



April 9, 2001

**ENGROSSED
SENATE BILL No. 569**

DIGEST OF SB 569 (Updated April 5, 2001 11:44 AM - DI 106)

Citations Affected: IC 31-14; IC 31-16; IC 31-17.

Synopsis: Performance bonds in family law cases. Authorizes a court to require a party to provide the security, or other guarantees required by the court to secure the performance of a child support, custody, or visitation order if the court makes specific findings. Specifies that the proceeds of a forfeited custody security, bond, or other guarantee may be used to: (1) reimburse a parent for actual expenses incurred in upholding the court's order; (2) pay reasonable fees to locate and return a child; or (3) reimburse a court trustee for reasonable fees and costs. Provides that excess proceeds of a forfeited bond must be used for the child's higher education or maintenance expenses. Provides a format for a support, custody, or visitation bond.

Effective: Upon passage.

Ford, Lubbers

(HOUSE SPONSORS — FRIZZELL, STURTZ)

January 23, 2001, read first time and referred to Committee on Judiciary.
March 1, 2001, amended, reported favorably — Do Pass.
March 5, 2001, read second time, ordered engrossed. Engrossed.
March 7, 2001, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 12, 2001, read first time and referred to Committee on Courts and Criminal Code.
April 9, 2001, amended, reported — Do Pass.

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ES 569—LS 8026/DI 106+



April 9, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

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ENGROSSED SENATE BILL No. 569



A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-14-1.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:

4 **Chapter 1.5. Security to Secure Child Support, Custody, and**
5 **Visitation Rights**

6 **Sec. 1. A bond required under this article to secure the**
7 **obligation of child support, enforcement of a custody order, or**
8 **enforcement of a visitation order must:**

- 9 (1) be in writing; and
- 10 (2) be secured by:
 - 11 (A) at least one (1) resident freehold surety; or
 - 12 (B) a commercial insurance company.

13 **Sec. 2. A bond described in section 1 of this chapter may be**
14 **prepared in substantially the following form:**

15 STATE OF INDIANA)
16) SS:
17 COUNTY OF _____)

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1)
 2)
 3 **IN THE MATTER OF:**
 4)
 5)
 6 **Name of Parent (As the Principal)**
 7)
 8 **Name of Parent (As the Oblige)**
 9)
 10)
 11 **CHILD:**
 12)
 13 **Name of Child**
 14)

15 **KNOW ALL MEN BY THESE PRESENTS, that we _____,**
 16 **as Principal, and _____, as Surety, are held and firmly bound unto**
 17 **_____, as Oblige, in the penal sum of ___ Dollars (\$___), for the**
 18 **payment of which well and truly to be made we hereby bind**
 19 **ourselves and our heirs, administrators, successors, and assigns,**
 20 **jointly and severally, firmly by these presents.**

21 **WHEREAS, an Order was duly made and entered by the above**
 22 **Court in the State of Indiana, County of ____, dated ____, defining**
 23 **custody, visitation, and support rights regarding the named**
 24 **children.**

25 **NOW THEREFORE, the conditions of this obligation are such**
 26 **that:**

- 27 1. **No right of action on this bond shall be granted for the**
 28 **use or benefit of any individual, partnership,**
 29 **corporation, or other entity, other than the named**
 30 **Oblige.**
- 31 2. **It is agreed that neither this bond nor the obligation of**
 32 **this bond, nor any interest in this bond, may be assigned**
 33 **without the prior express written consent of the Surety.**
- 34 3. **Payment under this bond shall be conditioned upon the**
 35 **Oblige's, or the representative of the Oblige's filing a**
 36 **motion with the court seeking a declaration of forfeiture**
 37 **of the bond and the Court's finding and entry of a final**
 38 **judgment ordering the Principal and Surety to make**
 39 **such payment. A certified copy of the filing shall be**
 40 **provided to the Surety at its address of record. The**
 41 **Surety shall make payment within thirty (30) days of**
 42 **receiving notification of the final judgment directly to a**

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Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.

- 4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.
- 5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, expires, or this cause is removed to another jurisdiction.
- 6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if the Principal faithfully complies with the requirements and conditions of the Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this ____ day of ____, 20 ____.

Principal: Surety:

(Name and address of Principal)

(Name and address of Surety)

(Signature of Principal)

(Countersigned by attorney-in-fact)

(Surety seal)

Witness:

Sec. 3. Upon forfeiture, the proceeds of the security, a bond, or other guarantee ordered to secure the obligation of child support, enforcement of a custody order, or enforcement of a visitation order under this article may only be used to:

- (1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order, if the security, bond, or guarantee covers custody or visitation, or both; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

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1 **Sec. 4. Upon forfeiture, the proceeds of security, a bond, or**
 2 **other guarantee ordered to secure the obligation of child support,**
 3 **enforcement of a custody order, or enforcement of a visitation**
 4 **order under this article that are not applied to the expenses**
 5 **described in section 3 of this chapter must be applied toward:**

- 6 **(1) the child's higher education; or**
 7 **(2) the support and maintenance of the child.**

8 SECTION 2. IC 31-14-11-7 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The court may
 10 require that the parent obligated to make support payments provide
 11 appropriate in:

- 12 **(1) a support order; or**
 13 **(2) modification of a support order;**

14 **for the security, bond, or other guarantee that is satisfactory to ensure**
 15 **that the parent will fulfill the parent's court to secure the obligation to**
 16 **make support payments.**

17 SECTION 3. IC 31-14-13-6.5 IS ADDED TO THE INDIANA
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE UPON PASSAGE]: Sec. 6.5. The court may provide
 20 in:

- 21 **(1) a custody order; or**
 22 **(2) a modification of a custody order;**

23 **for the security, bond, or other guarantee that is satisfactory to the**
 24 **court to secure enforcement of the custody order.**

25 SECTION 4. IC 31-14-13-6.7 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE UPON PASSAGE]: Sec. 6.7. (a) The court shall
 28 consider requiring security, a bond, or another guarantee under
 29 section 6.5 of this chapter if the court makes a finding under
 30 subdivision (1), (2), (4), or (7) by clear and convincing evidence. If
 31 the court makes a finding under subdivisions (1), (2), (4), or (7), the
 32 court shall also consider subdivisions (3), (5), (6), (8), and (9) in
 33 determining the amount of security, bond, or other guarantee. In
 34 making a determination under this section, the court shall consider
 35 the following:

- 36 **(1) Whether a party has previously taken a child out of**
 37 **Indiana or another state in violation of a custody or visitation**
 38 **order.**
 39 **(2) Whether a party has previously threatened to take a child**
 40 **out of Indiana or another state in violation of a custody or**
 41 **visitation order.**
 42 **(3) Whether a party has strong ties to Indiana.**



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- 1 **(4) Whether a party:**
 2 **(A) is a citizen of another country;**
 3 **(B) has strong emotional or cultural ties to the other**
 4 **country; and**
 5 **(C) has indicated or threatened to take a child out of**
 6 **Indiana to the other country.**
 7 **(5) Whether a party has friends or family living outside**
 8 **Indiana.**
 9 **(6) Whether a party does not have a financial reason to stay**
 10 **in Indiana, such as whether the party is unemployed, able to**
 11 **work anywhere, or is financially independent.**
 12 **(7) Whether a party has engaged in planning that would**
 13 **facilitate removal from Indiana, such as quitting a job, selling**
 14 **the party's primary residence, terminating a lease, closing an**
 15 **account, liquidating other assets, hiding or destroying**
 16 **documents, applying for a passport, applying for a birth**
 17 **certificate, or applying for school or medical records.**
 18 **(8) Whether a party has a history of marital instability, a lack**
 19 **of parental cooperation, domestic violence, or child abuse.**
 20 **(9) Whether a party has a criminal record.**

21 **After considering evidence, the court shall issue a written**
 22 **determination of security, bond, or other written guarantee**
 23 **supported by findings of fact and conclusions of law.**

24 **(b) If a motion for change of judge or change of venue is filed,**
 25 **the court may, before a determination of change of judge or change**
 26 **of venue, consider security, bond, or other guarantee under this**
 27 **chapter.**

28 **SECTION 5. IC 31-14-14-2.5 IS ADDED TO THE INDIANA**
 29 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 30 **[EFFECTIVE UPON PASSAGE]: Sec. 2.5. The court may provide**
 31 **in:**

32 **(1) a visitation order; or**
 33 **(2) a modification of a visitation order;**
 34 **for the security, bond, or other guarantee that is satisfactory to**
 35 **secure enforcement of the visitation order.**

36 **SECTION 6. IC 31-14-15-3 IS AMENDED TO READ AS**
 37 **FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) This section**
 38 **does not apply to an order under IC 31-14-11-7, IC 31-14-13-6.5,**
 39 **or IC 31-14-14-2.5.**

40 **(b) A court may not require an applicant for a temporary restraining**
 41 **order or an injunction under this chapter (or IC 31-6-6.1-12.1 before its**
 42 **repeal) to give security.**



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1 SECTION 7. IC 31-14-16-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) **This section**
3 **does not apply to an order under IC 31-14-11-7, IC 31-14-13-6.5,**
4 **or IC 31-14-14-2.5.**

5 (b) A court may not require the moving party under this chapter to
6 give security.

7 SECTION 8. IC 31-16-3.5 IS ADDED TO THE INDIANA CODE
8 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
9 UPON PASSAGE]:

10 **Chapter 3.5. Security to Secure Child Support**

11 **Sec. 1. A bond required under this article to secure the**
12 **obligation of child support must:**

- 13 (1) be in writing; and
- 14 (2) be secured by:
 - 15 (A) at least one (1) resident freehold surety; or
 - 16 (B) a commercial insurance company.

17 **Sec. 2. A bond described in section 1 of this chapter may be**
18 **prepared in substantially the following form:**

19 STATE OF INDIANA)
 20) SS:
 21 COUNTY OF _____)
 22)
 23)
 24 **IN THE MATTER OF:**
 25)
 26)
 27 **Name of Parent (As the Principal)**
 28)
 29 **Name of Parent (As the Obligee)**
 30)
 31)
 32 **CHILD:**
 33)
 34 **Name of Child**
 35)

36 **KNOW ALL MEN BY THESE PRESENTS, that we _____,**
37 **as Principal, and _____, as Surety, are held and firmly bound unto**
38 **_____, as Obligee, in the penal sum of _____ Dollars (\$_____), for the**
39 **payment of which well and truly to be made we hereby bind**
40 **ourselves and our heirs, administrators, successors, and assigns,**
41 **jointly and severally, firmly by these presents.**

42 **WHEREAS, an Order was duly made and entered by the above**



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1 Court in the State of Indiana, County of ____, dated ____, defining
 2 custody, visitation, and support rights regarding the named
 3 children.

4 NOW THEREFORE, the conditions of this obligation are such
 5 that:

- 6 1. No right of action on this bond shall be granted for the
 7 use or benefit of any individual, partnership,
 8 corporation, or other entity, other than the named
 9 Obligee.
- 10 2. It is agreed that neither this bond nor the obligation of
 11 this bond, nor any interest in this bond, may be assigned
 12 without the prior express written consent of the Surety.
- 13 3. Payment under this bond shall be conditioned upon the
 14 Obligee's, or the representative of the Obligee's filing a
 15 motion with the court seeking a declaration of forfeiture
 16 of the bond and the Court's finding and entry of a final
 17 judgment ordering the Principal and Surety to make
 18 such payment. A certified copy of the filing shall be
 19 provided to the Surety at its address of record. The
 20 Surety shall make payment within thirty (30) days of
 21 receiving notification of the final judgment directly to a
 22 Trustee appointed by the Court who shall administer the
 23 funds in a fiduciary capacity.
- 24 4. The Surety shall not be liable hereunder for any amount
 25 larger than the face amount of this bond.
- 26 5. This bond and the obligation hereunder shall terminate
 27 and be of no further effect if the Court order requiring
 28 it is modified in any way without the Surety's consent,
 29 expires, or this cause is removed to another jurisdiction.
- 30 6. The Surety may file a motion with the Court for
 31 discharge of this bond and its obligation hereunder for
 32 any good cause. Good cause includes, but is not limited
 33 to, misrepresentation or fraud in the initial application
 34 for this bond, nonpayment of premium, loss of collateral,
 35 or resignation of the Indemnitor. The Surety shall give
 36 notice of any such motion to the Obligee.

37 NOW THEREFORE, if the Principal faithfully complies with
 38 the requirements and conditions of the Court Order within the
 39 limitations and parameters set forth therein, then this Obligation
 40 shall be void, otherwise it shall remain in full force and effect.

41 In witness whereof, each party to this bond has caused it to be
 42 executed at the place and on the date indicated below.

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Signed, sealed and dated on this ____ day of ____, 20 ____.

Principal: Surety:

(Name and address of Principal)

(Name and address of Surety)

(Signature of Principal)

(Countersigned by attorney-in-fact)

(Surety seal)

Witness:

Sec. 3. Upon forfeiture, the proceeds of security, a bond, or other guarantee ordered to secure the obligation of child support, enforcement of a custody order, or enforcement of a visitation order under this article may only be used to:

- (1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order, if the security, bond, or guarantee covers custody or visitation, or both; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

Sec. 4. The proceeds of the security, bond, or other guarantee ordered to secure the obligation of child support ordered under this article that are not applied to the expenses described in section 3 of this chapter must be applied toward:

- (1) the child's higher education; or
- (2) the support and maintenance of the child.

SECTION 9. IC 31-16-8-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The court may provide in a modification of a support order for the security, bond, or other guarantee that is satisfactory to the court to secure the obligation to make support payments.

SECTION 10. IC 31-17-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 3.5. Security to Secure Custody and Visitation Orders

Sec. 1. A bond required under this article to secure enforcement of a custody order or visitation order must:

- (1) be in writing; and
- (2) be secured by:
 - (A) at least one (1) resident freehold surety; or

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(B) a commercial insurance company.
Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:

STATE OF INDIANA)
) SS:
COUNTY OF _____)
)
)

IN THE MATTER OF:

Name of Parent (As the Principal)

Name of Parent (As the Obligee)

CHILD:

Name of Child

KNOW ALL MEN BY THESE PRESENTS, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto _____, as Obligee, in the penal sum of _____ Dollars (\$_____), for the payment of which well and truly to be made we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above Court in the State of Indiana, County of _____, dated _____, defining custody, visitation, and support rights regarding the named children.

NOW THEREFORE, the conditions of this obligation are such that:

1. No right of action on this bond shall be granted for the use or benefit of any individual, partnership, corporation, or other entity, other than the named Obligee.
2. It is agreed that neither this bond nor the obligation of this bond, nor any interest in this bond, may be assigned without the prior express written consent of the Surety.
3. Payment under this bond shall be conditioned upon the Obligee's, or the representative of the Obligee's filing a motion with the court seeking a declaration of forfeiture

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of the bond and the Court's finding and entry of a final judgment ordering the Principal and Surety to make such payment. A certified copy of the filing shall be provided to the Surety at its address of record. The Surety shall make payment within thirty (30) days of receiving notification of the final judgment directly to a Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.

- 4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.
- 5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, expires, or this cause is removed to another jurisdiction.
- 6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if said Principal shall faithfully comply with the requirements and conditions of said Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this ____ day of ____, 20__.

Principal: Surety:

(Name and address of Principal)

(Name and address of Surety)

(Signature of Principal)
(Countersigned by attorney-in-fact)
(Surety seal)

Witness:

Sec. 3. Upon forfeiture, the proceeds of security, a bond, or other guarantee ordered to secure enforcement of a custody order or visitation order under this article may only be used to:

- (1) reimburse the nonviolating party for actual costs or

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- damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

Sec. 4. Upon forfeiture, the proceeds of the security, a bond, or other guarantee ordered to secure enforcement of a custody order or visitation order under this article that are not applied to the expenses described in section 3 of this chapter must be applied toward:

- (1) the child's higher education; or
- (2) the support and maintenance of the child.

SECTION 11. IC 31-17-2-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21.5. The court may provide in:

- (1) a custody order; or
- (2) a modification to a custody order;

for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the custody order.

SECTION 12. IC 31-17-2-21.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21.7. (a) The court shall consider requiring security, a bond, or another guarantee under section 21.5 of this chapter if the court makes a finding under subdivision (1), (2), (4), or (7) by clear and convincing evidence. If the court makes a finding under subdivision (1), (2), (4), or (7), the court shall also consider subdivisions (3), (5), (6), (8), and (9) in determining the amount of security, bond, or other guarantee. In making a determination under this section, the court shall consider the following:

- (1) Whether a party has previously taken a child out of Indiana or another state in violation of a custody or visitation order.
- (2) Whether a party has previously threatened to take a child out of Indiana or another state in violation of a custody or visitation order.
- (3) Whether a party has strong ties to Indiana.
- (4) Whether a party:
 - (A) is a citizen of another country;
 - (B) has strong emotional or cultural ties to the other country; and

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(C) has indicated or threatened to take a child out of Indiana to the other country.

(5) Whether a party has friends or family living outside Indiana.

(6) Whether a party does not have a financial reason to stay in Indiana, such as whether the party is unemployed, able to work anywhere, or is financially independent.

(7) Whether a party has engaged in planning that would facilitate removal from Indiana, such as quitting a job, selling the party's primary residence, terminating a lease, closing an account, liquidating other assets, hiding or destroying documents, applying for a passport, applying for a birth certificate, or applying for school or medical records.

(8) Whether a party has a history of marital instability, a lack of parental cooperation, domestic violence, or child abuse.

(9) Whether a party has a criminal record.

After considering evidence, the court shall issue a written determination of security, bond, or other written guarantee supported by findings of fact and conclusions of law.

(b) If a motion for change of judge or change of venue is filed, the court may, before a determination of change of judge or change of venue, consider security, bond, or other guarantee under this chapter.

SECTION 13. IC 31-17-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. The court may provide in:**

- (1) a visitation order; or
- (2) a modification to a visitation order;

for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the provisions of the visitation order.

SECTION 14. IC 31-17-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) This section does not apply to an order under section 2.5 of this chapter.**

(b) A court may not require an applicant for a temporary restraining order or an injunction under section 4 of this chapter (or IC 31-1-11.5-26 before its repeal) to give security.

SECTION 15. **An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Lubbers be added as second author of Senate Bill 569.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 569, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:
SECTION 1. IC 31-14-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 1.5. Security to Secure Child Support, Custody, and Visitation Rights".

Page 2, delete lines 1 through 6.

Page 2, line 7, delete "(d)" and insert "Sec. 1."

Page 2, line 7, delete "or surety".

Page 2, line 7, delete "chapter" and insert "**article to secure the obligation of child support, enforcement of a custody order, or enforcement of a visitation order**".

Page 2, line 8, after ";" insert "**and**".

Page 2, line 11, delete "; and" and insert ".".

Page 2, delete line 12, begin a new paragraph and insert:

"Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:".

Page 4, line 5, delete "(e) The" and insert "**Sec. 3. Upon forfeiture, the**".

Page 4, line 5, after "of" insert "**the security,**".

Page 4, line 5, delete "or surety forfeited under this section" and insert "**, or other guarantee ordered to secure the obligation of child support, enforcement of a custody order, or enforcement of a visitation order under this article**".

Page 4, line 10, delete ";" and insert "**, if the security, bond, or guarantee covers custody or visitation, or both;**".

Page 4, line 13, delete "(f) The" and insert "**Sec. 4. Upon forfeiture, the**".

Page 4, line 13, after "of" insert "**security,**".

Page 4, line 13, delete "or surety forfeited under this section" and insert "**, or other guarantee ordered to secure the obligation of child support, enforcement of a custody order, or enforcement of a visitation order under this article**".

Page 4, line 14, delete "subsection (e)" and insert "**section 3 of this chapter**".

Page 4, line 15, delete "placed in trust to provide for:" and insert

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"applied toward:".

Page 4, line 17, delete "upon" and insert ".".

Page 4, delete lines 18 through 42, begin a new paragraph and insert:

"SECTION 2. IC 31-14-11-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The court may require that the parent obligated to make support payments provide appropriate in:

- (1) a support order; or**
- (2) modification of a support order;**

for the security, bond, or other guarantee that is satisfactory to ensure that the parent will fulfill the parent's court to secure the obligation to make support payments.

SECTION 3. IC 31-14-13-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.5. The court may provide in:

- (1) a custody order; or**
- (2) a modification of a custody order;**

for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the custody order.

SECTION 4. IC 31-14-13-6.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.7. The court shall consider requiring security, a bond or another guarantee under section 6.5 of this chapter if the court determines that there is a reasonable likelihood from the totality of the evidence that one (1) or more parties may commit a violation of IC 35-42-3-4 (interference with custody). In making a determination under this section, the court may consider the following:

- (1) Whether a party has previously taken a child out of Indiana or another state in violation of a custody or visitation order.**
- (2) Whether a party has previously threatened to take a child out of Indiana or another state in violation of a custody or visitation order.**
- (3) Whether a party has strong ties to Indiana.**
- (4) Whether a party is a citizen of another country and has strong emotional or cultural ties to the other county in which the person is a citizen.**
- (5) Whether a party has friends or family living outside Indiana.**

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(6) Whether a party does not have a financial reason to stay in Indiana, such as whether the party is unemployed, able to work anywhere, or is financially independent.

(7) Whether a party has engaged in planning that would facilitate removal from Indiana, such as quitting a job, selling the party's primary residence, terminating a lease, closing an account, liquidating other assets, hiding or destroying documents, applying for a passport, applying for a birth certificate, or applying for school or medical records.

(8) Whether a party has a history of marital instability, a lack of parental cooperation, domestic violence, or child abuse.

(9) Whether a party has a criminal record.

SECTION 5. IC 31-14-14-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. The court may provide in:**

(1) a visitation order; or

(2) a modification of a visitation order;

for the security, bond, or other guarantee that is satisfactory to secure enforcement of the visitation order.

SECTION 6. IC 31-14-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3. (a) This section does not apply to an order under IC 31-14-11-7, IC 31-14-13-6.5, or IC 31-14-14-2.5.**

(b) A court may not require an applicant for a temporary restraining order or an injunction under this chapter (or IC 31-6-6.1-12.1 before its repeal) to give security.

SECTION 7. IC 31-14-16-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2. (a) This section does not apply to an order under IC 31-14-11-7, IC 31-14-13-6.5, or , IC 31-14-14-2.5.**

(b) A court may not require the moving party under this chapter to give security.

SECTION 8. IC 31-16-3.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 3.5. Security to Secure Child Support

Sec. 1. A bond required under this article to secure the obligation of child support must:

(1) be in writing; and

(2) be secured by:

(A) at least one (1) resident freehold surety; or

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(B) a commercial insurance company.

Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:

STATE OF INDIANA)
) SS:
COUNTY OF _____)

IN THE MATTER OF:

Name of Parent (As the Principal)

Name of Parent (As the Obligee)

CHILD:

Name of Child

KNOW ALL MEN BY THESE PRESENTS, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto _____, as Obligee, in the penal sum of _____ Dollars (\$_____), for the payment of which well and truly to be made we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above Court in the State of Indiana, County of _____, dated _____, defining custody, visitation, and support rights regarding the named children.

NOW THEREFORE, the conditions of this obligation are such that:

1. No right of action on this bond shall be granted for the use or benefit of any individual, partnership, corporation, or other entity, other than the named Obligee.
2. It is agreed that neither this bond nor the obligation of this bond, nor any interest in this bond, may be assigned without the prior express written consent of the Surety.
3. Payment under this bond shall be conditioned upon the Obligee's, or the representative of the Obligee's filing a motion with the court seeking a declaration of forfeiture

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of the bond and the Court's finding and entry of a final judgment ordering the Principal and Surety to make such payment. A certified copy of the filing shall be provided to the Surety at its address of record. The Surety shall make payment within thirty (30) days of receiving notification of the final judgment directly to a Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.

- 4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.
- 5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, expires, or this cause is removed to another jurisdiction.
- 6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if the Principal faithfully complies with the requirements and conditions of the Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this ____ day of ____, 20__.

Principal: Surety

(Name and address of Principal)

(Name and address of Surety)

(Signature of Principal)

(Countersigned by attorney-in-fact)

(Surety seal)

Witness:

Sec. 3. Upon forfeiture, the proceeds of security, a bond , or other guarantee ordered to secure the obligation of child support, enforcement of a custody order, or enforcement of a visitation order under this article may only be used to:

- (1) reimburse the nonviolating party for actual costs or



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- damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order, if the security, bond, or guarantee covers custody or visitation, or both; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

Sec. 4. The proceeds of the security, bond , or other guarantee ordered to secure the obligation of child support ordered under this article that are not applied to the expenses described in section 3 of this chapter must be applied toward:

- (1) the child's higher education; or
- (2) the support and maintenance of the child.

SECTION 9. IC 31-16-8-3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 3. The court may provide in a modification of a support order for the security, bond, or other guarantee that is satisfactory to the court to secure the obligation to make support payments.**

SECTION 10. IC 31-17-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]:

Chapter 3.5. Security to Secure Custody and Visitation Orders".

Page 5, delete lines 1 through 5.

Page 5, line 6, delete "(d)" and insert "**Sec. 1.**".

Page 5, line 6, delete " or surety".

Page 5, line 6, delete "chapter" and insert "**article to secure enforcement of a custody order or visitation order**".

Page 5, line 7, after ";" insert "**and**".

Page 5, line 10, delete "; and" and insert ".".

Page 5, delete line 11, begin a new paragraph and insert:

"Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:".

Page 7, line 5, delete "(e) The" and insert "**Sec. 3. Upon forfeiture, the**".

Page 7, line 5, after "of" insert "**security,**".

Page 7, line 5, delete "or surety forfeited under this section" and insert "**, or other guarantee ordered to secure enforcement of a custody order or visitation order under this article**".

Page 7, line 13, delete "(f) The" and insert "**Sec. 4. Upon forfeiture, the**".

Page 7, line 13, after "of" insert "**the security,**".

Page 7, line 13, delete "or surety forfeited under this section" and

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insert ", or other guarantee ordered to secure enforcement of a custody order or visitation order under this article".

Page 7, line 14, delete "subsection (e)" and insert "**section 3 of this chapter**".

Page 7, line 15, delete "placed in trust to provide for:" and insert "**applied toward:**".

Page 7, line 17, delete "upon" and insert ".".

Page 7, delete lines 18 through 22, begin a new paragraph and insert:

"SECTION 11. IC 31-17-2-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 21.5. The court may provide in:**

- (1) a custody order; or**
- (2) a modification to a custody order;**

for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the custody order.

SECTION 12. IC 31-17-2-21.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 21.7. The court shall consider requiring security, a bond or another guarantee under section 21.5 of this chapter if the court determines that there is a reasonable likelihood from the totality of the evidence that one (1) or more parties may commit a violation of IC 35-42-3-4 (interference with custody). In making a determination under this section, the court may consider the following:**

- (1) Whether a party has previously taken a child out of Indiana or another state in violation of a custody or visitation order.**
- (2) Whether a party has previously threatened to take a child out of Indiana or another state in violation of a custody or visitation order.**
- (3) Whether a party has strong ties to Indiana.**
- (4) Whether a party is a citizen of another country and has strong emotional or cultural ties to the other county in which the person is a citizen.**
- (5) Whether a party has friends or family living outside Indiana.**
- (6) Whether a party has not financial reason to stay in Indiana, such as whether the party is unemployed, able to work anywhere, or is financially independent.**
- (7) Whether a party has engaged in planning that would**

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facilitate removal from Indiana, such as quitting a job, selling the party's primary residence, terminating a lease, closing an account, liquidating other assets, hiding or destroying documents, applying for a passport, applying for a birth certificate, or applying for school or medical records.

(8) Whether a party has a history of marital instability, a lack of parental cooperation, domestic violence, or child abuse.

(9) Whether a party has a criminal record.

SECTION 13. IC 31-17-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. The court may provide in:**

(1) a visitation order; or

(2) a modification to a visitation order;

for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the provisions of the visitation order.

SECTION 14. IC 31-17-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) This section does not apply to an order under IC 31-17-4-2.5.**

(b) A court may not require an applicant for a temporary restraining order or an injunction under section 4 of this chapter (or IC 31-1-11.5-26 before its repeal) to give security."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 569 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 569, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 23, after "Surety" insert ":",

Page 4, line 27, after "Sec. 6.7." insert "(a)".

Page 4, line 28, after "bond" insert ",",

Page 4, line 29, delete "determines that there is a reasonable" and insert **"makes a finding under subdivision (1), (2), (4), or (7) by clear and convincing evidence. If the court makes a finding under subdivisions (1), (2), (4), or (7), the court shall also consider subdivisions (3), (5), (6), (8), and (9) in determining the amount of security, bond, or other guarantee."**

Page 4, delete lines 30 through 31.

Page 4, line 32, delete "custody)."

Page 4, line 33, delete "may" and insert "shall".

Page 4, line 41, after "party" insert ":",

(A)".

Page 4, line 41, after "country" delete "and" and insert ":",

(B)".

Page 4, line 42, delete "county" and insert **"country; and"**.

Page 4, line 42, delete "in which".

Page 5, delete line 1.

Page 5, between lines 1 and 2, begin a new line double block indented and insert:

"(C) has indicated or threatened to take a child out of Indiana to the other country."

Page 5, between lines 15 and 16, begin a new line blocked left and insert:

"After considering evidence, the court shall issue a written determination of security, bond, or other written guarantee supported by findings of fact and conclusions of law.

(b) If a motion for change of judge or change of venue is filed, the court may, before a determination of change of judge or change of venue, consider security, bond, or other guarantee under this chapter."

Page 5, line 34, delete ",,".

Page 7, line 32, after "Surety" insert ":",

Page 10, line 18, after "Surety" insert ":",

Page 11, line 11, after "Sec. 21.7." insert "(a)".

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Page 11, line 12, after "bond" insert ",".

Page 11, line 13, delete "determines that there is a reasonable" and insert **"makes a finding under subdivision (1), (2), (4), or (7) by clear and convincing evidence. If the court makes a finding under subdivision (1), (2), (4), or (7), the court shall also consider subdivisions (3), (5), (6), (8), and (9) in determining the amount of security, bond, or other guarantee."**

Page 11, delete lines 14 through 15.

Page 11, line 16, delete "custody).".

Page 11, line 17, delete "may" and insert "shall".

Page 11, line 25, after "party" insert ":

(A)".

Page 11, line 25, after "country" delete "and" and insert ";

(B)".

Page 11, line 26, delete "county" and insert **"country; and"**.

Page 11, line 26, delete "in which".

Page 11, delete line 27.

Page 11, line 27, between lines 27 and 28, begin a new line double block indented and insert:

"(C) has indicated or threatened to take a child out of Indiana to the other country."

Page 11, line 30, delete "has not" and insert **"does not have a"**.

Page 11, between lines 41 and 42 begin a new line blocked left and insert:

"After considering evidence, the court shall issue a written determination of security, bond, or other written guarantee supported by findings of fact and conclusions of law.

(b) If a motion for change of judge or change of venue is filed, the court may, before a determination of change of judge or change of venue, consider security, bond, or other guarantee under this chapter."

Page 12, line 11, delete "IC 31-17-4-2.5." and insert **"section 2.5 of this chapter."**

and when so amended that said bill do pass.

(Reference is to SB 569 as printed March 2, 2001.)

DVORAK, Chair

Committee Vote: yeas 9, nays 0.

ES 569—LS 8026/DI 106+



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