

## **IC 5-8**

# **ARTICLE 8. OFFICERS' IMPEACHMENT, REMOVAL, RESIGNATION, AND DISQUALIFICATION**

## **IC 5-8-1**

### **Chapter 1. Impeachment and Removal From Office**

#### **IC 5-8-1-1**

##### **Officers; judges; prosecuting attorney; liability to impeachment**

Sec. 1. (a) Under Article 6, Sections 7 and 8 of the Constitution of the State of Indiana, all state officers other than justices of the supreme court or judges of the court of appeals of Indiana or the Indiana tax court, all other judges, prosecuting attorneys, and all county, city, town, and township officers are liable to impeachment for any misdemeanor in office.

(b) A justice of the supreme court or a judge of the court of appeals of Indiana or of the Indiana tax court is subject to removal from office under Article 7, Section 11 of the Constitution of the State of Indiana.

*(Formerly: Acts 1897, c.182, s.1.) As amended by P.L.3-1993, SEC.241.*

#### **IC 5-8-1-2**

##### **Method of impeachment**

Sec. 2. All impeachments must be by resolution, adopted, originated in and conducted by managers elected by the house of representatives, who must prepare articles of impeachment, present them at the bar of the senate and prosecute the same, and the trial must be had before the senate sitting as a court of impeachment.

*(Formerly: Acts 1897, c.182, s.2.)*

#### **IC 5-8-1-3**

##### **Articles of impeachment**

Sec. 3. When an officer is impeached by the house of representatives for a misdemeanor in office, the articles of impeachment must be delivered to the president of the senate, saving and excepting only that in case the officer impeached be the governor, lieutenant-governor, or the acting president of the senate, such articles shall be delivered to the secretary of the senate.

*(Formerly: Acts 1897, c.182, s.3.)*

#### **IC 5-8-1-4**

##### **Hearing**

Sec. 4. The senate must assign a day for the hearing of the impeachment, and inform the managers elected by the house of representatives thereof. The secretary of the senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than ten (10) days before the day fixed for the hearing.

*(Formerly: Acts 1897, c.182, s.4.)*

#### **IC 5-8-1-5**

##### **Service upon defendant**

Sec. 5. The service must be made upon the defendant personally, or if he can not, upon diligent inquiry, be found within the state, the senate, upon proof of the fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.

*(Formerly: Acts 1897, c.182, s.5.)*

#### **IC 5-8-1-6**

##### **Absence of defendant**

Sec. 6. If the defendant does not appear, the senate, upon proof of service or publication, as provided in the two (2) sections last preceding, may, of its own motion, or for cause shown, assign another day for hearing the impeachment, or may proceed, in the absence of the defendant, to trial and judgment.

*(Formerly: Acts 1897, c.182, s.6.)*

#### **IC 5-8-1-7**

##### **Objections to articles of impeachment; pleas**

Sec. 7. When the defendant appears, he may in writing object to the sufficiency of the articles of impeachment, or he may answer the same by an oral plea of not guilty, which plea must be entered upon the journal and put in issue every material allegation of the articles of impeachment.

*(Formerly: Acts 1897, c.182, s.7.)*

#### **IC 5-8-1-8**

##### **Answering articles of impeachment; judgment**

Sec. 8. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate who heard the argument, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, the senate must render judgment of conviction against him. If he plead not guilty, or refuses to plead, the senate must, at such time as it may appoint, proceed to try the impeachment.

*(Formerly: Acts 1897, c.182, s.8.)*

#### **IC 5-8-1-9**

##### **Oaths**

Sec. 9. At the time and place appointed, and before the senate proceeds to act on the impeachment, the secretary must administer to the president of the senate, and the president of the senate to each of the members of the senate then present, an oath, truly and impartially to hear, try and determine the impeachment; and no member of the senate can vote or act upon the impeachment, or upon any question arising thereon, without having taken such oath.

*(Formerly: Acts 1897, c.182, s.9.)*

#### **IC 5-8-1-10**

##### **Conviction**

Sec. 10. The defendant can not be convicted on impeachment without the concurrence of two-thirds of the members elected, voting by ayes and noes, and if two-thirds of the members elected do not concur in a conviction, he must be acquitted.

*(Formerly: Acts 1897, c.182, s.10.)*

#### **IC 5-8-1-11**

##### **Judgment**

Sec. 11. After conviction, the senate must, at such time as it may appoint, pronounce judgment, in the form of resolution entered upon the journals of the senate.

*(Formerly: Acts 1897, c.182, s.11.)*

#### **IC 5-8-1-12**

##### **Resolution of acquittal or conviction**

Sec. 12. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate.

*(Formerly: Acts 1897, c.182, s.12.)*

#### **IC 5-8-1-13**

##### **Suspension or removal from office**

Sec. 13. The judgment may be that the defendant be suspended or that he be removed from office and disqualified to hold any office of honor, trust or profit, under the state.

*(Formerly: Acts 1897, c.182, s.13.)*

#### **IC 5-8-1-14**

##### **Disqualification of defendant from receiving salaries**

Sec. 14. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees or emoluments of the office.

*(Formerly: Acts 1897, c.182, s.14.)*

#### **IC 5-8-1-15**

##### **Temporary suspension during pendency of proceedings; filling vacancies**

Sec. 15. Whenever articles of impeachment against any officer subject to impeachment are presented to the senate, such officer is temporarily suspended from office and cannot act in the officer's official capacity until the officer is acquitted. Upon such suspension of any officer other than the governor, the office must, at once, be temporarily filled by an appointment made by the governor, with the advice and consent of the senate, until the acquittal of the party impeached, or, in case of removal, until the vacancy is filled as required by law.

*(Formerly: Acts 1897, c.182, s.15.) As amended by P.L.3-1989, SEC.27.*

#### **IC 5-8-1-16**

##### **Impeachment of governor or lieutenant governor; chief justice to preside**

Sec. 16. If the governor or lieutenant-governor is impeached, the chief justice of the Supreme Court of the state shall preside over the senate during the impeachment trial, but he shall not have the right to vote.

*(Formerly: Acts 1897, c.182, s.16.)*

#### **IC 5-8-1-17**

##### **Indictment or information not barred**

Sec. 17. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment or information, the indictment or information is not barred hereby.

*(Formerly: Acts 1897, c.182, s.17.)*

#### **IC 5-8-1-18**

##### **Senate to continue in session**

Sec. 18. In case impeachment proceedings be pending in the senate at the time of the expiration of any session of the general assembly, the senate shall be continued in session for the sole and only purpose of sitting as a court of impeachment until such impeachment proceedings be concluded, and may, pending the conclusion of such impeachment proceedings, adjourn from time to time, as it may deem expedient.

*(Formerly: Acts 1897, c.182, s.18.)*

#### **IC 5-8-1-19**

##### **Judge or prosecuting attorney; duties of attorney general**

Sec. 19. (a) Under Article 7, Section 13 of the Constitution of the State of Indiana, whenever a circuit, superior, or probate court judge or prosecuting attorney has been convicted of corruption or any other high crime, the attorney general shall bring proceedings in the supreme court, on information, in the name of the state, for the removal from office of the judge or prosecuting attorney.

(b) If the judgment is against the defendant, the defendant is removed from office. The governor, the officer, or the entity required to fill a vacancy under IC 3-13-6-2 shall, subject to:

- (1) IC 33-33-2-39;
- (2) IC 33-33-2-43;
- (3) IC 33-33-45-38; and
- (4) IC 33-33-71-40;

appoint or select a successor to fill the vacancy in office.

*(Formerly: Acts 1897, c.182, s.19.) As amended by P.L.3-1987, SEC.497; P.L.3-1993, SEC.242; P.L.16-1995, SEC.3; P.L.19-1995, SEC.4; P.L.98-2004, SEC.62; P.L.201-2011, SEC.7.*

### **IC 5-8-1-20**

#### **Repealed**

*(Repealed by P.L.3-1993, SEC.282.)*

### **IC 5-8-1-21**

#### **Written accusations; grand jury**

Sec. 21. An accusation in writing against any district officer, county officer, township officer, municipal officer, or prosecuting attorney may be presented by the grand jury of the county in which the officer accused is elected or appointed.

*(Formerly: Acts 1897, c.182, s.21.) As amended by P.L.1-1990, SEC.56.*

### **IC 5-8-1-22**

#### **Form of accusation**

Sec. 22. The accusation must state the offense charged in ordinary and concise language, and without repetition.

*(Formerly: Acts 1897, c.182, s.22.)*

### **IC 5-8-1-23**

#### **Delivery of accusations; service on defendant**

Sec. 23. The accusation must be delivered by the foreman of the grand jury to the prosecuting attorney of the county, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require, by notice in writing of not less than ten (10) days, that he appear before the circuit court of the county at the time mentioned in the notice, and answer the accusation. The original accusation must then be filed with the clerk of the court, or if he be the party accused, with the judge of the court.

*(Formerly: Acts 1897, c.182, s.23.) As amended by P.L.3-1993, SEC.243.*

### **IC 5-8-1-24**

#### **Appearance of defendant**

Sec. 24. The defendant must appear at the time appointed in the notice and answer the accusation, unless, for some sufficient cause, the court assign another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

*(Formerly: Acts 1897, c.182, s.24.)*

### **IC 5-8-1-25**

#### **Answering accusation**

Sec. 25. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

*(Formerly: Acts 1897, c.182, s.25.)*

### **IC 5-8-1-26**

#### **Objections to legal sufficiency of accusation**

Sec. 26. If the defendant objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection.

*(Formerly: Acts 1897, c.182, s.26.)*

#### **IC 5-8-1-27**

##### **Denial of accusation**

Sec. 27. If he denies the truth of the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

*(Formerly: Acts 1897, c.182, s.27.)*

#### **IC 5-8-1-28**

##### **Objection to accusation not sustained**

Sec. 28. If an objection to the sufficiency of the accusation is not sustained, the defendant must answer thereto forthwith.

*(Formerly: Acts 1897, c.182, s.28.)*

#### **IC 5-8-1-29**

##### **Guilty plea or refusal to answer; not guilty plea**

Sec. 29. If the defendant pleads guilty, or refuses to answer the accusation, the court must render judgment of conviction against him. If he denies the matters charged, the court must immediately, or at such time as it may appoint, proceed to try the accusation.

*(Formerly: Acts 1897, c.182, s.29.)*

#### **IC 5-8-1-30**

##### **Trial**

Sec. 30. The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

*(Formerly: Acts 1897, c.182, s.30.)*

#### **IC 5-8-1-31**

##### **Attendance of witnesses**

Sec. 31. The prosecuting attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses, as upon a trial of an indictment.

*(Formerly: Acts 1897, c.182, s.31.)*

#### **IC 5-8-1-32**

##### **Repealed**

*(Repealed by Acts 1982, P.L.34, SEC.2.)*

#### **IC 5-8-1-33**

##### **Repealed**

*(Repealed by Acts 1982, P.L.34, SEC.2.)*

#### **IC 5-8-1-34**

##### **Removal of prosecuting attorney; proceedings**

Sec. 34. The same proceedings maybe had on like grounds for the

removal of a prosecuting attorney, except that the accusation must be delivered by the foreman of the grand jury to the clerk, and by him to the judge of the circuit court of the county, or criminal court, if such court exists in the county, who must thereupon notify the attorney-general to act as prosecuting officer in the matter, and shall designate some resident attorney to act as assistant to the attorney-general in such prosecution, whose compensation shall be fixed by the court and paid out of the county treasury.

*(Formerly: Acts 1897, c.182, s.34.)*

### **IC 5-8-1-35**

#### **Verification of accusation; citing party; hearing; judgment**

Sec. 35. (a) When an accusation in writing, verified by the oath of any person, is presented to a circuit court, alleging that any officer within the jurisdiction of the court has been guilty of:

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

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

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

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

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

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

*(Formerly: Acts 1897, c.182, s.35.) As amended by P.L.34-1992, SEC.1.*

### **IC 5-8-1-36**

**Repealed**

*(Repealed by Acts 1982, P.L.34, SEC.2.)*

**IC 5-8-1-37**

**Repealed**

*(Repealed by P.L.37-2008, SEC.4.)*

**IC 5-8-1-38**

**Felony conviction; removal; appeal; reinstatement; remuneration; vacancy**

Sec. 38. (a) The following definitions apply throughout this section:

- (1) "Felony" has the meaning set forth in IC 3-8-1-5.
- (2) "Public officer" means any person, elected or appointed, who holds any state, county, township, city, or town office.

(b) Any public officer convicted of a felony during the public officer's term of office shall:

- (1) be removed from office by operation of law when:
  - (A) in a jury trial, a jury publicly announces a verdict against the person for a felony;
  - (B) in a bench trial, the court publicly announces a verdict against the person for a felony; or
  - (C) in a guilty plea hearing, the person pleads guilty or nolo contendere to a felony; and
- (2) not receive any salary or remuneration from the time the public officer is removed from office under subdivision (1).

(c) The subsequent reduction of a felony to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5 after the:

- (1) jury has announced its verdict against the person for a felony;
- (2) court has announced its verdict against the person for a felony; or
- (3) person has pleaded guilty or nolo contendere to a felony;

does not affect the operation of subsection (b).

(d) If the conviction is:

- (1) reversed;
- (2) vacated;
- (3) set aside;
- (4) for a felony other than a felony arising out of an action taken in the public officer's official capacity, reduced to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5; or
- (5) not entered because the trial court did not accept the guilty plea;

and the public officer's term has not expired, the public officer shall be reinstated in office and receive any salary or other remuneration that the public officer would have received had the public officer not been removed from office.

(e) If the conviction is reversed, vacated, or set aside and the public officer's term has expired, the public officer shall receive any salary or other remuneration that the public officer would have



received had the public officer not been removed from office.

(f) A vacancy in a public office caused by the removal of a public officer under this section shall be filled as provided by law. If a convicted public officer is reinstated, the person filling the office during the appeal shall cease to hold the office.

(g) This subsection applies whenever:

(1) a public officer is removed from office by operation of law under subsection (b); and

(2) a vacancy occurs in a state, county, township, city, or town office as the result of the removal from office.

The court must file a certified copy of the sentencing order with the person who is entitled under IC 5-8-6 to receive notice of the death of an individual holding the office. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice under IC 5-8-6. The person who is required or permitted to fill the vacancy must comply with IC 3-13.

(h) This subsection applies if a public officer is reinstated in office under subsection (d). The court must file a certified copy of the order reversing, vacating, reducing, or setting aside the conviction with the person who is entitled under IC 5-8-6 to receive notice of the death of an individual holding the office. The person receiving a copy of the order must give notice of the reinstatement in the same manner as notice of a vacancy would be given under IC 5-8-6. The person receiving a copy of the order must also give notice to the person who was selected to fill the vacancy before the reinstatement occurred.

*As added by P.L.37-2008, SEC.2.*