

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 370, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 12-7-2-37.5 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2000]: **Sec. 37.5. "Community based residential, habilitation, or
5 vocational services provider", for purposes of IC 12-9-5 and
6 IC 12-11-1.5, means an entity approved by the bureau of
7 developmental disabilities services under IC 12-11-1.1-1(e).**
8 SECTION 2. IC 12-7-2-63.5 IS ADDED TO THE INDIANA CODE
9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
10 1, 2000]: **Sec. 63.5. (a) "Direct care staff person", for purposes of
11 IC 12-9-5, IC 12-11-1.5, and IC 12-24-3.5, means an individual who
12 provides direct assistance with daily living and personal
13 adjustment activities to a consumer receiving services from:
14 (1) a community based residential, habilitation, or vocational
15 services provider (as defined in section 37.5 of this chapter);
16 (2) an ICF/MR (as defined in IC 16-18-2-185) serving more
17 than eight (8) individuals; or
18 (3) a state institution (as defined in section 184 of this
19 chapter).**
20 **(b) The term does not include the following:**
21 **(1) A person who holds a license (as defined in IC 25-1-9-3)**
22 **issued by a board (as defined in IC 25-1-9-1).**
23 **(2) A volunteer who provides direct care services without**
24 **compensation.**
25 **(3) A member of the consumer's immediate family.**
26 SECTION 3. IC 12-7-2-135.6 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2000]: **Sec. 135.6. (a) "Other unlicensed**

1 **employee", for purposes of IC 12-11-1.5 and IC 12-24-3.5, means**
 2 **an employee of:**

- 3 (1) **a community based residential, habilitation, or vocational**
 4 **services provider (as defined in section 37.5 of this chapter);**
 5 (2) **an ICF/MR (as defined in IC 16-28-2-185) serving more**
 6 **than eight (8) individuals; or**
 7 (3) **a state institution (as defined in section 184 of this**
 8 **chapter).**

9 **(b) The term does not include the following:**

- 10 (1) **A direct care staff person (as defined in section 63.5 of this**
 11 **chapter).**
 12 (2) **A person who holds a license (as defined in IC 25-1-9-3)**
 13 **issued by a board (as defined in IC 25-1-9-1).**

14 SECTION 4. IC 12-7-2-159.3 IS ADDED TO THE INDIANA
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2000]: **Sec. 159.3. "Registry of direct care**
 17 **staff", for purposes of IC 12-9-5, IC 12-11-1.5, and IC 12-24-3.5,**
 18 **refers to the registry of direct care staff persons maintained by the**
 19 **state department of health under IC 16-32-4.**

20 SECTION 5. IC 12-7-2-159.5 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2000]: **Sec. 159.5. "Registry of nurse aides",**
 23 **for purposes of IC 12-11-1.5 and IC 12-24-3.5, refers to the registry**
 24 **of nurse aides maintained by the state department of health under**
 25 **42 CFR 483.156.**

26 SECTION 6. IC 12-9-5-5 IS ADDED TO THE INDIANA CODE
 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 28 1, 2000]: **Sec. 5. (a) This section applies to the following entities:**

- 29 (1) **A community based residential, habilitation, or vocational**
 30 **services provider.**
 31 (2) **An ICF/MR (as defined in IC 16-18-2-185) serving more**
 32 **than eight (8) individuals.**
 33 (3) **A state institution.**

34 **(b) Not later than September 1, 2000, the division shall establish**
 35 **a procedure for the receipt and the timely review and investigation**
 36 **of allegations of:**

- 37 (1) **neglect of a consumer;**
 38 (2) **abuse of a consumer; or**
 39 (3) **misappropriation of a consumer's property;**

40 **by a direct care staff person of an entity described in subsection**
 41 **(a).**

42 **(c) The procedure required under subsection (b) must allow for:**

- 43 (1) **reasonable notice to the direct care staff person; and**
 44 (2) **reasonable opportunity for a hearing in which the direct**
 45 **care staff person may rebut the allegation.**

46 **(d) The division shall, after following the procedure required**
 47 **under this section, make a finding whether the direct care staff**
 48 **person:**

- 49 (1) **neglected a consumer;**
 50 (2) **abused a consumer; or**

- 1 **(3) misappropriated a consumer's property.**
2 **(e) If the division determines that a direct care staff person has:**
3 **(1) neglected a consumer;**
4 **(2) abused a consumer; or**
5 **(3) misappropriated a consumer's property;**
6 **the division shall notify the registry of direct care staff of that**
7 **determination.**
8 **(f) The division may adopt rules under IC 4-22-2, including**
9 **emergency rules under IC 4-22-2-37.1, to implement this section.**
10 SECTION 7. IC 12-11-1.5 IS ADDED TO THE INDIANA CODE
11 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2000]:
13 **Chapter 1.5. Criminal History of Direct Care Staff Persons and**
14 **Other Unlicensed Employees**
15 **Sec. 1. This chapter applies after August 31, 2000.**
16 **Sec. 2. This chapter applies to the following entities:**
17 **(1) A community based residential, habilitation, or vocational**
18 **services provider.**
19 **(2) An ICF/MR facility (as defined in IC 16-18-2-185) serving**
20 **more than eight (8) individuals.**
21 **(3) An entity in the business of contracting to provide direct**
22 **care staff persons or other unlicensed employees for an entity**
23 **described in subdivision (1) or (2).**
24 **Sec. 3. (a) An entity described in section 2 of this chapter may**
25 **not knowingly employ an individual as a direct care staff person or**
26 **other unlicensed employee if the individual has been convicted of**
27 **any of the following:**
28 **(1) A sex crime (IC 35-42-4).**
29 **(2) Exploitation of an endangered adult (IC 35-46-1-12).**
30 **(3) Failure to report battery, neglect, or exploitation of an**
31 **endangered adult (IC 35-46-1-13).**
32 **(4) Theft (IC 35-43-4), if the individual's conviction for theft**
33 **occurred less than five (5) years before the individual's**
34 **employment application date, except as provided in**
35 **IC 16-27-2-5(a)(5).**
36 **(5) Murder (IC 35-42-1-1).**
37 **(6) Voluntary manslaughter (IC 35-42-1-3).**
38 **(7) Involuntary manslaughter (IC 35-42-1-4) within the**
39 **previous five (5) years.**
40 **(8) Felony battery within the previous five (5) years.**
41 **(9) A felony offense relating to controlled substances within**
42 **the previous five (5) years.**
43 **(b) In addition to the requirement of subsection (a), an entity**
44 **described in section 2 of this chapter may not employ an individual**
45 **as a direct care staff person if one (1) or more of the following**
46 **conditions exists:**
47 **(1) A finding that the individual has:**
48 **(A) abused, neglected, or mistreated a consumer; or**
49 **(B) misappropriated a consumer's property;**
50 **has been entered into the registry of direct care staff.**

1 **(2) A finding that the individual has:**

2 **(A) abused, neglected, or mistreated a patient; or**

3 **(B) misappropriated a patient's property;**

4 **has been entered into the registry of nurse aides.**

5 **Sec. 4. (a) An individual who knowingly or intentionally applies**
 6 **for a job as a direct care staff person at an entity described in**
 7 **section 2 of this chapter after:**

8 **(1) the individual is convicted of at least one (1) of the offenses**
 9 **listed in section 3(a) of this chapter;**

10 **(2) a finding that the individual has committed an action set**
 11 **forth in section 3(b)(1) of this chapter is entered into the**
 12 **registry of direct care staff; or**

13 **(3) a finding that the individual has committed an action set**
 14 **forth in section 3(b)(2) of this chapter is entered into the**
 15 **registry of nurse aides;**

16 **commits a Class A infraction.**

17 **(b) An individual who knowingly or intentionally applies for a**
 18 **job as an other unlicensed employee at an entity described in**
 19 **section 2 of this chapter after the individual is convicted of at least**
 20 **one (1) of the offenses listed in section 3(a) of this chapter commits**
 21 **a Class A infraction.**

22 **Sec. 5. (a) Except as provided in subsection (c), a person who**
 23 **operates an entity described in section 2 of this chapter shall,**
 24 **within three (3) business days after the date an individual is**
 25 **employed as a direct care staff person, apply to:**

26 **(1) the state department of health for a copy of the**
 27 **individual's:**

28 **(A) registry of direct care staff report; and**

29 **(B) registry of nurse aides report; and**

30 **(2) the Indiana central repository for criminal history**
 31 **information under IC 5-2-5 or another source allowed by law**
 32 **for a copy of the individual's limited criminal history.**

33 **(b) Except as provided in subsection (c), a person who operates**
 34 **an entity described in section 2 of this chapter shall, within three**
 35 **(3) business days after the date an individual is employed as an**
 36 **other unlicensed employee, apply to the Indiana central repository**
 37 **for criminal history information under IC 5-2-5 or another source**
 38 **allowed by law for a copy of the individual's limited criminal**
 39 **history.**

40 **(c) If an entity described in section 2(3) of this chapter places an**
 41 **individual as a direct care staff person or other unlicensed**
 42 **employee in an entity described in section 2(1) or 2(2) of this**
 43 **chapter, the entity described in section 2(1) or 2(2) of this chapter**
 44 **is not required to apply for the documents required by subsection**
 45 **(a) or (b) regarding the individual.**

46 **Sec. 6. (a) Except as provided in subsection (b), if the registry of**
 47 **direct care staff does not contain any information regarding an**
 48 **individual who has applied for employment as a direct care staff**
 49 **person with an entity described in section 2 of this chapter, the**
 50 **entity shall transmit the information required to be contained in**

1 the registry of direct care staff under IC 16-32-4-4 within three (3)
 2 business days after receipt of notice that there is no information
 3 regarding the individual in the registry of direct care staff.

4 (b) If an entity described in section 2(3) of this chapter places an
 5 individual as a direct care staff person in an entity described in
 6 section 2(1) or 2(2), the entity described in section 2(1) or 2(2) of
 7 this chapter is not required to transmit the information required
 8 by subsection (a).

9 **Sec. 7. (a) A person who operates an entity described in section**
 10 **2 of this chapter may not employ an individual as a direct care staff**
 11 **person after receipt of the individual's:**

12 (1) registry of direct care staff report, if the report indicates
 13 that the individual has been found to have committed an
 14 action set forth in section 3(b)(1) of this chapter;

15 (2) registry of nurse aides report, if the report indicates that
 16 the individual has been found to have committed an action set
 17 forth in section 3(b)(2) of this chapter; or

18 (3) limited criminal history, if the limited criminal history
 19 indicates that the individual has been convicted of any of the
 20 offenses listed in section 3(a) of this chapter.

21 (b) A person who operates an entity described in section 2 of this
 22 chapter may not employ an individual as an other unlicensed
 23 employee after receipt of the individual's limited criminal history,
 24 if the limited criminal history indicates that the individual has been
 25 convicted of any of the offenses listed in section 3(a) of this chapter.

26 **Sec. 8. (a) A person who operates an entity described in section**
 27 **2 of this chapter is responsible for the payment of fees under**
 28 **IC 5-2-5-7 and other fees required to process a registry of direct**
 29 **care staff report, a registry of nurse aides report, and a limited**
 30 **criminal history under this chapter.**

31 (b) An entity described in section 2 of this chapter may require
 32 an individual who applies to the entity for employment:

33 (1) to pay the cost of fees described in subsection (a) to the
 34 entity at the time the individual submits an application for
 35 employment; or

36 (2) to reimburse the entity for the cost of fees described in
 37 subsection (a).

38 **Sec. 9. The application of this chapter to an entity described in**
 39 **section 2 of this chapter is limited to an individual:**

40 (1) who is employed by the entity; and

41 (2) whose employment or responsibilities are limited to
 42 activities primarily performed within an entity described in
 43 section 2(1) or 2(2) of this chapter.

44 **Sec. 10. An individual who is denied employment or dismissed**
 45 **from employment under this chapter:**

46 (1) does not have a cause of action;

47 (2) is not eligible for unemployment compensation;

48 (3) does not acquire the rights of an unemployed individual;
 49 and

50 (4) does not have other rights under IC 22;

1 as a result of the denial or dismissal.

2 **Sec. 11. An individual, other than an individual denied**
 3 **employment or dismissed under this chapter or against whom a**
 4 **finding is made for the registry of direct care staff under**
 5 **IC 12-9-5-5, who in good faith:**

6 (1) denies employment to an individual or dismisses an
 7 individual from employment under this chapter;

8 (2) testifies or participates in an investigation or an
 9 administrative or a judicial proceeding arising from:

10 (A) this chapter; or

11 (B) IC 12-9-5-5; or

12 (3) makes a report to the division, the state department of
 13 health, or the registry of direct care staff;

14 is immune from both civil and criminal liability arising from those
 15 actions.

16 **Sec. 12. (a) The division may assess a civil penalty against a**
 17 **person who:**

18 (1) operates an entity described in section 2 of this chapter;
 19 and

20 (2) knowingly or intentionally violates section 3, 5, 6, or 7 of
 21 this chapter.

22 (b) The amount of the penalty assessed under subsection (a) may
 23 not exceed the amount of the fine that may be assessed by the state
 24 department of health under IC 16-28-5-4(a)(2).

25 (c) Civil penalties collected under this section shall be:

26 (1) deposited by the division in the developmentally disabled
 27 client services account; and

28 (2) used to implement this chapter and other quality
 29 assurance programs approved by the division.

30 **Sec. 13. (a) Each entity described in section 2 of this chapter**
 31 **shall maintain a personnel record for each direct care staff person**
 32 **and other unlicensed employee employed by the entity. The**
 33 **personnel record must include the documents required under:**

34 (1) section 5(a) of this chapter for a direct care staff person;
 35 or

36 (2) section 5(b) of this chapter for an other unlicensed
 37 employee.

38 (b) The personnel records required under subsection (a) shall be
 39 available for inspection by the division to assure compliance with
 40 this chapter.

41 (c) If an entity described in section 2(3) of this chapter provides
 42 a direct care staff person or other unlicensed employee to an entity
 43 described in section 2(1) or 2(2) of this chapter, the entity described
 44 in section 2(3) of this chapter shall provide a copy of the documents
 45 required under subsection (a) to the entity described in section 2(1)
 46 or 2(2) of this chapter. If an entity described in section 2(3) of this
 47 chapter fails to provide a document described in subsection (a) to
 48 an entity described in section 2(1) or 2(2) of this chapter, the entity
 49 described in section 2(1) or 2(2) of this chapter is not in violation
 50 of this chapter.

1 **Sec. 14. If an entity described in section 2 of this chapter has**
 2 **knowledge of a conviction of an employee of the entity that would**
 3 **indicate unfitness for service as a direct care staff person, other**
 4 **unlicensed employee, or other health care professional (as defined**
 5 **in IC 16-27-2-1), the entity shall report the information to:**

- 6 (1) the division;
- 7 (2) the registry of direct care staff, if the employee is a direct
- 8 care staff person; or
- 9 (3) the appropriate licensing authority.

10 **Sec. 15. The division may adopt rules under IC 4-22-2, including**
 11 **emergency rules under IC 4-22-2-37.1, to implement this chapter.**

12 SECTION 8. IC 12-24-3-2 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 2. (a) This section**
 14 **applies to an individual who:**

- 15 (1) applies for employment with; or
- 16 (2) is hired by;

17 **a state institution before September 1, 2000.**

18 (b) To provide greater security for patients, visitors, and employees,
 19 the division may not employ in a state institution an individual
 20 **described in subsection (a)** who has been convicted of any of the
 21 following offenses:

- 22 (1) Rape (IC 35-42-4-1).
- 23 (2) Criminal deviate conduct (IC 35-42-4-2).
- 24 (3) Child molesting (IC 35-42-4-3).
- 25 (4) Child exploitation (IC 35-42-4-4).

26 SECTION 9. IC 12-24-3-2.5 IS ADDED TO THE INDIANA CODE
 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 28 1, 2000]: **Sec. 2.5. (a) This section applies to an individual who:**

- 29 (1) applies for employment with; or
- 30 (2) is employed by;

31 **a state institution after August 31, 2000.**

32 (b) A state institution may not employ an individual described
 33 in subsection (a) who has been convicted of any of the following
 34 offenses:

- 35 (1) A sex crime (IC 35-42-4).
- 36 (2) Exploitation of an endangered adult (IC 35-46-1-12).
- 37 (3) Failure to report battery, neglect, or exploitation of an
- 38 endangered adult (IC 35-46-1-13).
- 39 (4) Theft (IC 35-43-4), if the individual's conviction for theft
- 40 occurred less than five (5) years before the individual's
- 41 employment application date, except as provided in
- 42 IC 16-27-2-5(a)(5).
- 43 (5) Murder (IC 35-42-1-1).
- 44 (6) Voluntary manslaughter (IC 35-42-1-3).
- 45 (7) Involuntary manslaughter (IC 35-42-1-4) within the
- 46 previous five (5) years.
- 47 (8) Felony battery within the previous five (5) years.
- 48 (9) A felony offense relating to controlled substances within
- 49 the previous five (5) years.

50 SECTION 10. IC 12-24-3.5 IS ADDED TO THE INDIANA CODE

1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2000]:

3 **Chapter 3.5. Criminal History of Direct Care Staff Persons and**
4 **Other Unlicensed Employees**

5 **Sec. 1. This chapter applies after August 31, 2000.**

6 **Sec. 2. (a) A state institution may not knowingly employ an**
7 **individual as a direct care staff person or other unlicensed**
8 **employee if the individual has been convicted of any of the**
9 **following:**

10 (1) A sex crime (IC 35-42-4).

11 (2) Exploitation of an endangered adult (IC 35-46-1-12).

12 (3) Failure to report battery, neglect, or exploitation of an
13 endangered adult (IC 35-46-1-13).

14 (4) Theft (IC 35-43-4), if the individual's conviction for theft
15 occurred less than five (5) years before the individual's
16 employment application date, except as provided in
17 IC 16-27-2-5(a)(5).

18 (5) Murder (IC 35-42-1-1).

19 (6) Voluntary manslaughter (IC 35-42-1-3).

20 (7) Involuntary manslaughter (IC 35-42-1-4) within the
21 previous five (5) years.

22 (8) Felony battery within the previous five (5) years.

23 (9) A felony offense relating to controlled substances within
24 the previous five (5) years.

25 (b) In addition to the requirement of subsection (a), a state
26 institution may not employ an individual as a direct care staff
27 person if one (1) or more of the following conditions exists:

28 (1) A finding that the individual has:

29 (A) abused, neglected, or mistreated a consumer; or

30 (B) misappropriated a consumer's property;

31 has been entered into the registry of direct care staff.

32 (2) A finding that the individual has:

33 (A) abused, neglected, or mistreated a patient; or

34 (B) misappropriated a patient's property;

35 has been entered into the registry of nurse aides.

36 **Sec. 3. (a) An individual who knowingly or intentionally applies**
37 **for a job as a direct care staff person at a state institution after:**

38 (1) the individual is convicted of at least one (1) of the offenses
39 listed in section 2(a) of this chapter;

40 (2) a finding that the individual has committed an action set
41 forth in section 2(b)(1) of this chapter is entered into the
42 registry of direct care staff; or

43 (3) a finding that the individual has committed an action set
44 forth in section 2(b)(2) of this chapter is entered into the
45 registry of nurse aides;

46 **commits a Class A infraction.**

47 (b) An individual who knowingly or intentionally applies for a
48 job as an other unlicensed employee at a state institution after the
49 individual is convicted of at least one (1) of the offenses listed in
50 section 2(a) of this chapter commits a Class A infraction.

1 **Sec. 4. An individual who is denied employment or dismissed**
 2 **from employment under this chapter:**

- 3 (1) does not have a cause of action;
 4 (2) is not eligible for unemployment compensation;
 5 (3) does not acquire the rights of an unemployed individual;
 6 and
 7 (4) does not have other rights under IC 22;

8 **as a result of the denial or dismissal.**

9 **Sec. 5. An individual, other than an individual denied**
 10 **employment or dismissed under this chapter or against whom a**
 11 **finding is made for the registry of direct care staff under**
 12 **IC 12-9-5-5, who in good faith:**

- 13 (1) denies employment to an individual or dismisses an
 14 individual from employment under this chapter;
 15 (2) testifies or participates in an investigation or an
 16 administrative or a judicial proceeding arising from:

17 (A) this chapter; or

18 (B) IC 12-9-5-5; or

- 19 (3) makes a report to the division, the state department of
 20 health, or the registry of direct care staff;

21 **is immune from both civil and criminal liability arising from those**
 22 **actions.**

23 **Sec. 6. If the registry of direct care staff does not contain any**
 24 **information for an individual who has applied for employment as**
 25 **a direct care staff person with a state institution, the director shall**
 26 **transmit the information required to be contained in the registry**
 27 **of direct care staff under IC 16-32-4-4 within three (3) business**
 28 **days after receipt of notice that there is no information regarding**
 29 **the individual in the registry of direct care staff.**

30 **Sec. 7. If the superintendent has knowledge of a conviction of an**
 31 **employee of a state institution that would indicate unfitness for**
 32 **service as a direct care staff person, other unlicensed employee, or**
 33 **other health care professional (as defined in IC 16-27-2-1), the**
 34 **superintendent shall report the information to the registry of direct**
 35 **care staff or the appropriate licensing authority.**

36 SECTION 11. IC 12-28-5-2, AS AMENDED BY P.L.272-1999,
 37 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2000]: Sec. 2. (a) The community residential facilities council
 39 is established. The council consists of the following members
 40 appointed by the governor:

- 41 (1) One (1) professional possessing specialized training in the
 42 field of human development.
 43 (2) One (1) member of the professional staff of the division of
 44 disability, aging, and rehabilitative services.
 45 (3) One (1) member of the professional staff of the office of
 46 Medicaid policy and planning.
 47 (4) One (1) member of the professional staff of the state
 48 department of health.
 49 (5) One (1) individual possessing a special interest in
 50 developmentally disabled individuals.

- 1 (6) One (1) individual possessing a special interest in mentally ill
 2 individuals.
- 3 (7) One (1) individual who is the chief executive officer of a
 4 facility providing both day services and residential services for
 5 developmentally disabled individuals.
- 6 (8) One (1) individual who is the chief executive officer of a
 7 facility providing residential services only for developmentally
 8 disabled individuals.
- 9 **(9) One (1) individual who is a member of the professional**
 10 **staff of the Indiana protection and advocacy services**
 11 **commission. The individual appointed under this subdivision**
 12 **is an ex officio member of the council.**
- 13 **(10) One (1) individual who is the chief executive officer of an**
 14 **entity providing only supported living services.**
- 15 **(11) One (1) individual who is receiving services through the**
 16 **bureau of developmental disabilities services.**
- 17 **(12) Two (2) members of the public.**
- 18 (b) Except for the members designated by subsection (a)(7), ~~and~~
 19 (a)(8), ~~and (a)(10)~~, a member of the council may not have an indirect
 20 or a direct financial interest in a residential facility for the
 21 developmentally disabled.
- 22 SECTION 12. IC 12-28-5-3 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. The term of each
 24 member of the council is four (4) years. Except for the members listed
 25 in section ~~2(a)(9)~~, ~~2(a)(10)~~, **2(a)(7)**, **2(a)(8)**, and ~~2(a)(11)~~ **2(a)(10)** of
 26 this chapter, members of the council may be reappointed.
- 27 SECTION 13. IC 12-28-5-7 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 7. The council shall
 29 meet at least ~~quarterly~~: **monthly**. Only the presiding officer may call
 30 additional meetings.
- 31 SECTION 14. IC 12-28-5-10 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 10. In conjunction with
 33 the division of disability, aging, and rehabilitative services, the council
 34 shall do the following:
- 35 (1) Determine the current and projected needs of each geographic
 36 area of Indiana for residential services for developmentally
 37 disabled individuals.
- 38 (2) Determine how the provision of developmental or vocational
 39 services for residents in these ~~geographic~~ **geographic** areas
 40 affects the availability of developmental or vocational services to
 41 developmentally disabled individuals living in their own homes.
- 42 (3) Develop standards for licensure of supervised group living
 43 facilities regarding the following:
- 44 (A) A sanitary and safe environment for residents and
 45 employees.
- 46 (B) Classification of supervised group living facilities.
- 47 (C) Any other matters that will ensure that the residents will
 48 receive a residential environment.
- 49 **(4) Develop standards for the approval of entities providing**
 50 **supported living services.**

1 (5) Recommend social and habilitation programs to the Indiana
 2 health facilities council for developmentally disabled individuals
 3 who reside in health facilities licensed under IC 16-28.

4 ~~(5)~~ (6) Develop and update semiannually a report that identifies
 5 the numbers of developmentally disabled individuals who live in
 6 health facilities licensed under IC 16-28. The Indiana health
 7 facilities council shall assist in developing and updating this
 8 report.

9 SECTION 15. IC 12-28-5-11 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) A supervised
 11 group living facility must have a license or provisional license issued
 12 under this chapter to operate.

13 (b) **An entity that provides supported living services must be**
 14 **approved by the council under this chapter to operate.**

15 SECTION 16. IC 12-28-5-12 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. (a) The council may
 17 license only those supervised group living facilities that:

18 (1) meet the standards established under section 10 of this
 19 chapter; and

20 (2) are necessary to provide adequate services to developmentally
 21 disabled individuals in that geographic area.

22 (b) A supervised group living facility described in subsection (c)
 23 may ~~only~~ locate in only one (1) of the following counties:

24 (1) a county having a population of more than twenty-five
 25 thousand nine hundred fifty (25,950) but less than twenty-six
 26 thousand (26,000);

27 (2) a county having a population of more than one hundred sixty
 28 thousand (160,000) but less than two hundred thousand
 29 (200,000); or

30 (3) a county having a population of more than forty-four thousand
 31 (44,000) but less than forty-five thousand (45,000).

32 (c) Notwithstanding 431 IAC 1.1-3-7(c) and 431 IAC 1.1-3-7(d), the
 33 council shall license one (1) supervised group living facility that is
 34 located less than one thousand (1,000) feet from another supervised
 35 group living facility or a sheltered workshop under the following
 36 conditions:

37 (1) Both of the supervised group living facilities meet all
 38 standards for licensure as provided in section 10(3) of this
 39 chapter.

40 (2) Both of the supervised group living facilities are built on land
 41 that is owned by one (1) private entity.

42 (3) The community formed by the supervised group living
 43 facilities provides job opportunities for residents of the supervised
 44 group living facilities.

45 (d) **The council may approve an entity to provide supported**
 46 **living services only if the entity meets the standards established**
 47 **under section 10 of this chapter.**

48 SECTION 17. IC 12-28-5-13 IS AMENDED TO READ AS
 49 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 13. The council may
 50 revoke:

- 1 (1) the license of a supervised group living facility; or
 2 (2) **the approval of an entity that provides supported living**
 3 **services;**

4 that no longer meets the standards established under section 10 of this
 5 chapter after following the procedures prescribed by IC 4-21.5-3. If a
 6 hearing is provided for or authorized to be held by the council, the
 7 council may designate a person as its agent or representative to conduct
 8 a hearing. The agent or representative shall conduct the hearing under
 9 IC 4-21.5-3.

10 SECTION 18. IC 12-28-5-14 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 14. (a) The council
 12 may issue a provisional license to a facility that does not qualify for a
 13 license under section 12 of this chapter but that provides satisfactory
 14 evidence that the facility will qualify within a period prescribed by the
 15 council. The period may not exceed ~~one (1) year~~: **six (6) months.**

16 (b) **The council may issue provisional approval to an entity**
 17 **providing supported living services that does not qualify for**
 18 **approval under section 12 of this chapter but that provides**
 19 **satisfactory evidence that the entity will qualify within a period**
 20 **prescribed by the council. The period may not exceed six (6)**
 21 **months.**

22 SECTION 19. IC 16-18-2-64.6 IS ADDED TO THE INDIANA
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE UPON PASSAGE]: **Sec. 64.6. "Community based**
 25 **residential, habilitation, or vocational services provider", for**
 26 **purposes of IC 16-32-4, has the meaning set forth in IC 16-32-4-1.**

27 SECTION 20. IC 16-18-2-94.5 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE UPON PASSAGE]: **Sec. 94.5. (a) "Direct care staff**
 30 **person", for purposes of IC 16-28-13.5, has the meaning set forth**
 31 **in IC 16-28-13.5-1.**

32 (b) **"Direct care staff person", for purposes of IC 16-32-4, has**
 33 **the meaning set forth in IC 16-32-4-2.**

34 SECTION 21. IC 16-18-2-314.5 IS ADDED TO THE INDIANA
 35 CODE AS A NEW SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2000]: **Sec. 314.5. "Registry of direct care**
 37 **staff", for purposes of IC 16-28-13.5, has the meaning set forth in**
 38 **IC 16-28-13.5-4.**

39 SECTION 22. IC 16-28-13.5 IS ADDED TO THE INDIANA
 40 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
 41 [EFFECTIVE JULY 1, 2000]:

42 **Chapter 13.5. Criminal History of Direct Care Staff Persons**

43 **Sec. 1. This chapter applies after August 31, 2000.**

44 **Sec. 2. This chapter applies to the following entities:**

45 (1) **A health facility.**

46 (2) **An entity in the business of contracting to provide direct**
 47 **care staff persons for a health facility.**

48 **Sec. 3. (a) As used in this chapter, "direct care staff person"**
 49 **means an individual who provides direct assistance with daily**
 50 **living and personal adjustment activities to a patient of a health**

1 facility.

2 (b) The term does not include the following:

3 (1) A person who holds a license (as defined in IC 25-1-9-3)
4 issued by a board (as defined in IC 25-1-9-1).

5 (2) A nurse aide.

6 (3) A volunteer who provides direct care services without
7 compensation.

8 (4) A member of the patient's immediate family.

9 Sec. 4. As used in this chapter, "registry of direct care staff"
10 refers to the registry of direct care staff persons maintained by the
11 state department under IC 16-32-4.

12 Sec. 5. An entity described in section 2 of this chapter may not
13 knowingly employ an individual as a direct care staff person if any
14 of the following conditions exists:

15 (1) The individual has been convicted of any of the following:

16 (A) A sex crime (IC 35-42-4).

17 (B) Exploitation of an endangered adult (IC 35-46-1-12).

18 (C) Failure to report battery, neglect, or exploitation of an
19 endangered adult (IC 35-46-1-13).

20 (D) Theft (IC 35-43-4), if the individual's conviction for
21 theft occurred less than five (5) years before the
22 individual's employment application date, except as
23 provided in IC 16-27-2-5(a)(5).

24 (E) Murder (IC 35-42-1-1).

25 (F) Voluntary manslaughter (IC 35-42-1-3).

26 (G) Involuntary manslaughter (IC 35-42-1-4) within the
27 previous five (5) years.

28 (H) Felony battery within the previous five (5) years.

29 (I) A felony offense relating to controlled substances within
30 the previous five (5) years.

31 (2) A finding that the individual has:

32 (A) abused, neglected, or mistreated a consumer; or

33 (B) misappropriated a consumer's property;

34 has been entered into the registry of direct care staff.

35 (3) A finding that the individual has:

36 (A) abused, neglected, or mistreated a patient; or

37 (B) misappropriated a patient's property;

38 has been entered into the registry of nurse aides.

39 Sec. 6. An individual who knowingly or intentionally applies for
40 a job as a direct care staff person at an entity described in section
41 2 of this chapter after:

42 (1) the individual is convicted of at least one (1) of the offenses
43 listed in section 5(1) of this chapter;

44 (2) a finding that the individual has committed an action set
45 forth in section 5(2) of this chapter is entered into the registry
46 of direct care staff; or

47 (3) a finding that the individual has committed an action set
48 forth in section 5(3) of this chapter is entered into the registry
49 of nurse aides;

50 commits a Class A infraction.

1 **Sec. 7. (a) Except as provided in subsection (b), a person who**
 2 **operates an entity described in section 2 of this chapter shall,**
 3 **within three (3) business days after the date an individual is**
 4 **employed as a direct care staff person, apply to:**

5 **(1) the state department of health for a copy of the**
 6 **individual's:**

7 **(A) registry of direct care staff report; and**

8 **(B) registry of nurse aides report; and**

9 **(2) the Indiana central repository for criminal history**
 10 **information under IC 5-2-5 or another source allowed by law**
 11 **for a copy of the individual's limited criminal history.**

12 **(b) If an entity described in section 2(2) of this chapter places an**
 13 **individual as a direct care staff person in an entity described in**
 14 **section 2(1) of this chapter, the entity described in section 2(1) of**
 15 **this chapter is not required to apply for the documents required by**
 16 **subsection (a) regarding the individual.**

17 **Sec. 8. (a) Except as provided in subsection (b), if the registry of**
 18 **direct care staff does not contain any information regarding an**
 19 **individual who has applied for employment as a direct care staff**
 20 **person with an entity described in section 2 of this chapter, the**
 21 **entity shall transmit the information required to be contained in**
 22 **the registry of direct care staff under IC 16-32-4-4 within three (3)**
 23 **business days after receipt of notice that there is no information**
 24 **regarding the individual in the registry of direct care staff.**

25 **(b) If an entity described in section 2(2) of this chapter places an**
 26 **individual as a direct care staff person in an entity described in**
 27 **section 2(1) of this chapter, the entity described in section 2(1) of**
 28 **this chapter is not required to transmit the information required**
 29 **by subsection (a).**

30 **Sec. 9. A person who operates an entity described in section 2 of**
 31 **this chapter may not employ an individual as a direct care staff**
 32 **person after receipt of the individual's:**

33 **(1) registry of direct care staff report, if the report indicates**
 34 **that the individual has been found to have committed an**
 35 **action set forth in section 5(2) of this chapter;**

36 **(2) registry of nurse aides report, if the report indicates that**
 37 **the individual has been found to have committed an action set**
 38 **forth in section 5(3) of this chapter; or**

39 **(3) limited criminal history, if the limited criminal history**
 40 **indicates that the individual has been convicted of any of the**
 41 **offenses listed in section 5(1) of this chapter.**

42 **Sec. 10. (a) A person who operates an entity described in section**
 43 **2 of this chapter is responsible for the payment of fees under**
 44 **IC 5-2-5-7 and other fees required to process a registry of direct**
 45 **care staff report, a registry of nurse aides report, and a limited**
 46 **criminal history under this chapter.**

47 **(b) An entity described in section 2 of this chapter may require**
 48 **an individual who applies to the entity for employment:**

49 **(1) to pay the cost of fees described in subsection (a) to the**
 50 **entity at the time the individual submits an application for**

- 1 employment; or
 2 (2) to reimburse the entity for the cost of fees described in
 3 subsection (a).

4 **Sec. 11. The application of this chapter to an entity described in
 5 section 2 of this chapter is limited to an individual:**

- 6 (1) who is employed by the entity; and
 7 (2) whose employment or responsibilities are limited to
 8 activities primarily performed within an entity described in
 9 section 2(1) of this chapter.

10 **Sec. 12. An individual who is denied employment or dismissed
 11 from employment under this chapter:**

- 12 (1) does not have a cause of action;
 13 (2) is not eligible for unemployment compensation;
 14 (3) does not acquire the rights of an unemployed individual;
 15 and
 16 (4) does not have other rights under IC 22;

17 as a result of the denial or dismissal.

18 **Sec. 13. An individual, other than an individual denied
 19 employment or dismissed under this chapter or against whom a
 20 finding is made for the registry of direct care staff under
 21 IC 12-9-5-5, who in good faith:**

- 22 (1) denies employment to an individual or dismisses an
 23 individual from employment under this chapter;
 24 (2) testifies or participates in an investigation or an
 25 administrative or a judicial proceeding arising from:
 26 (A) this chapter; or
 27 (B) IC 12-9-5-5; or
 28 (3) makes a report to the division of disability, aging, and
 29 rehabilitative services, the state department, or the registry of
 30 direct care staff;

31 is immune from both civil and criminal liability arising from those
 32 actions.

33 **Sec. 14. (a) Each entity described in section 1 of this chapter
 34 shall maintain a personnel record for each direct care staff person
 35 employed by the entity. The personnel record must include the
 36 documents required under section 7(a) of this chapter.**

37 **(b) The personnel records required under subsection (a) shall be
 38 available for inspection by the state department to assure
 39 compliance with this chapter.**

40 **(c) If an entity described in section 2(2) of this chapter provides
 41 a direct care staff person to an entity described in section 2(1) of
 42 this chapter, the entity described in section 2(2) of this chapter
 43 shall provide a copy of the documents required under subsection
 44 (a) to the entity described in section 2(1) of this chapter. If an entity
 45 described in section 2(2) of this chapter fails to provide a document
 46 described in subsection (a) to an entity described in section 2(1) of
 47 this chapter, the entity described in section 2(1) of this chapter is
 48 not in violation of this chapter.**

49 **Sec. 15. If an entity described in section 2 of this chapter has
 50 knowledge of a conviction of an employee of the entity that would**

1 indicate unfitness for service as a direct care staff person, the
2 entity shall report the information to:

- 3 (1) the division of disability, aging, and rehabilitative services;
- 4 (2) the registry of direct care staff;
- 5 (3) the state department; or
- 6 (4) the appropriate licensing authority.

7 **Sec. 16.** The state department may adopt rules under IC 4-22-2,
8 including emergency rules under IC 4-22-2-37.1, to implement this
9 chapter.

10 SECTION 23. IC 16-32-4 IS ADDED TO THE INDIANA CODE
11 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
12 UPON PASSAGE]:

13 **Chapter 4. Registry of Direct Care Staff Persons**

14 **Sec. 1.** As used in this chapter, "community based residential,
15 habilitation, or vocational services provider", means an entity
16 approved by the bureau of developmental disabilities services
17 under IC 12-11-1.1-1(e).

18 **Sec. 2. (a)** As used in this chapter, "direct care staff person"
19 means an individual who provides direct assistance with daily
20 living and personal adjustment activities to a consumer receiving
21 services from:

- 22 (1) a community based residential, habilitation, or vocational
23 services provider;
- 24 (2) an ICF/MR serving more than eight (8) individuals;
- 25 (3) a state institution (as defined in IC 12-7-2-184); or
- 26 (4) a health facility (as defined in IC 16-18-2-167).

27 **(b)** The term does not include the following:

- 28 (1) A person who holds a license (as defined in IC 25-1-9-3)
29 issued by a board (as defined in IC 25-1-9-1).
- 30 (2) A nurse aide (as defined in IC 16-28-13-1).
- 31 (3) A volunteer who provides direct care services without
32 compensation.
- 33 (4) A member of the consumer's immediate family.

34 **Sec. 3.** The state department shall establish and maintain a
35 registry of direct care staff persons.

36 **Sec. 4. (a)** The registry required under this chapter must contain
37 at least the following information regarding each direct care staff
38 person:

- 39 (1) The individual's name.
- 40 (2) Information necessary to identify the individual, as
41 determined by the state department.
- 42 (3) The date the individual was first placed on the registry.
- 43 (4) The following information on any finding by the division
44 of disability, aging, and rehabilitative services under
45 IC 12-9-5-5 regarding abuse, neglect, or misappropriation of
46 property by the individual:
 - 47 (A) Documentation of the division's investigation,
48 including the nature of the allegation and the evidence that
49 led the division to conclude that the allegation was valid.
 - 50 (B) The date of the hearing, if the individual chose to have

1 one, and its outcome.

2 (C) A statement by the individual disputing the allegation,
3 if the individual chooses to make a statement.

4 (b) The state department shall enter the information required
5 under subsection (a) within ten (10) working days after receipt of
6 the information.

7 Sec. 5. (a) Except as provided in subsection (b), the state
8 department shall maintain the information in the registry
9 regarding an individual permanently.

10 (b) The state department shall remove information regarding an
11 individual entered into the registry under section 4(a)(4) of this
12 chapter if:

13 (1) the division of disability, aging, and rehabilitative services
14 notifies the state department that the finding was made in
15 error;

16 (2) the individual was found not guilty in a court of law; or

17 (3) the state department is notified of the individual's death.

18 Sec. 6. If the division of disability, aging, and rehabilitative
19 services notifies the state department that the division has
20 determined under IC 12-9-5-5 that a direct care staff person has
21 neglected or abused a consumer or misappropriated a consumer's
22 property, the state department shall:

23 (1) place the information required under section 4(a)(4) of this
24 chapter on the registry of direct care staff; and

25 (2) notify the direct care staff person's current employer, if
26 known to the state department, of that determination.

27 Sec. 7. The state department must disclose information under
28 section 4(a)(4) of this chapter upon request and may disclose
29 additional information the state department determines necessary.

30 Sec. 8. The state department shall promptly provide an
31 individual with:

32 (1) all information contained in the registry regarding the
33 individual:

34 (A) upon request by the individual; and

35 (B) whenever a finding adverse to the individual is placed
36 on the registry; and

37 (2) sufficient opportunity to correct any misstatements or
38 inaccuracies contained in the registry regarding the
39 individual.

40 Sec. 9. If an entity applies to the state department for a copy of
41 an individual's registry of nurse aides report and registry of direct
42 care staff report, the state department shall provide a copy of both
43 reports to the entity at the same time.

44 Sec. 10. If the registry established under this chapter does not
45 contain any information regarding an individual for whom an
46 entity requests a report, the state department shall notify the entity
47 of that fact.

48 Sec. 11. The state department may adopt rules under IC 4-22-2,
49 including emergency rules under IC 4-22-2-37.1, to implement this
50 chapter.

1 SECTION 24. IC 34-30-2-43.3 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2000]: **Sec. 43.3. IC 12-11-1.5-11 (Beginning**
 4 **September 1, 2000, concerning persons for denying or terminating**
 5 **employment of an individual with a criminal history, or reporting**
 6 **to or participating in the proceedings of the division of disability,**
 7 **aging, and rehabilitative services, the state department of health,**
 8 **or the registry of direct care staff.)**

9 SECTION 25. IC 34-30-2-47.5 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2000]: **Sec. 47.5. IC 12-24-3.5-5 (Beginning**
 12 **September 1, 2000, concerning persons for denying or terminating**
 13 **employment of an individual with a criminal history, or reporting**
 14 **to or participating in the proceedings of a division of the office of**
 15 **the secretary of family and social services, the state department of**
 16 **health, or the registry of direct care staff.)**

17 SECTION 26. IC 34-30-2-67.2 IS ADDED TO THE INDIANA
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2000]: **Sec. 67.2. IC 16-28-13.5-13 (Beginning**
 20 **September 1, 2000, concerning persons for denying or terminating**
 21 **employment of an individual with a criminal history, or reporting**
 22 **to or participating in the proceedings of a division of the office of**
 23 **the secretary of family and social services, the state department of**
 24 **health, or the registry of direct care staff.)**

25 SECTION 27. [EFFECTIVE JULY 1, 2000] (a) As used in this
 26 SECTION, "direct care staff person" has the meaning set forth in
 27 IC 12-7-2-63.5, as added by this act.

28 (b) As used in this SECTION, "other unlicensed employee" has
 29 the meaning set forth in IC 12-7-2-135.6, as added by this act.

30 (c) Except as provided in subsection (d), IC 12-24-3.5-2, as
 31 added by this act, does not apply to an individual who was
 32 employed by a state institution as a direct care staff person or
 33 other unlicensed employee before September 1, 2000.

34 (d) If an individual described in subsection (a) separates from
 35 employment from a state institution, the state institution may not
 36 rehire the individual as a direct care staff person or other
 37 unlicensed employee after August 31, 2000, if the individual has
 38 been convicted of an offense described in IC 12-24-3.5.2.

39 SECTION 28. [EFFECTIVE JULY 1, 2000] (a) This SECTION
 40 applies to the following entities:

41 (1) A community based residential, habilitation, or vocational
 42 services provider (as defined in IC 12-7-2-37.5, as added by
 43 this act).

44 (2) An ICF/MR (as defined in IC 16-18-2-185) serving more
 45 than eight (8) individuals.

46 (3) A state institution (as defined in IC 12-7-2-184).

47 (4) A health facility (as defined in IC 16-18-2-167).

48 (5) An entity in the business of contracting to provide direct
 49 care staff persons for an entity described in subdivision (1),
 50 (2), (3), or (4).

1 (b) As used in this SECTION, "direct care staff person" has the
2 meaning set forth in IC 12-7-2-63.5, as added by this act.

3 (c) As used in this SECTION, "registry of direct care staff"
4 refers to the registry of direct care staff persons and other
5 unlicensed employees maintained by the state department of health
6 under IC 16-32-4, as added by this act.

7 (d) Not later than August 31, 2000, an entity described in
8 subsection (a) shall transmit to the registry of direct care staff the
9 information required to be contained in the registry of direct care
10 staff under IC 16-32-4-4, as added by this act, regarding each
11 direct care staff person employed by the entity.

12 (e) If an entity described in subsection (a)(5) places an
13 individual as a direct care staff person in an entity described in
14 subsection (a)(1), (a)(2), (a)(3), or (a)(4), the entity described in
15 subsection (a)(1), (a)(2), (a)(3), or (a)(4) is not required to transmit
16 the information required by subsection (d).

17 (f) This SECTION expires September 30, 2000.

18 SECTION 29. [EFFECTIVE UPON PASSAGE] In establishing
19 and maintaining the registry of direct care staff persons and other
20 unlicensed employees required by IC 16-32-4, as added by this act,
21 the state department of health shall, to the extent possible, use the
22 technology of the registry of nurse aides required under 42 CFR
23 483.156.

24 SECTION 30. An emergency is declared for this act.

25

(Reference is to SB 370 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Health and Provider Services.

GARTON Chairperson