inspection report" means a legibly written report prepared for compensation and issued after a home inspection. The report must include the following:
(1) A report on any system or component inspected that, in the professional opinion of the inspector, is significantly deficient or near the end of the system or component's service life. A report under this subdivision must include the reason why the system or component is significantly deficient or near the end of the system or component's service life, unless the reason is self-evident.
(2) The inspector's recommendation to remedy or monitor a deficiency reported under subdivision (1).
(3) A list of any systems or components that were designated for inspection in the standards of performance adopted by the board but that were not inspected.
(4) The reason a system or component listed under subdivision (3) was not inspected.
(5) A statement that the report does not address environmental hazards, including:
(A) lead-based paint;
(B) radon;
(C) asbestos;
(D) cockroaches;
(E) rodents;
(F) pesticides;
(G) treated lumber;
(H) mold;
(I) mercury;
(J) carbon monoxide; or
(K) other similar environmental hazards.
(6) A statement that the report does not address wood destroying insects and organisms.
(7) A statement that the report does not address subterranean systems or system components (operational or nonoperational), including:
(A) sewage disposal;
(B) water supply; or
(C) fuel storage or delivery.

Sec. 8. "Licensed home inspector" means an individual who

is licensed under this article as a home inspector.

Sec. 9. "Licensee" means a person who performs home inspections and who is licensed under this article as a home inspector.

Sec. 10. "Residential dwelling" means a structure consisting of at least one (1) but not more than five (5) units, each designed for occupancy by a single family, whether the units are occupied or unoccupied.

Chapter 3. Home Inspectors Licensing Board

Sec. 1. The home inspectors licensing board is established.

Sec. 2. (a) The board is composed of seven (7) members appointed by the governor as follows:

(1) Four (4) members, each of whom:
(A) is licensed in Indiana as a home inspector; and
(B) has been actively engaged in performing home inspections in Indiana for at least five (5) years immediately before the member's appointment to the board.

(2) One (1) member who:
(A) is a home builder; and
(B) has been actively engaged in home building in Indiana for at least five (5) years immediately before the member's appointment to the board.

(3) One (1) member who:
(A) is a licensed real estate salesperson under IC 25-34.1-3-3.1 or a licensed real estate broker under IC 25-34.1-3-4.1; and
(B) has been actively engaged in selling, trading, exchanging, optioning, leasing, renting, managing, listing, or appraising residential real estate in Indiana for at least five (5) years immediately before the member's appointment to the board.

(4) One (1) member who represents the public at large and is not associated with the home inspection, home building, or real estate business other than as a consumer.

(b) The members of the board must be residents of Indiana.

Sec. 3. (a) Each member of the board serves a term of three (3) years and until a successor is appointed and qualified.

(b) The governor may remove a board member at any time for incompetency, neglect of duty, or unprofessional conduct.

(c) If a vacancy occurs in the membership of the board, the governor shall appoint an individual to serve for the remainder of the unexpired term.

(d) A member may not serve on the board for more than six (6) consecutive years.

Sec. 4. (a) Each year the board shall elect a member as chairperson and a member as vice chairperson.

(b) The chairperson and the vice chairperson shall serve in their respective capacities for one (1) year and until a successor is elected.

(c) The chairperson and the vice chairperson may not serve in those capacities for more than two (2) consecutive years.

Sec. 5. (a) The chairperson shall preside at all meetings at which the chairperson is present. The vice chairperson shall preside at meetings in the absence of the chairperson and shall perform other duties as the chairperson directs.

(b) If the chairperson and vice chairperson are absent from a meeting of the board when a quorum exists, the members who are present may elect a presiding officer who shall serve as acting chairperson until the conclusion of the meeting or until the arrival of the chairperson or vice chairperson.

Sec. 6. (a) The board shall meet at least two (2) times each calendar year upon the call of the chairperson or the written request of a majority of the members of the board.

(b) The chairperson shall establish the date, time, and place for each meeting.

(c) A majority of the current members of the board constitutes a quorum.

(d) The affirmative vote of a majority of the members appointed to the board is necessary for the board to take official action.

Sec. 7. Each member of the board is entitled to the minimum salary per diem as provided by IC 4-10-11-2.1(b). Each member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

Sec. 8. The board shall:

(1) administer and enforce this article;
(2) adopt rules under IC 4-22-2 that are reasonably necessary or appropriate for the administration and enforcement of this article;
(3) prescribe the requirements for and the form of licenses, applications, and other documents that are required by this article;
(4) grant, deny, suspend, and revoke approval of examinations and courses of study;
(5) issue, deny, suspend, and revoke licenses in accordance with this article;
(6) in accordance with IC 25-1-7, investigate complaints concerning licensees or persons the board has reason to believe should be licensees, including complaints concerning failure to comply with this article or rules adopted under this article, and, when appropriate, take action under IC 25-20.2-8;
(7) bring actions in the name of the state in an appropriate circuit court in order to enforce compliance with this article or rules adopted under this article;
(8) establish fees in accordance with IC 25-1-8;
(9) inspect the records of a licensee in accordance with rules adopted by the board;
(10) conduct or designate a member or other representative to conduct public hearings on any matter for which a hearing is required under this article and exercise all powers granted under IC 4-21.5;
(11) adopt a seal containing the words "Indiana Home Inspectors Licensing Board" and, through the board's secretary, certify copies and authenticate all acts of the board;
(12) in accordance with IC 25-1-6:
(A) use counsel, consultants, and other persons;
(B) enter into contracts; and
(C) authorize expenditures;
that are reasonably necessary or appropriate to administer and enforce this article and rules adopted under this article;
(13) establish continuing education requirements for licensed home inspectors in accordance with IC 25-1-4;
(14) maintain the board's office, files, records, and property in the city of Indianapolis; and
(15) exercise all other powers specifically conferred on the board by this article.

Sec. 9. The board shall adopt rules under IC 4-22-2 establishing:

(1) standards for the competent performance of home inspections;
(2) a code of ethics for licensed home inspectors; and
(3) standards for home inspection reports prepared by licensed home inspectors.

Chapter 4. Licensing Agency; Board Secretary

Sec. 1. The agency shall provide the board with a competent person to serve as secretary of the board. The secretary is not a member of the board. The secretary, through the agency, shall:

(1) provide reasonable notice to board members of the date, time, and place of each meeting and provide notice in compliance with IC 5-14-1.5;
(2) keep a complete and accurate record of all:
(A) meetings;
(B) votes taken by the board; and
(C) other proceedings, transactions, communications, official acts, and records of the board;
(3) keep a current file of all licenses and licensees; and
(4) perform any other duties assigned by the board.

Sec. 2. The agency shall provide the board with clerical or other assistants, including investigators, necessary for the proper performance of the board's duties.

Sec. 3. The secretary shall receive and account for all money collected under this article and, at the end of each month, report to the auditor of state and deposit the money into the state general fund with the treasurer of state.

Sec. 4. All expenses incurred in the administration of this article shall be paid from the state general fund.

Chapter 5. Licensing Requirements

Sec. 1. Unless exempt under this article, a person may not conduct a home inspection for compensation without first obtaining a license as a home inspector.

Sec. 2. (a) An individual who applies for a license as a home inspector must do the following:

(1) Furnish evidence satisfactory to the board showing that the individual:

(A) is at least eighteen (18) years of age;

(B) has graduated from high school or earned an Indiana general educational development (GED) diploma; and

(C) has not been:

(i) convicted of an act that would constitute a ground for disciplinary sanction under IC 25-1-11;

(ii) convicted of a crime that has a direct bearing on the individual's ability to perform competently and fully as a licensee;

(iii) listed on a national or state registry of sex offenders; or

(iv) the subject of a disciplinary or enforcement action by another state or a local jurisdiction in connection with the performance of home inspections or the licensing or certification of home inspectors.

(2) Verify the information submitted on the application form.

(3) Complete a board approved training program or course of study involving the performance of home inspections and the preparation of home inspection reports and pass an examination prescribed or approved by the board.

(4) Submit to the board a certificate of insurance or other evidence of financial responsibility that is acceptable to the board and that:

(A) is issued by an insurance company or other legal entity authorized to transact business in Indiana;

(B) provides for general liability coverage of at least one hundred thousand dollars ($100,000);

(C) lists the state as an additional insured;

(D) states that cancellation and nonrenewal of the underlying policy or other evidence of financial responsibility is not effective until the board receives at least ten (10) days prior written notice of the cancellation or nonrenewal; and

(E) contains any other terms and conditions established by the board.

(5) Pay a licensing fee established by the board.

(b) An individual applying for a license as a home inspector must apply on a form prescribed and provided by the board.

Sec. 3. (a) The other licensing requirements of this chapter may be waived for an individual moving to Indiana from another jurisdiction, and the individual may be granted a license as a home inspector if the individual meets the following requirements:

(1) The other jurisdiction grants the same privileges to licensees of Indiana as Indiana grants to licensees of that other jurisdiction.

(2) The individual is licensed in the other jurisdiction.

(3) The licensing requirements of the other jurisdiction are substantially similar to the requirements of this article.

(4) The individual states that the individual has studied, is familiar with, and will abide by this article and the rules adopted by the board under this article.

(b) An individual seeking a license as a home inspector under this section must:

(1) apply on a form prescribed and provided by the board; and

(2) pay the applicable licensing fee established by the board.

Sec. 4. (a) A nonresident whom the board determines meets the requirements of this article and who files the written consent described in subsection (b) may be licensed as a home inspector in Indiana.

(b) A nonresident applicant shall file with the board a written consent stating that, if licensed:

(1) the applicant agrees to the commencement of any action arising out of the conduct of the applicant's business in Indiana in the county in which the events giving rise to the cause of action occurred;

(2) the applicant:

(A) agrees to provide to the board the name and address of an agent to receive service of process in Indiana; or

(B) consents to the board acting as the applicant's agent for the purpose of receiving service of process, if:

(i) an agent's name and address have not been filed with the board; or

(ii) the agent's name and address on file with the board are incorrect; and

(3) the applicant agrees that service of process in accordance with the Indiana Rules of Trial Procedure is proper service and subjects the applicant to the jurisdiction of Indiana courts.

Sec. 5. All licenses issued by the board remain the property of the board.

Sec. 6. A licensee shall notify the board immediately of any change of:

(1) name;

(2) name under which the licensee conducts business; or

(3) business address.

Chapter 6. License Renewal

Sec. 1. A license for a home inspector issued under this article expires two (2) years after the date of issuance.

Sec. 2. An individual who applies to renew a license as a licensed home inspector must:

(1) furnish evidence showing successful completion of the continuing education requirements of this chapter; and

(2) pay the renewal fee established by the board.

Sec. 3. (a) Renewal notices must be sent in accordance with IC 25-1-2-6(c).

(b) The renewal fee must be paid in accordance with IC 25-1-8-2(d).

Sec. 4. Before the end of each license period, each licensee must complete the continuing education required by the board. This requirement may not exceed twenty (20) hours per year.

Sec. 5. (a) The board shall adopt rules concerning the continuing education required for the renewal of a license under this chapter.

(b) The rules must do the following:

(1) Establish procedures for approving organizations that provide continuing education.

(2) Establish a fee for each hour of continuing education that is required after a license is issued or renewed.

(3) Prescribe the content, duration, and organization of continuing education courses that contribute to the general competence of home inspectors.

Chapter 7. Authority of Other Jurisdictions to License Home Inspectors

Sec. 1. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 2. An agency or political subdivision of the state (other than the board) may not:

(1) impose a registration or licensing requirement; or

(2) charge a license, an employment, or another fee;

on individuals licensed under this article for activities defined in this article.

Chapter 8. Disciplinary Proceedings; Enforcement

Sec. 1. The board may take disciplinary actions against or impose sanctions on a licensee under IC 25-1-11 for any of the following:

(1) Disclosing information concerning the results of a home inspection without the approval of a client or the client's legal representative, except under a court order.

(2) Accepting compensation for the same service from more than one (1) party without the consent of all interested parties.

(3) Accepting commissions or allowances, directly or indirectly, from other parties dealing with the licensee's client in connection with any repair work recommended in the licensee's home inspection report.

(4) Accepting compensation, directly or indirectly, from the licensee's client in connection with any repair work recommended in the licensee's home inspection report.

(5) Failing to disclose to a client information about a business interest of the licensee that may affect the client in connection with any work for which the licensee is responsible.

(6) Knowingly making a false or misleading representation about:

(A) the condition of a residential dwelling for which the licensee has performed or has contracted to perform a home inspection; or

(B) the extent of the services the licensee has performed or will perform.

(7) Committing a felony in the course of the practice of home inspection or committing any act constituting a violation of IC 25-20.2-5-2(a)(1)(C).

(8) Violating any provisions of this article or rules adopted by the board under this article.

(9) Making a false or misleading representation:

(A) in a license or renewal application form; or

(B) in information provided to the board.

(10) Failing to pay any fees or fines required by this article.

(11) Failing to continuously maintain the insurance or other evidence of financial responsibility required by this article.

(12) Communicating to the public false or misleading information about the type of license held by the licensee.

(13) Engaging in a course of lewd or immoral conduct in connection with the delivery of services to clients.

(14) Failing to complete the continuing education requirements established by the board.

Sec. 2. The procedures set forth in IC 4-21.5 govern the board's conduct of disciplinary hearings.

Sec. 3. The board may summarily suspend a license for up to ninety (90) days before a final adjudication or during an appeal of the board's determination if the board finds that the licensee would represent a clear and immediate danger to the public's health, safety, or property if allowed to perform home inspections. The summary suspension may be renewed upon a hearing before the board for up to ninety (90) days.

Sec. 4. (a) If the board determines that an individual not licensed under this article is engaged in or believed to be engaged in activities for which a license is required under this article, the board may issue an order to that individual requiring the individual to show cause why the individual should not be ordered to cease and desist from such activities. The show cause order must set forth a date, time, and place for a hearing at which the affected individual may appear and show cause why the individual should not be subject to licensing under this article.

(b) If the board, after a hearing, determines that the activities in which the individual is engaged are subject to licensing under this article, the board may issue a cease and desist order that identifies the individual and describes activities that are the subjects of the order.

(c) A cease and desist order issued under this section is enforceable in circuit courts.

Sec. 5. (a) An individual who:

(1) performs or offers to perform home inspections for compensation without being licensed as a home inspector and without being exempt from licensing under law;

(2) presents as the individual's own the license of another;

(3) intentionally gives false or materially misleading information to the board or to a board member in connection with licensing matters;

(4) impersonates another licensee;

(5) uses an expired, a suspended, a revoked, or an otherwise restricted license; or

(6) otherwise violates this article;

commits a Class B infraction.

(b) When entering a judgment for an infraction under this section, the court shall add to any penalty imposed the amount of any fee or other compensation earned by the individual in the commission of the infraction.

(c) Each transaction involving activities defined by this article constitutes a separate violation of this section.

Sec. 6. In all actions for the collection of a fee or other compensation for performing home inspections, the party seeking relief must allege and prove that, at the time the cause of action arose, the party seeking relief was not in violation of section 5 of this chapter.

Sec. 7. An individual who applies for a license or a licensee who is aggrieved by an order or a determination of the board is entitled to a judicial review under IC 4-21.5.

Sec. 8. The attorney general shall act as the legal adviser for the board and provide any legal assistance necessary to carry out this article.

Chapter 9. Liability and Immunity From Liability

Sec. 1. An action for damages, whether brought in contract or tort or on any other basis, based upon professional services that were rendered or that should have been rendered by a licensed home inspector may not be brought, commenced, or maintained unless the action is filed not more than two (2) years after the date the cause of action accrues.

Sec. 2. A licensed home inspector is not liable to a person for damages that arise from an act or omission relating to a home inspection if the person is not a party to the contract under which the home inspection is conducted.

Sec. 3. A person who in good faith recommends or endorses a licensed home inspector without compensation, remuneration, rebate, or other form of consideration is not liable for the actions of the licensed home inspector, including errors, omissions, the failure to perform contracted duties of a home inspection, or the failure to meet the standards of performance, report writing standards, or code of ethics established by the board.

SECTION 8. IC 25-34.1-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. The commission may:

(1) administer and enforce the provisions of this article;

(2) adopt rules in accordance with IC 4-22-2 and prescribe forms for licenses, applications, principal broker certifications, and other documents which are necessary or appropriate for the administration and enforcement of this article;

(3) issue, deny, suspend, and revoke licenses in accordance with this article, which licenses shall remain the property of the commission;

(4) subject to IC 25-1-7, investigate complaints concerning licensees or persons the commission has reason to believe should be licensees, including complaints respecting failure to comply with this article or the rules, and, when appropriate, take action pursuant to IC 25-34.1-6;

(5) bring actions, in the name of the state of Indiana, in an appropriate circuit court in order to enforce compliance with this article or the rules;

(6) inspect the records of a licensee in accordance with rules and standards prescribed by the commission;

(7) conduct, or designate a member or other representative to conduct, public hearings on any matter for which a hearing is required under this article and exercise all powers granted in IC 4-21.5;

(8) adopt a seal containing the words "Indiana Real Estate

Commission" and, through its executive director, certify copies and authenticate all acts of the commission;

(9) utilize counsel, consultants, and other persons who are necessary or appropriate to administer and enforce this article and the rules;

(10) enter into contracts and authorize expenditures that are necessary or appropriate, subject to IC 25-1-6, to administer and enforce this article and the rules;

(11) maintain the commission's office, files, records, and property in the city of Indianapolis;

(12) grant, deny, suspend, and revoke approval of examinations and courses of study as provided in IC 25-34.1-5;

(13) provide for the filing and approval of surety bonds which are required by IC 25-34.1-5; ~~and~~

(14) **adopt rules in accordance with IC 4-22-2 necessary for the administration of the investigative fund established under IC 25-34.1-8-7.5; and**

(15) exercise other specific powers conferred upon the commission by this article.

SECTION 9. IC 25-34.1-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. **(a) Except as provided in subsection (b),** all funds collected under this article shall, at the end of each month, be reported to the auditor of state and deposited with the treasurer of state for deposit in the general fund. All expenses incurred in the administration of this article shall be paid from the general fund.

(b) The commission shall establish a fee of not more than ten dollars ($10) for real estate brokers and salespersons to provide funds for the purpose of administering and enforcing the provisions of this article, including investigating and taking enforcement action against real estate fraud and real estate appraisal fraud. All funds collected under this subsection shall be deposited in the investigative fund established by IC 25-34.1-8-7.5.

SECTION 10. IC 25-34.1-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The commission shall establish fees under IC 25-1-8-2 to implement section 8 of this chapter.

(b) Notwithstanding IC 25-1-8-2, a fee ~~described in subsection (a)~~ **established under IC 25-1-8-2 to implement section 8 of this chapter** may not be less than fifty dollars ($50).

(c) The commission shall establish fees to provide funding for the investigative fund established by IC 25-34.1-8-7.5. The fees under this subsection may not be more than ten dollars ($10).

~~(c)~~ **(d)** The board may collect a fee required by federal law and transmit the fees to the federal government as required by federal law.

~~(d)~~ **(e)** A fee described in subsection (a) is in addition to any fees required by federal law.

SECTION 11. IC 25-34.1-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. The board shall submit recommendations to the commission concerning the following:

(1) Implementation and operation of the real estate appraiser licensure and certification program under IC 25-34.1-3-8.

(2) Rules governing real estate appraisers licensed and certified under IC 25-34.1-3-8.

(3) Establishing a fee in an amount necessary to fund the investigative fund established by section 7.5 of this chapter but not more than ten dollars ($10).

(4) Rules governing the administration of the investigative fund established by section 7.5 of this chapter.

SECTION 12. IC 25-34.1-8-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 7.5. (a) The investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against real estate fraud and real estate appraisal fraud. The fund shall be administered by the attorney general and the professional licensing agency.**

(b) The expenses of administering the fund shall be paid from the money in the fund. The fund consists of money from a fee imposed upon licensed or certified appraisers and real estate brokers and salespersons under IC 25-34.1-2-6 and IC 25-34.1-3-9.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund. If the total amount in the investigative fund exceeds five hundred thousand dollars ($500,000) at the end of a state fiscal year after payment of all claims and expenses, the amount that exceeds five hundred thousand dollars ($500,000) reverts to the state general fund.

(e) Money in the fund is continually appropriated for use by the attorney general and the professional licensing agency to administer and enforce the provisions of this article and to conduct investigations and take enforcement action against real estate and appraisal fraud under this article. The attorney general and the professional licensing agency shall divide the money in the fund equally.

SECTION 13. IC 25-34.1-8-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 15. The office of the attorney general and the professional licensing agency may use the investigative fund established by section 7.5 of this chapter to hire investigators and other employees to administer and enforce the provisions of this article and to investigate and prosecute real estate fraud and real estate appraisal fraud.**

SECTION 14. IC 34-30-2-98.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 98.8. IC 25-20.2-9-1 through IC 25-20.2-9-3 (Concerning actions of home inspectors).**

SECTION 15. [EFFECTIVE JULY 1, 2003] **(a) As used in this SECTION, "board" refers to the home inspectors licensing board established by IC 25-20.2-3-1, as added by this act.**

(b) An individual who performs home inspections after June 30, 2003, does not violate IC 25-20.2-5-1 or IC 25-20.2-8-5(a)(1), both as added by this act, and may not be disciplined or sanctioned for failure to have a home inspector's license if the person obtains a home inspector's license not later than July 1, 2005.

(c) Notwithstanding the requirements of IC 25-20.2-5-2, as added by this act, before July 1, 2005, the board may issue to an individual, upon the individual's application and payment of fees, a home inspector license if the individual:

(1) meets the requirements of IC 25-20.2-5-2(a), as added by this act, excluding IC 25-20.2-5-2(a)(3);

(2) has been engaged in the practice of home inspections for at least six (6) months; and

(3) documents the performance of at least twenty-five (25) home inspections performed for compensation in the previous twelve (12) months or at least one hundred (100) home inspections performed for compensation in the individual's career.

(d) The board may consider and accept the successful completion of equivalent licensing requirements in another state instead of one (1) or more of the requirements of IC 25-20.2-5-2(a), as added by this act.

(e) This SECTION expires January 1, 2006.

SECTION 16. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "board" refers to the home inspectors licensing board established by IC 25-20.2-3-1, as added by this act.**

(b) Before July 1, 2004, the governor shall make the initial appointments to the board. In making each initial appointment, the governor shall indicate the length of the term for which the individual is appointed.

(c) Notwithstanding IC 25-20.2-3-3, as added by this act, the initial terms of office for the seven (7) individuals appointed to the board by the governor are as follows:

(1) Three (3) members for a term of three (3) years.

(2) Two (2) members for a term of two (2) years.

(3) Two (2) members for a term of one (1) year.

(d) The initial terms begin July 1, 2004.

(e) An individual who does not meet all the requirements of IC 25-20.2-5-2(a), as added by this act, may be appointed to the board under IC 25-20.2-3-2(a)(1), as added by this act, if the individual:

(1) meets the requirements of IC 25-20.2-5-2(a)(1)(A) through IC 25-20.2-5-2(a)(1)(C), as added by this act;

(2) has been performing home inspections for at least six (6) months immediately before the person's appointment; and

(3) documents the performance of at least twenty-five (25) home inspections performed for compensation in the previous twelve (12) months or at least one hundred (100) home inspections performed for compensation in the individual's career.

(f) A board member appointed in accordance with subsection (e) must obtain the requisite license in accordance with IC 25-20.2-5-2, as added by this act, on or before July 1, 2005. If a board member does not obtain the requisite license on or before July 1, 2005, the board member shall be considered to have resigned from the board on July 1, 2005, and the governor shall fill the vacancy in accordance with IC 25-20.2-3-3(c), as added by this act. If a board member resigns under this SECTION for failure to obtain a home inspector's license, the acts of the board member and the board before July 1, 2005, are legal and valid.

(g) Not later than January 1, 2005, the board shall adopt rules under IC 4-22-2 to carry out this act.

(h) This SECTION expires June 30, 2007.

SECTION 17. **An emergency is declared for this act**.

(Reference is to EHB 1515 as reprinted April 2, 2003.)

WELCH	WEATHERWAX
BEHNING	LANANE
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1243–1; filed April 24, 2003, at 1:55 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1243 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 36-9-23-33, AS AMENDED BY P.L.171-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 33. (a) An officer described in subsection (b) may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (l), the officer charged with the collection of fees and penalties assessed under this chapter shall enforce their payment. As often as the officer determines is necessary in a calendar year, the officer shall prepare **either of the following:**

(1) A list of the delinquent fees and penalties that are enforceable under this section, which must include the **following:**

(A) **The** name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.

(B) **A** description of the premises, as shown by the records of the county auditor. ~~and~~

(C) **The** amount of the delinquent fees, together with the penalty. ~~or~~

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording ~~it~~ **the list or each individual instrument** in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars ($5), which is in addition to the recording fee charged under this subsection and under subsection (f), shall be added to each delinquent fee that is recorded.

(d) This subsection applies only to a county containing a consolidated city. Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the officer shall certify to the county auditor a list of the liens that remain unpaid according to a schedule agreed upon by the county treasurer and the officer for collection with the next cycle's property tax installment. The county and its officers and employees are not liable for any material error in the information on the list.

(e) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), ~~after September 1 of the preceding calendar year and before September 1 of the current calendar year,~~ the officer shall, ~~before December 15 of each year~~ **not later than ten (10) days after the list or each individual instrument is recorded under subsection (c),** certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

(f) The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(g) On receipt of the list under subsection ~~(d) or~~ (e), the county auditor of each county ~~(excluding a county having a consolidated city)~~ shall add a fifteen dollar ($15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due ~~no~~ **not** later than the due date of the next May installment of property taxes. ~~However,~~ In a county having a consolidated city, the delinquent fees, penalties, service charges, and recording fees are due not later than the due date of the next installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(h) After ~~the date of~~ certification ~~in each year,~~ **of liens under subsection (e),** the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor. This subsection does not apply to a county containing a consolidated city.

(i) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(j) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

(k) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 32(d) of this chapter, files a verified demand with the county auditor.

(l) A board may write off a fee or penalty under subsection (a) that is for less than forty dollars ($40).

(Reference is to EHB 1243 as reprinted April 10, 2003.)

STEVENSON	SKILLMAN
AYRES	DEMBOWSKI
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1407–1; filed April 24, 2003, at 2:23 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1407 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert:

SECTION 1. IC 4-1-8-1, AS AMENDED BY HEA 1935-2003, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) No individual may be compelled by any state agency, board, commission, department, bureau, or other entity of state government (referred to as "state agency" in this chapter) to provide the individual's Social Security number to the state agency against the individual's will, absent federal requirements to the contrary. However, the provisions of this chapter do not apply to the following:

(1) Department of state revenue.
(2) Department of workforce development.
(3) The programs administered by:
(A) the division of family and children;
(B) the division of mental health and addiction;
(C) the division of disability, aging, and rehabilitative services; and
(D) the office of Medicaid policy and planning;
of the office of the secretary of family and social services.
(4) Auditor of state.
(5) State personnel department.
(6) Secretary of state, with respect to the registration of broker-dealers, agents, and investment advisors.
(7) The legislative ethics commission, with respect to the registration of lobbyists.
(8) Indiana department of administration, with respect to bidders on contracts.
(9) Indiana department of transportation, with respect to bidders on contracts.
(10) Health professions bureau.
(11) Indiana professional licensing agency.
(12) Indiana department of insurance, with respect to licensing of insurance ~~agents.~~ **producers.**
(13) A pension fund administered by the board of trustees of the public employees' retirement fund.
(14) The Indiana state teachers' retirement fund.
(15) The state police benefit system.

(b) The bureau of motor vehicles may, notwithstanding this chapter, require the following:

(1) That an individual include the individual's Social Security number in an application for an official certificate of title for any vehicle required to be titled under IC 9-17.
(2) That an individual include the individual's Social Security number on an application for registration.
(3) That a corporation, limited liability company, firm, partnership, or other business entity include its federal tax identification number on an application for registration.

(c) The Indiana department of administration, the Indiana department of transportation, the health professions bureau, and the Indiana professional licensing agency may require an employer to provide its federal employer identification number.

(d) The department of correction may require a committed offender to provide the offender's Social Security number for purposes of matching data with the Social Security Administration to determine benefit eligibility.

(e) The Indiana gaming commission may, notwithstanding this chapter, require the following:

(1) That an individual include the individual's Social Security number in any application for a riverboat owner's license, supplier's license, or occupational license.
(2) That a sole proprietorship, a partnership, an association, a fiduciary, a corporation, a limited liability company, or any other business entity include its federal tax identification number on an application for a riverboat owner's license or supplier's license.

(f) Notwithstanding this chapter, the professional standards board established by IC 20-1-1.4-2 may require an individual who applies to the board for a license or an endorsement to provide the individual's Social Security number. The Social Security number may be used by the board only for conducting a background investigation, if the board is authorized by statute to conduct a background investigation of an individual for issuance of the license or endorsement.

SECTION 2. IC 9-25-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A person who receives a request for evidence of financial responsibility under section 3 of this chapter shall set forth in the certificate of compliance the following information concerning the form of financial responsibility that was in effect with respect to the motor vehicle on the date in question:

(1) If a motor vehicle liability policy was in effect, the following:
(A) The name and address of the insurer.
(B) The limits of coverage of the policy.
(C) The identification number applying to the policy.
(2) If a bond was in effect, the following:
(A) The name and address of the bond company or surety.
(B) The face amount of the bond.
(3) If self-insurance was in effect under IC 9-25-4-11, the following:
(A) The date on which the certificate of self-insurance was issued by the bureau.
(B) The name of the person to whom the certificate of self-insurance was issued.

(b) A person who requests information or verification of coverage to complete a certificate of compliance under subsection (a) from:

(1) an insurance company; or
(2) an insurance ~~agent;~~ **producer;**

is not required to give the company or the ~~agent~~ **producer** a reason for requesting the information unless the person has been involved in an accident.

SECTION 3. IC 12-17.6-4-5, AS ADDED BY P.L.273-1999, SECTION 177, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) It is a violation of IC 27-4-1-4 if an insurer, or an insurance ~~agent~~ **producer** or insurance broker compensated by the insurer, knowingly or intentionally refers an insured or the dependent of an insured to the program for health insurance coverage when the insured already receives health insurance coverage through an employer's health care plan that is underwritten by the insurer.

(b) The office shall coordinate with the children's health policy board under IC 4-23-27 to evaluate the need for mechanisms that minimize the incentive for an employer to eliminate or reduce health care coverage for an employee's dependents.

SECTION 4. IC 16-21-2-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 16. A hospital or an ambulatory outpatient surgical center that provides to a patient notice concerning a third party billing for a service provided to the patient shall ensure that the notice:**

(1) conspicuously states that the notice is not a bill;
(2) does not include a tear-off portion; and
(3) is not accompanied by a return mailing envelope.

SECTION 5. IC 16-25-3-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 11. A hospice that provides to a hospice program patient notice concerning a third party billing for a hospice service provided to the hospice program patient shall ensure that the notice:**

(1) conspicuously states that the notice is not a bill;
(2) does not include a tear-off portion; and
(3) is not accompanied by a return mailing envelope.

SECTION 6. IC 16-27-1-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 17. A home health agency**

that provides to a patient notice concerning a third party billing for a home health service provided to the patient shall ensure that the notice:

(1) conspicuously states that the notice is not a bill;

(2) does not include a tear-off portion; and

(3) is not accompanied by a return mailing envelope.

SECTION 7. IC 16-28-2-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 10. A health facility that provides to a patient notice concerning a third party billing for a service provided to the patient shall ensure that the notice:**

(1) conspicuously states that the notice is not a bill;

(2) does not include a tear-off portion; and

(3) is not accompanied by a return mailing envelope.

SECTION 8. IC 22-2-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. As used in this chapter:

"Commissioner" means the commissioner of labor or the commissioner's authorized representative.

"Department" means the department of labor.

"Occupation" means an industry, trade, business, or class of work in which employees are gainfully employed.

"Employer" means any individual, partnership, association, limited liability company, corporation, business trust, the state, or other governmental agency or political subdivision during any work week in which they have two (2) or more employees. However, it shall not include any employer who is subject to the minimum wage provisions of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209).

"Employee" means any person employed or permitted to work or perform any service for remuneration or under any contract of hire, written or oral, express or implied by an employer in any occupation, but shall not include any of the following:

(a) Persons less than sixteen (16) years of age.

(b) Persons engaged in an independently established trade, occupation, profession, or business who, in performing the services in question, are free from control or direction both under a contract of service and in fact.

(c) Persons performing services not in the course of the employing unit's trade or business.

(d) Persons employed on a commission basis.

(e) Persons employed by their own parent, spouse, or child.

(f) Members of any religious order performing any service for that order, any ordained, commissioned, or licensed minister, priest, rabbi, sexton, or Christian Science reader, and volunteers performing services for any religious or charitable organization.

(g) Persons performing services as student nurses in the employ of a hospital or nurses training school while enrolled and regularly attending classes in a nurses training school chartered or approved under law, or students performing services in the employ of persons licensed as both funeral directors and embalmers as a part of their requirements for apprenticeship to secure an embalmer's license or a funeral director's license from the state, or during their attendance at any schools required by law for securing an embalmer's or funeral director's license.

(h) Persons who have completed a four (4) year course in a medical school approved by law when employed as interns or resident physicians by any accredited hospital.

(i) Students performing services for any school, college, or university in which they are enrolled and are regularly attending classes.

(j) Persons with physical or mental disabilities performing services for nonprofit organizations organized primarily for the purpose of providing employment for persons with disabilities or for assisting in their therapy and rehabilitation.

(k) Persons employed as insurance ~~agents,~~ **producers,** insurance solicitors, and outside salesmen, if all their services are performed for remuneration solely by commission.

(l) Persons performing services for any camping, recreational, or guidance facilities operated by a charitable, religious, or educational nonprofit organization.

(m) Persons engaged in agricultural labor. The term shall include only services performed:

(1) on a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment if the major part of the service is performed on a farm;

(3) in connection with:

(A) the production or harvesting of maple sugar or maple syrup or any commodity defined as an agricultural commodity in the Agricultural Marketing Act, as amended (12 U.S.C. 1141j);

(B) the raising or harvesting of mushrooms;

(C) the hatching of poultry; or

(D) the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, to market, or to a carrier for transportation to market, any agricultural or horticultural commodity, but only if service is performed as an incident to ordinary farming operation or, in the case of fruits and vegetables, as an incident to the preparation of fruits and vegetables for market. However, this exception shall not apply to services performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market or processor for preparation or distribution for consumption.

As used in this subdivision, "farm" includes stock, dairy, poultry, fruit, furbearing animals, and truck farms, nurseries, orchards, or greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities.

(n) Those persons employed in executive, administrative, or professional occupations who have the authority to employ or discharge and who earn one hundred fifty dollars ($150) or more a week, and outside salesmen.

(o) Any person not employed for more than four (4) weeks in any four (4) consecutive three (3) month periods.

(p) Any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service under the federal Motor Carrier Act of 1935 (49 U.S.C. 304(3)) or any employee of a carrier subject to IC 8-2.1.

SECTION 9. IC 22-3-3-13, AS AMENDED BY P.L.202-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause, had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident becomes permanently and totally disabled by reason of the loss, or loss of use of, another such member or eye, the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under section 4(e) of this chapter, continue to receive compensation in a timely manner for a reasonable prospective period, the board shall send notice not later than October 1 in any year to:

(1) all insurance carriers and other entities insuring or providing

coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or the death of their employees under this article; and

(2) each employer carrying the employer's own risk;

stating that an assessment is necessary. After June 30, 1999, the board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or death of their employees under this article and every employer carrying the employer's own risk, shall, within thirty (30) days of the board sending notice under this subsection, pay to the worker's compensation board for the benefit of the fund an assessed amount that may not exceed two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the due date of such payment. For the purposes of calculating the assessment under this subsection, the board may consider payments for temporary total disability, temporary partial disability, permanent total impairment, permanent partial impairment, or death of an employee. The board may not consider payments for medical benefits in calculating an assessment under this subsection. If the amount to the credit of the second injury fund on or before October 1 of any year exceeds one million dollars ($1,000,000), the assessment allowed under this subsection shall not be assessed or collected during the ensuing year. But when on or before October 1 of any year the amount to the credit of the fund is less than one million dollars ($1,000,000), the payments of not more than two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment.

(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than September 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the contract under this subsection with money in the fund.

(e) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected, and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the computation of ~~agent~~ **insurance producer** commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(f) The sums shall be paid by the board to the treasurer of state, to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(g) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

(1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or

(2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by this section, as follows under subsection (h).

(h) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

(1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and

(2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(i) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

(j) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and

(2) not later than thirty (30) days after a change occurs;

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.

SECTION 10. IC 22-4-8-3, AS AMENDED BY P.L.1-2003, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. "Employment" shall not include the following:

(a) Except as provided in section 2(i) of this chapter, service performed prior to January 1, 1978, in the employ of this state, any other state, any town or city, or political subdivision, or any instrumentality of any of them, other than service performed in the employ of a municipally owned public utility as defined in this article; or service performed in the employ of the United States of America, or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this article, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation statute, all of the provisions of this article shall be applicable to such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. However, if this state shall not be certified for any year by the Secretary of Labor under Section 3304 of the Internal Revenue Code the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in IC 22-4-32-19 with respect to contribution erroneously paid or wrongfully assessed.

(b) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; however, the board is authorized to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in IC 22-4-19-2 for rules of the board, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this article, acquired rights to unemployment compensation under such Act of Congress, or who have, after having acquired potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this article.

(c) "Agricultural labor" as provided in section 2(l)(1) of this chapter shall include only services performed:

(i) on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(ii) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) in connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (½) of the commodity with respect to which such service is performed;

(B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subdivision (A), but only if such operators produce more than one-half (½) of the commodity with respect to which such service is performed;

(C) the provisions of subdivisions (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(v) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, "farm" includes stock, dairy, poultry, fruit, furbearing animals, and truck farms, nurseries, orchards, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.

(d) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in section 2(m) of this chapter.

(e) Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

(f) Service performed by an individual in the employ of child or spouse, and service performed by a child under the age of twenty-one (21) in the employ of a parent.

(g) Service not in the course of the employing unit's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for such service is fifty dollars ($50) or more and such service is performed by an individual who is regularly employed by such employing unit to perform such service. For the purposes of this subsection, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if:

(i) on each of some of twenty-four (24) days during such quarter such individual performs such service for some portion of the day; or

(ii) such individual was regularly employed (as determined under clause (I)) by such employing unit in the performance of such service during the preceding calendar quarter.

(h) Service performed by an individual in any calendar quarter in the employ of any organization exempt from income tax under Section 501 of the Internal Revenue Code (except those services included in sections 2(i) and 2(j) of this chapter if the remuneration for such service is less than fifty dollars ($50).

(i) Service performed in the employ of a hospital, if such service is performed by a patient of such hospital.

(j) Service performed in the employ of a school, college, or university if such service is performed:

(i) by a student who is enrolled and is regularly attending classes at such school, college, or university; or

(ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that:

(A) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university; and

(B) such employment will not be covered by any program of unemployment insurance.

(k) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(l) Service performed in the employ of a government foreign to the United States of America, including service as a consular or other officer or employee or a nondiplomatic representative.

(m) Service performed in the employ of an instrumentality wholly owned by a government foreign to that of the United States of America, if the service is of a character similar to that performed in foreign countries by employees of the United States of America or of an instrumentality thereof, and if the board finds that the Secretary of State of the United States has certified to the Secretary of the Treasury of the United States that the government, foreign to the United States, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in such country by employees of the United States and of instrumentalities thereof.

(n) Service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four (4) year course in a medical school chartered or approved pursuant to state law.

(o) Service performed by an individual as an insurance ~~agent~~ **producer** or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

(p)(A) Service performed by an individual under the age of eighteen (18) in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(B) Services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back.

(q) Service performed in the employ of an international organization.

(r) Except as provided in IC 22-4-7-1, services covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law in accordance with an arrangement pursuant to IC 22-4-22-1 through IC 22-4-22-5, during the effective period of such election.

(s) If the service performed during one-half (½) or more of any pay period by an individual for an employing unit constitutes employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half (½) of any pay period by such an individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection, "pay period" means a period of not more than thirty-one (31) consecutive days for which a payment of remuneration is ordinarily made to the individual by the employing unit. This subsection shall not be applicable with respect to services performed in a pay period by any such individual where any such service is excepted by subsection (b).

(t) Service performed by an inmate of a custodial or penal institution.

(u) Service performed as a precinct election officer (as defined in IC 3-5-2-40.1).

SECTION 11. IC 24-4.5-6-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 201. (1) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 apply to a person, including a supervised financial organization, engaged in Indiana in any of the following:

(a) Making consumer credit sales, consumer leases, or consumer loans.

(b) Taking assignments of rights against debtors that arise from sales, leases, or loans by a person having an office or a place of business in Indiana, and undertaking direct collection of payments from the debtors or enforcement of rights against the debtors.

(c) Placing consumer credit insurance, receiving commissions for consumer credit insurance, or acting as ~~an agent~~ **a limited line credit insurance producer** in the sale of consumer credit insurance.

(2) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller credit card issued by a person other than the seller if the issuer of the card has complied with the provisions of this section, IC 24-4.5-6-202, and IC 24-4.5-6-203.

(3) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 apply to a seller whose credit sales are made using credit cards that:

(a) are issued by a lender;

(b) are in the name of the seller; and

(c) can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

SECTION 12. IC 25-1-9-19 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 19. A practitioner that provides to a patient notice concerning a third party billing for a health care service provided to the patient shall ensure that the notice:**

(1) conspicuously states that the notice is not a bill;

(2) does not include a tear-off portion; and

(3) is not accompanied by a return mailing envelope.

SECTION 13. IC 27-1-2-3, AS AMENDED BY P.L.48-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. As used in this article, and unless a different meaning appears from the context: (a) "Insurance" means a contract of insurance or an agreement by which one (1) party, for a consideration, promises to pay money or its equivalent or to do an act valuable to the insured upon the destruction, loss or injury of something in which the other party has a pecuniary interest, or in consideration of a price paid, adequate to the risk, becomes security to the other against loss by certain specified risks; to grant indemnity or security against loss for a consideration.

(b) "Commissioner" means the "insurance commissioner" of this state.

(c) "Department" means "the department of insurance" of this state.

(d) The term "company" or "corporation" means an insurance company and includes all persons, partnerships, corporations, associations, orders or societies engaged in or proposing to engage in making any kind of insurance authorized by the laws of this state.

(e) The term "domestic company" or "domestic corporation" means an insurance company organized under the insurance laws of this state.

(f) The term "foreign company" or "foreign corporation" means an insurance company organized under the laws of any state of the United States other than this state or under the laws of any territory or insular possession of the United States or the District of Columbia.

(g) The term "alien company" or "alien corporation" means an insurance company organized under the laws of any country other than the United States or territory or insular possession thereof or of the District of Columbia.

(h) The term "person" includes individuals, corporations, associations, and partnerships; personal pronoun includes all genders; the singular includes the plural and the plural includes the singular.

(k) The term "insurance solicitor" means any natural person employed to aid an insurance ~~agent~~ **producer** in any manner in soliciting, negotiating, or effecting contracts of insurance or indemnity other than life.

(l) The term "principal office" means that office maintained by the corporation in this state, the address of which is required by the provisions of this article to be kept on file in the office of the department.

(m) The term "articles of incorporation" includes both the original articles of incorporation and any and all amendments thereto, except where the original articles of incorporation only are expressly referred to, and includes articles of merger, consolidation and reinsurance, and in case of corporations, heretofore organized, articles of reorganization filed in the office of the secretary of state, and all amendments thereto.

(n) The term "shareholder" means one who is a holder of record of shares of stock in a corporation, unless the context otherwise requires.

(o) The term "policyholder" means one who is a holder of a contract of insurance in an insurance company.

(p) The term "member" means one who holds a contract of insurance or is insured in an insurance company other than a stock corporation.

(q) The term "capital stock" means the aggregate amount of the par value of all shares of capital stock.

(r) The term "capital" means the aggregate amount paid in on the shares of capital stock of a corporation issued and outstanding.

(s) The term "life insurance company" means any company making one or more of the kinds of insurance set out and defined in class 1(a) of IC 27-1-5-1.

(t) The term "casualty insurance company" means any company making the kind or kinds of insurance set out and defined in class 2 of IC 27-1-5-1.

(u) The term "fire and marine insurance company" means any company making the kind or kinds of insurance set out and defined in class 3 of IC 27-1-5-1.

(v) The term "certificate of authority" means an instrument in writing issued by the department to an insurer, which sets out the authority of such insurer to engage in the business of insurance or activities connected therewith.

(w) The term "premium" means money or any other thing of value paid or given in consideration to an insurer, ~~agent,~~ **insurance producer,** or solicitor on account of or in connection with a contract of insurance and shall include as a part but not in limitation of the above, policy fees, admission fees, membership fees and regular or special assessments and payments made on account of annuities.

(x) The term "insurer" means a company, firm, partnership, association, order, society or system making any kind or kinds of insurance and shall include associations operating as Lloyds, reciprocal or inter-insurers, or individual underwriters.

(y) The terms "assessment plan" and "assessment insurance" mean the mode or plan and the business of a corporation, association or society organized and limited to the making of insurance on the lives of persons and against disability from disease, bodily injury or death by accident, and which provides for the payment of policy claims, accumulation of reserve or emergency funds, and the expenses of the management and prosecution of its business by payments to be made either at stated periods named in the contract or upon assessments,

and wherein the insured's liability to contribute is not limited to a fixed sum.

(z) "Agency billed" refers to a system in which an insured pays a premium directly to an insurance agency.

SECTION 14. IC 27-1-6-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. The commissioner may, personally or through ~~his~~ **the commissioner's** deputies and assistants, examine into the affairs of any such proposed company and inspect its books and papers, and may summon and examine under oath any officer or ~~agent~~ **insurance producer** or any person who is or has been connected with such company, and if ~~he~~ **the commissioner** finds the company is violating the law, or if the company shall not be qualified for a certificate of authority within one (1) year from date of its permit, ~~he~~ **the commissioner** may revoke its permit; and if ~~he~~ **the commissioner** finds an ~~agent~~ **insurance producer** of such company has violated the law, ~~he~~ **the commissioner** may revoke ~~his~~ **the insurance producer's** authority, and ~~he~~ **the commissioner** may for ~~such agent's~~ **the insurance producer's** violation revoke the company's permit. Any revocation shall be after notice and hearing. The commissioner may renew any company's permit or agent's authority which ~~he~~ **the commissioner** has revoked.

SECTION 15. IC 27-1-6.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. When any insurer admitted to transact business in this state transfers its domicile to this or any other state, its certificate of authority, ~~agents'~~ **insurance producers'** appointments and licenses, policy forms, rates, authorizations, and other filings and approvals which existed at the time of the transfer, remain in effect after the transfer of domicile occurs.

SECTION 16. IC 27-1-12-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 43. (a) As used in this section, "life insurance policy" means:

(1) an individual life insurance policy other than a credit life insurance policy; or

(2) an individual policy of variable life insurance;

that is sold after June 30, 1994.

(b) No life insurance policy may be issued in Indiana or issued for delivery in Indiana unless it contains a provision allowing the policyholder to return the policy to:

(1) the insurer;

(2) the ~~agent~~ **insurance producer** through whom the policy was purchased; or

(3) any agent of the insurer;

within ten (10) days after the policy is received by the policyholder for a full refund of all money paid by the policyholder.

(c) Each life insurance policy must have prominently printed on its first page a notice setting forth in substance the provisions of subsection (b).

SECTION 17. IC 27-1-12.6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. Each annuity contract shall contain a provision giving the purchaser an unrestricted right to return the contract to the company or to the ~~agent~~ **insurance producer** through whom it was purchased, on or before the tenth day after it is received by the purchaser, such return entitling the purchaser to a return of the value of a variable annuity account or the monies paid by the purchaser to a fixed account in connection with the issuance of the contract. This provision shall be conspicuously placed on the face of the contract. This provision does not apply to contracts issued in connection with a pension, annuity, or profit-sharing plan qualified or exempt under Sections 401, 403, 404, or 501 of the Internal Revenue Code, if participation in the plan is a condition of employment.

SECTION 18. IC 27-1-12.7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 12.7. Funding Agreements

Sec. 1. As used in this chapter, "funding agreement" means an agreement that:

(1) is issued by a life insurance company to a holder;

(2) authorizes a life insurance company to accept funds; and

(3) provides for an accumulation of the funds for the purpose of making one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies of the holder of the funding agreement.

Sec. 2. As used in this chapter, "holder" means a person described in section 5 of this chapter that is issued a funding agreement by a life insurance company.

Sec. 3. As used in this chapter, "life insurance company" means a life insurance company authorized to issue a product described in Class 1(c) of IC 27-1-5-1.

Sec. 4. As used in this chapter, "optional modes of settlement" means the manner in which the funding agreement is structured to repay interest and principal to the holder.

Sec. 5. A life insurance company may issue or issue for delivery in Indiana a funding agreement to the following:

(1) A person authorized by a state or foreign country to engage in an insurance business or a subsidiary of an insurance business.

(2) A person who uses the funding agreement for the purpose of funding:

(A) benefits under an employee benefit plan (as defined in the federal Employee Retirement Security Act of 1974, 29 U.S.C. 1001 et seq.);

(B) the activities of a nonprofit organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code or a similar nonprofit organization domiciled in a foreign country;

(C) a program of:

(i) the United States government;

(ii) a state government;

(iii) a political subdivision;

(iv) a foreign country; or

(v) an agency or instrumentality of the United States or a state government, a political subdivision, or a foreign country;

(D) an agreement providing for periodic payments in satisfaction of a claim;

(E) a program of an institution with assets exceeding twenty-five million dollars ($25,000,000);

(F) a program in which a business entity, including a trust:

(i) purchases and holds funding agreements; and

(ii) issues securities by using the funding agreement to finance or collateralize the securities; or

(G) any program or activity substantially similar to a program or an activity described in clauses (A) through (F) that is first authorized by the commissioner.

Sec. 6. The issuance of a funding agreement:

(1) constitutes an activity necessary, convenient, or expedient to the business of a life insurance company under IC 27-1-7-2;

(2) is not insurance under IC 27-1-5-1;

(3) is not a security (as defined in IC 23-2-1-1(k)); and

(4) does not constitute gross premium for taxation purposes under IC 27-1-18-2.

Sec. 7. An amount may not be guaranteed or credited under a funding agreement except:

(1) upon reasonable assumptions as to investment income and expenses; and

(2) on a basis equitable to all holders of funding agreements of a given class.

Sec. 8. An amount paid to a life insurance company and proceeds applied to amounts paid under optional modes of settlement under a funding agreement may be allocated by the insurer to one (1) or more segregated asset accounts in the manner described in Class 1(c) of IC 27-1-5-1.

Sec. 9. The commissioner may establish reasonable conditions or adopt rules under IC 4-22-2 regarding:

(1) reserve amounts to be maintained by a life insurance company for funding agreements;

(2) accounting and reporting of funds credited under

funding agreements; and

(3) other matters regarding funding agreements the commissioner considers necessary, proper, and advisable.

Sec. 10. Notwithstanding any other provision of law:

(1) the commissioner has the sole authority to regulate the issuance and sale of funding agreements;

(2) a funding agreement is not considered a covered policy under IC 27-8-8-1(a); and

(3) a claim for payments under a funding agreement must be treated as a loss claim described in Class 2 of IC 27-9-3-40.

SECTION 19. IC 27-1-13-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. At all such meetings of the governing body held at Indianapolis, Indiana, as set out in section 10 of this chapter, any aggrieved policyholder, ~~agent,~~ **insurance producer,** company, representative, or any other aggrieved person may appear before such meeting to have complaints heard in full, and it shall be the duty of such rating bureau to rectify such conditions as are justly complained of in such manner as is reasonably possible.

SECTION 20. IC 27-1-20-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 30. (a) No company acting through its officers or members, attorney-in-fact, or by any other party, no officer of a company acting on ~~his~~ **the officer's** own behalf and no insurance ~~agent,~~ **producer,** broker, or solicitor, personally or by any other party, shall offer, promise, allow, give, set off or pay, directly or indirectly, any rebate of or part of the premium payable on a policy, or any ~~agent's~~ **insurance producer's** commission thereon, or earnings, profits, dividends or other benefits founded, arising, accruing, or to accrue thereon or therefrom, or any special advantage in date of policy or age of issue, or any paid employment or contract for services of any kind, or any other valuable consideration or inducement, to or for insurance on any risk in this state, now or hereafter to be written, or for or upon any renewal of any such insurance, which is not specified in the policy contract of insurance, or offer, promise, give, option, sell or purchase any stocks, bonds, securities, or property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever as inducement to insurance or in connection therewith, or any renewal thereof, which is not specified in the policy. Nothing in this section shall prevent a company which transacts industrial life insurance on a weekly payment plan from returning to policyholders who have made a premium payment for a period of at least one (1) year directly to the company at its home or district office a percentage of premium which the company would otherwise have paid for the weekly collection of such premium, nor shall this section be construed to prevent the taking of a bona fide obligation, with legal interest, in payment of any premium.

(b) No insured person or party or applicant for insurance shall directly or indirectly, receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, or all or any part of any ~~agent's~~ **insurance producer's** or broker's commission thereon, or any favor or advantage, or share in any benefit to accrue under any policy of insurance, or any valuable consideration or inducement, other than such as are specified in the policy.

SECTION 21. IC 27-1-22-2.5, AS AMENDED BY P.L.132-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.5. (a) As used in this chapter, "exempt commercial policyholder" means an entity that:

(1) makes written certification to the entity's insurer on a form prescribed by the department that the entity is an exempt commercial policyholder;

(2) has purchased the policy of insurance through an insurance ~~agent~~ **producer** licensed under IC 27-1-15.6 or IC 27-1-15.8; and

(3) meets any three (3) of the following criteria:

(A) Has a net worth of more than twenty-five million dollars ($25,000,000) at the time the policy of insurance is issued.

(B) Has a net revenue or sales of more than fifty million dollars ($50,000,000) in the preceding fiscal year.

(C) Has more than twenty-five (25) employees per individual company or fifty (50) employees per holding company aggregate at the time the policy of insurance is issued.

(D) Has aggregate annual commercial insurance premiums, excluding any worker's compensation and professional liability insurance premiums, of more than seventy-five thousand dollars ($75,000) in the preceding fiscal year.

(E) Is a nonprofit or a public entity with an annual budget of at least twenty-five million dollars ($25,000,000) or assets of at least twenty-five million dollars ($25,000,000) in the preceding fiscal year.

(F) Procures commercial insurance with the services of a risk manager.

An entity meets the written certification requirement under subdivision (1) if the entity provides a copy of a certification previously submitted under subdivision (1) and if there has been no significant material change in the entity's status.

(b) As used in this chapter, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager may be:

(1) a full-time employee of an exempt commercial policyholder who is qualified through education and experience or training and experience; or

(2) a person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder.

SECTION 22. IC 27-1-22-4, AS AMENDED BY P.L.268-1999, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating schedule, every rating plan, and every modification of any of the foregoing which it proposes to use.

(b) The following types of insurance are exempt from the requirements of subsections (a) and (j):

(1) Inland marine risks, which by general custom of the business are not written according to manual rates or rating plans.

(2) Insurance, other than workers compensation insurance or professional liability insurance, issued to exempt commercial policyholders.

(c) Every such filing shall indicate the character and extent of the coverage contemplated and shall be accompanied by the information upon which the filer supports such filing.

(d) The information furnished in support of a filing may include:

(1) the experience and judgment of the insurer or rating organization making the filing;

(2) its interpretation of any statistical data it relies upon;

(3) the experience of other insurers or rating organizations; or

(4) any other relevant factors.

The commissioner shall have the right to request any additional relevant information. A filing and any supporting information shall be open to public inspection as soon as stamped "filed" within a reasonable time after receipt by the commissioner, and copies may be obtained by any person on request and upon payment of a reasonable charge therefor.

(e) Filings shall become effective upon the date of filing by delivery or upon date of mailing by registered mail to the commissioner, or on a later date specified in the filing.

(f) Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(g) Any insurer may satisfy its obligation to make any such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the commissioner to accept such filings on its behalf, provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization or as requiring any member or subscriber to authorize the commissioner to accept such filings on its behalf.

(h) Every insurer which is a member of or a subscriber to a rating organization shall be deemed to have authorized the commissioner to accept on its behalf all filings made by the rating organization which are within the scope of its membership or subscribership, provided:

(1) that any subscriber may withdraw or terminate such authorization, either generally or for individual filings, by written notice to the commissioner and to the rating organization and may then make its own independent filings for any kinds of insurance, or subdivisions, or classes of risks, or parts or combinations of any of the foregoing, with respect to which it has withdrawn or terminated such authorization, or may request the rating organization, within its discretion, to make any such filing on an agency basis solely on behalf of the requesting subscriber; and

(2) that any member may proceed in the same manner as a subscriber unless the rating organization shall have adopted a rule, with the approval of the commissioner:

(A) requiring a member, before making an independent filing, first to request the rating organization to make such filing on its behalf and requiring the rating organization, within thirty (30) days after receipt of such request, either:

(i) to make such filing as a rating organization filing;

(ii) to make such filing on an agency basis solely on behalf of the requesting member; or

(iii) to decline the request of such member; and

(B) excluding from membership any insurer which elects to make any filing wholly independently of the rating organization.

(i) Under such rules as ~~he~~ **the commissioner** shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing as to any kinds of insurance, or subdivision, or classes of risk, or parts or combinations of any of the foregoing, the rates for which can not practicably be filed before they are used. Such orders and rules shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as ~~he~~ **the commissioner** may deem advisable to ascertain whether any rates affected by such order are excessive, inadequate, or unfairly discriminatory.

(j) Upon the written application of the insured, stating ~~his~~ **the insured's** reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(k) An insurer shall not make or issue a policy or contract except in accordance with filings which are in effect for that insurer or in accordance with the provisions of this chapter. Subject to the provisions of section 6 of this chapter, any rates, rating plans, rules, classifications, or systems in effect on May 31, 1967, shall be continued in effect until withdrawn by the insurer or rating organization which filed them.

(l) The commissioner shall have the right to make an investigation and to examine the pertinent files and records of any insurer, insurance ~~agent,~~ **producer,** or insured in order to ascertain compliance with any filing for rate or coverage which is in effect. ~~He~~ **The commissioner** shall have the right to set up procedures necessary to eliminate noncompliance, whether on an individual policy, or because of a system of applying charges or discounts which results in failure to comply with such filing.

(m) The department may adopt rules to:

(1) implement the exemption under subsection (b);

(2) impose disclosure requirements the commissioner determines are necessary to adequately protect exempt commercial policyholders; and

(3) establish the form of the report required by subsection (n).

(n) Each insurer who issues insurance to an exempt commercial policyholder shall file an annual report with the department by February 1 of each year. The annual report may not disclose the identity of an exempt commercial policyholder and must include only the following information regarding each exempt commercial policyholder:

(1) The account number, policy number, or other number used by the insurer to identify the insured.

(2) The amount of aggregate annual commercial premium.

(3) The inception date and expiration date of commercial insurance coverage provided by the insurer.

(4) The criteria in section 2.5(a)(3) of this chapter used to establish the entity as an exempt commercial policyholder.

(o) The annual report filed under subsection (n) must be accompanied by the fee prescribed by IC 27-1-3-15(e). For purposes of calculating the required fee, each policy purchased by an exempt commercial policyholder shall be considered a product filing under IC 27-1-3-15(e).

SECTION 23. IC 27-1-22-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Upon ~~his own~~ **the commissioner's** motion, or upon written request by any insured affected thereby or by any licensed insurance ~~agent~~ **producer** or broker, if such request is made in good faith and states reasonable grounds, the commissioner, if ~~he~~ **the commissioner** shall have reason to believe that any filing is not in compliance with the applicable provisions of section 3 of this chapter, or in the case of an alleged violation of section 6 of the chapter if ~~he~~ **the commissioner** finds on the basis of the information on file with the department that there has been a prima facie showing of a violation of that section, shall hold a hearing upon not less than ten (10) days written notice to the rating organization or insurer which made the filing in issue, specifying the items and matters to be considered and stating in what manner and to what extent noncompliance is alleged to exist. No other matter or subject shall be considered at such hearing. Only the rating organization or insurer which made such filing and the commissioner may be parties to any hearing or to any judicial appeal resulting therefrom. Within a reasonable time, the commissioner shall notify every person making request as to ~~his~~ **the** decision as to the validity of the request and subsequently shall notify every such person of any action which may thereafter be taken with reference to such request.

(b) If, after such hearing, the commissioner finds, based upon a preponderance of the evidence adduced at such hearing and made a part of the record thereof, that such filing is not in compliance with the provisions of section 3 of this chapter, ~~he~~ **the commissioner** shall immediately issue a written order to the parties specifying in detail in what respects and upon what evidence such noncompliance exists and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Said order shall not affect any contract policy made or issued prior to the expiration of the period set forth in said order.

(c) If after such hearing the commissioner finds that such filing does not violate the provisions of section 3 of this chapter, ~~he~~ **the commissioner** shall immediately issue a written order to the parties dismissing the proceedings.

(d) The finding and order of the commissioner shall be made within ninety (90) days after the close of such hearing or within such reasonable time extensions as may be fixed by the commissioner.

(e) No manual of classifications, rule, rate, rating schedule, rating plan, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, which has been filed pursuant to section 4 of this chapter shall be disapproved if the rates produced thereby meet the requirements of section 3 of this chapter.

(f) All actions of the commissioner under this chapter and all appeals from ~~his~~ **the commissioner's** action shall be governed by IC 4-21.5, except where a different specific provision is made in this chapter.

SECTION 24. IC 27-1-22-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) When a filing or deviation involving a rate adjustment depends upon a change in the relationship between the proposed rates and the anticipated production expense portion thereof from the relationship anticipated under any rates previously filed and currently in effect for the company or rating organization involved, such filing or deviation shall be subject to the provisions of subsection (b).

(b) Each filing or deviation subject to this section shall be on file for a waiting period of twenty (20) days before it becomes effective. If within such waiting period or after hearing as provided in this section, the commissioner finds that the filing or deviation does not meet the requirements of this chapter, ~~he~~ **the commissioner** shall send to the insurer or rating organization which made the filing or to the insurer which filed the deviation written notice of disapproval specifying therein in what respects the filing or deviation fails to meet the requirements of this chapter and stating that the same shall

not become effective. Such filing or deviation shall be deemed to meet the requirements of this act unless disapproved:

(1) within such waiting period; or

(2) if a hearing has been called and written notice thereof given by the commissioner during such waiting period, then within ten (10) days after the date of commencement of such hearing.

Upon ~~his~~ **the commissioner's** own motion, or upon timely written request by any ~~agent~~ **insurance producer** or broker of the company or companies to which such filing or deviation is applicable, if such request is in good faith and states reasonable grounds, the commissioner may at any time within the waiting period call a hearing upon not less than ten (10) nor more than fifteen (15) days written notice to the company or rating organization making the filing or to the company filing the deviation. Within ten (10) days after the commencement of such hearing, the commissioner shall in writing either approve such filing or deviation or shall disapprove the same as provided in this section.

SECTION 25. IC 27-1-22-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. No insurer, broker, or ~~agent~~ **insurance producer** shall knowingly charge, demand, or receive a premium for any policy of insurance except in accordance with the provisions of this chapter. No insurer or employee thereof, and no broker or ~~agent~~ **insurance producer** shall pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in applicable filings. No insured named in any policy of insurance shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of, nor permitting the regulation of the payment of, commissions or other compensation to duly licensed ~~agents~~ **insurance producers** and brokers, nor as prohibiting, or permitting the regulation of, any insurer from allowing or returning to its participating policyholders or members, dividends or savings.

SECTION 26. IC 27-1-22-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. Nothing in this chapter abridges or restricts the freedom of contract of insurers, ~~agents,~~ **insurance producers,** or brokers with reference to the amount of commission to be paid to ~~agents~~ **insurance producers** or brokers by insurers, and such payments are expressly authorized.

SECTION 27. IC 27-1-25-1, AS AMENDED BY P.L.132-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. As used in this chapter:

(a) "Administrator", except as provided in section 7.5 of this chapter, means a person who collects charges or premiums from, or who adjusts or settles claims on, residents of Indiana in connection with life or health coverage or annuities, whether provided for by an insurer or a self-funded plan. The term "administrator" does not include the following persons:

(1) An employer for its employees or for the employees of a subsidiary or affiliated corporation of the employer.

(2) A union for its members.

(3) An insurer, including:

(A) an insurer operating a health maintenance organization or a limited service health maintenance organization; and

(B) the sales representative of an insurer operating a health maintenance organization or a limited service health maintenance organization when that sales representative is licensed in Indiana and when it is engaged in the performance of its duties as the sales representative.

(4) A life or health insurance ~~agent~~ **producer** licensed under IC 27-1-15.6 whose activities are limited exclusively to the sale of insurance.

(5) A creditor for its debtors regarding insurance covering a debt between them.

(6) A trust established under 29 U.S.C. 186 and the trustees, agents, and employees acting pursuant to that trust.

(7) A trust that is exempt from taxation under Section 501(a) of the Internal Revenue Code and:

(A) the trustees and employees acting pursuant to that trust; or

(B) a custodian and the agents and employees of the custodian acting pursuant to a custodian account that meets the requirements of Section 401(f) of the Internal Revenue Code.

(8) A financial institution that is subject to supervision or examination by federal or state banking authorities.

(9) A credit card issuing company that advances for and collects premiums or charges from its credit cardholders as long as that company does not adjust or settle claims.

(10) An individual who adjusts or settles claims in the normal course of ~~his~~ **the individual's** practice or employment as an attorney at law, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.

(11) A health maintenance organization that has a certificate of authority issued under IC 27-13.

(12) A limited service health maintenance organization that has a certificate of authority issued under IC 27-13.

(b) "Certificate of registration" refers to the certificate required by section 11 of this chapter.

(c) "Commissioner" refers to the commissioner of insurance.

(d) "Financial institution" means a bank, savings association, credit union, or any other institution regulated under IC 28 or federal law.

(e) "Insurer" means a person who obtains a certificate of authority under IC 27-1-3-20.

(f) "Person" means an individual, a corporation, a partnership, a limited liability company, or an unincorporated association.

(g) "Self-funded plan" means a plan for providing benefits for life, health, or annuity coverage by a person who is not an insurer.

SECTION 28. IC 27-1-27-1, AS AMENDED BY HEA 1692-2003, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The term "public adjuster" shall include every individual or corporation who, or which, for compensation or reward, renders advice or assistance to the insured in the adjustment of a claim or claims for loss or damages under any policy of insurance covering real or personal property and any person or corporation who, or which, advertises, solicits business, or holds itself out to the public as an adjuster of such claims. However, no public adjuster shall:

(1) act in any manner in relation to claims for personal injury or automobile property damage; or

(2) bind the insured in the settlement of claims.

(b) This chapter does not apply to, and the following are not included in the term "public adjuster":

(1) An attorney at law admitted to practice in the state of Indiana who adjusts insurance losses in the course of the practice of ~~his~~ **the attorney's** profession.

(2) An officer, regular salaried employee, or other representative of an insurer or of an attorney in fact of any reciprocal insurer of Lloyd's underwriter licensed to do business in Indiana who adjusts losses arising under ~~his~~ **an** employer's or principal's own policies.

(3) An adjustment bureau or association owned and maintained by insurers to adjust or investigate losses of such insurers, or any regular salaried employee who devotes substantially all ~~of his~~ **the employee's** time to the business of such bureau or association.

(4) Any licensed ~~agent~~ **insurance producer** or an authorized insurer or officer or employee of the same who adjusts losses for such insurer, and any ~~agent~~ **insurance producer** or representative of a farm mutual insurance company operating under the farm mutual insurance laws of this state on behalf of an insurer.

(5) Any independent adjuster representing an insurer.

SECTION 29. IC 27-1-27-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Each applicant

for a certificate of authority as a public adjuster shall file with the commissioner of insurance ~~his, or its,~~ **an** application therefor on forms furnished by the commissioner of insurance, which application shall set forth:

(1) the name and address of the applicant, and if the applicant be a corporation, the name and address of each of its officers and directors;

(2) whether the person is applying as a resident or nonresident;

(3) whether any license or certificate of authority as ~~agent,~~ **insurance producer,** broker, public adjuster, or independent adjuster has been issued previously by the commissioner of insurance of the state of Indiana or by the insurance department of any other state, any territorial possession of the United States, or any foreign country to the applicant; and

(4) the business or employment in which the applicant has been engaged for the five (5) years next preceding the date of the application, and the name and address of such business and the name or names and addresses of ~~his~~ **the applicant's** employer or employers.

(b) An application for any certificate of authority must be signed and verified under oath by the applicant.

(c) An annual fee of fifty dollars ($50) is to be paid to the commissioner of insurance by the applicant for such public adjuster's certificate of authority before the application or annual renewal thereof is granted. However, the commissioner may, by rule adopted under IC 4-22-2, change the amount of the fee to an amount necessary to pay all of the direct and indirect costs of administering this chapter. Fees collected shall be used by the department to administer this chapter.

(d) Every public adjuster's certificate of authority shall expire on December 31 of the calendar year in which the same shall have been issued, but if an application for the renewal of such certificate shall have been filed with the commissioner of insurance before January 1 of any year, the certificate of authority sought to be renewed shall continue in full force and effect until the issuance by the commissioner of insurance of the new certificate applied for or until five (5) days after the commissioner of insurance shall have refused to issue such new certificate and shall have served notice of such refusal on the applicant therefor. Service of such notice shall be made by registered mail directed to the applicant at the place of business specified in the application.

(e) The applicant shall file with the commissioner of insurance a surety bond in a sum equal to ten thousand dollars ($10,000) payable to the state of Indiana and conditioned on the principal's faithful performance and discharge of ~~his~~ **the principal's** duties under this title and under any rule of the department of insurance. The bond must be renewed annually.

SECTION 30. IC 27-1-34-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) A reinsurer may not issue a policy of insurance to a multiple employer welfare arrangement that does not have a certificate of registration from the department.

(b) An ~~agent~~ **insurance producer** licensed by the department may not solicit, offer, or provide coverage through a multiple employer welfare arrangement that does not have a certificate of registration from the department.

(c) A reinsurer or ~~agent~~ **insurance producer** who knows or reasonably should have known that the arrangement does not have a current certificate of registration is liable for any claims for benefits that are due and unpaid.

SECTION 31. IC 27-1-36-46 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 46. (a) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer and it is not intended as a means to rank insurers generally. Except as provided in subsection (b), the action of an insurer, an ~~agent,~~ **insurance producer,** a broker, or other person engaged in any manner in the insurance business, in:

(1) making, publishing, disseminating, circulating, or placing before the public; or

(2) causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way;

an advertisement, an announcement, or a statement containing an assertion, a representation, or a statement regarding the RBC level of an insurer or any component derived in the calculation of the RBC level of an insurer is misleading and is prohibited.

(b) If:

(1) a materially false statement with respect to the comparison regarding an insurer's total adjusted capital to an RBC level of the insurer or an inappropriate comparison of any other amount to the insurer's RBC levels is published in any written publication; and

(2) the insurer is able to demonstrate to the commissioner with substantial proof the:

(A) falsity; or

(B) inappropriateness;

of the statement;

the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

SECTION 32. IC 27-2-17-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. As used in this chapter, "independent ~~agent"~~ **insurance producer"** means an ~~agent~~ **insurance producer** who:

(1) represents an insurer in the sale of insurance as an independent contractor rather than as an employee; and

(2) is not limited to representing:

(A) one (1) insurer; or

(B) several insurers that are under common management.

SECTION 33. IC 27-2-17-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) An insurance company that issues property or casualty insurance shall not discriminate in the appointment of an independent ~~agent~~ **insurance producer** on the basis of race, color, national origin, or gender.

(b) Except as provided in subsection (c), the department has exclusive jurisdiction to investigate any complaints of discrimination in the appointment of independent ~~agents~~ **insurance producers** in violation of subsection (a).

(c) If the commissioner of the department determines after a hearing that an insurance company has violated subsection (a), the commissioner may order one (1) of the following remedies:

(1) Payment of a civil penalty of not more than two thousand dollars ($2,000) for each violation.

(2) Suspension or revocation of the insurance company's certificate of authority if the commissioner determines that the violation was willful or wanton and that similar violations have been committed by that company with a frequency that constitutes a general business practice.

(3) Any other remedy agreed to by the department and the insurance company.

(d) Any determination made by the commissioner under this section is subject to IC 4-21.5.

(e) Findings of the department under this section may not be considered as evidence in any civil action other than an appeal as provided under IC 4-21.5.

SECTION 34. IC 27-4-1-2, AS AMENDED BY HEA 1692-2003, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. When and as used in this chapter:

(a) The term "person" shall mean any individual, corporation, company including any farm mutual insurance company, association, partnership, firm, reciprocal exchange, inter-insurer, Lloyds insurers, society, fraternal benefit society, lodge, order, council, corps, and any other association or legal entity, engaged in the business of insurance, including but not in limitation of the foregoing, ~~agents,~~ **insurance producers,** brokers, solicitors, advisors, auditors, and adjusters.

(b) "Department" shall mean the department of insurance of this state created and defined as a department in the state government of the state of Indiana by IC 27-1.

(c) "Commissioner" shall mean the insurance commissioner of this state appointed pursuant to, and on and in whom the powers, duties,

management, and control of the department are conferred and vested by, the provisions of IC 27-1.

SECTION 35. IC 27-4-1-4, AS AMENDED BY P.L.130-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender ~~his~~ **the policyholder's** insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of ~~his~~ **the person's** insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or ~~agent~~ **insurance producer** thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed ~~agent~~ **insurance producer** thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, ~~agent,~~ **insurance producer,** or solicitor duly licensed under the laws of this state, but such broker, ~~agent,~~ **insurance producer,** or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance ~~agent~~ **producer** or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of ~~its or his~~ **the** right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of ~~agents~~ **insurance producers** or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, ~~agent,~~ **insurance producer,** or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of ~~his, her, or~~ **it's the** right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

SECTION 36. IC 27-4-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. It is hereby declared unlawful for any two (2) or more insurance companies writing the same class, or classes, of risks and doing business in this state, directly or indirectly, to enter into any arrangement, contract, agreement, understanding, combination or association to require, coerce or induce any ~~agent~~ **insurance producer** or representative of any two (2) or more of such insurance companies within the state of Indiana to refrain from representing other such insurance companies, or to afford any advantage to any ~~such agent~~ **insurance producer** to refrain from representing other such insurance companies or to impose upon ~~such agent~~ **the insurance producer** any disadvantage by reason of ~~his~~ **the insurance producer's** acting as representative of other such insurance companies.

SECTION 37. IC 27-4-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. **(a)** It ~~shall be~~ **is** unlawful for any insurance ~~agent~~ **producer** representing or acting for two (2) or more insurance companies writing the same class or classes, of risks to enter, either directly or indirectly, into any agreement, arrangement, contract or understanding with one (1) or more of such companies that ~~he~~ **the insurance producer** will refrain from representing any other like company or companies, and it ~~shall be~~ **is** unlawful for any such insurance company, not having a contract

requiring an ~~agent~~ **insurance producer** to represent ~~it~~ **the insurance company** alone, in any manner to require, coerce, or induce any ~~agent~~ **insurance producer** to refrain from representing any other like company or companies.

~~Provided, however, That this shall not be construed to~~ **(b) This section does not** prevent any insurance company or ~~agent~~ **insurance producer** from at any time entering into a bona fide contract whereby ~~such agent~~ **an insurance producer** agrees that ~~he~~ **the insurance producer** will thereafter represent a single company exclusively.

SECTION 38. IC 27-4-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. For violation of any provision of this chapter, the license of the offending company or ~~agent~~ **insurance producer** to transact the business of insurance within the state of Indiana shall be suspended for a period of three (3) years. Whenever information of any such violation shall come to the knowledge of the commissioner of insurance, ~~he~~ **the commissioner** shall issue an order fixing a day certain, not more than thirty (30) nor less than twenty (20) days from the making thereof, upon which the offender shall appear and show cause why such penalty should not be enforced, such order specifying with reasonable certainty the violation charged, and if, after hearing, the commissioner shall determine that the company or ~~agent~~ **insurance producer** is guilty of such violation, ~~he~~ **the commissioner** shall forthwith suspend the license of the offender for a period of three (3) years. Such hearing shall be public, and at any such hearing any person or corporation having lodged information of such violation with the commissioner shall be entitled to be present and submit evidence. Within thirty (30) days after the suspension of any such license, the ~~agent~~ **insurance producer** or company whose license has been suspended may appeal from the ruling of the commissioner of insurance to the circuit or superior court of the county in which ~~such agent~~ **the insurance producer** resides or in which such company has its principal place of business, and if such company be a foreign insurance company then such appeal may be taken by such company to the circuit or superior court of Marion County.

SECTION 39. IC 27-5-3-3, AS AMENDED BY P.L.132-2001, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) With respect to writing, making, or taking the kinds of insurance specifically excepted in IC 27-5-2-1(1)(B) and with respect to writing, making, or taking liability insurance, worker's compensation, fidelity, and surety insurance such farmers' mutual insurance company shall be subject to the following statutes, anything in IC 27-1 or IC 27-5-1 to the contrary notwithstanding:

(1) IC 27-1-3, IC 27-9, IC 27-1-5-3, IC 27-1-6-15, IC 27-1-7-14, IC 27-1-7-15, IC 27-1-7-16, IC 27-6-1.1-2, IC 27-1-7-21, IC 27-1-7-22, IC 27-1-7-23, IC 27-1-9, IC 27-1-13-3, IC 27-1-13-4, IC 27-1-13-6, IC 27-1-13-7, IC 27-1-13-8, IC 27-1-13-9, IC 27-1-20-1, IC 27-1-20-4, IC 27-1-20-6, IC 27-1-20-9, IC 27-1-20-10, IC 27-1-20-11, IC 27-1-20-14, IC 27-1-20-19, IC 27-1-20-20, IC 27-1-20-21, IC 27-1-20-23, ~~IC 27-1-20-24,~~ and IC 27-1-20-30.

(2) All of IC 27-1-22.

(3) IC 27-1-13-7.

(4) All of IC 27-7-2.

(b) An ~~agent~~ **insurance producer** representing a farmers' mutual insurance company with respect to insurance authorized to be written by this chapter and not authorized before March 13, 1953, to be written by a farmers' mutual insurance company shall comply with IC 27-1-15.6.

SECTION 40. IC 27-5-4-2, AS AMENDED BY P.L.132-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. Any such farmers' mutual insurance company may elect to become subject to the provisions of IC 27-1 as provided by IC 27-1-11-1 and thereafter may avail itself of all rights, privileges, and franchises provided by IC 27-1 in accordance with IC 27-1. Nothing contained in IC 27-1 shall affect or invalidate any policies issued or bound by such company and in full force and effect at the time said election becomes effective, but any such policy or contract of insurance and the rights and obligations thereunder may continue in full force and effect until expiration or termination; provided, that not later than five (5) years following the effective date of said election, all such policies or contracts of insurance shall be subject to the provisions of IC 27-1. Any ~~agent~~ **insurance producer** or representative of such company who is exempt from the provisions of IC 27-1-15.6 at the time said election becomes effective may continue to represent such company only within the scope of such existing representation without compliance with the provisions of IC 27-1-15.6 for a period not to exceed one (1) year following the effective date of said election, but thereafter such representation shall be subject to compliance with IC 27-1-15.6. Such election provided for in this section shall become effective upon the date of issuance of the new certificate of authority pursuant to IC 27-1-11-7.

SECTION 41. IC 27-6-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The commissioner shall:

(i) Notify the association of the existence of an insolvent insurer not later than three (3) working days after ~~he~~ **the commissioner** receives an order of liquidation.

(ii) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(b) The commissioner may:

(i) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the order of liquidation and of their rights under this chapter. This notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation in all counties in which the insolvent insurer transacted insurance business shall be sufficient.

(ii) Require each ~~agent~~ **insurance producer** of the insolvent insurer to give prompt written notice by first class mail of such insolvency and the rights of the insured under this chapter to each insured of the insolvent insurer for whom ~~he~~ **the insurance producer** is ~~agent~~ **insurance producer** of record, at such insured's last known address.

(iii) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. The fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars ($100) per month.

(iv) Revoke the designation of any servicing facility if ~~he~~ **the commissioner** finds claims are being handled unsatisfactorily.

(v) Any final action or order of the commissioner under this chapter shall be subject to judicial review in a court of competent jurisdiction.

SECTION 42. IC 27-6-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (Effect of Paid Claims) (a) Any person recovering under this chapter shall be deemed to have assigned ~~his~~ **the person's** rights under the policy to the association to the extent of ~~his~~ **the person's** recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as the person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments previously made and no assessment shall be thereafter made for the purpose of reimbursing the association.

(b) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state functioning pursuant to IC 27-6-8-8(d). The court having jurisdiction shall grant

such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(c) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

(d) The association shall have a right to recover from the ~~agent~~ **insurance producer** of record any part of the paid claim for unearned premium that represents unearned commission to the ~~agent.~~ **insurance producer.**

SECTION 43. IC 27-6-8-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. No person, including an insurer, ~~agent,~~ **insurance producer,** or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Indiana insurance guaranty association law. ~~Provided,~~ However, this section does not apply to Indiana insurance guaranty association or to any other entity which does not sell or solicit insurance.

SECTION 44. IC 27-6-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. As used in this chapter, "licensed producer" means an ~~agent,~~ **insurance producer,** broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law.

SECTION 45. IC 27-7-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. No notice of cancellation of a policy to which section 4 of this chapter applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium at least ten (10) days notice of cancellation accompanied by the reason therefor shall be given. In the event such policy was procured by an ~~agent~~ **insurance producer** duly licensed by the state of Indiana, notice of intent to cancel shall be mailed or delivered to ~~such agent~~ **the insurance producer** at least ten (10) days prior to such mailing or delivery to the named insured unless such notice of intent is or has been waived in writing by ~~such agent.~~ **the insurance producer.** Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than fifteen (15) days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation. This section shall not apply to nonrenewal.

SECTION 46. IC 27-7-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. **(a)** No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least twenty (20) days' advance notice of its intention not to renew. In the event such policy was procured by an ~~agent~~ **insurance producer** duly licensed by the state of Indiana notice of intent not to renew shall be mailed or delivered to ~~such agent~~ **the insurance producer** at least ten (10) days prior to such mailing or delivery to the named insured unless such notice of intent is or has been waived in writing by ~~such agent.~~ **the insurance producer.**

(b) This section shall not apply:

~~(a)~~ **(1)** if the insurer has manifested its willingness to renew; ~~nor~~ **or**

~~(b)~~ **(2)** in case of nonpayment of premium.

~~Provided, That,~~ **However,** notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(c) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

SECTION 47. IC 27-7-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner of insurance or against any insurer, its authorized representative, its ~~agents,~~ **insurance producers,** its employees, or any firm, person, limited liability company, or corporation furnishing to the insurer information as to reasons for cancellation, for any statement made by any of them in any written notice of cancellation, or in any other communication, oral or written specifying the reasons for cancellation, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

SECTION 48. IC 27-7-9-9, AS AMENDED BY P.L.182-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) An insurer making the type of insurance described in Class 3(a) of IC 27-1-5-1 shall enter into a reinsurance agreement with the commissioner. The reinsurance agreement must include the following terms:

(1) The insurer agrees to cede to the commissioner one hundred percent (100%) of any mine subsidence coverage issued under this chapter, subject to a maximum limit of two hundred thousand dollars ($200,000) per structure insured.

(2) The insurer shall collect the premiums for mine subsidence insurance, may retain a ceding commission in an amount set by the commissioner, and shall remit the remainder of the premiums to the commissioner for deposit in the mine subsidence insurance fund.

(3) The insurer, in consideration of the ceding commission, shall:

(A) undertake the adjustment of losses under the mine subsidence coverage issued under this chapter by the insurer, with technical assistance provided under section 9.5 of this chapter; and

(B) pay the taxes and absorb all other expenses necessarily incurred by the insurer in the sale of policies and the administration of the mine subsidence insurance program under this chapter.

(4) The commissioner shall reimburse the insurer from the mine subsidence insurance fund for all amounts paid to policyholders for mine subsidence insurance claims.

(5) The insurer is not required to pay a claim for any mine subsidence loss insured under this chapter if the amount available in the mine subsidence insurance fund is insufficient to reimburse the insurer for the claim.

(b) The determination of the commissioner as to the amount of the ceding commission that an insurer may retain under subsection (a)(2) must be based on a consideration of the insurer's reasonable administrative costs (including ~~agents'~~ **insurance producers'** commissions).

SECTION 49. IC 27-7-10-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. (a) A risk retention group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within Indiana, and shall report to the commissioner of this state the net premiums written for risks resident or located within Indiana. A risk retention group that is chartered and licensed in a state other than Indiana is subject to taxation, and any applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer.

(b) A licensed ~~agent~~ **insurance producer** who is utilized under section 30 of this chapter in soliciting, negotiating, or procuring liability insurance from a risk retention group that is chartered and licensed in a state other than Indiana shall report to the commissioner the premiums for direct business for risks resident or located within Indiana that the ~~agent~~ **insurance producer** has placed with or on behalf of a risk retention group that is not chartered in Indiana.

(c) A licensed ~~agent~~ **insurance producer** who is utilized under section 30 of this chapter in soliciting, negotiating, or procuring liability insurance from a risk retention group that is chartered and

licensed in a state other than Indiana shall keep a complete and separate record of all policies procured from each such risk retention group. The record kept under this subsection must be open to examination by the commissioner and must, for each policy and each kind of insurance provided, include the following information:

(1) The limit of liability.
(2) The time period covered.
(3) The effective date.
(4) The name of the risk retention group that issued the policy.
(5) The gross premium charged.
(6) The amount of return premiums, if any.

SECTION 50. IC 27-7-10-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 27. (a) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed ~~agent~~ **insurance producer** or broker acting under the surplus lines laws and regulations of that state.

(b) A purchasing group that obtains liability insurance from an insurer that is not admitted in Indiana or from a risk retention group shall inform each of the members of the group who have a risk resident or located in Indiana that the risk is not protected by an insurance insolvency guaranty fund in Indiana and that the risk retention group or insurer may not be subject to all insurance laws and rules of Indiana.

(c) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole. However, coverage may provide for a deductible or self-insured retention applicable to individual members of the purchasing group.

(d) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits that are applicable to all purchases of group insurance.

SECTION 51. IC 27-7-10-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. Premium taxes and taxes on premiums paid for coverage of risks resident or located in Indiana by a purchasing group or any member of a purchasing group shall be:

(1) imposed at the same rate and subject to the same interest, fines, and penalties that apply to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and
(2) paid first by the insurance source, and if not by the insurance source, then by the ~~agent~~ **insurance producer** or broker for the purchasing group, and if not by the ~~agent~~ **insurance producer** or broker, then by the purchasing group, and if not by the purchasing group, then by each of its members.

SECTION 52. IC 27-7-10-30, AS AMENDED BY P.L.132-2001, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 30. No individual, firm, association, limited liability company, or corporation may act or aid in any manner in soliciting, negotiating, or procuring liability insurance in Indiana from a risk retention group unless the individual, firm, association, or corporation is licensed as an insurance ~~agent~~ **producer** under IC 27-1-15.6.

SECTION 53. IC 27-7-10-31, AS AMENDED BY P.L.132-2001, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 31. (a) No individual, firm, association, or corporation may act or aid in any manner in soliciting, negotiating, or procuring liability insurance in Indiana for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless the individual, firm, association, or corporation is licensed as an insurance ~~agent~~ **producer** under IC 27-1-15.6.

(b) No individual, firm, association, or corporation may act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in Indiana for any member of a purchasing group under a purchasing group's policy unless the individual, firm, association, or corporation is licensed as an insurance ~~agent~~ **producer** under IC 27-1-15.6.

(c) No individual, firm, association, or corporation may act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in Indiana on behalf of a purchasing group located in Indiana unless the individual, firm, association, or corporation is licensed as a surplus lines ~~agent~~ **producer** under IC 27-1-15.8.

SECTION 54. IC 27-7-10-32, AS AMENDED BY P.L.132-2001, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 32. (a) For purposes of acting as an ~~agent~~ **insurance producer** for a risk retention group or purchasing group under section 30 or 31 of this chapter, the requirement of residence in Indiana does not apply.

(b) Every individual, firm, association, or corporation licensed under IC 27-1-15.6, in regard to business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by section 18 of this chapter in the case of a risk retention group and section 27(c) of this chapter in the case of a purchasing group.

SECTION 55. IC 27-7-12-3, AS ADDED BY P.L.203-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) Notice of cancellation of property insurance coverage by an insurer must:

(1) be in writing;
(2) be delivered or mailed to the named insured at the last known address of the named insured;
(3) state the effective date of the cancellation; and
(4) upon request of the named insured, be accompanied by a written explanation of the specific reasons for the cancellation.

(b) An insurer shall provide written notice of cancellation to the named insured at least:

(1) ten (10) days before canceling a policy, if the cancellation is for nonpayment of a premium;
(2) twenty (20) days before canceling a policy, if the cancellation occurs more than sixty (60) days after the date of issuance of the policy; and
(3) ten (10) days before canceling a policy, if the cancellation occurs not more than sixty (60) days after the date of issuance of the policy.

(c) If the policy was procured by an independent ~~agent~~ **insurance producer** licensed in Indiana, the insurer shall deliver or mail notice of cancellation to the ~~agent~~ **insurance producer** not less than ten (10) days before the insurer delivers or mails the notice to the named insured, unless the obligation to notify the ~~agent~~ **insurance producer** is waived in writing by the ~~agent.~~ **insurance producer.**

SECTION 56. IC 27-7-12-4, AS ADDED BY P.L.203-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Notice of nonrenewal by an insurer must:

(1) be in writing;
(2) be delivered or mailed to the named insured at the last known address of the named insured;
(3) state the insurer's intention not to renew the policy upon expiration of the current policy period;
(4) upon request of the named insured, be accompanied by a written explanation of the specific reasons for the nonrenewal; and
(5) be provided to the named insured at least twenty (20) days before the expiration of the current policy period.

(b) If the policy was procured by an independent ~~agent~~ **insurance producer** licensed in Indiana, the insurer shall deliver or mail notice of nonrenewal to the ~~agent~~ **insurance producer** not less than ten (10) days before the insurer delivers or mails the notice to the named insured, unless the obligation to notify the ~~agent~~ **insurance producer** is waived in writing by the ~~agent.~~ **insurance producer.**

(c) If an insurer mails or delivers to an insured a renewal notice, bill, certificate, or policy indicating the insurer's willingness to renew a policy and the insured does not respond, the insurer is not required to provide to the insured notice of intention not to renew.

SECTION 57. IC 27-7-12-9, AS ADDED BY P.L.203-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The following persons are immune from civil liability for any communication giving notice of or specifying the reasons for a termination or for any statement made

in connection with an attempt to discover or verify the existence of conditions that would be a reason for a termination under this chapter:

(1) Employees of the department of insurance.

(2) An insurer or its authorized representative, agent, or employee.

(3) A licensed insurance ~~agent.~~ **producer.**

(4) A person furnishing information to an insurer as to reasons for a termination.

(b) This section does not apply to statements made in bad faith with malice in fact.

SECTION 58. IC 27-8-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. The provisions of this chapter shall in no way apply to any secret or fraternal society or lodge or association which, under the supervision of a grand or supreme lodge, secures membership through the lodge system exclusively, and provides insurance to its members, nor to insurance organizations of a purely benevolent character which pay no commission nor employ any paid ~~agent,~~ **insurance producer,** organized under the laws of this or any other state.

SECTION 59. IC 27-8-3-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 25. The fees to be paid by each such corporation, association, or society to the insurance commissioner for the authority to such corporation, association, or society, and its ~~agents~~ **insurance producers** under the license granted by him to each corporation, association, or society, to transact business in the state of Indiana shall be as follows:

For filing copy of charter or articles of incorporation, twenty-five dollars ($25).

For filing each annual statement, twenty dollars ($20).

For issuing certificate of authority or license to company, corporation, association or society, one dollar ($1).

For issuing license to each ~~agent,~~ **insurance producer,** one dollar ($1).

For affixing seal and certifying to any paper, one dollar ($1).

For renewal of license, each such corporation, association, or society shall file with the commissioner its annual statement, for which it shall pay the sum of twenty dollars ($20).

~~For issuing license to each agent, one dollar ($1).~~

~~For affixing seal and certifying any paper, one dollar ($1).~~

For the privilege of transacting business in this state, a foreign or alien company, association, or society, admitted and licensed under this chapter, shall pay an annual tax upon premiums or assessments derived from business written within this state, such tax to be as defined and determined under IC 27-1-18-2, which is declared to be applicable in its terms and provisions to such a company, association, or society; provided also, that when any other state or country shall impose any obligations in excess of those imposed by this chapter upon any such corporation, association, or society of this state, a like obligation shall be imposed on similar corporations and their agents of such state or country doing business in this state; and provided also, that such corporation, association, or society, in transacting business in this state, shall be subject only to the provisions of this chapter.

SECTION 60. IC 27-8-5-3, AS AMENDED BY P.L.162-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) Except as provided in subsection (c), each policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section. However, the insurer may, at its option, substitute for one (1) or more of the provisions corresponding provisions of different wording approved by the commissioner that are in each instance no less favorable in any respect to the insured or the beneficiary. The provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by appropriate individual or group captions or subcaptions as the commissioner may approve.

(1) A provision as follows: ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No ~~agent~~ **insurance producer** has authority to change this policy or to waive any of its provisions.

(2) A provision as follows: TIME LIMIT ON CERTAIN DEFENSES: (A) After two (2) years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two (2) year period.

The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy of denial of a claim during such initial two (2) year period, nor to limit the application of subsection (b), (1), (2), (3), (4), and (5) in the event of misstatement with respect to age or occupation or other insurance.

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

(1) until at least age fifty (50); or

(2) in the case of a policy issued after forty-four (44) years of age, for at least five (5) years from its date of issue;

may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE": After this policy has been in force for a period of two (2) years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.

(B) No claim for loss incurred or disability (as defined in the policy) commencing after two (2) years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition, not excluded from coverage by name or specific description effective on the date of loss, had existed prior to the effective date of coverage of this policy.

(3) A provision as follows: GRACE PERIOD: A grace period of (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

A policy in which the insurer reserves the right to refuse renewal shall have, at the beginning of the above provision: "Unless not less than thirty (30) days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured's last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.".

Each policy in which the insurer reserves the right to refuse renewal on an individual basis shall provide, in substance, in a provision of the policy, in an endorsement on the policy, or in a rider attached to the policy, that subject to the right to terminate the policy upon non-payment of premium when due, such right to refuse renewal shall not be exercised before the renewal date occurring on, or after and nearest, each anniversary, or in the case of lapse and reinstatement at the renewal date occurring on, or after and nearest, each anniversary of the last reinstatement, and that any refusal or renewal shall be without prejudice to any claim originating while the policy is in force. The preceding sentence shall not apply to accident insurance only policies.

(4) A provision as follows: REINSTATEMENT: If any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy. Provided, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may

begin more than ten (10) days after such date. In all other respects the insured and insurer shall have the same rights as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty (60) days prior to the date of reinstatement.

The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

(1) until at least fifty (50) years of age; or

(2) in the case of a policy issued after forty-four (44) years of age, for at least five (5) years from its date of issue.

(5) A provision as follows: NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty (20) days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at _____ (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

In a policy providing a loss-of-time benefit which may be payable for at least two (2) years, an insurer may insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two (2) years, the insured shall, at least once in every six (6) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six (6) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insurer's right to any indemnity which would otherwise have accrued during the period of six (6) months preceding the date on which such notice is actually given.

(6) A provision as follows: CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen (15) days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made.

(7) A provision as follows: PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety (90) days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety (90) days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one (1) year from the time proof is otherwise required.

(8) A provision as follows: TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid:

(1) immediately upon receipt of due written proof of such loss; or

(2) in accordance with IC 27-8-5.7;

whichever is more favorable to the policyholder. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid _____ (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof. This provision must reflect compliance with IC 27-8-5.7.

(9) A provision as follows: PAYMENT OF CLAIMS: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $ _____ (insert an amount which shall not exceed $1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.

For the purposes of this section a "minor" is a person under the age of eighteen (18) years. A person eighteen (18) years of age or over is competent, insofar as the person's age is concerned, to sign a valid release.

(10) A provision as follows: PHYSICAL EXAMINATIONS AND AUTOPSY: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows: LEGAL ACTIONS: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty (60) days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three (3) years after the time written proof of loss is required to be furnished.

(12) A provision as follows: CHANGE OF BENEFICIARY: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

(13) A provision as follows: GUARANTEED RENEWABILITY: In compliance with the federal Health Insurance Portability and Accountability Act of 1996 (P.L.104-191), renewability is guaranteed.

(b) Except as provided in subsection (c), no policy delivered or issued for delivery to any person in Indiana shall contain provisions respecting the matters set forth below unless the provisions are in the words in which the provisions appear in this section. However, the insurer may use, instead of any provision, a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any substitute provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by appropriate individual or group captions or subcaptions as the commissioner may approve.

(1) A provision as follows: CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed the insured's occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the

insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes the insured's occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(2) A provision as follows: MISSTATEMENT OF AGE: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision as follows: OTHER INSURANCE IN THIS INSURER: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured are in force concurrently herewith, making the aggregate indemnity for _____ (insert type of coverage or coverages) in excess of $ _____ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to the insured's estate. Or, instead of that provision: Insurance effective at any one (1) time on the insured under a like policy or policies, in this insurer is limited to the one (1) such policy elected by the insured, the insured's beneficiary or the insured's estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision as follows: INSURANCE WITH OTHER INSURER: If there is other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro-rata portion of the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase "EXPENSE INCURRED BENEFITS". The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any worker's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".

(5) A provision as follows: INSURANCE WITH OTHER INSURERS: If there is other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro-rata portion for the indemnities thus determined. If the foregoing policy provision is included in a policy which also contains the next preceding policy provision, there shall be added to the caption of the foregoing provision the phrase "-OTHER BENEFITS". The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage to the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any worker's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".

(6) A provision as follows: RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or the insured's average monthly earnings for the period of two (2) years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two (2) years as shall exceed the pro rata amount of the premiums for the benefits actually paid; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars ($200) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

(1) until at least fifty (50) years of age; or

(2) in the case of a policy issued after forty-four (44) years of age, for at least five (5) years from its date of issue.

The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition the term shall not include any coverage provided for the insured pursuant to any compulsory benefit statute

(including any worker's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.

(7) A provision as follows: UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(8) A provision as follows: CONFORMITY WITH STATE STATUTES: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

(9) A provision as follows: ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(10) A provision as follows: INTOXICANTS AND NARCOTICS: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

(c) If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(d) The provisions which are the subject of subsections (a) and (b), or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

(e) "Insured", as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

(f)(1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than is provided in this chapter and which is prescribed or required by the law of the state under which the insurer is organized.

(f)(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(g) The commissioner may make reasonable rules under IC 4-22-2 concerning the procedure for the filing or submission of policies subject to this chapter as are necessary, proper, or advisable to the administration of this chapter. This provision shall not abridge any other authority granted the commissioner by law.

SECTION 61. IC 27-8-5.7-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. (a) Beginning on the effective date of the date referred to in Section 262 of the federal Health Insurance Portability and Accountability Act (42 U.S.C. 1320d-4), an insurer may request from the commissioner appointed under IC 27-1-1-2 a waiver from the requirements of this chapter that apply to claims filed on paper.**

(b) The commissioner may grant a waiver under this section if, not more than six (6) months after the effective date described in subsection (a), the requesting insurer experiences an increase of the lesser of:

(1) ten thousand (10,000); or

(2) at least twenty percent (20%);

in the volume of claims filed on paper.

(c) A waiver granted under this section is effective for a set period determined by the commissioner.

(d) This section expires December 31, 2005.

SECTION 62. IC 27-8-8-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. A person, including an insurer, ~~agent~~ **insurance producer,** or affiliate of an insurer shall not place before the public, directly or indirectly, an announcement or statement that uses the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter. This section does not apply to the association or any other entity that does not sell or solicit insurance.

SECTION 63. IC 27-8-10-2.1, AS AMENDED BY P.L.192-2002(ss), SECTION 169, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.1. (a) There is established a nonprofit legal entity to be referred to as the Indiana comprehensive health insurance association, which must assure that health insurance is made available throughout the year to each eligible Indiana resident applying to the association for coverage. All carriers, health maintenance organizations, limited service health maintenance organizations, and self-insurers providing health insurance or health care services in Indiana must be members of the association. The association shall operate under a plan of operation established and approved under subsection (c) and shall exercise its powers through a board of directors established under this section.

(b) The board of directors of the association consists of seven (7) members whose principal residence is in Indiana selected as follows:

(1) Three (3) members to be appointed by the commissioner from the members of the association, one (1) of which must be a representative of a health maintenance organization.

(2) Two (2) members to be appointed by the commissioner shall be consumers representing policyholders.

(3) Two (2) members shall be the state budget director or designee and the commissioner of the department of insurance or designee.

The commissioner shall appoint the chairman of the board, and the board shall elect a secretary from its membership. The term of office of each appointed member is three (3) years, subject to eligibility for reappointment. Members of the board who are not state employees may be reimbursed from the association's funds for expenses incurred in attending meetings. The board shall meet at least semiannually, with the first meeting to be held not later than May 15 of each year.

(c) The association shall submit to the commissioner a plan of operation for the association and any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation becomes effective upon approval in writing by the commissioner consistent with the date on which the coverage under this chapter must be made available. The commissioner shall, after notice and hearing, approve the plan of operation if the plan is determined to be suitable to assure the fair, reasonable, and equitable administration of the association and provides for the sharing of association losses on an equitable, proportionate basis among the member carriers, health maintenance organizations, limited service health maintenance organizations, and self-insurers. If the association fails to submit a suitable plan of operation within one hundred eighty (180) days after the appointment of the board of directors, or at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall adopt rules under IC 4-22-2 necessary or advisable to implement this section. These rules are effective until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. The plan of operation must:

(1) establish procedures for the handling and accounting of assets and money of the association;

(2) establish the amount and method of reimbursing members of the board;

(3) establish regular times and places for meetings of the board of directors;

(4) establish procedures for records to be kept of all financial transactions, and for the annual fiscal reporting to the commissioner;

(5) establish procedures whereby selections for the board of

directors will be made and submitted to the commissioner for approval;

(6) contain additional provisions necessary or proper for the execution of the powers and duties of the association; and

(7) establish procedures for the periodic advertising of the general availability of the health insurance coverages from the association.

(d) The plan of operation may provide that any of the powers and duties of the association be delegated to a person who will perform functions similar to those of this association. A delegation under this section takes effect only with the approval of both the board of directors and the commissioner. The commissioner may not approve a delegation unless the protections afforded to the insured are substantially equivalent to or greater than those provided under this chapter.

(e) The association has the general powers and authority enumerated by this subsection in accordance with the plan of operation approved by the commissioner under subsection (c). The association has the general powers and authority granted under the laws of Indiana to carriers licensed to transact the kinds of health care services or health insurance described in section 1 of this chapter and also has the specific authority to do the following:

(1) Enter into contracts as are necessary or proper to carry out this chapter, subject to the approval of the commissioner.

(2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against participating carriers.

(3) Take legal action necessary to avoid the payment of improper claims against the association or the coverage provided by or through the association.

(4) Establish a medical review committee to determine the reasonably appropriate level and extent of health care services in each instance.

(5) Establish appropriate rates, scales of rates, rate classifications and rating adjustments, such rates not to be unreasonable in relation to the coverage provided and the reasonable operational expenses of the association.

(6) Pool risks among members.

(7) Issue policies of insurance on an indemnity or provision of service basis providing the coverage required by this chapter.

(8) Administer separate pools, separate accounts, or other plans or arrangements considered appropriate for separate members or groups of members.

(9) Operate and administer any combination of plans, pools, or other mechanisms considered appropriate to best accomplish the fair and equitable operation of the association.

(10) Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the association, policy and other contract design, and any other function within the authority of the association.

(11) Hire an independent consultant.

(12) Develop a method of advising applicants of the availability of other coverages outside the association and may promulgate a list of health conditions the existence of which would deem an applicant eligible without demonstrating a rejection of coverage by one (1) carrier.

(13) Provide for the use of managed care plans for insureds, including the use of:

(A) health maintenance organizations; and

(B) preferred provider plans.

(14) Solicit bids directly from providers for coverage under this chapter.

(f) Rates for coverages issued by the association may not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable expenses of providing the coverage. Separate scales of premium rates based on age apply for individual risks. Premium rates must take into consideration the extra morbidity and administration expenses, if any, for risks insured in the association. The rates for a given classification may not be more than one hundred fifty percent (150%) of the average premium rate for that class charged by the five (5) carriers with the largest premium volume in the state during the preceding calendar year. In determining the average rate of the five (5) largest carriers, the rates charged by the carriers shall be actuarially adjusted to determine the rate that would have been charged for benefits identical to those issued by the association. All rates adopted by the association must be submitted to the commissioner for approval.

(g) Following the close of the association's fiscal year, the association shall determine the net premiums, the expenses of administration, and the incurred losses for the year. Any net loss shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums, excluding premiums for Medicaid contracts with the state of Indiana, received in Indiana during the calendar year (or with paid losses in the year) coinciding with or ending during the fiscal year of the association or any other equitable basis as may be provided in the plan of operation. For self-insurers, health maintenance organizations, and limited service health maintenance organizations that are members of the association, the proportionate share of losses must be determined through the application of an equitable formula based upon claims paid, excluding claims for Medicaid contracts with the state of Indiana, or the value of services provided. In sharing losses, the association may abate or defer in any part the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for interim assessments against members of the association if necessary to assure the financial capability of the association to meet the incurred or estimated claims expenses or operating expenses of the association until the association's next fiscal year is completed. Net gains, if any, must be held at interest to offset future losses or allocated to reduce future premiums. Assessments must be determined by the board members specified in subsection (b)(1), subject to final approval by the commissioner.

(h) The association shall conduct periodic audits to assure the general accuracy of the financial data submitted to the association, and the association shall have an annual audit of its operations by an independent certified public accountant.

(i) The association is subject to examination by the department of insurance under IC 27-1-3.1. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

(j) All policy forms issued by the association must conform in substance to prototype forms developed by the association, must in all other respects conform to the requirements of this chapter, and must be filed with and approved by the commissioner before their use.

(k) The association may not issue an association policy to any individual who, on the effective date of the coverage applied for, does not meet the eligibility requirements of section 5.1 of this chapter.

(l) The association shall pay an ~~agent's~~ **insurance producer's** referral fee of twenty-five dollars ($25) to each insurance ~~agent~~ **producer** who refers an applicant to the association if that applicant is accepted.

(m) The association and the premium collected by the association shall be exempt from the premium tax, the adjusted gross income tax, or any combination of these upon revenues or income that may be imposed by the state.

(n) Members who after July 1, 1983, during any calendar year, have paid one (1) or more assessments levied under this chapter may either:

(1) take a credit against premium taxes, adjusted gross income taxes, or any combination of these, or similar taxes upon revenues or income of member insurers that may be imposed by the state, up to the amount of the taxes due for each calendar year in which the assessments were paid and for succeeding years until the aggregate of those assessments have been offset by either credits against those taxes or refunds from the association; or

(2) any member insurer may include in the rates for premiums charged for insurance policies to which this chapter applies amounts sufficient to recoup a sum equal to the amounts paid

to the association by the member less any amounts returned to the member insurer by the association, and the rates shall not be deemed excessive by virtue of including an amount reasonably calculated to recoup assessments paid by the member.

(o) The association shall provide for the option of monthly collection of premiums.

SECTION 64. IC 27-8-10-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. Before January 1, 1996, the board of directors of the association shall establish eligibility guidelines for the issuance of an association policy under this chapter to prohibit an:

(1) employer;

(2) insurance ~~agent;~~ **producer;** or

(3) insurance broker;

from placing in or referring to the association an individual who works for an employer who offers employees an employee welfare benefit plan (as defined in 29 U.S.C. 1002).

SECTION 65. IC 27-8-12-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) The insurance commissioner shall adopt rules under IC 4-22-2 establishing standards of full and fair disclosure concerning long term care insurance policies. The standards must require disclosure of information concerning the following:

(1) The sale of the policies.

(2) Terms of renewability.

(3) Initial and subsequent terms of eligibility.

(4) Nonduplication of coverage provisions.

(5) Coverage of dependents.

(6) Preexisting conditions.

(7) Termination of insurance coverage.

(8) Probationary periods.

(9) Limitations on coverage.

(10) Exceptions to coverage.

(11) Reductions from coverage.

(12) Elimination periods.

(13) Requirements for replacement.

(14) Recurrent conditions.

(15) Definitions of terms.

(16) Continuation or conversion of coverage.

(b) The insurance commissioner shall adopt rules under IC 4-22-2 to establish minimum standards concerning:

(1) marketing practices;

(2) ~~agent~~ **insurance producer** continuing education;

(3) penalties; and

(4) reporting practices;

for long term care insurance.

(c) Rules adopted by the insurance commissioner under this section must:

(1) recognize the unique, developing, and experimental nature of long term care insurance; and

(2) where necessary or appropriate, recognize the distinctions between group insurance policies and individual insurance policies.

SECTION 66. IC 27-8-12-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) The insurer shall deliver an outline of the coverage provided by an individual long term care insurance policy to the prospective applicant at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and the document's purpose.

(b) The commissioner shall prescribe a standard format regarding:

(1) style;

(2) arrangement;

(3) overall appearance; and

(4) content;

for an outline of coverage.

(c) An ~~agent~~ **insurance producer** who solicits a long term care insurance policy shall deliver the outline of coverage before the presentation of an application or enrollment form.

(d) The outline of coverage must be presented in conjunction with any application or enrollment form when there is a direct response solicitation of long term care insurance.

(e) An outline of coverage required under this section must include the following:

(1) A description of the principal benefits and coverage provided in the policy.

(2) A statement of the principal exclusions, reductions, and limitations set forth in the policy.

(3) A statement of the policy's renewal provisions, including any reservation by the insurer of a right to change premiums.

(4) A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine the exact terms of the coverage provided by the policy.

(5) A description of the terms under which the policy may be returned and the premium refunded.

(6) A brief description of the relationship of the cost of care and benefits.

(7) A statement of the terms under which the policy or certificate may continue or be discontinued, including any reservation in the policy of the right to change the premium.

(8) A specific statement of the provisions for continuation or conversion of group coverage.

SECTION 67. IC 27-8-12-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. (a) As used in this section, "compensation" includes pecuniary and nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, the following:

(1) Bonuses.

(2) Gifts.

(3) Prizes.

(4) Awards.

(5) Finders fees.

(b) An insurer or other entity that provides a commission or other compensation to an ~~agent~~ **insurance producer** or other representative for the sale of a long term care insurance policy may not violate the following conditions:

(1) The amount of the first year commission or first year compensation for selling or servicing the policy may not exceed two hundred percent (200%) of the amount of the commission or other compensation paid in the second year.

(2) The amount of commission or other compensation provided in years after the second year must be equal to the amount provided in the second year.

(3) A commission or other compensation must be provided each year for at least five (5) years after the first year.

(c) If an existing long term care policy or certificate is replaced, the insurer or other entity that issues the replacement policy may not provide, and its ~~agent~~ **insurance producer** may not accept, compensation in an amount greater than the renewal compensation payable by the replacing insurer on renewal policies, unless the benefits of the replacement policy or certificate are clearly and substantially greater than the benefits under the replaced policy or certificate.

(d) This section does not apply to the following:

(1) Life insurance policies and certificates.

(2) A policy or certificate that is sponsored by an employer for the benefit of:

(A) the employer's employees; or

(B) the employer's employees and their dependents.

SECTION 68. IC 27-8-12-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. (a) In addition to any other sanction provided under this article, the commissioner may impose a civil penalty against an insurer who has violated this chapter or rules adopted under this chapter. A penalty imposed under this section must be the greater of:

(1) three (3) times the amount of the commissions paid for each policy involved in the violation; or

(2) ten thousand dollars ($10,000).

(b) In addition to any other sanction provided under this title, the commissioner may impose a penalty against an insurance ~~agent~~ **producer** who has violated this chapter or rules adopted under this chapter. The penalty must be the greater of:

(1) up to three (3) times the amount of the commissions paid **to**

that insurance producer for each policy involved in the violation; or

(2) twenty-five hundred dollars ($2,500).

SECTION 69. IC 27-8-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. As used in this chapter, "Medicare supplement insurance solicitation" means a meeting between an insurance ~~agent~~ **producer** and another individual at which the ~~agent~~ **insurance producer** discusses the possible issuance of a medicare supplement policy to the other individual.

SECTION 70. IC 27-8-13-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Following a Medicare supplement insurance solicitation, an ~~agent~~ **insurance producer** shall give the individual involved in the solicitation a receipt for materials received by the ~~agent~~ **insurance producer** as a result of the solicitation.

(b) The receipt required under subsection (a) must be dated and signed by the ~~agent~~ **insurance producer** and must set forth the following:

(1) An itemized list of the materials received by the ~~agent.~~ **insurance producer.**

(2) The ~~agent's~~ **insurance producer's** name.

(3) The address and telephone number of the ~~agent's~~ **insurance producer's** office.

(c) As used in this section, "materials" includes any:

(1) document;

(2) cash;

(3) money order; or

(4) check or draft;

received by the ~~agent.~~ **insurance producer.** The term does not include an application for a policy.

SECTION 71. IC 27-8-19.8-8.5, AS AMENDED BY P.L.132-2001, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8.5. The following must be licensed as ~~a life insurance agent~~ **an insurance producer with a life qualification** under ~~IC 27-1-15.6:~~ **IC 27-1-15.6-7:**

(1) A viatical settlement broker.

(2) A person who solicits, offers, or attempts to negotiate a viatical settlement contract with a viator.

SECTION 72. IC 27-8-28-17, AS AMENDED BY P.L.1-2002, SECTION 116, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) An insurer shall establish written policies and procedures for the timely resolution of appeals of grievance decisions. The procedures for registering and responding to oral and written appeals of grievance decisions must include the following:

(1) Written or oral acknowledgment of the appeal not more than five (5) business days after the appeal is filed.

(2) Documentation of the substance of the appeal and the actions taken.

(3) Investigation of the substance of the appeal, including any aspects of clinical care involved.

(4) Notification to the covered individual:

(A) of the disposition of an appeal; and

(B) that the covered individual may have the right to further remedies allowed by law.

(5) Standards for timeliness in:

(A) responding to an appeal; and

(B) providing notice to covered individuals of:

(i) the disposition of an appeal; and

(ii) the right to initiate an external grievance review under IC 27-8-29;

that accommodate the clinical urgency of the situation.

(b) In the case of an appeal of a grievance decision described in section 6(1) or 6(2) of this chapter, an insurer shall appoint a panel of one (1) or more qualified individuals to resolve an appeal. The panel must include one (1) or more individuals who:

(1) have knowledge of the medical condition, procedure, or treatment at issue;

(2) are licensed in the same profession and have a similar specialty as the provider who proposed or delivered the health care procedure, treatment, or service;

(3) are not involved in the matter giving rise to the appeal or in the initial investigation of the grievance; and

(4) do not have a direct business relationship with the covered individual or the health care provider who previously recommended the health care procedure, treatment, or service giving rise to the grievance.

(c) An appeal of a grievance decision must be resolved:

(1) as expeditiously as possible, reflecting the clinical urgency of the situation; and

(2) not later than forty-five (45) days after the appeal is filed.

An insurer that violates this subsection commits an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4.

(d) If an insurer violates subsection (c), the insurer shall file a report with the department during the quarter in which the violation occurred concerning the insurer's compliance with subsection (c). The report must include the following:

(1) The number of appealed grievance decisions that were not resolved as required under subsection (c).

(2) The reason each appeal described in subdivision (1) was not resolved.

~~(d)~~ **(e)** An insurer shall allow a covered individual the opportunity to:

(1) appear in person before; or

(2) if unable to appear in person, otherwise appropriately communicate with;

the panel appointed under subsection (b).

~~(e)~~ **(f)** An insurer shall notify a covered individual in writing of the resolution of an appeal of a grievance decision within five (5) business days after completing the investigation. The appeal resolution notice must include the following:

(1) A statement of the decision reached by the insurer.

(2) A statement of the reasons, policies, and procedures that are the basis of the decision.

(3) Notice of the covered individual's right to further remedies allowed by law, including the right to external grievance review by an independent review organization under IC 27-8-29.

(4) The department, address, and telephone number through which a covered individual may contact a qualified representative to obtain more information about the decision or the right to an external grievance review.

SECTION 73. IC 27-9-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) A delinquency proceeding under this chapter may only be commenced by the commissioner. A court may not entertain, hear, or determine a proceeding commenced by any other person.

(b) A court may not entertain, hear, or determine any complaint requesting:

(1) the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer; or

(2) an injunction, restraining order, or other relief preliminary to, incidental to, or relating to those proceedings other than in accordance with this article.

(c) In addition to other grounds for jurisdiction provided by the law, an Indiana court having jurisdiction of the subject matter has jurisdiction over a person served under the Indiana rules of court or other applicable law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in Indiana if the person served is:

(1) obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the ~~agent~~ **insurance producer** or broker, in any action on or incident to the obligation;

(2) a reinsurer who:

(A) has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced; or

(B) is an ~~agent~~ **insurance producer** or broker of, or for, the reinsurer in any action on or incident to the reinsurance contract; or

(3) or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or

liquidation order is in effect when the action is commenced in any action resulting from such a relationship with the insurer.

(d) If it appears to a receiver appointed in a proceeding under this article that there has been criminal or tortious conduct, breach of any contractual or fiduciary obligation, or other unlawful conduct detrimental to the insurer by any director, officer, manager, ~~agent,~~ **insurance producer,** broker, employee, or other person or entity, the receiver may pursue all appropriate legal remedies on behalf of the insurer.

(e) If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside Indiana, the court may enter an order to stay further proceedings on the action in Indiana.

(f) All action authorized by this section must be brought in the Marion County circuit court.

SECTION 74. IC 27-9-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) An officer, manager, director, trustee, owner, employee, or ~~agent~~ **insurance producer** of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner in any proceeding under IC 27-9 or any investigation preliminary to the proceeding. The term "person", as used in this section, includes any person who exercises control, directly or indirectly, over activities of **an** insurer through any holding company or other affiliate of the insurer. "To cooperate" includes:

(1) replying promptly in writing to any inquiry from the commissioner requesting such a reply; and

(2) making available to the commissioner all books, accounts, documents, or other records, information, or property of or pertaining to the insurer and in ~~his~~ **the insurer's** possession, custody, or control.

(b) A person may not obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary to or incidental to an investigation.

(c) This section does not abridge existing legal rights, including the right to resist a petition for liquidation, other delinquency proceedings, or other orders.

(d) A person who:

(1) is included within subsection (a) and who fails to cooperate with the commissioner;

(2) obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental to a delinquency proceeding; or

(3) violates any order of the commissioner under IC 27-9;

commits a Class A infraction.

SECTION 75. IC 27-9-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The commissioner may petition for an order dissolving the corporate existence of a domestic insurer, or the United States branch of an alien insurer domiciled in Indiana, at the time ~~he~~ **the commissioner** applies for a liquidation order. The Marion County circuit court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, the dissolution shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

(b) The liquidator may do all acts necessary or appropriate for the accomplishment of the liquidation, including the following:

(1) Appoint a special deputy to act for ~~him~~ **the liquidator** under this article, and determine a reasonable compensation for that special deputy.

(2) Employ employees and ~~agents,~~ **insurance producers,** legal counsel, actuaries, accountants, appraisers, consultants, and other personnel as ~~he~~ **the liquidator** considers necessary to assist in the liquidation.

(3) Fix the reasonable compensation of employees and ~~agents,~~ **insurance producers,** legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court.

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer.

(5) Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to ~~his~~ **the person's** testimony after it has been correctly reduced to writing, and in connection with hearings and the examination of witnesses require the production of any books, papers, records, or other documents which ~~he~~ **the liquidator** deems relevant to the inquiry.

(6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:

(A) institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against those debts;

(B) do other acts necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as ~~he~~ **the liquidator** considers best; and

(C) pursue any creditor's remedies available to enforce ~~his~~ **the liquidator's** claims.

(7) Conduct public and private sales of the property of the insurer.

(8) Use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 40 of this chapter.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable.

(10) Borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

(11) Enter into contracts that are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.

(12) Continue to prosecute and to institute in the name of the insurer, or in ~~his~~ **the liquidator's** own name, all suits and other legal proceedings, in Indiana or elsewhere, and abandon the prosecution of claims ~~he~~ **the liquidator** considers unprofitable to pursue further.

(13) Prosecute any action that may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any director or officer of the insurer, or any other person.

(14) Remove all records and property of the insurer to the offices of the commissioner or to some other place as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one (1) or more banks in Indiana sums required for meeting current administration expenses and dividend distributions.

(16) Invest all sums not currently needed, unless the court orders otherwise.

(17) File any necessary documents for record in the office of any recorder of deeds or record office in Indiana or elsewhere where property of the insurer is located.

(18) Assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury.

(19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included in sections 14 through 16 of this chapter.

(20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the

receiver or trustee whenever the appointment is offered.

(21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.

(22) Exercise all powers conferred upon receivers by the laws of Indiana not inconsistent with this article.

SECTION 76. IC 27-9-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) Unless the Marion County circuit court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by:

(1) first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;

(2) first-class mail to any guaranty association or foreign guaranty association that is or may become obligated as a result of the liquidation;

(3) first-class mail to all insurance ~~agents~~ **producers** of the insurer;

(4) first-class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last known address as indicated by the records of the insurer;

(5) first-class mail to the secretary of state's office; and

(6) publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in all other locations the liquidator considers appropriate.

(b) Notice to potential claimants under subsection (a) must require claimants to file with the liquidator their claims, together with proper proof of those claims under section 34 of this chapter, before a date the liquidator specifies in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants must keep the liquidator informed of any changes of address.

(c) If notice is given in accordance with this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice.

SECTION 77. IC 27-9-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) Every person who receives notice in the form prescribed in section 10 of this chapter that an insurer whom ~~he~~ **the person** represents as an ~~agent~~ **insurance producer** is the subject of a liquidation order must, within fifteen (15) days of that notice, give notice of the liquidation order to each policyholder as provided by subsection (b).

(b) The notice must be sent by first class mail to the last address contained in the ~~agent's~~ **insurance producer's** records to each policyholder or other person named in any policy issued through that ~~agent~~ **insurance producer** by the insurer, if ~~he~~ **the insurance producer** has a record of the address of the policyholder or other person.

(c) A policy shall be treated as though it were issued through an ~~agent~~ **insurance producer** if the ~~agent~~ **insurance producer** has a property interest in the expiration of the policy, or if the ~~agent~~ **insurance producer** has had in ~~his~~ **the insurance producer's** possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another.

(d) The written notice must include:

(1) the name and address of the insurer;

(2) the name and address of the ~~agent;~~ **insurance producer;** and

(3) identification of the policy impaired and the nature of the impairment, including termination of coverage as described in section 8 of this chapter.

(e) Notice by a general agent satisfies the notice requirement for any ~~agents~~ **insurance producers** under contract to ~~him.~~ **the general agent.** Each ~~agent~~ **insurance producer** obligated to give notice under this section shall file a report of compliance with the liquidator.

(f) After a hearing under IC 4-21.5-3, an ~~agent~~ **insurance producer** failing to give notice or file a report of compliance as required by subsection (e) may be subject to payment of a penalty of not more than one thousand dollars ($1,000) and may have ~~his~~ **the insurance producer's** license suspended.

(g) The liquidator may waive the duties imposed by this section if ~~he~~ **the liquidator** determines that other notice to the policyholders of the insurer under liquidation is adequate.

SECTION 78. IC 27-9-3-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 31. (a) An ~~agent,~~ **insurance producer,** a broker, an agency, a premium finance company, an insured, or any other person responsible for the payment of a premium shall be obligated to pay any earned but unpaid premium for any policy that is due the insurer for coverage provided before the declaration of insolvency. However, an ~~agent,~~ **insurance producer,** a broker, an agency, a premium finance company, an insured, or any other person responsible for the payment of a premium shall not be responsible for any unpaid premium unearned as of the time of the declaration of insolvency.

(b) In addition to the obligation owed under subsection (a), an ~~agent,~~ **insurance producer,** broker, agency, premium finance company, or any other person, other than the insured, responsible for the payment of a premium to the insurance company or any holding company shall pay any unearned premium collected from the insured before the declaration of insolvency. The commissioner may also recover from that person any part of an unearned premium that represents a commission of that person.

(c) Credits or setoffs or both may not be allowed to an ~~agent,~~ **insurance producer,** broker, or premium finance company for any amounts advanced to the insurer by the ~~agent,~~ **insurance producer,** broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

(d) Upon satisfactory evidence of a violation of this section, the commissioner may pursue the following courses of action against those parties licensed by the department of insurance:

(1) Suspend, revoke, or refuse to renew the licenses of the offending party.

(2) Impose a penalty of not more than one thousand dollars ($1,000) for each and every act in violation of this article by the party.

These penalties are in addition to and not in lieu of the obligations owed under subsections (a) and (b).

(e) Before the commissioner may take any action as provided in subsection (d), ~~he~~ **the commissioner** shall give written notice to the person accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time (at least ten (10) days after the notice is sent) and place when a hearing on the matter is to be held. After the hearing, if the commissioner finds a violation, or upon failure of the accused to appear at the hearing, the commissioner shall impose whatever penalties allowed under subsection (d) as ~~he~~ **the commissioner** considers advisable.

(f) Subsection (a) does not relieve an insured of any obligation that may exist to reimburse any agency, ~~agent,~~ **insurance producer,** broker, premium finance company, or other person for amounts advanced to the insurer on behalf of the insured.

SECTION 79. IC 27-9-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under section 4(c) of this chapter, be vested by operation of law with the title to all of the assets, property, contracts, and rights of action, ~~agents'~~ **insurance producers'** balances, and all of the books, accounts, and other records of the insurer located in Indiana. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from ~~agents~~ **insurance producers** and to obtain possession of the books, accounts, and other records of the insurer located in Indiana. ~~He~~ **The domiciliary liquidator** also shall have the right to recover all other assets of the insurer located in Indiana, subject to section 4 of this chapter.

(b) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner shall be vested by

operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts, and other records of the insurer located in Indiana, at the same time that the domiciliary liquidator is vested with title in the domicile. The Indiana insurance commissioner may petition for a conservation or liquidation order under ~~sections~~ **section** 1 or 2 of this chapter, or for an ancillary receivership under section 4 of this chapter, or after approval by the Marion County circuit court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(c) Claimants residing in Indiana may file claims with the liquidator or ancillary receiver, if any, in Indiana or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

SECTION 80. IC 27-10-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. "All lines fire and casualty ~~agent"~~ **insurance producer"** means an ~~agent~~ **insurance producer** who holds a valid license issued by the department of insurance to engage in the writing and transacting of all of the following lines and kinds of insurance:

(1) Property insurance.
(2) Casualty insurance.
(3) Surety insurance.
(4) Disability insurance.
(5) Inland marine insurance.

SECTION 81. IC 27-10-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) A person may not act in the capacity of a bail agent or recovery agent or perform any of the functions, duties, or powers prescribed for bail agents or recovery agents under this article unless the person is qualified and licensed as provided in this article. However, none of the terms of this section shall prohibit any individual or individuals from:

(1) pledging real or other property as security for a bail bond in judicial proceedings and where the individual does not receive, or is not promised, money or other things of value; or
(2) executing any bail bond for an insurer, pursuant to a bail bond service agreement entered into between the insurer and any automobile club or association, financing institution, insurance company, or other organization or association, and on behalf of a person required to furnish bail in connection with any violation of law arising out of the use of a motor vehicle.

(b) A license:

(1) may not be issued except in compliance with this article; and
(2) may only be issued to an individual.

However, upon an affirmative showing to the commissioner in writing by an individual that the individual is an all lines fire and casualty ~~agent,~~ **insurance producer,** a surety bail agent license shall be issued to the individual without further qualification or fee to represent an insurer the individual is licensed to represent. The individual shall be subject to and governed by laws and rules relating to bail agents when engaged in the activities of a bail agent.

(c) A firm, a partnership, an association, a limited liability company, or a corporation may not be licensed.

(d) The applicant must apply in writing, on forms prepared and supplied by the commissioner, and the commissioner may propound any reasonable interrogatories to an applicant for a license under this article or on any renewal of a license relating to the applicant's qualifications, residence, prospective place of business, and any other matters which, in the opinion of the commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The commissioner may also conduct any reasonable inquiry or investigation the commissioner sees fit, relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

(e) The failure of the applicant to secure approval of the commissioner shall not preclude the applicant from applying as many times as the applicant desires. However, an applicant's application may not be considered by the commissioner within one (1) year subsequent to the date upon which the commissioner denied the applicant's last application.

SECTION 82. IC 27-10-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The application for license, in addition to the matters set out in section 1 of this chapter, to serve as a bail agent must affirmatively show that:

(1) the applicant is at least eighteen (18) years of age and is of good moral character;
(2) the applicant has never been convicted of a disqualifying offense, notwithstanding IC 25-1-1.1, or:
(A) in the case of a felony conviction, at least ten (10) years have passed since the date of the applicant's conviction or release from imprisonment, parole, or probation, whichever is later; or
(B) in the case of a misdemeanor disqualifying offense, at least five (5) years have passed since the date of the applicant's conviction or release from imprisonment, parole, or probation, whichever is later; and
(3) the applicant has knowledge, experience, or instruction in the bail bond business, or has held a valid all lines fire and casualty ~~agent's~~ **insurance producer's** license for one (1) year within the last five (5) years, or has been employed by a company engaged in writing bail bonds in which field the applicant has actively engaged for at least one (1) year of the last five (5) years.

(b) The application must affirmatively show that the applicant has been a bona fide resident of ~~the state~~ **Indiana** for one (1) year immediately preceding the date of application. However, the commissioner may waive this requirement.

SECTION 83. IC 27-11-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) ~~Agents~~ **Insurance producers** of societies shall be licensed in accordance with the laws regulating the licensing and the revocation, suspension, or termination of license of resident and nonresident ~~agents.~~ **insurance producers.**

(b) No examination or license shall be required of any regular salaried officer, employee, or member of a licensed society who devotes substantially all of the officer's, employee's or member's services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of those contracts no commission or other compensation directly dependent upon the amount of business obtained.

SECTION 84. IC 27-13-1-3, AS AMENDED BY P.L.132-2001, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. ~~"Agent"~~ **"Insurance producer"** means a person who is a licensed insurance ~~agent~~ **producer** under IC 27-1-15.6 and who:

(1) solicits, negotiates, effects, procures, delivers, renews, or continues a policy or contract for membership in a health maintenance organization or a prepaid limited health service organization;
(2) takes or transmits a membership fee or premium for the policy or contract other than for the ~~agent~~ **insurance producer;** or
(3) causes the ~~agent~~ **insurance producer** to be held out to the public, through advertising or otherwise, as a producer for a health maintenance organization or a prepaid limited health service organization.

SECTION 85. IC 27-13-10-8, AS AMENDED BY P.L.133-1999, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) A health maintenance organization shall establish written policies and procedures for the timely resolution of appeals of grievance decisions. The procedures for registering and responding to oral and written appeals of grievance decisions must include the following:

(1) Acknowledgment of the appeal, orally or in writing, within three (3) business days after receipt of the appeal being filed.
(2) Documentation of the substance of the appeal and the actions taken.
(3) Investigation of the substance of the appeal, including any aspects of clinical care involved.
(4) Notification to enrollees or subscribers of the disposition of the appeal and that the enrollee or subscriber may have the right to further remedies allowed by law.

(5) Standards for timeliness in responding to appeals and providing notice to enrollees or subscribers of the disposition of the appeal and the right to initiate an external appeals process that accommodate the clinical urgency of the situation.

(b) The health maintenance organization shall appoint a panel of qualified individuals to resolve an appeal. An individual may not be appointed to the panel who has been involved in the matter giving rise to the complaint or in the initial investigation of the complaint. Except for grievances that have previously been appealed under IC 27-8-17, in the case of an appeal from the proposal, refusal, or delivery of a health care procedure, treatment, or service, the health maintenance organization shall appoint one (1) or more individuals to the panel to resolve the appeal. The panel must include one (1) or more individuals who:

(1) have knowledge in the medical condition, procedure, or treatment at issue;

(2) are in the same licensed profession as the provider who proposed, refused, or delivered the health care procedure, treatment, or service;

(3) are not involved in the matter giving rise to the appeal or the previous grievance process; and

(4) do not have a direct business relationship with the enrollee or the health care provider who previously recommended the health care procedure, treatment, or service giving rise to the grievance.

(c) An appeal of a grievance decision must be resolved as expeditiously as possible and with regard to the clinical urgency of the appeal. However, an appeal must be resolved not later than forty-five (45) days after the appeal is filed. **A health maintenance organization that violates this subsection commits an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4.**

(d) **If a health maintenance organization violates subsection (c), the health maintenance organization shall file a report with the department during the quarter in which the violation occurred concerning the insurer's compliance with subsection (c). The report must include the following:**

(1) The number of appealed grievance decisions that were not resolved as required under subsection (c).

(2) The reason each appeal described in subdivision (1) was not resolved.

(e) A health maintenance organization shall allow enrollees and subscribers the opportunity to appear in person at the panel or to communicate with the panel through appropriate other means if the enrollee or subscriber is unable to appear in person.

~~(e)~~ **(f)** A health maintenance organization shall notify the enrollee or subscriber in writing of the resolution of the appeal of a grievance within five (5) business days after completing the investigation. The grievance resolution notice must contain the following:

(1) The decision reached by the health maintenance organization.

(2) The reasons, policies, or procedures that are the basis of the decision.

(3) Notice of the enrollee's or subscriber's right to further remedies allowed by law, including the right to review by an independent review organization under IC 27-13-10.1.

(4) The department, address, and telephone number through which an enrollee may contact a qualified representative to obtain more information about the decision or the right to an appeal.

SECTION 86. IC 27-13-21-1, AS AMENDED BY P.L.132-2001, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. To qualify to represent a health maintenance organization or a limited service health maintenance organization, an ~~agent~~ **insurance producer** shall be licensed ~~and regulated as~~ **with** an accident and health ~~insurance agent~~ **or sickness qualification** under ~~IC 27-1-15.6.~~ **IC 27-1-15.6-7.**

SECTION 87. IC 27-13-34-18, AS AMENDED BY P.L.132-2001, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. (a) Except as provided in subsection (c), a limited service health maintenance organization shall maintain in force a fidelity bond in its own name on its officers and employees:

(1) in an amount not less than fifty thousand dollars ($50,000); or

(2) in any other amount prescribed by the commissioner.

(b) The fidelity bond required by this section must be issued by an insurance company not affiliated in any way with the limited service health maintenance organization, that is licensed to do business in Indiana. However, if a fidelity bond is not available from an insurance company that holds a certificate of authority in Indiana, a limited service health maintenance organization may satisfy the requirement of this section by maintaining a fidelity bond procured by a surplus lines insurance ~~agent~~ **producer** not affiliated in any way with the limited service health maintenance organization who holds a license issued under IC 27-1-15.8.

(c) Instead of maintaining a fidelity bond under subsection (a), a limited service health maintenance organization may deposit with the commissioner:

(1) cash;

(2) certificates of deposit;

(3) United States government obligations acceptable to the commissioner;

(4) any other securities acceptable to the commissioner of the types referred to in IC 27-13-11-1; or

(5) a combination of the items described in subdivisions (1) through (4).

A deposit made under this subsection is in addition to any other required deposit, and must also be maintained in joint custody with the commissioner in the amount and subject to the same conditions required for a fidelity bond under this section.

SECTION 88. IC 27-13-36.2-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) Beginning on the effective date of the date referred to in Section 262 of the federal Health Insurance Portability and Accountability Act (42 U.S.C. 1320d-4), a health maintenance organization may request from the insurance commissioner appointed under IC 27-1-1-2 a waiver from the requirements of this chapter that apply to claims filed on paper.**

(b) The commissioner may grant a waiver under this section if, not more than six (6) months after the effective date described in subsection (a), the requesting health maintenance organization experiences an increase of the lesser of:

(1) ten thousand (10,000); or

(2) at least twenty percent (20%);

in the volume of claims filed on paper.

(c) A waiver granted under this section is effective for a set period determined by the commissioner.

(d) This section expires December 31, 2005.

SECTION 89. IC 28-1-11-2, AS AMENDED BY P.L.134-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. Any bank or trust company shall have power to act as fiscal or transfer agent of the United States or of any state, municipality, body politic or corporation; and in such capacity to receive and disburse money; to transfer, register and countersign certificates of stock, bonds or other evidence of indebtedness; to authenticate and certify any such bonds and certificates of indebtedness; to act as agent to buy and sell domestic and foreign transportation; to solicit and write insurance as ~~agent~~ **an insurance producer** or broker for any insurance company authorized to do business in the state or states where the ~~agent~~ **insurance producer** or broker operates; and to act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.

SECTION 90. IC 28-1-11-2.5, AS AMENDED BY HEA 1653-2003, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.5. (a) A bank or trust company may act as an ~~agent~~ **insurance producer** for the sale of any life insurance policy or annuity contract issued by a life insurance company authorized to do business in any state in which the agent operates.

(b) A bank or trust company that acts as an ~~agent~~ **insurance producer** for the sale of a life insurance policy or an annuity contract

in Indiana:
(1) is subject to all requirements of IC 27; and
(2) must comply with the disclosure requirements under IC 27-1-38.
(c) A bank or trust company may not condition:
(1) an extension of credit;
(2) a lease or sale of real or personal property;
(3) the performance of services; or
(4) the amount charged for:
(A) extending credit;
(B) leasing or selling real or personal property; or
(C) performing services;
upon a person's purchase of a life insurance policy or an annuity contract from the bank or trust company or an affiliate (as defined in IC 28-2-13-3) of the bank or trust company.
(d) This section does not prohibit a bank or trust company from requiring that a person, as a condition to a transaction, obtain a life insurance policy from an insurance company acceptable to the bank or trust company.
SECTION 91. IC 28-5-1-6.5, AS AMENDED BY P.L.130-2002, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6.5. (a) Notwithstanding any other provision of this title, an industrial loan and investment company may act as an ~~agent~~ **insurance producer** for the sale of any annuity contract issued by a life insurance company (as defined in IC 27-1-2-3) authorized to do business in Indiana under IC 27-1.
(b) An industrial loan and investment company that acts as an ~~agent~~ **insurance producer** for the sale of an annuity contract:
(1) is subject to all requirements of IC 27 relating to the sale and solicitation of insurance, including licensing as an ~~agent~~ **insurance producer** under IC 27-1-15.6; and
(2) must comply with the disclosure requirements under IC 27-1-38.
(c) This section does not give power to, or otherwise affect the power of, an industrial loan and investment company to act as an ~~agent~~ **insurance producer** for the sale of life insurance other than an annuity contract.
SECTION 92. IC 28-6.1-6-14, AS AMENDED BY P.L.130-2002, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) A savings bank may solicit and write insurance as an ~~agent~~ **insurance producer** or a broker for any insurance company authorized to do business in the state or states where the ~~agent~~ **insurance producer** or broker operates.
(b) A savings bank or its affiliate (as defined in IC 28-6.2-1-4) may act as an ~~agent~~ **insurance producer** for the sale of any life insurance policy or annuity contract issued by a life insurance company (as defined in IC 27-1-2-3) authorized to do business in the state or states where the ~~agent~~ **insurance producer** operates.
(c) A savings bank or its affiliate that acts as an ~~agent~~ **insurance producer** for the sale of a life insurance policy or an annuity contract under subsection (b):
(1) is subject to all requirements of IC 27 with respect to the ~~agent's~~ **insurance producer's** activity in Indiana; and
(2) must comply with the disclosure requirements under IC 27-1-38.
(d) A savings bank or its affiliate may not condition:
(1) an extension of credit;
(2) a lease or sale of real or personal property;
(3) the performance of a service; or
(4) the amount charged for:
(A) extending credit;
(B) leasing or selling real or personal property; or
(C) performing services;
upon a person's purchase of a life insurance policy or an annuity contract from the savings bank or its affiliate.
(e) This section does not prohibit a savings bank or its affiliate from requiring that a person, as a condition to a transaction, obtain a life insurance policy from an insurance company acceptable to the savings bank or its affiliate.
SECTION 93. IC 28-7-1-9.1, AS AMENDED BY P.L.130-2002, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9.1. (a) A credit union or a related credit union service organization (as defined in section 0.5(7) of this chapter) that acts as an ~~agent~~ **insurance producer** for the sale of a life insurance policy or an annuity contract issued by a life insurance company (as defined in IC 27-1-2-3):
(1) is subject to the requirements of IC 27; and
(2) must comply with the disclosure requirements of IC 27-1-38.
(b) A credit union or credit union service organization may not condition:
(1) an extension of credit;
(2) a lease or sale of real or personal property;
(3) the performance of a service; or
(4) the amount charged for:
(A) extending credit;
(B) leasing or selling real or personal property; or
(C) performing services;
upon a person's purchase of a life insurance policy or an annuity contract from the credit union or related credit union service organization.
(c) This section does not prohibit a credit union or a credit union service organization from requiring that a person, as a condition to a transaction, obtain a life insurance policy from an insurance company acceptable to the credit union or credit union service organization.
SECTION 94. IC 28-14-3-10, AS AMENDED BY P.L.215-1999, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. A corporate fiduciary has the power to act as fiscal or transfer agent of the United States or any state, municipality, body politic, or corporation, and may, in that capacity:
(1) receive and disburse money;
(2) transfer, register, and countersign certificates of stocks, bonds, and other evidence of indebtedness;
(3) authenticate and certify bonds and certificates of indebtedness referred to in subdivision (2);
(4) act as agent to buy and sell domestic and foreign transportation;
(5) solicit and write insurance as ~~agent~~ **insurance producer** or broker for any insurance company authorized to do business in Indiana; and
(6) act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.
SECTION 95. IC 28-14-3-11, AS AMENDED BY P.L.130-2002, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) Notwithstanding any other provision of this title, a corporate fiduciary may act as an ~~agent~~ **insurance producer** for the sale of any annuity contract or any life insurance policy issued by a life insurance company (as defined in IC 27-1-2-3) authorized to do business in Indiana under IC 27-1.
(b) A corporate fiduciary that acts as an agent for the sale of an annuity contract or a life insurance policy:
(1) is subject to all requirements of IC 27 relating to the sale and solicitation of insurance, including licensing as an ~~agent~~ **insurance producer** under IC 27-1-15.6; and
(2) must comply with the disclosure requirements under IC 27-1-38.
SECTION 96. IC 34-18-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The surcharge shall be collected on the same basis as premiums by each insurer, risk manager, or surplus lines ~~agent.~~ **producer.**
(b) The surcharge is due and payable within thirty (30) days after the premium for malpractice liability insurance has been received by the insurer, risk manager, or surplus lines ~~agent~~ **producer** from a health care provider in Indiana. If a surcharge is not paid as required by this section, the insurer, risk manager, or surplus lines ~~agent~~ **producer** responsible for the delinquency is liable for the surcharge plus a penalty equal to ten percent (10%) of the amount of the surcharge.
(c) If the annual premium surcharge is not paid within the time limit specified in subsection (b), the certificate of authority of the insurer, risk manager, and surplus lines ~~agents~~ **producer** shall be suspended until the annual premium surcharge is paid.

SECTION 97. IC 35-43-9-4, AS AMENDED BY P.L.132-2001, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. As used in this chapter, "title insurance agent" means a person who holds a limited ~~insurance representative's~~ **lines producer's** license issued under IC 27-1-15.6-18(4) and disburses funds from a title insurance escrow account to a party in connection with a residential real property transaction.

SECTION 98. [EFFECTIVE JULY 1, 2003] **(a) IC 27-8-28-17 and IC 27-13-10-8, both as amended by this act, apply to an appeal of a grievance that is filed after June 30, 2003.**

(b) This SECTION expires June 30, 2006.

SECTION 99. **An emergency is declared for this act.**

(Reference is to EHB 1407 as reprinted April 10, 2003.)

FRY	PAUL
RIPLEY	LEWIS
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1834–1; filed April 24, 2003, at 2:34 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1834 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 24-4.5-1-102, AS AMENDED BY P.L.82-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 102. Purposes; Rules of Construction)(1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

(a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;

(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

(g) to make uniform the law including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted pursuant to this article.

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2001.~~ **2002.**

SECTION 2. IC 24-4.5-7-401, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 401. (1) Except as provided in subsection (2), a small loan may not be made for a term of less than fourteen (14) days.

(2) After the consumer's third consecutive small loan, ~~renewal,~~ another small loan may not be made to that consumer within seven (7) days after the date of the third consecutive small loan unless the new small loan is for a term of twenty-eight (28) days or longer.

SECTION 3. IC 24-4.5-7-413, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 413. (1) A person engaged in making small loans under this chapter shall post a bond to the department in the amount of fifty thousand dollars ($50,000) for each location where small loans will be made, up to a maximum bond amount of five hundred thousand dollars ($500,000).

(2) A bond posted under subsection (1) must continue in effect for ~~five (5)~~ **two (2)** years after the lender ceases operation in Indiana. The bond must be available to pay damages and penalties to a consumer harmed by a violation of this chapter.

SECTION 4. IC 28-1-2-23, AS AMENDED BY P.L.134-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23. (a) A corporation or an individual acting directly, indirectly, or through or in concert with one (1) or more other corporations or individuals may not acquire control of any bank, trust company, stock savings bank, ~~bank~~ holding company, corporate fiduciary, or industrial loan and investment company unless the department has received an application for change in control by which the department is given one hundred twenty (120) days prior written notice of the proposed change in control and within that time the department has issued a notice approving the proposed change in control. The application shall contain the name and address of the corporation, individual, or individuals, who propose to acquire control.

(b) The period for approval under subsection (a) may be extended:

(1) in the discretion of the director for an additional thirty (30) days; and

(2) not to exceed two (2) additional times for not more than forty-five (45) days each time if:

(A) the department determines that the corporation, individual, or individuals, who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (c);

(B) the department determines that any material information submitted is substantially inaccurate; or

(C) the department has been unable to complete the investigation of the corporation, individual, or individuals, who propose to acquire control because of any delay caused by or the inadequate cooperation of the corporation, individual, or individuals.

(c) The department shall issue a notice approving the application only after it has become satisfied that both of the following apply:

(1) The corporation, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the bank, trust company, stock savings bank, bank holding company, corporate fiduciary, or industrial loan and investment company in a legal and proper manner.

(2) The interests of the stockholders, depositors, and creditors of the bank, trust company, stock savings bank, bank holding company, corporate fiduciary, or industrial loan and investment company and the interests of the public generally will not be jeopardized by the proposed change in control.

(d) As used in this section, ~~"bank~~ "holding company" means any company (as defined in IC 28-2-15-5 before July 1, 1992, and as defined in IC 28-2-16-5 beginning July 1, 1992) that **directly or indirectly** controls one (1) or more state chartered ~~banks.~~ **financial institutions.**

(e) As used in this section, "control" means the power directly or indirectly to:

(1) direct the management or policies of a bank, a trust company, a ~~bank~~ holding company, a corporate fiduciary, or an industrial loan and investment company; or

(2) vote at least twenty-five percent (25%) of any class of voting securities of a bank, a trust company, a ~~bank~~ holding company, a corporate fiduciary, or an industrial loan and investment company.

(f) The president or other chief executive officer of a financial institution **or holding company** shall report to the director of the department any transfer or sale of shares of stock of the financial institution **or holding company** that results in direct or indirect ownership by a stockholder or an affiliated group of stockholders of at least ten percent (10%) of the outstanding stock of the financial institution **or holding company.** The report required by this section

must be made not later than ten (10) days after the transfer of the shares of stock on the books of the financial institution **or holding company.**

SECTION 5. IC 28-1-11-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 12.5. Subject to any limitations imposed by the department through policy, a bank or trust company may do any of the following:**

(1) Invest the money deposited in the bank or trust company in the shares of the capital stock, bonds, debentures, notes, or other obligations of a federal home loan bank of the United States.

(2) Become a member of the federal home loan bank of the district in which Indiana is located or an adjoining district.

(3) Borrow money from:

(A) a federal home loan bank described in subdivision (2);

(B) the Federal Deposit Insurance Corporation; or

(C) any other corporation.

(4) Transfer, assign to, and pledge with a federal home loan bank described in subdivision (2), the Federal Deposit Insurance Corporation, or other corporation any of the bonds, notes, contracts, mortgages, securities, or any other property of the bank or trust company held or acquired as security for the payment of loans entered into under subdivision (3).

(5) Exercise all rights, powers, and privileges conferred upon, and do all things and perform all acts required of, members or shareholders of a federal home loan bank by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449).

SECTION 6. IC 28-1-20-4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Except as provided in subsections (c), (d), (g), and (k), it is unlawful for any person, firm, limited liability company, or corporation (other than a bank or trust company, **bank holding company,** or corporate fiduciary organized or reorganized under IC 28 or statutes in effect at the time of organization or reorganization or under the laws of the United States):

(1) to use the word "bank", **banc, or banco** as a part of the name or title of the person, firm, or corporation; or

(2) to advertise or represent the person, firm, limited liability company, or corporation to the public:

(A) as a bank or trust company or a corporate fiduciary; or

(B) as affording the services or performing the duties which by law only a bank or trust company or a corporate fiduciary is entitled to afford and perform.

(b) A financial institution organized under the laws of any state or the United States that establishes a branch office under this title is authorized to do business at that branch using a name other than the name of its home office.

(c) Notwithstanding the prohibitions of this section, an out-of-state financial institution with the word "bank" in its legal name may use the word "bank" if the financial institution is insured by the Federal Deposit Insurance Corporation or its successor.

(d) Notwithstanding subsection (a), a building and loan association organized under IC 28-4 (before its repeal) may include in its name or title:

(1) the words "savings bank"; or

(2) the word "bank" if the name or title also includes either the words "savings bank" or letters "SB".

A building and loan association that includes "savings bank" in its title under this section does not by that action become a savings bank for purposes of IC 28-6.1.

(e) The name or title of a savings bank governed by IC 28-6.1 must include the words "savings bank" or the letters "SB".

(f) A savings association may include in its name the words "building and loan association".

(g) Notwithstanding subsection (a), a bank holding company (as defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a part of its name. However, this subsection does not permit a bank holding company to advertise or represent itself to the public as affording the services or performing the duties that by law a bank or trust company only is entitled to afford and perform.

(h) The department is authorized to investigate the business affairs of any person, firm, limited liability company, or corporation that uses "bank", **banc, or banco** in its title or holds itself out as a bank, corporate fiduciary, or trust company for the purpose of determining whether the person, firm, limited liability company, or corporation is violating any of the provisions of this article, and, for that purpose, the department and its agents shall have access to any and all of the books, records, papers, and effects of the person, firm, limited liability company, or corporation. In making its examination, the department may examine any person and the partners, officers, members, or agents of the firm, limited liability company, or corporation under oath, subpoena witnesses, and require the production of the books, records, papers, and effects considered necessary. On application of the department, the circuit or superior court of the county in which the person, firm, limited liability company, or corporation maintains a place of business shall, by proper proceedings, enforce the attendance and testimony of witnesses and the production and examination of books, papers, records, and effects.

(i) The department is authorized to exercise the powers under IC 28-11-4 against a person, firm, limited liability company, or corporation that improperly holds itself out as a financial institution.

(j) A person, firm, limited liability company, or corporation who violates this section is subject to a penalty of ~~two~~ **five** hundred dollars ~~($200)~~ **($500)** per day for each and every day during which the violation continues. The penalty imposed shall be recovered in the name of the state on relation of the department and, when recovered, shall be paid into the financial institutions fund established by IC 28-11-2-9.

(k) The word "bank", **banc, or banco** may not be included in the name of a corporate fiduciary.

(l) A person, firm, limited liability company, or corporation may not use the name of an existing bank or bank holding company or a name confusingly similar to that of an existing bank or bank holding company when marketing to or soliciting business from a customer or prospective customer if the reference to the existing bank or bank holding company is:

(1) without the consent of the existing bank or bank holding company; and

(2) in a manner that could cause a reasonable person to believe that the marketing material or solicitation:

(A) originated from;

(B) is endorsed by; or

(C) is in any other way the responsibility of;

the existing bank or bank holding company.

(m) An existing bank or bank holding company may, in addition to any other remedies available under the law, report an alleged violation of subsection (l) to the department. If the department finds that the marketing material or solicitation in question is in violation of subsection (l), the department may direct the person, firm, limited liability company, or corporation to cease and desist from using that marketing material or solicitation in Indiana. If that person, firm, limited liability company, or corporation persists in using the marketing material or solicitation, the department may impose a civil penalty of up to fifteen thousand dollars ($15,000) for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer constitutes a separate violation of subsection (l).

(n) Nothing in subsection (l) or (m) prohibits the use of or reference to the name of an existing bank or bank holding company in marketing materials or solicitations, if the use or reference does not deceive or confuse a reasonable person regarding whether the marketing material or solicitation:

(1) originated from;

(2) is endorsed by; or

(3) is in any other way the responsibility of;

the existing bank or bank holding company.

(o) The department may adopt rules under IC 4-22-2 to implement this section.

SECTION 7. IC 28-2-13-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 26. (a) A bank, trust company, corporate fiduciary, or savings bank **organized under the laws of Indiana** may establish a trust office to exercise its powers as a fiduciary **to conduct business** in any location that is approved by the department. Before the department approves a trust office **to exercise powers as a fiduciary** under this subsection, it must determine to its satisfaction that the bank, trust company, corporate fiduciary, or savings bank will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the trust office.

(b) A trust office established under this section by a bank, trust company, or savings bank shall not:

(1) receive deposits;

(2) pay checks; or

(3) lend money;

at the trust office.

SECTION 8. IC 28-6.1-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. **Subject to any limitations imposed by the department through policy, a** ~~A~~ savings bank may do any of the following:

(1) Invest the money deposited in the savings bank in the shares of the capital stock, bonds, debentures, notes, or other obligations of a federal home loan bank of the United States.

(2) Become a member of the federal home loan bank of this or an adjoining district.

(3) Borrow money from:

(A) a bank described in subdivision (2);

(B) the Federal Deposit Insurance Corporation; or

(C) any other corporation.

(4) Transfer, assign to, and pledge with a bank described in subdivision (2), the Federal Deposit Insurance Corporation, or other corporation, any of the bonds, notes, contracts, mortgages, securities, or other property of the savings bank held or acquired, as security for the payment of loans entered into under subdivision (3).

(5) Exercise all rights, powers, and privileges conferred upon, and to do all things and perform all acts required of, members or shareholders of a federal home loan bank by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449).

SECTION 9. IC 28-6.1-20 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 20. Applicability of the Federal Reserve Act

Sec. 1. For purposes of this article, a savings bank that is not a member of the Federal Reserve System is subject to Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) to the same extent and in the same manner as if the savings bank were a member of the Federal Reserve System.

Sec. 2. A violation of Section 23A or 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) by a savings bank or a subsidiary constitutes a violation of this chapter.

SECTION 10. IC 28-7-1-9, AS AMENDED BY P.L.134-2001, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. A credit union has the following powers:

(1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

(2) To make loans to members or other credit unions. A loan to another credit union may not exceed twenty percent (20%) of the paid-in capital and surplus of the credit union making the loan.

(3) To make loans to officers, directors, or committee members, but only if:

(A) the loan complies with all requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

(B) upon the making of the loan, the aggregate amount of loans outstanding under this subdivision will not exceed twenty percent (20%) of the unimpaired capital and surplus of the credit union;

(C) the loan is approved by the credit committee or loan officer; and

(D) the borrower takes no part in the consideration of or vote on the application.

(4) To invest in any of the following:

(A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that are not in default.

(B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).

(C) Interest-bearing obligations of the FSLIC Resolution Fund and obligations of national mortgage associations issued under the authority of the National Housing Act.

(D) Mortgages on real estate situated in Indiana which are fully insured under Title 2 of the National Housing Act (12 U.S.C. 1707 through 1715z).

(E) Obligations issued by farm credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).

(F) In savings and loan associations, other credit unions that are insured under IC 28-7-1-31.5 and certificates of indebtedness or investment of an industrial loan and investment company if the association or company is federally insured. Not more than twenty percent (20%) of the assets of a credit union may be invested in the shares or certificates of an association or company; nor more than forty percent (40%) in all such associations and companies.

(G) Corporate credit unions.

(H) Federal funds or similar types of daily funds transactions with other financial institutions.

(I) Mutual funds created and controlled by credit unions, credit union associations, or their subsidiaries. Mutual funds referred to in this clause may invest only in instruments that are approved for credit union purchase under this chapter.

(J) Shares, stocks, or obligations of any credit union service organization (as defined in Section 712 of the Rules and Regulations of the National Credit Union Administration) with the approval of the department. Not more than five percent (5%) of the total paid in and unimpaired capital of the credit union may be invested under this clause.

(5) To deposit its funds into:

(A) depository institutions that are federally insured; or

(B) state chartered credit unions that are privately insured by an insurer approved by the department.

(6) To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.

(7) To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.

(8) To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.

(9) To charge the member's share account for the actual cost of necessary locator service when the member has failed to keep the credit union informed about the member's current address. The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not more than once in any twelve (12) month period.

(10) To transfer to an accounts payable, a dormant account, or a special account share accounts which have been inactive,

except for dividend credits, for a period of two (2) years. The credit union shall not consider the payment of dividends on the transferred account.

(11) To invest in fixed assets with the funds of the credit union. An investment in fixed assets in excess of five percent (5%) of its assets is subject to the approval of the department.

(12) To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the principal office.

(13) To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

(14) To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

(A) the coverage is placed with an insurance company licensed to do business in Indiana; and

(B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or purchase of the coverage.

(15) To sell and cash negotiable checks, travelers checks, and money orders for members.

(16) To purchase members' notes from any liquidating credit union, with written approval from the department, at prices agreed upon by the boards of directors of both the liquidating and the purchasing credit unions. However, the aggregate of the unpaid balances of all notes of liquidating credit unions purchased by any one (1) credit union shall not exceed ten percent (10%) of its unimpaired capital and surplus unless special written authorization has been granted by the department.

(17) To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(18) To act as a custodian or trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan which qualifies or qualified for specific tax treatment under Section 408(a) or Section 401(d) of the Internal Revenue Code, if the funds of the trust are invested only in share accounts or insured certificates of the credit union.

(19) To issue shares of its capital stock or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.

(20) A credit union may exercise any rights and privileges that are:

(A) granted to federal credit unions; but

(B) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

if the credit union complies with section 9.2 of this chapter.

(21) To sell, pledge, or discount any of its assets. ~~to purchase all or part of the assets of another credit union, and to assume the liabilities of the selling credit union.~~ However, a credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.

(22) **To purchase assets of another credit union and to assume the liabilities of the selling credit union.**

(23) To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed ten percent (10%) of the total assets of that credit union, excluding those public funds.

~~(23)~~ **(24)** To join the National Credit Union Administration Central Liquidity Facility.

~~(24)~~ **(25)** To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

~~(25)~~ **(26)** To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

~~(26)~~ **(27)** To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

~~(27)~~ **(28)** Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional obligations as may be incident to becoming an owner or lessor of such property.

SECTION 11. IC 28-7-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. In this chapter, unless the context otherwise requires:

"Pawnbroker" means any person, partnership, association, or corporation lending money on the deposit or pledge of personal property, or who deals in the purchase of personal property on the condition of selling the property back again at a stipulated price, other than choses in action, securities, or printed evidence of indebtedness.

"Pledge" means personal property deposited with a pawnbroker as security for a loan.

"Pledger" means the person who delivers personal property into the possession of a pawnbroker as security for a loan unless such person discloses that the person is or was acting for another; and in such event "pledger" means the disclosed principal.

"Department" means the department of financial institutions.

"Person" means an individual, a firm, an association, a limited liability company, a partnership, a joint stock association, a trust, or a corporation.

"Month" means a period extending from a given date in one (1) calendar month to the like date in the succeeding calendar month or, if there is no such like date, then to the last day of the succeeding calendar month. For purposes of this chapter, each month is considered to have thirty (30) days.

SECTION 12. IC 28-7-5-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) The maximum rate of interest charged by pawnbrokers shall be the same as the maximum loan finance charge for supervised lenders under IC 24-4.5-3-508(2). **For purposes of this subsection:**

(1) the term of a loan commences on the date on which the loan is made;

(2) differences in lengths of months are disregarded; and

(3) each day is counted as one-thirtieth (1/30) of a month.

The minimum term of a loan made by a pawnbroker is one (1) month. However, on loans paid in full within the first month, the

pawnbroker may charge one (1) month's interest.

(b) Interest shall not be deducted in advance, neither shall the pawnbroker induce or permit any borrower to split up or divide any loan or loans for the purpose of evading any provisions of this chapter.

(c) If a pawnbroker charges or receives interest in excess of that provided in this section, or makes any charges not authorized by this chapter, the pawnbroker shall forfeit principal and interest and return the pledge upon demand of the pledger and surrender of the pawn ticket without the principal or interest. If such excessive or unauthorized charges have been paid by the pledger, the pledger may recover the same, including the principal if paid, in a civil action against the pawnbroker.

SECTION 13. IC 28-7-5-28.5, AS AMENDED BY P.L.163-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28.5. (a) Except as provided in subsection (b), in addition to the loan finance charge authorized by section 28 of this chapter, a pawnbroker may charge, contract for, and receive a fee not to exceed one-fifth (1/5) of the principal amount of the loan per month or any fractional part of a month for servicing the pledge that may include investigating the title, storing, providing security, appraisal, handling, making daily reports to local law enforcement officers, and for other expenses and costs associated with servicing the pledge. The fee for each month after the second month of the loan transaction is limited to one-thirtieth (1/30) of the monthly fee for each day the loan is outstanding. Such a charge when made and collected is not interest and is not a rate under IC 35-45-7-1.

(b) If a loan is renewed or extended, the monthly fee authorized by subsection (a) accrues at a rate of one-thirtieth (1/30) of the monthly fee each day:

(1) beginning ~~sixty (60) days~~ **upon the expiration of two (2) months** after the original date of the loan; and

(2) continuing through and including the day a pledger redeems the pledge.

SECTION 14. IC 28-7-5-30, AS AMENDED BY P.L.163-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 30. ~~After~~ **Upon** the expiration of ~~sixty (60) days~~ **two (2) months** from the maturity of the loan, a pawned article becomes the property of the pawnbroker and **is** subject to sale.

SECTION 15. IC 28-7-5-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 35. If more than one (1) person shall claim the right to redeem a pledge, the pawnbroker shall incur no liability for refusing to deliver the pledge until the respective rights of the claimants shall have been adjudicated. If no action be brought against the pawnbroker by either party within the period for which the pawnbroker is required under section 30 of this chapter to hold the pledge, or within ~~thirty (30) days~~ **one (1) month** after notice of an adverse claim, the pawnbroker may proceed to sell the pledge subject to adjudication of the parties' rights.

SECTION 16. IC 28-8-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) This chapter does not apply to the following:

(1) The United States or an instrumentality of the United States.

(2) The state, a political subdivision of the state, or an instrumentality of the state or of a political subdivision of the state.

(3) A bank, a bank holding company, an industrial loan and investment company, a credit union, a savings association, a savings bank, a mutual bank, or a mutual savings bank organized under the laws of any state or the United States.

(b) Unless otherwise provided in this chapter, this chapter does not apply to an authorized delegate of a person:

(1) licensed under this chapter **or excluded under subsection (a);** and

(2) acting within the scope of authority conferred by a written contract conforming to the requirements of section 49 of this chapter.

SECTION 17. IC 28-8-4-47 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 47. (a) Notwithstanding any other provision of law, all information or reports obtained by the director from an applicant, a licensee, or an authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including but not limited to:

(1) all information contained in or related to:

(A) examination;

(B) investigation;

(C) operation; or

(D) condition reports prepared by, on behalf of, or for the use of the director; or

(2) financial statements, balance sheets, or authorized delegate information;

are confidential and may not be disclosed or distributed outside the department by the director or any officer or employee of the department, except as provided in subsection (b).

(b) The director may provide for the release of information to representatives of state or federal:

(1) financial institution supervisory agencies; ~~who state in writing under oath~~

(2) law enforcement agencies; or

(3) prosecutorial agencies or offices;

that ~~they~~ shall maintain the confidentiality of the information **as described in IC 28-1-2-30.** ~~if:~~

~~(1) the licensee provides consent before the release; or~~

~~(2) the director finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given prior notice by the director to release the information.~~

(c) Nothing in this section shall prohibit the director from releasing to the public a list of persons licensed under this chapter or from releasing aggregated financial data on such licensees.

SECTION 18. IC 28-10-1-1, AS AMENDED BY P.L.82-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. A reference to a federal law or federal regulation in IC 28 is a reference to the law or regulation in effect January 1, ~~2002.~~ **2003.**

SECTION 19. IC 28-11-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) If the director determines that ~~(1)~~ a director, ~~or~~ an officer, **or an employee** of a financial institution has:

~~(A)~~ **(1)** committed a violation of a statute, **a** rule, ~~or~~ **a** final cease and desist order, **any condition imposed in writing by the director in connection with the grant of any application or other request by the financial institution, or any written agreement between the financial institution and the director;**

~~(B)~~ **(2)** engaged or participated in an unsafe or unsound practice in connection with the financial institution;

~~(C)~~ **(3)** committed or engaged in an act, an omission, or a practice that constitutes a breach of fiduciary duty as director, ~~or~~ officer, **or employee;** or

~~(D)~~ **(4)** been charged in a complaint, an indictment, or an information with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one (1) year under federal law or the law of a state; ~~and~~

~~(2) either:~~

the director, subject to subsection (b), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting any participation by the person in the conduct of the affairs of any financial institution, or an order both removing the person and prohibiting the person's participation.

(b) A violation, practice, or breach specified in subdivision (a) is subject to the authority of the director under subsection (a) if the director finds both of the following:

(1) By reason of the violation, practice, or breach:

(A) the financial institution has suffered or will probably suffer substantial financial loss or other damage; or

(B) the interests of the financial institution's depositors could be seriously prejudiced by reason of the violation, practice,

or breach of fiduciary duty.
~~the director may issue and serve upon the director or the officer a notice of charges of the practice, violation, or act.~~

~~(b)~~

(2) The violation, practice, or breach:

(A) involves personal dishonesty on the part of the officer, director, or employee; or

(B) demonstrates a willful or continuing disregard by the officer, director, or employee for the safety and soundness of the financial institution.

(c) A person convicted of a:

(1) felony; or

(2) crime involving dishonesty or breach of trust;

may not serve as a director, an officer, or an employee of a financial institution, or serve in any similar capacity, unless the person obtains the written consent of the department.

~~(c)~~ **(d)** A financial institution that willfully permits a person to serve the financial institution in violation of subsection (b) **or (c)** is subject to a civil penalty of five hundred dollars ($500) for each day the violation continues. A civil penalty paid under this subsection must be deposited into the financial institutions fund established by IC 28-11-2-9.

SECTION 20. IC 28-11-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) A notice issued under this chapter must: ~~do the following:~~

(1) contain a statement of the facts constituting the alleged practice, violation, or ~~act.~~

~~(2) Fix a time and place at which a hearing will be held by the department to determine whether a final order under section 7 of this chapter should be issued.~~

~~(b) The hearing shall be fixed for a date:~~

~~(1) not earlier than thirty (30) days; and~~

~~(2) not later than one hundred twenty (120) days;~~

~~after service of the notice. However, at the request of the party to whom the notice is issued, the department may fix the hearing for a date specified in the request.~~ **breach;**

(2) state the facts alleged in support of the violation, practice, or breach;

(3) state the director's intention to enter an order under section 3(a) of this chapter;

(4) be delivered to the board of directors of the financial institution;

(5) be delivered to the officer, director, or employee concerned; and

(6) specify the procedures that must be followed to initiate a hearing to contest the facts alleged.

(b) If a hearing is requested within ten (10) days after service of the written notice, the director or designee of the director shall hold a hearing concerning the alleged practice, violation, or breach. The hearing shall be held not later than forty-five (45) days after receipt of the request. The director or designee of the director, based on the evidence presented at the hearing, shall enter:

(1) a final order under section 7 of this chapter for the immediate removal of the officer, director, or employee affected;

(2) a final order under section 7 of this chapter prohibiting further participation by the officer, director, or employee, in any manner, in the conduct of affairs of any financial institution;

(3) a final order consisting of both an order described in subdivision (1) and an order described in subdivision (2);

(4) a reprimand of the individuals, entities, or other persons concerned; or

(5) a dismissal of the entire matter.

(c) If no hearing is requested within the time specified in subsection (b), the director may proceed to issue a final order described in subsection (b)(1), (b)(2), or (b)(3) on the basis of the facts set forth in the written notice.

(d) An officer, director, or employee who is removed from a position under a removal order that has become final may not participate in the conduct of the affairs of any financial institution without the approval of the director.

(e) The director may, for the protection of the financial institution or the interests of its depositors, suspend from office or prohibit from participation in the affairs of the financial institution an officer, a director, or an employee of a financial institution who is the subject of a written notice served by the director under subsection (a). A suspension or prohibition under this subsection becomes effective upon service of the notice. Unless stayed by a court in a proceeding authorized by subsection (f), the notice shall remain in effect pending completion of the proceeding under the written notice served under subsection (a) and until the effective date of an order entered by the director under subsection (b) or (c). Copies of the notice shall also be served upon the financial institution or subsidiary of which the person is an officer, a director, or an employee.

(f) Not more than ten (10) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the financial institution or subsidiary under subsection (e), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings under subsection (b), and the court may stay the suspension of prohibition.

~~(c)~~ **(g)** The department shall maintain an official record of a proceeding under this chapter.

SECTION 21. IC 28-11-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. If the department enters into a consent to a final order under section 7 of this chapter with a financial institution, director, ~~or~~ officer, **or employee,** the director is not required to issue and serve a notice of charges upon the financial institution, director, or officer under section 2 or 3 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges.

SECTION 22. IC 28-11-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) If the department determines that an alleged practice, a violation, or an act specified in a notice served under this chapter is likely to:

(1) cause insolvency of the financial institution;

(2) cause substantial dissipation of assets or earnings of the financial institution; or

(3) otherwise seriously prejudice the interests of the depositors of the financial institution;

the department may issue a temporary order without a hearing.

(b) A temporary order may

~~(1)~~ require the financial institution to cease and desist from the practice or violation. ~~or~~

~~(2) temporarily remove a director or an officer of the financial institution.~~

(c) A temporary order is effective upon service and remains effective and enforceable until the earliest of the following:

(1) The issuance of an injunction by a court under subsection (d).

(2) The dismissal of the charges by the department.

(3) The effective date of a final order under section 7 of this chapter.

(d) A financial institution ~~a director, or an officer~~ served with a temporary order under this section may apply to a court having jurisdiction for an injunction to stay, modify, or vacate the order.

SECTION 23. IC 28-11-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) If ~~upon the record made at a hearing under this chapter~~ the department finds that the conditions specified in section 2 or 3 of this chapter have been established, the department may issue a final order.

(b) A final order must include separately stated findings of fact **and conclusions of law** for all aspects of the order. ~~including any remedy under subsection (c). Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings.~~

(c) A final order may do any of the following:

(1) Require the financial institution and its directors, officers, employees, and agents to do any of the following:

(A) Cease and desist from the practice or violation.
(B) Take affirmative action to correct the conditions resulting from the practice or violation.
(2) ~~Permanently remove~~ **Suspend or prohibit** a director, ~~or~~ an officer, **or an employee from participating in the affairs of a financial institution or subsidiary.**
(3) Impose a civil penalty not to exceed the amount specified in section 9 of this chapter.

(d) A final order shall be issued in writing within ninety (90) days after conclusion of the hearing, unless this period is waived or extended with the written consent of all parties or for good cause shown. **A final order issued under this chapter may be made public by the department.**

(e) If the financial institution, director, or officer does not appear individually or by a duly authorized representative at the hearing, the financial institution, director, or officer is considered to have consented to the issuance of a final order.

SECTION 24. IC 28-12-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) This section applies only to a corporation that is any of the following:
(1) A bank and trust company.
(2) A bank.
(3) A stock savings bank.

(b) The department shall determine the minimum amount of the capital ~~stock~~ of a corporation organized or reorganized under this title after giving consideration to the potential deposit liability to be anticipated in the case of a proposed new corporation, or the existing deposit liability of a corporation to be reorganized.

SECTION 25. IC 28-13-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. A ~~bank, trust company, or corporate fiduciary~~ **corporation** may not, during the time it continues in business as such, withdraw or authorize or permit to be withdrawn any portion of the capital stock in the form of dividends or otherwise.

SECTION 26. IC 28-13-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A ~~bank, trust company, or corporate fiduciary~~ **corporation** may not declare or pay any dividends to its shareholders in any form if, by the payment of the dividends, its capital stock will be thereby impaired.

(b) A ~~bank, trust company, or corporate fiduciary~~ **corporation** may never pay a dividend in an amount greater than the remainder of undivided profits then on hand after deducting losses, bad debts, or depreciation that the department may have determined, and all other expenses.

(c) A corporation must obtain department approval before reducing the corporation's capital stock, capital surplus, or preferred stock.

SECTION 27. IC 28-13-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. All debts due to a ~~bank, trust company, or corporate fiduciary~~ **corporation** on which interest is past due for a period of six (6) months are bad debts unless, in the opinion of the department, the debts are well secured.

SECTION 28. IC 28-13-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) The department may, if the department considers it necessary for the protection of the depositors, require any bank or trust **company, savings bank, or savings association** to increase the sound capital or to reduce the amount of the deposits of the bank or trust **company, savings bank, or savings association.** The department shall, in arriving at a decision whether to order a bank or trust **company, savings bank, or savings association** to increase the sound capital or reduce the amount of the deposits for the protection of **the depositors of** the bank or trust ~~company's depositors,~~ **company, savings bank, or savings association,** take into consideration the following:
(1) Quality of management.
(2) Liquidity of assets.
(3) History of earnings and the retention of earnings.
(4) Quality and character of ownership.
(5) Burden of occupancy expenses.
(6) Potential volatility of deposit structure.
(7) Quality of operating procedures.
(8) Capacity to meet present and future needs of the area served, considering its competition.

(b) If the department determines that an increase in the sound capital or decrease in the deposits is necessary, the department shall enter an order fixing the amount of the increase or decrease. The order shall be complied with within the time period fixed by the order.

(c) The department may require a corporate fiduciary to increase its capital. In deciding whether to order a corporate fiduciary to increase its capital, the department shall take into consideration the following:
(1) Quality of management.
(2) Liquidity of assets.
(3) History of earnings and the retention of earnings.
(4) Quality and character of ownership.
(5) Burden of occupancy expenses.
(6) Quality of operating procedures.
(7) Ability to administer fiduciary accounts in a prudent manner consistent with applicable laws or regulations.

(d) If the department determines that an increase in capital is necessary, the department shall enter an order fixing the amount of the increase. The order must be complied with within the period fixed by the order.

SECTION 29. IC 28-13-16-4, AS ADDED BY P.L.215-1999, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) A financial institution **or any of its subsidiaries** may acquire or establish a qualifying subsidiary by providing the department with written notice before acquiring or establishing the subsidiary. The department shall notify the requesting financial institution of the department's receipt of the notice.

(b) A subsidiary may exercise a power or engage in an activity permitted to be performed by a financial institution under the same conditions and restrictions as if the power or activity is performed by the financial institution itself, or the activity has been authorized by 12 CFR 5.34(e)(2)(ii).

(c) The qualified subsidiary may exercise or engage in the activity thirty (30) days after the date on which the department receives the notification unless otherwise notified by the department.

SECTION 30. IC 28-15-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. Savings associations may do the following:
(1) Accept deposit accounts.
(2) Issue evidence of deposit account ownership.
(3) Declare and distribute earnings to members.
(4) Pay, in part or in full, withdrawal requests of deposit accounts.
(5) Subject to the provisions and restrictions of 12 U.S.C. 84 and 12 CFR 32:
(A) Make loans to members on the security of deposit accounts.
(B) Make property improvement loans.
(C) Make other loans as provided under IC 28-15-8.
(D) Make mortgage loans.
(E) Accept additional collateral on mortgage loans.
(F) Purchase and sell loans.
(G) Negotiate loan servicing agreements.
(H) Purchase and sell participating interests in loans.
(I) Issue letters of credit with specific expiration dates.
(J) Make secured or unsecured loans, which are partially insured or guaranteed in any manner by any state of the United States, the United States government, or any of its agencies or government sponsored enterprises.
(K) Purchase commercial paper that is denominated in United States currency and rated by at least one (1) nationally recognized investment rating service in one (1) of the two (2) highest grades.
(L) Make, purchase, or participate in alternative mortgage loans as provided in IC 28-15-11.
(6) Acquire and sell real estate in satisfaction of debts previously contracted.
(7) Acquire real estate for the convenient transaction of its

business. A savings association has the same powers under this subdivision as a bank or trust company has under IC 28-1-11-5.
(8) Notwithstanding any other law, establish, maintain, or relocate one (1) or more branch offices by following the provisions of IC 28-2-13, IC 28-2-17, or IC 28-2-18 as if the savings association were a bank.
(9) Become a member in any agency or instrumentality of the federal government. For the purposes of this subdivision, membership in an agency or instrumentality of the federal government may include:
(A) purchasing stock;
(B) purchasing notes and debentures; or
(C) borrowing money.
(10) **Subject to any limitations imposed by the department through policy:**
(A) invest the money deposited in the savings association in the shares of the capital stock, bonds, debentures, notes, or other obligations of a federal home loan bank of the United States;
(B) become a member of the federal home loan bank of the district in which Indiana is located or an adjoining district;
(C) borrow money from:
(i) a federal home loan bank described in clause (B);
(ii) the Federal Deposit Insurance Corporation; or
(iii) any other corporation;
(D) transfer, assign to, and pledge with a federal home loan bank described in clause (B), the Federal Deposit Insurance Corporation, or any other corporation any of the bonds, notes, contracts, mortgages, securities, or other property of the savings association held or acquired as security for the payment of loans entered into under clause (C); and
(E) exercise all rights, powers, and privileges conferred upon, and do all things and perform all acts required of, members or shareholders of a federal home loan bank by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449).
(11) Subject to the provisions and restrictions of 12 U.S.C. 24 and 12 CFR 1, invest in the following types of securities:
(A) Bonds, notes, certificates, and other valid obligations of the United States government or any agency of the United States government.
(B) Accounts offered by federally insured banks, savings banks, and savings associations.
(C) Bonds, notes, or other evidences of indebtedness that are general obligations supported by the full faith and credit of any state in the United States or any city, town, or other political subdivision in any state in the United States if the obligations have been assigned one (1) of the four (4) highest grades by a nationally recognized investment rating service.
(D) Shares of stock of a subsidiary that does not exercise a power or engage in any activity that is not authorized for the savings association. The investment power granted by this subdivision is separate from the investment power granted by IC 28-15-9.
(E) Corporate debt securities that are denominated in United States currency and rated by at least one (1) nationally recognized investment rating service in one (1) of the four (4) highest grades. Corporate debt securities in which a savings association invests under this clause must be convertible into stock at the sole option of the holder, and a savings association is prohibited from exercising the conversion option.
(F) Shares of open end investment companies that are eligible for purchase by national banks.
(G) Bankers' acceptances that are eligible for purchase by national banks.
~~(11)~~ **(12)** For the purpose of:
(A) check and deposit sorting and posting;
(B) computation and posting of interest and other credits and charges;
(C) preparation and mailing of checks, statements, notices, and similar items; or
(D) other clerical, bookkeeping, accounting, statistical, or similar functions performed by a savings association;
invest in a corporation organized in any state to perform those functions for two (2) or more savings associations, each of which owns a portion of the capital stock of the corporation. The total investment of a savings association under this subdivision may not exceed ten percent (10%) of the capital and surplus of the savings association. A savings association may not invest in this type of corporation unless the corporation furnishes assurances to the department that it will subject itself to examination by the department to the same extent as if the services were performed by the savings association.
~~(12)~~ **(13)** Lend money to other savings associations:
(A) the deposits of which are insured by the Federal Deposit Insurance Corporation; and
(B) that are incorporated and operating under the laws of any state or of the United States.
~~(13)~~ **(14)** Borrow money and mortgage or pledge its property to secure payment.
~~(14)~~ **(15)** Issue subordinated notes or debentures.
~~(15)~~ **(16)** Assess and collect interest, fees, and other charges.
~~(16)~~ **(17)** Insure its deposit accounts with the Federal Deposit Insurance Corporation or its successor.
~~(17)~~ **(18)** Act as an agent for the United States or its instrumentalities.
~~(18)~~ **(19)** Accept property for safe keeping or escrow.
~~(19)~~ **(20)** Rent or lease safe deposit boxes.
~~(20)~~ **(21)** Issue and sell checks, drafts, money orders, and other instruments for the transmission or payment of money.
~~(21)~~ **(22)** Exercise all the powers that:
(A) are incidental and proper; or
(B) may be necessary and usual;
in carrying on the business of the savings association.
~~(22)~~ **(23)** Purchase or construct buildings, hold legal title to the buildings, and lease the buildings for public purposes to municipal corporations or other public authorities that have resources sufficient to make payment of all rentals as they become due. Each lease agreement entered into under this subdivision must provide that, upon expiration, the lessee will become the owner of the building.
~~(23)~~ **(24)** Open or establish automated teller machines at any location. An automated teller machine opened or established under this subdivision may be owned and operated individually or jointly on a cost sharing or fee basis.
~~(24)~~ **(25)** Act:
(A) in any fiduciary capacity in which a bank or trust company is permitted to act under this title; and
(B) as an agent for the sale of real estate, without bond or other security.
~~(25)~~ **(26)** Accept and maintain demand deposit accounts if the savings association is insured by the Federal Deposit Insurance Corporation or its successor.
~~(26)~~ **(27)** Without the approval of the department, to the extent authorized by the board of directors of the savings association, establish or maintain agencies that:
(A) only service and originate, but do not approve, loans and contracts; or
(B) manage or sell real estate owned by the savings association.
An agency established or maintained under this subdivision may offer any services not referred to in this subdivision with the approval of the department, except for accepting payment on savings accounts. An agency shall maintain records of all business it transacts and transmit copies to a branch or home office of the savings association.
SECTION 31. IC 28-15-16 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:
Chapter 16. Applicability of the Federal Reserve Act

Sec. 1. For purposes of this article, a savings association that is not a member of the Federal Reserve System is subject to Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) to the same extent and in the same manner as if the savings association were a member of the Federal Reserve System.

Sec. 2. A violation of Section 23A or 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) by a savings association or a subsidiary constitutes a violation of this chapter.

SECTION 32. [EFFECTIVE UPON PASSAGE] **This act does not affect:**

(1) rights or liabilities accrued;
(2) penalties incurred;
(3) crimes committed; or
(4) proceedings begun;

before the effective date of this act. Those rights, liabilities, penalties, crimes, and proceedings continue and shall be imposed under prior law as if this act had not been enacted.

SECTION 33. **An emergency is declared for this act.**

(Reference is to EHB 1834 as reprinted April 8, 2003.)

BARDON	PAUL
BURTON	LEWIS
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

The House recessed until the fall of the gavel.

RECESS

The House reconvened at 8:05 p.m. with the Speaker Pro Tempore, Representative Dobis, in the Chair.

Representative Budak, who had been excused, was present.

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report on Engrossed Senate Bills 166–1, 186–1, 187–1, 280–1, 479–1, 482–1, 494–1, 523–1, and 533–1.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report on Engrossed Senate Bills 242–1, 267–1, and 383–1.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has accepted and approved the Joint Rule 20 correction on Engrossed Senate Bill 422.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed Senate Concurrent Resolution 11 and the same is herewith transmitted to the House for further action.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I hereby transmit Senate Enrolled Act 136 for signature.

MARY C. MENDEL
Principal Secretary of the Senate

ENROLLED ACTS SIGNED

The Speaker announced that he had signed Senate Enrolled Act 136 on April 24.

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT
EHB 1458–1; filed April 24, 2003, at 3:30 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1458 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 2-5-26-15, AS ADDED BY P.L.256-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. This chapter expires December 31, ~~2003.~~ **2008.**

SECTION 2. IC 12-7-2-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1.5. "Administrator", for purposes of:

(1) IC 12-10-15, has the meaning set forth in IC 12-10-15-1.5; and

(2) IC 12-24-17, has the meaning set forth in IC 12-24-17-1.

SECTION 3. IC 12-10-15-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. As used in this chapter, "administrator" means a natural person who administers, manages, supervises, or is in general administrative charge of a housing with services establishment.**

SECTION 4. IC 12-10-15-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. **(a)** The director shall adopt rules under IC 4-22-2 necessary to carry out this chapter.

(b) The director shall adopt rules concerning the following:

(1) Procedures for the posting of notices at housing with services establishments, area agencies on aging, and centers for independent living (as defined by IC 12-12-8-1) that advise residents of their rights under this chapter.

(2) Procedures for residents and their representatives to file complaints with the director concerning violations of this chapter.

SECTION 5. IC 12-10-15-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 15. (a) The director shall enforce this chapter.**

(b) The director may impose a penalty of not less than one hundred dollars ($100) but not more than one thousand dollars ($1,000) for each day of violation of this chapter. However, the total penalty for each violation may not exceed ten thousand dollars ($10,000).

(c) A person aggrieved by a penalty imposed under this section may request a review under IC 4-21.5-3-7. If a request for a hearing is not filed within fifteen (15) days after the penalty is imposed, the determination of the director and the penalty is final.

(d) If the director determines that a housing with services establishment has had substantial and repeated violations of this chapter, the director may prohibit a housing with services establishment from using the term "assisted living" to describe the housing with services establishment's services and operations to the public.

(e) If the director determines that an operator or administrator of a housing with services establishment has intentionally violated this chapter or has made fraudulent and material misrepresentations to a resident, the director may

request the attorney general to investigate and take appropriate action against the operator or administrator.

(f) Penalties collected under this section shall be deposited in the state general fund.

SECTION 6. IC 12-15-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) An application or a request for Medicaid for an individual must be made in the manner required by the office:

(1) at enrollment centers specified by the office; **or**

(2) through the United States mail, as described in subsection (h), if the individual has a developmental disability.

(b) Enrollment centers:

(1) shall be located at each county office; and

(2) may be located at other locations including the following:

(A) A hospital licensed under IC 16-21.

(B) The office of a provider who is eligible to receive payments under this article.

(C) A public or private elementary or secondary school.

(D) A day care center licensed under IC 12-17.2.

(E) The county health department.

(F) A federally qualified health center (as defined in 42 U.S.C. 1396d(l)(2)(B)).

(G) A rural health clinic (as defined in 42 U.S.C. 1396d(l)(1)).

(c) An entity described in subsection (b) other than the county office must enter into an agreement with the office for authorization to serve as an enrollment center where individuals may apply for Medicaid.

(d) One (1) or more authorized workers at each enrollment center may:

(1) accept applications for Medicaid; ~~and~~

(2) conduct interviews with applicants; **and**

(3) accept applications for services under a Medicaid waiver by an individual who has a developmental disability;

during hours and days of the week agreed upon by the office and the enrollment center.

(e) The office shall provide each enrollment center with the materials and training needed by the enrollment center to comply with this section.

(f) An enrollment center shall provide:

(1) each application taken by the enrollment center; and

(2) any accompanying materials;

to the county office located in the same county as the enrollment center at least one (1) time each week by any reasonable means. **Except as provided in subsection (g),** the county office staff shall make the final determination of an applicant's eligibility for Medicaid.

(g) The office shall make the final determination of eligibility of an individual who has a developmental disability to receive services under a Medicaid waiver.

(h) An individual who has a developmental disability may submit to the office through the United States mail an application to receive services under a Medicaid waiver.

(i) The office shall make available:

(1) on the Internet;

(2) at an enrollment center; and

(3) through the United States mail;

an application form for an individual who has a developmental disability to receive services under a Medicaid waiver.

SECTION 7. IC 12-15-35-28, AS AMENDED BY P.L.107-2002, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. (a) The board has the following duties:

(1) The adoption of rules to carry out this chapter, in accordance with the provisions of IC 4-22-2 and subject to any office approval that is required by the federal Omnibus Budget Reconciliation Act of 1990 under Public Law 101-508 and its implementing regulations.

(2) The implementation of a Medicaid retrospective and prospective DUR program as outlined in this chapter, including the approval of software programs to be used by the pharmacist for prospective DUR and recommendations concerning the provisions of the contractual agreement between the state and any other entity that will be processing and reviewing Medicaid drug claims and profiles for the DUR program under this chapter.

(3) The development and application of the predetermined criteria and standards for appropriate prescribing to be used in retrospective and prospective DUR to ensure that such criteria and standards for appropriate prescribing are based on the compendia and developed with professional input with provisions for timely revisions and assessments as necessary.

(4) The development, selection, application, and assessment of interventions for physicians, pharmacists, and patients that are educational and not punitive in nature.

(5) The publication of an annual report that must be subject to public comment before issuance to the federal Department of Health and Human Services and to the Indiana legislative council by December 1 of each year.

(6) The development of a working agreement for the board to clarify the areas of responsibility with related boards or agencies, including the following:

(A) The Indiana board of pharmacy.

(B) The medical licensing board of Indiana.

(C) The SURS staff.

(7) The establishment of a grievance and appeals process for physicians or pharmacists under this chapter.

(8) The publication and dissemination of educational information to physicians and pharmacists regarding the board and the DUR program, including information on the following:

(A) Identifying and reducing the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and recipients.

(B) Potential or actual severe or adverse reactions to drugs.

(C) Therapeutic appropriateness.

(D) Overutilization or underutilization.

(E) Appropriate use of generic drugs.

(F) Therapeutic duplication.

(G) Drug-disease contraindications.

(H) Drug-drug interactions.

(I) Incorrect drug dosage and duration of drug treatment.

(J) Drug allergy interactions.

(K) Clinical abuse and misuse.

(9) The adoption and implementation of procedures designed to ensure the confidentiality of any information collected, stored, retrieved, assessed, or analyzed by the board, staff to the board, or contractors to the DUR program that identifies individual physicians, pharmacists, or recipients.

(10) The implementation of additional drug utilization review with respect to drugs dispensed to residents of nursing facilities shall not be required if the nursing facility is in compliance with the drug regimen procedures under 410 IAC 16.2-3-8 and 42 CFR 483.60.

(11) The research, development, and approval of a preferred drug list for:

(A) Medicaid's fee for service program;

(B) Medicaid's primary care case management program; and

(C) the primary care case management component of the children's health insurance program under IC 12-17.6;

in consultation with the therapeutics committee.

(12) The approval of the review and maintenance of the preferred drug list at least two (2) times per year.

(13) The preparation and submission of a report concerning the preferred drug list at least two (2) times per year to the select joint commission on Medicaid oversight established by IC 2-5-26-3.

(14) The collection of data reflecting prescribing patterns related to treatment of children diagnosed with attention deficit disorder or attention deficit hyperactivity disorder.

(b) The board shall use the clinical expertise of the therapeutics committee in developing a preferred drug list. The board shall also

consider expert testimony in the development of a preferred drug list.

(c) In researching and developing a preferred drug list under subsection (a)(11), the board shall do the following:

(1) Use literature abstracting technology.

(2) Use commonly accepted guidance principles of disease management.

(3) Develop therapeutic classifications for the preferred drug list.

(4) Give primary consideration to the clinical efficacy or appropriateness of a particular drug in treating a specific medical condition.

(5) Include in any cost effectiveness considerations the cost implications of other components of the state's Medicaid program and other state funded programs.

(d) Prior authorization is required for coverage under a program described in subsection (a)(11) of a drug that is not included on the preferred drug list.

(e) The board shall determine whether to include a single source covered outpatient drug that is newly approved by the federal Food and Drug Administration on the preferred drug list not later than sixty (60) days after the date **on which the manufacturer notifies the board in writing** of the drug's approval. However, if the board determines that there is inadequate information about the drug available to the board to make a determination, the board may have an additional sixty (60) days to make a determination from the date that the board receives adequate information to perform the board's review. Prior authorization may not be automatically required for a single source drug that is newly approved by the federal Food and Drug Administration, and that is:

(1) in a therapeutic classification:

(A) that has not been reviewed by the board; and

(B) for which prior authorization is not required; or

(2) the sole drug in a new therapeutic classification that has not been reviewed by the board.

(f) The board may not exclude a drug from the preferred drug list based solely on price.

(g) The following requirements apply to a preferred drug list developed under subsection (a)(11):

(1) **Except as provided by IC 12-15-35.5-3(b) and IC 12-15-35.5-3(c),** the office or the board may require prior authorization for a drug that is included on the preferred drug list under the following circumstances:

(A) To override a prospective drug utilization review alert.

(B) To permit reimbursement for a medically necessary brand name drug that is subject to generic substitution under IC 16-42-22-10.

(C) To prevent fraud, abuse, waste, overutilization, or inappropriate utilization.

(D) To permit implementation of a disease management program.

(E) To implement other initiatives permitted by state or federal law.

(2) All drugs described in IC 12-15-35.5-3(b) must be included on the preferred drug list.

(3) The office may add a ~~new single source~~ drug that has been approved by the federal Food and Drug Administration to the preferred drug list without prior approval from the board.

(4) The board may add a ~~new single source~~ drug that has been approved by the federal Food and Drug Administration to the preferred drug list.

(h) At least two (2) times each year, the board shall provide a report to the select joint commission on Medicaid oversight established by IC 2-5-26-3. The report must contain the following information:

(1) The cost of administering the preferred drug list.

(2) Any increase in Medicaid physician, laboratory, or hospital costs or in other state funded programs as a result of the preferred drug list.

(3) The impact of the preferred drug list on the ability of a Medicaid recipient to obtain prescription drugs.

(4) The number of times prior authorization was requested, and the number of times prior authorization was:

(A) approved; and

(B) disapproved.

(i) The board shall provide the first report required under subsection (h) not later than six (6) months after the board submits an initial preferred drug list to the office.

SECTION 8. IC 12-15-35-28.7, AS ADDED BY P.L.107-2002, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28.7. (a) The board shall submit the initial approved preferred drug list to the office not later than August 1, 2002.

(b) Except as permitted under subsection (g), the office may not further restrict the status of a drug in the Medicaid program or the children's health insurance program until the board reviews a therapeutic classification and the office implements the therapeutic classification on the preferred drug list.

(c) The office shall provide advance notice to providers of the contents of the preferred drug list submitted by the board under subsection (a).

(d) Notwithstanding IC 12-15-13-6, the office shall implement any change in the preferred drug list not later than thirty (30) days after the date the board submits the amended list to the office.

(e) **Except as provided by section 28(g)(3) of this chapter,** the office may not implement a preferred drug list or an amendment to the preferred drug list that has not been approved by the board.

(f) The office may not require prior authorization for a drug that is excluded from the preferred drug list unless the board has made the determinations required under section 35 of this chapter.

(g) The office may adopt rules under IC 4-22-2 necessary to carry out this chapter.

SECTION 9. IC 12-15-35-43.5, AS ADDED BY P.L.107-2002, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 43.5. **(a)** The board, the therapeutics committee, or the office may not release proprietary or confidential information obtained as part of the development, implementation, or maintenance of a preferred drug list under this chapter.

(b) Information described in subsection (a) is confidential for purposes of IC 5-14-3-4(a)(1).

SECTION 10. IC 12-15-35.5-2.5, AS ADDED BY P.L.107-2002, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. As used in this chapter, "unrestricted access" means the ability of a recipient to obtain a prescribed drug without being subject to limits or preferences imposed by the office or the board for the purpose of cost savings except as provided under ~~IC 12-15-35-8 and~~ section 7 of this chapter.

SECTION 11. IC 12-15-35.5-7, AS ADDED BY P.L.6-2002, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Subject to subsection (b), the office may place limits on quantities dispensed or the frequency of refills for any covered drug for the purpose of:

(1) preventing fraud, abuse, waste, overutilization, or inappropriate utilization; or

(2) implementing a disease management program.

(b) Before implementing a limit described in subsection (a), the office shall:

(1) consider quality of care and the best interests of Medicaid recipients;

(2) seek the advice of the drug utilization review board, established by IC 12-15-35-19, at a public meeting of the board; and

(3) publish a provider bulletin that complies with the requirements of IC 12-15-13-6.

(c) Subject to subsection (d), the board may establish and the office may implement a restriction on a drug described in section 3(b) of this chapter if:

(1) the board determines that data provided by the office indicates that a situation described in IC 12-15-35-28(a)(8)(A) through IC 12-15-35-28(a)(8)(K) requires an intervention to:

(A) prevent fraud, abuse, waste, overutilization, or inappropriate utilization; or

(B) implement a disease management program;

(2) the board approves and the office implements an educational intervention program for providers to address the situation; and

(3) at least six (6) months after the implementation of the educational intervention program described in subdivision (2), the board determines that the situation requires further action.

(d) A restriction established under subsection (c) for any drug described in section 3(b) of this chapter:

(1) must comply with the procedures described in IC 12-15-35-35;

(2) may include requiring a recipient to be assigned to one (1) practitioner and one (1) pharmacy provider for purposes of receiving mental health medications;

(3) may not lessen the quality of care; and

(4) must be in the best interest of Medicaid recipients.

(e) Implementation of a restriction established under subsection (c) must provide that only the prescribing practitioner may authorize an override of the restriction.

(f) Before implementing a restriction established under subsection (c), the office shall publish a provider bulletin that complies with the requirements of IC 12-15-13-6.

(g) Subsections (c) through (f):

(1) apply only to drugs described in section 3(b) of this chapter; and

(2) do not apply to a restriction on a drug described in section 3(b) of this chapter that was approved by the board and implemented by the office before April 1, 2003.

SECTION 12. IC 12-21-2-5, AS AMENDED BY HEA 1395-2003, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Subject to subsection (b), the director may delegate statutory duties or powers of the division, a bureau of the division, the director, or other statutorily created personnel.

(b) If the director decides that a final decision is to be made concerning the placement of a mentally ill individual in a mental health facility, the final decision must be made:

(1) by the director, if the director is a licensed psychiatrist or licensed psychologist; or

(2) by a licensed psychiatrist or licensed psychologist who is delegated the authority by the director;

in consultation with the patient's psychiatrist or psychologist.

(c) Subsection (b) does not apply to an initial placement designation made under IC 12-24-12-10(b).

SECTION 13. IC 25-22.5-5-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.5. (a) The board may authorize the service bureau to issue temporary fellowship permits for the practice of medicine. A temporary fellowship is subject to any termination date specified by the board.**

(b) The board may issue a temporary fellowship permit to a graduate of a school located outside the United States, its possessions, or Canada if the graduate:

(1) applies in the form and manner required by the board;

(2) pays a fee set by the board;

(3) has completed the academic requirements for the degree of doctor of medicine from a medical school approved by the board;

(4) has been issued a valid permit by another state for participation in a postgraduate medical education or training program located in a state that has standards for postgraduate medical education and training satisfactory to the board;

(5) has been accepted into a postgraduate medical fellowship training program that:

(A) is affiliated with a medical school located in a state that issued a permit under subdivision (4);

(B) has a training site located in Indiana; and

(C) has standards for postgraduate medical education and training satisfactory to the board;

(6) provides the board with documentation of the areas of medical practice for which the training is sought;

(7) provides the board with at least two (2) letters of reference documenting the individual's character; and

(8) demonstrates to the board that the individual is a physician of good character who is in good standing outside the United States, its possessions, or Canada where the person normally would practice.

(c) Applications for the temporary fellowship permit for graduates of foreign medical schools must be made to the board subject to this section.

(d) A permit issued under this section expires one (1) year after the date it is issued and, at the discretion of the board, may be renewed for additional one (1) year periods upon the payment of a renewal fee set by the board by rule.

(e) An individual who applies for a temporary fellowship permit under this section is not required to take any step of the United States Medical Licensure Examination.

(f) A temporary fellowship permit must be kept in the possession of the fellowship training institution and surrendered by it to the board within thirty (30) days after the person ceases training in Indiana.

(g) A temporary fellowship permit authorizes a person to practice in the training institution only and, in the course of training, to practice only those medical acts approved by the board but does not authorize the person to practice medicine otherwise.

(h) The board may deny an application for a temporary fellowship permit if the training program that has accepted the applicant has:

(1) violated; or

(2) authorized or permitted a physician to violate;

this section.

(i) A person issued a temporary medical permit under this section must file an affidavit that:

(1) is signed by a physician licensed in Indiana;

(2) includes the license number of the signing physician;

(3) attests that the physician will monitor the work of the physician holding the temporary medical permit; and

(4) is notarized.

The affidavit must be filed with the service bureau before the person holding the temporary medical permit may provide medical services.

(j) This section expires July 1, 2008.

SECTION 14. P.L.107-2002, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 36. (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning.

(b) The office shall develop a federal Medicaid waiver application under which a prescription drug program may be established or implemented to provide access to prescription drugs for low-income senior citizens.

(c) Before the office may submit an application for a federal Medicaid waiver that will have an effect on the Indiana prescription drug program established under IC 12-10-16, the following must occur:

(1) The office shall submit the proposed Medicaid waiver to the prescription drug advisory committee established under this act.

(2) The prescription drug advisory committee must review, allow public comment, and approve the proposed Medicaid waiver.

(d) A prescription drug program established or implemented by the office or a contractor of the office under this SECTION may ~~only~~ **not** limit access to prescription drugs for prescription drug program recipients, **except under the following circumstances:**

(1) Access may be limited to the extent that restrictions ~~are~~ **were** in place in the Medicaid program on ~~the date of enactment of this act.~~ **March 26, 2002.**

(2) Except as provided by IC 12-15-35.5-3(b) and IC 12-15-35.5-3(c), access may be limited to:

(A) prevent the following:

(i) Fraud.

(ii) Abuse.

(iii) Waste.

(iv) Overutilization of prescription drugs.

(v) Inappropriate utilization of prescription drugs; or

(B) implement a disease management program.

IC 12-15-35.5-7 applies to a limit implemented under this subdivision.

(e) Changes to a prescription drug program that:

(1) is established or implemented by the office or a contractor of the office under this SECTION; and

(2) uses money from the Indiana prescription drug account established under IC 4-12-8-2;

must be approved by the prescription drug advisory committee established under this act.

(f) Before July 1, 2002, the office shall apply to the United States Department of Health and Human Services for approval of any waiver necessary under the federal Medicaid program to provide access to prescription drugs for low income senior citizens.

(g) A Medicaid waiver developed under this SECTION must limit a prescription drug program's state expenditures to funding appropriated to the Indiana prescription drug account established under IC 4-12-8-2 from the Indiana tobacco master settlement agreement fund.

(h) The office may not implement a waiver under this SECTION until the office files an affidavit with the governor attesting that the federal waiver applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver is approved.

(i) If the office receives a waiver under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection ~~(f),~~ **(h),** the office shall implement the waiver not more than sixty (60) days after the governor receives the affidavit.

SECTION 15. **An emergency is declared for this act**.

(Reference is to EHB 1458 as printed April 4, 2003.)

C. BROWN	MILLER
BECKER	BREAUX
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
ESB 389–1; filed April 24, 2003, at 3:31 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 389 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 22-2-6-2, AS AMENDED BY P.L.83-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) Any assignment of the wages of an employee is valid only if all of the following conditions are satisfied:

(1) The assignment is:

(A) in writing;

(B) signed by the employee personally;

(C) by its terms revocable at any time by the employee upon written notice to the employer; and

(D) agreed to in writing by the employer.

(2) An executed copy of the assignment is delivered to the employer within ten (10) days after its execution.

(3) The assignment is made for a purpose described in subsection (b).

(b) A wage assignment under this section may be made for the purpose of paying any of the following:

(1) Premium on a policy of insurance obtained for the employee by the employer.

(2) Pledge or contribution of the employee to a charitable or nonprofit organization.

(3) Purchase price of bonds or securities, issued or guaranteed by the United States.

(4) Purchase price of shares of stock, or fractional interests therein, of the employing company, or of a company owning the majority of the issued and outstanding stock of the employing company, whether purchased from such company, in the open market or otherwise. However, if such shares are to be purchased on installments pursuant to a written purchase agreement, the employee has the right under the purchase agreement at any time before completing purchase of such shares to cancel said agreement and to have repaid promptly the amount of all installment payments which theretofore have been made.

(5) Dues to become owing by the employee to a labor organization of which the employee is a member.

(6) Purchase price of merchandise sold by the employer to the employee, at the written request of the employee.

(7) Amount of a loan made to the employee by the employer and evidenced by a written instrument executed by the employee subject to the amount limits set forth in section 4(c) of this chapter.

(8) Contributions, assessments, or dues of the employee to a hospital service or a surgical or medical expense plan or to an employees' association, trust, or plan existing for the purpose of paying pensions or other benefits to said employee or to others designated by the employee.

(9) Payment to any credit union, nonprofit organizations, or associations of employees of such employer organized under any law of this state or of the United States.

(10) Payment to any person or organization regulated under the Uniform Consumer Credit Code (IC 24-4.5) for deposit or credit to the employee's account by electronic transfer or as otherwise designated by the employee.

(11) Premiums on policies of insurance and annuities purchased by the employee on the employee's life.

(12) The purchase price of shares or fractional interest in shares in one (1) or more mutual funds.

(13) A judgment owed by the employee if the payment:

(A) is made in accordance with an agreement between the employee and the creditor; and

(B) is not a garnishment under IC 34-25-3.

(14) Payment for the purchase or maintenance of uniforms worn by the employee while performing duties for the employer.

(15) Payment for the purchase or rental of tools and equipment used by the employee while performing duties for the employer.

SECTION 2. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 6. Employer Sales to Employees

Sec. 1. An employer may not sell to an employee of the employer any:

(1) merchandise; or

(2) supplies;

at a higher price than the employer sells the merchandise or supplies for cash to another person who is not an employee of the employer.

Sec. 2. A person who violates section 1 of this chapter commits a Class C infraction.

SECTION 3. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2003]: IC 22-2-4-1; IC 22-2-4-2; IC 22-2-4-3; IC 22-2-4-4; IC 22-2-4-6.

(Reference is to ESB 389 as printed April 1, 2003.)

M. YOUNG	FRENZ
HOWARD	BORROR
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
ESB 343–1; filed April 24, 2003, at 4:30 p.m.

Mr. Speaker: Your Conference Committee appointed to confer

with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 343 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 12-15-12-19, AS AMENDED BY P.L.66-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) This section applies to an individual who:

(1) is a Medicaid recipient; **and**

(2) is not enrolled in the risk-based managed care program. ~~and (3) resides in a county having a population of more than one hundred thousand (100,000).~~

(b) Subject to subsection (c), the office shall develop the following programs regarding individuals described in subsection (a):

(1) A disease management program for recipients with any of the following **chronic** diseases:

(A) Asthma.

(B) Diabetes.

(C) Congestive heart failure or coronary heart disease.

~~(D) HIV or AIDS.~~ **(D) Hypertension.**

(2) A case management program for recipients ~~whose per recipient Medicaid cost is in the highest ten percent (10%) of all individuals~~ described in subsection (a) **who are at high risk of chronic disease, that is based on a combination of cost measures, clinical measures, and health outcomes identified and developed by the office with input and guidance from the state department of health and other experts in health care case management or disease management programs.**

(c) **The office shall implement:**

(1) a pilot program for at least two (2) of the diseases listed in subsection (b) not later than July 1, 2003; and

(2) a statewide chronic disease program as soon as practicable after the office has done the following:

(A) Evaluated a pilot program described in subdivision (1).

(B) Made any necessary changes in the program based on the evaluation performed under clause (A).

(d) The office shall develop and implement a program required under this section in cooperation with the state department of health and shall use the following health care providers to the extent possible:

(1) Community health centers.

(2) Federally qualified health centers (as defined in 42 U.S.C. 1396d(l)(2)(B)).

(3) Rural health clinics (as defined in 42 U.S.C. 1396d(l)(1)).

(4) Local health departments.

(5) Hospitals.

(e) The office ~~shall~~ **may** contract with an outside vendor or vendors to **assist in the** ~~develop~~ **development** and ~~implement~~ **implementation of** the programs required under ~~subsection (b).~~ **this section.** ~~The office shall begin the contract procurement process not later than October 1, 2001. The contract required under this subsection must be effective not later than July 1, 2002.~~

~~(d)~~ **(f)** The ~~vendor or vendors with whom the~~ office ~~contracts under subsection (c)~~ **and the state department of health** shall provide ~~the office and~~ the select joint commission on Medicaid oversight established by IC 2-5-26-3 with an evaluation and recommendations on the costs, benefits, and health outcomes of the **pilot** programs required under ~~subsection (b).~~ **this section.** The evaluations required under this subsection must be provided not more than ~~nine (9)~~ **twelve (12)** months after the ~~effective~~ **implementation** date of the ~~contract.~~ **pilot programs.**

~~(e)~~ **(g)** The office **and the state department of health** shall report to the select joint commission on Medicaid oversight established by IC 2-5-26-3 not later than ~~December 31, 2002,~~ **November 1 of each year** regarding the programs developed under this section.

SECTION 2. IC 16-18-2-55.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 55.5. "Chronic disease", for purposes of IC 16-38-6, has the meaning set forth in IC 16-38-6-1.**

SECTION 3. IC 16-38-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 6. Chronic Disease Registry

Sec. 1. As used in this chapter, "chronic disease" means one (1) of the following conditions:

(1) Asthma.

(2) Diabetes.

(3) Congestive heart failure or coronary heart disease.

(4) Hypertension.

Sec. 2. The state department, with the cooperation of the office of Medicaid policy and planning, shall establish a chronic disease registry for the purpose of:

(1) recording chronic disease cases that are diagnosed or treated in Indiana; and

(2) compiling necessary and appropriate information determined by the state department concerning cases described in subdivision (1) in order to do the following:

(A) Conduct epidemiologic and environmental surveys of chronic disease and use appropriate preventive and control measures.

(B) Inform citizens regarding programs designed to manage chronic disease.

(C) Provide guidance to the office of Medicaid policy and planning to identify and develop cost and clinical measures for use in a program required by IC 12-15-12-19.

Sec. 3. The state department shall use information compiled by a public or private entity to the greatest extent possible in the development of a statewide chronic disease registry under this chapter.

Sec. 4. (a) The following persons may report confirmed cases of chronic disease to the chronic disease registry:

(1) Physicians.

(2) Hospitals.

(3) Medical laboratories.

(b) A person who reports information to the state chronic disease registry under this section may use:

(1) information submitted to any other public or private chronic disease registry; or

(2) information required to be filed with federal, state, or local agencies;

when completing a report under this chapter. However, the state department may require additional, definitive information.

(c) The office of Medicaid policy and planning shall provide data concerning services for chronic diseases reimbursed by the state Medicaid program to the chronic disease registry. The office shall work with the state department to identify the data available and to determine a means to transmit the information to assist the state department in data collection for the chronic disease registry.

Sec. 5. Except as provided in sections 6, 7, and 8 of this chapter, information obtained by the state department under this chapter concerning chronic disease patients is confidential and may be used by the state department only for the purposes of this chapter.

Sec. 6. The state department may grant a researcher access to confidential information obtained under this chapter concerning individual chronic disease patients if the researcher who is requesting additional information for research purposes or soliciting the patient's participation in a research project obtains the following:

(1) First, the oral or written consent of the patient's attending physician.

(2) Second, the patient's written consent by completing a confidential medical release form.

Sec. 7. The state department may release confidential information obtained under this chapter concerning individual chronic disease patients to the following:

(1) The chronic disease registry of another state if the following conditions are met:

(A) The other state has entered into a reciprocal agreement with the state department.

(B) The reciprocal agreement under clause (A) states that information that identifies a patient will not be released to any other person without the written consent of the patient.

(2) Physicians and local health officers for diagnostic and treatment purposes if the following conditions are met:

(A) The patient's attending physician gives oral or written consent to the release of the information.

(B) The patient gives written consent by completing a confidential medical release form.

(3) The office of Medicaid policy and planning for purposes related to administering the state Medicaid plan.

Sec. 8. A person who reports information for the chronic disease registry under this chapter is immune from any civil or criminal liability that might otherwise be imposed because of the release of confidential information.

Sec. 9. This chapter does not prevent the release to any interested person of epidemiological information that does not identify a chronic disease patient.

Sec. 10. The state department may adopt rules under IC 4-22-2 necessary to carry out this chapter.

SECTION 4. IC 16-41-6-1, AS AMENDED BY P.L.293-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Except as provided in **IC 16-41-10-2.5 and** subsection (b), a person may not perform a screening or confirmatory test for the antibody or antigen to the human immunodeficiency virus (HIV) without the consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

SECTION 5. IC 16-41-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. As used in this chapter, "emergency medical services provider" means a firefighter, **a** law enforcement officer, **a** paramedic, **an** emergency medical technician, **a physician licensed under IC 25-22.5, a nurse licensed under IC 25-23,** or other person who provides emergency medical services in the course of the person's employment.

SECTION 6. IC 16-41-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) ~~A provider of~~ **An** emergency medical services **provider** who is exposed to blood or body fluids while providing emergency medical services to a patient may request notification concerning exposure to a dangerous communicable disease under this chapter if the exposure is of a type that has been demonstrated epidemiologically to transmit a dangerous communicable disease.

(b) If ~~a provider of~~ **an** emergency medical services **provider** desires to be notified **of results of testing following a possible exposure to a dangerous communicable disease** under this chapter, the ~~provider of~~ emergency medical services **provider** shall notify the emergency ~~service facility~~ **medical services provider's employer** not more than twenty-four (24) hours after the ~~patient~~ **emergency medical services provider** is ~~admitted to the facility~~ **exposed** on a form that is prescribed by the state department and the Indiana emergency medical services commission.

(c) The ~~provider of~~ emergency medical services **provider** shall distribute a copy of the completed form required under subsection (b) to the following:

(1) **If applicable,** the ~~receiving~~ **medical director of the emergency department of the** medical facility:

(A) to which the patient was admitted following the exposure; or

(B) in which the patient was located at the time of the exposure.

(2) The ~~facility that employs the provider of~~ emergency medical services **provider's employer.**

(3) The state department.

SECTION 7. IC 16-41-10-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 2.5. (a) A patient (including a patient who is unable to consent due to physical or mental incapacity) to whose blood or body fluids an emergency medical services provider is exposed as described in section 2 of this chapter is considered to have consented to:**

(1) testing for the presence of a dangerous communicable disease of a type that has been epidemiologically demonstrated to be transmittable by an exposure of the kind experienced by the emergency medical services provider; and

(2) release of the testing results to a medical director or physician described in section 3 of this chapter.

The medical director or physician shall notify the emergency medical services provider of the test results.

(b) If a patient described in subsection (a) refuses to provide a blood or body fluid specimen for testing for a dangerous communicable disease, the exposed emergency medical services provider, the exposed emergency medical services provider's employer, or the state department may petition the circuit or superior court having jurisdiction in the county:

(1) of the patient's residence; or

(2) where the employer of the exposed emergency medical services provider has the employer's principal office;

for an order requiring that the patient provide a blood or body fluid specimen.

SECTION 8. IC 16-41-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) Except as provided in subsection (b), **if a patient to whose blood or body fluids an emergency medical services provider is exposed as described in section 2 of this chapter:**

(1) is admitted to a medical facility following the exposure or is located in a medical facility at the time of the exposure, a physician designated by ~~an emergency~~ **the** medical ~~service~~ facility shall, **not more than seventy-two (72) hours after the medical facility is notified under section 2 of this chapter:**

(A) cause a blood or body fluid specimen to be obtained from the patient and testing to be performed for a dangerous communicable disease of a type that has been epidemiologically demonstrated to be transmittable by an exposure of the kind experienced by the emergency medical services provider; and

(B) notify the medical director of ~~a facility employing~~ the ~~provider of~~ emergency medical services ~~described in section 2 of this chapter if (1) not more than seventy-two (72) hours after a patient is admitted to the facility the facility obtains information from the patient's records or a diagnosis at the facility that the patient has a dangerous communicable disease; and (2) the provider of emergency medical services has complied with section 2 of this chapter;~~ **provider's employer; or**

(2) is not described in subdivision (1), the exposed emergency medical services provider, the exposed emergency medical services provider's employer, or the

state department may:

(A) arrange for testing of the patient as soon as possible; or

(B) petition the circuit or superior court having jurisdiction in the county of the patient's residence or where the employer of the exposed emergency medical services provider has the employer's principal office for an order requiring that the patient provide a blood or body fluid specimen.

(b) ~~A provider of~~ **An** emergency medical services **provider** may, **on the form described in section 2 of this chapter,** designate a physician other than the medical director of the ~~facility that employs the provider of~~ emergency medical services **provider's employer** to receive ~~notification. on the form described in section 2 of this chapter.~~ **the test results.**

(c) ~~The notification required by this section shall be made~~ **The medical director or physician described in section 3 of this chapter shall notify the emergency medical services provider of the test results** not more than forty-eight (48) hours after the ~~facility determines that a patient~~ **medical director or physician receives the test results.** ~~has a dangerous communicable disease that is potentially transmissible through the incident.~~

SECTION 9. IC 16-41-10-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 3.5. (a) A medical facility may not physically restrain a patient described in section 2.5 of this chapter in order to test the patient for the presence of a dangerous communicable disease.**

(b) Nothing in this chapter prohibits a patient from being discharged from a medical facility before:

(1) a test is performed under section 2.5 or 3 of this chapter; or

(2) the results of a test are released under section 3 of this chapter.

(c) A provider or a facility that tests a patient for the presence of a dangerous communicable disease under section 2.5 or section 3 of this chapter is immune from liability for the performance of the test over the patient's objection or without the patient's consent. However, this subsection does not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct.

SECTION 10. IC 16-41-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) ~~If medically indicated,~~ A **medical director or** physician notified under section 3 of this chapter shall, **not more than forty-eight (48) hours after receiving the notification under section 3 of this chapter,** contact the ~~provider of~~ emergency medical services **provider** described in section 2 of this chapter to do the following:

(1) Explain, without disclosing information about the patient, the ~~infectious~~ **dangerous communicable** disease to which the ~~provider of~~ emergency medical services **provider** was exposed.

(2) Provide for any medically necessary treatment and counseling to the ~~provider of~~ emergency medical services **provider.**

(b) Expenses of **testing or** treatment and counseling are the responsibility of the ~~provider of~~ emergency medical services **provider** or the provider's employer.

SECTION 11. IC 16-41-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Except as **otherwise** provided in ~~sections 3 and 4 of~~ this chapter, **the medical information referred to in this chapter is confidential, and** a person may not disclose or be compelled to disclose medical or epidemiological information referred to in this chapter.

(b) A person responsible for recording, reporting, or maintaining information referred to in this chapter who recklessly, knowingly, or intentionally discloses or fails to protect medical or epidemiological information classified as confidential under this section commits a Class A misdemeanor.

(c) In addition to the penalty prescribed by subsection (b), a public employee who violates this section is subject to discharge or other disciplinary action under the personnel rules of the agency that employs the employee.

SECTION 12. IC 34-30-2-77.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 77.4. IC 16-38-6-8 (Concerning persons who report information to the chronic disease registry).**

SECTION 13. IC 34-30-2-81.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 81.5. IC 16-41-10-3.5 (Concerning a provider who tests a patient for the presence of a dangerous communicable disease).**

SECTION 14. **An emergency is declared for this act**.

(Reference is to ESB 343 as reprinted April 11, 2003.)

MILLER	C. BROWN
SIMPSON	T. BROWN
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
ESB 460–1; filed April 24, 2003, at 4:30 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 460 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 12-14-15-1, AS AMENDED BY P.L.67-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. Assistance shall be given to a needy disabled individual (referred to as "disabled person" in this chapter) who meets the following qualifications:

(1) Has a pending application on file with the federal Social Security Administration for assistance under Public Law 92-603, supplemental security income (SSI), or is receiving assistance. However, a person whose application for assistance under Public Law 92-603 has been denied but who meets all other requirements of this chapter is eligible for supplemental assistance.

(2) Has one (1) of the following:

(A) A physical or mental impairment, disease, or loss that is verifiable by a physician licensed under IC 25-22.5, that appears reasonably certain to result in death or ~~that has lasted or appears reasonably certain~~ to last for a continuous period of at least ~~four (4) years~~ **twelve (12) months** without significant improvement, and that substantially impairs the individual's ability to perform labor or services or to engage in a useful occupation.

(B) A mental impairment, disease, or loss that is:

(i) diagnosed by a physician licensed under IC 25-22.5 or a health services provider in psychology licensed under IC 25-33-1; and

(ii) verifiable by a physician licensed under IC 25-22.5 or a psychologist licensed under IC 25-33;

that ~~has lasted or~~ appears reasonably certain to last for a continuous period of at least ~~four (4) years~~ **twelve (12) months** without significant improvement, and that substantially impairs the individual's ability to perform labor or services or to engage in a useful occupation. Employment in a sheltered workshop or under an approved vocational rehabilitation plan is not considered a useful occupation for the purposes of this chapter. The determination of medical disability under this subdivision shall be made without reference to the individual's ability to pay for treatment.

(3) Does not have a parent, spouse, or other legally responsible relative able to support the individual.

(4) Is at least eighteen (18) years of age.

(5) Is residing and intends to remain in Indiana in a bona fide living arrangement.

(6) Has insufficient income or other resources to provide a

reasonable subsistence according to the standards established by the division.

(7) Except as otherwise provided in this chapter, is not an inmate of or being maintained by a municipal, state, or national institution while receiving assistance.

(8) Has not, at any time within five (5) years immediately before the date of the filing of an application for assistance under this chapter, made an assignment or transfer of property for the purpose of making or that will make the individual eligible for assistance under this chapter, except as otherwise provided in this chapter.

SECTION 2. IC 12-15-2-6, AS AMENDED BY P.L.287-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) Subject to subsection (b), an individual who:

(1) is receiving monthly assistance payments under the federal Supplemental Security Income program; and

(2) meets the income and resource requirements established by statute or the office unless the state is required to provide medical assistance to the individual under ~~Section 209(b) of Public Law 92-603 passed by the United States Congress~~ **42 U.S.C. 1396a(f)** or under ~~Section 1619(b)(3) of the federal Social Security Act (42 U.S.C. 1382h);~~ **42 U.S.C. 1382h;**

is eligible to receive Medicaid.

(b) An individual who is receiving monthly disability assistance payments under the federal Supplemental Security Income program or the federal Social Security Disability Insurance program must meet the eligibility requirements specified in IC 12-14-15 unless the state is required to provide medical assistance to the individual under ~~Section 1619(b)(3) of the federal Social Security Act (42 U.S.C. 1382h).~~ **42 U.S.C. 1382h.**

(c) The office may not apply a spend down requirement to an individual who is eligible for medical assistance under ~~Section 1619(b)(3) of the federal Social Security Act (42 U.S.C. 1382h).~~ **42 U.S.C. 1382h.**

SECTION 3. [EFFECTIVE UPON PASSAGE] **(a) The office of Medicaid policy and planning established by IC 12-8-6-1, in cooperation with the attorney general's office, shall contract with an outside vendor to conduct an annual audit of areas of the state Medicaid program, including:**

(1) the claims processing contractor;

(2) provider billing practices; and

(3) overutilization of services by Medicaid recipients.

(b) The office of Medicaid policy and planning shall provide any atypical or unusual information collected under this SECTION to the Medicaid clinical advisory committee established under IC 12-15-33.5. The committee shall review individual cases of utilization and clinical practice.

(c) Information obtained or used in the audit required under subsection (a) that identifies an individual Medicaid contractor, provider, or recipient must be kept confidential unless the attorney general commences an official action by the state concerning fraudulent activity.

(d) The office of Medicaid policy and planning shall report to the state budget committee and the select joint commission on Medicaid oversight upon request regarding the office's implementation of this SECTION.

(e) This SECTION expires December 31, 2007.

SECTION 4. **An emergency is declared for this act**.

(Reference is to ESB 460 as reprinted April 1, 2003.)

MILLER	C. BROWN
SIMPSON	LEHE
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT

EHB 1221–1; filed April 24, 2003, at 4:59 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1221 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 13-14-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) **Except as provided in section 9 of this chapter,** if a person who is affected by a rule adopted by a board believes that the imposition of the rule would impose an undue hardship or burden upon the person, the person may apply to the commissioner for a variance from the rule.

(b) The commissioner may hold a public hearing on an application submitted under subsection (a).

(c) If the commissioner determines that immediate compliance with the rule would impose an undue hardship or burden upon the applicant, the commissioner, except as provided in section 9 of this chapter, may grant a variance from the rule for any period not exceeding one (1) year.

(d) Upon the request of an applicant, the commissioner may renew an expired variance if the commissioner determines that compliance with the rule would continue to impose an undue hardship or burden upon the applicant. Except as provided in section 9 of this chapter, each renewal may be granted for a period not exceeding one (1) year.

SECTION 2. IC 13-14-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) ~~This section applies to~~ A variance ~~granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal)~~ from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit issued under this title **must meet the conditions specified in:**

(1) 40 CFR Part 132, Appendix F, Procedure 2.C; and

(2) rules adopted by the board.

(b) Except as provided in subsection (c), a variance from a water quality standard of the water pollution control board under section 8 of this chapter or IC 13-7-7-6 (before its repeal) may be:

(1) granted for not more than five (5) years; and

(2) renewed for not more than five (5) years.

(c) A variance granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal) from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit:

(1) issued under this title; and

(2) extended under IC 13-15-3-6 or IC 13-7-10-2(e) (before its repeal);

remains in effect until the National Pollutant Discharge Elimination System permit expires.

SECTION 3. IC 13-21-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) Except as provided in subsection (c) and section 14.5 of this chapter, the powers of a district do not include the following:

(1) The power of eminent domain.

(2) Except as provided in subsection (b), the power to exclusively control the collection or disposal of any solid waste or recyclables within the district by means that include the following:

(A) Franchising.

(B) Establishing a territory or territories within the district in which a person may provide service.

(3) The power to establish the type of service that a person must provide for the collection or disposal of solid waste or recyclables within the district.

(4) The power to establish fees that a person must charge for the collection or disposal of solid waste or recyclables within the district.

(5) The power to issue permits for an activity that is already permitted by a state agency, except as expressly granted by statute.

(b) If one (1) or more of the governmental entities in a district, at the time of the formation of the district, is a party to a contract providing that the persons contracted with have the exclusive right to collect or dispose of solid waste within the jurisdiction of the governmental entity, the district may enter into an extension of that

contract.

(c) Subsection (a) does not apply to activities conducted as part of a household hazardous waste collection and disposal project.

SECTION 4. [EFFECTIVE DECEMBER 31, 2000 (RETROACTIVE)] **(a) As used in this SECTION, "board" refers to the water pollution control board established by IC 13-18-1.**

(b) All waters designated under 327 IAC 2-1.5-19(b) as outstanding state resource waters shall be maintained and protected in their present quality in accordance with the antidegradation implementation procedures for the outstanding state resource waters established by the board for waters in the Great Lakes system. This SECTION does not affect the authority of the board to amend 327 IAC 5-2-11.7. Any rule adopted by the board contrary to this standard is void.

(c) All waters designated as outstanding state resource waters under 327 IAC 2-1-2(3) and waters designated as exceptional use waters under 327 IAC 2-1-6(i) shall be maintained and protected in accordance with 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2). If a permittee seeks a new or increased discharge for which a new or increased permit limit is required and that amounts to a significant lowering of water quality, the permittee shall demonstrate an overall improvement in water quality in the outstanding state resource water or exceptional use water, subject to:

(1) the approval of the department of environmental management; and

(2) IC 13-18-3-2(m)(2)(A) and IC 13-18-3-2(m)(2)(B).

(d) Any rule adopted by the board before the effective date of this SECTION is void to the extent that it:

(1) is inconsistent with this SECTION; or

(2) requires protection of waters beyond the protection required by 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2).

(e) Before July 1, 2004, the board shall amend 327 IAC 2-1-2, 327 IAC 2-1-6, and 327 IAC 2-1.5-4 to reflect this SECTION.

(f) This SECTION expires on the earlier of:

(1) the effective date of the rule amendments adopted by the board under subsection (e); or

(2) July 1, 2006.

SECTION 5. [EFFECTIVE DECEMBER 31, 2002 (RETROACTIVE)] **(a) Until July 1, 2004, the following apply to a water body designated before October 1, 2002, as an exceptional use water:**

(1) The water body is subject to the overall water quality improvement provisions of IC 13-18-3-2(l).

(2) The water body is not subject to a standard of having its water quality maintained and protected without degradation consistent with the provisions of P.L.140-2000.

(b) Before July 1, 2004, the water pollution control board established under IC 13-18-1 shall:

(1) determine whether, effective July 1, 2004, to designate as an outstanding state water each water designated before October 1, 2002, as an exceptional use water under 327 IAC 2-1-11; and

(2) complete rulemaking to make any designation determined under subdivision (1).

(c) This SECTION expires July 1, 2006.

SECTION 6. [EFFECTIVE UPON PASSAGE] **(a) Before July 1, 2005, the:**

(1) air pollution control board, water pollution control board, or solid waste management board may not adopt a new rule; and

(2) department of environmental management may not adopt a new policy;

if the new rule or policy would require any industry described in subsection (b) that experienced at least a ten percent (10%) job loss or a ten percent (10%) decline in production during calendar years 2001 and 2002 to comply with a standard of conduct that exceeds the standard established in a related federal regulation or regulatory policy.

(b) The following are the industries referred to in subsection (a) functioning under the following primary Standard Industrial Classification (SIC) codes:

(1) Blast furnaces and steel mills (3312).

(2) Gray and ductile iron foundries (3321).

(3) Malleable iron foundries (3322).

(4) Steel investment foundries (3324).

(5) Steel foundries (3325).

(6) Aluminum foundries (3365).

(7) Copper foundries (3366).

(8) Nonferrous foundries (3369).

(c) This SECTION expires July 1, 2005.

SECTION 7. **An emergency is declared for this act.**

(Reference is to EHB 1221 as printed April 1, 2003.)

BOTTORFF	GARD
WOLKINS	LEWIS
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT

ESB 410–1; filed April 24, 2003, at 5:23 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 410 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-10.2-2-2.5, AS AMENDED BY P.L.61-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.5. (a) Each board may establish investment guidelines and limits on all types of investments (including, but not limited to, stocks and bonds) and take other actions necessary to fulfill its duty as a fiduciary for all assets under its control, subject to the limitations and restrictions set forth in **section 18 of this chapter,** IC 5-10.3-5-3, and IC 21-6.1-3-9.

(b) Each board may commingle or pool assets with the assets of any other persons or entities. This authority includes, but is not limited to, the power to invest in commingled or pooled funds, partnerships, or mortgage pools. In the event of any such investment, the board shall keep separate detailed records of the assets invested. Any decision to commingle or pool assets is subject to the limitations and restrictions set forth in IC 5-10.3-5-3 and IC 21-6.1-3-9.

SECTION 2. IC 5-10.2-2-18 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 18. (a) As used in this section, "high growth company" means a sole proprietorship, firm, corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, syndicate, or other business unit or association that:**

(1) is primarily focused on commercialization of research and development, technology transfers, or the application of new technology or is determined by the department of commerce to have significant potential to:

(A) bring substantial capital into Indiana;

(B) create jobs;

(C) diversify the business base of Indiana; or

(D) significantly promote the purposes of this chapter in any other way;

(2) has had an average annual net worth of less than twenty million dollars ($20,000,000) in each of the last two (2) calendar years; and

(3) is not engaged in a business involving:

(A) real estate;

(B) real estate development;

(C) insurance;

(D) professional services provided by an accountant, a lawyer, or a physician;

(E) retail sales, except when the primary purpose of the business is the development or support of electronic commerce using the Internet; or

(F) gas and oil exploration.

A company that meets the definition of a high growth company under this subsection shall be considered to meet the definition even if affiliated with one (1) or more other companies that do not meet the definition and regardless of whether any of the affiliated companies is engaged in a business involving the matters described in subdivision (3).

(b) As used in this section, "Indiana high growth company" means a high growth company as defined in subsection (a) that:

(1) has its headquarters in Indiana; and

(2) has:

(A) at least fifty percent (50%) of its employees residing in Indiana; or

(B) at least seventy-five percent (75%) of its assets located in Indiana.

(c) If the board decides to allocate part of the fund assets to funds investing in high growth companies, the board is strongly encouraged to establish the following:

(1) A goal for investment in funds investing in Indiana high growth companies of at least twenty-five percent (25%) of the amount allocated to funds investing in high growth companies.

(2) A preference for investments described in subdivision (1) that are started in or assisted by Indiana universities and colleges.

(d) The board has five (5) years after the date the goals in subsection (c) are adopted to achieve the goal percentages.

(e) The board is not required to achieve the goal percentages under subsection (c) if the board, exercising financial and fiduciary prudence, determines that sufficient appropriate investments in privately held equity or debt assets are not available in Indiana.

(f) This section expires July 1, 2013.

SECTION 3. IC 5-10.3-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The board shall invest its assets with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims. The board shall also diversify such investments in accordance with prudent investment standards, **subject to the limitations and restrictions set forth in IC 5-10.2-2-18.**

(b) The board may invest up to five percent (5%) of the excess of its cash working balance in debentures of the corporation for innovation development subject to IC 30-4-3-3.

(c) The board is not subject to IC 4-13, IC 4-13.6, and IC 5-16 when managing real property as an investment. Any management agreements entered into by the board must ensure that the management agent acts in a prudent manner with regard to the purchase of goods and services. Contracts for the management of investment property shall be submitted to the governor, the attorney general, and the budget agency for approval. A contract for management of real property as an investment:

(1) may not exceed a four (4) year term and must be based upon guidelines established by the board;

(2) may provide that the property manager may collect rent and make disbursements for routine operating expenses such as utilities, cleaning, maintenance, and minor tenant finish needs;

(3) must establish, consistent with the board's duty under IC 30-4-3-3(c), guidelines for the prudent management of expenditures related to routine operation and capital improvements; and

(4) may provide specific guidelines for the board to purchase new properties, contract for the construction or repair of properties, and lease or sell properties without individual transactions requiring the approval of the governor, the attorney general, the Indiana department of administration, and the budget agency. However, each individual contract involving the purchase or sale of real property is subject to review and approval by the attorney general at the specific request of the attorney general.

(d) Whenever the board takes bids in managing or selling real property, the board shall require a bid submitted by a trust (as defined in IC 30-4-1-1(a)) to identify all of the following:

(1) Each beneficiary of the trust.

(2) Each settlor empowered to revoke or modify the trust.

SECTION 4. IC 21-6.1-3-9, AS AMENDED BY P.L.1-2002, SECTION 88, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The board shall invest its assets with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims. The board shall also diversify such investments in accordance with prudent investment standards, **subject to the limitations and restrictions set forth in IC 5-10.2-2-18.**

(b) The board may:

(1) make or have made investigations concerning investments; and

(2) contract for and employ investment counsel to advise and assist in the purchase and sale of securities.

(c) The board is not subject to IC 4-13, IC 4-13.6, or IC 5-16 when managing real property as an investment. Any management agreements entered into by the board must ensure that the management agent acts in a prudent manner with regard to the purchase of goods and services. Contracts for the management of investment property shall be submitted to the governor, the attorney general, and the budget agency for approval. A contract for the management of real property as an investment:

(1) may not exceed a four (4) year term and must be based upon guidelines established by the board;

(2) may provide that the property manager may collect rent and make disbursements for routine operating expenses such as utilities, cleaning, maintenance, and minor tenant finish needs;

(3) shall establish, consistent with the board's duty under IC 30-4-3-3(c), guidelines for the prudent management of expenditures related to routine operation and capital improvements; and

(4) may provide specific guidelines for the board to purchase new properties, contract for the construction or repair of properties, and lease or sell properties without individual transactions requiring the approval of the governor, the attorney general, the Indiana department of administration, and the budget agency. However, each individual contract involving the purchase or sale of real property is subject to review and approval by the attorney general at the specific request of the attorney general.

(d) Whenever the board takes bids in managing or selling real property, the board shall require a bid submitted by a trust (as defined in IC 30-4-1-1(a)) to identify all of the following:

(1) Each beneficiary of the trust.

(2) Each settlor empowered to revoke or modify the trust.

SECTION 5. [EFFECTIVE JULY 1, 2003] **IC 5-10.2-2-18, as added by this act, applies only to investments made after June 30, 2003.**

SECTION 6. [EFFECTIVE JULY 1, 2003] **(a) For purposes of this SECTION, "boards" refers to the board of trustees of the Indiana state teachers' retirement fund and the board of trustees of the public employees' retirement fund.**

(b) In order to seek and enhance investment opportunities under IC 5-10.2-2-2.5, IC 5-10.3-5-3, and IC 21-6.1-3-9, all as amended by this act, the boards shall seek funding from:

(1) a private foundation;

(2) the federal government;

(3) an institution of higher education; or

(4) any other entity;

to develop a fellowship program to work with the Indiana future fund to enhance venture capital investment opportunities in Indiana technology and advanced manufacturing companies.

(c) The investment opportunities must be designed to enhance investment in companies in Indiana and must be designed to:

(1) enhance the venture capital community;

(2) train future venture capitalists; and

(3) support the development of high potential, startup, and early stage companies in the areas of technology and advanced manufacturing.

(d) The fellowship program must be designed to last for two

(2) years.

(e) An applicant for the fellowship must:

(1) be a resident of Indiana;

(2) hold a graduate degree, preferably with a business or technical major; and

(3) have at least three (3) years of practical experience.

(f) The department of commerce shall assist the boards in developing and administering the grant. The boards shall create a committee, including:

(1) one (1) individual appointed by the board of trustees of the public employees' retirement fund;

(2) one (1) individual appointed by the teachers' retirement fund; and

(3) three (3) individuals appointed by the department of commerce.

(g) The committee established in subsection (f) shall:

(1) review the grant application before it is submitted;

(2) review applicants for the fellowship program; and

(3) set the stipend for participants in the program.

(h) This SECTION expires July 1, 2007.

(Reference is to ESB 410 as reprinted April 10, 2003.)

FORD	HASLER
SIMPSON	TURNER
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1171–1; filed April 24, 2003, at 7:00 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1171 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 9-25-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. The bureau may not revoke the driving license or registration plates of the owner or operator of a motor vehicle who has been involved in a motor vehicle accident resulting in bodily injury or death or in damage to property in excess of ~~seven hundred fifty~~ **one thousand** dollars ~~($750)~~ **($1,000)** solely because of failure to provide evidence of financial responsibility whenever the:

(1) owner or operator was insured by an insurance company for public liability and property damage at the time of the accident; and

(2) insurance company becomes insolvent after the accident or within fifteen (15) days before the accident;

if the insurance company was authorized and qualified to do business in Indiana on the effective date of the policy.

SECTION 2. IC 9-25-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A person who **knowingly:**

(1) operates; or

(2) permits the operation of;

a motor vehicle on a public highway in Indiana commits a Class A infraction unless financial responsibility is in effect with respect to the motor vehicle under IC 9-25-4-4. **However, the offense is a Class C misdemeanor if the person knowingly or intentionally violates this section and has a prior unrelated conviction or judgment under this section.**

(b) Subsection (a)(2) applies to:

(1) the owner of a rental company that is referred to in IC 9-25-6-3(e)(1); and

(2) an employer that is referred to in IC 9-25-6-3(e)(2).

(c) In addition to any other penalty imposed on a person for violating this section, the court may recommend the suspension of the person's driving privileges for one (1) year. However, if, within the five (5) years preceding the conviction under this section, the person had a prior unrelated conviction under this section, the court shall recommend the suspension of the person's driving privileges for one (1) year.

(d) Upon receiving the recommendation of the court under subsection (c), the bureau shall suspend the person's driving privileges for the period recommended by the court.

SECTION 3. IC 9-26-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. The driver of a vehicle involved in an accident that does not result in injury or death of a person but that does result in damage to a vehicle that is driven or attended by a person shall do the following:

(1) Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.

(2) Immediately return to and remain at the scene of the accident until the driver does the following:

(A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.

(B) Upon request, exhibits the driver's license of the driver to the driver or occupant of or person attending each vehicle involved in the accident.

(3) If the accident results in total property damage to an apparent extent of at least ~~seven hundred fifty~~ **one thousand** dollars ~~($750),~~ **($1,000),** forward a written report of the accident to the state police department within ten (10) days after the accident.

SECTION 4. IC 9-26-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. A law enforcement officer shall investigate each motor vehicle accident that results in any of the following:

(1) The injury or death of a person.

(2) Total property damage to an apparent extent of at least ~~seven hundred fifty~~ **one thousand** dollars ~~($750).~~ **($1,000).**

SECTION 5. IC 9-26-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) A law enforcement officer shall enforce IC 9-21 and IC 9-25 against the parties to a motor vehicle accident on private property if the accident:

(1) occurs on commercial or other private property that is open to the public; and

(2) results in:

(A) personal injury or death; or

(B) property damage to an apparent extent greater than ~~seven hundred fifty~~ **one thousand** dollars ~~($750).~~ **($1,000).**

(b) This section does not affect the power of a local government unit to contract with the owner or lessee of a shopping center or private business property under IC 9-21-18-4.

SECTION 6. [EFFECTIVE JULY 1, 2003] **IC 9-25-8-2, as amended by this act, applies only to offenses committed after June 30, 2003.**

(Reference is to EHB 1171 as printed April 4, 2003.)

HERRELL	LONG
STUTZMAN	CRAYCRAFT
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

RESOLUTIONS ON FIRST READING

Senate Concurrent Resolution 4

The Speaker handed down Senate Concurrent Resolution 4, sponsored by Representative Stevenson:

A CONCURRENT RESOLUTION urging the establishment of an interim study committee on the rules concerning preschools.

Whereas, Because of the concerns with over crowding and safety conditions in preschools, the state has a strong interest in studying the rules concerning preschools;

Whereas, In order to ensure the physical well-being, safety, and protection of our children, the issue of preschool rules should be studied more thoroughly to determine if any changes need to be made; and

Whereas, The preschool years are vital to the development of our children, introducing them to learning and guiding them in their critical early learning years: Therefore,

Be it resolved by the Senate
of the General Assembly of the State of Indiana,
the House of Representatives concurring:

SECTION 1. That the legislative council is urged to establish a commission to study the rules concerning preschools.

SECTION 2. That the committee, if established, shall operate under the direction of the legislative council and that the committee shall issue a final report when directed to do so by the council.

The resolution was read a first time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution.

Representative Ripley was excused.

Senate Concurrent Resolution 11

The Speaker handed down Senate Concurrent Resolution 11, sponsored by Representative C. Brown:

A CONCURRENT RESOLUTION urging the health finance commission to study the issue of the rising number of uninsured in Indiana and develop a plan for ensuring the availability of lower cost health insurance coverage for individuals and employers.

Whereas, The number of uninsured individuals in Indiana is rising;

Whereas, The costs of health insurance have risen dramatically for individuals, including individuals within Indiana's workforce and employers in all economic sectors;

Whereas, This rise in the cost of health benefits coverage has contributed to a decrease in the number of individuals and employers who are able to secure health insurance;

Whereas, The increase in the number of uninsured individuals has restricted citizens' access to the health care delivery system in Indiana and has caused greater numbers of persons to seek coverage under state health insurance programs; and

Whereas, Regulatory and legislative proposals have been adopted in a number of other states to increase the affordability of private insurance for individuals and employers, thereby increasing access to the health care delivery system; Indiana is seeking instead to address these issues through a voluntary cooperative effort: Therefore,

Be it resolved by the Senate
of the General Assembly of the State of Indiana,
the House of Representatives concurring:

SECTION 1. That the health finance commission review the issue of the rising number of uninsured in Indiana and develop a plan for ensuring the availability of lower cost health insurance coverage for individuals and employers.

SECTION 2. That when developing this plan of action, the health finance commission members consult with Indiana's working uninsured as well as members of Indiana's employer, insurer, and health care provider communities.

SECTION 3. That the commission shall conduct a review of existing and forthcoming studies, data, and legislative action in other states, consulting with experts as needed to:

(1) develop a comprehensive plan for reducing the number of uninsured in our state;
(2) review the compilation of factors causing the increased cost of health coverage in Indiana;
(3) identify viable approaches to making lower cost health insurance coverage available to individuals and employers; and
(4) report the commission's findings, conclusions, and recommendations for legislative action.

The resolution was read a first time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution.

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed House Bill 1130 because it conflicts with HEA 1704-2003 without properly recognizing the existence of HEA 1704-2003, has had Engrossed House Bill 1130 under consideration and begs leave to report back to the House with the recommendation that Engrossed House Bill 1130 be corrected as follows:

Page 2, line 11, after "IC 16-41-35-29" insert ", AS AMENDED BY HEA 1704-2003, SECTION 6,".
Page 2, reset in roman lines 18 through 27.
Page 2, line 28, reset in roman "(c)".
Page 2, line 40, delete "(c)".
Page 2, line 40, reset in roman "(d)".
(Reference is to EHB 1130 as reprinted April 9, 2003.)

PELATH, Chair
WHETSTONE, R.M.M.
C. BROWN, Author

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed House Bill 1701 because it conflicts with HEA 1813-2003 without properly recognizing the existence of HEA 1813-2003, has had Engrossed House Bill 1701 under consideration and begs leave to report back to the House with the recommendation that Engrossed House Bill 1701 be corrected as follows:

Page 1, line 15, delete "P.L.1-2002," and insert "HEA 1813-2003".
Page 1, line 16, delete "50," and insert "9,".
Page 2, delete lines 23 through 29, begin a new line double block indented and insert:

"(E) IC 12-17.
(F) IC 12-17.2.
(G) IC 12-17.4.
(H) IC 12-18.
(I) IC 12-19.
(J) IC 12-20.".

(Reference is to EHB 1701 as reprinted April 11, 2003.)

PELATH, Chair
WHETSTONE, R.M.M.
C. BROWN, Author

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed Senate Bill 493 because it conflicts with SEA 63-2003 without properly recognizing the existence of SEA 63-2003, has had Engrossed Senate Bill 493 under consideration and begs leave to report back to the House with the recommendation that Engrossed Senate Bill 493 be corrected as follows:

Page 1, line 5, delete "IC 12-7-2-24.6" and insert "IC 12-7-2-24.8".
Page 1, line 7, delete "24.6." and insert "**24.8.**".
(Reference is to ESB 493 as printed March 28, 2003.)

PELATH, Chair
WHETSTONE, R.M.M.
C. BROWN, Sponsor

Report adopted.

MOTIONS TO CONCUR IN SENATE AMENDMENTS

HOUSE MOTION

Mr. Speaker: I move that the House concur in the Senate

amendments to Engrossed House Bill 1521.

FRIZZELL

Roll Call 659: yeas 91, nays 0. Motion prevailed.

Representative Ripley, who had been excused, was present.

HOUSE MOTION

Mr. Speaker: I move that the House concur in the Senate amendments to Engrossed House Bill 1145.

CRAWFORD

Roll Call 660: yeas 89, nays 4. Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that the House concur in the Senate amendments to Engrossed House Bill 1815.

CRAWFORD

Roll Call 661: yeas 75, nays 21. Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that the House reconsider its actions whereby it dissented from the Senate amendments to Engrossed House Bill 1734 and that the House now concur in the Senate amendments to said bill.

AYRES

Roll Call 662: yeas 92, nays 0. Motion prevailed.

RULES SUSPENSION

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 160.1 and 162.1 and recommends that Rule 160.1 be suspended so that the following conference committee reports are eligible for consideration after April 14, 2003, and that House Rule 162.1 be suspended so that the following conference committee reports may be laid over on the members' desks for 3 hours, all so that the following conference committee reports may be eligible to be placed before the House for action: Engrossed House Bills 1056–1, 1558–1, and 1630–1 and Engrossed Senate Bills 169–1, 186–1, 238–1, 242–1, 383–1, and 494–1.

PELATH, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 160.1 be suspended so that the following conference committee reports are eligible for consideration after April 14, 2003, and that House Rule 162.1 be suspended so that the following conference committee reports may be laid over on the members' desks for 3 hours, all so that the following conference committee reports may be eligible to be placed before the House for action: Engrossed House Bills 1056–1, 1558–1, and 1630–1 and Engrossed Senate Bills 169–1, 186–1, 238–1, 242–1, 383–1, and 494–1.

PELATH

Motion prevailed.

CONFERENCE COMMITTEE REPORTS

Engrossed House Bill 1558–1

The conference committee report was reread. Roll Call 663: yeas 92, nays 0. Report adopted.

Engrossed House Bill 1630–1

The conference committee report was reread. Roll Call 664: yeas 90, nays 2. Report adopted.

Representatives Cochran and Crawford were excused.

Engrossed Senate Bill 238–1

The conference committee report was reread. Roll Call 665: yeas 91, nays 4. Report adopted.

Engrossed Senate Bill 169–1

The conference committee report was reread. Roll Call 666: yeas 62, nays 32. Report adopted.

Representative Crawford, who had been excused, was present.

Engrossed Senate Bill 186–1

The conference committee report was reread. Roll Call 667: yeas 93, nays 2. Report adopted.

Representative Crawford was excused for the rest of the day.

Engrossed Senate Bill 242–1

The conference committee report was reread. Roll Call 668: yeas 78, nays 17. Report adopted.

Engrossed Senate Bill 494–1

The conference committee report was reread. Roll Call 669: yeas 91, nays 2. Report adopted.

Engrossed Senate Bill 383–1

The conference committee report was reread. Roll Call 670: yeas 93, nays 0. Report adopted.

MOTIONS TO CONCUR IN SENATE AMENDMENTS

HOUSE MOTION

Mr. Speaker: I move that the House concur in the Senate amendments to Engrossed House Bill 1850.

BECKER

Roll Call 671: yeas 94 nays 0. Motion prevailed.

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT

EHB 1798–1; filed April 24, 2003, at 8:33 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1798 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning environmental management.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 8-1.5-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The legislative body of a municipality may, by ordinance, provide for the control of any or all of its municipally owned utilities by:

(1) the municipal works board;

(2) a board consisting of the members of the municipal legislative body;

(3) a utility service board established under subsection ~~(c)~~ **(f)** or established before January 1, 1983, under IC 8-1-2-100 (repealed); or

(4) the board of directors of a department of waterworks established under IC 8-1.5-4.

The legislative body of a third class city also may adopt an ordinance under this subsection to provide for the control of any or all of its storm water facilities by a board described in subdivisions (1) through (4). An ordinance granting control of any or all of a third class city's storm water facilities to a board described in this subsection may be separate from or combined

with an ordinance granting control of the third class city's municipally owned utilities to a board described in this subsection.

(b) **If, at the time an ordinance is adopted under subsection (a) to grant control of any or all of a third class city's storm water facilities to a board described in subsection (a) the third class city has a department of storm water management under IC 8-1.5-5, the ordinance must specify a procedure for the transition of control of the affected storm water facilities from the board of directors of the department of storm water management to the board described in subsection (a).**

(c) The registered voters of a municipality may file a petition addressed to the legislative body requesting that the question of the creation of a utility service board be submitted to a referendum. The petition must be signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot.

~~(c)~~ **(d)** Within thirty (30) days after a petition is filed, the municipal clerk shall certify to the legislative body and to the county election board that a sufficient petition has been filed.

~~(d)~~ **(e)** Following certification, the legislative body shall submit the question of the creation of a utility service board to a referendum at the next election. The question shall be submitted to the registered voters of the municipality by placement on the ballot in the form prescribed by IC 3-10-9-4 and must state:

"Shall the legislative body of the municipality of _____ adopt an ordinance providing for the appointment of a utility service board to operate _____ (Insert name of utility here)?".

~~(e)~~ **(f)** If a majority of the voters voting on the question vote for the creation of a utility service board, the legislative body shall, by ordinance, establish a utility service board consisting of not less than three (3) nor more than seven (7) members. Not more than two-thirds (2/3) of the members may be of the same political party. All members must be residents of the area served by the board. The ordinance must provide for:

(1) a majority of the members to be appointed by the executive and a minority of the members to be appointed by the legislative body;

(2) the terms of the members, which may not exceed four (4) years, with initial terms prescribed so that the members' terms will be staggered;

(3) the salaries, if any, to be paid to the members; and

(4) the selection by the board of a chairman, who shall not be considered the head of a department for purposes of IC 36-4-9-2.

~~(f)~~ **(g)** The registered voters of the municipality may also file a petition requesting that the question of the abolition of the utility service board be submitted to a referendum. The procedure for filing of the petition and the referendum is the same as that prescribed by subsections ~~(b)~~ **(c)** through ~~(d).~~ **(e).**

SECTION 2. IC 8-1.5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter applies to each:

(1) municipality; **and**

(2) county that:

(A) does not have a consolidated city; and

(B) receives notification from the department of environmental management that the county will be subject to storm water regulation under 327 IAC 15-13;

that adopts the provisions of this chapter by ordinance.

SECTION 3. IC 8-1.5-5-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.5. The definitions in IC 36-1-2 apply throughout this chapter.**

SECTION 4. IC 8-1.5-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter, "board" means the following:

(1) For a consolidated city, the board of public works established by IC 36-3-5-6.

(2) For all other municipalities, the:

(A) board of directors described in section 4 of this chapter; **or**

(B) board that controls the third class city's municipally owned utilities under IC 8-1.5-3-3(a) if the city has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the city's storm water facilities by the board that controls the city's municipally owned utilities.

(3) For a county:

(A) the county executive; and

(B) the county surveyor.

SECTION 5. IC 8-1.5-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "department" means the following:

(1) For a consolidated city, the department of public works.

(2) For all other municipalities, the department of storm water management established under section 4 of this chapter.

(3) For a county, the department of storm water management established under section 4.5 of this chapter.

SECTION 6. IC 8-1.5-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) This section applies to all municipalities except a consolidated city.

(b) If the legislative body of a municipality adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.

(c) Except as provided in ~~subsection~~ **subsections** (f) **and (g),** the board consists of three (3) directors. The executive of the municipality shall appoint the directors, not more than two (2) of whom may be of the same political party.

(d) Except as provided in ~~subsection~~ **subsections** (f) **and (g),** the legislative body shall prescribe, by ordinance, the terms of the directors. However, the legislative body must prescribe the initial terms of the directors so that they will be staggered.

(e) The executive may remove a director at any time when, in the judgment of the executive, it is for the best interest of the department.

(f) If a second class city has a department of public sanitation under IC 36-9-25, the executive of the city may appoint the members of the board of sanitary commissioners as the board of directors of the department of storm water management. The terms of the members of the board of directors are the same as the terms of the members of the board of sanitary commissioners under IC 36-9-25-4.

(g) **If a third class city:**

(1) has a board that controls the city's municipally owned utilities under IC 8-1.5-3-3(a); and

(2) has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the city's storm water facilities by the board that controls the city's municipally owned utilities;

the members of the board that controls the city's municipally owned utilities shall serve as the board of directors of the department of storm water management, subject to any transition procedure specified in the ordinance under IC 8-1.5-3-3(b). The terms of the members of the board of directors are the same as the terms of the members of the board that controls the city's municipally owned utilities under IC 8-1.5-3-3(a), subject to the completion of any transition procedure specified in the ordinance under IC 8-1.5-3-3(b).

(h) A member of the board of directors of the department of storm water management **who:**

(1) is appointed under subsection (f); **or**

(2) is a member of the board under subsection (g) and receives a salary as a member of the board that controls the third class city's municipally owned utilities;

is not entitled to a salary for serving as a member of the board of directors of the department of storm water management. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.

SECTION 7. IC 8-1.5-5-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. (a) This section applies to a county.**

(b) If the county executive adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.

(c) An ordinance adopted under this section shall provide for the appointment of:

(1) the members of the county executive; and

(2) the county surveyor;

as the board of directors of the department. The term of office of a member of the board who is appointed from the membership of the county executive is coextensive with the member's term of office on the county executive. The term of the surveyor or the surveyor's designee as a member of the board is coextensive with the surveyor's term of office.

(d) A member of the board of directors is not entitled to a salary or per diem for serving as a member of the board of directors. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.

SECTION 8. IC 8-1.5-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The ~~legislative body shall, in the~~ ordinance adopting the provisions of this chapter ~~create~~ **creates** a special taxing district that includes the following:

(1) For a consolidated city, all of the territory of the county containing the consolidated city.

(2) For all other municipalities, all territory within the corporate boundaries of the municipality.

(3) For a county, all the territory in the county that is not located in a municipality.

(b) ~~As to each municipality to which this chapter applies, including a consolidated city,~~ All the territory within the district constitutes a special taxing district for the purpose of providing for the collection and disposal of storm water of the district in a manner that protects the public health and welfare and for the purpose of levying special benefit taxes for purposes of storm water collection and disposal. All ~~area~~ **territory** in the district and all ~~area~~ **territory** added to the district is considered to have received a special benefit from the storm water collection and disposal facilities of the district equal to or greater than the special taxes imposed on the ~~area by~~ **territory under** this chapter in order to pay all or part of the costs of such facilities.

SECTION 9. IC 8-1.5-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. ~~(a)~~ The board has the powers and duties prescribed by IC 8-1.5-3-4(a). In addition, the board may:

(1) hold hearings following public notice;

(2) make findings and determinations;

(3) install, maintain, and operate a storm water collection and disposal system;

(4) make all necessary or desirable improvements of the grounds and premises under its control; and

(5) issue and sell bonds of the district in the name of the ~~municipality~~ **unit served by the department** for the acquisition, construction, alteration, addition, or extension of the storm water collection and disposal system or for the refunding of any bonds issued by the board.

~~(b) The board has exclusive jurisdiction over the collection and disposal of storm water within the district.~~

SECTION 10. IC 8-1.5-5-7, AS AMENDED BY P.L.176-2002, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The acquisition, construction, installation, operation, and maintenance of facilities and land for storm water systems may be financed through:

(1) proceeds of special taxing district bonds of the storm water district;

(2) the assumption of liability incurred to construct the storm water system being acquired;

(3) service rates;

(4) revenue bonds; or

(5) any other available funds.

(b) The board, after **holding a public hearing with notice given under IC 5-3-1 and obtaining the** approval ~~by~~ **of** the ~~legislative~~ **fiscal** body of the ~~municipality,~~ **unit served by the department,** may assess and collect user fees from all of the property of the storm water district for the operation and maintenance of the storm water system. **The amount of the user fees must be the minimum amount necessary for the operation and maintenance of the storm water system. The assessment and collection of user fees under this subsection by the board of a county must also be approved by the county executive.**

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

(d) The board shall use one (1) or more of the following factors to establish the fees authorized by this section:

(1) A flat charge for each lot, parcel of property, or building.

(2) The amount of impervious surface on the property.

(3) The number and size of storm water outlets on the property.

(4) The amount, strength, or character of storm water discharged.

(5) The existence of improvements on the property that address storm water quality and quantity issues.

(6) The degree to which storm water discharged from the property affects water quality in the storm water district.

(7) Any other factors the board considers necessary.

(e) The board may exercise reasonable discretion in adopting different schedules of fees or making classifications in schedules of fees based on:

(1) variations in the costs, including capital expenditures, of furnishing services to various classes of users or to various locations;

(2) variations in the number of users in various locations; and

(3) whether the property is used primarily for residential, commercial, or agricultural purposes.

SECTION 11. IC 8-1.5-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) If the board acquires a storm water system and assumes the liability incurred by the seller to construct the storm water system, the principal and interest on the liability so assumed shall be paid from the bond and interest redemption account in the same manner as bonds of the district would be paid, and the board shall set aside sufficient revenues to comply with the requirements of the instrument creating the liability.

(b) A ~~municipality~~ **unit** acquiring a storm water system may not assume any liability for the payment of a secured debt or charge other than the obligation to apply the revenues in the manner prescribed in the ordinance.

(c) The board may issue bonds in exchange for, or satisfaction of, the liability assumed in the acquisition of a storm water system. The bonds so issued may not be issued at less than ninety-seven percent (97%) of the par value thereof in exchange for, or satisfaction of, the liability. Notwithstanding section 13(c) of this chapter, bonds issued in exchange for, or satisfaction of, the liability need not be sold in accordance with IC 5-1-11. However, the interest rate on such bonds may not exceed the average yield on municipal revenue bonds of comparable credit rating and maturity as of the end of the week immediately preceding the issuance of the bonds.

SECTION 12. IC 8-1.5-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) All money received from bonds issued under this chapter shall be applied solely to the acquisition, construction, repair, and maintenance of the storm water system, the cost of the issuance of the bonds, and the creation of any reserve for the bonds.

(b) Any holder of the bonds may bring a civil action to compel performance of all duties required by this chapter of the board issuing the bonds or of any officer of the board, including the following:

(1) Making and collecting reasonable and sufficient user fees lawfully established for service rendered by the storm water system.

(2) Segregating the income and revenues of the department.

(3) Applying the respective funds created under this chapter.

(c) If there is any default in the payment of the principal or interest of any of the bonds, a court having jurisdiction of the action may:

(1) appoint an administrator or receiver to administer the storm water system on behalf of the ~~municipality~~ **unit served by the department** and the bondholders, with power to:

(A) charge and collect user fees lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the storm water system; and

(B) apply the income and revenues in conformity with this chapter and the ordinance; or

(2) declare the whole amount of the bonds due and payable and direct the sale of the storm water system.

Under a sale ordered under subdivision (2), the purchaser is vested with an indeterminate permit as defined in IC 8-1-2-1 to maintain and operate the storm water system to collect and dispose of storm water for the ~~municipality~~ **unit served by the department** and its citizens.

SECTION 13. IC 8-1.5-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) **This section applies to a municipality.**

(b) The reasonable cost and value of any service rendered to the municipality by the storm water system by furnishing storm water collection and disposal shall be:

(1) charged against the municipality; and

(2) paid for ~~in monthly installments~~ as the service accrues out of: ~~the:~~

(A) **the** current revenues of the municipality, collected or in process of collection; ~~and~~ **or**

(B) **the** tax levy of the municipality made by it to raise money to meet its necessary current expenses.

~~(b)~~ **(c)** The compensation for the service provided to the municipality shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

SECTION 14. IC 8-1.5-5-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 16.5. (a) This section applies to a county.**

(b) The reasonable cost and value of any service rendered to the county by the storm water system by furnishing storm water collection and disposal shall be:

(1) charged against all the territory in the county, except territory within a municipality; and

(2) paid for as the service accrues out of:

(A) the current revenues of the county, collected or in process of collection; or

(B) the tax levy of the county made by the county to raise money to meet the county's necessary current expenses.

(c) The compensation for the service provided to the county shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

SECTION 15. IC 8-1.5-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. All real property, rights-of-way, or other property acquired by purchase or appropriation shall be taken and held in the name of the ~~municipality.~~ **unit served by the department.**

SECTION 16. IC 8-1.5-5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) To procure money to pay for the required property and the acquisition, erection, and construction of the proposed work, and in anticipation of the collection of the special benefit tax, the board may issue, in the name of the ~~municipality,~~ **unit served by the department,** special taxing district bonds of the storm water district. The bonds may not exceed the total estimated cost of the work and property to be acquired as provided for in the resolution, including:

(1) all expenses necessarily incurred for supervision and inspection during the period of construction; and

(2) expenses actually incurred preliminary to the acquiring of the necessary property and the construction of the work, including the cost of records, engineering expenses, publication of notices, salaries, and other expenses incurred, before and in connection with the acquiring of the property, the letting of the contract, and the sale of bonds.

(b) After adopting a resolution authorizing the bonds, the board shall certify a copy of the resolution to the ~~municipal~~ fiscal officer, who shall then prepare the bonds. The ~~municipal~~ executive shall execute the bonds, and the fiscal officer shall attest the bonds.

(c) The board may not issue bonds of the storm water district, payable by a special benefit property tax, when the total of the outstanding bonds of the district that are payable from a special benefit property tax, including the bonds already issued and to be issued, exceeds eight percent (8%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. For purposes of this section, bonds are not considered to be outstanding bonds if the payment has been provided for by an irrevocable deposit in escrow of government obligations sufficient to pay the bonds when due or called for redemption.

(d) The bonds are not a corporate obligation or indebtedness of the ~~municipality~~ **unit** but are an indebtedness of the storm water district. The bonds and interest are payable:

(1) out of a special benefit tax levied upon all of the property of the storm water district; or

(2) by any other means including revenues, cash on hand, and cash in depreciation or reserve accounts.

(e) The bonds must recite the terms upon their face, together with the purpose for which they are issued.

SECTION 17. IC 8-1.5-5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. (a) To raise the necessary revenues to pay for the bonds issued and the interest on the bonds, the board:

(1) after approval by the ~~legislative~~ **fiscal** body of the ~~municipality,~~ **unit served by the department,** shall levy a special benefit tax upon all the property of the storm water district in the amount necessary to meet and pay the principal of the bonds as they severally mature, together with all accruing interest; and

(2) shall certify the tax levied each year to the fiscal ~~officers~~ **officer** of the ~~municipality and of the county in which the storm water district is located,~~ **unit served by the department** at the same time ~~the levy of the municipality is~~ **and in the same manner as other levies of the unit are** certified.

The tax levied and certified shall be estimated and entered upon the tax duplicate and shall be collected and enforced in the same manner as state and county taxes are estimated, entered, and enforced.

(b) In fixing the amount of the necessary levy, the board:

(1) shall consider the amount of revenues derived by the board from the operation of the storm water system under its jurisdiction above the amount of revenues required to pay the cost of operation and maintenance of the storm water system; and

(2) may, in lieu of making the levy in this section, set aside by resolution a specific amount of the surplus revenues to be collected before maturity of the principal and interest of the bonds payable in the following calendar year.

(c) The special tax shall be deposited in the bond and interest redemption account.

SECTION 18. IC 8-1.5-5-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) The board may not issue any bonds authorized by this chapter until it has secured the approval for the issuance of the bonds from the ~~legislative~~ **fiscal** body of the ~~municipality.~~ **unit served by the department.**

(b) IC 6-1.1-20 applies to the issuance of bonds under this chapter which are or may be payable from the special benefit property tax.

SECTION 19. IC 8-1.5-5-27 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 27. If the department:**

(1) uses private property for storm water collection or disposal; and

(2) obtains the consent of the owner of the private property to maintain the private property;

the department shall maintain the private property.

SECTION 20. IC 8-1.5-5-28 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 28. A person may not be**

required to screen a storm water outfall if the pipe diameter of the storm water outfall is less than twenty-four (24) inches.

SECTION 21. IC 13-11-2-25.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 25.8. For purposes of IC 13-18:**

(1) "Class I wetland" means an isolated wetland described by one (1) or both of the following:

(A) At least fifty percent (50%) of the wetland has been disturbed or affected by human activity or development by one (1) or more of the following:

(i) Removal or replacement of the natural vegetation.

(ii) Disturbance or modification of the natural hydrology.

(B) The wetland supports minimal wildlife habitat or hydrologic function because the wetland:

(i) does not provide critical habitat for threatened or endangered species listed in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(ii) is typified by low species diversity;

(iii) contains greater than fifty percent (50%) areal coverage of non-native invasive species;

(iv) does not support significant habitat or wildlife uses; or

(v) does not possess significant hydrologic function;

(2) "Class II wetland" means:

(A) an isolated wetland that is not a Class I or Class III wetland; or

(B) a type of wetland listed in subdivision (3)(B) that would meet the definition of Class I wetland if the wetland were not a rare or ecologically important type; and

(3) "Class III wetland" means an isolated wetland:

(A) that is located in a setting undisturbed or minimally disturbed by human activity or development; or

(B) unless classified as a Class II wetland under subdivision (2)(B), that is of one (1) of the following rare and ecologically important types:

(i) Acid bog.

(ii) Acid seep.

(iii) Circumneutral bog.

(iv) Circumneutral seep.

(v) Cypress swamp.

(vi) Dune and swale.

(vii) Fen.

(viii) Forested fen.

(ix) Forested swamp.

(x) Marl beach.

(xi) Muck flat.

(xii) Panne.

(xiii) Sand flat.

(xiv) Sedge meadow.

(xv) Shrub swamp.

(xvi) Sinkhole pond.

(xvii) Sinkhole swamp.

(xviii) Wet floodplain forest.

(xix) Wet prairie.

(xx) Wet sand prairie.

SECTION 22. IC 13-11-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 29. "Clean Water Act", for purposes of **this chapter,** IC 13-18-13, **IC 13-18-22, and IC 13-18-23,** refers to:

(1) 33 U.S.C. 1251 et seq.; and

(2) regulations adopted under 33 U.S.C. 1251 et seq.

SECTION 23. IC 13-11-2-36.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 36.3. "Compensatory mitigation", for purposes of IC 13-18-22, means the:**

(1) restoration; or

(2) creation;

of wetlands to offset or compensate for a loss of wetlands resulting from an authorized wetland activity. Wetlands enlargement, enhancement, and preservation may be considered compensatory mitigation on a case-by-case basis, particularly for Class III wetlands.

SECTION 24. IC 13-11-2-74.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 74.5. (a) "Exempt isolated wetland", for purposes of IC 13-18, means an isolated wetland that:**

(1) is a voluntarily created wetland unless:

(A) the wetland is approved by the department for compensatory mitigation purposes in accordance with a permit issued under Section 404 of the Clean Water Act;

(B) the wetland is reclassified as a state regulated wetland under IC 13-18-22-6(c); or

(C) the owner of the wetland declares, by a written instrument:

(i) recorded in the office of the recorder of the county or counties in which the wetland is located; and

(ii) filed with the department;

that the wetland is to be considered in all respects to be a state regulated wetland;

(2) exists as an incidental feature in or on:

(A) a residential lawn;

(B) a lawn or landscaped area of a commercial or governmental complex;

(C) agricultural land;

(D) a roadside ditch;

(E) an irrigation ditch; or

(F) a manmade drainage control structure;

(3) is a fringe wetland associated with a private pond;

(4) is, or is associated with, a manmade body of surface water of any size created by:

(A) excavating;

(B) diking; or

(C) excavating and diking;

dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes;

(5) subject to subsection (b), is a Class I wetland with a delineation of one-half (1/2) acre or less;

(6) subject to subsection (c), is a Class II wetland with a delineation of one-fourth (1/4) acre or less;

(7) is located on land:

(A) subject to regulation under the United States Department of Agriculture wetland conservation rules, also known as Swampbuster, because of voluntary enrollment in a federal farm program; and

(B) used for agricultural or associated purposes allowed under the rules referred to in clause (A); or

(8) is constructed for reduction or control of pollution.

(b) The total acreage of Class I wetlands on a tract to which the exemption described in subsection (a)(5) may apply is limited to the larger of:

(1) the acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in subsection (a)(5); and

(2) fifty percent (50%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in subsection (a)(5) but for the limitation of this subsection.

(c) The total acreage of Class II wetlands on a tract to which the exemption described in subsection (a)(6) may apply is limited to the larger of:

(1) the acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in subsection (a)(6); and

(2) thirty-three and one-third percent (33 1/3%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in subsection (a)(6) but for the limitation of this subsection.

SECTION 25. IC 13-11-2-112.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

[EFFECTIVE UPON PASSAGE]: **Sec. 112.5. "Isolated wetland", for purposes of IC 13-18, is a wetland that is not subject to regulation under Section 404(a) of the Clean Water Act.**

SECTION 26. IC 13-11-2-130.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 130.5. "Periodic vehicle inspection program", for purposes of IC 13-17-5, means a program requiring a motor vehicle registered in a county to undergo a periodic test of emission characteristics and be repaired and retested if the motor vehicle fails the emissions test. The term includes entering into and managing contracts for inspection stations.**

SECTION 27. IC 13-11-2-166.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 166.5. "Pond", for purposes of IC 13-18:**

(1) means:

(A) a natural surface water that is smaller than ten (10) acres at the ordinary high water mark, as defined in 33 CFR 328.3; or

(B) a manmade body of surface water of any size created by:

(i) excavating;

(ii) diking; or

(iii) excavating and diking;

dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes; and

(2) includes water in saturated soils associated with the body of water.

SECTION 28. IC 13-11-2-221.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 221.5. "State regulated wetland", for purposes of IC 13-18, means an isolated wetland located in Indiana that is not an exempt isolated wetland.**

SECTION 29. IC 13-11-2-233.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 233.5. "Tract", for purposes of this chapter, means any area of land that is under common ownership and is contained within a continuous border.**

SECTION 30. IC 13-11-2-245.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 245.5. "Voluntarily created wetland", for purposes of this chapter, means an isolated wetland that:**

(1) was restored or created in the absence of a governmental order, directive, or regulatory requirement concerning the restoration or creation of the wetland; and

(2) has not been applied for or used as compensatory mitigation or another regulatory purpose that would have the effect of subjecting the wetland to regulation as waters by:

(A) the department; or

(B) another governmental entity.

SECTION 31. IC 13-11-2-265, AS AMENDED BY P.L.183-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 265. (a) "Waters", for purposes of water pollution control laws and environmental management laws, means:

(1) the accumulations of water, surface and underground, natural and artificial, public and private; or

(2) a part of the accumulations of water;

that are wholly or partially within, flow through, or border upon Indiana.

(b) The term "waters" does not include:

(1) an exempt isolated wetland;

(2) a private pond; or

(3) an off-stream pond, reservoir, **wetland,** or **other** facility built for reduction or control of pollution or cooling of water before discharge. ~~unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.~~

SECTION 32. IC 13-11-2-265.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 265.6. "Wetland activity", for purposes of IC 13-18-22, means the discharge of:**

(1) dredged; or

(2) fill;

material into an isolated wetland.

SECTION 33. IC 13-11-2-265.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 265.7. "Wetlands", for purposes of IC 13-18, means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include:**

(1) swamps;

(2) marshes;

(3) bogs; and

(4) similar areas.

SECTION 34. IC 13-11-2-265.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 265.8. "Wetlands delineation" or "delineation", for purposes of section 74.5 of this chapter, means a technical assessment:**

(1) of whether a wetland exists on an area of land; and

(2) if so, of the type and quality of the wetland based on the presence or absence of wetlands characteristics, as determined consistently with the Wetlands Delineation Manual, Technical Report Y-87-1 of the United States Army Corps of Engineers.

SECTION 35. IC 13-14-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a) Except as provided in subsection (b),** the department shall provide notice in the Indiana Register of the first public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

(1) Identify the authority under which the proposed rule is to be adopted.

(2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must include a listing of all alternatives being considered by the department at the time of the notice and must set forth the basis for each alternative.

(3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.

(4) Request the submission of alternative ways to achieve the purpose of the proposed rule.

(5) Request the submission of comments, including suggestions of specific language for the proposed rule.

(6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

(b) This section does not apply to rules adopted under IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.

SECTION 36. IC 13-17-5-6.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 6.7. (a) A person may not be charged a fee for having a motor vehicle tested under this chapter.**

(b) This section expires January 1, 2007.

SECTION 37. IC 13-17-5-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 9. (a) After December 31, 2006, the board may not adopt a rule under air pollution control laws that requires motor vehicles to undergo a periodic test of emission characteristics in the following counties:**

(1) A county having a population of more than seventy thousand (70,000) but less than seventy-one thousand (71,000).

(2) A county having a population of more than ninety thousand (90,000) but less than one hundred thousand (100,000).

(b) After December 31, 2006, 326 IAC 13-1.1 is void to the extent it applies to a county referred to in subsection (a).

(c) Unless the budget agency approves a periodic vehicle inspection program for a county referred to in subsection (a), the board shall amend 326 IAC 13-1.1 so that it does not apply after December 31, 2006, to a county referred to in subsection (a).

(d) The budget agency, after review by the budget committee, may approve in writing the implementation of a periodic vehicle inspection program for one (1) or more counties described in subsection (a) only if the budget agency determines that the implementation of a periodic vehicle inspection program in the designated counties is necessary to avoid a loss of federal highway funding for the state or a political subdivision. The approval must specify the counties to which the periodic vehicle inspection program applies and the time during which the periodic vehicle inspection program must be conducted in each designated county. The budget agency, after review by the budget committee, shall withdraw an approval given under this subsection for a periodic vehicle inspection program in a county if the budget agency determines that the suspension of the periodic vehicle inspection program will not adversely affect federal highway funding for the state or a political subdivision.

SECTION 38. IC 13-18-22 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 22. State Regulated Wetlands

Sec. 1. (a) Except as provided in subsection (b), a person proposing a wetland activity in a state regulated wetland must obtain a permit under this chapter to authorize the wetland activity.

(b) A permit is not required for the following wetland activities:

(1) The discharge of dirt, sand, rock, stone, concrete, or other inert fill materials in a de minimis amount.

(2) A wetland activity at a surface coal mine for which the department of natural resources has approved a plan to:

(A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;

(B) otherwise effectuate environmental values; and

(C) enhance those values where practicable.

(3) Any activity listed under Section 404(f) of the Clean Water Act, including:

(A) normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the navigable waters; and

(E) construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices, to assure that:

(i) flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired;

(ii) the reach of the navigable waters is not reduced; and

(iii) any adverse effect on the aquatic environment will be otherwise minimized.

(c) The goal of the permitting program for wetland activities in state regulated wetlands is to:

(1) promote a net gain in high quality isolated wetlands; and

(2) assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program.

Sec. 2. (a) The board may adopt rules under IC 4-22-2 and IC 13-14 not later than February 1, 2004, to implement the part of the definition of Class I wetland under IC 13-11-2-25.8(1)(B).

(b) Before the adoption of rules by the board under subsection (a), the department shall determine the class of a wetland in a manner consistent with the definitions of Class I, II, and III wetlands in IC 13-11-2-25.8.

Sec. 3. (a) An individual permit is required to authorize a wetland activity in a Class III wetland.

(b) Except as provided in section 4(a) of this chapter, an individual permit is required to authorize a wetland activity in a Class II wetland.

(c) The board shall adopt rules under IC 4-22-2 and IC 13-14 not later than June 1, 2004, to govern the issuance of individual permits by the department under subsections (a) and (b).

Sec. 4. (a) A general permit is authorized for wetland activities with minimal impact in Class II wetlands, including the activities analogous to the nationwide permit program (as published in 67 Fed. Reg. 2077-2089 (2002)).

(b) A general permit is authorized for wetland activities in Class I wetlands.

(c) The board shall adopt rules under IC 4-22-2 and IC 13-14 not later than February 1, 2004, to establish and implement the general permits authorized in subsections (a) and (b).

Sec. 5. (a) The rules adopted under section 3 of this chapter:

(1) must require that the applicant demonstrate, as a prerequisite to the issuance of the permit, that wetland activity:

(A) is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; and

(B) for a Class III wetland, is without practical alternative and will be accompanied by taking steps that are practicable and appropriate to minimize potential adverse impacts of the discharge on the aquatic ecosystem of the wetland;

(2) except as provided in subsection (c), must establish that compensatory mitigation will be provided as set forth in section 6 of this chapter to reasonably offset the loss of wetlands allowed by the permits; and

(3) may prescribe additional conditions that are reasonable and necessary to carry out the purposes of this chapter.

(b) The rules adopted under section 4 of this chapter must require, as a prerequisite to the applicability of the general permit by rule to a specific wetland activity, that the person proposing the discharge submit to the department a notice of intent to be covered by the general permit by rule that:

(1) identifies the wetlands to be affected by the wetland activity; and

(2) except as provided in subsection (c), provides a compensatory mitigation plan as set forth in section 6 of this chapter to reasonably offset the loss of wetlands allowed by the general permit.

(c) Under subsections (a) and (b), the rules adopted under sections 3 and 4 of this chapter may provide for exceptions to compensatory mitigation in specific, limited circumstances.

(d) For purposes of subsection (a)(1)(A):

(1) a resolution of the executive of the county or municipality in which the wetland is located; or

(2) a permit or other approval from a local government entity having authority over the proposed use of the property on which the wetland is located;

that includes a specific finding that the wetland activity is reasonably necessary or appropriate to achieve the intended use of the property is considered conclusive evidence of that fact.

Sec. 6. (a) Except as otherwise specified in subsection (b), compensatory mitigation shall be provided in accordance with

the following table:

Wetland Class	Replacement Class	On-site Ratio	Off-site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested
Class III	Class III	2 to 1	2.5 to 1
		Nonforested	Nonforested
		2.5 to 1	3 to 1
		Forested	Forested

(b) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(c) The off-site location of compensatory mitigation must be within:

(1) the same eight (8) digit U.S. Geological Service hydrologic unit code; or

(2) the same county;

as the isolated wetlands subject to the authorized wetland activity.

(d) Exempt isolated wetlands may be used to provide compensatory mitigation for wetlands activities in state regulated wetlands. An exempt isolated wetland that is used to provide compensatory mitigation becomes a state regulated wetland.

Sec. 7. (a) The department shall:

(1) administer the permit programs established by this chapter; and

(2) review and issue decisions on applications for permits to undertake wetland activities in state regulated wetlands in accordance with the rules issued by the board under this chapter.

(b) Before the adoption of rules by the board under this chapter, the department shall:

(1) issue individual permits under this chapter consistent with the general purpose of this chapter; and

(2) for wetland activities in Class I wetlands, issue permits under this subsection:

(A) that are simple, streamlined, and uniform;

(B) that do not require development of site specific provisions; and

(C) promptly upon submission by the applicant to the department of a notice of registration for a permit.

(c) Not later than June 1, 2003, the department shall make available to the public:

(1) a form for use in applying for a permit under subsection (b)(1); and

(2) a form for use in submitting a notice of registration for a permit to undertake a wetland activity in a Class I wetland under subsection (b)(2).

Sec. 8. (a) The department shall make a decision to issue or deny an individual permit under section 3 or 7(b)(1) of this chapter not later than one hundred twenty (120) days after receipt of the application. If the department fails to make a decision on a permit application by that deadline, a permit is considered to have been issued by the department in accordance with the application.

(b) Except as provided in subsection (d), a general permit under section 4 of this chapter is considered to have been issued to an applicant on the thirty-first day after the department receives a notice of intent of the permit if the department has not previously authorized the wetland activity.

(c) Except as provided in subsection (d), a permit to undertake a wetland activity in a Class I wetland under section 7(b)(2) of this chapter is considered to have been issued to an applicant on the thirty-first day after the department receives a notice of registration submitted under section 7(b)(2) of this chapter if the department has not previously authorized the wetland activity.

(d) The department may deny a registration for a permit under subsection (b) or (c) before the period specified in subsection (b) or (c) expires.

(e) The department must support a denial under subsection (a) or (d) by a written statement of reasons.

Sec. 9. (a) The owner of a Class III wetland may petition the board for designation of the wetland as an outstanding state protected wetland. Upon verification by the board that the wetland is a Class III wetland and that the petitioner is the owner of the wetland, the board shall conduct a proceeding under IC 4-22-2 and IC 13-14 to adopt a rule designating the wetland as an outstanding state protected wetland.

(b) A rule adopted by the board under subsection (a) must specifically identify each wetland to be designated as an outstanding state protected wetland, including:

(1) the wetland type;

(2) a legal description of the wetland as delineated; and

(3) other information considered necessary by the board.

(c) The owner of a Class III wetland designated as an outstanding state protected wetland under this section shall:

(1) not cause or allow any anthropogenic activities on the property on which the wetland is located that may adversely affect or degrade the wetland, except for activities with minimal and short term effect, such as construction of an observation pathway or installation of an underground pipeline that are:

(A) authorized by rules adopted by the board; or

(B) approved by the department in the absence of rules under clause (A); and

(2) provide for the long term assurance of the protections described in subdivision (1) through:

(A) a restrictive covenant that is recorded with respect to the property on which the delineated wetland is located; or

(B) a grant of title to or a conservation easement in the property on which the delineated wetland is located to:

(i) the department of natural resources; or

(ii) a nonprofit entity with demonstrated ability in the maintenance and protection of wetlands.

(d) Notwithstanding the designation of a wetland under this section by the board as an outstanding state protected wetland, the owner of a Class III wetland may petition the board for rescission of the designation if the owner can demonstrate important social or economic needs that warrant adverse effects to the wetland. In its review of the petition, the board shall give great weight to a resolution of the legislative body of the municipality or county in which the Class III wetland is located describing important social or economic needs, the accomplishment of which would necessitate adverse effects to the wetland.

Sec. 10. The department has no authority over the:

(1) filling;

(2) draining; or

(3) elimination by other means;

before January 1, 2003, of a wetland that would have been an isolated wetland.

Sec. 11. When land referred to in IC 13-11-2-74.5(a)(7) is no longer subject to United States Department of Agriculture wetland conservation rules:

(1) isolated wetlands located on the land are subject to this chapter; and

(2) any past wetland activities in the isolated wetlands located on the land become subject to this chapter, unless the wetland activities were in compliance with United States Department of Agriculture wetland conservation rules.

SECTION 39. IC 13-18-23 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 23. Department Action on Certification Applications

Sec. 1. (a) The department shall:

(1) make a final determination on an application for a certification under Section 401 of the Clean Water Act not

later than one hundred twenty (120) days after its receipt of a complete application; and

(2) include in its notice of the final determination to the applicant a statement of reasons for the final determination.

(b) A failure by the department to act within the period specified in subsection (a)(1) constitutes a waiver of the certification.

SECTION 40. IC 36-9-27-114 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 114. (a) This section applies to a county that:**

(1) receives notification from the department of environmental management that the county will be subject to regulation under 327 IAC 15-13; and

(2) has not adopted an ordinance to adopt the provisions of IC 8-1.5-5.

(b) As used in this section, "storm water improvements" means storm sewers, drains, storm water retention or detention structures, dams, or any other improvements used for the collection, treatment, and disposal of storm water.

(c) The drainage board of a county may establish fees for services provided by the board to address issues of storm water quality and quantity, including the costs of constructing, maintaining, operating, and equipping storm water improvements.

(d) Fees established under this chapter after a public hearing with notice given under IC 5-3-1 are presumed to be just and equitable.

(e) The fees are payable by the owner of each lot, parcel of real property, or building that uses or is served by storm water improvements that address storm water quality and quantity. Unless the board finds otherwise, the storm water improvements are considered to benefit every lot, parcel of real property, or building that uses or is served by the storm water improvements, and the fees shall be billed and collected accordingly.

(f) The board shall use one (1) or more of the following factors to establish the fees:

(1) A flat charge for each lot, parcel of property, or building.

(2) The amount of impervious surface on the property.

(3) The number and size of storm water outlets on the property.

(4) The amount, strength, or character of storm water discharged.

(5) The existence of improvements on the property that address storm water quality and quantity issues.

(6) The degree to which storm water discharged from the property affects water quality in the district.

(7) Any other factors the board considers necessary.

(g) The board may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on:

(1) variations in the costs, including capital expenditures, of addressing storm water quality and quantity for various classes of users or for various locations;

(2) variations in the number of users in various locations; and

(3) whether the property is used primarily for residential, commercial, or agricultural purposes.

SECTION 41. [EFFECTIVE UPON PASSAGE] **(a) The environmental quality service council shall do the following:**

(1) Monitor the implementation of SECTIONS 21 through 25, 27 through 35, 38, and 39 of this act.

(2) Review the role of the department of environmental management with respect to action on requests under Section 401 of the Clean Water Act (33 U.S.C. 1341) for certifications concerning projects subject to permit requirements under Section 404 of the Clean Water Act (33 U.S.C. 1344), and recommend whether statutory direction is appropriate or necessary in defining that role.

(3) Complete its consideration of the options for statutory definition of "private pond" as used in the definition of "waters" in IC 13-11-2-265, as amended by this act, and:

(A) recommend an option; and

(B) include with the recommendation a statement of rationale for the recommendation.

(4) Evaluate the tensions between existing programs for wetlands protection and for local drainage and recommend principles and policies for ameliorating those tensions, taking into consideration the rationale and objectives for both programs.

(5) Submit its final report on the matters described in subdivisions (1) through (4) before November 1, 2003, to:

(A) the governor; and

(B) the executive director of the legislative services agency.

(b) The environmental quality service council shall:

(1) conduct an ongoing evaluation of the implementation of the permit program for state regulated wetlands under IC 13-18-22, as added by this act;

(2) recommend any adjustments to the program referred to in subdivision (1) that are considered advisable to improve the operation and effectiveness of the program, consistent with the purpose of providing an efficient permitting process and enhancing the attainment of an overall goal of no net loss of state regulated wetlands; and

(3) submit its final report on the matters described in subdivisions (1) and (2) before November 1, 2005, to:

(A) the governor; and

(B) the executive director of the legislative services agency.

(c) This SECTION expires January 1, 2006.

SECTION 42. **An emergency is declared for this act.**

(Reference is to EHB 1798 as reprinted April 8, 2003.)

BOTTORFF	GARD
SCHOLER	LEWIS
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT
EHB 1659–1; filed April 24, 2003, at 8:52 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1659 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 13-26-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. **(a) Except as provided in subsection (b),** the rates or charges for a sewage works may be determined based on the following:

(1) A flat charge for each connection.

(2) The amount of water used on the premises.

(3) The number and size of water outlets on the premises.

(4) The amount, strength, or character of sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.

(7) A combination of these or other factors that the board determines is necessary to establish **nondiscriminatory,** just, and equitable rates or charges.

(b) This subsection applies only to a district in which a campground brought a legal action after January 1, 2000, and before April 1, 2003, against a board concerning sewage service billed at a flat rate. If a campground is billed for sewage service at a flat rate under subsection (a), the campground may instead elect to be billed for the sewage service under this subsection by installing, at the campground's expense, a meter to measure the

actual amount of sewage discharged by the campground into the sewers for one (1) year. The highest meter reading for a calendar week for the campground during the year shall be used to determine the resident equivalent units for the campground. The basic monthly charge for the campground's sewage service must be equal to the number of the campground's resident equivalent units multiplied by the rate charged by the board for a resident unit. The board may impose additional charges on a campground under this subsection if the board incurs additional costs that are caused by any unique factors that apply to providing sewage service for the campground, including, but not limited to:

(1) the installation of:

(A) oversized pipe; or

(B) any other unique equipment;

necessary to provide sewage service for the campground; and

(2) excessive biochemical oxygen demand (BOD).

(Reference is to EHB 1659 as printed April 8, 2003.)

BOTTORFF	GARD
WOLKINS	HUME
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

OTHER BUSINESS ON THE SPEAKER'S TABLE

HOUSE MOTION

Mr. Speaker: I move that when we do adjourn, we adjourn until Friday, April 25, 2003 at 9:00 a.m.

PELATH

Motion prevailed.

PETITION TO CHANGE VOTING RECORD

Mr. Speaker: Pursuant to House Rule 75, I hereby petition to change my voting record on the concurrence on Engrossed House Bill 1519, Roll Call 639, on April 24, 2003. In support of this petition, I submit the following reason:

"I was present, but when I attempted to vote, the voting machine did not register my vote. I intended to vote yea."

NOE

There being a constitutional majority voting in favor of the petition, the petition was adopted. [*Journal Clerk's note: the final vote tally for the concurrence on Engrossed House Bill 1519 is 89 yeas, 0 nays.*]

PETITION TO CHANGE VOTING RECORD

Mr. Speaker: Pursuant to House Rule 75, I hereby petition to change my voting record on the concurrence on Engrossed House Bill 1169, Roll Call 629, on April 23, 2003. In support of this petition, I submit the following reason:

"I was present, but I inadvertently pushed the yea button, when I intended to be excused from voting."

STINE

There being a constitutional majority voting in favor of the petition, the petition was adopted. [*Journal Clerk's note: the final vote tally for the concurrence on Engrossed House Bill 1169 is 85 yeas, 2 nays.*]

PETITION TO CHANGE VOTING RECORD

Mr. Speaker: Pursuant to House Rule 75, I hereby petition to change my voting record on the concurrence on Engrossed House Bill 1701, Roll Call 638, on April 24, 2003. In support of this petition, I submit the following reason:

"I was present, but when I attempted to vote, the voting machine did not register my vote. I intended to vote yea."

NOE

There being a constitutional majority voting in favor of the petition, the petition was adopted. [*Journal Clerk's note: the final vote tally for the concurrence on Engrossed House Bill 1701 is 77 yeas, 11 nays.*]

Pursuant to House Rule 156, conference committee meetings were announced.

On the motion of Representative Bischoff, the House adjourned at 9:05 p.m., this twenty-fourth day of April, 2003, until Friday, April 25, 2003, at 9:00 a.m.

B. PATRICK BAUER
Speaker of the House of Representatives

DIANE MASARIU CARTER
Principal Clerk of the House of Representatives