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### Legislative Update 2023

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# Legislative Update 2023

June 27, 2023

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August 2020

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# **LEGISLATIVE UPDATE 2023**

June 27, 2023

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Jeffrey A. Lawson  
Program Director

# LEGISLATIVE UPDATE 2023



## Agenda

- 8:30 A.M. Registration & Coffee
- 8:55 A.M. Welcome and Introduction  
*Senator Eric. A. Koch, Program Chair*
- 9:00 A.M. Session 1  
*Senator Aaron M. Freeman*  
- SEA 287 – Probate and Trust Matters  
- SEA 343 – Criminal Matters  
- HEA 1287 – Home Detention Bill, A fix to the State v. Russell Case  
- HEA 1172 – Paternity Actions
- 9:30 A.M. Session 2  
*Senator Rodney Pol, Jr.*  
- SEA 317 – Government Contracting and Advanced Payments  
- SEA 415 – Admissibility of Juvenile Statements  
- SEA 286 – Credit Time  
- HEA 1365 – Machine Guns  
- SEA 353 – Political Subdivision Risk Management Fund  
- SEA 464 – Adult Court Jurisdiction over Delinquent Acts - The Neukam Fix
- 10:00 A.M. Session 3  
*Senator R. Michael Young*  
- SEA 161 - Unlawful Surveillance  
- SJR 1 – Proposed Constitutional Amendment on Bail  
- HEA 1447 – Matter Harmful to Minors – School Libraries  
- SEA 177 – School Board Candidate Filing  
- HEA 1334 – Absentee Ballots
- 10:30 A.M. Coffee Break
- 10:45 A.M. Session 4  
*Representative Christopher P. Jeter*  
- HEA 1570 – Adoptions and Foster Parents  
- SEA 166 – Statute of Limitations on Adverse Possession  
- HEA 1466 – Juror Compensation  
- SEA 331 – Deposition of a Child Sex Victim  
- HB 1006 – Mental Health and Emergency Detentions

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## LEGISLATIVE UPDATE 2023

### Agenda Continued



- 11:15 A.M.    Session 5  
*Representative Matthew S. Pierce*  
- SEA 5 – Consumer Data Protection
- 11:45 A.M.    Session 6– 2024 Look Ahead  
*Panel Discussion*  
This will include things such as emerging issues, evolving issues, trends, lessons learned, what should perhaps be re-thought, and unfinished business.
- 12:15 P.M.    Adjourn

June 27, 2023

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## LEGISLATIVE UPDATE 2023

### Faculty



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#### **Senator Aaron M. Freeman**

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#### **Representative Christopher P. Jeter**

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#### **Representative Matthew S. Pierce**

Indiana House of Representatives  
Indiana House Democratic Caucus  
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Indianapolis, IN 46204  
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#### **Senator Rodney Pol, Jr.**

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City of Gary Law Department  
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Gary, IN 46402  
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#### **Senator R. Michael Young**

Indiana State Senate - District 35  
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June 27, 2023

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### **Contact Information**

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812-337-3120

The firm is led by Eric A. Koch, who brings over 33 years of experience to his clients.

An 8th generation Hoosier, Eric grew up on a grain and livestock farm, where he learned the value of hard work.

He earned a Bachelor's Degree from Georgetown University and worked on President Ronald Reagan's re-election campaign in the Office of Political Affairs at the Reagan-Bush '84 Committee.

While earning his Juris Doctorate at the Indiana University School of Law, he clerked at the Bloomington law firm of McDonald, Barrett & Dakich.

He has been engaged in the private practice of law with offices in Bloomington since 1989 and Bedford since 2003. He is a member of the Monroe and Lawrence County Bar Associations, the Indiana State Bar Association, the Million Dollar Advocates Forum, the Multi-Million Dollar Advocates Forum, and founded and served as the first President of the Indiana Creditors Bar Association.

In 2002, he was elected to the Indiana House of Representatives, where he served until being elected to the Indiana State Senate in 2016. His legislative service has been recognized by, among others, the Indiana Judges Association (Champion of Justice Award), the Indiana Trial Lawyers Association (Legislator of the Year 2008 and 2015), the Indiana Pro Bono Commission (Randall T. Shepard Award), Kentucky Governor Ernie Fletcher (Kentucky Colonel), and Indiana Governor Mike Pence (Sagamore of the Wabash).

He currently serves as Chairman of the Senate Utilities Committee, Ranking Member of the Senate Judiciary and Commerce & Technology Committees, and as a member of the Senate Corrections & Criminal Law Committee.

## Education

- [Georgetown University](#) (Bachelor of Science, Business Administration, 1987)
- [Indiana University School of Law](#), Bloomington (Doctorate of Jurisprudence, 1989)
- [Indiana University School of Law](#), Indianapolis (Civil Mediation Certificate, 2017)
- [University of Idaho, College of Business and Economics](#) (Graduate Certificate in Energy Policy Planning, 2017)
- Southern Methodist University, Cox School of Business, [Southwestern Graduate School of Banking](#) (Community Bank Director Certification, 2019)

## Admitted to Bar, 1989, Indiana

## Court Admissions

- [U.S. Supreme Court](#)
- U.S. Court of Appeals: [Sixth](#), [Seventh](#), and [District of Columbia](#) Circuits
- [U.S. Court of Appeals for the Federal Circuit](#)
- [U.S. Court of Federal Claims](#)
- U.S. District Court, [Northern](#) and [Southern](#) Districts of Indiana
- U.S. Bankruptcy Court, [Northern](#) and [Southern](#) Districts of Indiana
- [U.S. Court of International Trade](#)
- [U.S. Tax Court](#)

A nationally-recognized leader in energy policy, he serves as co-chairman of the Energy Supply Task Force of the National Conference of State Legislatures, as a member of the Executive Committee of the National Council on Electricity Policy, and holds a graduate certificate in Energy Policy Planning from the University of Idaho. He also served as a member of the Federal Communications Commission Consumer Advisory Committee from 2018—2022. He focuses on energy, telecommunications, and water policy interactions in Indiana and nationally.

He has served as a member of the Indiana Commission on Courts (2007—2011), the Indiana Probate Code Study Commission (2005—2007, 2013—2014, 2019—present), the Indiana Military Base Planning Council (2005—2019), the Board of Trustees of the Indiana Criminal Justice Institute (2006—2011), and the Indiana Public Defender Commission (2017—present). He represents Indiana as a Commissioner on The National Conference of Commissioners on Uniform State Laws (2018—present). As a member of the Indiana Supreme Court's Commercial Courts Committee (2019—present), he provides guidance to Indiana's Commercial Courts. He was appointed by the Indiana Supreme Court to serve on its Innovation Initiative (2019—present) to advise the Supreme Court on opportunities to increase efficiency and accessibility through innovative technology and case management, analysis of court reform, and development and testing of pilot programs related to court reform.

Eric frequently serves as a faculty member teaching continuing legal education courses, including for the Indiana State Bar Association and the Indiana Continuing Legal Education Forum. He enjoys teaching lawyers about new developments in the law

- [U.S. Court of Appeals for the Armed Forces](#)
- [U.S. Court of Appeals for Veterans Claims](#)
- [Indiana Supreme, Appellate and Tax Courts](#)
- All Indiana State Trial Courts

## Registered Mediator

Civil Mediator registered by the Indiana Supreme Court

## Insurance License

Real Estate Title Insurance Producer licensed by the [Indiana Department of Insurance](#)

## Elected Office

- Member, [Indiana State Senate](#), 2016—present
- Member, [Indiana House of Representatives](#), 2002—2016

and sharing his insights into the legislative process.

He is a registered civil mediator, having earned a civil mediation certificate from the Indiana University McKinney School of Law, studying under ADR expert John Krauss. Eric enjoys using the combination of his mediation skills and litigation experience to help parties settle cases and resolve disputes.

Eric is frequently appointed by judges to serve as a court-appointed fiduciary with responsibilities such as a trustee, federal multidistrict litigation plaintiffs' steering committee member, special administrator, and personal representative.

A licensed Indiana title insurance producer, he founded Indiana Title Insurance Company in 2015 and serves as its President. His business experience also includes real estate, as President of White River Properties, Inc.; agriculture, as a partner in Koch Farms; and healthcare, as a former board member and Chairman of the Board of Dunn Memorial Hospital and St. Vincent Dunn Hospital.

He is a member of the Boards of Directors of Mid-Southern Savings Bank, FSB and its holding company Mid-Southern Bancorp, Inc. (NASDAQ: MSVB).

His leadership in the non-profit sector has included service as a member of the Board of Governors of the Society of Indiana Pioneers, as a member of the Executive Board of the Hoosier Trails Council of the Boy Scouts of America, as a member of the Mitchell Urban Enterprise Association Board, and as a member of the Georgetown University Alumni Admissions Committee.

## Honors and Awards

- Named a [Sagamore of the Wabash](#) by Governor Mike Pence
- Named a [Kentucky Colonel](#) by Governor Ernie Fletcher
- [Guardian of Small Business Award](#) from the National Federation of Independent Business (2019)
- [Champion of Justice Award](#) from the Indiana Judges Association (2016)
- [Randall T. Shepard Award](#) from the Indiana Pro Bono Commission (2012)
- Commitment to Rural Water Excellence Award, Alliance of Indiana Rural Water (2022)

- Senator of the Year, Aviation Indiana (2020)
- 2019 Legislator of the Year, The Arc of Indiana (2020)
- Legislative Excellence Award, Indiana Prosecuting Attorneys Council (2018 & 2021)
- Legislator of the Year, Indiana Chapter National Association of Water Companies (2018)
- Legislator of the Year, Mothers Against Drunk Driving (2017)
- Legislative Service Award, Indiana Municipal Power Agency (2017)
- National Active & Retired Federal Employees Association (2016)
- Outstanding Achievement in State Tax Reform Award, Tax Foundation (2015)
- Legislator of the Year, Indiana Volunteer Firefighters Association (2015)
- Champion of Indiana's Electric Cooperatives (2015)
- Legislator of the Year, Indiana Trial Lawyers Association (2008 & 2015)
- Legislator of the Year, Indiana Telecommunications Association (2011)
- Cordry-Sweetwater Conservancy District (2010)
- President's Award, Southern Indiana Center for Independent Living (2006 & 2008)
- Legislative Leadership Award, Indiana Rural Health Association (2006)
- Government Leadership Award, Greater Bloomington Chamber of Commerce (2005)
- Indiana Speech - Language - Hearing Association (2005)
- Corporation for Educational Technology (2004)
- Southern Indiana Drug Task Force (2004)

### **Public Service:**

- [Midwestern Radioactive Materials Transportation Committee](#), 2022—present
- Member, Indiana Geological & Water Survey Advisory Council, 2022—present
- Member, Executive Committee of the National Council on Electricity Policy (NCEP), 2019—present
- Commissioner, National Conference of Commissioners on Uniform State Laws, 2018—present
- Member, [Indiana Public Defender Commission](#), 2017—present
- Member, Indiana Supreme Court Innovation Initiative, 2019—present
- Member, Indiana Commercial Courts Committee, 2019—present
- Member, Consumer Advisory Committee, Federal Communications Commission (FCC), 2018—2022
- Board Member, Mitchell Urban Enterprise Association, 2017—2020
- Member, Indiana Military Base Planning Council, 2005—2019
- Member, Indiana Commission on Courts, 2007—2011
- Member, Indiana Probate Code Study Commission, 2005—2007, 2013—2014, 2019—present)
- Trustee, Indiana Criminal Justice Institute, 2006—2011
- Member, Board of Advisors, Oakland City University - Bedford, 2008—2011

### **Faculty:**

- “Energy Policymaking in Indiana”, Legislative Energy Horizon Institute, Washington, DC, 2022
- "Indiana's Broadband Grant Programs: Legislative Insight for Then and Now", Indiana Law Review Broadband Symposium, Connecting the World: Rural Broadband Issues & Opportunities, 2022
- “Leadership Lens: Policy, Power, and Pipelines”, Indiana Energy Association Annual Energy Conference, French Lick, Indiana, 2022
- “The Evolving Customer: Resilience and the Local Economy”, National Council on Electricity Policy Annual Meeting, Washington, DC, 2022

- “Pillars and Principles of Utility Policymaking in Indiana”, Indiana State Bar Association Utility Law Section Annual Conference, 2022
- “Federalism and Broadband Spending: Finding the Right Approach”, The Federalist Society National Lawyers Convention, Washington, DC, 2021
- “Legislative Update 2021: New Laws that Impact Your Practice”, Hoosier Hills Estate Planning Council, 2021
- “Service of Lawyer-Legislators in the Indiana General Assembly”, Indianapolis Bar Association, 2007—2016, 2018—2023
- “Utilities and Energy”, 29th Annual Dentons Legislative Conference, 2020
- “Legislative Update”, Defense Trial Counsel of Indiana 27th Annual Conference, 2020
- “Building the 21st Century Energy Workforce”, National Conference of State Legislatures Teleforum, 2020
- “Legislative Update”, Indiana Continuing Legal Education Forum, 2012—2022 (Chair, 2017—2022)
- Bench Bar Conference, Monroe County Bar Association, 2013, 2018, 2020
- “Water Utility Consolidation”, American Water Summit, Houston, Texas, 2019
- “Connecting Rural America: Teleforum on Practical Solutions for Closing the Rural Digital Divide”, New York Law School, 2019
- “Legislative Update,” Indiana State Bar Association, 2013—2017
- Leadership Development Academy, Indiana State Bar Association, 2013, 2014, 2016
- “Patent Trolling”, Indiana State Bar Association Solo & Small Firm Conference, 2016
- “Energy Challenges and Opportunities”, Indiana Industrial Energy Consumers, 2013
- “Law of Bullying in Indiana”, Indiana State Bar Association, 2012
- Advanced Communications Law and Policy Institute Summit, New York Law School, 2012
- “State Law and Energy Policy”, Robert H. McKinney School of Law, Indiana University, 2009
- “Collection Law in Indiana”, Lorman Education Seminars, 1998

## Governing Board Service

- Member, Board of Governors, [Society of Indiana Pioneers](#), 2014—present
- Member, Executive Board, [Hoosier Trails Council of the Boy Scouts of America](#), 2016—2019
- Chairman, Board of Directors, St. Vincent Dunn Hospital, 2010—2014
- Member, Board of Governors, Dunn Memorial Hospital, 1999—2010 (Chairman, 2001—2010)
- Member, Board of Directors, National Legal Center for the Medically Dependent and Disabled, 1993—2013
- Member, Board of Directors, Indiana Heritage Arts, Inc., 1999—2001

## Professional Memberships

- [Million Dollar Advocates Forum and Multi-Million Dollar Advocates Forum](#)
- [Indiana State Bar Association](#)
- [Monroe County Bar Association](#) (Secretary, 1991; 2002)
- Lawrence County Bar Association
- Indiana Creditors Bar Association (Founder and President, 1995—1996)



MILLION DOLLAR ADVOCATES FORUM



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MULTI-MILLION DOLLAR ADVOCATES FORUM



**Sen. Aaron M. Freeman**, The Freeman Law Office, LLC, Indianapolis



*Aaron Freeman* loves being a lawyer and is driven to help you achieve the best outcome possible. It is a great honor for him to help others with their problems and assist them through the legal process. Aaron has the best interests of his clients in mind with every decision he makes. Aaron's diverse background and understanding of the legal process is an asset to his clients.

In 2009 Aaron began his private practice career, focusing mostly on family law and criminal law cases. Since then, his practice has grown to include many different types of litigation cases, estate planning, and corporate law.

Aaron handles a broad range of cases. From criminal defense cases to estate planning and family law matters, Aaron is the attorney you need by your side.

Aaron began his legal career working as a Deputy Prosecutor in Marion County for nearly five years. Aaron prosecuted all level of crimes, from misdemeanors to murder. He served in the Grand Jury Division of the Marion County Prosecutor's Office for 3 years, prosecuting white collar crimes and other cases resulting from complex investigations. Aaron also served in the Homicide Unit, prosecuting murder and attempted murder cases. Through these positions, he gained valuable courtroom experience and an understanding of how to effectively navigate the legal process.

While in law school, Aaron clerked for Judge Joe Billy McDade, the Chief Federal District Court Judge in the Central District of Illinois. Aaron also clerked for the United States Attorney's Office in the Central District of Illinois, gaining experience prosecuting crimes at the federal level. Prior to his legal career, Aaron was an Emergency 911 Dispatcher in Franklin County, Indiana and an Emergency Medical Technician.



**Rep. Christopher P. Jeter**, Massillamany Jeter & Carson LLP, Fishers



*Chris Jeter* is an equity partner at Massillamany Jeter & Carson LLP. Mr. Jeter is a well-respected litigator and business advisor with over 15 years of experience representing companies and individuals in a multitude of legal issues before state and federal courts nationwide. He current serves as outside counsel to small and medium-sized businesses throughout Indiana and the entire Midwest. Mr. Jeter also has a strong business litigation practice which specializes in complex commercial disputes, consumer financial services litigation, director/officer liability, securities fraud, product liability, and general civil litigation. In addition to his corporate and litigation work, Mr. Jeter represents several government entities. He is particularly passionate about veterans' issues and represents veteran-owned small businesses and helps them grow, expand, and secure contracts. He also maintains a robust and growing estate planning and probate administration practice. Since August 2020, Mr. Jeter has served the people of District 88 in the Indiana House of Representatives, which includes portions of Marion, Hamilton, and Hancock counties.

**Rep. Matthew S. Pierce**, Indiana House of Representatives, Indianapolis



*State Representative Matt Pierce* serves as the Assistant Democratic Floor Leader and is the ranking minority member of the Indiana House Utilities, Energy and Telecommunications Committee. He also serves on the Courts and Criminal Code, Rules and Legislative Procedures committees, and the Statutory Committee on Ethics.

Pierce received a bachelor's in telecommunications and political science from Indiana University in 1984. In 1987, he graduated from the Indiana University School of Law at Bloomington. He has been admitted to practice law in Indiana, Colorado, Pennsylvania, and the District of Columbia.

Pierce was an intern for the U.S. House of Representatives Subcommittee on Telecommunications, Consumer Protection and Finance, and served as a legal clerk for the National Association of Broadcasters.

From 1999 through 2001, Pierce served as chief of staff for former Congressman Baron Hill (9th District–Indiana).

He served as the principal clerk of the Indiana House of Representatives from 1996 to 1998. He began working for the Indiana General Assembly in 1988 and has held the positions of legislative assistant, research and policy analyst, and attorney.

Pierce first became involved in local government as a consumer watchdog on the Bloomington Telecommunications Council. In 1995, he was elected to represent Bloomington's Third District on the City Council.

Pierce was first elected to the Indiana House of Representatives in 2002.

**Sen. Rodney Pol, Jr.**, City of Gary - Law Department



*Senator Rodney Pol, Jr.* is from Gary, Indiana, and he represents District 4. Indiana Senate District 4 encompasses portions of northern Porter County and Michigan, Coolspring and New Durham townships in LaPorte County.

**Sen. R. Michael Young**, Indiana State Senate - District 35, Indianapolis



In 1986, *Sen. R. Michael Young* began his career as a public servant after being elected to the Indiana House of Representatives for District 92. Sen. Young served in the House until his election to the Indiana State Senate in 2000 for District 35, representing Guilford and Liberty Townships in Hendricks County as well as Decatur Township and portions of Wayne Township in Marion County.

During his career in the Indiana General Assembly, Sen. Young has been recognized for his service and expertise in the areas of criminal law, pensions, elections, civil rights and veteran's affairs.

In 2012, Sen. Young was appointed Chairman of the prominent Senate Standing Committee on Corrections and Criminal Law. In this position, he has presided over important legislation affecting the implementation of criminal justice in Indiana.

In addition to his work on the Corrections and Criminal law committee, Sen. Young serves on the Senate committees for Elections, Civil Law, and is the ranking member of the Senate Judiciary committee.

Sen. Young received his Juris Doctorate degree from Indiana University School of Law, Indianapolis in 2009 and is a private practice attorney while the legislature is not in session.

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## **Section One**

**2023 Session in Review..... Senator Aaron M. Freeman**

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# **Section One**

# **2023 Session in Review**

**Senator Aaron M. Freeman**  
The Freeman Law Office, LLC  
Indianapolis, Indiana

## **Section One**

**2023 Session in Review..... Senator Aaron M. Freeman**

PowerPoint Presentation

# 2023 Session In Review

State Senator Aaron Freeman

June 1, 2023



# Senate Enrolled Act 287

- Senate Enrolled Act 287 was the Indiana State Bar Association's omnibus probate and trust update and technical corrections bill.
- The Governor signed this legislation on April 20, 2023.
- All provisions are effective for decedents dying or for decisions made or actions taken on or after July 1, 2023.



## Pre-mortem validation of Wills and trust instruments while the testator or settlor is still alive.

- For both wills and revocable trusts, SEA 287 creates a new optional pre-mortem validation procedure that the living testator (for a Will) or a living settlor (for a revocable or irrevocable trust) can use to bar the filing of a will contest or trust contest after death.
- *[sections 3 and 18 of the Act, adding new I.C. § 29-1-7-16.5 and amending I.C. § 30-4-6-14].*





## Pre-mortem validation of Wills and trust instruments while the testator or settlor is still alive.

- For clients who want to bar after-death challenges to their estate plans, these optional procedures are less onerous than the currently available remedy: a declaratory judgment action filed by the testator or settlor against the beneficiaries and against potential challengers.



## Pre-mortem validation of Wills and trust instruments while the testator or settlor is still alive.

- Here is the procedure that a living testator or settlor will use if he or she chooses to do pre-mortem validation:

1. The testator or settlor sends a complete copy of the Will or trust instrument AND a notice with specified content to each beneficiary or disinherited person whose later claims (after death) need to be barred.

2. If the living testator uses the new statute to protect his or her Will against a future contest, the statutory 90-day notice also must be sent to each person who would be an intestate heir of the testator if he or she died without a valid Will on the date the notice is sent.



## Pre-mortem validation of Wills and trust instruments while the testator or settlor is still alive.

3. The notice must inform each recipient that he or she has 90 days in which to file an action to challenge the validity of the Will or trust on the grounds of lack of capacity, undue influence, etc.
4. If a recipient of the notice does not commence an action within the 90-day period, a contest action by that recipient after the settlor's or testator's death is barred.
5. If the settlor or testator signs a new trust instrument or Will after using this new statute, he or she must start the notice process all over again in order to bar an after-death contest to challenge the new Will or trust.



## New guardianship procedure to obtain a medical report or records on incapacity via a “confidential health disclosure order.”

- In proceedings to establish adult guardianships, the local probate court rules in several of Indiana’s most populous counties (including Marion, Hamilton, Tippecanoe, and Vanderburgh) require the filing of a “physician’s report” or other written medical evidence of the adult’s incapacity *either* at the time the guardianship petition is filed *or* at the time of the initial hearing (Marion County requires the filing of a physician’s report when the initial petition is filed).



## New guardianship procedure to obtain a medical report or records on incapacity via a “confidential health disclosure order.”

- Although it is currently quite common for capacity or incapacity determinations to be made by clinical psychologists, neuropsychologists, or even physician assistants or nurse practitioners, all of the above-mentioned local probate rules require the written report to be signed by a licensed “doctor” or “physician,” and this can create a practical obstacle to establishing even a limited guardianship for an incapacitated adult who does need a guardianship.



## **New guardianship procedure to obtain a medical report or records on incapacity via a “confidential health disclosure order.”**

- If the alleged incapacitated adult (AIA) is not able or willing to sign a HIPAA authorization to allow the petitioner and his or her lawyer to obtain the relevant medical records or report and if there is no other “personal representative” who has been given record-release authority under the HIPAA Privacy Rule (45 C.F.R. Part 160), this can create a “chicken-or-egg” problem that prevents the filing of or a hearing on a guardianship petition. Obviously, unless there is demonstrable and immediate emergency threat to the AIA’s health or safety, health care providers are generally terrified of violating HIPAA rules and will refuse to disclose any medical records or reports without a valid HIPAA authorization or court order (Bare subpoenas are not sufficient unless the issuer complies with additional requirements in the HIPAA regulations).





## New guardianship procedure to obtain a medical report or records on incapacity via a “confidential health disclosure order.”

- A similar medical-record-access problem exists for adult individuals who are currently under guardianship. The guardianship might have been hastily or improvidently established; the scope of the guardianship might be broader than was necessary or currently necessary; or the protected adult’s health and condition may have improved to the point where it would be in his or her best interests to terminate or limit the guardianship.
- But the protected adult may bind that he or she cannot induce a health care provider to produce relevant medical records or an updated report, because health care providers may regard the court-appointed guardian as the only person authorized to release the medical records or personal health information (PHI) of the protected adult.



## **New guardianship procedure to obtain a medical report or records on incapacity via a “confidential health disclosure order.”**

- Sections 9 through 15 of SEA 287 address these problems by creating a new statutory procedure for petitioning for a “confidential health disclosure order,” which in turn allows the petitioner to obtain relevant medical records or an existing or new medical or psychological report on the capacity or incapacity of the alleged incapacitated adult (AIA). SEA 287 adds new I.C. § 29-3-4-1.5 and amends I.C. §§ 29-3-8-8, 29-3-12-1, and 29-3-12-5.





## **New guardianship procedure to obtain a medical report or records on incapacity via a “confidential health disclosure order.”**

- (i) The new procedures are based on a procedure already available under a hard-to-find provision of the federal HIPAA privacy regulation [45 C.F.R. § 164.512(e)].
- (ii) Any interested person can petition the probate court for an order to obtain either existing medical records about the AIA or a new medical report on that adult’s capacity.
- (iii) The probate court must appoint a guardian ad litem for the AIA unless he or she already has an attorney of record.



## **New guardianship procedure to obtain a medical report or records on incapacity via a “confidential health disclosure order.”**

- (iv) The probate court must schedule and hold a hearing on the petition and the relevant health care provider(s) and all other interested persons must receive notice and an opportunity to attend the hearing and file objections.
- (v) If the court issues an order for a health care provider to disclose existing medical records or a new report on capacity, the records and report must be filed first and only with the court.



## **New guardianship procedure to obtain a medical report or records on incapacity via a “confidential health disclosure order.”**

- (vi) The court shares the medical records or report with the AIA and his or her GAL or counsel, and the court decides whether the records or report contain sufficient evidence of incapacity to warrant sharing the medical records or report with the other parties.
- (vii) All medical records or reports produced and disclosed in the proceeding can be used only in guardianship or related proceedings involving the AIA and will remain confidential case records.



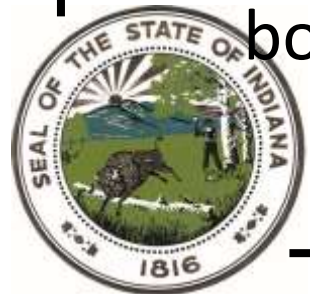
## **New guardianship procedure to obtain a medical report or records on incapacity via a “confidential health disclosure order.”**

- (viii) An adult who is subject to an existing guardianship and who believes that the guardianship is no longer necessary or should be made limited has the right to petition for a confidential health disclosure order to obtain his or her own records.



## Clarifying the probate court's discretion to reduce or waive the bond requirement for a non-resident personal representative of an unsupervised estate.

- Currently, I.C. § 29-1-10-1 appears to impose strict minimum requirements for the amount of a surety bond that a non-resident personal representative must post as a condition to being appointed. Solely for unsupervised estates, I.C. § 29-1-7.5-2.5 says that the probate court has discretion to “adjust” the bond that a non-resident P R must post, but that authority has not been consistently applied throughout Indiana.
- Sections 7 and 8 of SEA 287 amends both of those Probate Code sections to confirm that if an estate will be unsupervised, the probate court has the discretion to reduce a non-resident P R's “required” bond amount to zero (i.e., to waive the bond requirement).



## Distribution of undistributed assets of a revoked revocable trust after death of settlor.

- Section 16 of SEA 287 amends I.C. § 30-4-3-1.5 to clarify what should happen to the assets of a revocable trust if the settlor revokes the trust but if the settlor dies before the trustee (who may also be the settlor) distributes or delivers the assets of the revoked trust. If the trust instrument itself is silent on this issue, the new “default rule” is that the revoked trust’s assets become assets of the deceased settlor’s estate.



**Confirming the discretionary power of a trustee to pay reimbursements to the settlor or other deemed owner of a grantor trust for part or all of trust income taxes that the deemed owner personally pays.**

- For estate and gift tax planning purposes, a high-net-worth individual may create an irrevocable grantor trust — a trust to which completed gifts can be made, so that the assets of the trust are not included in the settlor's or any donor's "estate" for estate tax purposes, but where the trust is treated as the alter ego of the settlor or another deemed owner solely for income tax purposes. All of the trust's income will be taxable to the settlor or other deemed owner, and when the deemed owner uses personal funds to pay those trust income taxes, that is the equivalent of making additional non-taxable gifts to the trust's beneficiaries. Irrevocable grantor trusts are often created to receive taxable gifts or installment sales of appreciating assets.





**Confirming the discretionary power of a trustee to pay reimbursements to the settlor or other deemed owner of a grantor trust for part or all of trust income taxes that the deemed owner personally pays.**

- Under current federal law (Revenue Ruling 2004-64, 2004-27 I.R.B. 7), if an independent trustee or independent trust director has the discretionary power but not the obligation to reimburse the grantor trust's deemed owner for income taxes that he or she pays from personal funds, neither the existence nor the exercise of that reimbursement power will cause the trust assets to be included in the deemed owner's "estate" for estate tax purposes.
- Section 17 of SEA 287 adds to the Trust Code a new section 30-4-3-38, which provides that unless the trust instrument provides otherwise, the trustee of each grantor trust has an explicit statutory power, but not an obligation, to use trust principal or income to make discretionary reimbursements to the grantor trust's deemed owner for income taxes that the deemed owner used personal funds to pay on the grantor trust's income.





## Authority to apply for means-tested public benefits; resolving potential conflict between authority of Agent under POA and health care representative under an Advance Directive.

- Under any “advance directive for health care” that is signed during or after 2021, each named health care representative (HCR) is presumed to have the authority to apply for means-tested public benefits (Medicaid, CHOICE, SSI, etc.) on behalf of the declarant unless the advance directive’s text specifically says otherwise (see I.C. §§ 16-36-7-10(2) and 16-36-7-36(a)(6)).
- But some individuals who sign new advance directives may have previously signed — and forgotten about — durable powers of attorney that contain health care powers, that name different persons as the Agents or attorneys in fact, and which also expressly or impliedly grant authority to apply for means tested public benefits. Because the signing of a new advance directive does not automatically supersede the earlier, broader POA, two or more different people could have the authority to prepare and submit a Medicaid application on behalf of the same individual.



## **Authority to apply for means-tested public benefits; resolving potential conflict between authority of Agent under POA and health care representative under an Advance Directive.**

- Section 19 of SEA 287 resolves this potential conflict by adding two new subsections to I.C. § 30-5-5-16 (the “health care powers” section in the POA statute), which provide that if authority to apply for public benefits is held by both a HCR and a different Agent under a durable POA, the Agent’s authority under the POA supersedes the authority of the HCR under the advance directive, unless the advance directive explicitly says otherwise.



## Making pre- and post-marital agreements for estate tax “portability elections” explicitly enforceable.

- Since the unused lifetime estate tax exclusion amount (DSUE amount) became “portable” and “transferable” between a deceased spouse and a surviving spouse after 2010, it has become increasingly common for couples to negotiate and add to their prenuptial agreements a provision that requires the deceased spouse’s executor to make a portability election if the marriage ends by the death of one spouse instead of by divorce. However, current Indiana law does not address what consideration would be adequate for a portability election provision included in a prenuptial agreement. Current Indiana law also says nothing about what consideration would be adequate for a portability election provision in a post-marital agreement.



## Making pre- and post-marital agreements for estate tax “portability elections” explicitly enforceable.

- Sections 20 and 21 of SEA 287 add two new sections (I.C. §§ 31-11-3-5.5 and 31-11-7-5) to title 31, to add a definition of “portability agreement” and to make “portability agreements” within prenuptial agreements and post-marital agreements enforceable without separate or additional consideration. Further, and because the making of a portability election allows the IRS to hold the statute of limitations open with respect to the correct calculation of the deceased spouse’s DSUE amount, a portability agreement can require the successors in interest of each spouse to cooperate and communicate with the others in later years, as necessary to respond to IRS inquiries.



## Technical corrections to statutory notice provisions in the Probate Code.

- Sections 2, 5 and 6 of SEA 287 make additional technical corrections to conform the Probate Code (I.C. §§ 29-1-7.5-1 and 29-1-7.5-1.5) to current estate administration practice, where the probate court clerk electronically signs and issues statutory notices, but the personal representative or her or his attorney serves the notices by mail and then e-files a certification of mailing. These corrections were accidentally stripped out of 2022 House Enrolled Act 1208 before it was passed.



## Allowing living will declarations be signed with one notarized acknowledgement.

- Finally, and for those Hoosiers who (against all logic and reason) want to sign a living will declaration but cannot easily arrange to sign in the presence of two disinterested witnesses), on and after July 1, 2023, section 1 of SEA 287 amends I.C. § 16-36-4-8 to allow the declarant to sign and acknowledge a living will declaration in the presence of a notary public instead of with the signatures of two witnesses.



## House Enrolled Act 1458 (P.L. 86-2023): Fixing inconsistencies in the out-of-hospital DNR and POST statutes.

- House Enrolled Act 1458 will be effective on and after July 1, 2023. It was signed by Governor Holcomb on April 20, 2023.
- When an individual suffers cardiac or pulmonary arrest at home, or somewhere out in public, or while traveling between health care facilities, if someone called 911 or if EMS personnel are otherwise on the scene, EMS personnel must attempt CPR unless they see a medical order telling them not to resuscitate.





## House Enrolled Act 1458 (P.L. 86-2023): Fixing inconsistencies in the out-of-hospital DNR and POST statutes.

- Indiana has two statutes which permit individual patients and their doctors to put in place medical orders that can apply outside hospitals and nursing facilities, and which can direct EMS personnel and other providers to NOT do CPR. One is the “out of hospital DNR declaration and order” under IC 16-36-5, which has been available for decades, and the other is the Physician Orders for Scope of Treatment or POST form, which has been available since July 2013 and which can contain a DNR or “code status” order in case of cardiac or pulmonary arrest.





## House Enrolled Act 1458 (P.L. 86-2023): Fixing inconsistencies in the out-of-hospital DNR and POST statutes.

- Only a small subset of adult patients are eligible to have and to sign an out-of-hospital DNR order or a POST. Essentially, these are patients who have underlying chronic or terminal health problems that are so serious that if such a patient suffered cardiac or pulmonary arrest and if CPR was done or attempted, then in the words of both statutes, “resuscitation would be unsuccessful or within a short period the person would experience repeated cardiac or pulmonary failure resulting in death.” I.C. §§ 16-36-5-10(2) and 16-36-6-5(4). The POST statute adds other qualifying criteria: advanced chronic progressive illness or advanced chronic progressive frailty.



## House Enrolled Act 1458 (P.L. 86-2023): Fixing inconsistencies in the out-of-hospital DNR and POST statutes.

- For example, most patients with metastatic cancer, COPD, or congestive heart failure would qualify to sign an out of hospital DNR declaration and order or a POST, and to have it approved by their doctor.
- Since 1987, Indiana's health care consent laws have allowed certain individuals standing in particular relationships to a patient to sign consents to health care (or to consent to the refusal or stopping of health care) on behalf of that patient IF that patient lacks the capacity to consent AND IF there is no health care representative who has been appointed in writing by that patient and who is able and available to consent. In 2018, these individuals (spouse, adult children, parents, adult siblings, etc.) got listed in a hierarchy or priority order in I.C. § 16-36-1-5, and the same hierarchy and rules also appear in I.C. § 16-36-7-42, within the "advance directives" chapter that was added in 2021. These individuals are now called "proxies."



## House Enrolled Act 1458 (P.L. 86-2023): Fixing inconsistencies in the out-of-hospital DNR and POST statutes.

- When any patient is being treated inside a hospital or a nursing facility and if that patient does not have a health care representative who was appointed in writing (such as under a POA) and who is able and available to act, a proxy of the patient who has priority under the statutory hierarchy can sign a “do not resuscitate” (DNR) or “allow natural death” order. Such an order will apply if the patient suffers cardiac or pulmonary arrest while inside the hospital or nursing facility.
- However, if that same patient were to be transported to his or her home or out of the hospital and to some other facility (such as a hospice) current law would not authorize the proxy to sign a DNR order that could be effective while the patient is at home or en route between treatment facilities. Most doctors and other clinicians do not understand this distinction.



## House Enrolled Act 1458 (P.L. 86-2023): Fixing inconsistencies in the out-of-hospital DNR and POST statutes.

- House Enrolled Act 1458 amends multiple sections in I.C. 16-36-5 and in I.C. 16-36-6 so that if a patient is qualified to sign an out of hospital DNR declaration or a POST but if the patient lacks capacity and has no appointed representative who is able and available to act, a proxy who is listed in I.C. § 16-36-7-42 and who has priority to act can take any action regarding either type of order (signing, revocation, replacement, etc.) that the patient or an appointed representative could take. A proxy who acts with respect to an out-of-hospital DNR declaration or a POST has an obligation to act in accordance with the patient's known wishes and intentions, and to act according to the patient's best interests if his or her wishes and intentions are not known. See I.C. § 16-36-7-42(d) and (e).



# Senate Enrolled Act 343 / Expungement

- (c) This subsection applies to a person arrested after June 30, 2022. If: (1) a person is arrested;
- (2) one hundred eighty (180) days have one (1) year has elapsed since the date of the arrest; and
- (3) no charges are pending against the person;
- **the person may petition a judge** exercising criminal jurisdiction in the county (or a designated judge, if applicable) for expungement, setting forth these facts.
- Upon receipt of the petition, the judge shall immediately order the expungement of all records related to the arrest.
- Expungement under this subsection does not shorten the statute of limitations. A prosecutor may still file a charge under this subsection.



# Senate Enrolled Act 343 / Expungement

(k) Records expunged or sealed under this section must be removed or sealed in accordance with this section, but may not be deleted or destroyed. Records expunged or sealed under this section remain available to the court and criminal justice agencies as needed to carry out their official duties.



# Senate Enrolled Act 343 / Expungement

- and
- (H) a school (as defined in IC22-4-2-37), for the purpose of determining whether to:
  - (i) employ a person seeking employment, including volunteer employment, with the school; (ii) continue a person's employment, including volunteer employment at the school; or
  - (iii) grant access or admission to the school to an SEA 343 — CC 1 12 applicant contractor or a contractor; if the person, contractor, or applicant contractor is likely to have contact with a student enrolled in the school, regardless of the age of the student.





# Senate Enrolled Act 343 / Organized Retail Theft

- Sec. 2.2. (a) As used in this section, "retail merchant" has the meaning set forth in IC 6-2.5-1-8.
- (b) A person who exercises unauthorized control over the property of a retail merchant with the intent to directly or indirectly distribute the property for resale commits organized retail theft, a Level 6 felony.





# Senate Enrolled Act 343 / Organized Retail Theft

- (c) The offense committed under subsection (b) is a Level 5 felony if:
  - (1) the value of the property is at least fifty thousand dollars (\$50,000);
  - (2) the property is a firearm; or
  - (3) the person has a prior unrelated conviction for:
    - (A) organized retail theft under this section;
    - (B) theft under section 2 of this chapter; or
    - (C) criminal conversion under section 3 of this chapter



# House Enrolled Act 1287 / Russell v. State fix

- SECTION 7. IC 35-38-2.6-2, AS AMENDED BY P.L.45-2022, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:
- Sec. 2. As used in this chapter, "community corrections program" means a program consisting of residential centers and work release, **home detention**, or electronic monitoring that is:
- (1) operated under a community corrections plan of a county and funded at least in part by the state subsidy provided under IC 11-12-2; or



# Senate Enrolled Act 343 / Organized Retail Theft

- (d) In determining the value of the property under this section, acts of organized retail theft committed in a single episode of criminal conduct (as defined in IC 35-50-1-2(b)) may be charged in a single count.
- (e) For purposes of this section, "the value of the property" means: (1) the fair market value of the property at the time and place the offense was committed; or
- (2) if the fair market value of the property cannot be satisfactorily determined, the cost to replace the property within a reasonable time after the offense was committed. A price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value of the property



# House Enrolled Act 1287 / Russell v. State fix

- Sec. 3. (a) The court may, at the time of sentencing, suspend any portion of the sentence and order a person to be placed in a community corrections program as an alternative to commitment to the county jail or the department of correction. for the part of the sentence which must be executed under IC 35-50-2-2.1 or IC35-50-2-2.2.
- However,if a person has a nonsuspendible sentence, except for a nonsuspendible sentence under IC35-50-2-2.2, a court may not order the person to serve the nonsuspendible portion of the person's sentence in a community corrections program.



# House Enrolled Act 1287 / Russell v. State fix

- (b) A person confined on work release or home detention in a community corrections program receives one (1) day of accrued time for each day the person is confined on work release or home detention. plus any earned good time credit.
- (c) In addition to accrued time under subsection.



# House Enrolled Act 1172 / Paternity Actions

- SECTION 1. IC 31-17-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) A child custody proceeding is commenced in the court by:
  - (1) a parent by filing a petition under IC31-15-2-4, IC31-15-3-4, or IC 31-16-2-3; or
  - (2) a person other than a parent by filing a petition seeking a determination of custody of the child; or
  - (3) a child, by the child's next friend, if the child is the subject of a:
    - (A) child in need of services petition under IC 31-34; or
    - (B) termination petition under IC 31-35.



# House Enrolled Act 1172 / Paternity Actions

- (b) As used in this section, "a child's next friend" means:
- (1) the department;
- (2) the child's court appointed special advocate; or
- (3) the child's guardian ad litem.



# House Enrolled Act 1172 / Paternity Actions

- (b) Subject to subsection (d), a court having jurisdiction over a child who is the subject of a child in need of services proceeding or juvenile delinquency proceeding has concurrent jurisdiction with a court having jurisdiction under IC 31-14 for the purpose of establishing or modifying paternity, custody, parenting time, or child support of the child.





# **Section Two**

# **Criminal Law Legislative Update**

**Senator Rodney Pol, Jr.**  
City Attorney  
City of Gary Law Department  
Gary, Indiana

## **Section Two**

**Criminal Law Legislative Update..... Senator Rodney Pol, Jr.**

PowerPoint Presentation

# Criminal Law Legislative Update

Senator Rodney Pol, Jr.

# Senate Bill 286



# Senate Bill 286

- \* **Pre-Trial Credit time and Habitual Sentence Range.**
- \* Permits a person placed on pretrial home detention to earn accrued time and good time credit in the same manner as other persons on home detention (1 day good time for 1 day served)
- \* Repeals Credit Class P. Prior law gave 1 day good time for 4 days served on PTHD.
- \* Provides that specified misconduct will result in the deprivation of all credit time earned on pretrial home detention.

# Senate Bill 286 Cont.

- \* Amends the sentencing guidelines for a habitual offender.
- \* (1) Increases minimum sentence of a Level 1 through Level 4 or murder from six (6) years to **eight (8) years** and up to twenty (20) years; or
- \* (2) Increases minimum sentence of a Level 5 or Level 6 felony from two (2) years to **three (3) years** and up to six (6) years.

# Senate Bill 317





# Senate Bill 317

- \* **Political Subdivision Contract and Purchasing.**
- \* Provides that a political subdivision may make **advance payments to contractors** to enable the contractors to **purchase materials** needed for a public works project of the political subdivision.
- \* Provides that a political subdivision may make **advance payments for goods or services** before the goods are delivered or services are completed if the fiscal body of the political subdivision authorizes advance payments.
- \* This provides local governments the flexibility to lock in costs on goods and services and public works projects that may take longer. Highlighted need during the pandemic.

# Senate Bill 317

- \* This provides local governments the flexibility to lock in costs on goods and services and public works projects that may take longer due to supply chain or other logistical issues with materials.
- \* The need for this legislation was obviously highlighted during the pandemic. Political subdivisions were statutorily tied up in paying for goods until after receipt.

# Senate Bill 353

Why Can't I Get My Money Back On My Home Insurance If I Haven't Filed A Claim In Years?



INSURANCE FOR TEXANS

# Senate Bill 353

- \* **Risk management and catastrophic liability funds.**
- \* Authorizes the insurance commissioner to **cease operation** of the political subdivision risk management fund (PSRMF) AND the political subdivision catastrophic liability fund (PSCLF) upon a determination by the insurance commissioner that:
  - \* (1) all political subdivisions that were members of the fund have withdrawn from the fund; and
  - \* (2) all payment of the liabilities of former members of the fund have been determined and finalized.
- \* Requires the insurance commissioner, when ceasing operation of one of the funds, **to distribute the balance in the fund to former members of the fund**, distributing to each former member an amount proportional to the total of assessments and (in the case of the PSRMF) surcharges paid by the former member.

# Senate Bill 353

- \* Provides that the **laws** establishing the PSRMF and the PSCLF **expire** when the insurance commissioner certifies to the executive director of the legislative services agency that:
  - \* (1) the funds have no remaining members;
  - \* (2) all payments of liabilities of former members of the funds have been determined and finalized; and
  - \* (3) the balances in the funds have been distributed to former members of the funds.
- \* Amends a provision of the law concerning tort claims against governmental entities to provide **that giving notice** of a tort claim against a PSRM commission is **not required** if the law establishing the PSRM commission has expired. (Plaintiff's attorneys rejoice!)

# Senate Bill 415



# Senate Bill 415

- \* [The Wire - Bunk's interrogation techniques – YouTube](#)
- \* **Juvenile Statements and Arrests.** Provides that a statement made by a juvenile during custodial interrogation in response to a materially false statement about evidence, sentence, or leniency from a law enforcement officer is inadmissible against the juvenile unless good faith exception applies. Also does NOT apply to fruit of the poisonous tree.
- \* Requires, unless certain circumstances exist, that a law enforcement officer who arrests or takes into custody a child on school property or at a school sponsored activity must notify or request a school administrator to notify the child's: (1) parent or guardian; or (2) emergency contact.

# Senate Bill 464 – The Neukam Problem

- \* **Jurisdiction.** Provides that **an adult criminal court has jurisdiction** over a person at least 21 years of age who committed an offense as a child (an adult child offender), **if the offense could have been waived** to adult court, and provides that **the juvenile court has jurisdiction** over an adult child offender **if the offense could NOT have been waived.**
- \* Specifies that an **adult child offender** may be **required to register as a sex offender** in the same manner as a delinquent child, and permits a court to remove the obligation for an adult child offender and a delinquent child to register after the completion of sex offender treatment.



# Senate Bill 464 Cont.

- \* Specifies when a child commits a delinquent act.
- \* Allows a court, in sentencing an adult child offender, to consider as a **mitigating factor that the person was a child at the time the person committed the offense.**
- \* Provides an **additional opportunity** for an adult child offender to obtain **sentence modification.**
- \* Permits a court to suspend a sentence imposed on an adult child offender, except for murder.

# House Bill 1365



# House Bill 1365

- \* **Machine guns.** [This Is the World's Smallest Machine Gun, and It's Suddenly Everywhere – YouTube](#)
- \* Revises, for purposes of an enhancement and certain criminal offenses, a definition of "machine gun" to include "designed to shoot" more than one bullet automatically with a single trigger pull.
- \* The term includes:
  - \* (1) the frame or receiver of a weapon ;
  - \* (2) a (A) part designed and intended solely and exclusively; or (B) combination of parts designed and intended; for use in converting a weapon into a machine gun; and
  - \* (3) any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

THANK YOU!

# **Section Three**

**SEA 161**  
**SJR 1**  
**HEA 1447**  
**SEA 177**  
**HEA 1334**

**Senator R. Michael Young**  
Indiana State Senate - District 35  
Indianapolis, Indiana

**Section Three**

**SEA 161**  
**SJR 1**  
**HEA 1447**  
**SEA 177**  
**HEA 1334..... Senator R. Michael Young**

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# Senate Bill 161

## Unlawful surveillance.

Enrolled Senate Bill (S)

Authored by:

[Sen. Michael Crider](#), [Sen. Ed Charbonneau](#), [Sen. Michael Young](#).

Co-Authored by:

[Sen. Vaneta Becker](#), [Sen. John Crane](#).

Sponsored by:

[Rep. Wendy McNamara](#), [Rep. Jerry Torr](#), [Rep. Mitch Gore](#).

Digest

Adds a prohibition against using a tracking device to the list of conditions a court may impose when issuing a protection order. Increases the penalty for stalking to a Level 5 felony if the offense is committed by means of a tracking device. Provides that a person who knowingly or intentionally places a tracking device on an individual or the individual's property without the individual's knowledge or consent commits unlawful surveillance, a Class A misdemeanor, unless certain exceptions apply, and increases the penalty to a Level 6 felony if the person is the subject of a protective order or has certain prior convictions. Establishes a sentence enhancement if a person uses a tracking device to commit or facilitate the commission of a crime.



# Senate Joint Resolution 1

## Limitation on right to bail.

Enrolled Senate Resolution (S)

Authored by:

[Sen. Eric Koch](#), [Sen. Rodric Bray](#), [Sen. Aaron Freeman](#).

Co-Authored by:

[Sen. Scott Baldwin](#), [Sen. Mike Bohacek](#), [Sen. Michael Young](#).

Sponsored by:

[Rep. Chris Jeter](#), [Rep. Gregory Steuerwald](#), [Rep. Wendy McNamara](#), [Rep. Jerry Torr](#).

Digest

Provides that an offense other than murder or treason is not bailable if: (1) the proof is evident or the presumption strong; and (2) the state proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.

# House Bill 1447

## Education matters.

Enrolled House Bill (H)

Authored by:

[Rep. Donna Schaibley](#).

Co-Authored by:

[Rep. Julie McGuire](#), [Rep. Becky Cash](#).

Sponsored by:

[Sen. Stacey Donato](#), [Sen. Jeff Raatz](#).

## Digest

Provides that, if a school corporation or qualified school uses a third party vendor in providing certain personal analyses, evaluations, or surveys, the third party vendor and the school corporation or qualified school may not record, collect, or maintain the responses to or results of the analysis, evaluation, or survey in a manner that would identify the responses or results of an individual student. Provides that, if a school corporation or qualified school uses a third party vendor in providing the personal analysis, evaluation, or survey, the school corporation or qualified school must provide parents or students, as applicable, two requests for written consent before administering the analysis, evaluation, or survey. Provides that the school corporation or qualified school may administer the personal analysis, evaluation, or survey if a parent or student, as applicable, does not decline the analysis, evaluation, or survey. Requires each school corporation or qualified school to: (1) post a copy of a personal analysis, evaluation, or survey on the school corporation's or qualified school's website; and (2) send with each notice an explanation of the reasons that the school corporation or qualified school is administering the personal analysis, evaluation, or survey. Requires each qualified school to establish and maintain a grievance procedure for complaints regarding a violation of this provision. Provides that, if a state agency, school corporation, or qualified school or an employee of a state agency, school corporation, or qualified school requires, makes part of a course, awards a grade or course credit, or otherwise incentivizes a student to engage in: (1) political activism; (2) lobbying; or (3) efforts to persuade members of the legislative or executive branch at the federal, state, or local level; the state agency, school corporation, or qualified school or the employee of the state agency, school corporation, or qualified school shall not require the student to adopt, affirm, affiliate, or take any action that would result in favoring any particular position on the issue or issues involved without offering an alternative option for the student to complete the assignment or receive extra credit or other incentivization that allows for the favoring of an alternative position. After June 30, 2023, requires certain contracts between a school corporation or a qualified school and a third party vendor concerning a personal analysis, survey, or evaluation to contain a breach of contract provision. Requires schools to adopt policies and procedures concerning material alleged to be obscene or harmful to minors. Removes schools from the list of entities eligible for a specified defense to such criminal prosecutions.

## Senate Bill 177

### School board candidate filing deadline.

Enrolled Senate Bill (S)

Authored by:

[Sen. Eric Koch](#), [Sen. James Buck](#).

Sponsored by:

[Rep. Timothy Wesco](#), [Rep. J.D. Prescott](#).

Digest

Changes the time frame that a candidate for a school board office is required to file the candidate's petition of nomination. Modifies deadlines concerning a statement questioning the validity of a petition of nomination or contesting the denial of certification.

## House Bill 1334

### Absentee voting.

Enrolled House Bill (H)

Authored by:

[Rep. Timothy Wesco.](#)

Co-Authored by:

[Rep. Mike Speedy](#), [Rep. Mike Ayles worth](#), [Rep. Randall Frye](#).

Sponsored by:

[Sen. Eric Koch](#), [Sen. Jon Ford](#), [Sen. Linda Rogers](#), [Sen. Jeff Raatz](#), [Sen. Tyler Johnson](#), [Sen. Dan Dernule](#).

Digest

Provides that an agency of the state or a political subdivision may not provide an individual with an application for an absentee ballot unless requested by the individual or a member of the individual's family. Provides that an absentee ballot application must request that the applicant include: (1) certain identification numbers; or (2) a photocopy of: (A) the applicant's Indiana driver's license, (B) the applicant's Indiana identification card number for nondrivers, or (C) other specified proof of identification. Provides that the application form must state that an applicant may include only one of the identification numbers or one of the documents, but the application may be delayed if the county election board cannot match at least one of the numbers with the voter's registration record. Allows an individual to provide, for purposes of accessing an absentee ballot application submitted in an electronic format: (1) the individual's Indiana identification card number for nondrivers; or (2) the unique identifying number assigned to the voter's registration record in the computerized list; as an alternative to the options available under current law. (Current law requires the provision of the individual's Indiana driver's license number or the last four digits of the individual's Social Security number.) Specifies that certain information and documentation is confidential. Specifies when a county voter registration office is required to redact particular confidential information. Requires a county election board to implement specified procedures if the county election board cannot match at least one of the numbers with the voter's registration record. Requires the bureau of motor vehicles (BMV) to provide particular information each day to the secretary of state (secretary) and the election division. Requires the secretary and the election division to provide specified information to each county voter registration office. Specifies that if certain information provided by the BMV is not a part of the voter's registration record, the county voter registration office shall update the voter's registration record to include this information. Requires a circuit court clerk or director of a board of elections and registration (clerk) to transmit certain information to an applicant who submits an application to receive an absentee ballot by mail if the application does not fully comply with particular laws. Specifies a process by which a clerk may: (1) deliver a second absentee ballot application; (2) approve a second absentee ballot application; and (3) provide an absentee ballot; to a voter who timely submits a defective application to receive

an absentee ballot. Provides that a voter who receives an absentee ballot under certain provisions may return the voted ballot: (1) in person to the absentee voter board; or (2) to the county election board; before the deadline for receipt of absentee ballots. Requires uniform application if a clerk uses this provision. Makes conforming changes.

# **Section Four**

**HEA 1570**

**SEA 166**

**HEA 1466**

**SEA 331**

**HB 1006**

**Representative Christopher P. Jeter**  
Massillamany Jeter & Carson LLP  
Fishers, Indiana

## Section Four

**HEA 1570**

**SEA 166**

**HEA 1466**

**SEA 331**

**HB 1006..... Representative Christopher P. Jeter**

HEA 1570 – Adoptions and Foster Parents.....1

SEA 166 – Statute of Limitations on Adverse Possession.....2

HEA 1466 – Juror Compensation .....3

SEA 331 – Deposition of a Child Sex Victim.....4

HB 1006 – Mental Health and Emergency Detentions.....5



## **HEA 1570 – Adoptions and Foster Parents**

### **Key Takeaways:**

- Protects foster parents' freedom to seek assistance from elected officials in handling issues concerning their foster child and Department of Child Services (DCS) in order to better manage the child's casework through a third party.
  - Previously there have been many reports of foster parents being retaliated against by DCS for seeking outside help with their foster children's cases.
- Informs foster parents of their rights and of the standard procedures of DCS by providing an informational packet containing resources for newly licensed foster parents.
- Allows foster parents to request a sibling visitation for their foster child in order to better restore familial bonds between the child and their sibling.
- Protects foster children from further trauma by creating a rebuttable presumption that biological parents convicted of violent offenses against their child are unfit for visitation with the child until demonstrated otherwise.

## **SEA 166 – Statute of Limitations on Adverse Possession**

### **Key Takeaways:**

- Tightens the statute of limitations on challenging a recovery of the possession of real estate involving a line established by a professional surveyor before the expiration of the appeal period to prevent challenges of property lines well after the appeal period.
  - Currently, you can appeal a land survey with an adverse property claim well after the appeal period which creates confusion for parties who believed the matter settled.
- Ensures that parties living both inside and outside of the county have the same 180 days to appeal granting a set standard for everyone.

## **HEA 1466 – Juror Compensation**

### **Key Takeaways:**

- Strengthens the administration of justice by incentivizing Hoosiers to take part in jury duty with increased compensation.
  - The general assembly has not addressed juror compensation in over 25 years.

## SEA 331 – Deposition of a Child Sex Victim

### Key Takeaways:

- Relieves the burden of finding qualified professionals in remote areas by broadening the definition of a provider, who can determine whether a protected person can communicate in the physical presence of the defendant without experiencing severe emotional distress, to include psychiatrists, psychologists, therapists, Advanced Practice Registered Nurses (APRN's), or a Physician Assistant (PA's).
- Protects young Hoosiers involved in despicable sexual and violent acts such as human and sexual trafficking or battery from unnecessary re-traumatization by requiring that any deposition within a criminal case with a child victim comply with Trial Rule 30 or Trial Rule 31.
  - This includes any other formal or informal statement or interview, oftentimes of which the defense team will utilize to circumvent the current deposition requirements for child victims.

## HB 1006 – Mental Health and Emergency Detentions

### Key Takeaways:

- Empowers law enforcement with the ability to practice compassionate justice by providing them with an enhanced ability to apprehend and transport an individual suffering from a mental illness or temporary impairment from drugs and alcohol to the nearest facility for mental health or substance abuse treatment as opposed to the county jail.
  - According to the Department of Correction (DOC), roughly 80 percent of inmates have either an addiction or mental health condition, and of the population who return to prison, those with a substance use disorder reaches 75 percent.
- Protects Good Samaritans trying to compassionately care for Hoosiers by providing liability protection to law enforcement officers, service providers, and treatment centers who are delivering vital services to those in crisis.
  - House Enrolled Act 1006 also ensures that these services are considered medically necessary, therefore empowering treatment center to provide services regardless of an individual's economic standing or ability to pay.
- Establishes a local mental health referral program to provide voluntary mental health treatment for individuals who have been arrested but have been designated to be eligible for the program.
  - This program may be used as a part of a pretrial release agreement and ensures that eligible individuals are surrounded by their community support systems including family, friends, and faith leaders.

# **Section Five**

# **SEA 5 Consumer Data Protection**

**Representative Matthew S. Pierce**  
Indiana House of Representatives  
Indiana House Democratic Caucus  
Indianapolis, Indiana

## **Section Five**

**SEA 5 Consumer Data Protection..... Representative Matthew S. Pierce**

SEA 5

Fiscal Impact Statement – SEA 5

Outline of Senate Enrolled Act 5 Consumer Data Protection

PowerPoint Presentation



First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 5

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AN ACT to amend the Indiana Code concerning trade regulation.

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

SECTION 1. IC 24-15 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2026]:

### **ARTICLE 15. CONSUMER DATA PROTECTION**

#### **Chapter 1. Applicability**

**Sec. 1. (a) This article applies to a person that conducts business in Indiana or produces products or services that are targeted to residents of Indiana and that during a calendar year:**

- (1) controls or processes personal data of at least one hundred thousand (100,000) consumers who are Indiana residents; or**
- (2) controls or processes personal data of at least twenty-five thousand (25,000) consumers who are Indiana residents and derives more than fifty percent (50%) of gross revenue from the sale of personal data.**

**(b) This article does not apply to any of the following:**

**(1) Either of the following:**

**(A) The state, a state agency, or a body, authority, board, bureau, commission, district, or agency of any political subdivision of the state.**

**(B) A third party under contract with an entity described in clause (A), when acting on behalf of the entity. This clause does not exempt data held or created by third**

SEA 5 — Concur



parties outside of the scope of the contract with the entity.

(2) Any financial institutions and affiliates, or data subject to Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.).

(3) Any covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services (45 CFR Parts 160 and 164) pursuant to HIPAA.

(4) Any nonprofit organization.

(5) Any institution of higher education.

(6) Any public utility (as defined in IC 8-1-2-1(a)) or service company affiliated with a public utility (as defined in IC 8-1-2-1(a)). For purposes of this subdivision, "service company" means an associate company within a holding company system organized specifically for the purpose of providing goods or services to a public utility (as defined in IC 8-1-2-1(a)) in the same holding company system.

**Sec. 2.** The following information and data are exempt from this article:

(1) Protected health information under HIPAA and related regulations under 45 CFR Part 160, 45 CFR Part 162, and 45 CFR Part 164.

(2) Patient identifying information for purposes of 42 U.S.C. 290dd-2.

(3) Any of the following:

(A) Identifiable private information for purposes of the federal policy for the protection of human subjects under 45 CFR Part 46.

(B) Identifiable private information that is otherwise information collected as part of human subjects research under the good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use.

(C) The protection of human subjects under 21 CFR Parts 50 and 56.

(D) Personal data used or shared in research conducted in accordance with the requirements set forth in this article.

(E) Other research conducted in accordance with applicable law.

(4) Information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.).



(5) Patient safety work product for purposes of the federal Patient Safety and Quality Improvement Act (42 U.S.C. 299b-21 et seq.).

(6) Information derived from any of the health care related information set forth in this section that is de-identified in accordance with the requirements for de-identification under HIPAA.

(7) Information:

(A) originating from;

(B) intermingled with so as to be indistinguishable from; or

(C) treated in the same manner as;

information that is exempt under this section and that is maintained by a covered entity or business associate, as defined in HIPAA, or a program or qualified service organization under 42 U.S.C. 290dd-2.

(8) Information used only for public health activities and purposes, as authorized by HIPAA.

(9) The collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by:

(A) a consumer reporting agency, furnisher, or user that provides information for use in a consumer report; or

(B) a user of a consumer report;

but only to the extent that such activity is regulated by and authorized under the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(10) Personal data collected, processed, sold, or disclosed in compliance with the federal Driver's Privacy Protection Act of 1994 (18 U.S.C. 2721 et seq.).

(11) Personal data regulated by the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g et seq.).

(12) Personal data collected, processed, sold, or disclosed in compliance with the federal Farm Credit Act (12 U.S.C. 2001 et seq.).

(13) Data processed or maintained:

(A) in the course of an individual applying to, employed by, or acting as an agent or independent contractor of a controller, processor, or third party, to the extent that the data is collected and used within the context of that role;

(B) as emergency contact information for an individual



under this article and used for emergency contact purposes; or

(C) that is necessary to retain to administer benefits for another individual relating to the individual under clause (A) and used for the purposes of administering those benefits.

**Sec. 3. A:**

(1) controller; or

(2) processor;

that complies with the Children's Online Privacy Protection Act (15 U.S.C. 6501 et seq.), and with any rules or regulations under that act, satisfies any obligation to obtain parental consent under this article.

**Chapter 2. Definitions**

**Sec. 0.5.** The definitions in this chapter apply throughout this article.

**Sec. 1. (a)** "Affiliate" means a legal entity that:

(1) controls, is controlled by, or is under common control with another legal entity; or

(2) shares common branding with another legal entity.

(b) For purposes of this section, "control", with respect to a company, means:

(1) ownership of, or the power to vote, more than fifty percent (50%) of the outstanding shares of any class of voting security of the company;

(2) control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or

(3) the power to exercise controlling influence over the management of the company.

**Sec. 2.** "Aggregate data" means information:

(1) that relates to a group or category of consumers;

(2) from which individual consumer identities have been removed; and

(3) that is not linked or reasonably linkable to any consumer.

**Sec. 3.** "Authenticate" means to verify through reasonable means that a consumer who is entitled to exercise the personal data rights provided by IC 24-15-3 is the same consumer exercising such rights with respect to particular personal data.

**Sec. 4. (a)** "Biometric data" means data that:

(1) is generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, a voiceprint, images of the retina or iris, or other unique biological



patterns or characteristics; and  
(2) is used to identify a specific individual.

(b) The term does not include:

- (1) a physical or digital photograph, or data generated from a physical or digital photograph;
- (2) a video or audio recording, or data generated from a video or audio recording; or
- (3) information collected, used, or stored for health care treatment, payment, or operations under HIPAA.

Sec. 5. "Business associate" has the meaning set forth in 45 CFR 160.103.

Sec. 6. "Child" means any individual who is less than thirteen (13) years of age.

Sec. 7. (a) "Consent" means a clear affirmative act that signifies a consumer's freely given, specific, informed, and unambiguous agreement to process personal data relating to the consumer.

(b) For purposes of this section, a "clear affirmative act" includes a written statement, including a statement written by electronic means, or any other unambiguous affirmative action.

Sec. 8. (a) "Consumer" means an individual who:

- (1) is a resident of Indiana; and
- (2) is acting only for a personal, family, or household purpose.

(b) The term does not include an individual acting in a commercial or employment context.

Sec. 9. "Controller" means a person that, alone or jointly with others, determines the purpose and means of processing personal data.

Sec. 10. "Covered entity" has the meaning set forth in 45 CFR 160.103.

Sec. 11. "Decision that produces legal or similarly significant effects concerning a consumer" means a decision made by a controller that results in the provision or denial by the controller of:

- (1) financial and lending services;
- (2) housing;
- (3) insurance;
- (4) education enrollment;
- (5) criminal justice;
- (6) employment opportunities;
- (7) health care services; or
- (8) access to basic necessities, such as food and water.

Sec. 12. "De-identified data" means data that cannot reasonably



be linked to an identified or identifiable individual because a controller that possesses the data:

- (1) takes reasonable measures to ensure that the data cannot be associated with an individual;
- (2) publicly commits to maintaining and using the data without attempting to re-identify the data; and
- (3) obligates any recipients of the data through contractual requirements to comply with all applicable provisions of this article.

Sec. 13. "Health care provider" has the meaning set forth in IC 4-6-14-2.

Sec. 14. "Health record" has the meaning set forth in IC 1-1-4-5(a)(6).

Sec. 15. "HIPAA" refers to the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d et seq.).

Sec. 16. "Identified or identifiable individual" means an individual who can be readily identified, directly or indirectly.

Sec. 17. "Institution of higher education" means a public or private college or university.

Sec. 18. "Nonprofit organization" means any organization exempt from taxation under Section 501(c)(3), 501(c)(6), or 501(c)(12) of the Internal Revenue Code.

Sec. 19. (a) "Personal data" means information that is linked or reasonably linkable to an identified or identifiable individual.

(b) The term does not include:

- (1) de-identified data;
- (2) aggregate data; or
- (3) publicly available information.

Sec. 20. (a) "Precise geolocation data" means information derived from technology, including global positioning system level latitude and longitude coordinates, that directly identifies the specific location of a natural person with precision and accuracy within a radius of one thousand seven hundred fifty (1,750) feet.

(b) The term does not include:

- (1) the content of communications; or
- (2) any data generated by or connected to advanced utility metering infrastructure systems or equipment for use by a utility.

Sec. 21. "Processing", with respect to personal data, means any operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data,



such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

**Sec. 22. "Processor"** means a person that processes personal data on behalf of a controller.

**Sec. 23. "Profiling"** means any form of solely automated processing performed on personal data to evaluate, analyze, or predict personal aspects related to an identified or identifiable individual's economic situation, health or health records, personal preferences, interests, reliability, behavior, location, or movements.

**Sec. 24. "Protected health information"** has the meaning set forth in 45 CFR 160.103.

**Sec. 25. "Pseudonymous data"** means personal data that cannot be attributed to a specific individual because additional information that would allow the data to be attributed to a specific individual is:

- (1) kept separately; and
- (2) subject to appropriate technical and organizational measures;

to ensure that the personal data is not attributed to an identified or identifiable individual.

**Sec. 26. "Publicly available information"** means information:

- (1) that is lawfully made available through federal, state, or local government records; or
- (2) that a business has a reasonable basis to believe is lawfully made available:
  - (A) to the general public through widely distributed media;
  - (B) by the consumer to whom the information pertains; or
  - (C) by a person to whom the consumer has disclosed the information;

unless the consumer has restricted the information to a specific audience.

**Sec. 27. (a) "Sale of personal data"** means the exchange of personal data for monetary consideration by a controller to a third party.

**(b) The term does not include:**

- (1) the disclosure of personal data to a processor that processes the personal data on behalf of the controller;
- (2) the disclosure of personal data to a third party for purposes of providing a product or service requested by:
  - (A) the consumer; or
  - (B) the parent of a child;
 to whom the personal data pertains;



- (3) the disclosure or transfer of personal data to an affiliate of the controller;
- (4) the disclosure of information that the consumer:
  - (A) intentionally made available to the general public via a channel of mass media; and
  - (B) did not restrict to a specific audience; or
- (5) the disclosure or transfer of personal data to a third party as an asset that is part of a proposed or actual merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller's assets.

**Sec. 28. "Sensitive data" means a category of personal data that includes any of the following:**

- (1) Personal data revealing racial or ethnic origin, religious beliefs, a mental or physical health diagnosis made by a health care provider, sexual orientation, or citizenship or immigration status.
- (2) Genetic or biometric data that is processed for the purpose of uniquely identifying a specific individual.
- (3) Personal data collected from a known child.
- (4) Precise geolocation data.

**Sec. 29. "State agency" has the meaning set forth in IC 1-1-15-3.**

**Sec. 30. (a) "Targeted advertising" means the displaying of an advertisement to a consumer in which the advertisement is selected based on personal data obtained from that consumer's activities over time and across nonaffiliated websites or online applications to predict the consumer's preferences or interests.**

**(b) The term does not include:**

- (1) advertisements based on activities within a controller's own or affiliated websites or online applications;
- (2) advertisements based on the context of a consumer's current search query, visit to a website, or online application;
- (3) advertisements directed to a consumer in response to the consumer's request for information or feedback; or
- (4) the processing of personal data solely for measuring or reporting advertising performance, reach, or frequency.

**Sec. 31. "Third party", with respect to a context to which this article applies, means a natural or legal person, public authority, agency, or body other than:**

- (1) the consumer;
- (2) the controller;
- (3) the processor; or





(4) an affiliate of the processor or the controller.

**Sec. 32. "Trade secret" has the meaning set forth in IC 24-2-3-2.**

**Chapter 3. Personal Data; Consumer Rights**

**Sec. 1. (a)** A consumer may invoke one (1) or more rights set forth in subsection (b) by submitting to a controller a request specifying the rights the consumer wishes to invoke. A known child's parent or legal guardian may invoke on behalf of the child one (1) or more rights set forth in subsection (b) with respect to the processing of personal data belonging to the known child by submitting to a controller a request specifying the rights the consumer wishes to invoke on behalf of the child. Except as provided in IC 24-15-7-1(c) and IC 24-15-7-2, and subject to any limitations or conditions set forth in subsections (b) and (c), a controller shall comply with an authenticated consumer request to exercise a right set forth in subsection (b).

**(b)** A consumer has the following rights:

**(1)** To confirm whether or not a controller is processing the consumer's personal data and, subject to the limitations set forth in subdivision (4), to access such personal data.

**(2)** To correct inaccuracies in the consumer's personal data that the consumer previously provided to a controller, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data. Upon receiving a request from a consumer under this subdivision, a controller shall correct inaccurate information as requested by the consumer, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data.

**(3)** To delete personal data provided by or obtained about the consumer.

**(4)** To obtain either:

**(A)** a copy of; or

**(B)** a representative summary of;

the consumer's personal data that the consumer previously provided to the controller. Information provided to a consumer under this subdivision must be in a portable and, to the extent technically practicable, readily usable format that allows the consumer to transmit the data or summary to another controller without hindrance, in any case in which the processing is carried out by automated means. The controller has the discretion to send either a copy or a representative summary of the consumer's personal data under this



subdivision, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data. A controller is not required to provide a copy or a representative summary of a consumer's personal data to the same consumer under this subdivision more than one (1) time in a twelve (12) month period.

(5) To opt out of the processing of the consumer's personal data for purposes of:

- (A) targeted advertising;
- (B) the sale of personal data; or
- (C) profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer.

(c) Except as otherwise provided in this article, a controller shall comply with a request by a consumer to exercise a consumer right set forth in subsection (b) as follows:

(1) A controller shall respond to the consumer without undue delay, but in any case not later than forty-five (45) days after receipt of the consumer's request under this section. The response period prescribed by this subdivision may be extended once by an additional forty-five (45) days when reasonably necessary, taking into account the complexity and number of the consumer's requests, as long as the controller informs the consumer of any such extension within the initial forty-five (45) day response period, along with the reason for the extension.

(2) If a controller declines to take action regarding the consumer's request, the controller shall inform the consumer without undue delay, but in any case not later than forty-five (45) days after receipt of the consumer's request under this section, of the justification for declining to take action, and shall provide instructions for how to appeal the decision under subsection (d).

(3) Information provided in response to a consumer request shall be provided by a controller free of charge, up to one (1) time annually per consumer. If requests from a consumer are manifestly unfounded, excessive, or repetitive, the controller may charge the consumer a reasonable fee to cover the administrative costs of complying with the request or decline to act on the request. The controller bears the burden of demonstrating the manifestly unfounded, excessive, or repetitive nature of the request.

(4) If a controller is unable to authenticate the request using



commercially reasonable efforts, the controller shall not be required to comply with a request to initiate an action under this section and may request that the consumer provide additional information reasonably necessary to authenticate the consumer and the consumer's request.

(5) A controller that has obtained personal data about a consumer from a source other than the consumer is considered to comply with a request by the consumer under subsection (b)(3) to delete the consumer's personal data if the controller:

(A) retains:

- (i) a record of the consumer's request for deletion; and
- (ii) the minimum data necessary to ensure that the consumer's personal data remains deleted from the controller's records; and

(B) does not use the data retained under clause (A)(ii) for any other purpose.

(d) A controller shall establish a process for a consumer to appeal, within a reasonable period of time after the consumer's receipt of a decision by the controller under subsection (c)(2), the controller's refusal to take action on a request by the consumer under this section. The appeal process shall be conspicuously available and similar to the process for submitting requests to invoke a right under this section. Not later than sixty (60) days after receipt of an appeal, a controller shall inform the consumer in writing of any action taken or not taken in response to the appeal, including a written explanation of the reasons for the decisions. If the appeal is denied, the controller shall also provide the consumer with an online mechanism, if available, or other method through which the consumer may contact the attorney general to submit a complaint.

#### **Chapter 4. Data Controller Responsibilities; Transparency**

**Sec. 1.** Except as provided in IC 24-15-7-2, a controller has the following responsibilities:

(1) A controller shall limit the collection of personal data to what is adequate, relevant, and reasonably necessary in relation to the purposes for which such data is processed, as disclosed to the consumer.

(2) Except as otherwise provided in this article, a controller shall not process personal data for purposes that are neither reasonably necessary for nor compatible with the disclosed purposes for which the personal data is processed, unless the



controller obtains the consumer's consent.

(3) A controller shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of personal data. The data security practices required under this subdivision must be appropriate to the volume and nature of the personal data at issue.

(4) A controller shall not process personal data in violation of state and federal laws that prohibit unlawful discrimination against consumers. A controller shall not discriminate against a consumer for exercising any of the consumer rights set forth in this article, including by denying goods or services to the consumer, charging different prices or rates for goods and services, or providing a different level or quality of goods or services to the consumer. However, nothing in this subdivision shall be construed to:

(A) require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain; or

(B) prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised the consumer's right to opt out under IC 24-15-3-1(b)(5) or if the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discount, or club card program.

(5) A controller shall not process sensitive data concerning a consumer without obtaining the consumer's consent, or, in the case of the processing of sensitive data concerning a known child, without processing such data in accordance with the federal Children's Online Privacy Protection Act (15 U.S.C. 6501 et seq.).

**Sec. 2.** Any provision of a contract or agreement of any kind that purports to waive or limit in any way a consumer's rights under IC 24-15-3 is contrary to public policy and is void and unenforceable.

**Sec. 3.** A controller shall provide consumers with a reasonably accessible, clear, and meaningful privacy notice that includes:

- (1) the categories of personal data processed by the controller;
- (2) the purpose for processing personal data;
- (3) how consumers may exercise their consumer rights under



**IC 24-15-3, including how a consumer may appeal a controller's decision with regard to the consumer's request;**  
**(4) the categories of personal data that the controller shares with third parties, if any; and**  
**(5) the categories of third parties, if any, with whom the controller shares personal data.**

**Sec. 4. If a controller sells a consumer's personal data to third parties or uses a consumer's personal data for targeted advertising, the controller shall clearly and conspicuously disclose such activity, as well as the manner in which a consumer may exercise the right to opt out of such sales or use.**

**Sec. 5. A controller shall establish, and shall describe in a privacy notice provided under section 3 of this chapter, one (1) or more secure and reliable means for consumers to submit a request to exercise their rights under IC 24-15-3. Such means must take into account:**

- (1) the ways in which consumers normally interact with the controller;**
- (2) the need for the secure and reliable communication of such requests; and**
- (3) the ability of the controller to authenticate the identity of the consumer making the request.**

**A controller may not require a consumer to create a new account in order to exercise the consumer's rights under IC 24-15-3 but may require a consumer to use an existing account.**

**Sec. 6. The attorney general may maintain on the attorney general's website a list of resources for controllers, including sample privacy notices and disclosures, to assist controllers in complying with this chapter.**

#### **Chapter 5. Responsibility According to Role; Controllers and Processors**

**Sec. 1. A processor shall adhere to the instructions of a controller and shall assist the controller in meeting its obligations under this chapter. Such assistance shall include the following:**

- (1) Assisting the controller in meeting the controller's obligation to respond to consumer requests under IC 24-15-3 by appropriate technical and organizational measures, insofar as this is reasonably practicable, and taking into account the nature of processing and the information available to the processor.**
- (2) Taking into account the nature of processing and the information available to the processor, assisting the controller**



in meeting the controller's obligations in relation to:

- (A) the security of processing the personal data; and
- (B) the notification of a breach of security of the system of the processor under IC 24-4.9;

in order to meet the controller's obligations.

- (3) Providing necessary information to enable the controller to conduct and document data protection impact assessments under IC 24-15-6.

**Sec. 2. (a)** A contract between a controller and a processor shall govern the processor's data processing procedures with respect to processing performed on behalf of the controller. The contract must be binding and clearly set forth instructions for processing personal data, the nature and purpose of processing, the type of data subject to processing, the duration of processing, and the rights and obligations of both parties. The contract must also include requirements that the processor do the following:

- (1) Ensure that each individual processing personal data is subject to a duty of confidentiality with respect to the data.
- (2) At the controller's direction, delete or return all personal data to the controller as requested at the end of the provision of services, unless retention of the personal data is required by law.
- (3) Upon the reasonable request of the controller, make available to the controller all information in its possession necessary to demonstrate the processor's compliance with the obligations in this chapter.
- (4) Allow, and cooperate with, reasonable assessments by the controller or the controller's designated assessor. Alternatively, the processor may arrange for a qualified and independent assessor to conduct an assessment of the processor's policies and technical and organizational measures in support of the processor's obligations under this chapter using an appropriate and accepted control standard or framework and assessment procedure for such assessments. The processor shall provide a report of any such assessment to the controller upon request.
- (5) Subject to subsection (b), engage any subcontractor pursuant to a written contract that requires the subcontractor to meet the obligations of the processor with respect to the personal data.

(b) Nothing in this section shall be construed to relieve a controller or a processor from the liabilities imposed on the



controller or processor by virtue of its role in the processing relationship.

**Sec. 3. Determining whether a person is acting as a controller or a processor with respect to a specific processing of data is a fact based determination that depends upon the context in which personal data is processed. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains a processor.**

#### **Chapter 6. Data Protection Impact Assessments**

**Sec. 1. (a) The data protection impact assessment requirements set forth in this chapter apply to processing activities created or generated after December 31, 2025, and are not retroactive to any processing activities created or generated before January 1, 2026.**

**(b) A controller shall conduct and document a data protection impact assessment of each of the following processing activities involving personal data:**

- (1) The processing of personal data for purposes of targeted advertising.**
- (2) The sale of personal data.**
- (3) The processing of personal data for purposes of profiling, if such profiling presents a reasonably foreseeable risk of:**
  - (A) unfair or deceptive treatment of, or unlawful disparate impact on, consumers;**
  - (B) financial, physical, or reputational injury to consumers;**
  - (C) a physical or other intrusion upon the solitude or seclusion, or the private affairs or concerns, of consumers, if such intrusion would be offensive to a reasonable person; or**
  - (D) other substantial injury to consumers.**
- (4) The processing of sensitive data.**
- (5) Any processing activities involving personal data that present a heightened risk of harm to consumers.**

**(c) Data protection impact assessments conducted under this chapter shall identify and weigh the benefits that may flow, directly and indirectly, from the processing to the controller, the consumer, other stakeholders, and the public against the potential risks to the rights of the consumer associated with such processing, as mitigated by safeguards that can be employed by the controller to reduce such risks. The use of de-identified data and the reasonable expectations of consumers, as well as the context of the processing and the relationship between the controller and the consumer**



whose personal data will be processed, shall be factored into this assessment by the controller.

(d) A single data protection impact assessment may address a comparable set of processing operations that include similar activities.

(e) A data protection impact assessment conducted by a controller for the purpose of compliance with other laws or regulations may be used to comply with this section if the assessment has a reasonably comparable scope and effect to an assessment conducted under this section.

**Sec. 2. (a)** The attorney general may request, pursuant to a civil investigative demand, that a controller disclose any data protection impact assessment that is relevant to an investigation conducted by the attorney general. Upon receipt of such a request, the controller shall make the data protection impact assessment available to the attorney general. Subject to subsection (b), the attorney general may evaluate the data protection impact assessment for a controller's compliance with the responsibilities set forth in IC 24-15-4.

(b) Data protection impact assessments are confidential and exempt from public inspection and copying under IC 5-14-3-4. The disclosure of a data protection impact assessment pursuant to a request from the attorney general does not constitute a waiver of attorney-client privilege or work product protection with respect to the assessment and any information contained in the assessment.

#### **Chapter 7. Processing De-identified Data or Pseudonymous Data; Exemptions**

**Sec. 1. (a)** A controller in possession of de-identified data shall:

- (1) take reasonable measures to ensure that the data cannot be associated with an individual;
- (2) publicly commit to maintaining and using de-identified data without attempting to re-identify the data; and
- (3) contractually obligate any recipients of the de-identified data to comply with all provisions of this chapter.

(b) This chapter shall not be construed to require a controller or processor to:

- (1) re-identify de-identified data or pseudonymous data;
  - (2) maintain data in identifiable form; or
  - (3) collect, obtain, retain, or access any data or technology;
- in order to be capable of associating an authenticated consumer request with personal data.

(c) This chapter shall not be construed to require a controller or





processor to comply with a request of a consumer under IC 24-15-3 if all of the following conditions are met:

- (1) The controller is not reasonably capable of associating the request with the personal data or it would be unreasonably burdensome for the controller to associate the request with the personal data.
- (2) The controller does not use the personal data to recognize or respond to the specific consumer who is the subject of the personal data, or associate the personal data with other personal data about the same specific consumer.
- (3) The controller does not sell the personal data to any third party or otherwise voluntarily disclose the personal data to any third party other than a processor.

**Sec. 2. The:**

- (1) rights of a consumer set forth in IC 24-15-3-1(b)(1) through IC 24-15-3-1(b)(4); and
- (2) responsibilities of a controller under IC 24-15-4-1(1) through IC 24-15-4-1(5);

do not apply to pseudonymous data in any case in which the controller is able to demonstrate that any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent the controller from accessing such information.

**Sec. 3.** A controller that discloses pseudonymous data or de-identified data shall exercise reasonable oversight to monitor compliance with any contractual commitments to which the pseudonymous data or de-identified data is subject and shall take appropriate steps to address any breaches of those contractual commitments.

#### **Chapter 8. Limitations**

**Sec. 1. (a)** This article shall not be construed to restrict a controller's or processor's ability to do any of the following:

- (1) Comply with federal, state, or local laws, rules, or regulations or, in the case of an owner of a riverboat licensed under IC 4-33-6, implement and operate a facial recognition program approved by the Indiana gaming commission.
- (2) Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by a federal, state, local, or other governmental authority.
- (3) Cooperate with law enforcement agencies concerning conduct or activity that the controller or processor reasonably and in good faith believes may violate federal, state, or local



laws, rules, or regulations.

(4) Investigate, establish, exercise, prepare for, or defend legal claims.

(5) Provide a product or service specifically requested by a consumer, perform a contract to which the consumer, or a parent of a child, is a party, including fulfilling the terms of a written warranty, or take steps at the request of the consumer or parent before entering into a contract.

(6) Take immediate steps to protect an interest that is essential for the life or physical safety of the consumer or of another individual, if the processing cannot be manifestly based on another legal basis.

(7) Prevent, detect, protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any illegal activity, investigate, report, or prosecute those responsible for any such action, and preserve the integrity or security of systems.

(8) Engage in public or peer reviewed scientific or statistical research that is in the public interest and that adheres to all applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board, or a similar independent oversight entity, that determines if:

(A) the information is likely to provide substantial benefits that do not exclusively accrue to the controller;

(B) the expected benefits of the research outweigh the privacy risks; and

(C) the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with re-identification.

(9) Assist another controller, processor, or third party with any obligation described in this section.

(b) Processing personal data for a purpose expressly identified in subsection (a)(1) through (a)(9) does not by itself make a person a controller with respect to such processing.

**Sec. 2.** The obligations imposed on a controller or a processor under this article do not prohibit or restrict a controller or processor from collecting, using, or retaining data to do the following:

(1) Conduct internal research to develop, improve, or repair products, services, or technology.

(2) Effectuate a product recall.

(3) Identify and repair technical errors that impair existing or



intended functionality.

**(4) Perform internal operations that are:**

**(A) reasonably compatible with the expectations of the consumer;**

**(B) reasonably anticipated based on the consumer's existing relationship with the controller; or**

**(C) otherwise compatible with:**

**(i) processing data in furtherance of the provision of a product or service specifically requested by a consumer, or the parent of a child; or**

**(ii) the performance of a contract to which the consumer is a party.**

**Sec. 3. The obligations imposed on a controller or a processor under this article do not apply if compliance by the controller or processor with this article would violate an evidentiary privilege under Indiana law. This article shall not be construed to prohibit a controller or processor from providing, as part of a privileged communication, personal data concerning a consumer to a person covered by an evidentiary privilege under Indiana law.**

**Sec. 4. A controller or processor that discloses personal data to a third party controller or processor in compliance with this article is not in violation of this article if the third party controller or processor that receives and processes the personal data violates this article, as long as, at the time of disclosing the personal data, the disclosing controller or processor did not have actual knowledge that the recipient intended to commit a violation. A third party controller or processor receiving personal data from a controller or processor is likewise not in violation of this article solely because of the transgressions of the controller or processor from which it receives such personal data.**

**Sec. 5. This article:**

**(1) shall not be construed as an obligation imposed on controllers and processors that adversely affects the rights or freedoms of any persons, such as exercising the right of free speech under the First Amendment to the Constitution of the United States; and**

**(2) does not apply to personal data in the context of a purely personal or household activity.**

**Sec. 6. Nothing in this article shall be construed as requiring a controller to disclose trade secrets.**

**Sec. 7. (a) Personal data processed by a controller for a purpose authorized under this chapter may not be processed for any other**



purpose unless otherwise allowed under this article. Personal data processed by a controller under this chapter may be processed to the extent that such processing is:

- (1) reasonably necessary and proportionate to a purpose authorized under this chapter; and
- (2) adequate, relevant, and limited to what is necessary in relation to the specific purpose.

(b) Personal data collected, used, or retained under section 2 of this chapter:

- (1) shall, as applicable, take into account the nature and purpose of the collection, use, or retention; and
- (2) must be subject to reasonable administrative, technical, and physical measures to:
  - (A) protect the confidentiality, integrity, and accessibility of the personal data; and
  - (B) reduce reasonably foreseeable risks of harm to consumers relating to such collection, use, or retention of the personal data.

(c) If a controller processes personal data pursuant to an exemption under this chapter, the controller bears the burden of demonstrating that such processing:

- (1) qualifies for the exemption; and
- (2) complies with the requirements set forth in this section.

#### **Chapter 9. Investigative Authority**

**Sec. 1.** Whenever the attorney general has reasonable cause to believe that any person has engaged in, is engaging in, or is about to engage in any violation of this article, the attorney general is empowered to issue a civil investigative demand to investigate the suspected violation.

#### **Chapter 10. Enforcement**

**Sec. 1.** The attorney general has exclusive authority to enforce the provisions of this article.

**Sec. 2. (a)** The attorney general may initiate an action in the name of the state and may seek an injunction to restrain any violations of this article and a civil penalty not to exceed seven thousand five hundred dollars (\$7,500) for each violation under this article.

**(b)** The attorney general may recover reasonable expenses incurred in investigating and preparing the case, including attorney's fees, in any action initiated under this chapter.

**Sec. 3. (a)** Before initiating an action under section 2 of this chapter, the attorney general shall provide a controller or



processor thirty (30) days written notice identifying the specific provisions of this article that the attorney general alleges have been or are being violated. If within the thirty (30) day period set forth in this section, the controller or processor:

- (1) cures the alleged violation; and
- (2) provides the attorney general an express written statement that:
  - (A) the alleged violation has been cured; and
  - (B) actions have been taken to ensure no further such violations will occur;

the attorney general shall not initiate an action against the controller or processor.

(b) If a controller or processor:

- (1) continues the alleged violation following the thirty (30) day period set forth in subsection (a); or
- (2) breaches an express written statement provided to the attorney general under subsection (a)(2);

the attorney general may initiate an action under section 2 of this chapter.

Sec. 4. Nothing in this article shall be construed as providing the basis for a private right of action for violations of this article or any other law.

#### **Chapter 11. Preemption; Other Laws**

Sec. 1. This article supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the processing of personal data by controllers or processors.

Sec. 2. Any reference to federal, state, or local law or statute in this article includes any accompanying rules, regulations, or exemptions.

SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "controller" has the meaning set forth in IC 24-15-2-9, as added by this act.

(b) The attorney general may, not later than December 31, 2025, establish on the attorney general's website a list of resources for controllers, including sample privacy notices and disclosures, to assist controllers in complying with IC 24-15-4, as added by this act.

(c) This SECTION expires July 1, 2026.

SECTION 3. An emergency is declared for this act.



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**SEA 5 — Concur**



**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 7395**

**BILL NUMBER: SB 5**

**NOTE PREPARED: Apr 14, 2023**

**BILL AMENDED: Apr 6, 2023**

**SUBJECT:** Consumer Data Protection.

**FIRST AUTHOR:** Sen. Brown L

**FIRST SPONSOR:** Rep. Lehman

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill establishes a new article in the Indiana Code concerning consumer data protection, to take effect January 1, 2026. It sets forth the following within the new article:

- (1) Definitions of various terms that apply throughout the article.
- (2) Exemptions from the bill's requirements concerning the responsibilities of controllers of consumers' personal data.
- (3) The rights of an Indiana consumer to do the following:
  - (A) Confirm whether or not a controller is processing the consumer's personal data.
  - (B) Correct inaccuracies in the consumer's personal data that the consumer previously provided to a controller.
  - (C) Delete the consumer's personal data held by a controller.
  - (D) Obtain a copy or representative summary of the consumer's personal data that the consumer previously provided to the controller.
  - (E) Opt out of the processing of the consumer's personal data for certain purposes.
- (4) The responsibilities of controllers of consumers' personal data.
- (5) The roles of controllers and processors with respect to a consumer's personal data.
- (6) Requirements for data protection impact assessments by controllers of consumers' personal data.
- (7) Requirements for processing de-identified data or pseudonymous data.
- (8) Limitations as to the scope of the new article.
- (9) The authority of the Attorney General to investigate and enforce suspected or actual violations of the new article.
- (10) The preemption of local rules, regulations, and laws regarding the processing of personal data.

The bill allows the Attorney General to publish certain resources on the Attorney General's website.

**Effective Date:** Upon passage; January 1, 2026.

**Explanation of State Expenditures:** This bill could increase the workload and expenditures of the Attorney General (AG) to enforce the prohibitions in the bill beginning in the latter half of FY 2026. Increases in workload and/or expenditures are expected to be financed in full or in part with civil penalties collected from controllers and processors who violate the bill's prohibitions.

In addition, the AG may have some additional workload to the extent the AG publishes resources on its website for controllers. The bill's requirements are within the agency's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

**Explanation of State Revenues:** Under the bill, the AG is able to collect a maximum civil penalty of \$7,500 per violation. Additionally, the AG can recover reasonable expenses for investigating and pursuing legal action against violators. Increases in General Fund revenue from civil penalties are indeterminable.

*Civil Filings by the Attorney General:* If the AG files a civil action against a nongovernmental party and prevails, court fees may be collected from the defendant [IC 33-37-3-1]. Additional court fees will increase revenue to the state General Fund. A civil costs fee of \$100 could be assessed from the defendant, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana, and proceeds from the automated record keeping fee (\$20) are deposited into the State User Fee Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$5) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per page) are charged for preparing transcripts or copies of record or certificate under seal.



- A civil garnishee defendant service fee (\$10) is collected from the filing party for each defendant beyond the first three garnishee defendants cited in the lawsuit.

**State Agencies Affected:** Attorney General.

**Local Agencies Affected:** Trial courts, city and town courts.

**Information Sources:**

**Fiscal Analyst:** Nate Bodnar, 317-234-9476.

## Outline of Senate Enrolled Act 5 Consumer Data Protection

- New Consumer Data Protection Article
  - IC 24-15
  - Rights and Obligations become effective January 1, 2026
- Applies to a person that
  - Conducts business in Indiana; or
  - Produces products or services that are targeted to residents of Indiana; and
  - During a calendar year
    - Controls or processes personal data of at least 100,000 Indiana residents; or
    - Controls or processes personal data of 25,000 Indiana residents and derives more than 50% of gross revenue from the sale of personal data
- Numerous Entities Exempted from the Law
  - Entities of state government
  - Any political subdivision of the state
  - Contractors of the state or political subdivisions acting on behalf of those entities
  - Financial Institutions and affiliates or data subject to Title V of the Graham-Leach-Bliley Act
  - Covered entities governed by privacy rules adopted by HHS under HIPAA
  - Nonprofit organizations
  - Institutions of Higher Education
  - Public utilities and their service company affiliates
- Numerous Categories of Information and Data Exempted
  - Health information protected under HIPAA and related regulations
  - Identifying information about substance use disorder patients confidential under 42 U.S.C 290dd-2
  - Any Identifiable private information about human subjects of research protected by federal law or collected under good clinical practices or other applicable law
  - Information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986
  - Patient safety work product for purposes of the federal Patient Safety and Quality Improvement Act
  - Health care related information exempted by HEA 5 that is de-identified in accordance with HIPAA requirements
  - Information originating from entities covered by HIPAA or federal human subjects laws, intermingled so as to become indistinguishable from, or treated the same as information exempted by HEA 5

- Information used only for public health activities and purposes as authorized by HIPAA
- The collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency, furnisher, or user that provides information for use in a consumer report; or (B) a user of a consumer report; but only to the extent that such activity is regulated by and authorized under the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).
- Personal data collected, processed, sold, or disclosed in compliance with the federal Driver's Privacy Protection Act of 1994 (18 U.S.C. 2721 et seq.).
- Personal data regulated by the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g et seq.).
- Personal data collected, processed, sold, or disclosed in compliance with the federal Farm Credit Act (12 U.S.C. 2001 et seq.).
- Data processed or maintained by a controller, processor, or third party for individuals in the course of
  - applying and being employed by them
  - Retaining or administering benefits
  - Being used for emergency contact purposes
- Parental Consent
  - Parental consent under HEA 5 is satisfied if it complies with the Children's Online Privacy Protection Act and any rules or regulations under the Act
- Two Key Definitions
  - "Controller" means a person that, alone or jointly with others, determines the purpose and means of processing personal data.
  - "Processor" means a person that processes personal data on behalf of a controller.
    - "Processing", with respect to personal data, means any operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.
- Consumer Rights Over Personal Data
  - Confirm whether a controller is processing the consumer's personal data and access the personal data
  - Correct inaccuracies in the consumers personal data
  - Delete the consumer's personal data
  - Obtain a copy or representative summary of the consumer's data at least once in a 12 month period

- Opt out of processing of a consumer's personal data for
    - Targeted advertising
    - Sale of personal data
    - Profiling in furtherance of a "decision that produces legal or similarly significant effects concerning a consumer" (likely referring to algorithms)
      - A "decision that produces legal or similarly significant effects concerning a consumer" is a decision made by a controller that results in the provision or denial by the controller of:
        - Financial and lending services
        - Housing
        - Insurance
        - Education enrollment
        - Criminal justice
        - Employment opportunities
        - Health care services
        - Access to basic necessities, such as food and water
- Response Requirements for Controllers
  - Controllers must provide information requested by consumers free of charge at least one time annually
  - Must respond without "undue delay", but no later than 45 days after receipt of the request
  - May extend the response period an additional 45 days when "reasonably necessary"
    - Must inform the consumer of the extension and the reason for it within the first 45 day period
  - A controller declining to take action on a consumer request must inform the consumer of
    - The justification for declining to take action
    - Instructions for how to appeal the decision
- Appeal Process
  - Controllers must establish an appeal process for declined requests
    - Give a reasonable time to appeal
    - "conspicuously available"
    - Similar to the process for submitting requests
    - Not later than 60 days inform consumer in writing
      - Any action taken or not taken in response to the appeal
      - Written explanation of the reasons for the decisions
    - Provide a method for consumers to submit a complaint to the Attorney General

- Limitations on Consumer Requests
  - Manifestly unfounded, excessive or repetitive requests can be declined or charged a reasonable fee for administrative costs
    - The burden is on the controller to demonstrate the request is manifestly unfounded, excessive or repetitive
  - Response not required if the controller is unable to verify the identity of the consumer using "commercially reasonable efforts"
- Controller Responsibilities
  - Limit collection of personal data to what is "adequate, relevant, and reasonably necessary in relation to the purpose for which data is processed, as disclosed to the consumer."
  - Not process personal data for "purposes that are neither reasonably necessary for nor compatible with the disclosed purposes" for which the data is processed, unless consumer consent obtained
  - Establish, implement and maintain appropriate data security practices to "protect the confidentiality, integrity, and accessibility of personal data."
  - Not process data in violation of state and federal laws that prohibit discrimination against consumers
  - Not process "sensitive data" concerning a consumer without obtaining the consumer's consent
    - "Sensitive data" is a category of personal data that includes:
      - Racial or ethnic origin
      - Religious beliefs
      - Mental or physical health diagnoses
      - Sexual orientation
      - Controller Responsibilities
      - Citizenship or immigration status
      - Genetic or biometric data processed to uniquely identify a specific individual
        - Excluding physical or digital photographs or data generated from them; Video or audio recordings or data generated from them; data for health care treatment, payment or operations under HIPAA
      - Personal data collected from a known child when not in accordance with COPPA (15 U.S.C 6501 et seq.)
        - Defined as an individual less than 13 years of age
      - Precise geolocation data (within 1,750 feet)
        - Advanced utility metering systems excluded
- Controller Responsibility Not to Discriminate
  - Shall not discriminate against consumers for exercising their privacy rights under the statute, including
    - Denying goods or services

- Charging different prices or rates for goods or services
  - Providing a different level or quality of goods or services
- However, the statute does not
  - require a controller to provide a product or service that requires personal data not collected or maintained by the controller
  - Prohibit a controller from offering a different price, rate, level, quality, or selection of goods and services to a consumer, including offering services for no fee, if the consumer opts-out of targeted advertising, the sale of personal data, or profiling that affects the consumer
  - Prohibit offers related to loyalty, discount, rewards, premium features or club card programs
- Prohibition on Rights Being Waived by Contract
  - Any contract or agreement that purports to waive or limit a consumer's rights under IC 24-15-3 is contrary to public policy and void and unenforceable
- Privacy Notice
  - A controller must provide consumers with a privacy notice that is "reasonably accessible, clear, and meaningful" that includes:
    - Categories of personal data processed by the controller
    - The purpose for processing personal data
    - How consumers may exercise their rights under IC 12-15-3, including
      - How to appeal a controller's decision about a consumer's request
      - The categories of personal data that the controller shared with third parties, if any
      - The categories of third parties, if any, with whom the controller shares personal data
    - Clearly and conspicuously disclose if personal data is sold to third parties or used by the controller for targeted advertising and how the consumer can opt-out
- Method for Consumer Requests
  - Controllers must establish and describe in the privacy notice one or more method for a consumer to submit a request to exercise privacy rights
  - The method must take into account
    - The ways consumers normally interact with the controller
    - The need for secure and reliable communication of the request
    - The ability of the controller to authenticate the identity of the requesting consumer
  - The controller may not require a consumer to create a new account to exercise privacy rights granted in IC 24-15-3
    - Can require a consumer to use an existing account

- Responsibilities of Processors
  - Shall adhere to the instructions of the controller
  - Shall assist the controller in meeting the controller's obligations including:
    - Responding to consumer requests related to privacy rights granted under IC 24-15-3 "by appropriate technical and organizational measures"
  - Shall assist the controller in meeting the controller's obligations including:
    - Security of processing the personal data
    - Notification of a breach of security of the processor's system
    - Providing necessary information for the controller to conduct and document data protection impact assessments under IC 24-15-6
  
- Controller/Processor Contract Requirements
  - A contract between the controller and processor governs the processor's data processing procedures for processing data on behalf of the controller
  - Contract must be binding and clearly set forth instructions for
    - Processing personal data
    - The nature and purpose of processing
    - The type of data subject to processing
    - The duration of processing
    - The rights and obligations of both parties
  - The contract must require the processor to do the following:
    - Ensure each individual processing personal data has a duty of confidentiality respecting the data
    - Delete or return all data to the controller at the direction of the controller when provision of services has ended, unless required by law to be retained
    - Make available upon the controller's reasonable request all information in the processor's possession necessary to demonstrate the processor's compliance with its statutory obligations
    - Allow and cooperate with reasonable assessments by the controller or its designated assessor or, alternatively, arrange for an independent assessment
    - Engage any subcontractors pursuant to a written contract that requires the subcontractor to meet the personal data requirements of the processor
  - Nothing in this section about contractual responsibilities shall be construed to relieve either the controller or processor from liabilities imposed on them by their role in the processing relationship

- Determining Whether a Person is a controller or Processor
  - Fact based determination whether a person is acting as a processor or controller with respect to specific processing of data
    - Depends upon the context in which personal data is processed
    - Processors who continue adhering to a controller's instructions with respect to a specific processing of personal data remain processors
- Data Protection Impact Assessments
  - A controller must conduct and document a data protection impact assessment
    - Applies to processing activities created or generated after December 31, 2025
  - Each of the following processing activities involving personal data must be assessed
    - Processing personal data for targeted advertising
    - The sale of personal data
  - Processing of personal data for profiling if the profiling presents a reasonably foreseeable risk of
    - Unfair or deceptive treatment of or disparate impact on consumers
    - Financial, physical, or reputational injury to consumers
    - Physical or other intrusion upon the "solitude or seclusion, or the private affairs or concerns, of consumers if such intrusion would be offensive to a reasonable person"
    - Other substantial injury to consumers
  - Processing of sensitive data
  - Any processing activities involving personal data that present a heightened risk of harm to consumers
  - The assessment shall identify and weigh the benefits that may flow
    - Directly and indirectly from the processing to the controller, the consumer, other stakeholders and the public
  - Against the potential risks to
    - The rights of consumers as mitigated by safeguards that can be employed by the controller to reduce the risks
  - The following shall be factored into the assessment by the controller:
    - The use of de-identified data and the reasonable expectations of consumers
    - The context of the processing and the relationship between the controller and consumers
  - A single assessment may assess a comparable set of processing operations that include similar activities
  - Assessments conducted to comply with other laws or regulations may be used to comply with the statute's assessment requirements if they have a reasonably comparable scope and effect to an assessment under the statute
  - The Attorney General may obtain any assessment relevant to an investigation through a civil investigative demand



- The Attorney General may evaluate the assessment for the controller's compliance with responsibilities in chapter 4 of the article
- Assessment are confidential and exempt from public inspection and copying under IC 5-14-3-4
- Disclosure to the Attorney General in response to a request is not a waiver of attorney-client privilege or work product protection
- Processing De-identified or Psuedonymous Data
  - Controllers in possession of de-identified data shall
    - Take reasonable measures to ensure that data cannot be identified with an individual
    - Publicly commit to maintaining and using de-identified data without attempting to re-identify the data
    - Contractually obligate any recipients of the de-identified data to comply with all provisions of Chapter 7
  - "Psuedonymous data" means personal data that cannot be attributed to a specific individual because additional information that would allow the data to be attributed to a specific individual is:
    - Kept separately, and
    - Subject to appropriate technical and organizational measures to ensure the personal data is not attributed to an identified or identifiable individual
  - A controller or processor is not required to
    - Re-identify de-identified or pseudonymous data
    - Maintain data in identifiable form, or
    - Collect, obtain, retain or access any data or technology

In order to be capable of associating an authenticated consumer request with personal data
  - A controller or processor does not have to comply with a consumer request under Chapter 3 when all of the following conditions are met:
    - The controller is not reasonably capable of associating the request with personal data or it would be unreasonably burdensome
    - The controller does not use personal data to recognize or respond to the specific consumer who is the subject of the personal data or associate the personal data with other personal data about the same specific consumer
    - The controller does not sell the personal data to any third party or otherwise voluntarily disclose the personal data to any third party other than a processor
  - The following rights of consumers and responsibilities of controllers do not apply to pseudonymous data in cases when any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent controllers from accessing such information:
    - Confirm whether a controller is processing the consumer's personal data and access the personal data

- Correct inaccuracies in the consumers personal data
- Delete the consumer's personal data
- Obtain a copy or representative summary of the consumer's data at least once in a 12 month period
- Limit collection of personal data to what is "adequate, relevant, and reasonably necessary in relation to the purpose for which data is processed, as disclosed to the consumer."
- Not process personal data for "purposes that are neither reasonably necessary for nor compatible with the disclosed purposes" for which the data is processed, unless consumer consent obtained
- Establish, implement and maintain appropriate data security practices to "protect the confidentiality, integrity, and accessibility of personal data."
- Not process data in violation of state and federal laws that prohibit discrimination against consumers
- Not process "sensitive data" concerning a consumer without obtaining the consumer's consent
- A controller that discloses de-identified or pseudonymous data shall:
  - Exercise reasonable oversight to monitor compliance with any contractual commitments to which the data is subject
  - Take appropriate steps to address any breaches of those contractual commitments
- Limitations on the Provisions of the Article
  - The article shall not be construed to restrict a controller's or processor's ability to do any of the following:
    - Comply with federal, state, or local laws, rules, or regulations
    - A licensed riverboat to implement and operate a facial recognition program approved by the Indiana Gaming Commission
    - Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by a federal, state, local, or other governmental entity
    - Cooperate with law enforcement agencies concerning conduct or activity that the controller or processor reasonably and in good faith believes may violate federal, state, or local laws, rules, or regulations
    - Investigate, establish, exercise or prepare for or defend legal claims
    - Provide a product or service specifically requested by a consumer, perform a contract to which the consumer or parent of child is a party, including fulfilling terms of a written warranty, or take steps at the request of the consumer or parent before entering into a contract
    - Take immediate steps to protect an interest that is essential for the life or physical safety of the consumer or of another individual, if the processing cannot be manifestly based on another legal basis
    - Prevent, detect protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any illegal

activities, investigate, report, or prosecute those responsible for any such action and preserve the integrity or security of systems

- Engage in public or peer reviewed scientific or statistical research that is in the public interest and adheres to all applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board, or a similar independent oversight entity that determines if:
  - The information is likely to provide substantial benefits that do not exclusively accrue to the controller
  - The expected benefits of the research outweigh the privacy risks, and
  - The controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with re-identification
- Assist another controller, processor, or third party with any obligation described in IC 24-15-8-1
- Processing personal data for a purpose expressly identified in 24-15-8-(a)(1) through (a)(9) does not by itself make a person a controller with respect to such processing
- Obligations imposed on Controllers and processors by the article do not prohibit or restrict a controller or processor from collecting, using, or retaining data to do the following:
  - Conduct internal research to develop, improve or repair products, services, or technology
  - Effectuate a product recall
  - Identify or repair technical errors that impair existing or intended functionality.
  - Perform internal operations that are:
    - Reasonably compatible with the expectations of consumers
    - Reasonably anticipated based on the consumer's existing relationship with the controller, or
    - Otherwise compatible with
      - Processing data in furtherance of the provision of a product or service specifically requested by a consumer, or the parent of a child, or
      - The performance of a contract to which the consumer is a party
- The obligations imposed on controllers and processors by the article do not apply if they would violate an evidentiary privilege under Indiana law
  - Personal data concerning a consumer may be provided as part of a privileged communication to a person covered by an evidentiary privilege under Indiana law
- A controller or processor who discloses personal data to a third party controller or processor in compliance with the article is not in violation if the third party receiving the data violates the article, so long as at the time of disclosing the

personal data, the controller or processor disclosing the data did not have actual knowledge the recipient intended to commit a violation

- A third party controller or processor receiving personal data is not in violation of the article solely because of the transgressions of the controller or processor from which it received personal data
  - The article may not be construed as imposing obligations on controllers and processors that adversely affect the rights or freedoms of any persons such as First Amendment free speech rights
  - The article does not apply to personal data in the context of a purely personal or household activity
  - Nothing in the article requires a controller to disclose trade secrets
  - Personal data processed by a controller under the Chapter 8 limitations may not be processed for any other purpose unless otherwise allowed by the Article
  - Personal data processed by a controller under the Chapter 8 limitations may be processed to the extent such processing is:
    - Reasonably necessary and proportionate to a purpose authorized under the Chapter
    - Adequate, relevant, and limited to what is necessary in relation to the specific purpose
  - Personal data collected, used, or retained under Section 2 of Chapter 8 (R&D, fix technical errors, product recalls, and internal operations)
    - Shall, as applicable, take into account the nature and purpose of the collection, use or retention, and
    - Must be subject to reasonable administrative, technical and physical measures to:
      - Protect the confidentiality, integrity and accessibility of the personal data, and
      - Reduce reasonably foreseeable risks of harm to consumers
  - If a controller processes personal data under a Chapter 8 exemption, the controller bears the burden of demonstrating the processing
    - Qualifies for the exemption, and
    - Complies with the requirements in Section 7 of Chapter 8
- Enforcement
    - The Attorney General (AG) has exclusive authority to enforce Article 24-15
    - Nothing in the Article shall be construed as providing the basis for a private right of action for violations of the Article or any other law
    - The AG is empowered to issue a civil investigative demand when the AG has reasonable cause to believe any person
      - Has engaged in
      - Is engaging in, or
      - Is about to engage inany violation of the Article

- The AG may initiate an action in the name of the state
  - May seek an injunction to restrain any violations of the Article, and
  - A civil penalty not to exceed \$7,500 for each violation under the Article
  - May recover reasonable expenses incurred in investigating and preparing the case, including attorney's fees
- The AG must provide a controller or processor with 30 days written notice to cure alleged violations
- The AG shall not initiate an action if the controller or processor
  - Cures the alleged violation, and
  - Provides the AG an express written statement that
    - The alleged violation has been cured, and
    - Actions have been taken to ensure no further violations will occur
- The AG may initiate an action if the controller or processor:
  - Continues the alleged violation following the 30 day period to cure, or
  - Breaches the express written statement that alleged violations were cured and actions had been taken to ensure no further violations will occur
- Preemption
  - The article supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the processing of personal data by controllers or processors
    - The preemption includes any accompanying rules, regulations, or exemptions
- Assistance with Compliance
  - The AG may, not later than December 31, 2025, establish on the AG's website a list of resources for controllers, including sample privacy notices and disclosures, to assist controllers in complying with their responsibilities under IC 24-15-4

# Current U.S. Law for Digital Privacy

- Numerous sectoral laws on privacy, but no comprehensive online privacy law
- Failure to follow stated privacy policies is a Deceptive Trade Practice that could bring Federal Trade Commission Enforcement

# Growing Momentum for Digital Privacy Laws

- European Union
  - General Data Protection Regulation (GDPR) (2018)
- California
  - California Consumer Privacy Act (2020)
  - California Privacy Rights and Enforcement Act (2023)
- More states and counting
  - Colorado, Connecticut, Indiana, Iowa, Montana, Tennessee, Utah, Virginia

# Senate Enrolled Act 5 (P.L.94-2023)

- New Consumer Data Protection Article
  - IC 24-15
- Rights and obligations become effective January 1, 2026



# To Whom Does it Apply?

- A person that
  - Conducts business in Indiana; or
  - Produces products or services that are targeted to residents of Indiana; and
  - During a calendar year
    - Controls or processes personal data of at least 100,000 Indiana residents; or
    - Controls or processes personal data of 25,000 Indiana residents and derives more than 50% of gross revenue from the sale of personal data

# Numerous Entities Exempted from the IC 24-15

- Exempts state government, political subdivisions of the state, and their contractors
- Public utilities and their service company affiliates
- Nonprofit organizations
- Institutions of Higher Education
- Financial Institutions and affiliates or data subject to Title V of the Graham-Leach-Bliley Act
- Covered entities governed by privacy rules adopted by HHS under HIPAA

# Information and Data Exempted

- Long list of information and data mostly covered by federal privacy laws that are exempt from IC 24-15
- A few examples:
  - Health information protected under HIPAA, its related regulations, and other health care privacy laws
  - Private information about human subjects of research protected by federal law or collected under good clinical practices or other applicable law

# Information and Data Exempted

- Personal information bearing on a consumer's credit worthiness by a consumer reporting agency, and use of a consumer report regulated by and authorized under the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

# Parental Consent

- Parental consent under HEA 5 is satisfied if it complies with the federal Children's Online Privacy Protection Act (COPPA) and any rules or regulations under the Act

# Two Key Definitions

- "Controller" means a person that, alone or jointly with others, determines the purpose and means of processing personal data.
- "Processor" means a person that processes personal data on behalf of a controller.
  - "Processing", with respect to personal data, means any operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

# Consumer Rights Over Personal Data

- Confirm whether a controller is processing the consumer's personal data and access the personal data
- Correct inaccuracies in the consumers personal data
- Delete the consumer's personal data
- Obtain a copy or representative summary of the consumer's data at least once in a 12 month period

# Consumer Rights Over Personal Data

- Opt out of processing of a consumer's personal data for
  - Targeted advertising
  - Sale of personal data
  - Profiling in furtherance of a "decision that produces legal or similarly significant effects concerning a consumer" (algorithms)



# Consumer Rights Over Personal Data

- A "decision that produces legal or similarly significant effects concerning a consumer" is a decision made by a controller that results in the provision or denial by the controller of:
  - Financial and lending services
  - Housing
  - Insurance
  - Education enrollment
  - Criminal justice
  - Employment opportunities
  - Health care services
  - Access to basic necessities, such as food and water

# Response Requirements for Controllers

- Controllers must provide information free of charge at least one time annually
- Must respond without "undue delay", but no later than 45 days after receipt of the request
- May extend the response period an additional 45 days when "reasonably necessary"
  - Must inform the consumer of the extension and the reason for it within the first 45 day period

# Response Requirements for Controllers

- A controller declining to take action must inform the consumer of
  - The justification for declining to take action
  - Instructions for how to appeal the decision

# Appeal Process

- Controllers must establish an appeal process for declined requests
  - Give a reasonable time to appeal
  - "conspicuously available"
  - Similar to the process for submitting requests
  - Not later than 60 days inform consumer in writing
    - Any action taken or not taken in response to the appeal
    - Written explanation of the reasons for the decisions
  - Provide a method for consumers to submit a complaint to the Attorney General

# Limitations on Requests

- Manifestly unfounded, excessive or repetitive requests can be declined or charged a reasonable fee for administrative costs
  - The burden is on the controller to demonstrate the request is manifestly unfounded, excessive or repetitive
- Response not required if the controller is unable to verify the identity of the consumer using "commercially reasonable efforts"

# Controller Responsibilities

- Limit collection of personal data to what is "adequate, relevant, and reasonably necessary in relation to the purpose for which data is processed, as disclosed to the consumer."
- Not process personal data for "purposes that are neither reasonably necessary for nor compatible with the disclosed purposes" for which the data is processed, unless consumer consent obtained

# Controller Responsibilities

- Establish, implement and maintain appropriate data security practices to "protect the confidentiality, integrity, and accessibility of personal data."
- Not process data in violation of state and federal laws that prohibit discrimination against consumers

# Controller Responsibilities

- Not process "sensitive data" concerning a consumer without obtaining the consumer's consent (opt-in)
- "Sensitive data" is a category of personal data that includes:
  - Racial or ethnic origin
  - Religious beliefs
  - Mental or physical health diagnoses
  - Sexual orientation



# Controller Responsibilities

- Citizenship or immigration status
- Genetic or biometric data processed to uniquely identify a specific individual
  - Excluding physical or digital photographs or data generated from them; Video or audio recordings or data generated from them; data for health care treatment, payment or operations under HIPAA
- Personal data collected from a known child when not in accordance with COPPA (15 U.S.C 6501 et seq.)
  - Defined as an individual less than 13 years of age
- Precise geolocation data (within 1,750 feet)
  - Advanced utility metering systems excluded

# Controller Responsibilities

- Shall not discriminate against consumers for exercising their privacy rights under the statute, including
  - Denying goods or services
  - Charging different prices or rates for goods or services
  - Providing a different level or quality of goods or services

# Controller Responsibilities

- However, the statute does not
  - require a controller to provide a product or service that requires personal data not collected or maintained by the controller
  - Prohibit a controller from offering a different price, rate, level, quality, or selection of goods and services to a consumer, including offering services for no fee, if the consumer opts-out of targeted advertising, the sale of personal data, or profiling that affects the consumer

# Controller Responsibilities

- However, the statute does not
  - Prohibit offers related to loyalty, discount, rewards, premium features or club card programs
- Any contract or agreement that purports to waive or limit a consumer's rights under IC 24-15-3 is contrary to public policy and void and unenforceable

# Privacy Notice

- A controller must provide consumers with a privacy notice that is "reasonably accessible, clear, and meaningful" that includes:
  - Categories of personal data processed by the controller
  - The purpose for processing personal data

# Privacy Notice

- How consumers may exercise their rights under IC 12-15-3, including
  - How to appeal a controller's decision about a consumer's request
  - The categories of personal data that the controller shared with third parties, if any
  - The categories of third parties, if any, with whom the controller shares personal data
- Clearly and conspicuously disclose if personal data is sold to third parties or used by the controller for targeted advertising and how the consumer can opt-out

# Method for Consumer Requests

- Controllers must establish and describe in the privacy notice one or more method for a consumer to submit a request to exercise privacy rights
- The method must take into account
  - The ways consumers normally interact with the controller
  - The need for secure and reliable communication of the request
  - The ability of the controller to authenticate the identity of the requesting consumer

# Responsibilities of Processors

- Shall adhere to the instructions of the controller
- Shall assist the controller in meeting the controller's obligations including:
  - Responding to consumer requests
  - Securing personal data and notifications of security breaches
  - Providing necessary information for the controller to conduct and document data protection impact assessments under IC 24-15-6



# Controller/Processor Contract Requirements

- A contract between the controller and processor governs the processor's data processing procedures for processing data on behalf of the controller

# Controller/Processor Contract Requirements

- Contract must be binding and clearly set forth instructions for
  - Processing personal data
  - The nature and purpose of processing
  - The type of data subject to processing
  - The duration of processing
  - The rights and obligations of both parties

# Contract Requirements for Processors

- The contract must require the processor to do the following:
  - Ensure each individual processing personal data has a duty of confidentiality respecting the data
  - Delete or return all data to the controller at the direction of the controller when provision of services has ended, unless required by law to be retained

# Controller/Processor Contract Requirements

- The contract must require the processor to do the following:
  - Make available upon the controller's reasonable request all information in the processor's possession necessary to demonstrate the processor's compliance with its statutory obligations
  - Allow and cooperate with reasonable assessments by the controller or its designated assessor or, alternatively, arrange for an independent assessment

# Controller/Processor Contract Requirements

- The contract must require the processor to do the following:
  - Engage any subcontractors pursuant to a written contract that requires the subcontractor to meet the personal data requirements of the processor
- Nothing in this section about contractual responsibilities shall be construed to relieve either the controller or processor from liabilities imposed on them

# Data Protection Impact Assessments

- A controller must conduct and document a data protection impact assessment
  - Applies to processing activities created or generated after December 31, 2025
- Each of the following processing activities involving personal data must be assessed
  - Processing personal data for targeted advertising
  - The sale of personal data

# Data Protection Impact Assessments

- Processing of personal data for profiling if the profiling presents a reasonably foreseeable risk of
  - Unfair or deceptive treatment of or disparate impact on consumers
  - Financial, physical, or reputational injury to consumers
  - Physical or other intrusion upon the "solitude or seclusion, or the private affairs or concerns, of consumers if such intrusion would be offensive to a reasonable person"
  - Other substantial injury to consumers
- Processing of sensitive data
- Any processing activities involving personal data that present a heightened risk of harm to consumers

# Data Protection Impact Assessments

- The assessment shall identify and weigh the benefits that may flow
  - Directly and indirectly from the processing to the controller, the consumer, other stakeholders and the public
- Against the potential risks to
  - The rights of consumers as mitigated by safeguards that can be employed by the controller to reduce the risks



# Data Protection Impact Assessments

- The Attorney General may obtain any assessment relevant to an investigation through a civil investigative demand
- The Attorney General may evaluate the assessment for the controller's compliance with responsibilities in chapter 4 of the article

# Data Protection Impact Assessments

- Assessments are confidential and exempt from public inspection and copying under IC 5-14-3-4
- Disclosure to the Attorney General in response to a request is not a waiver of attorney-client privilege or work product protection

# Processing De-identified or Psuedonymous Data

- Controllers in possession of de-identified data shall
  - Take reasonable measures to ensure that data cannot be identified with an individual
  - Publicly commit to maintaining and using de-identified data without attempting to re-identify the data
  - Contractually obligate any recipients of the de-identified data to comply with all provisions of Chapter 7

# Processing De-identified or Psuedonymous Data

- "Psuedonymous data" means personal data that cannot be attributed to a specific individual because additional information that would allow the data to be attributed to a specific individual is:
  - Kept separately, and
  - Subject to appropriate technical and organizational measuresto ensure that the personal data is not attributed to an identified or identifiable individual

# Processing De-identified or Psuedonymous Data

- A controller or processor does not have to comply with a consumer request under Chapter 3 when all of the following conditions are met:
  - The controller is not reasonably capable of associating the request with personal data or it would be unreasonably burdensome
  - The controller does not use personal data to recognize or respond to the specific consumer who is the subject of the personal data or associate the personal data with other personal data about the same specific consumer

# Processing De-identified or Psuedonymous Data

- The controller does not sell the personal data to any third party or otherwise voluntarily disclose the personal data to any third party other than a processor

# Processing De-identified or Pseudonymous Data

- The following rights of consumers and responsibilities of controllers do not apply to pseudonymous data in cases when any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent controllers from accessing such information:

# Processing De-identified or Psuedonymous Data

- Confirm whether a controller is processing the consumer's personal data and access the personal data
- Correct inaccuracies in the consumers personal data
- Delete the consumer's personal data
- Obtain a copy or representative summary of the consumer's data at least once in a 12 month period



# Processing De-identified or Psuedonymous Data

- Limit collection of personal data to what is "adequate, relevant, and reasonably necessary in relation to the purpose for which data is processed, as disclosed to the consumer."
- Not process personal data for "purposes that are neither reasonably necessary for nor compatible with the disclosed purposes" for which the data is processed, unless consumer consent obtained

# Processing De-identified or Psuedonymous Data

- Establish, implement and maintain appropriate data security practices to "protect the confidentiality, integrity, and accessibility of personal data."
- Not process data in violation of state and federal laws that prohibit discrimination against consumers
- Not process "sensitive data" concerning a consumer without obtaining the consumer's consent

# Processing De-identified or Pseudonymous Data

- A controller that discloses de-identified or pseudonymous data shall:
  - Exercise reasonable oversight to monitor compliance with any contractual commitments to which the data is subject
  - Take appropriate steps to address any breaches of those contractual commitments

# Limitations

- The article shall not be construed to restrict a controller's or processor's ability to do any of the following:
  - Comply with federal, state, or local laws, rules, or regulations
  - A licensed riverboat to implement and operate a facial recognition program approved by the Indiana Gaming Commission
  - Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by a federal, state, local, or other governmental entity

# Limitations

- Cooperate with law enforcement agencies concerning conduct or activity that the controller or processor reasonably and in good faith believes may violate federal, state, or local laws, rules, or regulations
- Investigate, establish, exercise or prepare for or defend legal claims
- Provide a product or service specifically requested by a consumer, perform a contract to which the consumer or parent of child is a party, including fulfilling terms of a written warranty, or take steps at the request of the consumer or parent before entering into a contract

# Limitations

- Take immediate steps to protect an interest that is essential for the life or physical safety of the consumer or of another individual, if the processing cannot be manifestly based on another legal basis
- Prevent, detect protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any illegal activities, investigate, report, or prosecute those responsible for any such action and preserve the integrity or security of systems

# Limitations

- Engage in public or peer reviewed scientific or statistical research that is in the public interest and adheres to all applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board, or a similar independent oversight entity that determines if:
  - The information is likely to provide substantial benefits that do not exclusively accrue to the controller

# Limitations

- The expected benefits of the research outweigh the privacy risks, and
- The controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with re-identification
- Assist another controller, processor, or third party with any obligation described in IC 24-15-8-1



# Limitations

- Obligations imposed on Controllers and processors by the article do not prohibit or restrict a controller or processor from collecting, using, or retaining data to do the following:
  - Conduct internal research to develop, improve or repair products, services, or technology
  - Effectuate a product recall

# Limitations

- Identify or repair technical errors that impair existing or intended functionality.
- Perform internal operations that are:
  - Reasonably compatible with the expectations of consumers
  - Reasonably anticipated based on the consumer's existing relationship with the controller, or
  - Otherwise compatible with
    - Processing data in furtherance of the provision of a product or service specifically requested by a consumer, or the parent of a child, or
    - The performance of a contract to which the consumer is a party

# Limitations

- The obligations imposed on controllers and processors by the article do not apply if they would violate an evidentiary privilege under Indiana law
  - Personal data concerning a consumer may be provided as part of a privileged communication to a person covered by an evidentiary privilege under Indiana law

# Limitations

- A controller or processor who discloses personal data to a third party controller or processor in compliance with the article is not in violation if the third party receiving the data violates the article, so long as
  - At the time of disclosing the personal data, the controller or processor disclosing the data did not have actual knowledge the recipient intended to commit a violation

# Limitations

- A third party controller or processor receiving personal data is not in violation of the article solely because of the transgressions of the controller or processor from which it received personal data
- The article may not be construed as imposing obligations on controllers and processors that adversely affect the rights or freedoms of any persons such as First Amendment free speech rights

# Limitations

- The article does not apply to personal data in the context of a purely personal or household activity
- Nothing in the article requires a controller to disclose trade secrets
- Personal data processed by a controller under the Chapter 8 limitations may not be processed for any other purpose unless otherwise allowed by the Article

# Limitations

- If a controller processes personal data under a Chapter 8 exemption, the controller bears the burden of demonstrating the processing
  - Qualifies for the exemption, and
  - Complies with the requirements in Section 7 of Chapter 8

# Enforcement

- The Attorney General (AG) has exclusive authority to enforce Article 24-15
- Nothing in the Article shall be construed as providing the basis for a private right of action for violations of the Article or any other law



# Enforcement

- The AG is empowered to issue a civil investigative demand when the AG has reasonable cause to believe any person
  - Has engaged in
  - Is engaging in, or
  - Is about to engage in any violation of the Article

# Enforcement

- The AG may initiate an action in the name of the state
  - May seek an injunction to restrain any violations of the Article, and
  - A civil penalty not to exceed \$7,500 for each violation under the Article
  - May recover reasonable expenses incurred in investigating and preparing the case, including attorney's fees

# Enforcement

- The AG must provide a controller or processor with 30 days written notice to cure alleged violations
- That AG shall not initiate an action if the controller or processor
  - Cures the alleged violation
  - Provides the AG an express written statement that
    - The alleged violation has been cured, and
    - Actions have been taken to ensure no further violations will occur

# Enforcement

- The AG may initiate an action if the controller or processor:
  - Continues the alleged violation following the 30 day period to cure, or
  - Breaches the express written statement that alleged violations were cured and actions had been taken to ensure no further violations will occur

# Preemption

- The article supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the processing of personal data by controllers or processors
  - The preemption includes any accompanying rules, regulations, or exemptions

# Assistance with Compliance

- The AG may, not later than December 31, 2025, establish on the AG's website a list of resources for controllers, including sample privacy notices and disclosures, to assist controllers in complying with their responsibilities under IC 24-15-4