
HOUSE BILL No. 1228

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2-162; IC 16-34-1-5.5; IC 25-22.5-2-7; IC 25-23-1-7; IC 25-26-13-4; IC 34-30-2-70.5.

Synopsis: Health care professional's conscience clause. Provides that a health care professional may not be required to dispense a drug or medical device if the drug or medical device would be used to: (1) cause an abortion; (2) destroy an unborn child; or (3) cause the death of a person by means of assisted suicide, euthanasia, or mercy killing. Specifies that a health care professional's refusal to dispense a drug or medical device under those circumstances may not be the basis for: (1) a claim of damages against the health care professional, the employer, or the facility; or (2) disciplinary action against the health care professional. Provides that an employer who knowingly or intentionally takes disciplinary, recriminatory, or discriminatory action against a health care professional who refuses to dispense a drug or medical device under those circumstances commits pharmacy discrimination, a Class A misdemeanor. Makes a second or subsequent offense a Class D felony. Authorizes the health care professional's licensing board to assess additional fines against the employer.

Effective: July 1, 2011.

Davisson

January 12, 2011, read first time and referred to Committee on Public Health.

C
o
p
y



First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

C
o
p
y

HOUSE BILL No. 1228

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

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

1 SECTION 1. IC 16-18-2-162, AS AMENDED BY P.L.212-2005,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 162. (a) "Health care professional", for purposes
4 of IC 16-27-1 and IC 16-27-4, has the meaning set forth in
5 IC 16-27-1-1.

6 (b) "Health care professional", for purposes of IC 16-27-2, has the
7 meaning set forth in IC 16-27-2-1.

8 (c) **"Health care professional", for purposes of IC 16-34-1-5.5,**
9 **has the meaning set forth in IC 16-34-1-5.5(a).**

10 SECTION 2. IC 16-34-1-5.5 IS ADDED TO THE INDIANA CODE
11 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 2011]: **Sec. 5.5. (a) As used in this section, "health care**
13 **professional" refers to:**

- 14 (1) **a physician, nurse, or pharmacist; or**
15 (2) **an individual enrolled in an educational program studying**
16 **to be a physician, nurse, or pharmacist.**
17 (b) **A health care professional may not be required to dispense**



1 a drug or medical device if the pharmacist believes that the drug
 2 or medical device would be used to:
 3 (1) cause an abortion;
 4 (2) destroy an unborn child; or
 5 (3) cause the death of a person by means of assisting suicide
 6 (IC 35-42-1-2.5), euthanasia, or mercy killing.
 7 (c) A health care professional's refusal under this section to
 8 dispense a drug or medical device may not be the basis for:
 9 (1) a claim for damages against the health care professional,
 10 the health care professional's employer, or the facility where
 11 the health care professional is employed; or
 12 (2) disciplinary, recriminatory, or discriminatory action
 13 against the health care professional.
 14 (d) An employer who knowingly or intentionally takes
 15 disciplinary, recriminatory, or discriminatory action against a
 16 health care professional employed by the employer because the
 17 health care professional refused to dispense a drug or medical
 18 device under subsection (b) commits pharmacy discrimination, a
 19 Class A misdemeanor. However, the offense is a Class D felony if
 20 the employer has a prior unrelated conviction for a violation of this
 21 subsection.
 22 (e) If an employer is convicted of health care professional
 23 discrimination under subsection (d), the health care professional's
 24 licensing board may, after a hearing under IC 4-21.5-3, assess
 25 against the employer a fine of not more than five thousand dollars
 26 (\$5,000) for a first offense and a fine of not more than ten thousand
 27 dollars (\$10,000) for a second or subsequent offense. A fine
 28 assessed under this subsection is in addition to any fine or other
 29 penalty imposed under subsection (d).
 30 SECTION 3. IC 25-22.5-2-7, AS AMENDED BY P.L.225-2007,
 31 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2011]: Sec. 7. (a) The board shall do the following:
 33 (1) Adopt rules and forms necessary to implement this article that
 34 concern, but are not limited to, the following areas:
 35 (A) Qualification by education, residence, citizenship,
 36 training, and character for admission to an examination for
 37 licensure or by endorsement for licensure.
 38 (B) The examination for licensure.
 39 (C) The license or permit.
 40 (D) Fees for examination, permit, licensure, and registration.
 41 (E) Reinstatement of licenses and permits.
 42 (F) Payment of costs in disciplinary proceedings conducted by

COPY



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- the board.
 - (2) Administer oaths in matters relating to the discharge of its official duties.
 - (3) Enforce this article and assign to the personnel of the agency duties as may be necessary in the discharge of the board's duty.
 - (4) Maintain, through the agency, full and complete records of all applicants for licensure or permit and of all licenses and permits issued.
 - (5) Make available, upon request, the complete schedule of minimum requirements for licensure or permit.
 - (6) Issue, at the board's discretion, a temporary permit to an applicant for the interim from the date of application until the next regular meeting of the board.
 - (7) Issue an unlimited license, a limited license, or a temporary medical permit, depending upon the qualifications of the applicant, to any applicant who successfully fulfills all of the requirements of this article.
 - (8) Adopt rules establishing standards for the competent practice of medicine, osteopathic medicine, or any other form of practice regulated by a limited license or permit issued under this article.
 - (9) Adopt rules regarding the appropriate prescribing of Schedule III or Schedule IV controlled substances for the purpose of weight reduction or to control obesity.
 - (10) Adopt rules establishing standards for office based procedures that require moderate sedation, deep sedation, or general anesthesia.
 - (b) The board may adopt rules that establish:
 - (1) certification requirements for child death pathologists;
 - (2) an annual training program for child death pathologists under IC 16-35-7-3(b)(2); and
 - (3) a process to certify a qualified child death pathologist.
 - (c) The board may fine an employer under IC 16-34-1-5.5(e).**
- SECTION 4. IC 25-23-1-7, AS AMENDED BY P.L.134-2008, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) The board shall do the following:
- (1) Adopt under IC 4-22-2 rules necessary to enable it to carry into effect this chapter.
 - (2) Prescribe standards and approve curricula for nursing education programs preparing persons for licensure under this chapter.
 - (3) Provide for surveys of such programs at such times as it considers necessary.

C
o
p
y



- 1 (4) Accredite such programs as meet the requirements of this
- 2 chapter and of the board.
- 3 (5) Deny or withdraw accreditation from nursing education
- 4 programs for failure to meet prescribed curricula or other
- 5 standards.
- 6 (6) Examine, license, and renew the license of qualified
- 7 applicants.
- 8 (7) Issue subpoenas, compel the attendance of witnesses, and
- 9 administer oaths to persons giving testimony at hearings.
- 10 (8) Cause the prosecution of all persons violating this chapter and
- 11 have power to incur necessary expenses for these prosecutions.
- 12 (9) Adopt rules under IC 4-22-2 that do the following:
- 13 (A) Prescribe standards for the competent practice of
- 14 registered, practical, and advanced practice nursing.
- 15 (B) Establish with the approval of the medical licensing board
- 16 created by IC 25-22.5-2-1 requirements that advanced practice
- 17 nurses must meet to be granted authority to prescribe legend
- 18 drugs and to retain that authority.
- 19 (C) Establish, with the approval of the medical licensing board
- 20 created by IC 25-22.5-2-1, requirements for the renewal of a
- 21 practice agreement under section 19.4 of this chapter, which
- 22 shall expire on October 31 in each odd-numbered year.
- 23 (10) Keep a record of all its proceedings.
- 24 (11) Collect and distribute annually demographic information on
- 25 the number and type of registered nurses and licensed practical
- 26 nurses employed in Indiana.
- 27 (12) Adopt rules and administer the interstate nurse licensure
- 28 compact under IC 25-23.3.
- 29 (b) The board may do the following:
- 30 (1) Create ad hoc subcommittees representing the various nursing
- 31 specialties and interests of the profession of nursing. Persons
- 32 appointed to a subcommittee serve for terms as determined by the
- 33 board.
- 34 (2) Utilize the appropriate subcommittees so as to assist the board
- 35 with its responsibilities. The assistance provided by the
- 36 subcommittees may include the following:
- 37 (A) Recommendation of rules necessary to carry out the duties
- 38 of the board.
- 39 (B) Recommendations concerning educational programs and
- 40 requirements.
- 41 (C) Recommendations regarding examinations and licensure
- 42 of applicants.

COPY



- 1 (3) Appoint nurses to serve on each of the ad hoc subcommittees.
- 2 (4) Withdraw from the interstate nurse licensure compact under
- 3 IC 25-23.2 (repealed).
- 4 (5) If requested by the nonprofit corporation formed under
- 5 IC 12-31-1-3, provide assistance to the public umbilical cord
- 6 blood bank and umbilical cord blood donation initiative.

7 **(6) Fine an employer under IC 16-34-1-5.5(e).**

- 8 (c) Nurses appointed under subsection (b) must:
- 9 (1) be committed to advancing and safeguarding the nursing
- 10 profession as a whole; and
- 11 (2) represent nurses who practice in the field directly affected by
- 12 a subcommittee's actions.

13 SECTION 5. IC 25-26-13-4, AS AMENDED BY P.L.182-2009(ss),
14 SECTION 371, IS AMENDED TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The board may:

- 16 (1) ~~promulgate~~ **adopt** rules ~~and regulations~~ under IC 4-22-2 for
- 17 implementing and enforcing this chapter;
- 18 (2) establish requirements and tests to determine the moral,
- 19 physical, intellectual, educational, scientific, technical, and
- 20 professional qualifications for applicants for pharmacists'
- 21 licenses;
- 22 (3) refuse to issue, deny, suspend, or revoke a license or permit or
- 23 place on probation or fine any licensee or permittee under this
- 24 chapter;
- 25 (4) regulate the sale of drugs and devices in the state of Indiana;
- 26 (5) impound, embargo, confiscate, or otherwise prevent from
- 27 disposition any drugs, medicines, chemicals, poisons, or devices
- 28 which by inspection are deemed unfit for use or would be
- 29 dangerous to the health and welfare of the citizens of the state of
- 30 Indiana; the board shall follow those embargo procedures found
- 31 in IC 16-42-1-18 through IC 16-42-1-31, and persons may not
- 32 refuse to permit or otherwise prevent members of the board or
- 33 their representatives from entering such places and making such
- 34 inspections;
- 35 (6) prescribe minimum standards with respect to physical
- 36 characteristics of pharmacies, as may be necessary to the
- 37 maintenance of professional surroundings and to the protection of
- 38 the safety and welfare of the public;
- 39 (7) subject to IC 25-1-7, investigate complaints, subpoena
- 40 witnesses, schedule and conduct hearings on behalf of the public
- 41 interest on any matter under the jurisdiction of the board;
- 42 (8) prescribe the time, place, method, manner, scope, and subjects

C
o
p
y



1 of licensing examinations which shall be given at least twice
 2 annually; ~~and~~
 3 (9) perform such other duties and functions and exercise such
 4 other powers as may be necessary to implement and enforce this
 5 chapter; **and**
 6 **(10) fine an employer under IC 16-34-1-5.5(e);**
 7 (b) The board shall adopt rules under IC 4-22-2 for the following:
 8 (1) Establishing standards for the competent practice of
 9 pharmacy.
 10 (2) Establishing the standards for a pharmacist to counsel
 11 individuals regarding the proper use of drugs.
 12 (3) Establishing standards and procedures before January 1, 2006,
 13 to ensure that a pharmacist:
 14 (A) has entered into a contract that accepts the return of
 15 expired drugs with; or
 16 (B) is subject to a policy that accepts the return of expired
 17 drugs of;
 18 a wholesaler, manufacturer, or agent of a wholesaler or
 19 manufacturer concerning the return by the pharmacist to the
 20 wholesaler, the manufacturer, or the agent of expired legend drugs
 21 or controlled drugs. In determining the standards and procedures,
 22 the board may not interfere with negotiated terms related to cost,
 23 expenses, or reimbursement charges contained in contracts
 24 between parties, but may consider what is a reasonable quantity
 25 of a drug to be purchased by a pharmacy. The standards and
 26 procedures do not apply to vaccines that prevent influenza,
 27 medicine used for the treatment of malignant hyperthermia, and
 28 other drugs determined by the board to not be subject to a return
 29 policy. An agent of a wholesaler or manufacturer must be
 30 appointed in writing and have policies, personnel, and facilities
 31 to handle properly returns of expired legend drugs and controlled
 32 substances.
 33 (c) The board may grant or deny a temporary variance to a rule it
 34 has adopted if:
 35 (1) the board has adopted rules which set forth the procedures and
 36 standards governing the grant or denial of a temporary variance;
 37 and
 38 (2) the board sets forth in writing the reasons for a grant or denial
 39 of a temporary variance.
 40 (d) The board shall adopt rules and procedures, in consultation with
 41 the medical licensing board, concerning the electronic transmission of
 42 prescriptions. The rules adopted under this subsection must address the

COPY



1 following:

2 (1) Privacy protection for the practitioner and the practitioner's

3 patient.

4 (2) Security of the electronic transmission.

5 (3) A process for approving electronic data intermediaries for the

6 electronic transmission of prescriptions.

7 (4) Use of a practitioner's United States Drug Enforcement

8 Agency registration number.

9 (5) Protection of the practitioner from identity theft or fraudulent

10 use of the practitioner's prescribing authority.

11 (e) The governor may direct the board to develop:

12 (1) a prescription drug program that includes the establishment of

13 criteria to eliminate or significantly reduce prescription fraud; and

14 (2) a standard format for an official tamper resistant prescription

15 drug form for prescriptions (as defined in IC 16-42-19-7(1)).

16 The board may adopt rules under IC 4-22-2 necessary to implement

17 this subsection.

18 (f) The standard format for a prescription drug form described in

19 subsection (e)(2) must include the following:

20 (1) A counterfeit protection bar code with human readable

21 representation of the data in the bar code.

22 (2) A thermochromic mark on the front and the back of the

23 prescription that:

24 (A) is at least one-fourth (1/4) of one (1) inch in height and

25 width; and

26 (B) changes from blue to clear when exposed to heat.

27 (g) The board may contract with a supplier to implement and

28 manage the prescription drug program described in subsection (e). The

29 supplier must:

30 (1) have been audited by a third party auditor using the SAS 70

31 audit or an equivalent audit for at least the three (3) previous

32 years; and

33 (2) be audited by a third party auditor using the SAS 70 audit or

34 an equivalent audit throughout the duration of the contract;

35 in order to be considered to implement and manage the program.

36 SECTION 6. IC 34-30-2-70.5 IS ADDED TO THE INDIANA

37 CODE AS A NEW SECTION TO READ AS FOLLOWS

38 [EFFECTIVE JULY 1, 2011]: **Sec. 70.5. IC 16-34-1-5.5 (Concerning**

39 **a health care professional, the health care professional's employer,**

40 **or the facility where the health care professional is employed for**

41 **the health care professional's refusal to dispense certain drugs or**

42 **medical devices).**

COPY

