

Insulating State Legislation From Court Challenges
Examples of Severability, Savings, Fallback, and Nonseverability Clauses
from Indiana Law/Legislation

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I. Severability/Nonseverability

1-1-1-8

Year Enacted 1976; Year Amended 2011

Sec. 8. Severability. (a) If any provision of this Code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

(b) Except in the case of a statute containing a nonseverability provision, each part and application of every statute is severable. If any provision or application of a statute is held invalid, the invalidity does not affect the remainder of the statute unless:

- (1) the remainder is so essentially and inseparably connected with, and so dependent upon, the invalid provision or application that it cannot be presumed that the remainder would have been enacted without the invalid provision or application; or
- (2) the remainder is incomplete and incapable of being executed in accordance with the legislative intent without the invalid provision or application.

This subsection applies to every statute, regardless of whether enacted before or after the passage of this subsection. The general assembly may preserve the legislative history of this subsection by adoption of a concurrent resolution and publication of the resolution in the legislative journals.

(c) The repeal of a statute stating that the provisions of an act are severable as provided in subsection (b) does not affect the operation of subsection (b) with respect to that act. As amended by Acts 1978, P.L.1, SEC.1; P.L.220-2011, SEC.1.

1-1-1-8.5

Year Enacted 2011; Year Amended 2011

Sec. 8.5. Notwithstanding section 8 of this chapter, the following apply:

- (1) Both of the following apply to P.L.240-1991 [HEA 1001]:
 - (A) Section 8 of this chapter does not apply to P.L.240-1991.
 - (B) If any SECTION, legislative district, or other provision of P.L.240-1991 or its application to any person or circumstance is held invalid, the invalidity of that SECTION, legislative district, or provision does not affect other SECTIONS, legislative districts, or provisions of P.L.240-1991 that can be given effect without the invalid SECTION, legislative district, or provision.
- (2) The provisions of P.L.95-2004 [HEA 1401; concerning public officer compensation] are not severable.

As added by P.L.220-2011, SEC.2.

8-3-22-10

Year Enacted 2000; Year Amended 2000

Sec. 10. (a) The provisions of this compact [Midwest Interstate Passenger Rail Compact] are severable, and if a phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of a compacting state or of the United States or the applicability of this compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of this compact to any government, agency, person, or circumstance is not affected.

(b) If this compact entered into is held contrary to the constitution of a compacting state, the compact remains in full force and effect for the remaining states and in full force and effect for the state affected as to all severable matters.

(c) The provisions of this compact shall be liberally construed to effectuate the purposes of the compact.

II. Savings

22-6-5-1

Year Enacted 2011; Year Amended 2011

Sec. 1. (a) This chapter applies to any election that is required or permitted by Indiana or federal law for the designation, authorization, or retention of employee representation.

(b) This chapter does not apply to the extent that it conflicts with:

- (1) the federal National Labor Relations Act (20 U.S.C. 151 et seq.); or
- (2) another federal law or regulation concerning labor relations or labor organizations.

As added by P.L.192-2011, SEC. 1.

III. Fallback

1-1-1-8.7

Year Enacted 2011; Year Amended 2011

Sec. 8.7. If a provision of P.L.224-2003 [HEA 1001] is found by a court with jurisdiction to be in violation of Article 4, Section 23 of the Constitution of the State of Indiana [which says . . . "all laws shall be general and of uniform application throughout the State."], it is the intent of the general assembly that the provision be given general application.
As added by P.L.220-2011, SEC.3.

[NOT ENACTED] SECTION 12. IC 16-34-2-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) If any provision of this chapter is found by the courts to be unconstitutional or invalid, the unconstitutional or invalid provision shall be considered severable in the manner provided by IC 1-1-1-8(b).

(b) If a court determines that any of the following sections of this chapter resulting from the actions taken by the 2011 session of the general assembly are unconstitutional, the amendments found by the court to be unconstitutional are void, and the language in effect before the amendments returns to effect:

- (1) Section 0.5.**
- (2) Section 1.**
- (3) Section 2.**
- (4) Section 3.**
- (5) Section 5.**