February 16, 2010

ENGROSSED
SENATE BILL No. 87

DIGEST OF SB 87 (Updated February 16, 2010 9:37 am - DI 96)

Citations Affected: IC 36-8.

Synopsis: Suspensions or terminations of EMS personnel. Provides that a medical director of a police or fire department or a volunteer fire department must provide a written explanation to an individual who is a member of the department, and as a condition of employment or appointment, holds a certification to provide emergency medical services, if the medical director refuses or fails to supervise or attest to the competency of the individual to provide emergency medical services or suspends the individual from performing emergency medical services. Provides that, before a department takes any employment or appointment related action against the individual, the individual is entitled to a hearing and appeal of the medical director's refusal, failure, or suspension. Requires the board or commission hearing the appeal to consult with an independent medical expert who must have certain qualifications in order to determine whether the individual followed the applicable emergency medical services protocol, if the medical director's action that is the subject of the appeal is based on a health care decision made by the individual in performing emergency medical services.

Effective: July 1, 2010.

Tallian, Boots, Young R Michael
(HOUSE SPONSORS — MOSELEY, TYLER)

January 5, 2010, read first time and referred to Committee on Pensions and Labor.
January 28, 2010, reported favorably — Do Pass.
February 1, 2010, read second time, ordered engrossed. Engrossed.
February 2, 2010, read third time, passed. Yeas 49, nays 1.

HOUSE ACTION
February 8, 2010, read first time and referred to Committee on Labor and Employment.
February 16, 2010, amended, reported — Do Pass.

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February 16, 2010

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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ENGROSSED
SENATE BILL No. 87

A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 36-8-3-4.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4.3. (a) This section also applies to a town or township that has at least one (1) certified employee of a full-time, paid fire or police department, without regard to whether:**

(1) the employee is an appointed police officer or firefighter; or

(2) under section 5 of this chapter, the police or fire department is exempt from sections 3, 4, and 4.1 of this chapter.

(b) As used in this section, "certified employee" means an individual who, as a condition of employment, holds a valid certification issued under IC 16-31-3 by the Indiana emergency medical services commission established by IC 16-31-2-1.

(c) As used in this section, "medical director" means a physician with an unlimited license to practice medicine in Indiana and who performs the duties and responsibilities described in 836

IAC 2-2-1.

(d) If a medical director takes any of the following actions against a certified employee, the medical director shall provide to the certified employee and to the chief of the certified employee's department a written explanation of the reasons for the action taken by the medical director:

(1) The medical director refuses or fails to supervise or otherwise provide medical control and direction to the certified employee.

(2) The medical director refuses or fails to attest to the competency of the certified employee to perform emergency medical services.

(3) The medical director suspends the certified employee from performing emergency medical services.

(e) Before a police or fire department takes any employment related action against a certified employee as the result of a medical director's action described in subsection (d), the certified employee is entitled to a hearing and appeal concerning the medical director's action as provided in section 4 of this chapter.

(f) If the medical director's action that is the subject of an appeal under subsection (e) is based on a health care decision made by the certified employee in performing emergency medical services, the safety board conducting the hearing shall consult with an independent medical expert to determine whether the certified employee followed the applicable emergency medical services protocol in making the health care decision. The independent medical expert:

(1) must be a physician trained in emergency medical services; and

(2) may not be affiliated with the same hospital as the medical director.

SECTION 2. IC 36-8-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. **Except as provided in section 4.3 of this chapter,** sections 3, 4, and 4.1 of this chapter do not apply to a police or fire department having a board or commission established by statute or ordinance to establish or administer policies based on merit for the appointment, promotion, demotion, and dismissal of members of the department, unless the establishing law specifically incorporates one (1) or more of those sections.

SECTION 3. IC 36-8-3.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) This chapter applies to each municipality or township that has a full-time paid police

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or fire department. A municipality may exercise the power of establishing a merit system for its police or fire department under this chapter or by ordinance adopted under IC 36-1-4-14. A township may exercise the power of establishing a merit system for its fire department under this chapter or by resolution under IC 36-1-4-14. This chapter does not affect merit systems established:

(1) by ordinance under IC 36-1-4-14, except as provided by subsection (e) **and section 19.3 of this chapter;**

(2) by resolution under IC 36-1-4-14, except as provided by subsection (f) **and section 19.3 of this chapter;** or

(3) by a prior statute, except as provided by subsection (b) **and section 19.3 of this chapter.**

(b) If a city had a merit system for its police or fire department under the former IC 18-4-12, IC 19-1-7, IC 19-1-14, IC 19-1-14.2, IC 19-1-14.3, IC 19-1-14.5, IC 19-1-20, IC 19-1-21, IC 19-1-29, IC 19-1-29.5, IC 19-1-31, IC 19-1-31.5, or IC 19-1-37.5, it may retain that system by ordinance of the city legislative body passed before January 1, 1983. The ordinance must initially incorporate all the provisions of the prior statute but may be amended by the legislative body after December 31, 1984. The ordinance retaining the system must be amended, if necessary, to include a provision under which the commission (or governing board of the merit system) has at least one-third (1/3) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must:

(1) be a person of good moral character; and

(2) except for a member of a fire department having a merit system established under IC 19-1-37.5, not be an active member of a police or fire department or agency.

(c) After December 31, 1984, the legislative body also may repeal the ordinance described in subsection (b), but the legislative body shall in the repealing ordinance concurrently establish a new merit system under section 3 of this chapter. (This subsection does not require the legislative body to establish a new merit system when it exercises its power to amend the ordinance under subsection (b).) After the new merit system takes effect, all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

(d) If a city had a merit system for its police or fire department under a prior statute but fails to retain that system under subsection (b), the city legislative body shall, before July 1, 1983, pass an ordinance to establish a new merit system under section 3 of this chapter. If the

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new merit system is approved as provided by section 4 of this chapter, it takes effect as provided by that section. However, if the new merit system is rejected under section 4 of this chapter, within thirty (30) days the city legislative body shall adopt an ordinance to retain the prior merit system. The prior merit system remains in effect until the new merit system takes effect, after which time all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

(e) An ordinance adopted under IC 36-1-4-14 to establish a police or fire merit system must include a provision under which the commission, or governing board of the merit system, has at least one-third (1/3) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must be a person of good moral character who is not an active member of a police or fire department or agency. If an ordinance was adopted under IC 36-1-4-14 before July 1, 1988, the ordinance must be amended to include this requirement.

(f) This chapter does not prevent a township or other unit that has adopted a merit system under section 3 of this chapter from later amending or deleting any provisions of the merit system contained in this chapter. However, the merit system must include a provision under which the commission has at least one-third (1/3) of its members elected by the active members of the department, as set forth in section 8 of this chapter and a provision that incorporates the requirements of section 6(a) of this chapter. This subsection does not require the legislative body to establish a new merit system when it exercises its power to amend under this subsection.

SECTION 4. IC 36-8-3.5-19.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 19.3. (a) This section applies to a department that has at least one (1) certified employee, without regard to whether:**

(1) the employee is an appointed police officer or firefighter; or

(2) the department has a merit system to which this chapter does not otherwise apply as provided under section 1 of this chapter.

(b) As used in this section, "certified employee" means an individual who, as a condition of employment, holds a valid certification issued under IC 16-31-3 by the Indiana emergency medical services commission established by IC 16-31-2-1.

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(c) As used in this section, "medical director" means a physician with an unlimited license to practice medicine in Indiana and who performs the duties and responsibilities described in 836 IAC 2-2-1.

(d) If a medical director takes any of the following actions against a certified employee, the medical director shall provide to the certified employee and to the chief of the certified employee's department a written explanation of the reasons for the action taken by the medical director:

(1) The medical director refuses or fails to supervise or otherwise provide medical control and direction to the certified employee.

(2) The medical director refuses or fails to attest to the competency of the certified employee to perform emergency medical services.

(3) The medical director suspends the certified employee from performing emergency medical services.

(e) Before a department takes any employment related action as the result of a medical director's action described in subsection (d) against a certified employee, the certified employee is entitled to a hearing and appeal concerning the medical director's action as provided in sections 17 and 18 of this chapter.

(f) If the medical director's action that is the subject of an appeal under subsection (e) is based on a health care decision made by the certified employee in performing emergency medical services, the commission conducting the hearing shall consult with an independent medical expert to determine whether the certified employee followed the applicable emergency medical services protocol in making the health care decision. The independent medical expert:

(1) must be a physician trained in emergency medical services; and

(2) may not be affiliated with the same hospital as the medical director.

SECTION 5. IC 36-8-12-19 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 19. (a) As used in this section, "medical director" means a physician with an unlimited license to practice medicine in Indiana and who performs the duties and responsibilities described in 836 IAC 2-2-1.**

(b) If a medical director takes any of the following actions against a member of the emergency medical services personnel, the

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medical director shall provide to the member and to the chief of the member's volunteer fire department a written explanation of the reasons for the action taken by the medical director:

(1) The medical director refuses or fails to supervise or otherwise provide medical control and direction to the member.

(2) The medical director refuses or fails to attest to the competency of the member to perform emergency medical services.

(3) The medical director suspends the member from performing emergency medical services.

(c) Before a volunteer fire department takes an action that affects the member's appointment with the volunteer fire department as the result of a medical director's action described in subsection (b), the member is entitled to a hearing and appeal concerning the medical director's action as provided in IC 36-8-3-4. The safety board of the unit that entered into an agreement with the volunteer fire department under section 3 of this chapter shall hear the member's appeal provided by this subsection.

(d) If the medical director's action that is the subject of an appeal under subsection (c) is based on a health care decision made by the member in performing emergency medical services, the safety board conducting the hearing shall consult with an independent medical expert to determine whether the member followed the applicable emergency medical services protocol in making the health care decision. The independent medical expert:

(1) must be a physician trained in emergency medical services; and

(2) may not be affiliated with the same hospital as the medical director.

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 87, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 87 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 11, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred Senate Bill 87, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 26, after "decision." insert "**The independent medical expert:**

(1) must be a physician trained in emergency medical services; and

(2) may not be affiliated with the same hospital as the medical director.".

Page 5, line 24, after "decision." insert "**The independent medical expert:**

(1) must be a physician trained in emergency medical services; and

(2) may not be affiliated with the same hospital as the medical director.".

Page 6, line 17, after "decision." insert "**The independent medical expert:**

(1) must be a physician trained in emergency medical services; and

(2) may not be affiliated with the same hospital as the medical director.".

and when so amended that said bill do pass.

(Reference is to SB 87 as printed January 29, 2010.)

NIEZGODSKI, Chair

Committee Vote: yeas 10, nays 0.

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