

PROPOSED AMENDMENT

HB 1417 # 3

DIGEST

Limitations. Removes provisions concerning what is not a public nuisance and what does not establish a public nuisance cause of action. Provides that the limitations shall not affect a local administrative code or ordinance, unless the local administrative code or ordinance provides for a civil cause of action and is in conflict with certain provisions. Provides that the award of attorney's fees, costs, and expenses may not total more than \$100,000 (rather than \$5,000) if a recipient does not accept a qualified settlement offer and the final judgment is less favorable to the recipient than the terms of the qualified settlement offer.

- 1 Page 2, delete lines 24 through 32, begin a new paragraph and
- 2 insert:
- 3 **"Sec. 2. For purposes of this chapter, an action or condition that**
- 4 **is otherwise permitted by:**
- 5 **(1) a local ordinance;**
- 6 **(2) state or federal law; or**
- 7 **(3) a court order;**
- 8 **is not a public nuisance."**
- 9 Page 2, line 34, delete "unlawful condition is occurring" and insert
- 10 **"public nuisance is located".**
- 11 Page 2, between lines 38 and 39, begin a new paragraph and insert:
- 12 **"(c) A governmental entity may only recover damages that are**
- 13 **reasonably necessary to abate the public nuisance."**
- 14 Page 2, line 39, delete "(c)" and insert **"(d)".**
- 15 Page 2, line 39, delete "economic," and insert **"money damages".**
- 16 Page 2, line 40, delete "noneconomic, or exemplary damages or
- 17 costs".
- 18 Page 2, delete line 42.
- 19 Page 3, delete lines 1 through 11, begin a new paragraph and insert:
- 20 **"Sec. 4. (a) Only one (1) public nuisance action may be brought**
- 21 **against a defendant based on the same or substantially similar set**
- 22 **of facts.**
- 23 **(b) A defendant may move to dismiss a second or subsequent**

1 **public nuisance under subsection (a) if it is based on the same or**
 2 **substantially similar set of facts."**

3 Page 3, line 12, delete "(b)" and insert "(c)".

4 Page 3, line 12, after "may" insert "**only**".

5 Page 3, line 12, after "following" insert "**damages**".

6 Page 3, delete lines 17 through 29.

7 Page 3, between lines 33 and 34, begin a new paragraph and insert:

8 **"Sec. 6. (a) Except as provided in subsection (b), this chapter**
 9 **shall not affect a local administrative code or ordinance, unless the**
 10 **local administrative code or ordinance:**

11 **(1) provides for a civil cause of action; and**

12 **(2) is in conflict with the provisions of this chapter.**

13 **(b) Nothing in this chapter supersedes applicable building codes,**
 14 **fire codes, or public health and safety laws."**

15 Page 3, line 34, delete "Sec. 6." and insert "**Sec. 7.**".

16 Page 4, between lines 17 and 18, begin a new paragraph and insert:

17 **"SECTION 8. IC 34-50-1-6, AS AMENDED BY P.L.117-2024,**
 18 **SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
 19 **JULY 1, 2026]: Sec. 6. (a) If:**

20 **(1) a recipient does not accept a qualified settlement offer; and**

21 **(2) the final judgment is less favorable to the recipient than the**
 22 **terms of the qualified settlement offer;**

23 **the court shall award attorney's fees, costs, and expenses to the offeror**
 24 **upon the offeror's motion.**

25 **(b) An award of attorney's fees, costs, and expenses under this**
 26 **section must consist of attorney's fees at a rate of not more than two**
 27 **hundred fifty dollars (\$250) per hour and other costs and expenses**
 28 **incurred by the offeror after the date of the qualified settlement offer.**
 29 **However, the award of attorney's fees, costs, and expenses may not**
 30 **total more than ~~five thousand dollars (\$5,000)~~ **one hundred thousand****
 31 **dollars (\$100,000).**

32 **(c) A motion for an award of attorney's fees, costs, and expenses**
 33 **under this section must be filed not more than thirty (30) days after**
 34 **entry of judgment. The motion must be accompanied by an affidavit of**
 35 **the offeror or the offeror's attorney establishing the amount of the**
 36 **attorney's fees and other costs and expenses incurred by the offeror**
 37 **after the date of the qualified settlement offer. The affidavit constitutes**
 38 **prima facie proof of the reasonableness of the amount.**

39 **(d) Where appropriate, the court may order a judgment entered**
 40 **against the offeror and in favor of the recipient reduced by the amount**

- 1 of attorney's fees, costs, and expenses awarded to the offeror under this
- 2 section (or IC 34-4-44.6-8 before its repeal).".
- 3 Renumber all SECTIONS consecutively.
 (Reference is to HB 1417 as introduced.)