

**IC 35-46**

**ARTICLE 46. MISCELLANEOUS OFFENSES**

**IC 35-46-1**

**Chapter 1. Offenses Against the Family**

**IC 35-46-1-0.1**

**Repealed**

*(As added by P.L.220-2011, SEC.615. Repealed by P.L.63-2012, SEC.69.)*

**IC 35-46-1-1**

**Definitions**

Sec. 1. As used in this chapter:

"Dependent" means:

(1) an unemancipated person who is under eighteen (18) years of age; or

(2) a person of any age who has a mental or physical disability.

"Endangered adult" has the meaning set forth in IC 12-10-3-2.

"Support" means food, clothing, shelter, or medical care.

"Tobacco business" means a sole proprietorship, corporation, partnership, or other enterprise in which:

(1) the primary activity is the sale of tobacco, tobacco products, and tobacco accessories; and

(2) the sale of other products is incidental.

*As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.84; P.L.185-1984, SEC.2; P.L.208-1986, SEC.1; P.L.41-1987, SEC.19; P.L.2-1992, SEC.881; P.L.256-1996, SEC.10; P.L.99-2007, SEC.210.*

**IC 35-46-1-1.3**

**"Dissolvable tobacco product"**

Sec. 1.3. As used in this chapter, "dissolvable tobacco product" means a smokeless tobacco product that dissolves in the mouth of the user.

*As added by P.L.10-2011, SEC.1.*

**IC 35-46-1-1.5**

**"Electronic cigarette"**

Sec. 1.5. As used in this chapter, "electronic cigarette" means a device that is capable of providing an inhalable dose of nicotine by delivering a vaporized solution. The term includes the components and cartridges.

*As added by P.L.20-2013, SEC.4.*

**IC 35-46-1-1.7**

**"Tobacco"**

Sec. 1.7. As used in this chapter, "tobacco" includes:

- (1) chewing tobacco;
- (2) cigars, cigarettes, and snuff that contain tobacco;
- (3) pipe tobacco; and
- (4) a dissolvable tobacco product.

*As added by P.L.318-1987, SEC.2. Amended by P.L.10-2011, SEC.2.*

### **IC 35-46-1-2**

#### **Bigamy**

Sec. 2. (a) A person who, being married and knowing that the person's spouse is alive, marries again commits bigamy, a Level 6 felony.

(b) It is a defense that the accused person reasonably believed that the person was eligible to remarry.

*As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.85; P.L.158-2013, SEC.548.*

### **IC 35-46-1-3**

#### **Incest**

Sec. 3. (a) A person eighteen (18) years of age or older who engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with another person, when the person knows that the other person is related to the person biologically as a parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew, commits incest, a Level 5 felony. However, the offense is a Level 4 felony if the other person is less than sixteen (16) years of age.

(b) It is a defense that the accused person's otherwise incestuous relation with the other person was based on their marriage, if the marriage was valid where it was entered into.

*As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.86; P.L.158-1987, SEC.5; P.L.79-1994, SEC.16; P.L.158-2013, SEC.549.*

### **IC 35-46-1-4**

#### **Neglect of a dependent; child selling**

Sec. 4. (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:

- (1) places the dependent in a situation that endangers the dependent's life or health;
- (2) abandons or cruelly confines the dependent;
- (3) deprives the dependent of necessary support; or
- (4) deprives the dependent of education as required by law;

commits neglect of a dependent, a Level 6 felony.

(b) However, the offense is:

- (1) a Level 5 felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and:

(A) results in bodily injury; or

(B) is:

- (i) committed in a location where a person is violating

- IC 35-48-4-1 (dealing in cocaine or a narcotic drug) or IC 35-48-4-1.1 (dealing in methamphetamine); or
- (ii) the result of a violation of IC 35-48-4-1 (dealing in cocaine or a narcotic drug) or IC 35-48-4-1.1 (dealing in methamphetamine);
- (2) a Level 3 felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and results in serious bodily injury;
- (3) a Level 1 felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) by a person at least eighteen (18) years of age and results in the death of a dependent who is less than fourteen (14) years of age; and
- (4) a Level 5 felony if it is committed under subsection (a)(2) and consists of cruel confinement or abandonment that:
  - (A) deprives a dependent of necessary food, water, or sanitary facilities;
  - (B) consists of confinement in an area not intended for human habitation; or
  - (C) involves the unlawful use of handcuffs, a rope, a cord, tape, or a similar device to physically restrain a dependent.
- (c) It is a defense to a prosecution based on an alleged act under this section that:
  - (1) the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age with an emergency medical provider who took custody of the child under IC 31-34-2.5 when:
    - (A) the prosecution is based solely on the alleged act of leaving the child with the emergency medical services provider; and
    - (B) the alleged act did not result in bodily injury or serious bodily injury to the child; or
  - (2) the accused person, in the legitimate practice of the accused person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the accused person's dependent.
- (d) Except for property transferred or received:
  - (1) under a court order made in connection with a proceeding under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5 or IC 31-6-5 before their repeal); or
  - (2) under section 9(b) of this chapter;

a person who transfers or receives any property in consideration for the termination of the care, custody, or control of a person's dependent child commits child selling, a Level 6 felony.

*As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.87; Acts 1978, P.L.144, SEC.8; Acts 1980, P.L.208, SEC.1; Acts 1981, P.L.299, SEC.2; Acts 1981, P.L.301, SEC.3; P.L.1-1997, SEC.151; P.L.197-1999, SEC.6; P.L.133-2000, SEC.10; P.L.46-2004, SEC.1; P.L.26-2006, SEC.2; P.L.15-2007, SEC.1; P.L.109-2007, SEC.1; P.L.6-2012, SEC.227; P.L.193-2013, SEC.6; P.L.158-2013, SEC.550; P.L.168-2014, SEC.85.*

#### **IC 35-46-1-4.1**

##### **Reckless supervision**

Sec. 4.1. (a) As used in this section, "child care provider" means a person who provides child care in or on behalf of:

- (1) a child care center (as defined in IC 12-7-2-28.4); or
- (2) a child care home (as defined in IC 12-7-2-28.6);

regardless of whether the child care center or child care home is licensed.

(b) A child care provider who recklessly supervises a child commits reckless supervision, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the offense results in serious bodily injury to a child, and a Level 6 felony if the offense results in the death of a child.

*As added by P.L.158-2013, SEC.551.*

#### **IC 35-46-1-5**

##### **Nonsupport of a dependent child**

Sec. 5. (a) A person who knowingly or intentionally fails to provide support to the person's dependent child commits nonsupport of a child, a Level 6 felony. However, the offense is a Level 5 felony if the person has a previous conviction under this section.

(b) It is a defense that the child had abandoned the home of the child's family without the consent of the child's parent or on the order of a court, but it is not a defense that the child had abandoned the home of the child's family if the cause of the child's leaving was the fault of the child's parent.

(c) It is a defense that the accused person, in the legitimate practice of the person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the person's dependent child.

(d) It is a defense that the accused person was unable to provide support.

*As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.88; Acts 1978, P.L.144, SEC.9; P.L.213-1996, SEC.4; P.L.123-2001, SEC.4; P.L.158-2013, SEC.552; P.L.148-2014, SEC.1.*

#### **IC 35-46-1-6**

##### **Nonsupport of a spouse**

Sec. 6. (a) A person who knowingly or intentionally fails to provide support to the person's spouse, when the spouse needs support, commits nonsupport of a spouse, a Level 6 felony.

(b) It is a defense that the accused person was unable to provide support.

*As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.89; Acts 1978, P.L.144, SEC.10; P.L.158-2013, SEC.553.*

#### **IC 35-46-1-7**

### **Nonsupport of a parent**

Sec. 7. (a) A person who knowingly or intentionally fails to provide support to his parent, when the parent is unable to support himself, commits nonsupport of a parent, a Class A misdemeanor.

(b) It is a defense that the accused person had not been supported by the parent during the time he was a dependent child under eighteen (18) years of age, unless the parent was unable to provide support.

(c) It is a defense that the accused person was unable to provide support.

*As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.90; Acts 1978, P.L.144, SEC.11.*

### **IC 35-46-1-8**

#### **Contributing to the delinquency of a minor**

Sec. 8. (a) A person at least eighteen (18) years of age who knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2) commits contributing to delinquency, a Class A misdemeanor.

(b) However, the offense described in subsection (a) is:

(1) a Level 5 felony if:

(A) the person committing the offense is at least twenty-one (21) years of age and knowingly or intentionally furnishes:

(i) an alcoholic beverage to a person less than eighteen (18) years of age in violation of IC 7.1-5-7-8 when the person committing the offense knew or reasonably should have known that the person furnished the alcoholic beverage was less than eighteen (18) years of age; or

(ii) a controlled substance (as defined in IC 35-48-1-9) or a drug (as defined in IC 9-13-2-49.1) in violation of Indiana law; and

(B) the consumption, ingestion, or use of the alcoholic beverage, controlled substance, or drug is the proximate cause of the death of any person; and

(2) a Level 6 felony if the person committing the offense knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act that would be a felony if committed by an adult under any of the following:

(A) IC 35-48-4-1.

(B) IC 35-48-4-1.1.

(C) IC 35-48-4-2.

(D) IC 35-48-4-3.

(E) IC 35-48-4-4.

(F) IC 35-48-4-4.5.

(G) IC 35-48-4-4.6.

(H) IC 35-48-4-5.

*As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977,*

*P.L.340, SEC.91; Acts 1978, P.L.144, SEC.12; Acts 1979, P.L.276, SEC.58; P.L.216-1996, SEC.24; P.L.1-1997, SEC.152; P.L.46-2004, SEC.2; P.L.2-2005, SEC.126; P.L.1-2006, SEC.533; P.L.151-2006, SEC.18; P.L.158-2013, SEC.554.*

### **IC 35-46-1-9**

#### **Profiting from adoption**

Sec. 9. (a) Except as provided in subsection (b), a person who, with respect to an adoption, transfers or receives any property in connection with the waiver of parental rights, the termination of parental rights, the consent to adoption, or the petition for adoption commits profiting from an adoption, a Level 6 felony.

(b) This section does not apply to the transfer or receipt of:

- (1) reasonable attorney's fees;
- (2) hospital and medical expenses concerning childbirth and pregnancy incurred by the adopted person's birth mother;
- (3) reasonable charges and fees levied by a child placing agency licensed under IC 31-27 or the department of child services;
- (4) reasonable expenses for psychological counseling relating to adoption incurred by the adopted person's birth parents;
- (5) reasonable costs of housing, utilities, and phone service for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth;
- (6) reasonable costs of maternity clothing for the adopted person's birth mother;
- (7) reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption;
- (8) any additional itemized necessary living expenses for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth, not listed in subdivisions (5) through (7) in an amount not to exceed one thousand dollars (\$1,000); or
- (9) other charges and fees approved by the court supervising the adoption, including reimbursement of not more than actual wages lost as a result of the inability of the adopted person's birth mother to work at her regular, existing employment due to a medical condition, excluding a psychological condition, if:
  - (A) the attending physician of the adopted person's birth mother has ordered or recommended that the adopted person's birth mother discontinue her employment; and
  - (B) the medical condition and its direct relationship to the pregnancy of the adopted person's birth mother are documented by her attending physician.

In determining the amount of reimbursable lost wages, if any, that are reasonably payable to the adopted person's birth mother under subdivision (9), the court shall offset against the reimbursable lost wages any amounts paid to the adopted person's birth mother under subdivisions (5) and (8) and any unemployment compensation

received by or owed to the adopted person's birth mother.

(c) Except as provided in this subsection, payments made under subsection (b)(5) through (b)(9) may not exceed three thousand dollars (\$3,000) and must be disclosed to the court supervising the adoption. The amounts paid under subsection (b)(5) through (b)(9) may exceed three thousand dollars (\$3,000) to the extent that a court in Indiana with jurisdiction over the child who is the subject of the adoption approves the expenses after determining that:

- (1) the expenses are not being offered as an inducement to proceed with an adoption; and
- (2) failure to make the payments may seriously jeopardize the health of either the child or the mother of the child and the direct relationship is documented by a licensed social worker or the attending physician.

(d) The payment limitation under subsection (c) applies to the total amount paid under subsection (b)(5) through (b)(9) in connection with an adoption from all prospective adoptive parents, attorneys, and licensed child placing agencies.

(e) An attorney or licensed child placing agency shall inform a birth mother of the penalties for committing adoption deception under section 9.5 of this chapter before the attorney or agency transfers a payment for adoption related expenses under subsection (b) in relation to the birth mother.

(f) The limitations in this section apply regardless of the state or country in which the adoption is finalized.

*As added by Acts 1980, P.L.208, SEC.2. Amended by P.L.117-1990, SEC.6; P.L.2-1992, SEC.882; P.L.81-1992, SEC.39; P.L.1-1993, SEC.241; P.L.4-1993, SEC.326; P.L.5-1993, SEC.333; P.L.226-1996, SEC.1; P.L.200-1999, SEC.32; P.L.130-2005, SEC.14; P.L.145-2006, SEC.371; P.L.146-2007, SEC.18; P.L.146-2008, SEC.683; P.L.158-2013, SEC.555.*

### **IC 35-46-1-9.5**

#### **Adoption deception**

Sec. 9.5. A person who is a birth mother, or a woman who holds herself out to be a birth mother, and who knowingly or intentionally benefits from adoption related expenses paid:

- (1) when the person knows or should have known that the person is not pregnant;
- (2) by or on behalf of a prospective adoptive parent who is unaware that at the same time another prospective adoptive parent is also paying adoption related expenses described under section 9(b) of this chapter in an effort to adopt the same child; or
- (3) when the person does not intend to make an adoptive placement;

commits adoption deception, a Class A misdemeanor. In addition to any other penalty imposed under this section, a court may order the person who commits adoption deception to make restitution to a

prospective adoptive parent, attorney, or licensed child placing agency that incurs an expense as a result of the offense.

*As added by P.L.200-1999, SEC.33. Amended by P.L.61-2003, SEC.21; P.L.146-2007, SEC.19.*

### **IC 35-46-1-10**

#### **Sale or distribution of tobacco or electronic cigarettes to a minor; defenses**

Sec. 10. (a) A person who knowingly:

(1) sells or distributes tobacco or an electronic cigarette to a person less than eighteen (18) years of age; or

(2) purchases tobacco or an electronic cigarette for delivery to another person who is less than eighteen (18) years of age;

commits a Class C infraction. For a sale to take place under this section, the buyer must pay the seller for the tobacco product or the electronic cigarette.

(b) It is not a defense that the person to whom the tobacco or electronic cigarette was sold or distributed did not smoke, chew, inhale, or otherwise consume the tobacco or the electronic cigarette.

(c) The following defenses are available to a person accused of selling or distributing tobacco or an electronic cigarette to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph, showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1, or a similar card issued under the laws of another state or the federal government, showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused person sold or delivered the tobacco or electronic cigarette to a person who acted in the ordinary course of employment or a business concerning tobacco or electronic cigarettes:

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

(e) As used in this section, "distribute" means to give tobacco or an electronic cigarette to another person as a means of promoting, advertising, or marketing the tobacco or electronic cigarette to the general public.

(f) Unless the person buys or receives tobacco or an electronic



cigarette under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco or an electronic cigarette is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco or electronic cigarette is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

*As added by Acts 1980, P.L.209, SEC.1. Amended by P.L.330-1983, SEC.1; P.L.318-1987, SEC.3; P.L.125-1988, SEC.4; P.L.177-1999, SEC.10; P.L.1-2001, SEC.37; P.L.204-2001, SEC.65; P.L.252-2003, SEC.17; P.L.20-2013, SEC.5.*

### **IC 35-46-1-10.1**

#### **Establishment's selling or furnishing alcoholic beverages to minors; civil penalties; defenses**

Sec. 10.1. (a) If a permit holder or an agent or employee of a permit holder violates IC 7.1-5-7-8 on the licensed premises, in addition to any other penalty, a civil judgment may be imposed against the permit holder as follows:

(1) If the licensed premises at that specific business location has not been issued a citation or summons for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars (\$200).

(2) If the licensed premises at that specific business location has had one (1) citation or summons for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars (\$400).

(3) If the licensed premises at that specific business location has had two (2) citations or summonses for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars (\$700).

(4) If the licensed premises at that specific business location has had three (3) or more citations or summonses for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars (\$1,000).

(b) The defenses set forth in IC 7.1-5-7-5.1 are available to a permit holder in an action under this section.

(c) Unless a person less than twenty-one (21) years of age buys or receives an alcoholic beverage under the direction of a law enforcement officer as part of an enforcement action, a permit holder that sells alcoholic beverages is not liable under this section unless the person less than twenty-one (21) years of age who bought or received the alcoholic beverage is charged for violating IC 7.1-5-7-7.

(d) All civil penalties collected under this section shall be deposited in the alcohol and tobacco commission's enforcement and administration fund under IC 7.1-4-10.

*As added by P.L.94-2008, SEC.61.*

## **IC 35-46-1-10.2**

### **Retail establishment's sale or distribution of tobacco or electronic cigarettes to a minor; defenses**

Sec. 10.2. (a) A retail establishment that sells or distributes tobacco or an electronic cigarette to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product or electronic cigarette. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

- (1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars (\$200).
- (2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars (\$400).
- (3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars (\$700).
- (4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars (\$1,000).

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours for each specific business location.

(b) It is not a defense that the person to whom the tobacco or electronic cigarette was sold or distributed did not smoke, chew, inhale, or otherwise consume the tobacco or electronic cigarette.

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco or an electronic cigarette to a person who is less than eighteen (18) years of age:

- (1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph showing that the purchaser or recipient was of legal age to make the purchase.
- (2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government showing that the purchaser or recipient was of legal age to make the purchase.
- (3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused retail establishment sold or delivered the tobacco or electronic cigarette to a person who acted in the ordinary course of employment or a business concerning tobacco or electronic cigarettes:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(e) As used in this section, "distribute" means to give tobacco or an electronic cigarette to another person as a means of promoting, advertising, or marketing the tobacco or electronic cigarette to the general public.

(f) Unless a person buys or receives tobacco or an electronic cigarette under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco or an electronic cigarette is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco or electronic cigarette is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

(h) A person who violates subsection (a) at least six (6) times in any one hundred eighty (180) day period commits habitual illegal sale of tobacco, a Class B infraction.

*As added by P.L.177-1999, SEC.11. Amended by P.L.14-2000, SEC.72; P.L.1-2001, SEC.38; P.L.250-2003, SEC.17; P.L.252-2003, SEC.18; P.L.94-2008, SEC.62; P.L.20-2013, SEC.6.*

### **IC 35-46-1-10.5**

#### **Purchase, acceptance, or possession of tobacco or electronic cigarettes by a minor; defenses**

Sec. 10.5. (a) A person less than eighteen (18) years of age who:

- (1) purchases tobacco or an electronic cigarette;
  - (2) accepts tobacco or an electronic cigarette for personal use;
- or
- (3) possesses tobacco or an electronic cigarette on his person;
- commits a Class C infraction.

(b) It is a defense under subsection (a) that the accused person acted in the ordinary course of employment in a business concerning tobacco or electronic cigarettes:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

*As added by P.L.125-1988, SEC.5. Amended by P.L.256-1996, SEC.13; P.L.20-2013, SEC.7.*

**IC 35-46-1-11**

**Retail sale of tobacco or electronic cigarettes; warning notices; penalty**

Sec. 11. (a) A tobacco or electronic cigarette vending machine that is located in a public place must bear the following conspicuous notices:

(1) A notice:

(A) that reads as follows, with the capitalization indicated: "If you are under 18 years of age, YOU ARE FORBIDDEN by Indiana law to buy tobacco or electronic cigarettes from this machine."; or

(B) that:

(i) conveys a message substantially similar to the message described in clause (A); and

(ii) is formatted with words and in a form authorized under the rules adopted by the alcohol and tobacco commission.

(2) A notice that reads as follows, "Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight."

(3) A notice printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance to callers in quitting smoking, as determined by the state department of health.

(b) A person who owns or has control over a tobacco or electronic cigarette vending machine in a public place and who:

(1) fails to post a notice required by subsection (a) on the vending machine; or

(2) fails to replace a notice within one (1) month after it is removed or defaced;

commits a Class C infraction.

(c) An establishment selling tobacco or electronic cigarettes at retail shall post and maintain in a conspicuous place, at the point of sale, the following:

(1) Signs printed in letters at least one-half (1/2) inch high, reading as follows:

(A) "The sale of tobacco or electronic cigarettes to persons under 18 years of age is forbidden by Indiana law."

(B) "Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight."

(2) A sign printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance to callers in quitting smoking, as determined by the state department of health.

(d) A person who:

(1) owns or has control over an establishment selling tobacco or electronic cigarettes at retail; and

(2) fails to post and maintain the sign required by subsection (c);

commits a Class C infraction.

*As added by P.L.330-1983, SEC.2. Amended by P.L.318-1987,*

*SEC.4; P.L.204-2001, SEC.66; P.L.94-2008, SEC.63; P.L.20-2013, SEC.8.*

### **IC 35-46-1-11.2**

#### **Operation of tobacco business near school prohibited**

Sec. 11.2. (a) This section does not apply to a tobacco business:

- (1) operating as a tobacco business before April 1, 1996; or
- (2) that begins operating as a tobacco business after April 1, 1996, if at the time the tobacco business begins operation the tobacco business is not located in an area prohibited under this section.

(b) A person may not operate a tobacco business within two hundred (200) feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco business and the nearest point of a building used by the school for instructional purposes.

(c) A person who violates this section commits a Class C misdemeanor.

*As added by P.L.256-1996, SEC.11.*

### **IC 35-46-1-11.3**

#### **Repealed**

*(As added by P.L.256-1996, SEC.12. Amended by P.L.177-1999, SEC.12; P.L.1-2001, SEC.39; P.L.204-2001, SEC.67. Repealed by P.L.250-2003, SEC.19.)*

### **IC 35-46-1-11.5**

#### **Coin machines for sale or distribution of tobacco or electronic cigarettes; penalty**

Sec. 11.5. (a) Except for a coin machine that is placed in or directly adjacent to an entranceway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than eighteen (18) years of age, this section does not apply to a coin machine that is located in the following:

- (1) That part of a licensed premises (as defined in IC 7.1-1-3-20) where entry is limited to persons who are at least eighteen (18) years of age.
- (2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) years of age.
- (3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.
- (4) Riverboats where entry is limited to persons who are at least twenty-one (21) years of age and on which lawful gambling is authorized.

(b) As used in this section, "coin machine" has the meaning set forth in IC 35-43-5-1.

(c) Except as provided in subsection (a), an owner of a retail establishment may not:

- (1) distribute or sell tobacco or electronic cigarettes by use of a coin machine; or
- (2) install or maintain a coin machine that is intended to be used for the sale or distribution of tobacco or electronic cigarettes.

(d) An owner of a retail establishment who violates this section commits a Class C infraction. A citation or summons issued under this section must provide notice that the coin machine must be moved within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

- (1) If the owner of the retail establishment has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).
- (2) If the owner of the retail establishment has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).
- (3) If the owner of the retail establishment has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days for the same machine, the coin machine shall be removed or impounded by a law enforcement officer having jurisdiction where the violation occurs.

An owner of a retail establishment may not be issued a citation or summons for a violation of this section more than once every two (2) business days for each business location.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

*As added by P.L.49-1990, SEC.20. Amended by P.L.177-1999, SEC.13; P.L.14-2000, SEC.73; P.L.1-2001, SEC.40; P.L.252-2003, SEC.20; P.L.20-2013, SEC.9.*

### **IC 35-46-1-11.7**

#### **Minors prohibited from entering retail establishment that primarily sells tobacco products; posting notices required; civil penalties**

Sec. 11.7. (a) A retail establishment that has as its primary purpose the sale of tobacco products may not allow an individual who is less than eighteen (18) years of age to enter the retail establishment.

(b) An individual who is less than eighteen (18) years of age may not enter a retail establishment described in subsection (a).

(c) A retail establishment described in subsection (a) must conspicuously post on all entrances to the retail establishment the following:

- (1) A sign in boldface type that states "NOTICE: It is unlawful for a person less than 18 years old to enter this store."
- (2) A sign printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance

to callers in quitting smoking, as determined by the state department of health.

(d) A person who violates this section commits a Class C infraction. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the person has not been cited for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars (\$200).

(2) If the person has had one (1) violation in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars (\$400).

(3) If the person has had two (2) violations in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars (\$700).

(4) If the person has had three (3) or more violations in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars (\$1,000).

A person may not be cited more than once every twenty-four (24) hours.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

(f) A person who violates subsection (a) at least six (6) times in any one hundred eighty (180) day period commits habitual illegal entrance by a minor, a Class B infraction.

*As added by P.L.177-1999, SEC.14. Amended by P.L.14-2000, SEC.74; P.L.1-2001, SEC.41; P.L.252-2003, SEC.21; P.L.94-2008, SEC.64.*

### **IC 35-46-1-11.8**

#### **Tobacco and electronic cigarette displays; exceptions; penalty**

Sec. 11.8. (a) As used in this section, "self-service display" means a display that contains tobacco or electronic cigarettes in an area where a customer:

(1) is permitted; and

(2) has access to the tobacco or electronic cigarettes without assistance from a sales person.

(b) This section does not apply to a self-service display located in a retail establishment that:

(1) has a primary purpose to sell tobacco or electronic cigarettes; and

(2) prohibits entry by persons who are less than eighteen (18) years of age.

(c) The owner of a retail establishment that sells or distributes tobacco or electronic cigarettes through a self-service display, other than a coin operated machine operated under IC 35-46-1-11 or IC 35-46-1-11.5, commits a Class C infraction.

(d) Notwithstanding IC 34-28-5-5(c), civil penalties collected

under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

*As added by P.L.37-2007, SEC.1. Amended by P.L.10-2011, SEC.3; P.L.20-2013, SEC.10.*

### **IC 35-46-1-12**

#### **Exploitation of dependent or endangered adult; financial exploitation of endangered adult; violation classification**

Sec. 12. (a) Except as provided in subsection (b), a person who recklessly, knowingly, or intentionally exerts unauthorized use of the personal services or the property of:

- (1) an endangered adult; or
- (2) a dependent eighteen (18) years of age or older;

for the person's own profit or advantage or for the profit or advantage of another person commits exploitation of a dependent or an endangered adult, a Class A misdemeanor.

(b) The offense described in subsection (a) is a Level 6 felony if:

- (1) the fair market value of the personal services or property is more than ten thousand dollars (\$10,000); or
- (2) the endangered adult or dependent is at least sixty (60) years of age.

(c) Except as provided in subsection (d), a person who recklessly, knowingly, or intentionally deprives an endangered adult or a dependent of the proceeds of the endangered adult's or the dependent's benefits under the Social Security Act or other retirement program that the division of family resources has budgeted for the endangered adult's or dependent's health care commits financial exploitation of an endangered adult or a dependent, a Class A misdemeanor.

(d) The offense described in subsection (c) is a Level 6 felony if:

- (1) the amount of the proceeds is more than ten thousand dollars (\$10,000); or
- (2) the endangered adult or dependent is at least sixty (60) years of age.

(e) It is not a defense to an offense committed under subsection (b)(2) or (d)(2) that the accused person reasonably believed that the endangered adult or dependent was less than sixty (60) years of age at the time of the offense.

(f) It is a defense to an offense committed under subsection (a), (b), or (c) if the accused person:

- (1) has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or a dependent; and
- (2) was acting within the scope of the accused person's fiduciary responsibility.

*As added by Acts 1981, P.L.299, SEC.3. Amended by P.L.185-1984, SEC.3; P.L.37-1990, SEC.26; P.L.2-1992, SEC.883; P.L.4-1993, SEC.327; P.L.5-1993, SEC.334; P.L.145-2001, SEC.1; P.L.145-2006, SEC.372; P.L.146-2008, SEC.684; P.L.158-2013,*



SEC.556.

**IC 35-46-1-13**

**Battery, neglect, or exploitation of endangered adult or person with mental or physical disability; failure to report; unlawful disclosure; referrals; retaliation**

Sec. 13. (a) A person who:

(1) believes or has reason to believe that an endangered adult or person of any age who has a mental or physical disability is the victim of battery, neglect, or exploitation as prohibited by this chapter or IC 35-42-2-1; and

(2) knowingly fails to report the facts supporting that belief to the division of disability and rehabilitative services, the division of aging, the adult protective services unit designated under IC 12-10-3, or a law enforcement agency having jurisdiction over battery, neglect, or exploitation of an endangered adult;

commits a Class B misdemeanor.

(b) An officer or employee of the division or adult protective services unit who unlawfully discloses information contained in the records of the division of aging under IC 12-10-3-12 through IC 12-10-3-15 commits a Class C infraction.

(c) A law enforcement agency that receives a report that an endangered adult or person of any age who has a mental or physical disability is or may be a victim of battery, neglect, or exploitation as prohibited by this chapter or IC 35-42-2-1 shall immediately communicate the report to the adult protective services unit designated under IC 12-10-3.

(d) An individual who discharges, demotes, transfers, prepares a negative work performance evaluation, reduces benefits, pay, or work privileges, or takes other action to retaliate against an individual who in good faith makes a report under IC 12-10-3-9 concerning an endangered individual commits a Class A infraction.

*As added by Acts 1981, P.L.299, SEC.4. Amended by P.L.185-1984, SEC.4; P.L.39-1985, SEC.3; P.L.41-1987, SEC.20; P.L.42-1987, SEC.14; P.L.2-1992, SEC.884; P.L.4-1993, SEC.328; P.L.5-1993, SEC.335; P.L.2-1997, SEC.75; P.L.281-2003, SEC.4; P.L.141-2006, SEC.112; P.L.153-2011, SEC.19; P.L.238-2015, SEC.14.*

**IC 35-46-1-14**

**Reporting or documenting battery, neglect, or exploitation; immunity from civil or criminal liability**

Sec. 14. Any person acting in good faith who:

(1) makes or causes to be made a report of neglect, battery, or exploitation under this chapter or IC 35-42-2-1 concerning an endangered adult or person of any age who has a mental or physical disability;

(2) makes or causes to be made photographs or x-rays of a victim of suspected neglect or battery of an endangered adult or a dependent eighteen (18) years of age or older; or

(3) participates in any official proceeding or a proceeding resulting from a report of neglect, battery, or exploitation of an endangered adult or a dependent eighteen (18) years of age or older relating to the subject matter of that report;

is immune from any civil or criminal liability that might otherwise be imposed because of these actions. However, this section does not apply to a person accused of neglect, battery, or exploitation of an endangered adult or a dependent eighteen (18) years of age or older. *As added by Acts 1981, P.L.299, SEC.5. Amended by P.L.185-1984, SEC.5; P.L.2-1997, SEC.76; P.L.2-1998, SEC.81; P.L.2-2005, SEC.127; P.L.238-2015, SEC.15.*

### **IC 35-46-1-15**

#### **Repealed**

*(Repealed by P.L.1-1991, SEC.200.)*

### **IC 35-46-1-15.1**

#### **Invasion of privacy; offense; penalties**

Sec. 15.1. A person who knowingly or intentionally violates:

- (1) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
- (2) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
- (3) a workplace violence restraining order issued under IC 34-26-6;
- (4) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
- (5) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
- (6) a no contact order issued as a condition of probation;
- (7) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
- (8) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
- (9) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;
- (10) an order issued in another state that is substantially similar

to an order described in subdivisions (1) through (9);  
(11) an order that is substantially similar to an order described  
in subdivisions (1) through (9) and is issued by an Indian:

- (A) tribe;
- (B) band;
- (C) pueblo;
- (D) nation; or
- (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(12) an order issued under IC 35-33-8-3.2; or

(13) an order issued under IC 35-38-1-30;

commits invasion of privacy, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction for an offense under this section.

*As added by P.L.1-1991, SEC.201. Amended by P.L.49-1993, SEC.14; P.L.242-1993, SEC.5; P.L.1-1994, SEC.170; P.L.23-1994, SEC.17; P.L.303-1995, SEC.1; P.L.1-1997, SEC.153; P.L.37-1997, SEC.3; P.L.1-1998, SEC.199; P.L.1-2001, SEC.42; P.L.280-2001, SEC.53; P.L.1-2002, SEC.150; P.L.133-2002, SEC.67; P.L.104-2008, SEC.22; P.L.94-2010, SEC.12; P.L.158-2013, SEC.557.*

#### **IC 35-46-1-16**

##### **Invasion of privacy convictions; record of persons protected by orders**

Sec. 16. The law enforcement agency with custody of a person who is sentenced to a term of imprisonment of more than ten (10) days following conviction of a crime under section 15.1 of this chapter shall maintain a confidential record of the:

- (1) name;
- (2) address; and
- (3) telephone number;

of each person that the person convicted under section 15.1 of this chapter is required to refrain from direct or indirect contact with under an order described by section 15.1 of this chapter.

*As added by P.L.53-1989, SEC.10. Amended by P.L.1-1991, SEC.202.*

#### **IC 35-46-1-17**

##### **Persons convicted of invasion of privacy; denial of access to protective order information**

Sec. 17. A person convicted of a crime under section 15.1 of this chapter may not have access to the information maintained under section 16 of this chapter.

*As added by P.L.53-1989, SEC.11. Amended by P.L.1-1991, SEC.203.*

**IC 35-46-1-18**

**Invasion of privacy convictions; release and hearings; notice to persons protected by orders**

Sec. 18. The law enforcement agency having custody of a person who is sentenced to a term of imprisonment of more than ten (10) days following conviction of a crime under section 15.1 of this chapter shall:

(1) provide each person described in section 16 of this chapter with written notification of:

(A) the release of a person convicted of a crime under section 15.1 of this chapter; and

(B) the date, time, and place of any substantive hearing concerning a violation of section 15.1 of this chapter by a person who is sentenced to a term of imprisonment of more than ten (10) days following conviction of a crime under section 15.1 of this chapter; and

(2) attempt to notify each person described in section 16 of this chapter by telephone to provide the information described in subdivision (1).

*As added by P.L.53-1989, SEC.12. Amended by P.L.1-1991, SEC.204.*

**IC 35-46-1-19**

**Invasion of privacy convictions; time of notice to persons protected by orders**

Sec. 19. The law enforcement agency shall:

(1) provide written notice; and

(2) attempt notification by telephone;

under section 18 of this chapter at least twenty-four (24) hours before the release or hearing.

*As added by P.L.53-1989, SEC.13.*

**IC 35-46-1-20**

**Enforcement of foreign protection orders**

Sec. 20. A law enforcement officer shall enforce a foreign protection order (as defined in IC 34-6-2-48.5) in conformity with the procedures in IC 34-26-5-17.

*As added by P.L.280-2001, SEC.54. Amended by P.L.133-2002, SEC.68.*

**IC 35-46-1-21**

**Unauthorized adoption advertising; telephone directory publisher requirements**

Sec. 21. (a) Only a person that is an attorney licensed to practice law or a child placing agency licensed under the laws of Indiana may place a paid advertisement or paid listing of the person's telephone

- number, on the person's own behalf, in a telephone directory that:
- (1) a child is offered or wanted for adoption; or
  - (2) the person is able to place, locate, or receive a child for adoption.
- (b) A person that publishes a telephone directory that is distributed in Indiana:
- (1) shall include, at the beginning of any classified heading for adoption and adoption services, a statement that informs directory users that only attorneys licensed to practice law and licensed child placing agencies may legally provide adoption services under Indiana law; and
  - (2) may publish an advertisement described in subsection (a) in the telephone directory only if the advertisement contains the following:
    - (A) For an attorney licensed to practice law in Indiana, the person's attorney number.
    - (B) For a child placing agency licensed under the laws of Indiana, the number on the person's child placing agency license.
- (c) A person who knowingly or intentionally violates subsection (a) commits unauthorized adoption advertising, a Class A misdemeanor.
- As added by P.L.146-2007, SEC.20. Amended by P.L.21-2010, SEC.10.*

### **IC 35-46-1-22**

#### **Unauthorized adoption facilitation**

Sec. 22. (a) As used in this section, "adoption services" means at least one (1) of the following services that is provided for compensation, an item of value, or reimbursement, either directly or indirectly, and provided either before or after the services are rendered:

- (1) Arranging for the placement of a child.
- (2) Identifying a child for adoption.
- (3) Matching adoptive parents with biological parents.
- (4) Arranging or facilitating an adoption.
- (5) Taking or acknowledging consents or surrenders for termination of parental rights for adoption purposes.
- (6) Performing background studies on:
  - (A) a child who is going to be adopted; or
  - (B) adoptive parents.
- (7) Making determinations concerning the best interests of a child and the appropriateness in placing the child for adoption.
- (8) Postplacement monitoring of a child before the child is adopted.

(b) As used in this section, the term "adoption services" does not include the following:

- (1) Legal services provided by an attorney licensed in Indiana.
- (2) Adoption related services provided by a governmental entity

or a person appointed to perform an investigation by the court.

(3) General education and training on adoption issues.

(4) Postadoption services, including supportive services to families to promote the well-being of members of adoptive families or birth families.

(c) Subsection (d) does not apply to the following persons:

(1) The department of child services, an agency or person authorized to act on behalf of the department of child services, or a similar agency or county office with similar responsibilities in another state.

(2) The division of family resources, an agency or person authorized to act on behalf of the division of family resources, or a similar agency or county office with similar responsibilities in another state.

(3) A child placing agency licensed under the laws of Indiana.

(4) An attorney licensed to practice law in Indiana.

(5) A prospective biological parent or adoptive parent acting on the individual's own behalf.

(d) A person who knowingly or intentionally provides, engages in, or facilitates adoption services to a birth parent who lives in Indiana commits unauthorized adoption facilitation, a Class A misdemeanor.

(e) Subsection (f) does not apply to the following persons:

(1) The department of child services, an agency or person authorized to act on behalf of the department of child services, or a similar agency or county office with similar responsibilities in another state.

(2) The division of family resources, an agency or person authorized to act on behalf of the division of family resources, or a similar agency or county office with similar responsibilities in another state.

(3) A child placing agency licensed under the laws of Indiana or another state.

(4) An attorney licensed to practice law in Indiana or another state.

(5) A prospective biological parent or adoptive parent acting on the individual's own behalf.

(f) A person who knowingly or intentionally provides, engages in, or facilitates adoption services to a prospective adoptive parent who lives in Indiana commits unauthorized adoption facilitation, a Class A misdemeanor.

*As added by P.L.146-2007, SEC.21. Amended by P.L.146-2008, SEC.685; P.L.21-2010, SEC.11; P.L.31-2011, SEC.1.*

**IC 35-46-2**

**Chapter 2. Offenses Relating to Civil Rights**

**IC 35-46-2-1**

**Violation of civil rights**

Sec. 1. A person who knowingly or intentionally denies to another person, because of color, creed, disability, national origin, race, religion, or sex, the full and equal use of the services, facilities, or goods in:

- (1) an establishment that caters or offers its services, facilities, or goods to the general public; or
- (2) a housing project owned or subsidized by a governmental entity;

commits a civil rights violation, a Class B misdemeanor.

*As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.92; P.L.23-1993, SEC.162.*

**IC 35-46-2-2**

**Discrimination in jury selection**

Sec. 2. A public servant having the duty to select or summon persons for grand jury or trial jury service who knowingly or intentionally fails to select or summon a person because of color, creed, disability, national origin, race, religion, or sex commits discrimination in jury selection, a Class A misdemeanor.

*As added by Acts 1977, P.L.340, SEC.93. Amended by P.L.23-1993, SEC.163.*

## **IC 35-46-3**

### **Chapter 3. Offenses Relating to Animals**

#### **IC 35-46-3-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 12 of this chapter by P.L.7-2007 apply only to:

(A) offenses; and

(B) acts that would be a crime if committed by an adult; that are committed after June 30, 2007.

(2) The amendments made to sections 8 and 12 of this chapter by P.L.171-2007 apply only to crimes committed after June 30, 2007. However, the amendments made to section 12(d) of this chapter by P.L.171-2007 apply only to:

(A) crimes; and

(B) delinquent acts that would be crimes if committed by an adult;

that are committed after June 30, 2007.

*As added by P.L.220-2011, SEC.616. Amended by P.L.63-2012, SEC.70.*

#### **IC 35-46-3-0.5**

##### **Definitions**

Sec. 0.5. The following definitions apply throughout this chapter:

(1) "Abandon" means to desert an animal or to leave the animal permanently in a place without making provision for adequate long term care of the animal. The term does not include leaving an animal in a place that is temporarily vacated for the protection of human life during a disaster.

(2) "Beat" means to unnecessarily or cruelly strike an animal, or to throw the animal against an object causing the animal to suffer severe pain or injury. The term does not include reasonable training or disciplinary techniques.

(3) "Mutilate" means to wound, injure, maim, or disfigure an animal by irreparably damaging the animal's body parts or to render any part of the animal's body useless. The term includes bodily injury involving:

(A) serious permanent disfigurement;

(B) serious temporary disfigurement;

(C) permanent or protracted loss or impairment of the function of a bodily part or organ; or

(D) a fracture.

(4) "Neglect" means:

(A) endangering an animal's health by failing to provide or arrange to provide the animal with food or drink, if the animal is dependent upon the person for the provision of



food or drink;

(B) restraining an animal for more than a brief period in a manner that endangers the animal's life or health by the use of a rope, chain, or tether that:

- (i) is less than three (3) times the length of the animal;
- (ii) is too heavy to permit the animal to move freely; or
- (iii) causes the animal to choke;

(C) restraining an animal in a manner that seriously endangers the animal's life or health;

(D) failing to:

- (i) provide reasonable care for; or
- (ii) seek veterinary care for;

an injury or illness to a dog or cat that seriously endangers the life or health of the dog or cat; or

(E) leaving a dog or cat outside and exposed to:

- (i) excessive heat without providing the animal with a means of shade from the heat; or
- (ii) excessive cold if the animal is not provided with straw or another means of protection from the cold;

regardless of whether the animal is restrained or kept in a kennel.

(5) "Torture" means:

(A) to inflict extreme physical pain or injury on an animal with the intent of increasing or prolonging the animal's pain; or

(B) to administer poison to a domestic animal (as defined in section 12(d) of this chapter) or expose a domestic animal to a poisonous substance with the intent that the domestic animal ingest the substance and suffer harm, pain, or physical injury.

*As added by P.L.171-2007, SEC.5. Amended by P.L.111-2009, SEC.10.*

### **IC 35-46-3-1**

#### **Harboring a non-immunized dog**

Sec. 1. A person who knowingly or intentionally harbors a dog that is over the age of six (6) months and not immunized against rabies commits harboring a non-immunized dog, a Class C infraction. However, the offense is a Class B misdemeanor if the dog causes bodily injury by biting a person.

*As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.94.*

### **IC 35-46-3-2**

#### **Repealed**

*(Repealed by P.L.193-1987, SEC.17.)*

### **IC 35-46-3-3**

#### **"Animal"**

Sec. 3. As used in this chapter, "animal" does not include a human being.

*As added by P.L.193-1987, SEC.6.*

#### **IC 35-46-3-4**

##### **"Animal fighting contest"**

Sec. 4. As used in this chapter, "animal fighting contest" means a conflict between two (2) or more animals. The term does not include a conflict that is unorganized or accidental.

*As added by P.L.193-1987, SEC.7.*

#### **IC 35-46-3-4.3**

##### **"Animal fighting paraphernalia"**

Sec. 4.3. As used in this chapter, "animal fighting paraphernalia" means equipment used to train or condition animals for participation in an animal fighting contest.

*As added by P.L.76-2002, SEC.2.*

#### **IC 35-46-3-4.5**

##### **"Law enforcement animal"**

Sec. 4.5. (a) As used in this chapter, "law enforcement animal" means an animal that is owned or used by a law enforcement agency for the principal purposes of:

- (1) aiding in:
  - (A) the detection of criminal activity;
  - (B) the enforcement of laws; and
  - (C) the apprehension of offenders; and
- (2) ensuring the public welfare.

(b) The term includes, but is not limited to, the following:

- (1) A horse.
- (2) An arson investigation dog.
- (3) A bomb detection dog.
- (4) A narcotic detection dog.
- (5) A patrol dog.

*As added by P.L.213-1997, SEC.2. Amended by P.L.9-2003, SEC.1.*

#### **IC 35-46-3-5**

##### **Exceptions from chapter; electrocution**

Sec. 5. (a) Except as provided in subsections (b) through (c), this chapter does not apply to the following:

- (1) Fishing, hunting, trapping, or other conduct authorized under IC 14-22.
- (2) Conduct authorized under IC 15-20-2.
- (3) Veterinary practices authorized by standards adopted under IC 25-38.1-2-14.
- (4) Conduct authorized by a local ordinance.
- (5) Acceptable farm management practices.
- (6) Conduct authorized by IC 15-17, and rules adopted under IC 15-17 for state or federally inspected livestock slaughtering

- facilities and state or federal animal disease control programs.
- (7) A research facility registered with the United States Department of Agriculture under the federal Animal Welfare Act (7 U.S.C. 2131 et seq.).
- (8) Destruction of a vertebrate defined as a pest under IC 15-16-5-24.
- (9) Destruction of or injury to a fish.
- (10) Destruction of a vertebrate animal that is:
- (A) endangering, harassing, or threatening livestock or a domestic animal; or
  - (B) destroying or damaging a person's property.
- (11) Destruction of an animal by an animal control program, including an animal control facility, an animal shelter, or a humane society.
- (12) Destruction of an injured or ill animal by an individual to prevent the animal from prolonged suffering.
- (13) Conduct not resulting in serious injury or illness to the animal that is incidental to exhibiting an animal for show, competition, or display, or that is incidental to transporting the animal for show, competition, or display.
- (14) Parking an animal.
- (15) Humane destruction of an animal that the person owns.

(b) Section 1 of this chapter applies to conduct described in subsection (a).

(c) Destruction of an animal by electrocution is authorized under this section only if it is conducted by a person who is engaged in an acceptable farm management practice, by a research facility registered with the United States Department of Agriculture under the Animal Welfare Act, or for the animal disease diagnostic laboratory established under IC 21-46-3-1, a research facility licensed by the United States Department of Agriculture, a college, or a university. *As added by P.L.193-1987, SEC.8. Amended by P.L.2-1993, SEC.188; P.L.1-1995, SEC.76; P.L.137-1996, SEC.74; P.L.41-1998, SEC.1; P.L.2-2007, SEC.378; P.L.171-2007, SEC.6; P.L.2-2008, SEC.79; P.L.111-2009, SEC.11.*

### **IC 35-46-3-6**

#### **Impoundment of animals; probable cause hearing; penalties; custody; bond**

Sec. 6. (a) This section does not apply to a violation of section 1 of this chapter.

(b) Any law enforcement officer or any other person having authority to impound animals who has probable cause to believe there has been a violation of this chapter or IC 15-20-1-4 may take custody of the animal involved.

(c) The owner of an animal that has been impounded under this section may prevent disposition of the animal by an animal shelter that is caring for the animal by posting, not later than ten (10) days after the animal has been impounded, a bond with the court in an

amount sufficient to provide for the animal's care and keeping for at least thirty (30) days, beginning from the date the animal was impounded. The owner may renew a bond by posting a new bond, in an amount sufficient to provide for the animal's care and keeping for at least an additional thirty (30) days, not later than ten (10) days after the expiration of the period for which a previous bond was posted. If a bond expires and is not renewed, the animal shelter may determine disposition of the animal, subject to court order. If the owner of an animal impounded under this section is convicted of an offense under this chapter or IC 15-20-1-4, the owner shall reimburse the animal shelter for the expense of the animal's care and keeping. If the owner has paid a bond under this subsection, the animal shelter may euthanize an animal if a veterinarian determines that an animal is suffering extreme pain.

(d) If the owner requests, the court having jurisdiction of criminal charges filed under this chapter or IC 15-20-1 shall hold a hearing to determine whether probable cause exists to believe that a violation of this chapter or IC 15-20-1 has occurred. If the court determines that probable cause does not exist, the court shall order the animal returned to its owner, and the return of any bond posted by its owner.

(e) Whenever charges are filed under this chapter, the court shall appoint the state veterinarian under IC 15-17-4-1 or the state veterinarian's designee to:

- (1) investigate the condition of the animal and the circumstances relating to the animal's condition; and
- (2) make a recommendation to the court under subsection (f) regarding the confiscation of the animal.

(f) The state veterinarian or the state veterinarian's designee who is appointed under subsection (e) shall do the following:

- (1) Make a recommendation to the court concerning whether confiscation is necessary to protect the safety and well-being of the animal.
- (2) If confiscation is recommended under subdivision (1), recommend a manner for handling the confiscation and disposition of the animal that is in the best interests of the animal.

The state veterinarian or the state veterinarian's designee who submits a recommendation under this subsection shall articulate to the court the reasons supporting the recommendation.

(g) The court:

- (1) shall give substantial weight to; and
- (2) may enter an order based upon;

a recommendation submitted under subsection (f).

(h) If a person is convicted of an offense under this chapter or IC 15-20-1, the court may impose the following additional penalties against the person:

- (1) A requirement that the person pay the costs of caring for an animal involved in the offenses that are incurred during a period of impoundment authorized under subsection (b).

(2) An order terminating or imposing conditions on the person's right to possession, title, custody, or care of:

(A) an animal that was involved in the offense; or

(B) any other animal in the custody or care of the person.

(i) If a person's right to possession, title, custody, or care of an animal is terminated under subsection (h), the court may:

(1) award the animal to a humane society or other organization that has as its principal purpose the humane treatment of animals; or

(2) order the disposition of the animal as recommended under subsection (f).

*As added by P.L.193-1987, SEC.9. Amended by P.L.176-1993, SEC.6; P.L.166-1993, SEC.5; P.L.14-2000, SEC.75; P.L.76-2002, SEC.3; P.L.171-2007, SEC.7; P.L.2-2008, SEC.80.*

### **IC 35-46-3-7**

#### **Abandonment or neglect of vertebrate animals; defense**

Sec. 7. (a) A person who:

(1) has a vertebrate animal in the person's custody; and

(2) recklessly, knowingly, or intentionally abandons or neglects the animal;

commits cruelty to an animal, a Class A misdemeanor. However, except for a conviction under section 1 of this chapter, the offense is a Level 6 felony if the person has a prior unrelated conviction under this chapter.

(b) It is a defense to a prosecution for abandoning a vertebrate animal under this section that the person who had the animal in the person's custody reasonably believed that the vertebrate animal was capable of surviving on its own.

(c) For purposes of this section, an animal that is feral is not in a person's custody.

*As added by P.L.193-1987, SEC.10. Amended by P.L.171-2007, SEC.8; P.L.111-2009, SEC.12; P.L.158-2013, SEC.558.*

### **IC 35-46-3-8**

#### **Purchase or possession of animals for fighting contests**

Sec. 8. A person who knowingly or intentionally purchases or possesses an animal for the purpose of using the animal in an animal fighting contest commits a Level 6 felony.

*As added by P.L.193-1987, SEC.11. Amended by P.L.171-2007, SEC.9; P.L.158-2013, SEC.559.*

### **IC 35-46-3-8.5**

#### **Possession of animal fighting paraphernalia**

Sec. 8.5. A person who knowingly or intentionally possesses animal fighting paraphernalia with the intent to commit a violation of section 9 of this chapter commits possession of animal fighting paraphernalia, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction

under this section.

*As added by P.L.76-2002, SEC.4. Amended by P.L.6-2012, SEC.228.*

### **IC 35-46-3-9**

#### **Promotion, use of animals, or attendance with animal at animal fighting contest**

Sec. 9. A person who knowingly or intentionally:

- (1) promotes or stages an animal fighting contest;
- (2) uses an animal in a fighting contest; or
- (3) attends an animal fighting contest having an animal in the person's possession;

commits a Level 6 felony.

*As added by P.L.193-1987, SEC.12. Amended by P.L.158-2013, SEC.560.*

### **IC 35-46-3-9.5**

#### **Promoting an animal fighting contest**

Sec. 9.5. A person who knowingly or intentionally:

- (1) possesses animal fighting paraphernalia with the intent to commit a violation of section 9 of this chapter; and
- (2) possesses, harbors, or trains a dog, cock, fowl, or bird bearing:
  - (A) a scar;
  - (B) a wound; or
  - (C) an injury;

consistent with participation in or training for an animal fighting contest;

commits promoting an animal fighting contest, a Level 6 felony.

*As added by P.L.76-2002, SEC.5. Amended by P.L.6-2012, SEC.229; P.L.158-2013, SEC.561.*

### **IC 35-46-3-10**

#### **Attendance at fighting contest**

Sec. 10. A person who knowingly or intentionally attends a fighting contest involving animals commits cruelty to an animal, a Class A misdemeanor. However, except for a conviction under section 1 of this chapter, the offense is a Level 6 felony if the person has a prior unrelated conviction under this chapter.

*As added by P.L.193-1987, SEC.13. Amended by P.L.111-2009, SEC.13; P.L.158-2013, SEC.562.*

### **IC 35-46-3-11**

#### **Cruelty to a law enforcement animal**

Sec. 11. (a) A person who knowingly or intentionally:

- (1) strikes, torments, injures, or otherwise mistreats a law enforcement animal; or
- (2) interferes with the actions of a law enforcement animal while the animal is engaged in assisting a law enforcement officer in the performance of the officer's duties;

commits a Class A misdemeanor.

(b) An offense under subsection (a)(1) is a Level 6 felony if the act results in:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (4) death;

of the law enforcement animal.

(c) It is a defense that the accused person:

- (1) engaged in a reasonable act of training, handling, or discipline; and
- (2) acted as an employee or agent of a law enforcement agency.

(d) In addition to any sentence or fine imposed for a conviction of an offense under this section, the court:

- (1) may order the person convicted to make restitution to the person or law enforcement agency owning the animal for reimbursement of veterinary bills; and
- (2) shall order the person convicted to make restitution to the person or law enforcement agency owning the animal for reimbursement of the cost of replacing the animal, which may include the cost of training the animal, if the animal is permanently disabled or killed.

*As added by P.L.193-1987, SEC.14. Amended by P.L.213-1997, SEC.3; P.L.9-2003, SEC.2; P.L.161-2013, SEC.8; P.L.158-2013, SEC.563; P.L.168-2014, SEC.86.*

### **IC 35-46-3-11.3**

#### **Cruelty to a search and rescue dog**

Sec. 11.3. (a) As used in this section, "search and rescue dog" means a dog that receives special training to locate or attempt to locate by air scent or ground or water tracking a person who is an offender or is lost, trapped, injured, or incapacitated.

(b) A person who knowingly or intentionally:

- (1) interferes with the actions of a search and rescue dog while the dog is performing or is attempting to perform a search and rescue task; or
- (2) strikes, torments, injures, or otherwise mistreats a search and rescue dog;

commits a Class A misdemeanor.

(c) An offense under subsection (b)(2) is a Level 6 felony if the act results in:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (4) death;

of the search and rescue dog.

(d) It is a defense that the accused person:

- (1) engaged in a reasonable act of training, handling, or disciplining the search and rescue dog; or
- (2) reasonably believed the conduct was necessary to prevent injury to the accused person or another person.

(e) In addition to any sentence or fine imposed for a conviction of an offense under this section, the court may order the person to make restitution to the person who owns the search and rescue dog for reimbursement of:

- (1) veterinary bills; and
- (2) replacement costs of the dog if the dog is disabled or killed.

*As added by P.L.9-2003, SEC.3. Amended by P.L.158-2013, SEC.564.*

### **IC 35-46-3-11.5**

#### **Cruelty to a service animal**

Sec. 11.5. (a) As used in this section, "service animal" means an animal that a person who is impaired by:

- (1) blindness or any other visual impairment;
- (2) deafness or any other aural impairment;
- (3) a physical disability; or
- (4) a medical condition;

relies on for navigation, assistance in performing daily activities, or alert signals regarding the onset of the person's medical condition.

(b) A person who knowingly or intentionally:

- (1) interferes with the actions of a service animal; or
- (2) strikes, torments, injures, or otherwise mistreats a service animal;

while the service animal is engaged in assisting an impaired person described in subsection (a) commits a Class A misdemeanor.

(c) An offense under subsection (b)(2) is a Level 6 felony if the act results in the:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (4) death;

of the service animal.

(d) It is a defense that the accused person:

- (1) engaged in a reasonable act of training, handling, or disciplining the service animal; or
- (2) reasonably believed the conduct was necessary to prevent injury to the accused person or another person.

*As added by P.L.143-1996, SEC.2. Amended by P.L.9-2003, SEC.4; P.L.158-2013, SEC.565.*

### **IC 35-46-3-12**

#### **Torture or mutilation of a vertebrate animal; killing a domestic animal**

Sec. 12. (a) This section does not apply to a person who



euthanizes an injured, a sick, a homeless, or an unwanted domestic animal if:

- (1) the person is employed by a humane society, an animal control agency, or a governmental entity operating an animal shelter or other animal impounding facility; and
- (2) the person euthanizes the domestic animal in accordance with guidelines adopted by the humane society, animal control agency, or governmental entity operating the animal shelter or other animal impounding facility.

(b) A person who knowingly or intentionally beats a vertebrate animal commits cruelty to an animal, a Class A misdemeanor. However, the offense is a Level 6 felony if:

- (1) the person has a previous, unrelated conviction under this section; or
- (2) the person committed the offense with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

(c) A person who knowingly or intentionally tortures or mutilates a vertebrate animal commits torturing or mutilating a vertebrate animal, a Level 6 felony.

(d) As used in this subsection, "domestic animal" means an animal that is not wild. The term is limited to:

- (1) cattle, calves, horses, mules, swine, sheep, goats, dogs, cats, poultry, ostriches, rhea, and emus; and
- (2) an animal of the bovine, equine, ovine, caprine, porcine, canine, feline, camelid, cervidae, or bison species.

A person who knowingly or intentionally kills a domestic animal without the consent of the owner of the domestic animal commits killing a domestic animal, a Level 6 felony.

(e) It is a defense to a prosecution under this section that the accused person:

- (1) reasonably believes the conduct was necessary to:
  - (A) prevent injury to the accused person or another person;
  - (B) protect the property of the accused person from destruction or substantial damage; or
  - (C) prevent a seriously injured vertebrate animal from prolonged suffering; or
- (2) engaged in a reasonable and recognized act of training, handling, or disciplining the vertebrate animal.

(f) When a court imposes a sentence or enters a dispositional decree under this section, the court:

- (1) shall consider requiring:
  - (A) a person convicted of an offense under this section; or
  - (B) a child adjudicated a delinquent child for committing an act that would be a crime under this section if committed by an adult;to receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree; and
- (2) may order an individual described in subdivision (1) to

receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree.

*As added by P.L.193-1987, SEC.15. Amended by P.L.41-1998, SEC.2; P.L.132-2002, SEC.1; P.L.7-2007, SEC.1; P.L.171-2007, SEC.10; P.L.111-2009, SEC.14; P.L.158-2013, SEC.566.*

#### **IC 35-46-3-12.5**

##### **Domestic violence animal cruelty**

Sec. 12.5. A person who knowingly or intentionally kills a vertebrate animal with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member commits domestic violence animal cruelty, a Level 6 felony.

*As added by P.L.171-2007, SEC.11. Amended by P.L.158-2013, SEC.567.*

#### **IC 35-46-3-13**

##### **Removal of attack dog's vocal cords; animal cruelty**

Sec. 13. (a) A person who knowingly or intentionally removes the vocal cords of a trained attack dog commits cruelty to an animal, a Class A misdemeanor.

(b) It is a defense to a prosecution under this section that the accused person reasonably believes that the conduct was necessary to prevent a seriously injured dog from prolonged injury.

*As added by P.L.76-2002, SEC.7.*

#### **IC 35-46-3-14**

##### **Bestiality**

Sec. 14. A person who knowingly or intentionally performs an act involving:

- (1) a sex organ of a person and the mouth or anus of an animal;
- (2) a sex organ of an animal and the mouth or anus of a person;
- (3) any penetration of the human female sex organ by an animal's sex organ; or
- (4) any penetration of an animal's sex organ by the human male sex organ;

commits bestiality, a Level 6 felony.

*As added by P.L.171-2007, SEC.12. Amended by P.L.158-2013, SEC.568.*

#### **IC 35-46-3-15**

##### **Electrocution or decompression of animals**

Sec. 15. (a) This section does not apply to the following:

- (1) A state or federally inspected livestock slaughtering facility (for conduct authorized by IC 15-17-5 and rules adopted under that chapter).
- (2) An animal disease diagnostic laboratory established under IC 21-46-3-1.
- (3) A postsecondary educational institution.
- (4) A research facility licensed by the United States Department

of Agriculture.

(b) As used in this section, "animal" has the meaning set forth in IC 35-46-3-3.

(c) A person who knowingly or intentionally destroys or authorizes the destruction of an animal by:

(1) placing the animal in a decompression chamber and lowering the pressure of or the oxygen content in the air surrounding the animal; or

(2) electrocution;

commits a Class B misdemeanor.

*As added by P.L.2-2008, SEC.13.*

**IC 35-46-4**

**Repealed**

*(Repealed by P.L.158-2013, SEC.569.)*

## **IC 35-46-5**

### **Chapter 5. Offenses Against Public Sensibility**

#### **IC 35-46-5-1**

##### **Human tissue trafficking**

Sec. 1. (a) As used in this section, "fetal tissue" means tissue from an infant or a fetus who is stillborn or aborted.

(b) As used in this section, "human organ" means the kidney, liver, heart, lung, cornea, eye, bone marrow, bone, pancreas, or skin of a human body.

(c) As used in this section, "item of value" means money, real estate, funeral related services, and personal property. "Item of value" does not include:

(1) the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ; or

(2) the reimbursement of travel, housing, lost wages, and other expenses incurred by the donor of a human organ related to the donation of the human organ.

(d) A person who intentionally acquires, receives, sells, or transfers in exchange for an item of value:

(1) a human organ for use in human organ transplantation; or

(2) fetal tissue;

commits unlawful transfer of human tissue, a Level 5 felony.

*As added by P.L.131-1992, SEC.2. Amended by P.L.217-1997, SEC.1; P.L.158-2013, SEC.570.*

#### **IC 35-46-5-2**

##### **Unlawful participation in human cloning; exception**

Sec. 2. (a) This section does not apply to in vitro fertilization.

(b) As used in this section, "cloning" has the meaning set forth in IC 16-18-2-56.5.

(c) A person who knowingly or intentionally:

(1) participates in cloning;

(2) implants or attempts to implant a cloned human embryo into a uterine environment to initiate a pregnancy; or

(3) ships or receives a cloned human embryo;

commits unlawful participation in human cloning, a Level 6 felony.

*As added by P.L.126-2005, SEC.9. Amended by P.L.158-2013, SEC.571.*

#### **IC 35-46-5-3**

##### **"Qualified third party"; unlawful transfer of human organisms; exceptions; penalties**

Sec. 3. (a) As used in this section, "qualified third party" means a fertility clinic or similar medical facility that:

(1) is accredited by an entity approved by the medical licensing board;

(2) is registered under 21 CFR 1271 with the United States Food

and Drug Administration; and

- (3) employs a physician licensed under IC 25-22.5 who:  
(A) is board certified in obstetrics and gynecology; and  
(B) performs oocyte cryopreservation at the facility.

(b) A person who knowingly or intentionally purchases or sells a human ovum, zygote, embryo, or fetus commits unlawful transfer of a human organism, a Level 5 felony.

(c) This section does not apply to the following:

- (1) The transfer to or receipt by either a woman donor of an ovum or a qualified third party of an amount for:  
(A) earnings lost due to absence from employment;  
(B) travel expenses;  
(C) hospital expenses;  
(D) medical expenses; and  
(E) recovery time in an amount not to exceed four thousand dollars (\$4,000);

concerning a treatment or procedure to enhance human reproductive capability through in vitro fertilization, gamete intrafallopian transfer, or zygote intrafallopian transfer.

(2) The following types of stem cell research:

- (A) Adult stem cell.  
(B) Fetal stem cell (as defined in IC 16-18-2-128.5), as long as the biological parent has given written consent for the use of the fetal stem cells.

(d) Any person who recklessly, knowingly, or intentionally uses a human embryo created with an ovum provided to a qualified third party under this section for purposes of embryonic stem cell research commits unlawful use of an embryo, a Level 5 felony.

*As added by P.L.126-2005, SEC.10. Amended by P.L.91-2012, SEC.2; P.L.158-2013, SEC.572.*

#### **IC 35-46-5-4**

##### **Unlawful documentation of a gift of organs, tissue, eyes, or body parts**

Sec. 4. An individual who, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document that:

- (1) expresses;  
(2) makes an amendment or revocation of; or  
(3) refuses;

a gift of organs, tissues, eyes, or other body parts intended to be used in research or in transplants, commits a Class A misdemeanor.

*As added by P.L.147-2007, SEC.18.*

## IC 35-46-6

### Chapter 6. Glue Sniffing

#### IC 35-46-6-1

##### "Model glue" defined

Sec. 1. As used in this chapter, "model glue" means a glue or cement containing toluene or acetone, or both.

*As added by P.L.2-1993, SEC.189. Amended by P.L.151-2006, SEC.19.*

#### IC 35-46-6-2

##### Inhaling toxic vapors

Sec. 2. A person who, with intent to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses, ingests or inhales the fumes of:

- (1) model glue; or
- (2) a substance that contains:
  - (A) toluene;
  - (B) acetone;
  - (C) benzene;
  - (D) N-butyl nitrite;
  - (E) any aliphatic nitrite, unless prescribed by a physician;
  - (F) butane;
  - (G) amyl butrate;
  - (H) isobutyl nitrate;
  - (I) freon;
  - (J) chlorinated hydrocarbons;
  - (K) methylene chloride;
  - (L) hexane;
  - (M) ether;
  - (N) chloroform; or
  - (O) halothane; or
- (3) any other chemical having the property of releasing toxic vapors;

commits inhaling toxic vapors, a Class B misdemeanor.

*As added by P.L.2-1993, SEC.189. Amended by P.L.151-2006, SEC.20.*

#### IC 35-46-6-3

##### Nitrous oxide distribution; nonmedical purposes

Sec. 3. A person who knowingly or intentionally uses or distributes nitrous oxide with intent to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses of another person, unless the nitrous oxide is to be used for medical purposes, commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

*As added by P.L.163-1994, SEC.1. Amended by P.L.218-1997, SEC.1.*

## **IC 35-46-7**

### **Chapter 7. Offenses Against Persons Receiving Care**

#### **IC 35-46-7-1**

##### **"Health care provider"**

Sec. 1. As used in this chapter, "health care provider" means:

- (1) a hospital licensed under IC 16-21;
- (2) a health facility licensed under IC 16-28;
- (3) a housing services establishment that is required to file a disclosure statement under IC 12-15;
- (4) a continuing care retirement community that is required to file a disclosure statement under IC 23-2-4;
- (5) a home health agency licensed under IC 16-27;
- (6) a hospice licensed under IC 16-25;
- (7) an entity that provides licensed or certified health care professionals to:
  - (A) a health care provider; or
  - (B) a person who is in need of, or receives, professional health care services;
- (8) a community mental health center (as defined in IC 12-7-2-38);
- (9) a private psychiatric hospital licensed under IC 12-25;
- (10) a state institution (as defined in IC 12-7-2-184); or
- (11) a community residential facility for the developmentally disabled that is licensed under IC 12-28-5.

*As added by P.L.139-2002, SEC.1.*

#### **IC 35-46-7-2**

##### **Excluded transactions**

Sec. 2. This chapter does not apply to the following:

- (1) A gift or donation of money or other asset given to:
  - (A) a health care provider in the corporate name of the health care provider; or
  - (B) a health care provider that is organized under Section 501(c)(3) of the Internal Revenue Code.
- (2) A gift or loan of money or other asset given by a person who receives services from a health care provider to a member of the person's family who:
  - (A) is employed by a health care provider; or
  - (B) owns, wholly or jointly, a health care provider.
- (3) A bequest of personal property or devise of real property made in an executable will as described in IC 29-1-5-5 to a health care provider or an owner, employee, or agent of a health care provider.
- (4) The purchase of a security (as defined in IC 23-19-1-2(28)) that is traded on a national or regional exchange.
- (5) A gift or gratuity, not exceeding five hundred dollars (\$500) in the aggregate per year per person receiving services from the



health care provider, to an employee of a health care provider.  
(6) A gift or donation of money or other asset given to purchase or otherwise acquire a product, service, or amenity for the use, entertainment, or enjoyment of persons receiving services from a health care provider.

*As added by P.L.139-2002, SEC.1. Amended by P.L.27-2007, SEC.32.*

### **IC 35-46-7-3**

#### **Regulated transactions; requirement that transaction be executed in writing; penalty**

Sec. 3. (a) The following transactions are subject to the requirements of subsection (b):

(1) A gift, a donation, a loan, or an investment from a person who receives services from a health care provider to:

(A) the health care provider; or

(B) an owner, employee, or agent of the health care provider.

(2) A loan or an investment from a person who receives services from a health care provider to the health care provider in the corporate name of the health care provider.

(b) A transaction under subsection (a) must be executed by a competent person (including a person other than the health care provider exercising a durable power of attorney on behalf of the donor) in writing and witnessed by two (2) disinterested parties. Each witness shall sign a document that describes the transaction in the presence of:

(1) the person who makes the transaction; and

(2) the other witness.

(c) A health care provider, or an owner, an employee, or an agent of a health care provider, who:

(1) receives a gift, a donation, a loan, or an investment from a person who receives services from a health care provider; and

(2) fails to comply with the requirements of subsection (b);

commits a Class A infraction. Without regard to the amount of the transaction, the court that imposes the penalty for the infraction violation may, upon the request of the prosecuting attorney, order the person to return assets or repay money received in violation of this section, plus interest from the date of the transaction, to the person who made the gift, donation, loan, or investment. In addition, if the court finds that the person knowingly violated the requirements of subsection (b), the court may order the person to pay treble damages and reasonable attorney's fees.

*As added by P.L.139-2002, SEC.1.*

## **IC 35-46-8**

### **Chapter 8. Unlawful Recording**

#### **IC 35-46-8-0.1**

##### **Repealed**

*(As added by P.L.220-2011, SEC.617. Repealed by P.L.63-2012, SEC.71.)*

#### **IC 35-46-8-1**

##### **Application**

Sec. 1. This chapter does not apply to a law enforcement officer acting within the scope of the officer's employment.

*As added by P.L.94-2005, SEC.6.*

#### **IC 35-46-8-2**

##### **"Audiovisual recording device"**

Sec. 2. As used in this chapter, "audiovisual recording device" means:

- (1) a digital or an analog photographic or video camera; or
  - (2) any other technology capable of enabling the recording or transmission of a motion picture or other audiovisual work;
- regardless of whether audiovisual recording is the sole or primary purpose of the device.

*As added by P.L.94-2005, SEC.6.*

#### **IC 35-46-8-3**

##### **"Motion picture exhibition facility"**

Sec. 3. (a) As used in this chapter, "motion picture exhibition facility" means:

- (1) an indoor or outdoor screening venue; or
- (2) any other premises;

where motion pictures or other audiovisual works are shown to the public for a charge, regardless of whether an admission fee is charged.

(b) The term does not include a dwelling.

*As added by P.L.94-2005, SEC.6.*

#### **IC 35-46-8-4**

##### **Unlawful recording; defense**

Sec. 4. (a) A person who knowingly or intentionally uses an audiovisual recording device in a motion picture exhibition facility with the intent to transmit or record a motion picture commits unlawful recording, a Class B misdemeanor.

(b) It is a defense to a prosecution under this section that the accused person had the written permission of the motion picture exhibition facility owner to transmit or record the motion picture.

*As added by P.L.94-2005, SEC.6.*

**IC 35-46-8-5**

**Additional penalties**

Sec. 5. In addition to a criminal penalty imposed for an offense under this chapter, a court may order the forfeiture, destruction, or other disposition of:

- (1) all unauthorized copies of motion pictures or other audiovisual works; and
- (2) any audiovisual recording devices or other equipment used in connection with the offense.

*As added by P.L.94-2005, SEC.6.*

**IC 35-46-8.5**

**Chapter 8.5. Unlawful Photography and Surveillance on Private Property**

**IC 35-46-8.5-1**

**Unlawful photography and surveillance on private property**

Sec. 1. (a) This section does not apply to any of the following:

(1) Electronic or video toll collection facilities or activities authorized under any of the following:

(A) IC 8-15-2.

(B) IC 8-15-3.

(C) IC 8-15.5.

(D) IC 8-15.7.

(E) IC 8-16.

(F) IC 9-21-3.5.

(2) A law enforcement officer who has obtained:

(A) a search warrant; or

(B) the consent of the owner or private property;

to place a camera or electronic surveillance equipment on private property.

(b) A person who knowingly or intentionally places a camera or electronic surveillance equipment that records images or data of any kind while unattended on the private property of another person without the consent of the owner or tenant of the private property commits a Class A misdemeanor.

*As added by P.L.170-2014, SEC.26.*

## **IC 35-46-9**

### **Chapter 9. Operating a Motorboat While Intoxicated**

#### **IC 35-46-9-1**

##### **"Chemical test"**

Sec. 1. As used in this chapter, "chemical test" means an analysis of an individual's:

- (1) blood;
- (2) breath;
- (3) urine; or
- (4) other bodily substance;

for the determination of the presence of alcohol or a controlled substance.

*As added by P.L.40-2012, SEC.21.*

#### **IC 35-46-9-2**

##### **"Intoxicated"**

Sec. 2. As used in this chapter, "intoxicated" means under the influence of:

- (1) alcohol;
- (2) a controlled substance;
- (3) any drug (as defined in IC 9-13-2-49.1) other than alcohol or a controlled substance;
- (4) any combination of alcohol, controlled substances, or drugs; or
- (5) any other substance, not including food and food ingredients (as defined in IC 6-2.5-1-20), tobacco (as defined in IC 6-2.5-1-28), or a dietary supplement (as defined in IC 6-2.5-1-16);

so that there is an impaired condition of thought and action and the loss of normal control of an individual's faculties.

*As added by P.L.40-2012, SEC.21. Amended by P.L.196-2013, SEC.19.*

#### **IC 35-46-9-3**

##### **"Motorboat"**

Sec. 3. (a) As used in this chapter, "motorboat" means a watercraft (as defined in IC 14-8-2-305) propelled by:

- (1) an internal combustion, steam, or electrical inboard or outboard motor or engine; or
- (2) any mechanical means.

(b) The term includes the following:

- (1) A sailboat that is equipped with a motor or an engine described in subsection (a) when the motor or engine is in operation, whether or not the sails are hoisted.
- (2) A personal watercraft (as defined in IC 14-8-2-202.5).

*As added by P.L.40-2012, SEC.21.*

#### **IC 35-46-9-4**

##### **"Prima facie evidence of intoxication"**

Sec. 4. As used in this chapter, "prima facie evidence of intoxication" includes evidence that at the time of an alleged violation there was an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath.

*As added by P.L.40-2012, SEC.21.*

#### **IC 35-46-9-5**

##### **"Relevant evidence"**

Sec. 5. As used in this chapter, "relevant evidence" includes evidence that at the time of the alleged violation there was an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least five-hundredths (0.05) gram and less than eight-hundredths (0.08) gram of alcohol per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath.

*As added by P.L.40-2012, SEC.21.*

#### **IC 35-46-9-6**

##### **Operating a motorboat while intoxicated**

Sec. 6. (a) Except as provided in subsections (b) and (c), a person who operates a motorboat while:

- (1) having an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol per:
  - (A) one hundred (100) milliliters of the person's blood; or
  - (B) two hundred ten (210) liters of the person's breath;
- (2) having a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or
- (3) intoxicated;

commits a Class C misdemeanor.

(b) The offense is a Level 6 felony if:

- (1) the person has a previous conviction under:
  - (A) IC 14-1-5 (repealed); or
  - (B) this chapter; or
- (2) the offense results in serious bodily injury to another person.

(c) The offense is a Level 5 felony if the offense results in the death of another person.

(d) It is a defense to a prosecution under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1-24) who acted in the course of the practitioner's professional practice.

*As added by P.L.40-2012, SEC.21. Amended by P.L.168-2014, SEC.87.*

#### **IC 35-46-9-7**

### **Violation of an order not to operate a motorboat**

Sec. 7. A person who operates a motorboat after the person has been ordered not to operate a motorboat under:

- (1) IC 14-15-8 (repealed); or
- (2) this chapter;

commits a Class A misdemeanor.

*As added by P.L.40-2012, SEC.21.*

### **IC 35-46-9-8**

#### **Implied consent**

Sec. 8. (a) A person who operates a motorboat in water over which Indiana has jurisdiction impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a motorboat in Indiana.

(b) If a person refuses to submit to a chemical test after having been advised that the refusal will result in the suspension of operating privileges or submits to a chemical test that results in prima facie evidence of intoxication, the arresting law enforcement officer shall do the following:

- (1) Obtain the person's driver's license or permit if the person is in possession of the document and issue a receipt valid until the initial hearing of the matter is held under IC 35-33-7-1.
- (2) Submit a probable cause affidavit to the prosecuting attorney of the county in which the alleged offense occurred.
- (3) Send a copy of the probable cause affidavit submitted under subdivision (2) to the bureau of motor vehicles.

*As added by P.L.40-2012, SEC.21.*

### **IC 35-46-9-9**

#### **Opportunity to submit to a chemical test**

Sec. 9. (a) A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter shall offer the person the opportunity to submit to a chemical test. It is not necessary for the law enforcement officer to offer a chemical test to an unconscious person.

(b) A law enforcement officer may offer a person more than one (1) chemical test under this chapter. However, all tests must be administered within three (3) hours after the officer had probable cause to believe the person violated this chapter.

(c) A person must submit to each chemical test offered by a law enforcement officer to comply with the implied consent provisions of this chapter.

*As added by P.L.40-2012, SEC.21.*

### **IC 35-46-9-10**

#### **Chemical test required if accident results in serious bodily injury or death**

Sec. 10. (a) A law enforcement officer shall offer a portable breath test or chemical test to any person if the officer has reason to believe

the person operated a motorboat that was involved in a fatal accident or an accident involving serious bodily injury. If:

(1) the results of a portable breath test indicate the presence of alcohol;

(2) the results of a portable breath test do not indicate the presence of alcohol but the law enforcement officer has probable cause to believe the person is under the influence of a controlled substance or another drug; or

(3) the person refuses to submit to a portable breath test;

the law enforcement officer shall offer a chemical test to the person.

(b) A law enforcement officer may offer a person more than one (1) portable breath test or chemical test under this section. However, all chemical tests must be administered within three (3) hours after the fatal accident or the accident involving serious bodily injury.

(c) It is not necessary for a law enforcement officer to offer a portable breath test or chemical test to an unconscious person.

*As added by P.L.40-2012, SEC.21.*

#### **IC 35-46-9-11**

##### **Arrest based on the results of a chemical test; refusal**

Sec. 11. (a) If a chemical test results in relevant evidence that the person is intoxicated, the person may be arrested for an offense under this chapter.

(b) If a chemical test results in prima facie evidence that the person is intoxicated, the person shall be arrested for an offense under this chapter.

(c) A person who refuses to submit to a chemical test may be arrested for an offense under this chapter.

(d) At a proceeding under this chapter, a person's refusal to submit to a chemical test is admissible into evidence.

*As added by P.L.40-2012, SEC.21.*

#### **IC 35-46-9-12**

##### **Certification of chemical tests**

Sec. 12. (a) The provisions of IC 9-30-6-5 concerning the certification and use of chemical breath tests apply to the use of chemical breath tests in a prosecution under this chapter.

(b) IC 9-30-6-6 applies to chemical tests performed under this chapter.

*As added by P.L.40-2012, SEC.21.*

#### **IC 35-46-9-13**

##### **Suspension of license for refusal to submit to a chemical test**

Sec. 13. If a person refuses to submit to a chemical test under this chapter, the law enforcement officer shall inform the person that the person's refusal will result in the suspension of the person's motorboat and motor vehicle operation privileges.

*As added by P.L.40-2012, SEC.21.*



**IC 35-46-9-14****Duties of prosecuting attorney**

Sec. 14. The prosecuting attorney of the county in which an alleged violation of this chapter occurs shall represent the state in a proceeding under this chapter.

*As added by P.L.40-2012, SEC.21.*

**IC 35-46-9-15****Results of a chemical test admissible as evidence**

Sec. 15. (a) At a proceeding concerning an offense under this chapter, evidence of the alcohol concentration that was in the blood of the person charged with the offense;

- (1) at the time of the alleged violation; or
- (2) within the time allowed for testing under sections 9 and 10 of this chapter;

as shown by an analysis of the person's breath, blood, urine, or other bodily substance is admissible.

(b) If, in a prosecution for an offense under this chapter, evidence establishes that:

- (1) a chemical test was performed on a test sample taken from the person charged with the offense within the time allowed for testing under sections of 9 and 10 this chapter; and
- (2) the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

- (A) one hundred (100) milliliters of the person's blood; or
- (B) two hundred ten (210) liters of the person's breath;

the trier of fact shall presume that the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the motorboat. However, this presumption is rebuttable.

*As added by P.L.40-2012, SEC.21.*