

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR ESB 175**

**Citations Affected:** IC 16-18-2; IC 16-28-15; IC 16-37-1; IC 16-41-39.2; IC 16-42-5-23; IC 31-11-4-5.

**Synopsis:** Various health matters. Sets a maximum fee for searching or copying a record in the division of vital records. Provides that a voluntary health facility audit report is privileged and inadmissible as evidence in a civil or administrative action except in specified circumstances. States that a voluntary health facility audit report is admissible in a criminal proceeding. Authorizes a physician last in attendance of a deceased to initiate the document process for the death record. Changes the date that the state department of health must establish the birth and death registration system to January 1, 2012. Maintains current system for reporting of stillbirths after changes in the reporting of births and deaths are implemented. Provides that certain health professionals are subject to disciplinary sanctions, instead of a Class B misdemeanor, for failure to comply with birth and death reporting requirements. Allows the state department to charge food establishments that are located on state property, inspected by the state department, and fail an inspection for subsequent inspections. Establishes the food establishment data base fund. Requires the state department to establish a lead-based paint poisoning prevention program concerning renovations performed for compensation in target housing and child-occupied facilities. Establishes the lead-based paint poisoning prevention program fund. Requires the state department of health to post HIV and communicable disease materials on the department's web site in a format that allows a clerk of a circuit court to print and distribute the materials to marriage license applicants (current law requires the state department of health to distribute the materials). **(This conference committee report: (1) returns the language to SB 175 as it passed the Senate and makes technical changes; (2) adds language (SB 254 with changes) concerning voluntary health facility audits; and (3) adds language that passed in the House version of SB 175 that: (A) changes the date that the state department of health must establish the birth registration system to January 1, 2012; and (B) provides that certain health professionals are subject to disciplinary sanctions, instead of a Class B misdemeanor, for failure to comply birth and death reporting requirements.)**

**Effective:** Upon passage; July 1, 2010.

## CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 175 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:  
2 SECTION 1. IC 16-18-2-54.7, AS ADDED BY P.L.57-2009,  
3 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 UPON PASSAGE]: Sec. 54.7. "Child-occupied facility", for purposes  
5 of lead-based paint activities, **IC 16-41-39.2**, and IC 16-41-39.8, means  
6 a building or a portion of a building that:  
7 (1) was constructed before 1978;  
8 (2) does not qualify as target housing (as defined in section 346.3  
9 of this chapter); and  
10 (3) is visited regularly by a child who is not more than six (6)  
11 years of age under the following circumstances described in  
12 clause (A), (B), or (C):  
13 (A) The child visits at least two (2) days a week (Sunday  
14 through Saturday) and each of the visits lasts at least three (3)  
15 hours.  
16 (B) The child visits at least six (6) hours each week.  
17 (C) The child's combined annual visits during a calendar year  
18 total at least sixty (60) hours.  
19 The term includes day care centers, preschools, and kindergarten  
20 classrooms. **The term also includes common areas and building**  
21 **exteriors.**  
22 SECTION 2. IC 16-18-2-346.3, AS ADDED BY P.L.57-2009,

1 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 UPON PASSAGE]: Sec. 346.3. (a) "Target housing", for purposes of  
3 lead-based paint activities, **IC 16-41-39.2**, and IC 16-41-39.8, means  
4 housing constructed before January 1, 1978.

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

6 (1) Housing for the elderly or individuals with disabilities that is  
7 not occupied by or expected to be occupied by a child of not more  
8 than six (6) years of age.

9 (2) A building without a bedroom.

10 SECTION 3. IC 16-28-15 IS ADDED TO THE INDIANA CODE  
11 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 2010]:

13 **Chapter 15. Voluntary Health Facility Audit Reports**

14 **Sec. 1. This chapter applies to a health facility licensed under**  
15 **IC 16-28-2.**

16 **Sec. 2. As used in this chapter, "health facility audit report"**  
17 **means a voluntary internal evaluation conducted by an owner or**  
18 **operator of a health facility, or an employee or independent**  
19 **contractor on behalf of the owner or operator, concerning:**

20 (1) a health facility;

21 (2) an activity at a health facility that is regulated by  
22 IC 16-28-2 or by administrative rules adopted under the  
23 authority of IC 16-28-2; or

24 (3) a management system related to a health facility or an  
25 activity at a health facility;

26 that is designed to identify and prevent violations of laws, rules,  
27 and regulations and improve compliance with laws.

28 **Sec. 3. (a) Except as provided in subsections (b) and (e), a health**  
29 **facility audit report is privileged and inadmissible as evidence in a**  
30 **civil or administrative legal action, including an enforcement**  
31 **action under IC 16-28-4 or IC 16-28-5.**

32 (b) A health facility audit report is not considered privileged in  
33 any of the following circumstances:

34 (1) A criminal investigation or proceeding.

35 (2) A civil or administrative hearing if the court determines  
36 that the health facility audit report was first issued after  
37 January 1, 2010, and either of the following applies:

38 (A) The privilege is asserted for a fraudulent purpose.

39 (B) The material is subject to the privilege, and the  
40 material shows evidence of noncompliance with:

41 (i) this title or a rule adopted by the department under  
42 this title; or

43 (ii) a federal law or regulation;

44 and the person claiming the privilege did not promptly  
45 initiate and diligently pursue appropriate efforts to achieve  
46 compliance with the law, regulation, or rule.

47 (3) An owner or operator of a health facility that prepared the  
48 health facility audit report or caused the report to be  
49 prepared waives the privilege of the health facility audit  
50 report.

51 (c) The privilege described in this section does not apply to the

1 following:

2 (1) Documents, communications data, reports, or other  
3 information that must be collected, developed, maintained,  
4 reported, or otherwise made available to the state department  
5 under this title, a rule or standard adopted under this title, or  
6 any other federal, state, or local law, permit, or order.

7 (2) Information obtained by observation, sampling, or  
8 monitoring by a regulatory agency.

9 (3) Information obtained from a source independent of the  
10 health facility audit report.

11 However, the state department may not adopt an administrative  
12 rule for the purpose of qualifying the information under this  
13 subsection and circumventing the privilege established in this  
14 chapter.

15 (d) A health facility audit report is admissible in a criminal  
16 proceeding. However, if the state department or a prosecuting  
17 attorney obtains, reviews, or uses a health facility audit report in  
18 a criminal proceeding, the administrative or civil privilege created  
19 by this chapter is not waived or eliminated.

20 (e) The privilege created by this chapter may not be used by a  
21 health facility to deny a resident or a resident's legal representative  
22 access to records concerning an injury to, or the death of, a  
23 resident, including records of an investigation of the injury or  
24 death. However, the privilege created by this chapter applies to  
25 evaluations of remedial measures that may include information  
26 concerning the resident's injury or death.

27 Sec. 4. (a) A party asserting the privilege described in section 3  
28 of this chapter has the burden of proving:

29 (1) that the privilege applies; and

30 (2) that the party made an appropriate effort to achieve  
31 compliance with a law, regulation, or rule if the evidence  
32 indicates that the party was in noncompliance with a law,  
33 regulation, or rule.

34 (b) A party seeking disclosure of material in a health facility  
35 audit report under section 3(b)(2)(A) of this chapter has the burden  
36 of proving that the privilege is being asserted for a fraudulent  
37 purpose.

38 Sec. 5. (a) A party that submits a health facility audit report to  
39 the state department waives any privilege that would otherwise be  
40 available under this chapter.

41 (b) If the state department determines that a health facility  
42 audit report or part of the health facility audit report may not be  
43 disclosed to the public under IC 5-14-3-4(a), the health facility  
44 audit report or part of the report may not be disclosed by a public  
45 agency unless access to the health facility audit report is required  
46 by:

47 (1) state law;

48 (2) federal law; or

49 (3) a court;

50 in accordance with IC 5-14-3-4(a).

51 Sec. 6. If a court determines that a health facility audit report

1 is admissible under section 3 or 4 of this chapter, the court may  
 2 compel disclosure of only the parts of the health facility audit  
 3 report that are relevant to the issues in dispute in the proceeding.

4 **Sec. 7. The parties to a legal action may at any time stipulate for**  
 5 **an order to be entered in court that directs whether specific**  
 6 **information contained in a health facility audit report is subject to**  
 7 **privilege under this chapter.**

8 **Sec. 8. The privilege described in this chapter does not limit,**  
 9 **waive, or abrogate the scope or nature of any other statutory or**  
 10 **common law privilege, including the following:**

11 **(1) The work product doctrine.**

12 **(2) The attorney-client privilege.**

13 SECTION 4. IC 16-37-1-3.1, AS ADDED BY P.L.61-2009,  
 14 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2010]: Sec. 3.1. (a) Beginning January 1, ~~2011~~, **2012**, the state  
 16 department shall establish the Indiana birth registration system (IBRS)  
 17 for recording in an electronic format live births in Indiana.

18 (b) Beginning January 1, ~~2011~~, **2012**, the state department shall  
 19 establish the Indiana death registration system (IDRS) for recording in  
 20 an electronic format deaths in Indiana.

21 (c) Submission of records on births and deaths shall be entered by:

- 22 (1) funeral directors;
- 23 (2) physicians;
- 24 (3) coroners;
- 25 (4) medical examiners;
- 26 (5) persons in attendance at birth; and
- 27 (6) local health departments;

28 using the electronic system created by the state department under this  
 29 section.

30 (d) A person in attendance at a live birth shall report a birth to the  
 31 local health officer in accordance with IC 16-37-2-2.

32 (e) Death records shall be submitted as follows, using the Indiana  
 33 death registration system:

34 (1) The:

35 **(A) physician last in attendance upon the deceased; or**

36 **(B) person in charge of interment;**

37 shall initiate the document process. ~~and If the person in charge~~  
 38 **of interment initiates the process, the person in charge of**  
 39 **interment shall** electronically submit the certificate required  
 40 under IC 16-37-3-5 to the physician last in attendance upon the  
 41 deceased not later than five (5) days after the death.

42 (2) The physician last in attendance upon the deceased shall  
 43 electronically certify to the local health department the cause of  
 44 death on the certificate of death not later than five (5) days after:

45 **(A) initiating the document process; or**

46 **(B) receiving under IC 16-37-3-5 the electronic notification**  
 47 **from the person in charge of interment.**

48 (3) The local health officer shall submit the reports required under  
 49 ~~IC 16-37-1-5~~ **section 5 of this chapter** to the state department not  
 50 later than five (5) days after electronically receiving under  
 51 IC 16-37-3-5 the completed certificate of death from the

1 physician last in attendance.

2 SECTION 5. IC 16-37-1-5, AS AMENDED BY P.L.61-2009,  
3 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2010]: Sec. 5. (a) The local health officer, on the fourth day  
5 of each month, shall report to the state department concerning the  
6 births, deaths, and stillbirths that occurred within the local health  
7 officer's jurisdiction within the preceding month. ~~However,~~

8 (b) After December 31, 2010, the local health officer, beginning  
9 five (5) days after electronically receiving the form required for the  
10 Indiana birth registration system or the Indiana death registration  
11 system, shall use the Indiana birth registration system and the Indiana  
12 death registration system established under section 3.1 of this chapter  
13 to report the births and deaths that occur in the local health officer's  
14 jurisdiction, and shall report each birth or death to the state department  
15 not later than five (5) days after being informed of the birth or death.  
16 **The local health department shall continue to report stillbirths in  
17 the manner described in subsection (a).**

18 ~~(b)~~ (c) If there are no births, deaths, or stillbirths to report, the local  
19 health officer shall indicate that information each month in a format  
20 prescribed by the state department.

21 SECTION 6. IC 16-37-1-11 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. (a) The state  
23 department shall charge and collect a fee ~~of eight dollars (\$8)~~ **not to**  
24 **exceed fifteen dollars (\$15)** for each search of the records in the  
25 division of vital records. If the requested record is found, one (1)  
26 certification of the record will be issued without charge. Additional  
27 certifications of the same record will be issued at that time for an  
28 additional fee ~~of four dollars (\$4)~~ **not to exceed eight dollars (\$8)** for  
29 each record.

30 (b) The state department shall charge and collect an additional fee  
31 ~~of eight dollars (\$8)~~ **not to exceed fifteen dollars (\$15)** for any  
32 amendment to a record previously filed with the division of vital  
33 records.

34 (c) Verification without charge will be issued to an agency of local,  
35 state, or federal government upon written request by the agency.

36 SECTION 7. IC 16-37-1-13 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 13. (a) Except as  
38 otherwise provided, a person who recklessly violates or fails to comply  
39 with this chapter commits a Class B misdemeanor.

40 (b) Each day a violation continues constitutes a separate offense.

41 (c) **A person who:**

42 (1) **is licensed under IC 25 in a profession listed in section**  
43 **3.1(c) of this chapter; and**

44 (2) **recklessly violates or fails to comply with this chapter;**  
45 **is not subject to the violation described in subsection (a). However,**  
46 **a person described in this subsection is subject to sanctions under**  
47 **IC 25-1-9 following a hearing by the appropriate licensing board.**

48 SECTION 8. IC 16-41-39.2 IS ADDED TO THE INDIANA CODE  
49 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
50 UPON PASSAGE]:

51 **Chapter 39.2. Lead-Based Paint Poisoning Prevention Program**

1           **Sec. 1. (a) The state department shall establish a lead-based**  
 2 **paint poisoning prevention program under the federal Toxic**  
 3 **Substances Control Act (15 U.S.C. 2682 et seq.) concerning**  
 4 **prerenovation education and renovation activities performed for**  
 5 **compensation in target housing and child-occupied facilities to**  
 6 **ensure the following:**

7           **(1) Individuals engaged in these activities are properly**  
 8 **trained.**

9           **(2) Training programs are accredited.**

10          **(3) Contractors engaged in these activities are certified.**

11          **(b) The state department shall include the following in the**  
 12 **program:**

13          **(1) Standards for performing renovations, including:**

14           **(A) reliability;**

15           **(B) effectiveness; and**

16           **(C) safety.**

17          **(2) A requirement that all renovation activities performed for**  
 18 **compensation in target housing and child-occupied facilities**  
 19 **be done by or overseen by certified individuals.**

20          **(3) Rules governing education requirements that must be**  
 21 **completed by an individual before the renovation activities for**  
 22 **compensation may occur.**

23          **Sec. 2. The state department's program must:**

24          **(1) be as protective as, but not more protective than, the**  
 25 **federal regulations under 40 CFR Part 745, Subparts E and**  
 26 **L; and**

27          **(2) provide for adequate enforcement.**

28          **Sec. 3. The state department shall adopt rules under IC 4-22-2**  
 29 **necessary to implement this chapter.**

30          **Sec. 4. An individual who is certified under federal or state law**  
 31 **to perform activities described in this chapter is not required to**  
 32 **obtain another certification under this chapter.**

33          **Sec. 5. (a) The lead-based paint poisoning prevention program**  
 34 **fund is established for the purpose of receiving fees and grant**  
 35 **money and for the purpose of paying expenses related to**  
 36 **administration of the lead-based paint poisoning prevention**  
 37 **program established under this chapter. The fund shall be**  
 38 **administered by the state department.**

39          **(b) The expenses of administering the fund shall be paid from**  
 40 **money in the fund.**

41          **(c) The treasurer of state shall invest the money in the fund not**  
 42 **currently needed to meet the obligations of the fund in the same**  
 43 **manner as other public money may be invested.**

44          **(d) Money in the fund at the end of a state fiscal year does not**  
 45 **revert to the state general fund.**

46          **SECTION 9. IC 16-42-5-23 IS AMENDED TO READ AS**  
 47 **FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 23. (a) The state**  
 48 **department may do the following:**

49          **(1) Enter at any time a food establishment or place suspected of**  
 50 **being a food establishment.**

51          **(2) Inspect the premises, utensils, fixtures, equipment, furniture,**

1 and machinery used in food handling.

2 **(3) Collect from a food establishment that:**

3 **(A) is located on state property;**

4 **(B) is inspected by the state department under this**  
 5 **chapter; and**

6 **(C) fails the inspection;**

7 **a reasonable fee for a subsequent inspection that results from**  
 8 **the food establishment's failure of the inspection under clause**  
 9 **(B).**

10 **(b) The food establishment data base fund is established for the**  
 11 **implementation and administration of a food establishment data**  
 12 **base. The fund shall be administered by the state department and**  
 13 **includes money appropriated to the fund and fees collected under**  
 14 **subsection (a)(3).**

15 **(c) Money in the food establishment data base fund at the end**  
 16 **of a state fiscal year does not revert to the state general fund.**

17 **(d) The state department shall adopt rules to do the following:**

18 **(1) Establish the amount of the fee to be collected under**  
 19 **subsection (a)(3) for the subsequent inspection of a food**  
 20 **establishment.**

21 **(2) Set forth the occurrences that result in a food**  
 22 **establishment's failure of an inspection and initiate the**  
 23 **subsequent inspection process.**

24 SECTION 10. IC 31-11-4-5 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) The clerk of the  
 26 circuit court shall distribute to marriage license applicants written  
 27 information or videotaped information approved by the AIDS advisory  
 28 council of the state department of health concerning dangerous  
 29 communicable diseases that are sexually transmitted.

30 (b) Written information and videotaped information distributed by  
 31 each clerk of the circuit court under subsection (a) must provide  
 32 current information on human immunodeficiency virus (HIV) infection  
 33 and other dangerous communicable diseases that are sexually  
 34 transmitted. The information must include an explanation of the  
 35 following:

36 (1) The etiology of dangerous communicable diseases that are  
 37 sexually transmitted.

38 (2) The behaviors that create a high risk of transmission of such  
 39 diseases.

40 (3) Precautionary measures that reduce the risk of contracting  
 41 such diseases.

42 (4) The necessity for consulting medical specialists if infection is  
 43 suspected.

44 (c) At the time of application for a marriage license, each clerk of  
 45 the circuit court shall:

46 (1) provide the marriage license applicants with written  
 47 information furnished under subsection (a) concerning dangerous  
 48 communicable diseases that are sexually transmitted; or

49 (2) show the marriage license applicants videotaped information  
 50 furnished under subsection (a) concerning dangerous  
 51 communicable diseases that are sexually transmitted.

1 (d) In addition to the information provided to marriage license  
2 applicants under subsection (c), each clerk of the circuit court shall  
3 inform each marriage license applicant that the applicant may be tested  
4 on a voluntary basis for human immunodeficiency virus (HIV)  
5 infection by the applicant's private physician or at another testing site.  
6 The clerk shall provide the marriage applicants with a list of testing  
7 sites in the community.

8 (e) An applicant who objects to the written information or  
9 videotaped information on religious grounds is not required to receive  
10 the information.

11 (f) If materials required by this section are not prepared by other  
12 sources, the state department of health shall:

13 (1) prepare the materials; **and**

14 (2) **post the materials on the state department of health's web**  
15 **site in a format that allows the clerk of the circuit court to**  
16 **print and distribute the materials.**

17 (g) ~~The provider of the materials is responsible for all costs involved~~  
18 ~~in the development, preparation, and distribution of the information~~  
19 ~~required by this section.~~ Except for the materials developed by the  
20 state, the state and county are not liable for the costs of materials used  
21 to implement this section and section 4 of this chapter.

22 **SECTION 11. An emergency is declared for this act.**

(Reference is to ESB 175 as reprinted February 25, 2010.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 175**

**S**igned by:

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Senator Miller  
Chairperson

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Representative Brown C

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Senator Errington

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Representative Turner

**Senate Conferees**

**House Conferees**