January 28, 2011

SENATE BILL No. 363

DIGEST OF SB 363 (Updated January 26, 2011 2:16 pm - DI 104)

Citations Affected: IC 10-13; IC 25-1; IC 35-38.

Synopsis: Criminal background checks of health professionals. Authorizes the state police department (department) to use the fingerprints of an individual in a request related to an individual applying for or renewing certain health professional licenses or certificates. Adds $6 to the fee to be collected by the department in conducting a criminal background check and deposited into a created fingerprint identification fund. Requires the department to permanently retain the applicant's fingerprints and store the fingerprints separately from fingerprints collected for the state central repository for criminal data. Requires applicants for certain licensed health professions to submit to a national criminal history background check. Requires the department to release the results of the national criminal history background check to the Indiana professional licensing agency (agency). Authorizes a licensing board to suspend, deny, or revoke a license if the applicant or license holder has been convicted of specified offenses. Requires the department and the agency to enter into a memorandum of understanding to provide data exchange and data matching regarding licensees who are charged with or convicted of an offense. Requires the personal information data exchanged to be kept confidential.

Effective: July 1, 2011.

Miller

January 11, 2011, read first time and referred to Committee on Health and Provider Services.
January 27, 2011, amended; reassigned to Committee on Appropriations.

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January 28, 2011

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.

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SENATE BILL No. 363

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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

SECTION 1. IC 10-13-3-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 28. **(a)** On request of an individual who has applied for employment with a noncriminal justice organization or individual, the Indiana central repository for criminal history information shall process a request for a ~~limited~~ criminal history check of the individual making the request from the Federal Bureau of Investigation's National Crime Information Center upon:

(1) the submission of fingerprints of the individual making the request; and

(2) the payment of:

(A) a fifteen dollar ($15) fee; **and**

(B) a six dollar ($6) fee to be deposited into the fingerprint identification fund established under this section.

(b) The fingerprint identification fund is established for the purpose of maintaining and updating the department's Automated Fingerprint Identification System (AFIS). The fund shall be

administered by the department. The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fingerprint identification fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Money in the fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 2. IC 10-13-3-37, AS AMENDED BY P.L.200-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 37. (a) Under Public Law 92-544 (86 Stat. 1115), a local law enforcement agency may use fingerprints submitted for the purpose of identification in a request related to the following:

(1) A taxicab driver's license application.

(2) Reinstatement or renewal of a taxicab driver's license.

(b) An applicant shall submit the fingerprints on forms provided for the license application.

(c) The local law enforcement agency shall charge each applicant the fees set by the department and federal authorities to defray the costs associated with a search for and classification of the applicant's fingerprints.

(d) The local law enforcement agency may:

(1) forward for processing to the Federal Bureau of Investigation or any other agency fingerprints submitted by a license applicant; and

(2) receive the results of all fingerprint investigations.

(e) The department:

(1) may permanently retain an applicant's fingerprints submitted under this section; and

(2) shall retain the applicant's fingerprints separately from fingerprints collected under section 24 of this chapter.

SECTION 3. IC 10-13-3-38.5, AS AMENDED BY P.L.113-2010, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 38.5. (a) Under federal P.L.92-544 (86 Stat. 1115), the department may use an individual's fingerprints submitted by the individual for the following purposes:

(1) Determining the individual's suitability for employment with the state, or as an employee of a contractor of the state, in a position:

(A) that has a job description that includes contact with, care of, or supervision over a person less than eighteen (18) years of age;

(B) that has a job description that includes contact with, care

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of, or supervision over an endangered adult (as defined in IC 12-10-3-2), except the individual is not required to meet the standard for harmed or threatened with harm set forth in IC 12-10-3-2(a)(3);

(C) at a state institution managed by the office of the secretary of family and social services or state department of health;

(D) at the Indiana School for the Deaf established by IC 20-22-2-1;

(E) at the Indiana School for the Blind and Visually Impaired established by IC 20-21-2-1;

(F) at a juvenile detention facility;

(G) with the Indiana gaming commission under IC 4-33-3-16;

(H) with the department of financial institutions under IC 28-11-2-3; or

(I) that has a job description that includes access to or supervision over state financial or personnel data, including state warrants, banking codes, or payroll information pertaining to state employees.

(2) Identification in a request related to an application for a teacher's license submitted to the department of education established by IC 20-19-3-1.

(3) Use by the gaming commission established under IC 4-33-3-1 for licensure of a promoter (as defined in IC 4-33-22-6) under IC 4-33-22.

(4) Use by the Indiana board of pharmacy in determining the individual's suitability for a position or employment with a wholesale drug distributor, as specified in IC 25-26-14-16(b), IC 25-26-14-16.5(b), IC 25-26-14-17.8(c), and IC 25-26-14-20.

(5) Identification in a request related to an individual applying for or renewing a license or certificate described in IC 25-1-1.1-4 and a conviction described in IC 25-1-1.1-2 or IC 25-1-1.1-3.

An applicant shall submit the fingerprints in an appropriate format or on forms provided for the employment, ~~or~~ license, **or certificate** application. The department shall charge each applicant the fee established under section 28 of this chapter and by federal authorities to defray the costs associated with a search for and classification of the applicant's fingerprints. The department may forward fingerprints submitted by an applicant to the Federal Bureau of Investigation or any other agency for processing. The state personnel department, **the Indiana professional licensing agency,** or the agency to which the applicant is applying for employment or a license may receive the

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results of all fingerprint investigations.

(b) An applicant who is an employee of the state may not be charged under subsection (a).

(c) Subsection (a)(1) does not apply to an employee of a contractor of the state if the contract involves the construction or repair of a capital project or other public works project of the state.

(d) The department:

(1) may permanently retain an applicant's fingerprints submitted under this section; and

(2) shall retain the applicant's fingerprints separately from fingerprints collected under section 24 of this chapter.

SECTION 4. IC 10-13-3-39, AS AMENDED BY P.L.3-2008, SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 39. (a) The department is designated as the authorized agency to receive requests for, process, and disseminate the results of national criminal history background checks that comply with this section and 42 U.S.C. 5119a.

(b) A qualified entity may contact the department to request a national criminal history background check on any of the following persons:

(1) A person who seeks to be or is employed with the qualified entity. A request under this subdivision must be made not later than three (3) months after the person is initially employed by the qualified entity.

(2) A person who seeks to volunteer or is a volunteer with the qualified entity. A request under this subdivision must be made not later than three (3) months after the person initially volunteers with the qualified entity.

(3) A person for whom a national criminal history background check is required under any law relating to the licensing of a home, center, or other facility for purposes of day care or residential care of children.

(4) A person for whom a national criminal history background check is required for purposes of placement of a child in a foster family home, a prospective adoptive home, or the home of a relative or other caretaker, or for purposes of a report concerning an adoption as required by IC 31-19-8.

(c) A qualified entity must submit a request under subsection (b) in the form required by the department and provide a set of the person's fingerprints and any required fees with the request.

(d) If a qualified entity makes a request in conformity with subsection (b), the department shall submit the set of fingerprints

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provided with the request to the Federal Bureau of Investigation for a national criminal history background check. The department shall respond to the request in conformity with:

(1) the requirements of 42 U.S.C. 5119a; and

(2) the regulations prescribed by the Attorney General of the United States under 42 U.S.C. 5119a.

(e) Subsection (f):

(1) applies to a qualified entity that:

(A) is not a school corporation or a special education cooperative; or

(B) is a school corporation or a special education cooperative and seeks a national criminal history background check for a volunteer; and

(2) does not apply to a qualified entity that is a:

(A) home health agency licensed under IC 16-27-1; or

(B) personal services agency licensed under IC 16-27-4.

(f) After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall make a determination whether the person who is the subject of a request has been convicted of:

(1) an offense described in IC 20-26-5-11;

(2) in the case of a foster family home, an offense described in IC 31-27-4-13(a);

(3) in the case of a prospective adoptive home, an offense described in IC 31-19-11-1(c);

(4) any other felony; or

(5) any misdemeanor;

and convey the determination to the requesting qualified entity.

(g) This subsection applies to a qualified entity that:

(1) is a school corporation or a special education cooperative; and

(2) seeks a national criminal history background check to determine whether to employ or continue the employment of a certificated employee or a noncertificated employee of a school corporation or an equivalent position with a special education cooperative.

After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department may exchange identification records concerning convictions for offenses described in IC 20-26-5-11 with the school corporation or special education cooperative solely for purposes of making an employment determination. The exchange may be made only for the official use of the officials with authority to make the employment determination. The

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exchange is subject to the restrictions on dissemination imposed under P.L.92-544, (86 Stat. 1115) (1972).

(h) This subsection applies to a qualified entity (as defined in IC 10-13-3-16) that is a public agency under IC 5-14-1.5-2(a)(1). After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall provide a copy to the public agency. Except as permitted by federal law, the public agency may not share the information contained in the national criminal history background check with a private agency.

(i) This subsection applies to a qualified entity that is a:

(1) home health agency licensed under IC 16-27-1; or

(2) personal services agency licensed under IC 16-27-4.

After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall make a determination whether the applicant has been convicted of an offense described in IC 16-27-2-5(a) and convey the determination to the requesting qualified entity.

(j) The department:

(1) may permanently retain an applicant's fingerprints submitted under this section; and

(2) shall retain the applicant's fingerprints separately from fingerprints collected under section 24 of this chapter.

SECTION 5. IC 25-1-1.1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. Except as provided under sections 2 through ~~3~~ **5** of this chapter, a license or certificate of registration that an individual is required by law to hold to engage in a business, profession, or occupation may not be denied, revoked, or suspended because the applicant or holder has been convicted of an offense. The acts from which the applicant's or holder's conviction resulted may, however, be considered as to whether the applicant or holder should be entrusted to serve the public in a specific capacity.

SECTION 6. IC 25-1-1.1-2, AS AMENDED BY P.L.151-2006, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. **Notwithstanding IC 25-1-7,** a board, a commission, or a committee may suspend, **deny,** or revoke a license or certificate issued under this title by the board, the commission, or the committee **without an investigation by the office of the attorney general** if the individual who holds the license or certificate is convicted of any of the following **and the board, commission, or committee determines that the offense affects the individual's ability to perform the duties of the profession:**

(1) Possession of cocaine or a narcotic drug under IC 35-48-4-6.

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(2) Possession of methamphetamine under IC 35-48-4-6.1.
(3) Possession of a controlled substance under IC 35-48-4-7(a).
(4) Fraudulently obtaining a controlled substance under IC 35-48-4-7(b).
(5) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).
(6) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).
(7) Possession of paraphernalia as a Class D felony under IC 35-48-4-8.3(b).
(8) Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.
(9) Maintaining a common nuisance under IC 35-48-4-13.
(10) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.
(11) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (10).
(12) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (10).
(13) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (12).
(14) A sex crime under IC 35-42-4.
(15) A felony that reflects adversely on the individual's fitness to hold a professional license.
(16) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described in this section.

SECTION 7. IC 25-1-1.1-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4. (a) This section applies to an individual who is applying for, or will be applying for, a license or a certificate under one (1) of the following:**
(1) IC 25-2.5 (acupuncturists).
(2) IC 25-10 (chiropractors).
(3) IC 25-13 (dental hygienists).
(4) IC 25-14 (dentists).
(5) IC 25-14.5 (dietitians).
(6) IC 25-17.3 (genetic counselors).
(7) IC 25-19 (health facility and residential care facility

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administrators).
(8) IC 25-21.8 (massage therapists).
(9) IC 25-22.5 (physicians).
(10) IC 25-23 (nurses).
(11) IC 25-23.5 (occupational therapists).
(12) IC 25-24 (optometrists).
(13) IC 25-26 (pharmacists).
(14) IC 25-27 (physical therapists).
(15) IC 25-27.5 (physician assistants).
(16) IC 25-29 (podiatrists).
(17) IC 25-33 (psychologists).
(18) IC 25-34.5 (respiratory care practitioners).
(19) IC 25-35.6 (speech pathologists and audiologists).
(20) IC 25-38.1 (veterinarians).

(b) As used in this chapter, "national criminal history background check" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

(c) An individual applying for a license or certificate specified in subsection (a) shall submit to a national criminal history background check at the cost of the individual.

(d) The state police department shall release the results of a national criminal history background check conducted under this section to the Indiana professional licensing agency.

(e) A board, a commission, or a committee may conduct a random audit and require an individual seeking a renewal of a license or a certificate specified in subsection (a) to submit to a national criminal history background check at the cost of the individual.

SECTION 8. IC 25-1-1.1-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5. (a) As used in this section, "licensee" refers to an individual who is licensed or certified in a profession set forth in section 4 of this chapter.**

(b) As used in this section, "personal information" means information that identifies an individual, including the following:
(1) Photograph.
(2) Social Security number.
(3) Driver's license number or identification card number.
(4) Name.
(5) Address.

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(6) Telephone number.

(7) Fingerprints.

(c) The state police department and the Indiana professional licensing agency shall enter into a memorandum of understanding to provide data exchange and data matching regarding licensees who are charged with or convicted of an offense.

(d) Personal information data exchanged under subsection (c) shall be kept confidential and may be used only for the purposes of a government agency, including the following:

(1) A prosecuting attorney.

(2) The Indiana professional licensing agency or a board, committee, or commission administered by the Indiana professional licensing agency.

(3) A court.

(4) A law enforcement agency.

(5) The office of the attorney general.

SECTION 9. IC 35-38-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. (a) As used in this chapter, "recommendation" and "victim" have the meanings set out in IC 35-35-3-1.

(b) The presentence investigation consists of the gathering of information with respect to:

(1) the circumstances attending the commission of the offense;

(2) the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education, and personal habits; ~~and~~

(3) the impact of the crime upon the victim; **and**

(4) whether the convicted person is licensed or certified in a profession regulated by IC 25.

(c) The presentence investigation may include any matter that the probation officer conducting the investigation believes is relevant to the question of sentence, and must include:

(1) any matters the court directs to be included;

(2) any written statements submitted to the prosecuting attorney by a victim under IC 35-35-3;

(3) any written statements submitted to the probation officer by a victim; and

(4) preparation of the victim impact statement required under section 8.5 of this chapter.

(d) If there are no written statements submitted to the probation officer, ~~he~~ **the probation officer** shall certify to the court:

(1) that ~~he~~ **the probation officer** has attempted to contact the

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victim; and

(2) that if ~~he~~ **the probation officer** has contacted the victim, ~~he~~ **the probation officer** has offered to accept the written statements of the victim or to reduce ~~his~~ **the victim's** oral statements to writing, concerning the sentence, including the acceptance of any recommendation.

(e) A presentence investigation report prepared by a probation officer must include the information and comply with any other requirements established in the rules adopted under IC 11-13-1-8.

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 363, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

Page 2, line 7, delete "Money in the fingerprint".

Page 2, delete line 8.

Page 6, line 35, delete "the Indiana".

Page 6, line 36, delete "professional licensing agency, or".

Page 6, line 41, delete ":" and insert "**and the board, commission, or committee determines that the offense affects the individual's ability to perform the duties of the profession:**".

Page 7, delete line 24.

Page 7, line 25, delete "(15)" and insert "**(14)**".

Page 7, line 26, delete "(16)" and insert "**(15)**".

Page 7, delete lines 28 through 29.

Page 7, line 30, delete "(18)" and insert "**(16)**".

and when so amended that said bill be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 363 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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