

## **IC 34-22**

# **ARTICLE 22. CAUSES OF ACTION: SURETY'S REMEDIES AGAINST PRINCIPAL**

## **IC 34-22-1**

### **Chapter 1. Remedies of Sureties Against Their Principals**

## **IC 34-22-1-1**

### **Applicability of chapter; surety may require creditor or obligee to commence action on contract**

Sec. 1. (a) This chapter applies to a person who is bound as surety upon a contract in writing for the:

- (1) payment of money; or
- (2) performance of any act.

(b) When the right of action has accrued, the surety may require, by notice in writing, the creditor or obligee to immediately institute an action upon the contract.

*As added by P.L.1-1998, SEC.17.*

## **IC 34-22-1-2**

### **Discharge of surety**

Sec. 2. If the creditor or obligee does not:

- (1) proceed within a reasonable time to bring an action upon the contract; and
- (2) prosecute the action to judgment and execution;

the surety is discharged from all liability on the contract.

*As added by P.L.1-1998, SEC.17.*

## **IC 34-22-1-3**

### **Trial on issue of suretyship; two or more defendants**

Sec. 3. (a) This section applies when:

- (1) an action is brought against two (2) or more defendants upon a contract; and
- (2) at least one (1) or more of the defendants is a surety for the others.

(b) The surety may, upon a written complaint to the court, cause the question of suretyship to be tried and determined, upon the issue made by the parties at:

- (1) the trial of the cause; or
- (2) any time before or after the trial.

(c) Proceedings described in subsection (b) do not affect the proceedings of the plaintiff.

*As added by P.L.1-1998, SEC.17.*

## **IC 34-22-1-4**

### **Order of levy upon property of principal and surety**

Sec. 4. (a) If the finding upon the issue described in section 3(b) of this chapter is in favor of the surety, the court shall make an order directing the sheriff to:

- (1) levy the execution, first upon the property of the principal;

and

(2) exhaust the property of the principal;  
before making a levy upon the property of the surety.

(b) The clerk shall endorse a memorandum of the order on the execution.

*As added by P.L.1-1998, SEC.17.*

### **IC 34-22-1-5**

#### **Judgment remaining in force for use of surety or other person making payment**

Sec. 5. (a) This section applies to a:

(1) defendant-surety in a:

(A) judgment;

(B) special bail; or

(C) replevin bail;

(2) surety in a delivery bond or replevin bond; or

(3) person who is a surety in any undertaking.

(b) This section does not apply to a sheriff, officer, or surety providing bond in an official capacity who:

(1) fails to pay over money collected; or

(2) wastes property upon which the sheriff, officer, or surety has levied.

(c) When a person described in subsection (a):

(1) is compelled to pay a judgment, or part of a judgment;

(2) makes any payment which is applied to a judgment by reason of the person's suretyship; or

(3) is compelled, by reason of a default of a sheriff, officer or surety providing bond in an official capacity, to pay a judgment, or part of a judgment;

the judgment is not discharged by the payment.

(d) However, the judgment remains in force for the use of the bail, surety, officer, or other person making the payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for use by the person making the payment.

*As added by P.L.1-1998, SEC.17.*

### **IC 34-22-1-6**

#### **Remedies against codefendants and cosureties**

Sec. 6. A person who:

(1) is one (1) of several:

(A) judgment defendants; or

(B) replevin sureties; and

(2) paid and satisfied the plaintiff;

has the remedy provided in section 5 of this chapter against the codefendants or cosureties to collect from them the ratable proportion each is equitably bound to pay.

*As added by P.L.1-1998, SEC.17.*

### **IC 34-22-1-7**

### **When confessed judgment or default judgment by surety not permitted**

Sec. 7. No surety or representative of a surety shall confess judgment or suffer judgment, by default, in any case, when the surety or representative is notified that there is a valid defense, if the principal will:

- (1) enter as a defendant to the action; and
- (2) tender to the surety or the representative good security to indemnify him, to be approved by the court.

*As added by P.L.1-1998, SEC.17.*

### **IC 34-22-1-8**

#### **No relief from valuation or appraisal laws**

Sec. 8. Whenever a surety seeks a remedy against the principal for discharging a debt, or claim upon contract, in whole or in part, without any relief from valuation or appraisal laws, the remedy of the surety is also enforced without any relief from valuation or appraisal laws.

*As added by P.L.1-1998, SEC.17.*

### **IC 34-22-1-9**

#### **Applicability of provisions to heirs, executors, administrators, and persons under legal disabilities**

Sec. 9. Sections 1 through 8 of this chapter extend to:

- (1) heirs;
- (2) executors; and
- (3) administrators;

of deceased persons. However, the provisions concerning sureties giving notice to the creditor do not operate against persons under legal disabilities.

*As added by P.L.1-1998, SEC.17.*

### **IC 34-22-1-10**

#### **Surety's recovery of interest on debt paid**

Sec. 10. When a surety on a bill, note, bond, or other instrument in writing, is compelled to pay the debt or obligation of the principal debtor, the surety shall recover the rate of interest on the amount paid by the surety for the principal, as was originally provided for in the bill, note, bond, or other instrument in writing, held against the principal debtor. The judgment given to the surety bears the same rate of interest, not exceeding ten percent (10%) per year.

*As added by P.L.1-1998, SEC.17.*