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# SENATE BILL No. 178

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-6-3-6; IC 5-8-1-35; IC 5-11-5.5-6; IC 5-14; IC 24-2-3-5; IC 24-4-7-5; IC 26-1-2.1-108; IC 27-1-3.1-17; IC 28-1-5-8.5; IC 31-17-4-3; IC 32-30-6-9.5; IC 34-6-2; IC 34-7-7-8; IC 34-12-3-4; IC 34-13; IC 34-52-1-1.

**Synopsis:** Attorney's fees in civil actions. Requires an award of reasonable and necessary attorney's fees to the prevailing party in a civil action when the nonprevailing party: (1) brought the action on a claim or asserted a defense that is frivolous, unreasonable, vexatious, or groundless; (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, vexatious, or groundless; or (3) litigated the action in bad faith. Exempts governmental entities and employees from liability for an award of attorney's fees.

**Effective:** July 1, 2013.

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## Banks, Yoder

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January 7, 2013, read first time and referred to Committee on Judiciary.

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First Regular Session 118th General Assembly (2013)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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# SENATE BILL No. 178



A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

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

1 SECTION 1. IC 4-6-3-6, AS AMENDED BY P.L.136-2007,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2013]: Sec. 6. If a person objects or otherwise fails to obey a  
4 written demand issued under section 3 of this chapter, the attorney  
5 general may file in the circuit or superior court of the county in which  
6 that person resides or maintains a principal place of business within the  
7 state an application for an order to enforce the demand. If the person  
8 does not reside or maintain a principal place of business in Indiana, the  
9 application for the order to enforce the demand may be filed in the  
10 Marion County circuit or superior court. Notice of hearing and a copy  
11 of the application shall be served upon that person, who may appear in  
12 opposition to the application. The attorney general must demonstrate  
13 to the court that the demand is proper. If the court finds that the  
14 demand is proper, it shall order that person to comply with the demand,  
15 subject to such modification as the court may prescribe. Upon motion  
16 by that person and for good cause shown, the court may make any  
17 further order in the proceedings which justice requires to protect the



1 person from unreasonable annoyance, embarrassment, oppression,  
 2 burden, expense, or to protect privileged information, trade secrets, or  
 3 information which is confidential under any other provision of law. ~~If~~  
 4 ~~the court finds that either party has acted in bad faith in seeking or~~  
 5 ~~resisting the demand; it may order that person to pay the other parties~~  
 6 ~~reasonable expenses including attorneys' fees.~~

7 SECTION 2. IC 5-8-1-35 IS AMENDED TO READ AS FOLLOWS  
 8 [EFFECTIVE JULY 1, 2013]: Sec. 35. (a) When an accusation in  
 9 writing, verified by the oath of any person, is presented to a circuit  
 10 court, alleging that any officer within the jurisdiction of the court has  
 11 been guilty of:

- 12 (1) charging and collecting illegal fees for services rendered or to  
 13 be rendered in ~~his~~ **the officer's** office;
- 14 (2) refusing or neglecting to perform the official duties pertaining  
 15 to ~~his~~ **the officer's** office; or
- 16 (3) violating IC 36-6-4-17(b) if the officer is the executive of a  
 17 township;

18 the court must cite the party charged to appear before the court at any  
 19 time not more than ten (10) nor less than five (5) days from the time the  
 20 accusation was presented, and on that day or some other subsequent  
 21 day not more than twenty (20) days from the time the accusation was  
 22 presented must proceed to hear, in a summary manner, the accusation  
 23 and evidence offered in support of the same, and the answer and  
 24 evidence offered by the party accused.

25 (b) If after the hearing under subsection (a) it appears that the  
 26 charge is sustained, the court must do the following:

- 27 (1) Enter a decree that the party accused be deprived of ~~his~~ **the**  
 28 **party's** office.
- 29 (2) Enter a judgment as follows:  
 30 (A) For five hundred dollars (\$500) in favor of the prosecuting  
 31 officer.  
 32 (B) For costs as are allowed in civil cases.  
 33 (C) For the amount of money that was paid to the officer in  
 34 compensation from the day when the accusation was filed  
 35 under this section to the day when judgment is entered in favor  
 36 of the public entity paying the compensation to the officer.

37 (c) ~~In an action under this section, a court may award reasonable~~  
 38 ~~attorney's fees, court costs, and other reasonable expenses of litigation~~  
 39 ~~to the accused officer if:~~

- 40 (1) ~~the officer prevails; and~~
- 41 (2) ~~the court finds that the accusation is frivolous or vexatious.~~

42 SECTION 3. IC 5-11-5.5-6, AS ADDED BY P.L.222-2005,

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1 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2013]: Sec. 6. (a) The person who initially filed the complaint  
3 is entitled to the following amounts if the state prevails in the action:

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

10 (2) If the attorney general or the inspector general intervened in  
11 the action and the court finds that the evidence used to prosecute  
12 the action consisted primarily of specific information contained  
13 in:

14 (A) a transcript of a criminal, a civil, or an administrative  
15 hearing;

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

18 (C) a news media report;

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

23 (3) If the attorney general or the inspector general did not  
24 intervene in the action, the person is entitled to receive at least  
25 twenty-five percent (25%) and not more than thirty percent (30%)  
26 of the proceeds of the action or settlement, plus reasonable  
27 attorney's fees and an amount to cover the expenses and costs of  
28 bringing the action.

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

30 (A) planned and initiated the violation of section 2 of this  
31 chapter; or

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

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

35 After conducting a hearing at which the attorney general or the  
36 inspector general and the person who initially filed the complaint may  
37 be heard, the court shall determine the specific amount to be awarded  
38 under this section to the person who initially filed the complaint. The  
39 award of reasonable attorney's fees plus an amount to cover the  
40 expenses and costs of bringing the action is an additional cost assessed  
41 against the defendant and may not be paid from the proceeds of the  
42 civil action.

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1 (b) If:

2 (1) the attorney general or the inspector general did not intervene  
3 in the action; and

4 (2) the defendant prevails;

5 the court may award the defendant reasonable attorney's fees plus an  
6 amount to cover the expenses and costs of defending the action; if the  
7 court finds that the action is frivolous:

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

10 SECTION 4. IC 5-14-1.5-7, AS AMENDED BY P.L.134-2012,  
11 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 2013]: Sec. 7. (a) An action may be filed by any person in any  
13 court of competent jurisdiction to:

14 (1) obtain a declaratory judgment;

15 (2) enjoin continuing, threatened, or future violations of this  
16 chapter; or

17 (3) declare void any policy, decision, or final action:

18 (A) taken at an executive session in violation of section 3(a) of  
19 this chapter;

20 (B) taken at any meeting of which notice is not given in  
21 accordance with section 5 of this chapter;

22 (C) that is based in whole or in part upon official action taken  
23 at any:

24 (i) executive session in violation of section 3(a) of this  
25 chapter;

26 (ii) meeting of which notice is not given in accordance with  
27 section 5 of this chapter; or

28 (iii) series of gatherings in violation of section 3.1 of this  
29 chapter; or

30 (D) taken at a meeting held in a location in violation of section  
31 8 of this chapter.

32 The plaintiff need not allege or prove special damage different from  
33 that suffered by the public at large.

34 (b) Regardless of whether a formal complaint or an informal inquiry  
35 is pending before the public access counselor, any action to declare any  
36 policy, decision, or final action of a governing body void, or to enter an  
37 injunction which would invalidate any policy, decision, or final action  
38 of a governing body, based on violation of this chapter occurring before  
39 the action is commenced, shall be commenced:

40 (1) prior to the delivery of any warrants, notes, bonds, or  
41 obligations if the relief sought would have the effect, if granted,  
42 of invalidating the notes, bonds, or obligations; or

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- 1 (2) with respect to any other subject matter, within thirty (30)  
 2 days of either:  
 3 (A) the date of the act or failure to act complained of; or  
 4 (B) the date that the plaintiff knew or should have known that  
 5 the act or failure to act complained of had occurred;  
 6 whichever is later. If the challenged policy, decision, or final action is  
 7 recorded in the memoranda or minutes of a governing body, a plaintiff  
 8 is considered to have known that the act or failure to act complained of  
 9 had occurred not later than the date that the memoranda or minutes are  
 10 first available for public inspection.
- 11 (c) If a court finds that a governing body of a public agency has  
 12 violated this chapter, it may not find that the violation was cured by the  
 13 governing body by only having taken final action at a meeting that  
 14 complies with this chapter.
- 15 (d) In determining whether to declare any policy, decision, or final  
 16 action void, a court shall consider the following factors among other  
 17 relevant factors:
- 18 (1) The extent to which the violation:  
 19 (A) affected the substance of the policy, decision, or final  
 20 action;  
 21 (B) denied or impaired access to any meetings that the public  
 22 had a right to observe and record; and  
 23 (C) prevented or impaired public knowledge or understanding  
 24 of the public's business.
- 25 (2) Whether voiding of the policy, decision, or final action is a  
 26 necessary prerequisite to a substantial reconsideration of the  
 27 subject matter.
- 28 (3) Whether the public interest will be served by voiding the  
 29 policy, decision, or final action by determining which of the  
 30 following factors outweighs the other:  
 31 (A) The remedial benefits gained by effectuating the public  
 32 policy of the state declared in section 1 of this chapter.  
 33 (B) The prejudice likely to accrue to the public if the policy,  
 34 decision, or final action is voided, including the extent to  
 35 which persons have relied upon the validity of the challenged  
 36 action and the effect declaring the challenged action void  
 37 would have on them.
- 38 (4) Whether the defendant acted in compliance with an informal  
 39 inquiry response or advisory opinion issued by the public access  
 40 counselor concerning the violation.
- 41 (e) If a court declares a policy, decision, or final action of a  
 42 governing body of a public agency void, the court may enjoin the

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1 governing body from subsequently acting upon the subject matter of  
 2 the voided act until it has been given substantial reconsideration at a  
 3 meeting or meetings that comply with this chapter.

4 (f) In any action filed under this section, a court shall award  
 5 reasonable attorney's fees **and** court costs ~~and~~ **to the prevailing party**  
 6 **as required under IC 34-52-1-1. In addition, the court shall award**  
 7 other reasonable expenses of litigation to the prevailing party if:

8 (1) the plaintiff prevails; or

9 (2) the defendant prevails and the court finds that the action is  
 10 frivolous and vexatious.

11 The plaintiff is not eligible for the awarding of attorney's fees, court  
 12 costs, and other reasonable expenses if the plaintiff filed the action  
 13 without first seeking and receiving an informal inquiry response or  
 14 advisory opinion from the public access counselor, unless the plaintiff  
 15 can show the filing of the action was necessary to prevent a violation  
 16 of this chapter.

17 (g) A court may assess a civil penalty under section 7.5 of this  
 18 chapter only if the plaintiff obtained an advisory opinion from the  
 19 public access counselor before filing an action under this section as set  
 20 forth in section 7.5 of this chapter.

21 (h) A court shall expedite the hearing of an action filed under this  
 22 section.

23 SECTION 5. IC 5-14-3-9, AS AMENDED BY P.L.134-2012,  
 24 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JULY 1, 2013]: Sec. 9. (a) A denial of disclosure by a public agency  
 26 occurs when the person making the request is physically present in the  
 27 office of the agency, makes the request by telephone, or requests  
 28 enhanced access to a document and:

29 (1) the person designated by the public agency as being  
 30 responsible for public records release decisions refuses to permit  
 31 inspection and copying of a public record when a request has  
 32 been made; or

33 (2) twenty-four (24) hours elapse after any employee of the public  
 34 agency refuses to permit inspection and copying of a public  
 35 record when a request has been made;

36 whichever occurs first.

37 (b) If a person requests by mail or by facsimile a copy or copies of  
 38 a public record, a denial of disclosure does not occur until seven (7)  
 39 days have elapsed from the date the public agency receives the request.

40 (c) If a request is made orally, either in person or by telephone, a  
 41 public agency may deny the request orally. However, if a request  
 42 initially is made in writing, by facsimile, or through enhanced access,

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1 or if an oral request that has been denied is renewed in writing or by  
2 facsimile, a public agency may deny the request if:

- 3 (1) the denial is in writing or by facsimile; and  
4 (2) the denial includes:

5 (A) a statement of the specific exemption or exemptions  
6 authorizing the withholding of all or part of the public record;  
7 and

8 (B) the name and the title or position of the person responsible  
9 for the denial.

10 (d) This subsection applies to a board, a commission, a department,  
11 a division, a bureau, a committee, an agency, an office, an  
12 instrumentality, or an authority, by whatever name designated,  
13 exercising any part of the executive, administrative, judicial, or  
14 legislative power of the state. If an agency receives a request to inspect  
15 or copy a record that the agency considers to be excepted from  
16 disclosure under section 4(b)(19) of this chapter, the agency may  
17 consult with the counterterrorism and security council established by  
18 IC 10-19-8-1. If an agency denies the disclosure of a record or a part of  
19 a record under section 4(b)(19) of this chapter, the agency or the  
20 counterterrorism and security council shall provide a general  
21 description of the record being withheld and of how disclosure of the  
22 record would have a reasonable likelihood of threatening the public  
23 safety.

24 (e) A person who has been denied the right to inspect or copy a  
25 public record by a public agency may file an action in the circuit or  
26 superior court of the county in which the denial occurred to compel the  
27 public agency to permit the person to inspect and copy the public  
28 record. Whenever an action is filed under this subsection, the public  
29 agency must notify each person who supplied any part of the public  
30 record at issue:

- 31 (1) that a request for release of the public record has been denied;  
32 and  
33 (2) whether the denial was in compliance with an informal inquiry  
34 response or advisory opinion of the public access counselor.

35 Such persons are entitled to intervene in any litigation that results from  
36 the denial. The person who has been denied the right to inspect or copy  
37 need not allege or prove any special damage different from that  
38 suffered by the public at large.

39 (f) The court shall determine the matter de novo, with the burden of  
40 proof on the public agency to sustain its denial. If the issue in de novo  
41 review under this section is whether a public agency properly denied  
42 access to a public record because the record is exempted under section

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1 4(a) of this chapter, the public agency meets its burden of proof under  
 2 this subsection by establishing the content of the record with adequate  
 3 specificity and not by relying on a conclusory statement or affidavit.

4 (g) If the issue in a de novo review under this section is whether a  
 5 public agency properly denied access to a public record because the  
 6 record is exempted under section 4(b) of this chapter:

7 (1) the public agency meets its burden of proof under this  
 8 subsection by:

9 (A) proving that the record falls within any one (1) of the  
 10 categories of exempted records under section 4(b) of this  
 11 chapter; and

12 (B) establishing the content of the record with adequate  
 13 specificity and not by relying on a conclusory statement or  
 14 affidavit; and

15 (2) a person requesting access to a public record meets the  
 16 person's burden of proof under this subsection by proving that the  
 17 denial of access is arbitrary or capricious.

18 (h) The court may review the public record in camera to determine  
 19 whether any part of it may be withheld under this chapter. However, if  
 20 the complaint alleges that a public agency denied disclosure of a public  
 21 record by redacting information in the public record, the court shall  
 22 conduct an in camera inspection of the public record with the redacted  
 23 information included.

24 (i) In any action filed under this section, a court shall award  
 25 reasonable attorney's fees **and** court costs ~~and to the prevailing party~~  
 26 **as required under IC 34-52-1-1. In addition, the court shall award**  
 27 other reasonable expenses of litigation to the prevailing party if:

28 (1) the plaintiff substantially prevails; or

29 (2) the defendant substantially prevails and the court finds the  
 30 action was frivolous or vexatious.

31 The plaintiff is not eligible for the awarding of attorney's fees, court  
 32 costs, and other reasonable expenses if the plaintiff filed the action  
 33 without first seeking and receiving an informal inquiry response or  
 34 advisory opinion from the public access counselor, unless the plaintiff  
 35 can show the filing of the action was necessary because the denial of  
 36 access to a public record under this chapter would prevent the plaintiff  
 37 from presenting that public record to a public agency preparing to act  
 38 on a matter of relevance to the public record whose disclosure was  
 39 denied.

40 (j) A court may assess a civil penalty under section 9.5 of this  
 41 chapter only if the plaintiff obtained an advisory opinion from the  
 42 public access counselor before filing an action under this section as set

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1       forth in section 9.5 of this chapter.  
2       (k) A court shall expedite the hearing of an action filed under this  
3       section.  
4       SECTION 6. IC 24-2-3-5 IS AMENDED TO READ AS FOLLOWS  
5       [EFFECTIVE JULY 1, 2013]: Sec. 5. If:  
6             (1) a claim of misappropriation is made in bad faith;  
7             (2) a motion to terminate an injunction is made or resisted in bad  
8             faith; or  
9             (3) willful and malicious misappropriation exists;  
10       the court ~~may~~ **shall** award reasonable attorney's fees to the prevailing  
11       party **as required under IC 34-52-1-1.**  
12       SECTION 7. IC 24-4-7-5 IS AMENDED TO READ AS FOLLOWS  
13       [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) If a contract between a sales  
14       representative and a principal is terminated, the principal shall, within  
15       fourteen (14) days after payment would have been due under the  
16       contract if the contract had not been terminated, pay to the sales  
17       representative all commissions accrued under the contract.  
18       (b) A principal who in bad faith fails to comply with subsection (a)  
19       shall be liable, in a civil action brought by the sales representative, for  
20       exemplary damages in an amount no more than three (3) times the sum  
21       of the commissions owed to the sales representative.  
22       (c) In a civil action under subsection (b), a principal against whom  
23       exemplary damages are awarded shall pay the sales representative's  
24       reasonable attorney's fees and court costs. ~~However, if judgment is~~  
25       ~~entered for the principal and the court determines that the action was~~  
26       ~~brought on frivolous grounds, the court shall award reasonable~~  
27       ~~attorney's fees and court costs to the principal.~~  
28       SECTION 8. IC 26-1-2.1-108 IS AMENDED TO READ AS  
29       FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 108. (1) If the court as  
30       a matter of law finds a lease contract or any clause of a lease contract  
31       to have been unconscionable at the time it was made, the court may  
32       refuse to enforce the lease contract, or it may enforce the remainder of  
33       the lease contract without the unconscionable clause, or it may so limit  
34       the application of any unconscionable clause as to avoid any  
35       unconscionable result.  
36       (2) With respect to a consumer lease, if the court as a matter of law  
37       finds that a lease contract or any clause of a lease contract has been  
38       induced by unconscionable conduct or that unconscionable conduct has  
39       occurred in the collection of a claim arising from a lease contract, the  
40       court may grant appropriate relief.  
41       (3) Before making a finding of unconscionability under subsection  
42       (1) or (2), the court, on its own motion or that of a party, shall afford

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1 the parties a reasonable opportunity to present evidence as to the  
2 setting, purpose, and effect of the lease contract or clause thereof, or of  
3 the conduct.

4 (4) In an action in which the lessee claims unconscionability with  
5 respect to a consumer lease:

6 (a) If the court finds unconscionability under subsection (1) or (2),  
7 the court shall award reasonable attorney's fees to the lessee **as**  
8 **required under IC 34-52-1-1.**

9 (b) If the court does not find unconscionability and the lessee  
10 claiming unconscionability has brought or maintained an action  
11 the lessee knew to be groundless, the court shall award reasonable  
12 attorney's fees to the party against whom the claim is made **as**  
13 **required under IC 34-52-1-1.**

14 (c) In determining attorney's fees, the amount of the recovery on  
15 behalf of the claimant under subsections (1) and (2) is not  
16 controlling.

17 SECTION 9. IC 27-1-3.1-17 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 17. (a) No cause of  
19 action shall arise nor shall any liability be imposed against the  
20 commissioner, the commissioner's authorized representatives, or any  
21 examiner appointed by the commissioner for any statements made or  
22 conduct performed in good faith while carrying out the provisions of  
23 this chapter.

24 (b) No cause of action may arise, and no liability be imposed against  
25 any person for the act of communicating or delivering information or  
26 data to the commissioner or the commissioner's authorized  
27 representative or examiner pursuant to an examination made under this  
28 chapter, if that act of communication or delivery is performed in good  
29 faith and without fraudulent intent or the intent to deceive.

30 (c) This section does not abrogate or modify in any way any  
31 common law or statutory privilege or immunity enjoyed by any person  
32 identified in subsection (a).

33 (d) ~~A person identified in subsection (a) is entitled to an award of~~  
34 ~~attorney's fees and costs if that person is the prevailing party in a civil~~  
35 ~~cause of action for libel, slander or any other relevant tort arising out~~  
36 ~~of that person's activities in carrying out the provisions of this chapter~~  
37 ~~and if the court finds the action was frivolous, unreasonable,~~  
38 ~~groundless, or litigated in bad faith.~~

39 SECTION 10. IC 28-1-5-8.5 IS AMENDED TO READ AS  
40 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8.5. (a) A person may  
41 not commence a proceeding in the right of a corporation unless the  
42 person was a shareholder of the corporation when the transaction

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1 complained of occurred or unless the person became a shareholder  
 2 through transfer by operation of law from one who was a shareholder  
 3 at that time. The derivative proceeding may not be maintained if it  
 4 appears that the person commencing the proceeding does not fairly and  
 5 adequately represent the interests of the shareholders in enforcing the  
 6 right of the corporation.

7 (b) A complaint in a proceeding brought in the right of a corporation  
 8 must be verified and allege with particularity the demand made, if any,  
 9 to obtain action by the board of directors, and either that the demand  
 10 was refused or ignored or why the shareholder did not make the  
 11 demand. Whether or not a demand for action was made, if the  
 12 corporation commences an investigation of the charges made in the  
 13 demand or complaint (including an investigation commenced under  
 14 subsection (d)), the court may stay any proceeding until the  
 15 investigation is completed.

16 (c) A proceeding commenced under this section may not be  
 17 discontinued or settled without the court's approval. If the court  
 18 determines that a proposed discontinuance or settlement will  
 19 substantially affect the interest of the corporation's shareholders or a  
 20 class of shareholders, the court shall direct that notice be given to the  
 21 shareholders affected. On termination of the proceeding, the court **shall**  
 22 **award costs and attorney's fees to a prevailing party to the extent**  
 23 **required by IC 34-52-1-1. In addition, the court** may require the  
 24 plaintiff to pay any defendant's **other** reasonable expenses (~~including~~  
 25 ~~attorney's fees~~) incurred in defending the proceeding if it finds that the  
 26 proceeding was commenced without reasonable cause.

27 (d) Unless prohibited by the articles of incorporation, the board of  
 28 directors may establish a committee consisting of three (3) or more  
 29 disinterested directors or other disinterested persons to determine:

- 30 (1) whether the corporation has a legal or equitable right or  
 31 remedy; and
- 32 (2) whether it is in the best interests of the corporation to pursue  
 33 that right or remedy, if any, or to dismiss a proceeding that seeks  
 34 to assert that right or remedy on behalf of the corporation.

35 (e) In making a determination under subsection (d), the committee  
 36 is not subject to the direction or control of or termination by the board.  
 37 A vacancy on the committee may be filled by the majority of the  
 38 remaining members by selection of another disinterested director or  
 39 other disinterested person.

40 (f) If the committee determines that pursuit of a right or remedy  
 41 through a derivative proceeding or otherwise is not in the best interests  
 42 of the corporation, the merits of that determination shall be presumed

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1 to be conclusive against any shareholder making a demand or bringing  
 2 a derivative proceeding with respect to such right or remedy, unless  
 3 such shareholder can demonstrate that:

- 4 (1) the committee was not disinterested, as described in  
 5 subsection (g); or  
 6 (2) the committee's determination was not made after an  
 7 investigation conducted in good faith.

8 (g) For purposes of this section, a director or other person is  
 9 disinterested if the director or other person:

- 10 (1) has not been made a party to a derivative proceeding seeking  
 11 to assert the right or remedy in question, or has been made a party  
 12 but only on the basis of a frivolous or insubstantial claim or for  
 13 the sole purpose of seeking to disqualify the director or other  
 14 person from serving on the committee;  
 15 (2) is able under the circumstances to render a determination in  
 16 the best interests of the corporation; and  
 17 (3) is not an officer, employee, or agent of the corporation or of a  
 18 related corporation. However, an officer, employee, or agent of  
 19 the corporation or a related corporation who meets the standards  
 20 of subdivisions (1) through (2) shall be considered disinterested  
 21 in any case in which the right or remedy under scrutiny is not  
 22 assertable against a director or officer of the corporation or the  
 23 related corporation.

24 (h) For purposes of this section, "shareholder" includes a beneficial  
 25 owner whose shares are held in a voting trust or held by a nominee on  
 26 the owner's behalf.

27 SECTION 11. IC 31-17-4-3, AS AMENDED BY P.L.68-2005,  
 28 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2013]: Sec. 3. (a) In any action filed to enforce or modify an  
 30 order granting or denying parenting time rights, a court **shall award**  
 31 **costs and attorney's fees as required by IC 34-52-1-1 and may**  
 32 **award other reasonable expenses of litigation if the court finds that**  
 33 **a party engaged in conduct described in IC 34-52-1-1(b). In**  
 34 **addition, a court may award:**

- 35 (1) reasonable attorney's fees;  
 36 (2) court costs; and  
 37 (3) other reasonable expenses of litigation;

38 **based on other factors.**

39 (b) In determining whether to award reasonable attorney's fees,  
 40 court costs, and other reasonable expenses of litigation, the court may  
 41 consider among other factors

- 42 (†) whether the petitioner substantially prevailed and whether the

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1 court found that the respondent knowingly or intentionally  
2 violated an order granting or denying rights. ~~and~~  
3 ~~(2) whether the respondent substantially prevailed and the court~~  
4 ~~found that the action was frivolous or vexatious.~~

5 SECTION 12. IC 32-30-6-9.5, AS ADDED BY P.L.73-2012,  
6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2013]: Sec. 9.5. (a) ~~If a court finds that an agricultural~~  
8 ~~operation that is the subject of a nuisance action:~~

9 ~~(1) was not a nuisance under section 9 of this chapter and that the~~  
10 ~~nuisance action was frivolous; the court shall award court costs~~  
11 ~~and reasonable attorney's fees; to the defendant in the action; or~~  
12 ~~(2) was a nuisance under this chapter and that the defense of the~~  
13 ~~nuisance action was frivolous; the court shall award court costs;~~  
14 ~~including reasonable attorney's fees; to the plaintiff in the action.~~

15 ~~(b) Reasonable attorney's fees under subsection (a): awarded under~~  
16 ~~IC 34-52-1-1 in a nuisance action concerning an agricultural~~  
17 ~~operation:~~

18 ~~(1) shall be calculated based on the reasonable and customary~~  
19 ~~hourly rates charged in the county in which the action occurred;~~  
20 ~~and~~

21 ~~(2) may include fees for only one (1) attorney, no matter how~~  
22 ~~many attorneys were actually employed by the party.~~

23 ~~(c) The determination that an action was initiated or maintained~~  
24 ~~frivolously may not be based on the mere fact that a party did not~~  
25 ~~prevail.~~

26 SECTION 13. IC 34-6-2-38, AS AMENDED BY P.L.121-2009,  
27 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 JULY 1, 2013]: Sec. 38. (a) "Employee" and "public employee", for  
29 purposes of section 91 of this chapter, IC 34-13-2, IC 34-13-3,  
30 IC 34-13-4, ~~and~~ IC 34-30-14, ~~and~~ **IC 34-52-1-1**, mean a person  
31 presently or formerly acting on behalf of a governmental entity,  
32 whether temporarily or permanently or with or without compensation,  
33 including members of boards, committees, commissions, authorities,  
34 and other instrumentalities of governmental entities, volunteer  
35 firefighters (as defined in IC 36-8-12-2), and elected public officials.

36 (b) The term also includes attorneys at law whether employed by the  
37 governmental entity as employees or independent contractors and  
38 physicians licensed under IC 25-22.5 and optometrists who provide  
39 medical or optical care to confined offenders (as defined in IC 11-8-1)  
40 within the course of their employment by or contractual relationship  
41 with the department of correction. However, the term does not include:

42 (1) an independent contractor (other than an attorney at law, a

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- 1 physician, or an optometrist described in this section);
- 2 (2) an agent or employee of an independent contractor;
- 3 (3) a person appointed by the governor to an honorary advisory or
- 4 honorary military position; or
- 5 (4) a physician licensed under IC 25-22.5 with regard to a claim
- 6 against the physician for an act or omission occurring or allegedly
- 7 occurring in the physician's capacity as an employee of a hospital.

8 (c) For purposes of IC 34-13-3 and IC 34-13-4, the term includes a  
 9 person that engages in an act or omission before July 1, 2004, in the  
 10 person's capacity as:

- 11 (1) a contractor under IC 6-1.1-4-32 (repealed);
- 12 (2) an employee acting within the scope of the employee's duties
- 13 for a contractor under IC 6-1.1-4-32 (repealed);
- 14 (3) a subcontractor of the contractor under IC 6-1.1-4-32
- 15 (repealed) that is acting within the scope of the subcontractor's
- 16 duties; or
- 17 (4) an employee of a subcontractor described in subdivision (3)
- 18 that is acting within the scope of the employee's duties.

19 SECTION 14. IC 34-6-2-49, AS AMENDED BY P.L.90-2010,  
 20 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 21 JULY 1, 2013]: Sec. 49. (a) "Governmental entity", for purposes of  
 22 section 91 of this chapter, IC 34-13-2, IC 34-13-3, **and** IC 34-13-4, **and**  
 23 **IC 34-52-1-1**, means the state or a political subdivision of the state.

24 (b) "Governmental entity", for purposes of section 103(j) of this  
 25 chapter, means the state or a political subdivision of the state.

26 SECTION 15. IC 34-7-7-8 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. If a court finds that  
 28 a motion to dismiss made under this chapter is

- 29 ~~(1) frivolous; or~~
- 30 ~~(2) solely intended to cause unnecessary delay,~~
- 31 the plaintiff is entitled to recover reasonable attorney's fees and costs
- 32 to answer the motion.

33 SECTION 16. IC 34-12-3-4 IS AMENDED TO READ AS  
 34 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. If a court finds that  
 35 a party has brought an action under a theory of recovery described in  
 36 section 3(1) or 3(2) of this chapter, the finding constitutes conclusive  
 37 evidence that the action is groundless. If a court makes a finding under  
 38 this section, the court shall dismiss the claims or action. **and The court**  
 39 **shall** award to the defendant ~~any~~ reasonable attorney's fee fees and  
 40 costs incurred in defending the claims or action **in accordance with**  
 41 **IC 34-52-1-1.**

42 SECTION 17. IC 34-13-3-21 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 21. In any action  
 2 brought against a governmental entity in tort, the court ~~may~~ **shall** allow  
 3 attorney's fees as part of the costs to the governmental entity prevailing  
 4 as defendant if ~~the court finds that plaintiff:~~

5 (1) brought the action on a claim that is frivolous, unreasonable,  
 6 or groundless;

7 (2) continued to litigate the action after plaintiff's claim clearly  
 8 became frivolous, unreasonable, or groundless; or

9 (3) litigated its action in bad faith.

10 This award of fees does not prevent a governmental entity from  
 11 bringing an action against the plaintiff for abuse of process arising in  
 12 whole or in part on the same facts; but the defendant may not recover  
 13 such attorney's fees twice. **as provided in IC 34-52-1-1.**

14 SECTION 18. IC 34-13-4-4 IS AMENDED TO READ AS  
 15 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. In any action brought  
 16 against a governmental entity under civil rights laws of the United  
 17 States, the court ~~may~~ **shall** allow attorney's fees as part of the costs to  
 18 the governmental entity prevailing as defendant if ~~it finds that plaintiff:~~

19 (1) brought the action on a claim that is frivolous, unreasonable,  
 20 or groundless;

21 (2) continued to litigate the action after plaintiff's claim clearly  
 22 became frivolous, unreasonable, or groundless; or

23 (3) litigated its action in bad faith.

24 This award of fees does not prevent a governmental entity from  
 25 bringing an action against the plaintiff for abuse of process arising in  
 26 whole or in part on the same facts; but the defendant may not recover  
 27 attorney's fees twice. **as provided in IC 34-52-1-1.**

28 SECTION 19. IC 34-52-1-1 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) In all civil  
 30 actions, the party recovering judgment shall recover costs, except in  
 31 those cases in which a different provision is made by law.

32 (b) **Subject to this section,** in any civil action **commenced before**  
 33 **July 1, 2013,** the court may, **and in all civil actions commenced after**  
 34 **June 30, 2013, the court shall,** award **reasonable and necessary**  
 35 attorney's fees as part of the cost to the prevailing party, if the court  
 36 finds that **either party one (1) or more nonprevailing parties:**

37 (1) brought the action or defense on a claim or defense that is  
 38 frivolous, unreasonable, **vexatious,** or groundless;

39 (2) continued to litigate the action or defense after the party's  
 40 claim or defense clearly became frivolous, unreasonable,  
 41 **vexatious,** or groundless; or

42 (3) litigated the action in bad faith.

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1 (c) The award of fees under subsection (b) does not prevent a  
 2 prevailing party from bringing an action against another party for abuse  
 3 of process arising in any part on the same facts. However, the  
 4 prevailing party may not recover the same attorney's fees twice.

5 (d) **If there are several nonprevailing parties, only the**  
 6 **nonprevailing parties that engaged in or joined in the conduct**  
 7 **described in subsection (b)(1) through (b)(3) (and, to the extent**  
 8 **provided in section 4 of this chapter, any relator, person, or**  
 9 **corporation on whose behalf the applicable nonprevailing parties**  
 10 **are actual parties) shall be ordered to pay attorney's fees awarded**  
 11 **under this subsection. If a party prevailed on some issues and not**  
 12 **others, an order to pay attorney's fees under subsection (b) shall be**  
 13 **limited to attorney's fees related to issues on which the party did**  
 14 **not prevail.**

15 (e) This section supplements any other statute providing for the  
 16 award of attorney's fees to a prevailing party. If another statute:

17 (1) permits but does not require an award of attorney's fees or  
 18 other costs to a prevailing party, the other statute shall be  
 19 treated as not granting discretion to the court to deny an  
 20 award of attorney's fees or other costs to a prevailing party  
 21 under this section, if the court finds that a nonprevailing  
 22 party engaged in conduct described in subsection (b)(1)  
 23 through (b)(3); or

24 (2) prohibits or limits an award of attorney's fees or other  
 25 costs to a prevailing party, the other statute shall be treated  
 26 as not prohibiting or limiting an award of attorney's fees or  
 27 other costs to a prevailing party under this section, if the  
 28 court finds that a nonprevailing party engaged in conduct  
 29 described in subsection (b)(1) through (b)(3).

30 (f) A governmental entity or an employee of a governmental  
 31 entity acting within the employee's official capacity or under color  
 32 of law is not liable for attorney's fees awarded under subsection  
 33 (b).

34 (g) If this section and a provision of any of the following  
 35 statutes, as effective June 30, 2013, apply to an award of attorney's  
 36 fees or other costs for the same or similar conduct in a civil  
 37 proceeding commenced before July 1, 2013, the applicable  
 38 following statute and not this section applies to an award of  
 39 attorney's fees and other costs in the civil proceeding covered by  
 40 the statute:

41 IC 4-6-3-6

42 IC 5-8-1-35

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- 1 IC 5-11-5.5-6
- 2 IC 5-14-1.5-7
- 3 IC 5-14-3-9
- 4 IC 24-2-3-5
- 5 IC 24-4-7-5
- 6 IC 26-1-2.1-108
- 7 IC 27-1-3.1-17
- 8 IC 28-1-5-8.5
- 9 IC 31-17-4-3
- 10 IC 32-30-6-9.5
- 11 IC 34-7-7-8
- 12 IC 34-12-3-4
- 13 IC 34-13-3-21
- 14 IC 34-13-4-4.

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