

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1501

Citations Affected: IC 4-2-7; IC 4-6-3-2; IC 4-13-1-4.2; IC 4-15-10-4; IC 4-21.5-3-7; IC 5-11-5.5; IC 5-22; IC 10-11-8-2; IC 10-13-3-10; IC 15-1.5-10.5-8; IC 16-41-11-8; IC 24-4.7-5-1; IC 24-5-12-23; IC 24-8-3-1; IC 27-2-19-3; IC 33-39-2-6; IC 34-24-2; IC 35-41-1-17; IC 35-44-1; IC 4-2-6-3; IC 4-2-6-5.

Synopsis: Inspector general and deceptive acts. Conference committee report for EHB 1501. Creates the office of the inspector general, and allows the ethics commission to refer a matter for investigation by the inspector general. Provides that evidence concerning an alleged breach of the code of ethics is confidential until probable cause has been established. Prohibits state officers, employees, and special state appointees employed from accepting employment or other benefits or from participating in any decision that would constitute a conflict of interest. Requires the department of administration to adopt rules requiring a person who lobbies the executive branch to register as an executive branch lobbyist. Mandates a one year waiting period before a former state officer, employee, or special state appointee may accept compensation as: (1) a lobbyist; or (2) an employee of an entity that the former state officer, employee, or special state appointee negotiated with, regulated, supervised, or licensed. Prohibits a former state officer, employee, or special state appointee from any involvement in a particular matter that the state officer, employee, or special state appointee personally and substantially participated in while a state officer, employee, or special state appointee. Allows the commission to: (1) issue reprimands; (2) terminate or suspend an employee or special state appointee; (3) recommend the impeachment of a state officer; and (4) bar a person from state employment; if the commission determines that the person has violated the ethics code or committed other misconduct. Permits a covered employee to appeal a decision of the ethics commission to the state employee appeals commission. Makes: (1) unlawful retaliation against an employee for cooperating with the commission; or (2) interfering with an inspector general investigation; a Class A misdemeanor. Requires the inspector general to investigate wrongdoing affecting state government and establish a code of ethics. Provides that records of the office of the inspector general, other than confidential records, are subject to public inspection. Specifies that the open door law applies to public meetings of the inspector general. Allows the inspector general to bring, in a matter involving public misconduct, a: (1) civil action on behalf of the state if the attorney general does not do so; and (2) criminal prosecution on behalf of the state if a prosecuting attorney does not do so and a court of appeals judge authorizes the appointment of the inspector general as a special prosecutor. Requires random selection of the court of appeals judge who determines whether the inspector general should be appointed as a special prosecuting attorney, and permits the court of

appeals judge to appoint either the inspector general or a prosecuting attorney to serve as a special prosecutor. Requires the inspector general to reimburse a prosecuting attorney for reasonable expenses incurred in serving as a special prosecutor. Specifies that the office of the inspector general is a law enforcement agency. Permits a prosecuting attorney to appoint the inspector general or a deputy inspector general as a deputy prosecuting attorney in a case involving public misconduct. Allows the inspector general to bring certain forfeiture actions. Makes official misconduct and profiteering from public service a Class D felony. Permits a person to bring a civil action on behalf of the state to recover money owed to the state due to the filing of a false claim. Allows the attorney general to intervene in a civil action concerning a false claim, and allows the inspector general to intervene if the attorney general is disqualified from intervening or elects not to intervene. Provides that the person initiating the civil action is entitled to 10% to 25% of the proceeds recovered in the action if the attorney general or the inspector general intervenes and 25% to 30% if the attorney general or inspector general does not intervene. Permits the attorney general and the inspector general to issue a civil investigative demand in an action involving a false claim, and establishes procedures for the issuance of civil investigative demands. Provides enhanced relief for a whistleblower who has been retaliated against by an employer for assisting in an investigation concerning a false claim. Requires a contractor that contracts with a governmental body to certify that the contractor, the contractor's affiliates, and persons acting on behalf of the contractor or its affiliates have not violated the terms of the telephone privacy act in the previous year, and will not violate the terms of the telephone privacy act, telephone solicitation act, or automatic dialing act for the duration of the contract. Permits the attorney general to institute a civil action to void a contract under certain circumstances if the contractor: (1) falsely asserts past compliance with the telephone privacy act; or (2) violates the terms of the telephone privacy act, telephone solicitation act, or automatic dialing act while the contract is in effect. Excludes contracts where one party is a political subdivision from compliance with the telephone privacy contracting restrictions. Authorizes the court to provide for the appointment of a receiver in an action brought by the attorney general to enjoin a deceptive act. Provides that the law regulating promotional gifts and contests applies to a notice of a promotion that is delivered by electronic mail or another form of electronic communication. Makes other changes and conforming amendments. **(This conference committee report: (1) removes a provision that would have specified the law concerning public purchasing applies to every use of funds by a governmental body instead of every expenditure of funds; (2) defines "affiliate" for purposes of the law concerning public purchasing; (3) removes the definition of "in good standing"; (4) requires the attorney general to notify a contractor, the department of administration, and the budget agency before the attorney general brings a civil action to void a contract between a contractor and a governmental body because the contractor violated certain laws concerning telephone solicitation and automatic dialing machines; (5) removes a provision that would have allowed the attorney general to recover costs and attorney's fees in the civil action; and (6) adds provisions concerning the inspector general and false claims against the state.)**

Effective: Upon passage; July 1, 2005.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1501 respectfully reports that said two committees 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:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 4-2-6-1 IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, and
- 4 unless the context clearly denotes otherwise:
- 5 (1) "Agency" means an authority, a board, a branch, a bureau, a
- 6 commission, a committee, a council, a department, a division, an
- 7 office, a service, or other instrumentality of the executive,
- 8 including the administrative, department of state government. The
- 9 term includes a body corporate and politic set up as an
- 10 instrumentality of the state ~~that chooses to be under the jurisdiction~~
- 11 ~~of the state ethics commission. and a private, nonprofit,~~
- 12 **government related corporation.** The term does not include any
- 13 of the following:
- 14 (A) The judicial department of state government.
- 15 (B) The legislative department of state government.
- 16 (C) A state educational institution (as defined in IC 20-12-0.5-1).
- 17 (D) A political subdivision.
- 18 ~~(E) A private nonprofit government related corporation.~~
- 19 (2) "Appointing authority" means the chief administrative officer
- 20 of an agency. The term does not include a state officer.
- 21 (3) "Assist" means to:
- 22 (A) help;
- 23 (B) aid;

- 1 (C) advise; or
 2 (D) furnish information to;
 3 a person. The term includes an offer to do any of the actions in
 4 clauses (A) through (D).
- 5 (4) "Business relationship" means dealings of a person with an
 6 agency seeking, obtaining, establishing, maintaining, or
 7 implementing:
 8 (A) a pecuniary interest in a contract or purchase with the
 9 agency; or
 10 (B) a license or permit requiring the exercise of judgment or
 11 discretion by the agency.
- 12 (5) "Commission" refers to the state ethics commission created
 13 under section 2 of this chapter.
- 14 (6) "Compensation" means any money, thing of value, or financial
 15 benefit conferred on, or received by, any person in return for
 16 services rendered, or for services to be rendered, whether by that
 17 person or another.
- 18 (7) "Employee" means an individual, other than a state officer, who
 19 is employed by an agency on a full-time, a part-time, a temporary,
 20 an intermittent, or an hourly basis. The term includes an individual
 21 who contracts with an agency for personal services. ~~for more than~~
 22 ~~thirty (30) hours a week for more than twenty-six (26) weeks~~
 23 ~~during any one (1) year period.~~
- 24 (8) "Employer" means any person from whom a state officer or
 25 employee or the officer's or employee's spouse received
 26 compensation. For purposes of this chapter, a customer or client of
 27 a self-employed individual in a sole proprietorship or a professional
 28 practice is not considered to be an employer.
- 29 (9) "Financial interest" means an interest:
 30 (A) in a purchase, sale, lease, contract, option, or other
 31 transaction between an agency and any person; or
 32 (B) involving property or services.
 33 The term includes an interest arising from employment or
 34 prospective employment for which negotiations have begun. The
 35 term does not include an interest of a state officer or employee in
 36 the common stock of a corporation unless the combined holdings
 37 in the corporation of the state officer or the employee, that
 38 individual's spouse, and that individual's unemancipated children
 39 are more than one percent (1%) of the outstanding shares of the
 40 common stock of the corporation. The term does not include an
 41 interest that is not greater than the interest of the general public or
 42 any state officer or any state employee.
- 43 (10) "Information of a confidential nature" means information:
 44 (A) obtained by reason of the position or office held; and
 45 (B) which:
 46 (i) a public agency is prohibited from disclosing under
 47 IC 5-14-3-4(a);
 48 (ii) a public agency has the discretion not to disclose under
 49 IC 5-14-3-4(b) and that the agency has not disclosed; or
 50 (iii) ~~the information~~ is not in a public record, but if it were,
 51 would be confidential.

- 1 (11) "Person" means any individual, proprietorship, partnership,
 2 unincorporated association, trust, business trust, group, limited
 3 liability company, or corporation, whether or not operated for
 4 profit, or a governmental agency or political subdivision.
- 5 (12) "Political subdivision" means a county, city, town, township,
 6 school district, municipal corporation, special taxing district, or
 7 other local instrumentality. The term includes an officer of a
 8 political subdivision.
- 9 (13) "Property" has the meaning set forth in IC 35-41-1-23.
- 10 (14) "Represent" means to do any of the following on behalf of a
 11 person:
 12 (A) Attend an agency proceeding.
 13 (B) Write a letter.
 14 (C) Communicate with an employee of an agency.
- 15 (15) "Special state appointee" means a person who is:
 16 (A) not a state officer or employee; and
 17 (B) elected or appointed to an authority, a board, a commission,
 18 a committee, a council, a task force, or other body designated by
 19 any name that:
 20 (i) is authorized by statute or executive order; and
 21 (ii) functions in a policy or an advisory role in the executive
 22 (including the administrative) department of state government,
 23 including a separate body corporate and politic.
- 24 (16) "State officer" means any of the following:
 25 (A) The governor.
 26 (B) The lieutenant governor.
 27 (C) The secretary of state.
 28 (D) The auditor of state.
 29 (E) The treasurer of state.
 30 (F) The attorney general.
 31 (G) The superintendent of public instruction.
- 32 (17) The masculine gender includes the masculine and feminine.
- 33 (18) The singular form of any noun includes the plural wherever
 34 appropriate.
- 35 SECTION 2. IC 4-2-6-2 IS AMENDED TO READ AS FOLLOWS
 36 [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) There is created a state
 37 ethics commission.
- 38 (b) The commission is composed of five (5) members appointed by
 39 the governor.
- 40 (c) No more than three (3) commission members shall be of the same
 41 political party. A person who:
 42 (1) holds an elected or appointed office of the state;
 43 (2) is employed by the state; or
 44 (3) is registered as a lobbyist under IC 2-7-2-1;
 45 may not be a member of the commission. The governor shall designate
 46 one (1) member of the commission as the ~~chairman~~ **chairperson**. Each
 47 appointment to the commission is for a period of four (4) years. A
 48 vacancy shall be filled by the governor for the unexpired term.
- 49 (d) The ~~governor and state budget agency~~ **inspector general** shall
 50 provide ~~such~~ rooms and staff assistance ~~as the commission may require~~.
 51 **for the commission.**

1 SECTION 3. IC 4-2-6-2.5 IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE UPON PASSAGE]: Sec. 2.5. The commission has
 3 jurisdiction over the following persons:

- 4 (1) A current or former state officer.
- 5 (2) A current or former employee.
- 6 (3) A person who has or had a business relationship with an
 7 agency.
- 8 (4) A **current or former** special state appointee.

9 SECTION 4. IC 4-2-6-4 IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The commission may do
 11 any of the following:

- 12 (1) Upon a vote of four (4) members, ~~or upon the written request~~
 13 ~~of the governor, initiate and conduct an investigation: refer any~~
 14 ~~matter within the inspector general's authority to the inspector~~
 15 ~~general for investigation.~~
- 16 (2) Receive and hear any complaint ~~which~~ **filed with the**
 17 **commission by the inspector general that** alleges a violation of
 18 this chapter, a rule adopted under this chapter, or any other statute
 19 or rule establishing standards of official conduct of state officers,
 20 employees, **an executive branch lobbyist (as defined in**
 21 **IC 4-2-7-1)**, or special state appointees.
- 22 (3) Obtain information and, upon a vote of four (4) members,
 23 compel the attendance and testimony of witnesses and the
 24 production of pertinent books and papers by a subpoena
 25 enforceable by the circuit or superior court of the county where the
 26 subpoena is to be issued.
- 27 (4) Recommend legislation to the general assembly relating to the
 28 conduct and ethics of state officers, employees, and special state
 29 appointees, including whether additional specific state officers or
 30 employees should be required to file a financial disclosure
 31 statement under section 8 of this chapter.
- 32 (5) Adopt rules under IC 4-22-2 to implement this chapter.
- 33 (6) Prescribe and provide forms for statements required to be filed
 34 under this chapter.
- 35 (7) Accept and file information:
 36 (A) voluntarily supplied; and
 37 (B) that exceeds the requirements of this chapter.
- 38 (8) Inspect financial disclosure forms.
- 39 (9) Notify persons who fail to file forms required under this
 40 chapter.
- 41 (10) Develop a filing, a coding, and an indexing system required by
 42 this chapter and IC 35-44-1-3(f).
- 43 (11) Conduct research.
- 44 (12) Prepare interpretive and educational materials and programs.
- 45 (b) The commission shall do the following:
 46 (1) Act as an advisory body by issuing advisory opinions to
 47 interpret this chapter, the commission's rules, or any other statute
 48 or rule establishing standards of official conduct upon:
 49 (A) request of:
 50 (i) a state officer or a former state officer;
 51 (ii) an employee or a former employee;

- 1 (iii) a person who has or had a business relationship with an
 2 agency; or
 3 (iv) a special state appointee **or former special state**
 4 **appointee**; or
 5 (B) motion of the commission.
- 6 (2) Conduct its proceedings in the following manner:
 7 (A) When a complaint is filed with the commission, the
 8 commission may:
 9 (i) reject, without further proceedings, a complaint that the
 10 commission considers frivolous or inconsequential;
 11 (ii) reject, without further proceedings, a complaint that the
 12 commission is satisfied has been dealt with appropriately by an
 13 agency;
 14 (iii) upon the vote of four (4) members, determine that the
 15 complaint does not allege facts sufficient to constitute a
 16 violation of this chapter or the code of ethics and dismiss the
 17 complaint; or
 18 (iv) forward a copy of the complaint to the attorney general,
 19 the prosecuting attorney of the county in which the alleged
 20 violation occurred, the state board of accounts, a state officer,
 21 the appointing authority, or other appropriate person for action,
 22 and stay the commission's proceedings pending the other
 23 action.
- 24 (B) If a complaint is not disposed of under clause (A), a copy of
 25 the complaint shall be sent to the person alleged to have
 26 committed the violation.
- 27 (C) If the complaint is not disposed of under clause (A), ~~or when~~
 28 ~~the commission initiates an investigation on its own motion or~~
 29 ~~upon request of the governor~~, the commission shall **may**
 30 promptly ~~investigate~~ **refer** the alleged violation **for additional**
 31 **investigation by the inspector general**. ~~If after the preliminary~~
 32 ~~investigation~~, the commission finds by a majority vote that
 33 probable cause exists to support an alleged violation, it shall
 34 convene a public hearing on the matter within sixty (60) days
 35 after making the determination. The respondent shall be notified
 36 within fifteen (15) days of the commission's determination.
 37 **Except as provided in this section**, the commission's evidence
 38 relating to an investigation is confidential. ~~until the earlier of:~~
 39 (i) ~~the time the respondent is notified of the hearing; or~~
 40 (ii) ~~the time the respondent elects to have the records divulged;~~
- 41 **(D) A complaint filed with the commission is open for public**
 42 **inspection after the commission finds that probable cause**
 43 **exists. However, a complaint filed by the inspector general**
 44 **that contains confidential information under IC 4-2-7-8 may**
 45 **be redacted to exclude the confidential information. Every**
 46 **hearing and other proceeding in which evidence is received**
 47 **by the commission is open to the public. Investigative reports**
 48 **by the inspector general that are not filed with the**
 49 **commission may be kept confidential.**
- 50 (E) A:
 51 (i) **complaint that is filed with; or**

1 (ii) proceeding that is held by;
 2 the commission before the commission has found probable
 3 cause is confidential unless the target of the investigation
 4 elects to have information disclosed, or the commission elects
 5 to respond to public statements by the person who filed the
 6 complaint.

7 ~~However,~~ (F) The commission may acknowledge:

- 8 (i) the existence and scope of an investigation before the
 9 finding of probable cause; or
 10 (ii) that the commission did not find probable cause to support
 11 an alleged violation.

12 ~~(D)~~ (G) If a hearing is to be held, the respondent may examine
 13 and make copies of all evidence in the commission's possession
 14 relating to the charges. At the hearing, the charged party shall be
 15 afforded appropriate due process protection consistent with
 16 IC 4-21.5, including the right to be represented by counsel, the
 17 right to call and examine witnesses, the right to introduce
 18 exhibits, and the right to cross-examine opposing witnesses.

19 ~~(E)~~ (H) After the hearing, the commission shall state its findings
 20 of fact. If the commission, based on competent and substantial
 21 evidence, finds by a majority vote that the respondent has
 22 violated this chapter, a rule adopted under this chapter, or any
 23 other statute or rule establishing standards of official conduct of
 24 state officers, employees, or special state appointees, it shall state
 25 its findings in writing in a report, which shall be supported and
 26 signed by a majority of the commission members and shall be
 27 made public. The report may make a recommendation for the
 28 sanctions to be imposed by the appointing authority or state
 29 officer for the violation, including:

- 30 (i) a letter of counseling;
 31 (ii) a reprimand;
 32 (iii) a suspension with or without pay; or
 33 (iv) the dismissal of an employee.

34 ~~(F)~~ (I) If the commission, based on competent and substantial
 35 evidence, finds by a majority vote a violation of this chapter, a
 36 rule adopted under this chapter, or any other statute or rule
 37 establishing standards of official conduct of state officers,
 38 employees, or special state appointees, the commission may also
 39 take any of the actions provided in section 12 of this chapter.

40 ~~(G)~~ (J) The report required under clause ~~(E)~~ (H) shall be
 41 presented to:

- 42 (i) the respondent;
 43 (ii) the appointing authority or state officer of the employee,
 44 former employee, or special state appointee; and
 45 (iii) the governor.

46 ~~(H)~~ (K) The commission may also forward the report to any of
 47 the following:

- 48 (i) The prosecuting attorney of each county in which the
 49 violation occurred.
 50 (ii) The state board of accounts.
 51 (iii) The state personnel director.

- 1 (iv) The attorney general.
 2 (v) A state officer.
 3 (vi) The appointing authority.
 4 (vii) Any other appropriate person.
 5 ~~(f) (L)~~ If the commission finds the respondent has not violated a
 6 code or statutory provision, it shall dismiss the charges.
 7 **(3) Review all conflict of interest disclosures received by the**
 8 **commission under IC 35-44-1-3, maintain an index of conflict of**
 9 **interest those disclosures, received by the commission under**
 10 **~~IC 35-44-1-3, and issue advisory opinions and screening~~**
 11 **procedures as set forth in section 9 of this chapter.**
 12 (c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the
 13 commission concerning the case of a respondent that are not
 14 confidential under ~~subsection (b)(2)(C)~~ **IC 5-14-3-4(b)(2)(C)** shall be
 15 available for inspection and copying in accordance with IC 5-14-3.
 16 SECTION 5. IC 4-2-6-5.5 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 18 UPON PASSAGE]: **Sec. 5.5. (a) A current state officer, employee,**
 19 **or special state appointee shall not knowingly:**
 20 **(1) accept other employment involving compensation of**
 21 **substantial value if the responsibilities of that employment are**
 22 **inherently incompatible with the responsibilities of public office**
 23 **or require the individual's recusal from matters so central or**
 24 **critical to the performance of the individual's official duties**
 25 **that the individual's ability to perform those duties would be**
 26 **materially impaired;**
 27 **(2) accept employment or engage in business or professional**
 28 **activity that would require the individual to disclose**
 29 **confidential information that was gained in the course of state**
 30 **employment; or**
 31 **(3) use or attempt to use the individual's official position to**
 32 **secure unwarranted privileges or exemptions that are:**
 33 **(A) of substantial value; and**
 34 **(B) not properly available to similarly situated individuals.**
 35 **(b) A written advisory opinion issued by the inspector general or**
 36 **the individual's supervisor granting approval of outside**
 37 **employment is conclusive proof that an individual is not in**
 38 **violation of subsection (a)(1) or (a)(2).**
 39 SECTION 6. IC 4-2-6-8 IS AMENDED TO READ AS FOLLOWS
 40 [EFFECTIVE UPON PASSAGE]: **Sec. 8. (a) The following persons**
 41 **shall file a written financial disclosure statement:**
 42 **(1) The governor, lieutenant governor, secretary of state, auditor of**
 43 **state, treasurer of state, attorney general, and state superintendent**
 44 **of public instruction.**
 45 **(2) Any candidate for one (1) of the offices in subdivision (1) who**
 46 **is not the holder of one (1) of those offices.**
 47 **(3) Any person who is the appointing authority of an agency.**
 48 **(4) The director of each division of the department of**
 49 **administration.**
 50 **(5) Any purchasing agent within the procurement division of the**
 51 **department of administration.**

- 1 (6) An employee required to do so by rule adopted by the
2 commission.
- 3 (b) The statement shall be filed with the commission as follows:
- 4 (1) Not later than February 1 of every year, in the case of the state
5 officers and employees enumerated in subsection (a).
- 6 (2) If the individual has not previously filed under subdivision (1)
7 during the present calendar year and is filing as a candidate for a
8 state office listed in subsection (a)(1), before filing a declaration of
9 candidacy under IC 3-8-2 or IC 3-8-4-11, petition of nomination
10 under IC 3-8-6, or declaration of intent to be a write-in candidate
11 under IC 3-8-2-2.5, or before a certificate of nomination is filed
12 under IC 3-8-7-8, in the case of a candidate for one (1) of the state
13 offices (unless the statement has already been filed when required
14 under IC 3-8-4-11).
- 15 (3) Not later than sixty (60) days after employment or taking office,
16 unless the previous employment or office required the filing of a
17 statement under this section.
- 18 (4) Not later than thirty (30) days after leaving employment or
19 office, unless the subsequent employment or office requires the
20 filing of a statement under this section.
- 21 The statement must be made under affirmation.
- 22 (c) The statement shall set forth the following information for the
23 preceding calendar year or, in the case of a state officer or employee
24 who leaves office or employment, the period since a previous statement
25 was filed:
- 26 (1) The name and address of any person known:
- 27 (A) to have a business relationship with the agency of the state
28 officer or employee or the office sought by the candidate; and
- 29 (B) from whom the state officer, candidate, or the employee, or
30 that individual's spouse or unemancipated children received a gift
31 or gifts having a total fair market value in excess of one hundred
32 dollars (\$100).
- 33 (2) The location of all real property in which the state officer,
34 candidate, or the employee or that individual's spouse or
35 unemancipated children has an equitable or legal interest either
36 amounting to five thousand dollars (\$5,000) or more or comprising
37 ten percent (10%) of the state officer's, candidate's, or the
38 employee's net worth or the net worth of that individual's spouse or
39 unemancipated children. An individual's primary personal
40 residence need not be listed, unless it also serves as income
41 property.
- 42 (3) The names and the nature of the business of the employers of
43 the state officer, candidate, or the employee and that individual's
44 spouse.
- 45 (4) The following information about any sole proprietorship owned
46 or professional practice operated by the state officer, candidate, or
47 the employee or that individual's spouse:
- 48 (A) The name of the sole proprietorship or professional practice.
- 49 (B) The nature of the business.
- 50 (C) Whether any clients are known to have had a business
51 relationship with the agency of the state officer or employee or

- 1 the office sought by the candidate.
- 2 (D) The name of any client or customer from whom the state
3 officer, candidate, employee, or that individual's spouse received
4 more than thirty-three percent (33%) of the state officer's,
5 candidate's, employee's, or that individual's spouse's nonstate
6 income in a year.
- 7 (5) The name of any partnership of which the state officer,
8 candidate, or the employee or that individual's spouse is a member
9 and the nature of the partnership's business.
- 10 (6) The name of any corporation (other than a church) of which the
11 state officer, candidate, or the employee or that individual's spouse
12 is an officer or a director and the nature of the corporation's
13 business.
- 14 (7) The name of any corporation in which the state officer,
15 candidate, or the employee or that individual's spouse or
16 unemancipated children own stock or stock options having a fair
17 market value in excess of ten thousand dollars (\$10,000).
18 **However, if the stock is held in a blind trust, the name of the**
19 **administrator of the trust must be disclosed on the statement**
20 **instead of the name of the corporation.** A time or demand
21 deposit in a financial institution or insurance policy need not be
22 listed.
- 23 (8) The name and address of the most recent former employer.
- 24 (9) Additional information that the person making the disclosure
25 chooses to include.
- 26 Any such state officer, candidate, or employee may file an amended
27 statement upon discovery of additional information required to be
28 reported.
- 29 (d) A person who:
- 30 (1) fails to file a statement required by rule or this section in a
31 timely manner; or
32 (2) files a deficient statement;
33 upon a majority vote of the commission, is subject to a civil penalty at
34 a rate of not more than ten dollars (\$10) for each day the statement
35 remains delinquent or deficient. The maximum penalty under this
36 subsection is one thousand dollars (\$1,000).
- 37 (e) A person who intentionally or knowingly files a false statement
38 commits a Class A infraction.
- 39 SECTION 7. IC 4-2-6-9 IS AMENDED TO READ AS FOLLOWS
40 [EFFECTIVE UPON PASSAGE]: Sec. 9. **(a)** A state officer, ~~or an~~
41 employee, ~~or a special state appointee~~ may not participate in any
42 decision or vote ~~of any kind in which the state officer or the employee,~~
43 ~~or that individual's spouse or unemancipated children has a financial~~
44 ~~interest: if the state officer, employee, or special state appointee has~~
45 **knowledge that any of the following has a financial interest in the**
46 **outcome of the matter:**
- 47 **(1) The state officer, employee, or special state appointee.**
48 **(2) A member of the immediate family of the state officer,**
49 **employee, or special state appointee.**
50 **(3) A business organization in which the state officer, employee,**
51 **or special state appointee is serving as an officer, a director, a**

1 trustee, a partner, or an employee.

2 (4) Any person or organization with whom the state officer,
3 employee, or special state appointee is negotiating or has an
4 arrangement concerning prospective employment.

5 (b) A state officer, an employee, or a special state appointee who
6 identifies a potential conflict of interest shall notify the person's
7 appointing authority and seek an advisory opinion from the
8 commission by filing a written description detailing the nature and
9 circumstances of the particular matter and making full disclosure
10 of any related financial interest in the matter. The commission
11 shall:

12 (1) with the approval of the appointing authority, assign the
13 particular matter to another person and implement all
14 necessary procedures to screen the state officer, employee, or
15 special state appointee seeking an advisory opinion from
16 involvement in the matter; or

17 (2) make a written determination that the interest is not so
18 substantial that the commission considers it likely to affect the
19 integrity of the services that the state expects from the state
20 officer, employee, or special state appointee.

21 (c) A written determination under subsection (b)(2) constitutes
22 conclusive proof that it is not a violation for the state officer,
23 employee, or special state appointee who sought an advisory
24 opinion under this section to participate in the particular matter.
25 A written determination under subsection (b)(2) shall be filed with
26 the appointing authority.

27 SECTION 8. IC 4-2-6-10.5 IS ADDED TO THE INDIANA CODE
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
29 UPON PASSAGE]: Sec. 10.5. (a) Subject to subsection (b), a state
30 officer, an employee, or a special state appointee may not
31 knowingly have a financial interest in a contract made by an
32 agency.

33 (b) The prohibition in subsection (a) does not apply to:

34 (1) a state officer, an employee, or a special state appointee who
35 does not participate in or have official responsibility for any of
36 the activities of the contracting agency, if:

37 (A) the contract is made after public notice or, where
38 applicable, through competitive bidding;

39 (B) the state officer, employee, or special state appointee files
40 with the commission a statement making full disclosure of all
41 related financial interests in the contract;

42 (C) the contract can be performed without compromising the
43 performance of the official duties and responsibilities of the
44 state officer, employee, or special state appointee; and

45 (D) in the case of a contract for professional services, the
46 appointing authority of the contracting agency makes and
47 files a written certification with the commission that no other
48 state officer, employee, or special state appointee of that
49 agency is available to perform those services as part of the
50 regular duties of the state officer, employee, or special state
51 appointee; or

1 **(2) a state officer, an employee, or a special state appointee**
 2 **who, acting in good faith, learns of an actual or prospective**
 3 **violation of the prohibition in subsection (a), if, not later than**
 4 **thirty (30) days after learning of the actual or prospective**
 5 **violation, the state officer, employee, or special state appointee:**

6 **(A) makes a full written disclosure of any financial interests**
 7 **to the contracting agency and the commission; and**

8 **(B) terminates or disposes of the financial interest.**

9 SECTION 9. IC 4-2-6-11 IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE UPON PASSAGE]: Sec. 11. ~~(a)~~ This section applies
 11 only:

12 ~~(1)~~ to a former state officer or former employee; and

13 ~~(2)~~ during the period that is twelve ~~(12)~~ months after the date the
 14 former state officer or former employee had responsibility for the
 15 particular matter:

16 ~~(b)~~ As used in this section, "legislative matter" has the meaning set
 17 forth in IC 2-2.1-3-1.

18 ~~(c)~~ **(a)** As used in this section, "particular matter" means:

19 (1) an application;

20 (2) a business transaction;

21 (3) a claim;

22 (4) a contract;

23 (5) a determination;

24 (6) an enforcement proceeding;

25 (7) an investigation;

26 (8) a judicial proceeding;

27 (9) a lawsuit;

28 (10) a license;

29 (11) an economic development project; or

30 (12) a public works project.

31 The term does not include the proposal or consideration of a legislative
 32 matter or the proposal, consideration, adoption, or implementation of
 33 a rule or an administrative policy or practice of general application.

34 ~~(d)~~ **(d)** A former state officer or former employee may not represent or
 35 assist a person regarding a particular matter involving a specific party
 36 or parties:

37 ~~(1)~~ that was under consideration by the agency that was served by
 38 the state officer or employee; and

39 ~~(2)~~ in which the officer or employee participated personally and
 40 substantially through:

41 ~~(A)~~ a decision;

42 ~~(B)~~ an approval;

43 ~~(C)~~ a disapproval;

44 ~~(D)~~ a recommendation;

45 ~~(E)~~ giving advice;

46 ~~(F)~~ an investigation; or

47 ~~(G)~~ the substantial exercise of administrative discretion:

48 ~~(e)~~ **(e)** An appointing authority or state officer of the agency that was
 49 served by the former state officer or former employee may waive
 50 application of this section if the appointing authority or state officer
 51 determines that representation or assistance of a former state officer or

1 former employee is not adverse to the public interest. A waiver under
 2 this subsection must be in writing and must be filed with the
 3 commission:

4 (f) This section does not prohibit an agency from contracting with a
 5 former state officer or employee to act on a matter on behalf of the
 6 agency.

7 (b) This subsection applies only to a person who served as a state
 8 officer, employee, or special state employee after January 10, 2005.
 9 A former state officer, employee, or special state appointee may not
 10 accept employment or receive compensation:

11 (1) as a lobbyist (as defined in IC 4-2-7-1);

12 (2) from an employer if the former state officer, employee, or
 13 special state appointee was:

14 (A) engaged in the negotiation or the administration of one

15 (1) or more contracts with that employer on behalf of the
 16 state or an agency; and

17 (B) in a position to make a discretionary decision affecting
 18 the:

19 (i) outcome of the negotiation; or

20 (ii) nature of the administration; or

21 (3) from an employer if the former state officer, employee, or
 22 special state appointee made a regulatory or licensing decision
 23 that directly applied to the employer or to a parent or
 24 subsidiary of the employer;

25 before the elapse of at least three hundred sixty-five (365) days
 26 after the date on which the former state officer, employee, or
 27 special state appointee ceases to be a state officer, employee, or
 28 special state appointee.

29 (c) A former state officer, employee, or special state appointee
 30 may not represent or assist a person in a particular matter
 31 involving the state if the former state officer, employee, or special
 32 state appointee personally and substantially participated in the
 33 matter as a state officer, employee, or special state appointee, even
 34 if the former state officer, employee, or special state appointee
 35 receives no compensation for the representation or assistance.

36 (d) A former state officer, employee, or special state appointee
 37 may not accept employment or compensation from an employer if
 38 the circumstances surrounding the employment or compensation
 39 would lead a reasonable person to believe that:

40 (1) employment; or

41 (2) compensation;

42 is given or had been offered for the purpose of influencing the
 43 former state officer, employee, or special state appointee in the
 44 performance of his or her duties or responsibilities while a state
 45 officer, an employee, or a special state appointee.

46 (e) A written advisory opinion issued by the inspector general
 47 certifying that:

48 (1) employment of;

49 (2) representation by; or

50 (3) assistance from;

51 the former state officer, employee, or special state appointee does

1 **not violate this section is conclusive proof that a former state**
 2 **officer, employee, or special state appointee is not in violation of**
 3 **this section.**

4 SECTION 10. IC 4-2-6-11.5 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 6 UPON PASSAGE]: **Sec. 11.5. (a) This section applies only to a**
 7 **person appointed after January 10, 2005.**

8 **(b) As used in this section, "advisory body" means a board, a**
 9 **commission, a committee, an authority, or a task force of the**
 10 **executive department that is authorized only to make nonbinding**
 11 **recommendations.**

12 **(c) Except as provided in subsection (d), a lobbyist (as defined in**
 13 **IC 4-2-7-1) may not serve as a member of a board, a commission,**
 14 **a committee, an authority, or a task force of the executive**
 15 **department.**

16 **(d) A lobbyist (as defined in IC 4-2-7-1) may serve as a member**
 17 **of an advisory body.**

18 SECTION 11. IC 4-2-6-12 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 12. If the**
 20 **commission finds a violation of this chapter, a rule adopted under this**
 21 **chapter, or any other statute or rule governing official conduct of state**
 22 **officers, employees, or special state appointees in a proceeding under**
 23 **section 4 of this chapter, the commission may take any of the following**
 24 **actions:**

25 (1) Impose a civil penalty upon a respondent not to exceed ~~the~~
 26 ~~greater of:~~

27 ~~(A) three (3) times the value of any benefit received from the~~
 28 ~~violation. or~~

29 ~~(B) ten thousand dollars (\$10,000);~~

30 (2) Cancel a contract.

31 (3) Bar a person from entering into a contract with any agency for
 32 a period specified by the commission. ~~The period specified by the~~
 33 ~~commission may not exceed two (2) years from the date the action~~
 34 ~~of the commission is effective.~~

35 **(4) Order restitution or disgorgement.**

36 **(5) Reprimand, suspend, or terminate an employee or a special**
 37 **state appointee.**

38 **(6) Reprimand or recommend the impeachment of a state**
 39 **officer.**

40 **(7) Bar a person from future state employment as an employee**
 41 **or future appointment as a special state appointee.**

42 SECTION 12. IC 4-2-6-13 IS AMENDED TO READ AS
 43 FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 13. (a) Subject to**
 44 **Except as provided in** subsection (b), a state officer, ~~or an~~ employee,
 45 **or a special state appointee** shall not retaliate or threaten to retaliate
 46 against an employee or a former employee because the employee or
 47 former employee did any of the following:

48 (1) Filed a complaint with the commission **or the inspector**
 49 **general.**

50 (2) Provided information to the commission **or the inspector**
 51 **general.**

- 1 (3) Testified at a commission proceeding.
- 2 (b) ~~Notwithstanding subsection (a)~~; A state officer, ~~or~~ an employee,
- 3 **or a special state appointee** may take appropriate action against an
- 4 employee who took any of the actions listed in subsection (a) if the
- 5 employee:
- 6 (1) did not act in good faith; or
- 7 (2) knowingly or recklessly provided false information or
- 8 testimony to the commission.
- 9 **(c) A person who violates this section is subject to action under**
- 10 **section 12 of this chapter.**
- 11 **(d) A person who knowingly or intentionally violates this section**
- 12 **commits a Class A misdemeanor. In addition to any criminal**
- 13 **penalty imposed under IC 35-50-3, a person who commits a**
- 14 **misdemeanor under this section is subject to action under section**
- 15 **12 of this chapter.**
- 16 SECTION 13. IC 4-2-6-14 IS AMENDED TO READ AS
- 17 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) A person
- 18 may not do any of the following:
- 19 (1) Knowingly or intentionally induce or attempt to induce, by
- 20 threat, coercion, suggestion, or false statement, a witness or
- 21 informant in a commission proceeding or investigation **conducted**
- 22 **by the inspector general** to do any of the following:
- 23 (A) Withhold or unreasonably delay the production of any
- 24 testimony, information, document, or thing.
- 25 (B) Avoid legal process summoning the person to testify or
- 26 supply evidence.
- 27 (C) Fail to appear at a proceeding or investigation to which the
- 28 person has been summoned.
- 29 (D) Make, present, or use a false record, document, or thing with
- 30 the intent that the record, document, or thing appear in a
- 31 commission proceeding or investigation to mislead a
- 32 commissioner or commission employee.
- 33 (2) Alter, damage, or remove a record, document, or thing except
- 34 as permitted or required by law, with the intent to prevent the
- 35 record, document, or thing from being produced or used in a
- 36 commission proceeding or investigation **conducted by the**
- 37 **inspector general.**
- 38 (3) Make, present, or use a false record, document, or thing with
- 39 the intent that the record, document, or thing appear in a
- 40 commission proceeding or investigation to mislead a commissioner
- 41 or commission employee.
- 42 **(b) A person who knowingly or intentionally violates subsection**
- 43 **(a) commits a Class A misdemeanor.**
- 44 SECTION 14. IC 4-2-7 IS ADDED TO THE INDIANA CODE AS
- 45 A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE UPON
- 46 PASSAGE]:
- 47 **Chapter 7. The Inspector General**
- 48 **Sec. 1. The following definitions apply throughout this chapter:**
- 49 (1) "Agency" means an authority, a board, a branch, a
- 50 commission, a committee, a department, a division, or other
- 51 instrumentality of the executive, including the administrative,

1 department of state government. The term includes a body
 2 corporate and politic established as an instrumentality of the
 3 state. The term does not include the following:

4 (A) The judicial department of state government.

5 (B) The legislative department of state government.

6 (C) A political subdivision (as defined in IC 4-2-6-1).

7 (2) "Business relationship" has the meaning set forth in
 8 IC 4-2-6-1.

9 (3) "Employee" means an individual who is employed by an
 10 agency on a full-time, a part-time, a temporary, a
 11 intermittent, or an hourly basis. The term includes an
 12 individual who contracts with an agency for personal services.

13 (4) "Ethics commission" means the state ethics commission
 14 created by IC 4-2-6-2.

15 (5) "Lobbyist" means an individual who seeks to influence
 16 decision making of an agency and who is registered as an
 17 executive branch lobbyist under rules adopted by the Indiana
 18 department of administration.

19 (6) "Person" has the meaning set forth in IC 4-2-6-1.

20 (7) "Special state appointee" has the meaning set forth in
 21 IC 4-2-6-1.

22 (8) "State officer" has the meaning set forth in IC 4-2-6-1.

23 **Sec. 2. (a) There is established the office of the inspector general.**
 24 **The office of the inspector general consists of the inspector general,**
 25 **who is the director of the office, and an additional staff of deputy**
 26 **inspectors general, investigators, auditors, and clerical employees**
 27 **appointed by the inspector general as necessary to carry out the**
 28 **duties of the inspector general. The inspector general shall provide**
 29 **rooms and staff assistance for the ethics commission.**

30 (b) The inspector general is responsible for addressing fraud,
 31 waste, abuse, and wrongdoing in agencies.

32 (c) The governor shall appoint the inspector general. The
 33 inspector general:

34 (1) except as provided in subdivision (2), shall be appointed for
 35 a term that expires on the earlier of the date that:

36 (A) the term of the governor who appointed the inspector
 37 general expires; or

38 (B) the governor leaves office;

39 (2) may only be removed from office by the governor for:

40 (A) neglect of duty;

41 (B) misfeasance;

42 (C) malfeasance; or

43 (D) nonfeasance;

44 (3) must be an attorney licensed to practice law in Indiana; and

45 (4) is entitled to receive compensation set by the governor and
 46 approved by the budget agency.

47 If the governor is reelected, the governor may reappoint the
 48 inspector general for an additional term. The inspector general's
 49 compensation may not be reduced during the inspector general's
 50 continuance in office.

51 (d) Subject to the approval of the budget agency, the inspector

1 **general shall fix the salary of all other employees of the office of the**
 2 **inspector general.**

3 **(e) Except for information declared confidential under this**
 4 **chapter, records of the office of the inspector general are subject to**
 5 **public inspection under IC 5-14-3.**

6 **(f) IC 5-14-1.5 (the open door law) applies to public meetings of**
 7 **the office of the inspector general.**

8 **Sec. 3. The inspector general shall do the following:**

9 **(1) Initiate, supervise, and coordinate investigations.**

10 **(2) Recommend policies and carry out other activities designed**
 11 **to deter, detect, and eradicate fraud, waste, abuse,**
 12 **mismanagement, and misconduct in state government.**

13 **(3) Receive complaints alleging the following:**

14 **(A) A violation of the code of ethics.**

15 **(B) Bribery (IC 35-44-1-1).**

16 **(C) Official misconduct (IC 35-44-1-2).**

17 **(D) Conflict of interest (IC 35-44-1-3).**

18 **(E) Profiteering from public service (IC 35-44-1-7).**

19 **(F) A violation of the executive branch lobbying rules.**

20 **(G) A violation of a statute or rule relating to the purchase of**
 21 **goods or services by a current or former employee, state**
 22 **officer, special state appointee, lobbyist, or person who has**
 23 **a business relationship with an agency.**

24 **(4) If the inspector general has reasonable cause to believe that**
 25 **a crime has occurred or is occurring, report the suspected**
 26 **crime to:**

27 **(A) the governor; and**

28 **(B) appropriate state or federal law enforcement agencies**
 29 **and prosecuting authorities having jurisdiction over the**
 30 **matter.**

31 **(5) Adopt rules under IC 4-22-2 and section 5 of this chapter to**
 32 **implement a code of ethics.**

33 **(6) Ensure that every:**

34 **(A) employee;**

35 **(B) state officer;**

36 **(C) special state appointee; and**

37 **(D) person who has a business relationship with an agency;**
 38 **is properly trained in the code of ethics.**

39 **(7) Provide advice to an agency on developing, implementing,**
 40 **and enforcing policies and procedures to prevent or reduce the**
 41 **risk of fraudulent or wrongful acts within the agency.**

42 **(8) Recommend legislation to the governor and general**
 43 **assembly to strengthen public integrity laws.**

44 **(9) Annually submit a report to the legislative council detailing**
 45 **the inspector general's activities. The report must be in an**
 46 **electronic format under IC 5-14-6.**

47 **Sec. 4. To carry out the duties described in section 3 of this**
 48 **chapter, the inspector general has the following powers:**

49 **(1) As part of an investigation, the inspector general may:**

50 **(A) administer oaths;**

51 **(B) examine witnesses under oath;**

- 1 **(C) issue subpoenas and subpoenas duces tecum; and**
 2 **(D) examine the records, reports, audits, reviews, papers,**
 3 **books, recommendations, contracts, correspondence, or any**
 4 **other documents maintained by an agency.**
 5 **(2) The inspector general may apply to a circuit or superior**
 6 **court for an order holding an individual in contempt of court**
 7 **if the individual refuses to give sworn testimony under a**
 8 **subpoena issued by the inspector general or otherwise disobeys**
 9 **a subpoena or subpoena duces tecum issued by the inspector**
 10 **general.**
 11 **(3) The inspector general shall prepare a report summarizing**
 12 **the results of every investigation. The report is confidential in**
 13 **accordance with section 8 of this chapter.**
 14 **(4) If the attorney general has elected not to file a civil action**
 15 **for the recovery of funds misappropriated, diverted, missing,**
 16 **or unlawfully gained, the inspector general may file a civil**
 17 **action for the recovery of the funds in accordance with section**
 18 **6 of this chapter.**
 19 **(5) The inspector general may prosecute a criminal matter as**
 20 **a special prosecuting attorney or special deputy prosecuting**
 21 **attorney in accordance with:**
 22 **(A) section 7 of this chapter; or**
 23 **(B) IC 33-39-2-6.**
 24 **Sec. 5. (a) The inspector general shall adopt rules under**
 25 **IC 4-22-2 establishing a code of ethics for the conduct of state**
 26 **business. The code of ethics must be consistent with Indiana law.**
 27 **(b) If the inspector general investigates and determines that there**
 28 **is specific and credible evidence that a current or former employee,**
 29 **a current or former state officer, a current or former special state**
 30 **appointee, or a person who has or had a business relationship with**
 31 **an agency has violated the code of ethics, the inspector general**
 32 **may:**
 33 **(1) file a complaint with the ethics commission and represent**
 34 **the state in a public proceeding before the ethics commission as**
 35 **prescribed in IC 4-2-6-4; or**
 36 **(2) file a complaint with the ethics commission and negotiate an**
 37 **agreed settlement for approval by the ethics commission**
 38 **according to its rules.**
 39 **Sec. 6. (a) This section applies if the inspector general finds**
 40 **evidence of misfeasance, malfeasance, nonfeasance,**
 41 **misappropriation, fraud, or other misconduct that has resulted in**
 42 **a financial loss to the state or in an unlawful benefit to an**
 43 **individual in the conduct of state business.**
 44 **(b) If the inspector general finds evidence described in subsection**
 45 **(a), the inspector general shall certify a report of the matter to the**
 46 **attorney general and provide the attorney general with any**
 47 **relevant documents, transcripts, or written statements. Not later**
 48 **than one hundred eighty (180) days after receipt of the report from**
 49 **the inspector general, the attorney general shall do one (1) of the**
 50 **following:**
 51 **(1) File a civil action (including an action upon a state officer's**

1 official bond) to secure for the state the recovery of funds
2 misappropriated, diverted, missing, or unlawfully gained. Upon
3 request of the attorney general, the inspector general shall
4 assist the attorney general in the investigation, preparation,
5 and prosecution of the civil action.

6 (2) Inform the inspector general that the attorney general does
7 not intend to file a civil action for the recovery of funds
8 misappropriated, diverted, missing, or unlawfully gained. If the
9 attorney general elects not to file a civil action, the attorney
10 general shall return to the inspector general all documents and
11 files initially provided by the inspector general.

12 (3) Inform the inspector general that the attorney general is
13 diligently investigating the matter and after further
14 investigation may file a civil action for the recovery of funds
15 misappropriated, diverted, missing, or unlawfully gained.
16 However, if more than three hundred sixty-five (365) days have
17 passed since the inspector general certified the report to the
18 attorney general, the attorney general loses the authority to file
19 a civil action for the recovery of funds misappropriated,
20 diverted, missing, or unlawfully gained and shall return to the
21 inspector general all documents and files initially provided by
22 the inspector general.

23 (c) If the inspector general has found evidence described in
24 subsection (a) and reported to the attorney general under
25 subsection (b) and:

26 (1) the attorney general has elected under subsection (b)(2) not
27 to file a civil action for the recovery of funds misappropriated,
28 diverted, missing, or unlawfully gained; or

29 (2) under subsection (b)(3) more than three hundred sixty-five
30 (365) days have passed since the inspector general certified the
31 report to the attorney general under subsection (b) and the
32 attorney general has not filed a civil action;

33 the inspector general may file a civil action for the recovery of
34 funds misappropriated, diverted, missing, or unlawfully gained.

35 (d) If the inspector general has found evidence described in
36 subsection (a), the inspector general may institute forfeiture
37 proceedings under IC 34-24-2 in a court having jurisdiction in a
38 county where property derived from or realized through the
39 misappropriation, diversion, disappearance, or unlawful gain of
40 state funds may be located, unless a prosecuting attorney has
41 already instituted forfeiture proceedings against that property.

42 Sec. 7. (a) If the inspector general discovers evidence of criminal
43 activity, the inspector general shall certify to the appropriate
44 prosecuting attorney the following information:

45 (1) The identity of any person who may be involved in the
46 criminal activity.

47 (2) The criminal statute that the inspector general believes has
48 been violated.

49 In addition, the inspector general shall provide the prosecuting
50 attorney with any relevant documents, transcripts, or written
51 statements. If the prosecuting attorney decides to prosecute the

1 crime described in the information certified to the prosecuting
 2 attorney, or any other related crimes, the inspector general shall
 3 cooperate with the prosecuting attorney in the investigation and
 4 prosecution of the case. Upon request of the prosecuting attorney,
 5 the inspector general may participate on behalf of the state in any
 6 resulting criminal trial.

7 (b) If:

8 (1) the prosecuting attorney to whom the inspector general
 9 issues a certification under subsection (a):

10 (A) is disqualified from investigating or bringing a criminal
 11 prosecution in the matter addressed in the certification;

12 (B) does not file an information or seek an indictment not
 13 later than one hundred eighty (180) days after the date on
 14 which the inspector general certified the information to the
 15 prosecuting attorney; or

16 (C) refers the case back to the inspector general; and

17 (2) the inspector general finds that there may be probable
 18 cause to believe that a person identified in a certification under
 19 subsection (a)(1) has violated a criminal statute identified in a
 20 certification under subsection (a)(2);

21 the inspector general may request that the governor recommend
 22 the inspector general be appointed as a special prosecuting attorney
 23 under subsection (h) so that the inspector general may prosecute
 24 the matter addressed in the certification.

25 (c) The governor may recommend the inspector general be
 26 appointed as a special prosecuting attorney if:

27 (1) one (1) of the conditions set forth in subsection (b)(1)
 28 relating to the prosecuting attorney is met; and

29 (2) the governor finds that the appointment of the inspector
 30 general as a special prosecuting attorney is in the best interests
 31 of justice.

32 (d) If the governor has recommended the appointment of the
 33 inspector general as a special prosecuting attorney, the inspector
 34 general shall file a notice with the chief judge of the court of
 35 appeals, stating:

36 (1) that the governor has recommended that the inspector
 37 general be appointed as a special prosecutor;

38 (2) the name of the county in which the crime that the inspector
 39 general intends to prosecute is alleged to have been committed;
 40 and

41 (3) that the inspector general requests the chief judge to assign
 42 a court of appeals judge to determine whether the inspector
 43 general should be appointed as a special prosecuting attorney.

44 Upon receipt of the notice, the chief judge of the court of appeals
 45 shall randomly select a judge of the court of appeals to determine
 46 whether the inspector general should be appointed as a special
 47 prosecuting attorney. The chief judge shall exclude from the
 48 random selection a judge who resided in the county in which the
 49 crime is alleged to have been committed at the time the judge was
 50 appointed to the court of appeals.

51 (e) The inspector general shall file a verified petition for

1 appointment as a special prosecuting attorney with the court of
2 appeals judge assigned under subsection (d). In the verified
3 petition, the inspector general shall set forth why the inspector
4 general should be appointed as a special prosecutor. The inspector
5 general may support the verified petition by including relevant
6 documents, transcripts, or written statements in support of the
7 inspector general's position. The inspector general shall serve a
8 copy of the verified petition, along with any supporting evidence,
9 on the prosecuting attorney to whom the case was originally
10 certified under subsection (a).

11 (f) The prosecuting attorney shall file a verified petition in
12 support of or opposition to the inspector general's verified petition
13 for appointment as a special prosecuting attorney not later than
14 fifteen (15) days after receipt of the inspector general's verified
15 petition for appointment as a special prosecuting attorney.

16 (g) Upon a showing of particularized need, the court of appeals
17 judge may order the verified petitions filed by the inspector general
18 and the prosecuting attorney to be confidential.

19 (h) After considering the verified petitions, the court of appeals
20 judge may appoint the inspector general or a prosecuting attorney,
21 other than the prosecuting attorney to whom the case was certified
22 under this section, as a special prosecuting attorney if the judge
23 finds that:

24 (1) one (1) of the conditions set forth in subsection (b)(1) is met;
25 and

26 (2) appointment of a special prosecuting attorney is in the best
27 interests of justice.

28 In making its determination under this subsection, the court of
29 appeals judge shall consider only the arguments and evidence
30 contained in the verified petitions.

31 (i) Except as provided in subsection (k), a special prosecuting
32 attorney appointed under this section has the same powers as the
33 prosecuting attorney of the county. However, the court of appeals
34 judge shall:

35 (1) limit the scope of the special prosecuting attorney's duties
36 as a special prosecuting attorney to include only the
37 investigation or prosecution of a particular case or particular
38 grand jury investigation, including any matter that reasonably
39 results from the investigation, prosecution, or grand jury
40 investigation; and

41 (2) establish for a time certain the length of the special
42 prosecuting attorney's term.

43 If the special prosecuting attorney's investigation or prosecution
44 acquires a broader scope or requires additional time to complete,
45 the court of appeals judge may at any time increase the scope of the
46 special prosecuting attorney's duties or establish a longer term for
47 the special prosecuting attorney.

48 (j) An inspector general or prosecuting attorney appointed to
49 serve as a special prosecuting attorney may appoint one (1) or more
50 deputies who are licensed to practice law in Indiana to serve as a
51 special deputy prosecuting attorney. A special deputy prosecuting

1 attorney is subject to the same statutory restrictions and other
 2 restrictions imposed on the special prosecuting attorney by the
 3 court of appeals, but otherwise has the same powers as a deputy
 4 prosecuting attorney.

5 (k) An inspector general or prosecuting attorney appointed to
 6 serve as a special prosecuting attorney under this section may bring
 7 a criminal charge only after obtaining an indictment from a grand
 8 jury. An inspector general or prosecuting attorney appointed
 9 under this section to serve as a special prosecuting attorney may
 10 not bring a criminal charge by filing an information.

11 (l) The inspector general or a deputy inspector general who is
 12 licensed to practice law in Indiana may serve as a special deputy
 13 prosecuting attorney under IC 33-39-2-6.

14 (m) If the court of appeals appoints a prosecuting attorney to
 15 serve as a special prosecuting attorney under this section, the
 16 inspector general shall reimburse the prosecuting attorney for the
 17 reasonable expenses of investigating and prosecuting the case.

18 Sec. 8. (a) The identity of any individual who discloses in good
 19 faith to the inspector general information alleging a violation of a
 20 state or federal statute, rule, regulation, or ordinance is
 21 confidential and may not be disclosed to anyone other than the
 22 governor, the staff of the office of the inspector general, or an
 23 authority to whom the investigation is subsequently referred or
 24 certified, unless:

25 (1) the inspector general makes a written determination that it
 26 is in the public interest to disclose the individual's identity; or

27 (2) the individual consents in writing to disclosure of the
 28 individual's identity.

29 (b) The investigative records of the inspector general may be kept
 30 confidential in whole or in part.

31 (c) This subsection does not apply to a person who is a party to
 32 an action brought by the inspector general. Information received
 33 by the inspector general is not required to be produced in the
 34 course of discovery unless ordered by a court after a showing of:

35 (1) particularized need; and

36 (2) proof that the information requested cannot be obtained
 37 from any other source.

38 (d) Except as provided in subsection (e), a person who knowingly
 39 or intentionally discloses:

40 (1) confidential information or records; or

41 (2) the identity of a person whose identity is confidential under
 42 subsection (a);

43 commits unlawful disclosure of confidential information, a Class A
 44 misdemeanor.

45 (e) A person may disclose confidential information or records or
 46 the identity of a person whose identity is confidential under
 47 subsection (a) if the governor authorizes the disclosure of this
 48 information in the public interest.

49 SECTION 15. IC 4-6-3-2 IS AMENDED TO READ AS FOLLOWS
 50 [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The attorney general
 51 shall have charge of and direct the prosecution of all civil actions that

1 are brought in the name of the state of Indiana or any state agency.

2 (b) In no instance under this section shall the state or a state agency
3 be required to file a bond.

4 (c) This section does not affect the authority of prosecuting attorneys
5 to prosecute civil actions.

6 **(d) This section does not affect the authority of the inspector
7 general to prosecute a civil action under IC 4-2-7-6 for the recovery
8 of funds misappropriated, diverted, missing, or unlawfully gained.**

9 SECTION 16. IC 4-13-1-4.2 IS ADDED TO THE INDIANA CODE
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
11 UPON PASSAGE]: **Sec. 4.2. In consultation with the inspector
12 general and the state ethics commission, the department shall,
13 subject to this chapter, adopt rules under IC 4-22-2 requiring a
14 person who lobbies the executive branch to register as an executive
15 branch lobbyist.**

16 SECTION 17. IC 4-15-2-33 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 33. An appointing
18 authority, ~~or his~~ **the appointing authority's** designee, ~~or the ethics~~
19 **commission** may, for disciplinary purposes, suspend without pay a
20 regular employee ~~in his division of the service~~ for such a length of time
21 as ~~he~~ **considers the appointing authority, the appointing authority's**
22 **designee, or the ethics commission** considers appropriate, not
23 exceeding thirty (30) days in any twelve (12) month period. With the
24 approval of the director a regular employee may be suspended for a
25 longer period pending the administrative investigation or trial of any
26 charges against ~~him~~ **the employee**. If the outcome of the charges or
27 trial of any charges is favorable to the employee, the appointing
28 authority shall reimburse the employee any lost wages and benefits for
29 the suspension period less any wages the employee might have earned
30 during the suspension period from other employment.

31 SECTION 18. IC 4-15-2-34 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 34. An appointing
33 authority, ~~or his~~ **the appointing authority's** designee, ~~or the ethics~~
34 **commission** may dismiss for cause any regular employee. ~~in his~~
35 ~~division of the service~~. No dismissal of a regular employee shall take
36 effect, unless, at least thirty (30) days before the effective date of the
37 dismissal, the appointing authority, ~~or his~~ **the appointing authority's**
38 **designee, or the ethics commission** gives to the employee a written
39 statement of the reasons for the dismissal and files a copy of the
40 statement with the director. During the thirty (30) day notice period the
41 employee shall be suspended without pay pending dismissal. The
42 employee shall have an opportunity to file with the appointing authority
43 **or the ethics commission** a written statement regarding the proposed
44 dismissal, a copy of which shall be filed with the director. A regular
45 employee who is dismissed shall have the right to appeal under section
46 **35 or 35.5** of this chapter.

47 SECTION 19. IC 4-15-2-35 IS AMENDED TO READ AS
48 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 35. **(a) This**
49 **section does not apply to an employee who has been suspended or**
50 **terminated by the ethics commission.**

51 **(b) Any regular employee may file a complaint if ~~his~~ the employee's**

1 status of employment is involuntarily changed or if ~~he~~ **the employee**
 2 deems conditions of employment to be unsatisfactory. However, the
 3 complaint procedure shall be initiated as soon as possible after the
 4 occurrence of the act or condition complained of and in no event shall
 5 be initiated more than thirty (30) calendar days after the employee is
 6 notified of a change in ~~his~~ **the** status of employment or after an
 7 unsatisfactory condition of employment is created. Failure to initiate the
 8 complaint procedure within ~~such~~ **this** time period shall render the
 9 complaint procedure unavailable to the employee. The following
 10 complaint procedure shall be followed:

11 Step I: The complaint procedure shall be initiated by a discussion of
 12 the complaint by the employee and ~~his~~ **the employee's** immediate
 13 supervisor and, if a mutually satisfactory settlement has not been made
 14 within two (2) consecutive working days, ~~such~~ **the** complaint may be
 15 referred to Step II.

16 Step II: The complaint shall be reduced to writing and presented to
 17 the intermediate supervisor. If a mutually satisfactory settlement has not
 18 been reached within four (4) consecutive working days, such complaint
 19 may then be referred to the appointing authority.

20 Step III: The appointing authority or ~~his~~ **designated representative the**
 21 **appointing authority's designee** shall hold ~~such~~ **hearings a hearing,**
 22 **if necessary,** and conduct ~~such~~ **investigations as he deems whatever**
 23 **investigation the appointing authority or the appointing authority's**
 24 **designee considers** necessary to render a decision. ~~and shall make such~~
 25 **The appointing authority or the appointing authority's designee**
 26 **must render a** decision in writing ~~within~~ **not later than** ten (10)
 27 **consecutive working business days from the date of the hearing, if**
 28 **applicable, or close of the investigation, whichever occurs later.**

29 ~~Should~~ **If** the appointing authority or ~~his~~ **designated representative**
 30 **the appointing authority's designee does** not find in favor of the
 31 employee, the complaint may be submitted within fifteen (15) calendar
 32 days to the state personnel director. The director or ~~his~~ **the director's**
 33 **designee** shall review the complaint and render a decision ~~within~~ **not**
 34 **later than** fifteen (15) calendar days **after the director or the**
 35 **director's designee receives the complaint.** If the decision is not
 36 agreeable to the employee, an appeal may be submitted by the
 37 employee in writing to the commission ~~no~~ **not** later than fifteen (15)
 38 calendar days from the date the employee has been given notice of the
 39 action taken by the personnel director or ~~his~~ **the director's** designee.
 40 After submission of the appeal, the commission shall, prior to rendering
 41 its decision, grant the appealing employee and the appointing authority
 42 a public hearing, with the right to be represented and to present
 43 evidence. With respect to all appeals, the commission shall render its
 44 decision within thirty (30) days after the date of the hearing on the
 45 appeal. If the commission finds that the action against the employee
 46 was taken on the basis of politics, religion, sex, age, race, or because of
 47 membership in an employee organization, the employee shall be
 48 reinstated ~~to his position~~ without loss of pay. In all other cases the
 49 appointing authority shall follow the recommendation of the
 50 commission, which may include reinstatement and payment of salary
 51 or wages lost by the employee, which may be mitigated by any wages

1 the employee earned from other employment during a dismissed or
2 suspended period.

3 If the recommendation of the commission is not agreeable to the
4 employee, the employee, within fifteen (15) calendar days from receipt
5 of the commission recommendation, may elect to submit the complaint
6 to arbitration. The cost of arbitration shall be shared equally by the
7 employee and the state of Indiana. The commissioner of labor shall
8 prepare a list of three (3) impartial individuals trained in labor relations,
9 and from this list each party shall strike one (1) name. The remaining
10 arbitrator shall consider the issues which were presented to the
11 commission and shall afford the parties a public hearing with the right
12 to be represented and to present evidence. The arbitrator's findings and
13 recommendations shall be binding on both parties and shall
14 immediately be instituted by the commission.

15 SECTION 20. IC 4-15-2-35.5 IS ADDED TO THE INDIANA
16 CODE AS A NEW SECTION TO READ AS FOLLOWS
17 [EFFECTIVE UPON PASSAGE]: **Sec. 35.5. (a) This section applies**
18 **only to an employee who has been suspended or terminated by the**
19 **ethics commission.**

20 **(b) An employee who has been suspended or terminated by the**
21 **ethics commission may request that the ethics commission**
22 **reconsider its decision by filing a written petition for**
23 **reconsideration with the ethics commission not later than fifteen**
24 **(15) days after the date on which the employee was suspended or**
25 **terminated. The employee must include in the petition for**
26 **reconsideration a concise statement of the reasons that the**
27 **employee believes that the termination or suspension was**
28 **erroneous.**

29 **(c) After receipt of the petition for reconsideration, the ethics**
30 **commission shall set the matter for hearing. At the hearing, the**
31 **employee is entitled to the due process protections of IC 4-21.5,**
32 **including the right to:**

- 33 (1) be represented by counsel;
34 (2) present relevant evidence; and
35 (3) cross-examine opposing witnesses.

36 **(d) The ethics commission shall rule on the petition for**
37 **reconsideration not later than thirty (30) days from the date of the**
38 **hearing. The ethics commission may:**

- 39 (1) affirm its decision to suspend or terminate the employee;
40 (2) modify its decision to suspend or terminate the employee
41 by:

- 42 (A) reducing the term of suspension; or
43 (B) vacating its order for termination and imposing a term of
44 suspension; or

- 45 (3) vacate its order to suspend or terminate the employee.

46 **(e) If the ethics commission vacates its order to suspend or**
47 **terminate the employee under subsection (d)(3), the ethics**
48 **commission may order the payment of all or part of the wages lost**
49 **by the employee during the period of suspension or termination.**

50 **(f) Unless the ethics commission orders otherwise, the pendency**
51 **of a petition for reinstatement does not stay the order for**

1 **termination or suspension.**

2 **(g) An employee who has filed a petition for reconsideration may**
3 **not file a second or subsequent petition for reconsideration.**

4 **(h) If the ruling by the ethics commission on the employee's**
5 **petition for reconsideration is not agreeable to the employee, the**
6 **employee may submit an appeal in writing to the commission not**
7 **later than fifteen (15) calendar days after the date of the ruling by**
8 **the ethics commission on the petition for reconsideration. After**
9 **submission of the appeal, the commission shall, before rendering its**
10 **decision, grant the appealing employee and the ethics commission**
11 **a public hearing, with the right to be represented and to present**
12 **evidence. With respect to all appeals, the commission shall render**
13 **its decision within thirty (30) days after the date of the hearing on**
14 **the appeal. If the commission finds that the action against the**
15 **employee was taken on the basis of politics, religion, sex, age, race,**
16 **or because of membership in an employee organization, the**
17 **employee shall be reinstated without loss of pay. In all other cases**
18 **the ethics commission shall follow the recommendation of the**
19 **commission, which may include reinstatement and payment of**
20 **salary or wages lost by the employee, which may be mitigated by**
21 **any wages the employee earned from other employment during a**
22 **period when the employee was dismissed or suspended.**

23 **(i) If the recommendation of the commission under subsection (h)**
24 **is not agreeable to the employee, not later than fifteen (15) calendar**
25 **days after receipt of commission's recommendation, the employee**
26 **may elect to submit the complaint to arbitration. The cost of**
27 **arbitration shall be shared equally by the employee and the state**
28 **of Indiana. The commissioner of labor shall prepare a list of three**
29 **(3) impartial individuals trained in labor relations, and from this**
30 **list each party shall strike one (1) name. The remaining arbitrator**
31 **shall consider the issues that were presented to the commission and**
32 **shall afford the parties a public hearing with the right to be**
33 **represented and to present evidence. The arbitrator's findings and**
34 **recommendations shall be binding on both parties and shall**
35 **immediately be instituted by the commission.**

36 SECTION 21. IC 4-15-10-4 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Any
38 employee may report in writing the existence of:

- 39 (1) a violation of a federal law or regulation;
40 (2) a violation of a state law or rule;
41 (3) a violation of an ordinance of a political subdivision (as defined
42 in IC 36-1-2-13); or
43 (4) the misuse of public resources;

44 first to a supervisor or appointing authority, unless the supervisor or
45 appointing authority is the person whom the employee believes is
46 committing the violation or misuse of public resources. In that case, the
47 employee may report the violation or misuse of public resources in
48 writing to either the supervisor or appointing authority or to the state
49 ethics commission and any official or agency entitled to receive a report
50 from the state ethics commission under IC 4-2-6-4(b)(2)(G) or
51 IC 4-2-6-4(b)(2)(H). If a good faith effort is not made to correct the

1 problem within a reasonable time; the employee may submit a written
 2 report of the incident to any person, agency, or organization: to a
 3 **supervisor or to the inspector general.**

4 (b) For having made a report under subsection (a), the employee
 5 making the report may not:

- 6 (1) be dismissed from employment;
- 7 (2) have salary increases or employment related benefits withheld;
- 8 (3) be transferred or reassigned;
- 9 (4) be denied a promotion the employee otherwise would have
 10 received; or
- 11 (5) be demoted.

12 (c) Notwithstanding subsections (a) and (b), an employee must make
 13 a reasonable attempt to ascertain the correctness of any information to
 14 be furnished and may be subject to disciplinary actions for knowingly
 15 furnishing false information, including suspension or dismissal, as
 16 determined by the employee's appointing authority, ~~or~~ the appointing
 17 authority's designee, **or the ethics commission.** However, any state
 18 employee disciplined under this subsection is entitled to process an
 19 appeal of the disciplinary action under the procedure as set forth in
 20 IC 4-15-2-34 ~~and IC 4-15-2-35~~ **through IC 4-15-2-35.5.**

21 (d) An employer who **knowingly or intentionally** violates this
 22 section commits a Class A ~~infraction:~~ **misdemeanor.**

23 SECTION 22. IC 4-21.5-3-7 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) To qualify
 25 for review of a personnel action to which IC 4-15-2 applies, a person
 26 must comply with IC 4-15-2-35 **or IC 4-15-2-35.5.** To qualify for
 27 review of any other order described in section 4, 5, or 6 of this chapter,
 28 a person must petition for review in a writing that does the following:

- 29 (1) States facts demonstrating that:
 - 30 (A) the petitioner is a person to whom the order is specifically
 31 directed;
 - 32 (B) the petitioner is aggrieved or adversely affected by the order;
 - 33 or
 - 34 (C) the petitioner is entitled to review under any law.
- 35 (2) Includes, with respect to determinations of notice of program
 36 reimbursement and audit findings described in section 6(a)(3) and
 37 6(a)(4) of this chapter, a statement of issues that includes:
 - 38 (A) the specific findings, action, or determination of the office of
 39 Medicaid policy and planning or of a contractor of the office of
 40 Medicaid policy and planning from which the provider is
 41 appealing;
 - 42 (B) the reason the provider believes that the finding, action, or
 43 determination of the office of Medicaid policy and planning or
 44 of a contractor of the office of Medicaid policy and planning was
 45 in error; and
 - 46 (C) with respect to each finding, action, or determination of the
 47 office of Medicaid policy and planning or of a contractor of the
 48 office of Medicaid policy and planning, the statutes or rules that
 49 support the provider's contentions of error.

50 Not more than thirty (30) days after filing a petition for review
 51 under this section, and upon a finding of good cause by the

1 administrative law judge, a person may amend the statement of
 2 issues contained in a petition for review to add one (1) or more
 3 additional issues.

4 (3) Is filed:
 5 (A) if an order described in section 4, 5, 6(a)(1), or 6(a)(2) of this
 6 chapter, with the ultimate authority for the agency issuing the
 7 order within fifteen (15) days after the person is given notice of
 8 the order or any longer period set by statute; or
 9 (B) if a determination described in section 6(a)(3) or 6(a)(4) of
 10 this chapter, with the office of Medicaid policy and planning not
 11 more than one hundred eighty (180) days after the hospital is
 12 provided notice of the determination.

13 The issuance of an amended notice of program reimbursement by
 14 the office of Medicaid policy and planning does not extend the time
 15 within which a hospital must file a petition for review from the
 16 original notice of program reimbursement under clause (B), except
 17 for matters that are the subject of the amended notice of program
 18 reimbursement.

19 If the petition for review is denied, the petition shall be treated as a
 20 petition for intervention in any review initiated under subsection (d).

21 (b) If an agency denies a petition for review under subsection (a) and
 22 the petitioner is not allowed to intervene as a party in a proceeding
 23 resulting from the grant of the petition for review of another person, the
 24 agency shall serve a written notice on the petitioner that includes the
 25 following:

26 (1) A statement that the petition for review is denied.
 27 (2) A brief explanation of the available procedures and the time
 28 limit for seeking administrative review of the denial under
 29 subsection (c).

30 (c) An agency shall assign an administrative law judge to conduct a
 31 preliminary hearing on the issue of whether a person is qualified under
 32 subsection (a) to obtain review of an order when a person requests
 33 reconsideration of the denial of review in a writing that:

34 (1) states facts demonstrating that the person filed a petition for
 35 review of an order described in section 4, 5, or 6 of this chapter;
 36 (2) states facts demonstrating that the person was denied review
 37 without an evidentiary hearing; and
 38 (3) is filed with the ultimate authority for the agency denying the
 39 review within fifteen (15) days after the notice required by
 40 subsection (b) was served on the petitioner.

41 Notice of the preliminary hearing shall be given to the parties, each
 42 person who has a pending petition for intervention in the proceeding,
 43 and any other person described by section 5(d) of this chapter. The
 44 resulting order must be served on the persons to whom notice of the
 45 preliminary hearing must be given and include a statement of the facts
 46 and law on which it is based.

47 (d) If a petition for review is granted, the petitioner becomes a party
 48 to the proceeding and the agency shall assign the matter to an
 49 administrative law judge or certify the matter to another agency for the
 50 assignment of an administrative law judge (if a statute transfers
 51 responsibility for a hearing on the matter to another agency). The

1 agency granting the administrative review or the agency to which the
 2 matter is transferred may conduct informal proceedings to settle the
 3 matter to the extent allowed by law.

4 SECTION 23. IC 5-11-5.5 IS ADDED TO THE INDIANA CODE
 5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2005]:

7 **Chapter 5.5. False Claims and Whistleblower Protection**

8 **Sec. 1. The following definitions apply throughout this chapter:**

9 **(1) "Claim" means a request or demand for money or property**
 10 **that is made to a contractor, grantee, or other recipient if the**
 11 **state:**

12 **(A) provides any part of the money or property that is**
 13 **requested or demanded; or**

14 **(B) will reimburse the contractor, grantee, or other recipient**
 15 **for any part of the money or property that is requested or**
 16 **demanded.**

17 **(2) "Documentary material" means:**

18 **(A) the original or a copy of a book, record, report,**
 19 **memorandum, paper, communication, tabulation, chart, or**
 20 **other document;**

21 **(B) a data compilation stored in or accessible through**
 22 **computer or other information retrieval systems, together**
 23 **with instructions and all other materials necessary to use or**
 24 **interpret the data compilations; and**

25 **(C) a product of discovery.**

26 **(3) "Investigation" means an inquiry conducted by an**
 27 **investigator to ascertain whether a person is or has been**
 28 **engaged in a violation of this chapter.**

29 **(4) "Person" includes a natural person, a corporation, a firm,**
 30 **an association, an organization, a partnership, a limited**
 31 **liability company, a business, or a trust.**

32 **(5) "Product of discovery" means the original or duplicate of:**

33 **(A) a deposition;**

34 **(B) an interrogatory;**

35 **(C) a document;**

36 **(D) a thing;**

37 **(E) a result of the inspection of land or other property; or**

38 **(F) an examination or admission;**

39 **that is obtained by any method of discovery in a judicial or an**
 40 **administrative proceeding of an adversarial nature. The term**
 41 **includes a digest, an analysis, a selection, a compilation, a**
 42 **derivation, an index, or another method of accessing an item**
 43 **listed in this subdivision.**

44 **(6) "State" means Indiana or any agency of state government.**

45 **The term does not include a political subdivision.**

46 **Sec. 2. (a) This section does not apply to a claim, record, or**
 47 **statement concerning income tax (IC 6-3).**

48 **(b) A person who knowingly or intentionally:**

49 **(1) presents a false claim to the state for payment or approval;**

50 **(2) makes or uses a false record or statement to obtain payment**
 51 **or approval of a false claim from the state;**

- 1 (3) with intent to defraud the state, delivers less money or
 2 property to the state than the amount recorded on the
 3 certificate or receipt the person receives from the state;
 4 (4) with intent to defraud the state, authorizes issuance of a
 5 receipt without knowing that the information on the receipt is
 6 true;
 7 (5) receives public property as a pledge of an obligation on a
 8 debt from an employee who is not lawfully authorized to sell or
 9 pledge the property;
 10 (6) makes or uses a false record or statement to avoid an
 11 obligation to pay or transmit property to the state;
 12 (7) conspires with another person to perform an act described
 13 in subdivisions (1) through (6); or
 14 (8) causes or induces another person to perform an act
 15 described in subdivisions (1) through (6);

16 is, except as provided in subsection (c), liable to the state for a civil
 17 penalty of at least five thousand dollars (\$5,000) and for up to three
 18 (3) times the amount of damages sustained by the state. In addition,
 19 a person who violates this section is liable to the state for the costs
 20 of a civil action brought to recover a penalty or damages.

21 (c) If the factfinder determines that the person who violated this
 22 section:

- 23 (1) furnished state officials with all information known to the
 24 person about the violation not later than thirty (30) days after
 25 the date on which the person obtained the information;
 26 (2) fully cooperated with the investigation of the violation; and
 27 (3) did not have knowledge of the existence of an investigation,
 28 a criminal prosecution, a civil action, or an administrative
 29 action concerning the violation at the time the person provided
 30 information to state officials;

31 the person is liable for a penalty of not less than two (2) times the
 32 amount of damages that the state sustained because of the violation.
 33 A person who violates this section is also liable to the state for the
 34 costs of a civil action brought to recover a penalty or damages.

35 Sec. 3. (a) The:

- 36 (1) attorney general; and
 37 (2) inspector general;

38 have concurrent jurisdiction to investigate a violation of section 2
 39 of this chapter.

40 (b) If the attorney general discovers a violation of section 2 of this
 41 chapter, the attorney general may bring a civil action under this
 42 chapter against a person who may be liable for the violation.

43 (c) If the inspector general discovers a violation of section 2 of
 44 this chapter, the inspector general shall certify this finding to the
 45 attorney general. The attorney general may bring a civil action
 46 under this chapter against a person who may be liable for the
 47 violation.

48 (d) If the attorney general or the inspector general is served by a
 49 person who has filed a civil action under section 4 of this chapter,
 50 the attorney general has the authority to intervene in that action as
 51 set forth in section 4 of this chapter.

- 1 (e) If the attorney general:
- 2 (1) is disqualified from investigating a possible violation of
- 3 section 2 of this chapter;
- 4 (2) is disqualified from bringing a civil action concerning a
- 5 possible violation of section 2 of this chapter;
- 6 (3) is disqualified from intervening in a civil action brought
- 7 under section 4 of this chapter concerning a possible violation
- 8 of section 2 of this chapter;
- 9 (4) elects not to bring a civil action concerning a possible
- 10 violation of section 2 of this chapter; or
- 11 (5) elects not to intervene under section 4 of this chapter;
- 12 the attorney general shall certify the attorney general's
- 13 disqualification or election to the inspector general.
- 14 (f) If the attorney general has certified the attorney general's
- 15 disqualification or election not to bring a civil action or intervene
- 16 in a case under subsection (e), the inspector general has authority
- 17 to:
- 18 (1) bring a civil action concerning a possible violation of section
- 19 2 of this chapter; or
- 20 (2) intervene in a case under section 4 of this chapter.
- 21 (g) The attorney general shall certify to the inspector general the
- 22 attorney general's disqualification or election under subsection (e)
- 23 in a timely fashion, and in any event not later than:
- 24 (1) sixty (60) days after being served, if the attorney general has
- 25 been served by a person who has filed a civil action under
- 26 section 4 of this chapter; or
- 27 (2) one hundred eighty (180) days before the expiration of the
- 28 statute of limitations, if the attorney general has not been
- 29 served by a person who has filed a civil action under section 4
- 30 of this chapter.
- 31 (h) A civil action brought under section 4 of this chapter may be
- 32 filed in:
- 33 (1) a circuit or superior court in Marion county; or
- 34 (2) a circuit or superior court in the county in which a
- 35 defendant or plaintiff resides.
- 36 (i) The state is not required to file a bond under this chapter.
- 37 Sec. 4. (a) A person may bring a civil action for a violation of
- 38 section 2 of this chapter on behalf of the person and on behalf of
- 39 the state. The action:
- 40 (1) must be brought in the name of the state; and
- 41 (2) may be filed in a circuit or superior court in:
- 42 (A) the county in which the person resides;
- 43 (B) the county in which a defendant resides; or
- 44 (C) Marion County.
- 45 (b) Except as provided in section 5 of this chapter, an action
- 46 brought under this section may be dismissed only if:
- 47 (1) the attorney general or the inspector general, if applicable,
- 48 files a written motion to dismiss explaining why dismissal is
- 49 appropriate; and
- 50 (2) the court issues an order:
- 51 (A) granting the motion; and

- 1 **(B) explaining the court's reasons for granting the motion.**
2 **(c) A person who brings an action under this section shall serve:**
3 **(1) a copy of the complaint; and**
4 **(2) a written disclosure that describes all relevant material**
5 **evidence and information the person possesses;**
6 **on both the attorney general and the inspector general. The person**
7 **shall file the complaint under seal, and the complaint shall remain**
8 **under seal for at least one hundred twenty (120) days. The**
9 **complaint shall not be served on the defendant until the court**
10 **orders the complaint served on the defendant following the**
11 **intervention or the election not to intervene of the attorney general**
12 **or the inspector general. The state may elect to intervene and**
13 **proceed with the action not later than one hundred twenty (120)**
14 **days after it receives both the complaint and the written disclosure.**
15 **(d) For good cause shown, the attorney general or the inspector**
16 **general may move the court to extend the time during which the**
17 **complaint must remain under seal. A motion for extension may be**
18 **supported by an affidavit or other evidence. The affidavit or other**
19 **evidence may be submitted in camera.**
20 **(e) Before the expiration of the time during which the complaint**
21 **is sealed, the attorney general or the inspector general may:**
22 **(1) intervene in the case and proceed with the action, in which**
23 **case the attorney general or the inspector general shall conduct**
24 **the action; or**
25 **(2) elect not to proceed with the action, in which case the**
26 **person who initially filed the complaint may proceed with the**
27 **action.**
28 **(f) The defendant in an action filed under this section is not**
29 **required to answer the complaint until twenty-one (21) days after**
30 **the complaint has been unsealed and served on the defendant.**
31 **(g) After a person has filed a complaint under this section, no**
32 **person other than the attorney general or the inspector general**
33 **may:**
34 **(1) intervene; or**
35 **(2) bring another action based on the same facts.**
36 **(h) If the person who initially filed the complaint:**
37 **(1) planned and initiated the violation of section 2 of this**
38 **chapter; or**
39 **(2) has been convicted of a crime related to the person's**
40 **violation of section 2 of this chapter;**
41 **upon motion of the attorney general or the inspector general, the**
42 **court shall dismiss the person as a plaintiff.**
43 **Sec. 5. (a) If the attorney general or the inspector general**
44 **intervenes in an action under section 4 of this chapter, the attorney**
45 **general or the inspector general is responsible for prosecuting the**
46 **action and is not bound by an act of the person who initially filed**
47 **the complaint. The attorney general or the inspector general may**
48 **move for a change of venue to Marion County if the attorney**
49 **general or the inspector general files a motion for change of venue**
50 **not later than ten (10) days after the attorney general or the**
51 **inspector general intervenes. Except as provided in this section, the**

1 person who initially filed the complaint may continue as a party to
2 the action.

3 (b) The attorney general or the inspector general may dismiss the
4 action after:

- 5 (1) notifying the person who initially filed the complaint; and
- 6 (2) the court has conducted a hearing at which the person who
7 initially filed the complaint was provided the opportunity to be
8 heard on the motion.

9 (c) The attorney general or the inspector general may settle the
10 action if a court determines, after a hearing, that the proposed
11 settlement is fair, adequate, and reasonable in light of the
12 circumstances. Upon a showing of good cause, the court may:

- 13 (1) conduct the settlement hearing in camera; or
- 14 (2) lift all or part of the seal to facilitate the investigative
15 process or settlement.

16 The court may consider an objection to the settlement brought by
17 the person who initially filed the complaint, but is not bound by this
18 objection.

19 (d) Upon a showing by the attorney general, the inspector
20 general, or the defendant that unrestricted participation by the
21 person who initially filed the complaint:

- 22 (1) will interfere with the prosecution of the case by the
23 attorney general or the inspector general; or
- 24 (2) will involve the presentation of repetitious or irrelevant
25 evidence, or evidence introduced for purposes of harassment;

26 the court may impose reasonable limitations on the person's
27 participation, including a limit on the number of witnesses that the
28 person may call, a limit to the amount and type of evidence that the
29 person may introduce, a limit to the length of testimony that the
30 person's witness may present, and a limit to the person's
31 cross-examination of a witness.

32 (e) If the attorney general or the inspector general elects not to
33 intervene in the action, the person who initially filed the complaint
34 has the right to prosecute the action. Upon request, the attorney
35 general or the inspector general shall be served with copies of all
36 documents filed in the action and may obtain a copy of depositions
37 and other transcripts at the state's expense.

38 (f) If the attorney general and the inspector general have elected
39 not to intervene in an action in accordance with section 4 of this
40 chapter, upon a showing of good cause, a court may permit either
41 the attorney general or the inspector general to intervene at a later
42 time. The attorney general may move to intervene at any time. If
43 the attorney general has not moved to intervene, the inspector
44 general may move to intervene by providing written notice to the
45 attorney general of the inspector general's intent to intervene. If the
46 attorney general does not move to intervene earlier than fifteen (15)
47 days after receipt of the notice of intent to intervene, the inspector
48 general may move to intervene. If the attorney general or the
49 inspector general intervenes under this subsection, the attorney
50 general or the inspector general is responsible for prosecuting the
51 action as if the attorney general or the inspector general had

1 intervened in accordance with section 4 of this chapter.

2 (g) If the attorney general or inspector general shows that a
3 specific discovery action by the person who initially filed the
4 complaint will interfere with the investigation or prosecution of a
5 civil or criminal matter arising out of the same facts, the court may,
6 following a hearing in camera, stay discovery for not more than
7 sixty (60) days. After the court has granted a sixty (60) day stay, the
8 court may extend the stay, following a hearing in camera, if it
9 determines that the state has pursued the civil or criminal
10 investigation with reasonable diligence and that a specific discovery
11 action by the person who initially filed the complaint will interfere
12 with the state's investigation or prosecution of the civil or criminal
13 matter.

14 (h) A court may dismiss an action brought under this chapter to
15 permit the attorney general or the inspector general to pursue its
16 claim through an alternative proceeding, including an
17 administrative proceeding or a proceeding brought in another
18 jurisdiction. The person who initially filed the complaint has the
19 same rights in the alternative proceedings as the person would have
20 had in the original proceedings. A finding of fact or conclusion of
21 law made in the alternative proceeding is binding on all parties to
22 an action under this section once the determination made in the
23 alternative proceeding is final under the rules, regulations, statutes,
24 or law governing the alternative proceeding, or if the time for
25 seeking an appeal or review of the determination made in the
26 alternative proceeding has elapsed.

27 Sec. 6. (a) The person who initially filed the complaint is entitled
28 to the following amounts if the state prevails in the action:

29 (1) Except as provided in subdivision (2), if the attorney
30 general or the inspector general intervened in the action, the
31 person is entitled to receive at least fifteen percent (15%) and
32 not more than twenty-five percent (25%) of the proceeds of the
33 action or settlement, plus reasonable attorney's fees and an
34 amount to cover the expenses and costs of bringing the action.

35 (2) If the attorney general or the inspector general intervened
36 in the action and the court finds that the evidence used to
37 prosecute the action consisted primarily of specific information
38 contained in:

39 (A) a transcript of a criminal, a civil, or an administrative
40 hearing;

41 (B) a legislative, an administrative, or another public report,
42 hearing, audit, or investigation; or

43 (C) a news media report;

44 the person is entitled to receive not more than ten percent
45 (10%) of the proceeds of the action or settlement, plus
46 reasonable attorney's fees and an amount to cover the expenses
47 and costs of bringing the action.

48 (3) If the attorney general or the inspector general did not
49 intervene in the action, the person is entitled to receive at least
50 twenty-five percent (25%) and not more than thirty percent
51 (30%) of the proceeds of the action or settlement, plus

1 reasonable attorney's fees and an amount to cover the expenses
2 and costs of bringing the action.

3 (4) If the person who initially filed the complaint:

4 (A) planned and initiated the violation of section 2 of this
5 chapter; or

6 (B) has been convicted of a crime related to the person's
7 violation of section 2 of this chapter;

8 the person is not entitled to an amount under this section.

9 After conducting a hearing at which the attorney general or the
10 inspector general and the person who initially filed the complaint
11 may be heard, the court shall determine the specific amount to be
12 awarded under this section to the person who initially filed the
13 complaint. The award of reasonable attorney's fees plus an amount
14 to cover the expenses and costs of bringing the action is an
15 additional cost assessed against the defendant and may not be paid
16 from the proceeds of the civil action.

17 (b) If:

18 (1) the attorney general or the inspector general did not
19 intervene in the action; and

20 (2) the defendant prevails;

21 the court may award the defendant reasonable attorney's fees plus
22 an amount to cover the expenses and costs of defending the action,
23 if the court finds that the action is frivolous.

24 (c) The state is not liable for the expenses, costs, or attorney's fees
25 of a party to an action brought under this chapter.

26 Sec. 7. (a) This section does not apply to an action brought by:

27 (1) the attorney general;

28 (2) the inspector general;

29 (3) a prosecuting attorney; or

30 (4) a state employee in the employee's official capacity.

31 (b) A court does not have jurisdiction over an action brought
32 under section 4 of this chapter that is based on information
33 discovered by a present or former state employee in the course of
34 the employee's employment, unless:

35 (1) the employee, acting in good faith, has exhausted existing
36 internal procedures for reporting and recovering the amount
37 owed the state; and

38 (2) the state has failed to act on the information reported by the
39 employee within a reasonable amount of time.

40 (c) A court does not have jurisdiction over an action brought
41 under section 4 of this chapter if the action is brought by an
42 incarcerated offender, including an offender incarcerated in
43 another jurisdiction.

44 (d) A court does not have jurisdiction over an action brought
45 under section 4 of this chapter against the state, a state officer, a
46 judge (as defined in IC 33-23-11-7), a justice, a member of the
47 general assembly, a state employee, or an employee of a political
48 subdivision, if the action is based in information known to the state
49 at the time the action was brought.

50 (e) A court does not have jurisdiction over an action brought
51 under section 4 of this chapter if the action is based upon an act

1 that is the subject of a civil suit, a criminal prosecution, or an
2 administrative proceeding in which the state is a party.

3 (f) A court does not have jurisdiction over an action brought
4 under section 4 of this chapter if the action is based upon
5 information contained in:

6 (1) a transcript of a criminal, a civil, or an administrative
7 hearing;

8 (2) a legislative, an administrative, or another public report,
9 hearing, audit, or investigation; or

10 (3) a news media report;

11 unless the person bringing the action has direct and independent
12 knowledge of the information that is the basis of the action, and the
13 person bringing the action has voluntarily provided this
14 information to the state.

15 Sec. 8. (a) An employee who has been discharged, demoted,
16 suspended, threatened, harassed, or otherwise discriminated
17 against in the terms and conditions of employment by the
18 employee's employer because the employee:

19 (1) objected to an act or omission described in section 2 of this
20 chapter; or

21 (2) initiated, testified, assisted, or participated in an
22 investigation, an action, or a hearing under this chapter;
23 is entitled to all relief necessary to make the employee whole.

24 (b) Relief under this section may include:

25 (1) reinstatement with the same seniority status the employee
26 would have had but for the act described in subsection (a);

27 (2) two (2) times the amount of back pay owed the employee;

28 (3) interest on the back pay owed the employee; and

29 (4) compensation for any special damages sustained as a result
30 of the act described in subsection (a), including costs and
31 expenses of litigation and reasonable attorney's fees.

32 (c) An employee may bring an action for the relief provided in
33 this section in any court with jurisdiction.

34 Sec. 9. (a) A subpoena requiring the attendance of a witness at a
35 trial or hearing conducted under this chapter may be served at any
36 place in the state.

37 (b) A civil action under section 4 of this chapter is barred unless
38 it is commenced:

39 (1) not later than six (6) years after the date on which the
40 violation is committed; or

41 (2) not later than three (3) years after the date when facts
42 material to the cause of action are discovered or reasonably
43 should have been discovered by a state officer or employee who
44 is responsible for addressing the false claim. However, an
45 action is barred unless it is commenced not later than ten (10)
46 years after the date on which the violation is committed.

47 (c) In a civil action brought under this chapter, the state is
48 required to establish:

49 (1) the essential elements of the offense; and

50 (2) damages;

51 by a preponderance of the evidence.

1 (d) If a defendant has been convicted (including a plea of guilty
2 or nolo contendere) of a crime involving fraud or a false statement,
3 the defendant is estopped from denying the elements of the offense
4 in a civil action brought under section 4 of this chapter that
5 involves the same transaction as the criminal prosecution.

6 Sec. 10. (a) If the attorney general or the inspector general has
7 reason to believe that a person may be in possession, custody, or
8 control of documentary material or information relevant to an
9 investigation involving a false claim, the attorney general or the
10 inspector general may, before commencing a civil proceeding under
11 this chapter, issue and serve a civil investigative demand requiring
12 the person to do one (1) or more of the following:

13 (1) Produce the documentary material for inspection and
14 copying.

15 (2) Answer an interrogatory in writing concerning the
16 documentary material or information.

17 (3) Give oral testimony concerning the documentary material
18 or information.

19 (b) If a civil investigative demand is a specific demand for a
20 product of discovery, the official issuing the civil investigative
21 demand shall:

22 (1) serve a copy of the civil investigative demand on the person
23 from whom the discovery was obtained; and

24 (2) notify the person to whom the civil investigative demand is
25 issued of the date of service.

26 Sec. 11. (a) A civil investigative demand issued under this chapter
27 must describe the conduct constituting a violation involving a false
28 claim that is under investigation and the statute or rule that has
29 been violated.

30 (b) If a civil investigative demand is for the production of
31 documentary material, the civil investigative demand must:

32 (1) describe each class of documentary material to be produced
33 with sufficient specificity to permit the material to be fairly
34 identified;

35 (2) prescribe a return date for each class of documentary
36 material that provides a reasonable period of time to assemble
37 and make the material available for inspection and copying;
38 and

39 (3) identify the official to whom the material must be made
40 available.

41 (c) If a civil investigative demand is for answers to written
42 interrogatories, the civil investigative demand must:

43 (1) set forth with specificity the written interrogatories to be
44 answered;

45 (2) prescribe the date by which answers to the written
46 interrogatories must be submitted; and

47 (3) identify the official to whom the answers must be submitted.

48 (d) If a civil investigative demand requires oral testimony, the
49 civil investigative demand must:

50 (1) prescribe a date, time, and place at which oral testimony
51 will be given;

- 1 (2) identify the official who will conduct the examination and
2 the custodian to whom the transcript of the examination will be
3 submitted;
- 4 (3) specifically state that attendance and testimony are
5 necessary to the conduct of the investigation;
- 6 (4) notify the person receiving the demand that the person has
7 the right to be accompanied by an attorney and any other
8 representative; and
- 9 (5) describe the general purpose for which the demand is being
10 issued and the general nature of the testimony, including the
11 primary areas of inquiry.
- 12 (e) A civil investigative demand that is a specific demand for a
13 product of discovery may not be returned until at least twenty-one
14 (21) days after a copy of the civil investigative demand has been
15 served on the person from whom the discovery was obtained.
- 16 (f) The date prescribed for the giving of oral testimony under a
17 civil investigative demand issued under this chapter must be a date
18 that is not less than seven (7) days after the date on which the
19 demand is received, unless the official issuing the demand
20 determines that exceptional circumstances are present that require
21 an earlier date.
- 22 (g) The official who issues a civil investigative demand may not
23 issue more than one (1) civil investigative demand for oral
24 testimony by the same person, unless:
- 25 (1) the person requests otherwise; or
- 26 (2) the official who issues a civil investigative demand, after
27 conducting an investigation, notifies the person in writing that
28 an additional civil investigative demand for oral testimony is
29 necessary.
- 30 Sec. 12. (a) A civil investigative demand issued under this chapter
31 may not require the production of any documentary material, the
32 submission of any answers to written interrogatories, or the giving
33 of any oral testimony if the material, answers, or testimony would
34 be protected from disclosure under the standards applicable:
- 35 (1) to a subpoena or subpoena duces tecum issued by a court to
36 aid in a grand jury investigation; or
- 37 (2) to a discovery request under the rules of trial procedure;
- 38 to the extent that the application of these standards to a civil
39 investigative demand is consistent with the purposes of this
40 chapter.
- 41 (b) A civil investigative demand that is a specific demand for a
42 product of discovery supersedes any contrary order, rule, or
43 statutory provision, other than this section, that prevents or
44 restricts disclosure of the product of discovery. Disclosure of a
45 product of discovery under a specific demand does not constitute
46 a waiver of a right or privilege that the person making the
47 disclosure may be otherwise entitled to invoke to object to
48 discovery of trial preparation materials.
- 49 Sec. 13. (a) A civil investigative demand issued under this chapter
50 may be served by an investigator or by any other person
51 authorized to serve process.

1 (b) A civil investigative demand shall be served in accordance
2 with the rules of trial procedure. A court having jurisdiction over
3 a person not located in the state has the same authority to enforce
4 compliance with this chapter as the court has over a person located
5 in the state.

6 Sec. 14. (a) The production of documentary material in response
7 to a civil investigative demand served under this chapter shall be
8 made in accordance with Trial Rule 34.

9 (b) Each interrogatory in a civil investigative demand served
10 under this chapter shall be answered in accordance with Trial Rule
11 33.

12 (c) The examination of a person under a civil investigative
13 demand for oral testimony served under this chapter shall be
14 conducted in accordance with Trial Rule 30.

15 Sec. 15. (a) The official who issued the civil investigative demand
16 is the custodian of the documentary material, answers to
17 interrogatories, and transcripts of oral testimony received under
18 this chapter.

19 (b) An investigator who receives documentary material, answers
20 to interrogatories, or transcripts of oral testimony under this
21 section shall transmit them to the official who issued the civil
22 investigative demand. The official shall take physical possession of
23 the material, answers, or transcripts and is responsible for the use
24 made of them and for the return of documentary material.

25 (c) The official who issued the civil investigative demand may
26 make copies of documentary material, answers to interrogatories,
27 or transcripts of oral testimony as required for official use by the
28 attorney general, the inspector general, or the state police. The
29 material, answers, or transcripts may be used in connection with
30 the taking of oral testimony under this chapter.

31 (d) Except as provided in subsection (e), documentary material,
32 answers to interrogatories, or transcripts of oral testimony, while
33 in the possession of the official who issued the civil investigative
34 demand, may not be made available for examination to any person
35 other than:

36 (1) the attorney general or designated personnel of the attorney
37 general's office;

38 (2) the inspector general or designated personnel of the
39 inspector general's office; or

40 (3) an officer of the state police who has been authorized by the
41 official who issued the civil investigative demand.

42 (e) The restricted availability of documentary material, answers
43 to interrogatories, or transcripts of oral testimony does not apply:

44 (1) if the person who provided:

45 (A) the documentary material, answers to interrogatories, or
46 oral testimony; or

47 (B) a product of discovery that includes documentary
48 material, answers to interrogatories, or oral testimony;

49 consents to disclosure;

50 (2) to the general assembly or a committee or subcommittee of
51 the general assembly; or

1 (3) to a state agency that requires the information to carry out
2 its statutory responsibility.

3 Documentary material, answers to interrogatories, or transcripts
4 of oral testimony requested by a state agency may be disclosed only
5 under a court order finding that the state agency has a substantial
6 need for the use of the information in carrying out its statutory
7 responsibility.

8 (f) While in the possession of the official who issued the civil
9 investigative demand, documentary material, answers to
10 interrogatories, or transcripts of oral testimony shall be made
11 available to the person, or to the representative of the person who
12 produced the material, answered the interrogatories, or gave oral
13 testimony. The official who issued the civil investigative demand
14 may impose reasonable conditions upon the examination of use of
15 the documentary material, answers to interrogatories, or
16 transcripts of oral testimony.

17 (g) The official who issued the civil investigative demand and any
18 attorney employed in the same office as the official who issued the
19 civil investigative demand may use the documentary material,
20 answers to interrogatories, or transcripts of oral testimony in
21 connection with a proceeding before a grand jury, a court, or an
22 agency. Upon the completion of the proceeding, the attorney shall
23 return to the official who issued the civil investigative demand any
24 documentary material, answers to interrogatories, or transcripts
25 of oral testimony that are not under the control of the grand jury,
26 court, or agency.

27 (h) Upon written request of a person who produced documentary
28 material in response to a civil investigative demand, the official who
29 issued the civil investigative demand shall return any documentary
30 material in the official's possession to the person who produced
31 documentary material, if:

- 32 (1) a proceeding before a grand jury, a court, or an agency
33 involving the documentary material has been completed; or
34 (2) a proceeding before a grand jury, a court, or an agency
35 involving the documentary material has not been commenced
36 within a reasonable time after the completion of the
37 investigation.

38 The official who issued the civil investigative demand is not
39 required to return documentary material that is in the custody of
40 a grand jury, a court, or an agency.

41 Sec. 16. (a) A person who has failed to comply with a civil
42 investigative demand is subject to sanctions under Trial Rule 37 to
43 the same extent as a person who has failed to cooperate in
44 discovery.

45 (b) A person who objects to a civil investigative demand issued
46 under this chapter may seek a protective order in accordance with
47 Trial Rule 26(C).

48 Sec. 17. Documentary material, answers to written
49 interrogatories, or oral testimony provided in response to a civil
50 investigative demand issued under this chapter are confidential.

51 Sec. 18. Proceedings under this chapter are governed by the

1 **Indiana Rules of Trial Procedure, unless the Indiana Rules of Trial**
 2 **Procedure are inconsistent with this chapter.**

3 SECTION 24. IC 5-22-1-3 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a) Except as**
 5 **provided in subsection (b),** this article does not apply to the following
 6 types of activities:

7 (1) A contract between governmental bodies except for a contract
 8 authorized under this article.

9 (2) A public works project.

10 (3) A collective bargaining agreement between a governmental
 11 body and its employees.

12 (4) The employment relationship between a governmental body
 13 and an employee of the governmental body.

14 (5) An investment of public funds.

15 (6) A contract between a governmental body and a body corporate
 16 and politic.

17 (7) A contract for social services.

18 **(8) A contract with a body corporate and politic.**

19 **(b) IC 5-22-3-7 applies to any:**

20 **(1) contract;**

21 **(2) project;**

22 **(3) agreement;**

23 **(4) employment relationship; or**

24 **(5) investment;**

25 **described in subsection (a).**

26 SECTION 25. IC 5-22-2-1 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **Except as**
 28 **otherwise provided,** the definitions in this chapter apply throughout
 29 this article.

30 SECTION 26. IC 5-22-2-1.3 IS ADDED TO THE INDIANA CODE
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 32 UPON PASSAGE]: **Sec. 1.3. "Affiliate" means a business entity that**
 33 **effectively controls or is controlled by a contractor or is associated**
 34 **with a contractor under common ownership or control, whether by**
 35 **shareholdings or other means, including a subsidiary, parent, or**
 36 **sibling of a contractor.**

37 SECTION 27. IC 5-22-3-7 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 39 UPON PASSAGE]: **Sec. 7. (a) This section applies to every use of**
 40 **funds by a governmental body. However, this section does not**
 41 **apply to a contract in which one (1) party is a political subdivision,**
 42 **including a body corporate and politic created by or authorized by**
 43 **a political subdivision.**

44 **(b) A prospective contractor may not contract with a**
 45 **governmental body unless the prospective contractor includes the**
 46 **following certifications as terms of the contract with the**
 47 **governmental body:**

48 **(1) The contractor and any principals of the contractor certify**
 49 **that:**

50 **(A) the contractor, except for de minimis and nonsystematic**
 51 **violations, has not violated the terms of:**

- 1 (i) IC 24-4.7;
 2 (ii) IC 24-5-12; or
 3 (iii) IC 24-5-14;
 4 in the previous three hundred sixty-five (365) days, even if
 5 IC 24-4.7 is preempted by federal law; and
 6 (B) the contractor will not violate the terms of IC 24-4.7 for
 7 the duration of the contract, even if IC 24-4.7 is preempted
 8 by federal law.
- 9 (2) The contractor and any principals of the contractor certify
 10 that an affiliate or principal of the contractor and any agent
 11 acting on behalf of the contractor or on behalf of an affiliate or
 12 principal of the contractor:
- 13 (A) except for de minimis and nonsystematic violations, has
 14 not violated the terms of IC 24-4.7 in the previous three
 15 hundred sixty-five (365) days, even if IC 24-4.7 is preempted
 16 by federal law; and
 17 (B) will not violate the terms of IC 24-4.7 for the duration of
 18 the contract, even if IC 24-4.7 is preempted by federal law.
- 19 (c) If a certification in subsection (b) concerning compliance with
 20 IC 24-4.7, IC 24-5-12, or IC 24-5-14 is materially false or if the
 21 contractor, an affiliate or a principal of the contractor, or an agent
 22 acting on behalf of the contractor or an affiliate or a principal of
 23 the contractor violates the terms of IC 24-4.7, IC 24-5-12, or
 24 IC 24-5-14, even if IC 24-4.7 is preempted by federal law, the
 25 attorney general may bring a civil action in the circuit or superior
 26 court of Marion County to:
- 27 (1) void a contract under this section, subject to subsection (d);
 28 and
 29 (2) obtain other proper relief.
- 30 However, a contractor is not liable under this section if the
 31 contractor or an affiliate of the contractor acquires another
 32 business entity that violated the terms of IC 24-4.7, IC 24-5-12, or
 33 IC 24-5-14 within the preceding three hundred sixty-five (365) days
 34 before the date of the acquisition if the acquired business entity
 35 ceases violating IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if
 36 IC 24-4.7 is preempted by federal law, as of the date of the
 37 acquisition.
- 38 (d) If:
- 39 (1) the attorney general notifies the contractor, department of
 40 administration, and budget agency in writing of the intention
 41 of the attorney general to void a contract; and
 42 (2) the attorney general does not receive a written objection
 43 from the department of administration or budget agency, sent
 44 to both the attorney general and the contractor, within thirty
 45 (30) days of the notice;
- 46 a contract between a contractor and a governmental body is
 47 voidable at the election of the attorney general in a civil action
 48 brought under subsection (c). If an objection of the department of
 49 administration or the budget agency is submitted under subdivision
 50 (2), the contract that is the subject of the objection is not voidable
 51 at the election of the attorney general unless the objection is

1 **rescinded or withdrawn by the department of administration or the**
 2 **budget agency.**

3 **(e) If the attorney general establishes in a civil action that a**
 4 **contractor is knowingly, intentionally, or recklessly liable under**
 5 **subsection (c), the contractor is prohibited from entering into a**
 6 **contract with a governmental body for three hundred sixty-five**
 7 **(365) days after the date on which the contractor exhausts appellate**
 8 **remedies.**

9 **(f) In addition to any remedy obtained in a civil action brought**
 10 **under this section, the attorney general may obtain the following:**

11 **(1) All money the contractor obtained through each telephone**
 12 **call made in violation of the terms of IC 24-4.7, IC 24-5-12, or**
 13 **IC 24-5-14, even if IC 24-4.7 is preempted by federal law.**

14 **(2) The attorney general's reasonable expenses incurred in:**

15 **(A) investigation; and**

16 **(B) maintaining the civil action.**

17 SECTION 28. IC 10-11-8-2 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this
 19 chapter, "law enforcement agency" means an agency or a department
 20 of any level of government whose principal function is the
 21 apprehension of criminal offenders. **The term includes the office of**
 22 **the inspector general.**

23 SECTION 29. IC 10-13-3-10 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) As used in
 25 this chapter, "law enforcement agency" means an agency or a
 26 department of any level of government whose principal function is the
 27 apprehension of criminal offenders.

28 (b) The term includes:

29 **(1) the office of the attorney general; and**

30 **(2) the office of the inspector general.**

31 SECTION 30. IC 15-1.5-10.5-8 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The trustees
 33 shall recommend an individual to be employed as executive director of
 34 the barn, subject to the approval of the governor. If the governor
 35 approves an individual recommended by the trustees, the trustees may
 36 employ the individual as executive director. If the governor does not
 37 approve an individual recommended by the trustees, the trustees shall
 38 submit another recommendation to the governor.

39 (b) The executive director employed under this section:

40 **(1) is the chief administrative officer of the barn; and**

41 **(2) shall implement the policies of the trustees.**

42 (c) The trustees may delegate any of the trustees' powers to the
 43 executive director. The trustees may make a delegation under this
 44 subsection through a resolution adopted by the trustees.

45 ~~(d) Notwithstanding IC 4-2-6-5,~~ The compensation for the executive
 46 director and other employees of the trustees may be paid in full or in
 47 part by the nonprofit entity established under section 10 of this chapter.

48 SECTION 31. IC 16-41-11-8 IS AMENDED TO READ AS
 49 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A person
 50 who believes that this chapter or rules adopted under this chapter have
 51 been violated may file a complaint with the state department. A

1 complaint must be in writing unless the violation complained of
 2 constitutes an emergency. The state department shall reduce an oral
 3 complaint to writing. The state department shall maintain the
 4 confidentiality of the person who files the complaint.

5 (b) The state department shall promptly investigate all complaints
 6 received under this section.

7 (c) The state department shall not disclose the name or identifying
 8 characteristics of the person who files a complaint under this section
 9 unless:

10 (1) the person consents in writing to the disclosure; or

11 (2) the investigation results in an administrative or judicial
 12 proceeding and disclosure is ordered by the administrative law
 13 judge or the court.

14 (d) The state department shall give a person who files a complaint
 15 under this section the opportunity to withdraw the complaint before
 16 disclosure.

17 (e) An employee must make a reasonable attempt to ascertain the
 18 correctness of any information to be furnished and may be subject to
 19 disciplinary actions for knowingly furnishing false information,
 20 including suspension or dismissal, as determined by the employer **or**
 21 **the ethics commission**. However, an employee disciplined under this
 22 subsection is entitled to process an appeal of the disciplinary action
 23 under any procedure otherwise available to the employee by
 24 employment contract, collective bargaining agreement, or, if the
 25 employee is an employee of the state, a rule as set forth in IC 4-15-2-34
 26 ~~and IC 4-15-2-35~~ **through IC 4-15-2-35.5**.

27 (f) The employer of an employee who files a complaint in good faith
 28 with the state department under this section may not, solely in
 29 retaliation for filing the complaint, do any of the following:

30 (1) Dismiss the employee.

31 (2) Withhold salary increases or employment related benefits from
 32 the employee.

33 (3) Transfer or reassign the employee.

34 (4) Deny a promotion that the employee would have received.

35 (5) Demote the employee.

36 SECTION 32. IC 24-4.7-5-1 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. A telephone solicitor
 38 who fails to comply with any provision of IC 24-4.7-4 commits a
 39 deceptive act that is actionable by the attorney general under this
 40 chapter. **In addition, a contractor who contracts or seeks to contract**
 41 **with the state:**

42 **(1) may be prohibited from contracting with the state; or**

43 **(2) may have an existing contract with the state voided;**

44 **if the contractor, an affiliate or principal of the contractor, or any**
 45 **agent acting on behalf of the contractor or an affiliate or principal**
 46 **of the contractor does not or has not complied with the terms of**
 47 **this article, even if this article is preempted by federal law.**

48 SECTION 33. IC 24-5-0.5-4, AS AMENDED BY SEA 509-2005,
 49 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 50 JULY 1, 2005]: Sec. 4. (a) A person relying upon an uncured or
 51 incurable deceptive act may bring an action for the damages actually

1 suffered as a consumer as a result of the deceptive act **or five hundred**
 2 **dollars (\$500), whichever is greater. The court may increase**
 3 **damages for a willful deceptive act in an amount that does not**
 4 **exceed the greater of:**

5 (1) **three (3) times the actual damages of the consumer**
 6 **suffering the loss; or**

7 (2) **one thousand dollars (\$1,000).**

8 **Except as provided in subsection (j),** the court may award reasonable
 9 attorney fees to the party that prevails in an action under this
 10 subsection. This subsection does not apply to a consumer transaction
 11 in real property, **including a claim or action involving a construction**
 12 **defect (as defined in IC 32-27-3-1(5)) brought against a**
 13 **construction professional (as defined in IC 32-27-3-1(4)),** except for
 14 purchases of time shares and camping club memberships. **This**
 15 **subsection also does not apply to a violation of IC 24-4.7,**
 16 **IC 24-5-12, or IC 24-5-14.** Actual damages awarded to a person under
 17 this section have priority over any civil penalty imposed under this
 18 chapter.

19 (b) Any person who is entitled to bring an action under subsection (a)
 20 on the person's own behalf against a supplier for damages for a
 21 deceptive act may bring a class action against such supplier on behalf
 22 of any class of persons of which that person is a member and which has
 23 been damaged by such deceptive act, subject to and under the Indiana
 24 Rules of Trial Procedure governing class actions, except as herein
 25 expressly provided. **Except as provided in subsection (j),** the court
 26 may award reasonable attorney fees to the party that prevails in a class
 27 action under this subsection, provided that such fee shall be determined
 28 by the amount of time reasonably expended by the attorney and not by
 29 the amount of the judgment, although the contingency of the fee may
 30 be considered. Any money or other property recovered in a class action
 31 under this subsection which cannot, with due diligence, be restored to
 32 consumers within one (1) year after the judgment becomes final shall
 33 be returned to the party depositing the same. This subsection does not
 34 apply to a consumer transaction in real property, except for purchases
 35 of time shares and camping club memberships. Actual damages
 36 awarded to a class have priority over any civil penalty imposed under
 37 this chapter.

38 (c) The attorney general may bring an action to enjoin a deceptive
 39 act. However, the attorney general may seek to enjoin patterns of
 40 incurable deceptive acts with respect to consumer transactions in real
 41 property. In addition, the court may:

42 (1) issue an injunction;

43 (2) order the supplier to make payment of the money unlawfully
 44 received from the aggrieved consumers to be held in escrow for
 45 distribution to aggrieved consumers; ~~and~~

46 (3) order the supplier to pay to the state the reasonable costs of the
 47 attorney general's investigation and prosecution related to the
 48 action; **and**

49 (4) **provide for the appointment of a receiver.**

50 (d) In an action under subsection (a), (b), or (c), the court may void
 51 or limit the application of contracts or clauses resulting from deceptive

1 acts and order restitution to be paid to aggrieved consumers.

2 (e) In any action under subsection (a) or (b), upon the filing of the
3 complaint or on the appearance of any defendant, claimant, or any other
4 party, or at any later time, the trial court, the supreme court, or the court
5 of appeals may require the plaintiff, defendant, claimant, or any other
6 party or parties to give security, or additional security, in such sum as
7 the court shall direct to pay all costs, expenses, and disbursements that
8 shall be awarded against that party or which that party may be directed
9 to pay by any interlocutory order by the final judgment or on appeal.

10 (f) Any person who violates the terms of an injunction issued under
11 subsection (c) shall forfeit and pay to the state a civil penalty of not
12 more than fifteen thousand dollars (\$15,000) per violation. For the
13 purposes of this section, the court issuing an injunction shall retain
14 jurisdiction, the cause shall be continued, and the attorney general
15 acting in the name of the state may petition for recovery of civil
16 penalties. Whenever the court determines that an injunction issued
17 under subsection (c) has been violated, the court shall award reasonable
18 costs to the state.

19 (g) If a court finds any person has knowingly violated section 3 or 10
20 of this chapter, the attorney general, in an action pursuant to subsection
21 (c), may recover from the person on behalf of the state a civil penalty
22 of a fine not exceeding five ~~hundred thousand~~ **hundred thousand** dollars ~~(\$500)~~ **(\$5,000)**
23 per violation.

24 (h) An elderly person relying upon an uncured or incurable deceptive
25 act, including an act related to hypnotism, may bring an action to
26 recover treble damages, if appropriate.

27 **(i) An offer to cure is:**

- 28 **(1) not admissible as evidence in a proceeding initiated under**
29 **this section unless the offer to cure is delivered by a supplier to**
30 **the consumer or a representative of the consumer before the**
31 **supplier files the supplier's initial response to a complaint; and**
32 **(2) only admissible as evidence in a proceeding initiated under**
33 **this section to prove that a supplier is not liable for attorney's**
34 **fees under subsection (j).**

35 **If the offer to cure is timely delivered by the supplier, the supplier**
36 **may submit the offer to cure as evidence to prove in the proceeding**
37 **in accordance with the Indiana Rules of Trial Procedure that the**
38 **supplier made an offer to cure.**

39 **(j) A supplier may not be held liable for the attorney's fees and**
40 **court costs of the consumer that are incurred following the timely**
41 **delivery of an offer to cure as described in subsection (i) unless the**
42 **actual damages awarded, not including attorney's fees and costs,**
43 **exceed the value of the offer to cure.**

44 SECTION 34. IC 24-5-12-23 IS AMENDED TO READ AS
45 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. A seller who fails
46 to comply with any provision of:

47 **(1) this chapter; or**

48 **(2) IC 24-4.7;**

49 commits a deceptive act that is actionable by the attorney general under
50 IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5.

51 **An action for a violation of IC 24-4.7 may be brought under**

1 **IC 24-5-0.5-4(c) or IC 24-4.7-5.** An action by the attorney general for
 2 a violation of this chapter **or IC 24-4.7** may be brought in the circuit or
 3 superior court of Marion County.

4 SECTION 35. IC 24-8-3-1 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Notice may be
 6 delivered by any of the following methods:

7 (1) Hand.

8 (2) Mail.

9 (3) Newspaper.

10 (4) Other periodical.

11 **(5) Electronic mail or any other form of electronic, digital, or**
 12 **Internet based communication.**

13 SECTION 36. IC 27-2-19-3 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this
 15 chapter, "law enforcement agency" means an agency or a department
 16 of any level of government whose principal function is the
 17 apprehension of criminal offenders. **The term includes the office of**
 18 **the inspector general.**

19 SECTION 37. IC 33-39-1-2 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) This section
 21 does not apply to a deputy prosecuting attorney appointed by a
 22 prosecuting attorney or **to a special prosecutor. appointed by a court.**

23 (b) To be eligible to hold office as a prosecuting attorney, a person
 24 must be a resident of the judicial circuit that the person serves.

25 SECTION 38. IC 33-39-1-6 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Special
 27 prosecutors may be appointed ~~only~~ under this section **or in accordance**
 28 **with IC 4-2-7-7.**

29 (b) A circuit or superior court judge:

30 (1) shall appoint a special prosecutor if:

31 (A) any person other than the prosecuting attorney or the
 32 prosecuting attorney's deputy files a verified petition requesting
 33 the appointment of a special prosecutor; and

34 (B) the prosecuting attorney agrees that a special prosecutor is
 35 needed;

36 (2) may appoint a special prosecutor if:

37 (A) a person files a verified petition requesting the appointment
 38 of a special prosecutor; and

39 (B) the court, after:

40 (i) notice is given to the prosecuting attorney; and

41 (ii) an evidentiary hearing is conducted at which the
 42 prosecuting attorney is given an opportunity to be heard;

43 finds by clear and convincing evidence that the appointment is
 44 necessary to avoid an actual conflict of interest or there is
 45 probable cause to believe that the prosecutor has committed a
 46 crime;

47 (3) may appoint a special prosecutor if:

48 (A) the prosecuting attorney files a petition requesting the court
 49 to appoint a special prosecutor; and

50 (B) the court finds that the appointment is necessary to avoid the
 51 appearance of impropriety; and

- 1 (4) may appoint a special prosecutor if:
- 2 (A) an elected public official, who is a defendant in a criminal
- 3 proceeding, files a verified petition requesting a special
- 4 prosecutor within ten (10) days after the date of the initial
- 5 hearing; and
- 6 (B) the court finds that the appointment of a special prosecutor
- 7 is in the best interests of justice.
- 8 (c) Each person appointed to serve as a special prosecutor:
- 9 (1) must consent to the appointment; and
- 10 (2) must be:
- 11 (A) the prosecuting attorney or a deputy prosecuting attorney in
- 12 a county other than the county in which the person is to serve as
- 13 special prosecutor; or
- 14 (B) except as provided in subsection (d), a senior prosecuting
- 15 attorney.
- 16 (d) A senior prosecuting attorney may be appointed in the county in
- 17 which the senior prosecuting attorney previously served if the court
- 18 finds that an appointment under this subsection would not create the
- 19 appearance of impropriety.
- 20 (e) A person appointed to serve as a special prosecutor has the same
- 21 powers as the prosecuting attorney of the county. However, the
- 22 appointing judge shall limit scope of the special prosecutor's duties to
- 23 include only the investigation or prosecution of a particular case or
- 24 particular grand jury investigation.
- 25 (f) The court shall establish the length of the special prosecutor's
- 26 term. If the target of an investigation by the special prosecutor is a
- 27 public servant (as defined in IC 35-41-1-24), the court shall order the
- 28 special prosecutor to file a report of the investigation with the court at
- 29 the conclusion of the investigation. The report is a public record.
- 30 (g) If the special prosecutor is not regularly employed as a full-time
- 31 prosecuting attorney or full-time deputy prosecuting attorney, the
- 32 compensation for the special prosecutor's services:
- 33 (1) shall be paid to the special prosecutor from the unappropriated
- 34 funds of the appointing county; and
- 35 (2) may not exceed:
- 36 (A) a per diem equal to the regular salary of a full-time
- 37 prosecuting attorney of the appointing circuit; and
- 38 (B) travel expenses and reasonable accommodation expenses
- 39 actually incurred.
- 40 (h) If the special prosecutor is regularly employed as a full-time
- 41 prosecuting attorney or deputy prosecuting attorney, the compensation
- 42 for the special prosecutor's services:
- 43 (1) shall be paid out of the appointing county's unappropriated
- 44 funds to the treasurer of the county in which the special prosecutor
- 45 regularly serves; and
- 46 (2) must include a per diem equal to the regular salary of a
- 47 full-time prosecuting attorney of the appointing circuit, travel
- 48 expenses, and reasonable accommodation expenses actually
- 49 incurred.
- 50 (i) The combination of:
- 51 (1) the compensation paid to a senior prosecuting attorney under

1 this chapter; and
 2 (2) retirement benefits that the person appointed as a senior
 3 prosecuting attorney is receiving or entitled to receive;
 4 may not exceed the minimum compensation to which a full-time
 5 prosecuting attorney is entitled under IC 33-39-6-5.

6 (j) A senior prosecuting attorney appointed under this chapter may
 7 not be compensated as senior prosecuting attorney for more than one
 8 hundred (100) calendar days in total during a calendar year.

9 SECTION 39. IC 33-39-2-6 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 11 UPON PASSAGE]: **Sec. 6. A prosecuting attorney may appoint the
 12 inspector general or a deputy inspector general who is licensed to
 13 practice law in Indiana as a special deputy prosecuting attorney to
 14 assist in any criminal proceeding involving public misconduct.**

15 SECTION 40. IC 34-24-2-2 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The
 17 prosecuting attorney in a county in which any of the property is located
 18 may bring an action for the forfeiture of any property:

- 19 (1) used in the course of;
 20 (2) intended for use in the course of;
 21 (3) derived from; or
 22 (4) realized through;
 23 conduct in violation of IC 35-45-6-2.

24 **(b) The inspector general may bring an action for forfeiture in
 25 accordance with IC 4-2-7-6 in a county where property that is:**

- 26 **(1) derived from; or**
 27 **(2) realized through;**
 28 **misfeasance, malfeasance, nonfeasance, misappropriation, fraud,**
 29 **or other misconduct that has resulted in a financial loss to the state**
 30 **is located.**

31 ~~(b)~~ **(c)** An action for forfeiture may be brought in any circuit or
 32 superior court in a county in which any of the property is located.

33 ~~(c)~~ **(d)** Upon a showing by a preponderance of the evidence that: ~~the~~

34 **(1) property in question described in subsection (a) was used in**
 35 **the course of, intended for use in the course of, derived from, or**
 36 **realized through conduct in violation of IC 35-45-6-2; or**

37 **(2) property described in subsection (b) was derived from or**
 38 **realized through conduct described in subsection (b);**

39 the court shall, subject to the right, title, or interest of record of any
 40 other party in the property determined under section 4 of this chapter,
 41 ~~(+)~~ order the property forfeited to the state and ~~(2)~~ specify the manner
 42 of disposition of the property, including the manner of disposition if the
 43 property is not transferable for value.

44 ~~(d)~~ **(e)** The court shall order forfeitures and dispositions under this
 45 section:

- 46 (1) with due provision for the rights of innocent persons; and
 47 (2) as provided under section 4 of this chapter.

48 SECTION 41. IC 34-24-2-3 IS AMENDED TO READ AS
 49 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. When an action
 50 is filed under section 2 of this chapter, the prosecuting attorney **or the**
 51 **inspector general** may move for an order to have property subject to

1 forfeiture seized by a law enforcement agency. The judge shall issue
2 such an order upon a showing of probable cause to believe that:

- 3 (1) a violation of IC 35-45-6-2, ~~involving the property in question~~
4 **in the case of property described in section 2(a) of this chapter;**
5 **or**
6 **(2) conduct described in section 2(b) of this chapter, in case of**
7 **property described in section 2(b) of this chapter;**

8 has occurred.

9 SECTION 42. IC 34-24-2-4 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Property
11 subject to forfeiture under this chapter shall be seized by a law
12 enforcement officer upon court order. Seizure may be made without a
13 court order only if:

- 14 (1) the seizure is incident to a lawful arrest or search, or to an
15 inspection under an administrative inspection warrant; or
16 (2) the property subject to seizure has been the subject of a prior
17 judgment in favor of the state in a forfeiture proceeding under this
18 chapter (or IC 34-4-30.5 before its repeal).

19 (b) When property is seized under subsection (a), pending forfeiture
20 and final disposition, the law enforcement officer making the seizure
21 may:

- 22 (1) place the property under seal;
23 (2) remove the property to a place designated by the court; or
24 (3) require another agency authorized by law to take custody of the
25 property and remove it to an appropriate location.

26 (c) Property seized under subsection (a) (or IC 34-4-30.5-4(a) before
27 its repeal) is not subject to replevin, but is considered to be in the
28 custody of the law enforcement officer making the seizure, subject only
29 to order of the court. However, if a seizure of property is made in
30 accordance with subsection (a), the prosecuting attorney **or the**
31 **inspector general** shall bring an action for forfeiture under section 2 of
32 this chapter within:

- 33 (1) thirty (30) days after receiving notice from any person claiming
34 a right, title, or interest in the property; or
35 (2) one hundred eighty (180) days after the property is seized;

36 whichever occurs first.

37 (d) If an action under subsection (c) is not filed within thirty (30)
38 days after receiving notice from any person claiming a right, title, or
39 interest in the property, the claimant:

- 40 (1) is entitled to file a complaint seeking:
41 (A) replevin;
42 (B) foreclosure; or
43 (C) other appropriate remedy; and
44 (2) shall immediately obtain a hearing on the complaint as provided
45 in subsection (f).

46 If an action is not filed within one hundred eighty (180) days after the
47 date of the seizure, and the property has not been previously released
48 to an innocent person under section 5 of this chapter (or
49 IC 34-4-30.5-4.5 before its repeal), the law enforcement agency whose
50 officer made the seizure shall return the property to its owner.

51 (e) If property is seized under subsection (a) (or IC 34-4-30.5-4(a)

1 before its repeal) and the property is a vehicle or real property, the
2 prosecuting attorney **or the inspector general** shall serve, within thirty
3 (30) days after the date the property is seized and as provided by the
4 Indiana Rules of Trial Procedure, notice of seizure upon each person
5 whose right, title, or interest is of record in the bureau of motor
6 vehicles, in the county recorder's office, or other office authorized to
7 receive or record vehicle or real property ownership interests.

8 (f) The person whose right, title, or interest is of record may at any
9 time file a complaint seeking:

- 10 (1) replevin;
- 11 (2) foreclosure; or
- 12 (3) another appropriate remedy;

13 to which the state may answer in forfeiture within the appropriate
14 statutory period. The court shall promptly set the matter for a hearing,
15 and in the case of replevin or foreclosure, the court shall set the hearing
16 as provided by the applicable statutory provisions.

17 SECTION 43. IC 34-24-2-5 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) If a person
19 holding a valid lien, mortgage, security interest, or interest under a
20 conditional sales contract did not know the property was the object of
21 corrupt business influence **or conduct described in section 2(b) of this**
22 **chapter**, the court shall determine whether the secured interest is equal
23 to or in excess of the appraised value of the property.

24 (b) Appraised value is to be determined as of the date of judgment on
25 a wholesale basis by:

- 26 (1) agreement between the secured party and the prosecuting
27 attorney; or
- 28 (2) the inheritance tax appraiser for the county in which the action
29 is brought.

30 (c) If the amount due to the secured party is equal to or greater than
31 the appraised value of the property, the court shall order the property
32 released to the secured party.

33 (d) If the amount due the secured party is less than the appraised
34 value of the property, the holder of the interest may pay into the court
35 an amount equal to the owner's equity, which shall be the difference
36 between the appraised value and the amount of the lien, mortgage,
37 security interest, or interest under a conditional sales contract. Upon
38 payment, the state or unit, or both, shall relinquish all claims to the
39 property.

40 SECTION 44. IC 34-24-2-6 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) An
42 aggrieved person may, in addition to proceeding under section 4 of this
43 chapter, bring an action for injunctive relief from corrupt business
44 influence in a circuit or superior court in the county of the aggrieved
45 person's residence, or in a county where any of the affected property or
46 the affected enterprise is located. If the court finds, through a
47 preponderance of the evidence, that the aggrieved person is suffering
48 from corrupt business influence, the court shall make an appropriate
49 order for injunctive relief. This order must be made in accordance with
50 the principles that govern the granting of injunctive relief from
51 threatened loss or damage in other civil cases, except that a showing of

1 special or irreparable damage to the aggrieved person is not required.
 2 The court may order injunctive relief only after the execution of a bond
 3 by the aggrieved person for an injunction improvidently granted, in an
 4 amount established by the court. In addition, the court may order a
 5 temporary restraining order or a preliminary injunction, but only after
 6 a showing of immediate danger of significant loss or damage to the
 7 aggrieved person.

8 (b) An aggrieved person may bring an action against a person who
 9 has violated IC 35-45-6-2 in a circuit or superior court in the county of
 10 the aggrieved person's residence, or in a county where any of the
 11 affected property or the affected enterprise is located, for damages
 12 suffered as a result of corrupt business influence. Upon a showing by
 13 a preponderance of the evidence that the aggrieved person has been
 14 damaged by corrupt business influence, the court shall order the person
 15 causing the damage through a violation of IC 35-45-6-2 to pay to the
 16 aggrieved person:

- 17 (1) an amount equal to three (3) times ~~his~~ **the person's** actual
- 18 damages;
- 19 (2) the costs of the action;
- 20 (3) a reasonable attorney's fee; and
- 21 (4) any punitive damages awarded by the court and allowable
- 22 under law.

23 (c) The defendant and the aggrieved person are entitled to a trial by
 24 jury in an action brought under this section (or IC 34-4-30.5-5 before
 25 its repeal).

26 (d) In addition to any rights provided under section 4 of this chapter,
 27 an aggrieved person has a right or claim to forfeited property or to the
 28 proceeds derived from forfeited property superior to any right or claim
 29 the state has in the same property or proceeds.

30 (e) If the state is an aggrieved person, the attorney general ~~has~~ **and**
 31 **the inspector general have** concurrent jurisdiction with the
 32 prosecuting attorney to bring an action under this section.

33 SECTION 45. IC 34-24-2-8 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A
 35 prosecuting attorney **or the inspector general** may retain an attorney
 36 to bring an action under this chapter.

37 (b) An attorney retained under this section is not required to be a
 38 deputy prosecuting attorney but must be admitted to the practice of law
 39 in Indiana.

40 SECTION 46. IC 35-41-1-17 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) "Law
 42 enforcement officer" means:

- 43 (1) a police officer, sheriff, constable, marshal, ~~or~~ prosecuting
- 44 attorney, **special prosecuting attorney, special deputy**
- 45 **prosecuting attorney, or the inspector general;**
- 46 (2) a deputy of any of those persons;
- 47 (3) an investigator for a prosecuting attorney **or for the inspector**
- 48 **general;**
- 49 (4) a conservation officer; or
- 50 (5) an enforcement officer of the alcohol and tobacco commission.

51 (b) "Federal enforcement officer" means any of the following:

- 1 (1) A Federal Bureau of Investigation special agent.
- 2 (2) A United States Marshals Service marshal or deputy.
- 3 (3) A United States Secret Service special agent.
- 4 (4) A United States Fish and Wildlife Service special agent.
- 5 (5) A United States Drug Enforcement Agency agent.
- 6 (6) A Bureau of Alcohol, Tobacco, and Firearms agent.
- 7 (7) A United States Forest Service law enforcement officer.
- 8 (8) A United States Department of Defense police officer or
- 9 criminal investigator.
- 10 (9) A United States Customs Service agent.
- 11 (10) A United States Postal Service investigator.
- 12 (11) A National Park Service law enforcement commissioned
- 13 ranger.
- 14 (12) United States Department of Agriculture, Office of Inspector
- 15 General special agent.
- 16 (13) A United States Immigration and Naturalization Service
- 17 special agent.
- 18 (14) An individual who is:
- 19 (A) an employee of a federal agency; and
- 20 (B) authorized to make arrests and carry a firearm in the
- 21 performance of the individual's official duties.
- 22 SECTION 47. IC 35-44-1-1, AS AMENDED BY SEA 15-2005,
- 23 SEC. 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 24 JULY 1, 2005]: Sec. 1. (a) A person who:
- 25 (1) confers, offers, or agrees to confer on a public servant, either
- 26 before or after the public servant becomes appointed, elected, or
- 27 qualified, any property except property the public servant is
- 28 authorized by law to accept, with intent to control the performance
- 29 of an act related to the employment or function of the public
- 30 servant **or because of any official act performed or to be**
- 31 **performed by the public servant, former public servant, or**
- 32 **person selected to be a public servant;**
- 33 (2) being a public servant, solicits, accepts, or agrees to accept,
- 34 either before or after the person becomes appointed, elected, or
- 35 qualified, any property, except property the person is authorized by
- 36 law to accept, with intent to control the performance of an act
- 37 related to the person's employment or function as a public servant;
- 38 (3) confers, offers, or agrees to confer on a person any property,
- 39 except property the person is authorized by law to accept, with
- 40 intent to cause that person to control the performance of an act
- 41 related to the employment or function of a public servant;
- 42 (4) solicits, accepts, or agrees to accept any property, except
- 43 property the person is authorized by law to accept, with intent to
- 44 control the performance of an act related to the employment or
- 45 function of a public servant;
- 46 (5) confers, offers, or agrees to confer any property on a person
- 47 participating or officiating in, or connected with, an athletic
- 48 contest, sporting event, or exhibition, with intent that the person
- 49 will fail to use the person's best efforts in connection with that
- 50 contest, event, or exhibition;
- 51 (6) being a person participating or officiating in, or connected with,

- 1 an athletic contest, sporting event, or exhibition, solicits, accepts,
 2 or agrees to accept any property with intent that the person will fail
 3 to use the person's best efforts in connection with that contest,
 4 event, or exhibition;
- 5 (7) being a witness or informant in an official proceeding or
 6 investigation, solicits, accepts, or agrees to accept any property,
 7 with intent to:
- 8 (A) withhold any testimony, information, document, or thing;
 9 (B) avoid legal process summoning the person to testify or
 10 supply evidence; or
 11 (C) absent the person from the proceeding or investigation to
 12 which the person has been legally summoned;
- 13 (8) confers, offers, or agrees to confer any property on a witness or
 14 informant in an official proceeding or investigation, with intent that
 15 the witness or informant:
- 16 (A) withhold any testimony, information, document, or thing;
 17 (B) avoid legal process summoning the witness or informant to
 18 testify or supply evidence; or
 19 (C) absent the person from any proceeding or investigation to
 20 which the witness or informant has been legally summoned; or
- 21 (9) confers or offers or agrees to confer any property on an
 22 individual for:
- 23 (A) casting a ballot or refraining from casting a ballot; or
 24 (B) voting for a political party, for a candidate, or for or against
 25 a public question;
- 26 in an election described in IC 3-5-1-2 or at a convention of a
 27 political party authorized under IC 3;
- 28 commits bribery, a Class C felony.
- 29 (b) It is no defense that the person whom the accused person sought
 30 to control was not qualified to act in the desired way.
- 31 SECTION 48. IC 35-44-1-2 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A public servant
 33 who:
- 34 (1) knowingly or intentionally performs an act that ~~he~~ **the public**
 35 **servant** is forbidden by law to perform;
- 36 (2) performs an act ~~he~~ **the public servant** is not authorized by law
 37 to perform, with intent to obtain any property for himself **or**
 38 **herself**;
- 39 (3) knowingly or intentionally solicits, accepts, or agrees to accept
 40 from ~~his~~ **an** appointee or employee any property other than what ~~he~~
 41 **the public servant** is authorized by law to accept as a condition of
 42 continued employment;
- 43 (4) knowingly or intentionally acquires or divests himself **or**
 44 **herself** of a pecuniary interest in any property, transaction, or
 45 enterprise or aids another person to do so based on information
 46 obtained by virtue of ~~his~~ **the public servant's** office that official
 47 action that has not been made public is contemplated;
- 48 (5) knowingly or intentionally fails to deliver public records and
 49 property in ~~his~~ **the public servant's** custody to ~~his~~ **the public**
 50 **servant's** successor in office when that successor qualifies; or
 51 (6) knowingly or intentionally violates IC 36-6-4-17(b);

1 commits official misconduct, a ~~Class A misdemeanor~~: **Class D felony.**
2 SECTION 49. IC 35-44-1-7 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) As used in
4 this section, "pecuniary interest" has the meaning set forth in section
5 3(g) of this chapter.
6 (b) A person who knowingly or intentionally:
7 (1) obtains a pecuniary interest in a contract or purchase with an
8 agency within one (1) year after separation from employment or
9 other service with the agency; and
10 (2) is not a public servant for the agency but who as a public
11 servant approved, negotiated, or prepared on behalf of the agency
12 the terms or specifications of:
13 (A) the contract; or
14 (B) the purchase;
15 commits profiteering from public service, a ~~Class A infraction~~: **Class**
16 **D felony.**
17 (c) This section does not apply to negotiations or other activities
18 related to an economic development grant, loan, or loan guarantee.
19 (d) This section does not apply if the person receives less than two
20 hundred fifty dollars (\$250) of the profits from the contract or purchase.
21 (e) It is a defense to a prosecution under this section that:
22 (1) the person was screened from any participation in the contract
23 or purchase;
24 (2) the person has not received a part of the profits of the contract
25 or purchase; and
26 (3) notice was promptly given to the agency of the person's interest
27 in the contract or purchase.
28 SECTION 50. THE FOLLOWING ARE REPEALED [EFFECTIVE
29 UPON PASSAGE]: IC 4-2-6-3; IC 4-2-6-5.
30 SECTION 51. [EFFECTIVE UPON PASSAGE] (a) **IC 4-2-6-13,**
31 **IC 4-2-6-14, IC 4-15-10-4, IC 35-44-1-2, and IC 35-44-1-7, all as**
32 **amended by this act, apply only to crimes committed after passage**
33 **of this act.**
34 (b) **IC 35-44-1-1, as amended by this act, applies only crimes**
35 **committed after June 30, 2005.**
36 SECTION 52. [EFFECTIVE UPON PASSAGE] **IC 5-22-1-3,**
37 **IC 5-22-2-1, IC 24-4.7-5-1, and IC 24-5-12-23, all as amended by**
38 **this act, and IC 5-22-3-7, as added by this act, apply only to a**
39 **contract entered into or renewed after the effective date of this act.**
40 SECTION 53. **An emergency is declared for this act.**
(Reference is to EHB 1501 as printed March 25, 2005.)

Conference Committee Report
on
Engrossed House Bill 1501

Signed by:

Representative Yount
Chairperson

Senator Server

Representative Van Haaften

Senator Lanane

House Conferees

Senate Conferees