

St. Joseph County Bar Association Legislative Update 2017

June 29, 2017

Selected Bills Concerning Civil and Criminal Law.....State Senator Joe Zakas

Civil Matters

SEA 516-----Power of Guardian to Request Health Records

HEA 1407—Various Changes to Probate and Trust Laws

SEA 332-----Adoption Matters

HEA 1245—Notice of Adoption to Grandparents

HEA 1048--- Adoption criminal history check

SEA 323-----Animal Protective Orders and Wireless Service Provider's

SEA 316-----Uniform Voidable Transactions Act

SEA 443-----Uniform Business Organization Laws

Criminal Matters

SEA 37-----Certifications Concerning Breath Tests

SEA 38-----Lifetime Parole

SEA 55-----Drug or Alcohol Screening Tests

HEA 1104—Adulterant and Synthetic Urine Ban

HEA 1010—Commitment to the DOC for a Level 6 Felony

SEA 190-----Value of Property

SEA 299-----Offenses Involving Unmanned Aerial Vehicles

SEA 479-----Motor Vehicle Related Offenses

HEA 1406—Criminal Offenses

Civil Matters

SEA 516 Power of guardian to request health records. Provides that, even though a guardianship terminates upon the death of the protected person, a guardian is authorized to request the health records of the protected person within 60 days after the protected person's death if the protected person was an incapacitated person. Provides, however, that a guardian may not request the health records of the protected person after the protected person's death if a personal representative of the estate of the protected person is appointed.

HEA 1407 Probate and trust matters. Makes various changes to probate and trust laws concerning contesting of wills, authorization of certain acts by a trustee, and the consideration of the requests of de facto custodians and living parents of incapacitated persons in the appointment of guardians and in custody orders. Prohibits a court clerk from collecting a court costs fee for the filing of a closing statement associated with a small estate. Specifies parameters for electronic message delivery. Makes technical corrections.

SEA 332 Adoption matters. Amends provisions regarding adoption notices. Provides that a consent to an adoption is not required from the biological father of a child born out of wedlock who was conceived as a result of a crime in any jurisdiction in which the elements of the crime are substantially similar to certain crimes under Indiana law. Amends provisions regarding: (1) when a putative father is not entitled to establish paternity; and (2) postadoption contact privileges. Prohibits any person from challenging an adoption decree after the expiration period. Makes the following changes to the crime of profiting from an adoption: (1) Provides that the crime does not apply if the birth mother is not a resident of Indiana and the adoption takes place outside of Indiana. (2) Increases, from \$3,000 to \$4,000, the allowable payments for certain costs and expenses. Prohibits the state department of health from processing a birth certificate with respect to a record for adoption unless certain fees have been paid and the report summarizing the available medical, psychological, and educational records concerning the birth parents has been submitted to the state department of health. Increases the penalty for adoption deception from a Class A misdemeanor to a Level 6 felony. Increases the penalty for unauthorized adoption advertising from a Class A misdemeanor to a Level 6 felony. Exempts the Indiana department of child services and federal agencies from the criminal statute pertaining to unauthorized adoption advertising.

SEA 1245 Notice of adoption to grandparents. Provides that a grandparent of a child sought to be adopted is entitled to notice of pending adoption proceedings if: (1) the grandparent has an existing right to petition for visitation; and (2) the grandparent's right to visitation will not be terminated after the adoption

SEA 1048 Adoption criminal history check. Removes a requirement that a criminal history check in an adoption or guardianship proceeding must include a request for information from a national registry of substantiated child abuse and neglect reports.

SEA 323 Animal protective orders and wireless service providers. Allows a court to grant an order of protection to: (1) grant possession and care of an animal to a petitioner; (2) prohibit a respondent from taking action against the animal; and (3) direct a law enforcement officer to accompany the petitioner to

retrieve the animal. Allows a court to include the transfer of wireless telephone numbers and accounts as part of an order for protection.

SEA 316 Indiana Uniform Voidable Transactions Act. Enacts the Indiana Uniform Voidable Transactions Act (Act), governing the ability of a creditor to nullify certain transfers made by a debtor. Specifies that comments released by a committee of the National Conference of Commissioners on Uniform State Laws shall not be considered as authority in interpreting solely the Act.

SEA 443 Summary of Legislation: The bill enacts provisions of the Uniform Business Organization Code, including the Uniform Model Registered Agents Act and the Uniform Model Entity Transactions Act. It also makes conforming changes. Effective Date: January 1, 2018.

Explanation of State Expenditures: Secretary of State (SOS): The SOS will incur additional administrative expenses to create new filings, update their website, and provide new guidance. The agency's current level of staff and resources should be sufficient to implement the bill's provisions.

Explanation of State Revenues: The bill would require limited partnerships and limited liability partnerships to file a biennial report with the SOS. This filing requirement currently exists for business corporations, non-profit corporations, and limited liability corporations. While the number of registered limited partnerships and limited liability partnerships is known, it is uncertain how many of those businesses are currently active because they do not have any subsequent filing requirements with the SOS. This provision could increase fee revenue deposited into the state General Fund revenue by an estimated \$47,000 to \$70,000 a year. [The fee for a for-profit filing entity to file a biennial report is \$20 for electronic filing or \$30 for another medium.]

The bill establishes nine new documents that business entities will be required to file with the SOS under specific circumstances. The filings involve domestication, interest exchange, conversion, and the registration of a commercial registered agent. The fees are \$20 for electronic filings or \$30 for another medium. Current law allows the SOS to impose the same fee amount for any other filing required or permitted but not explicitly listed in the fee schedule. If more of these types of documents are filed, it will increase revenue deposited into the state General Fund. The additional revenue associated with these provisions is likely to be small.

It also establishes a preclearance fee of \$10. Preclearance refers to filing a document in advance to make sure it is acceptable before the actual filing. The additional fee revenue would be deposited in the state General Fund. The additional revenue is likely to be small.

Criminal Matters

SEA 37 Certifications concerning breath tests. Authorizes the department of toxicology (department) to publish certifications of breath test operators, breath test equipment and chemicals, and proper breath test administration techniques on its Internet web site. Provides that a certification published on the department's Internet web site and obtained from the department as an electronic record bearing an electronic signature: (1) is admissible in a proceeding involving the offense of operating a vehicle while intoxicated; and (2) constitutes prima facie evidence concerning the equipment used in administering a breath test, the technique used in administering the breath test, or the certification of the operator who administered the breath test.

SEA 38 Lifetime parole. Requires a sexually violent predator released on lifetime parole to be placed on 24 hour GPS monitoring, subject to a sex offender risk assessment and funds specifically appropriated to the department of correction for this purpose. Requires the parole board to inform the county sheriff and prosecuting attorney: (1) that an offender has been placed on lifetime parole; and (2) whether the offender is required to wear a GPS monitoring device as a condition of parole. Provides that a person placed on lifetime parole who violates a condition of parole involving a child or a victim commits criminal parole violation by a sexual predator. (Under current law, a person commits the offense only if the person has two previous parole violations or if the person has completely served the person's sentence.) Prohibits a sex or violent offender from expunging a misdemeanor conviction.

SEA 55 Drug or alcohol screening tests. Expands the definition of "drug or alcohol screening test" for purposes of the criminal law governing forgery, fraud, and other deceptions to include testing that is ordered by a court as part of a civil action.

HEA 1104 Adulterant and synthetic urine ban. Defines "adulterant" and "synthetic urine". Provides distributing synthetic urine or an adulterant with the intent to assist a person in defrauding a drug screen is a misdemeanor.

SEA 190 Value of property. Provides that, with respect to an offense with a penalty that may be enhanced due to the value of the property involved in the offense: (1) if the offense is committed within a 30 day period all offenses may be charged in a single count; and (2) if the offenses are charged in a single count, the value of the property involved in the offenses may be aggregated.

HEA 1010 Commitment to the DOC for a Level 6 felony. Amends the law limiting the circumstances under which a person convicted of a Level 6 felony can be committed to the department of correction (DOC). Provides that a person convicted of a Level 6 felony can be committed to the DOC if: (1) the commitment is due to the revocation of the person's sentence for violating probation, parole, or community corrections and the revocation of the person's sentence is due to a new criminal offense; or (2) the person is convicted of a Level 6 felony and the sentence for that felony is ordered to be served consecutively to the sentence for another felony.

SEA 299 Offenses involving unmanned aerial vehicles. Amends the definition of "unmanned aerial vehicle" to specify that the term includes: (1) an unmanned aircraft and an unmanned aircraft system; and (2) a small unmanned aircraft and a small unmanned aircraft system; all as defined in federal law.

Creates the following new criminal offenses involving the use of an unmanned aerial vehicle as Class A misdemeanors: (1) Sex offender unmanned aerial vehicle offense. (2) Public safety remote aerial interference. (3) Remote aerial voyeurism. (4) Remote aerial harassment. Provides that the offenses are Level 6 felonies if the accused person has a prior unrelated conviction for the same offense. Provides that it is not a defense to a prosecution for invasion of privacy that the accused person used or operated an unmanned aerial vehicle in committing the violation.

SEA 479 Motor vehicle related offenses. Provides that a person who commits a Class A misdemeanor or a felony by failing to comply with the duties of the operator of a motor vehicle involved in an accident commits a separate offense for each person whose serious bodily injury or death is caused by the person's failure to comply with those duties. Provides that it is a Level 4 felony (instead of a Level 5 felony) for a vehicle operator to cause the death of another person when: (1) the vehicle operator's blood or breath has a certain alcohol concentration; (2) the vehicle operator's blood contains a controlled substance or its metabolite; or (3) the vehicle operator is intoxicated; if, in addition, the vehicle operator causes the death of the other person when the driving privileges of the vehicle operator are suspended under the habitual traffic violator law. Permits a court to impose consecutive terms of imprisonment on a person who commits multiple offenses of failing to comply with the duties of the operator of a motor vehicle involved in an accident resulting in serious bodily injury or death, and that the consecutive terms are not subject to certain sentencing limitations that otherwise apply.

SEA 1406 Criminal offenses. Provides that a person who knowingly or intentionally manufactures or finances the manufacture of methamphetamine commits manufacturing methamphetamine, a Level 4 felony. Specifies circumstances under which the crime is a Level 3 or Level 2 felony. Provides that the crime of strangulation includes application of pressure to a victim's torso, and increases the penalty to a Level 5 felony if it is knowingly committed against a pregnant woman. Provides that a person commits controlled substances criminal mischief if the person damages property while manufacturing or dealing in a controlled substance. (Under current law, the statute applies only to certain controlled substances.) Creates an enhancement to obstruction of justice if a person interferes with a witness during the investigation or pendency of a domestic violence or child abuse case. Increases the penalty for receiving stolen auto parts if the person has a prior conviction for this offense or for auto theft. Defines "drug related felony", and requires the division of state court administration to report certain drug related felonies to the National Precursor Log Exchange (NPLEx) so that NPLEx can generate a stop sale alert to prevent individuals with drug related felonies from purchasing ephedrine or pseudoephedrine. Provides that the offense of possession of a precursor by a methamphetamine offender (which prohibits the possession of pseudoephedrine or ephedrine without a prescription by persons convicted of certain offenses) applies to a person who has been convicted of a drug related felony. Makes cemetery mischief: (1) a Class A misdemeanor if the pecuniary loss is less than \$750; (2) a Level 6 felony if the pecuniary loss is at least \$750 but less than \$50,000; and (3) a Level 5 felony if the pecuniary loss is at least \$50,000. Increases the penalty for contributing to the delinquency of a minor: (1) to a felony of the same level as the delinquent act committed by the child, if the child commits an act that would be a felony if committed by an adult; and (2) to a felony one level higher than the level that the delinquent act would be if committed by an adult, with the exception of murder or a Level 1 felony, if the person who commits the offense is at least 21 years of age, the child is less than 16 years of age, and the child commits a delinquent act that would be a misdemeanor or felony if committed by an adult. Establishes sentence enhancements applicable if a certain quantity of heroin is sold within a 90 day period. Makes dealing in heroin as a Level 2 or Level 3 felony nonsuspendible if the person has a prior felony conviction.

SECTION 6. IC 29-3-1-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 3.5. "De facto custodian" has the meaning set forth in IC 31-9-2-35.5.**

SECTION 13. IC 30-5-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 4. (a) A principal may nominate a guardian for consideration by the court if protective proceedings for the principal's person or estate are commenced. The court shall make an appointment in accordance with the principal's most recent nomination in a power of attorney except for good cause or disqualification.**

(b) A parent of a minor or a de facto custodian of a minor may nominate a guardian of the minor for consideration by the court if protective proceedings for the minor's person or estate are commenced. The court shall consider a nomination in a power of attorney.

(c) A parent of an incapacitated person may nominate a guardian of the incapacitated person for consideration by the court if protective proceedings for the incapacitated person's person or estate are commenced. The court shall consider a nomination in a power of attorney.

(d) A guardian does not have power, duty, or liability with respect to property or personal health care decisions that are subject to a valid power of attorney. A guardian has no power to revoke or amend a valid power of attorney unless specifically directed to revoke or amend the power of attorney by a court order on behalf of the principal. A court may not enter an order to revoke or amend a power of attorney without a hearing. Notice of a hearing held under this section shall be given to the attorney in fact.

IC 31-9-2-35.5

" De facto custodian "

Sec. 35.5. "De facto custodian", for purposes of IC 31-14-13, IC 31-17-2, and IC 31-34-4, means a person who has been the primary caregiver for, and financial support of, a child who has resided with the person for at least:

- (1) six (6) months if the child is less than three (3) years of age; or,
- (2) one (1) year if the child is at least three (3) years of age.

Any period after a child custody proceeding has been commenced may not be included in determining whether the child has resided with the person for the required minimum period. The term does not include a person providing care for a child in a foster family home (as defined in IC 31-9-2-46.9). *As added by P.L.96-1999, SEC.1. Amended by P.L.145-2006, SEC.186; P.L.52-2007, SEC.7.*

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Voices

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OUR OPINION

More options to break a cycle of abuse

A new law passed by the General Assembly this year gives domestic violence victims two more ways to try to gain control of their lives.

Senate Enrolled Act 323, sponsored by state Rep. Wendy McNamara, R-Evansville, and co-authored by state Sen. Joseph Zakas, R-Granger, is a combination of two proposals.

The first part of the

law, according to a story by the Evansville Courier Press, allows wireless providers to transfer phone plans over to domestic violence victims without the consent of an account holder and with the permission of a judge.

The other part of the law allows judges to include pets in protective orders for domestic violence.

Controlling a phone account and, essentially a mobile device, with access to all types of information, including the user's friends, can be a powerful control mechanism.

The ultimate goal is to make it easier for victims of domestic violence to escape an abusive relationship by eliminating two common ways abusers

seek to exert control over another person's life.

Controlling a phone account and, essentially a mobile device, with access to all types of in-

formation, including the user's friends, can be a powerful control mechanism.

Having a separate phone plan is a safety issue because it allows a victim to reach out to family and friends when they need to.

Abusers can use a family pet as leverage over a partner similar to the way they would take advantage of a child to main-

tain control in an abusive relationship.

"It's sad that on a regular basis we deal with domestic violence issues," Zakas said. "We regularly try to give the courts tools to deal with these things."

This legislation is not going to eliminate domestic abuse, but it gives victims two more ways to try to escape an abusive relationship.

SEA 316

contemporaneous and is in fact substantially contemporaneous.

SECTION 13. IC 32-18-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 14. (a) A transfer made or an obligation incurred by a debtor is **fraudulent voidable** as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (B) intended to incur or believed or reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as the debts became due.

(b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:

- (1) the debtor retained possession or control of the property transferred after the transfer;
- (2) the transfer or obligation was disclosed or concealed;
- (3) before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;
- (4) the transfer was of substantially all the debtor's assets;
- (5) the debtor absconded;
- (6) the debtor removed or concealed assets;
- (7) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (8) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; and
- (9) the transfer occurred shortly before or shortly after a substantial debt was incurred.

(c) A creditor making a claim for relief under this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 14. IC 32-18-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 15. (a) A transfer made or an obligation incurred by a debtor is **fraudulent voidable** as to a creditor whose claim arose before the transfer was made or the

SEA 316



~~SECTION 11. IC 35-42-2-9, AS AMENDED BY P.L.158-2013, SECTION 432, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:~~ Sec. 9. (a) This section does not apply to a medical procedure.

(b) As used in this section, "torso" means any part of the upper body from the collarbone to the hips.

(c) A person who, in a rude, angry, or insolent manner, knowingly or intentionally:

- (1) applies pressure to the throat or neck of another person; or
- (2) obstructs the nose or mouth of the another person; or
- (3) applies pressure to the torso of another person;

in a manner that impedes the normal breathing or the blood circulation of the other person commits strangulation, a Level 6 felony.

(d) However, the offense under subsection (c) is a Level 5 felony if:

- (1) the offense is committed against a pregnant woman; and
- (2) the person who committed the offense knew the victim was pregnant at the time of the offense.

~~SECTION 15. IC 35-44.1-2-2, AS AMENDED BY P.L.158-2013, SECTION 502, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:~~ Sec. 2. (a) A person who:

(1) knowingly or intentionally induces, by threat, coercion, false statement, or offer of goods, services, or anything of value, a witness or informant in an official proceeding or investigation to:

- (A) withhold or unreasonably delay in producing any testimony, information, document, or thing;
- (B) avoid legal process summoning the person to testify or supply evidence; or
- (C) absent the person from a proceeding or investigation to which the person has been legally summoned;

(2) knowingly or intentionally in an official criminal proceeding or investigation:

- (A) withholds or unreasonably delays in producing any testimony, information, document, or thing after a court orders the person to produce the testimony, information, document, or thing;
- (B) avoids legal process summoning the person to testify or supply evidence; or

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(C) absents the person from a proceeding or investigation to which the person has been legally summoned;

(3) alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation;

(4) makes, presents, or uses a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant; or

(5) communicates, directly or indirectly, with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror;

commits obstruction of justice, a Level 6 felony, **except as provided in subsection (b).**

(b) Except as provided in subsection (e), the offense described in subsection (a) is a Level 5 felony if, during the investigation or pendency of a domestic violence or child abuse case under subsection (c), a person knowingly or intentionally:

- (1) offers, gives, or promises any benefit to;**
- (2) communicates a threat as defined by IC 35-45-2-1(c) to; or**
- (3) intimidates, unlawfully influences, or unlawfully persuades;**

any witness to abstain from attending or giving testimony at any hearing, trial, deposition, probation, or other criminal proceeding or from giving testimony or other statements to a court or law enforcement officer under IC 35-31.5-2-185.

(c) As used in this section, "domestic violence or child abuse case" means any case involving an allegation of:

- (1) the commission of a crime involving domestic or family violence under IC 35-31.5-2-76 involving a family or household member under IC 35-31.5-2-128;**
- (2) the commission of a crime of domestic violence under IC 35-31.5-2-78 involving a family or household member under IC 35-31.5-2-128; or**
- (3) physical abuse, sexual abuse, or child neglect, including crimes listed under IC 35-31.5-2-76 involving a victim who was less than eighteen (18) years of age at the time of the offense, whether or not the person is a family or household member under IC 35-31.5-2-128.**

(b) (d) Subsection (a)(2)(A) does not apply to:

- (1) a person who qualifies for a special privilege under IC 34-46-4 with respect to the testimony, information, document, or thing; or**

