
SENATE BILL No. 111

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-3; IC 16-18-2; IC 16-28-14.7; IC 34-30-2-67.7; IC 35-51-16-1.

Synopsis: Health facility employee criminal background checks. Requires a health facility to obtain a national criminal history background check or an expanded criminal history check for the health facility's employees. Provides immunity to persons: (1) for denying or terminating employment because of another person's criminal history; or (2) for reporting to or participating in the proceedings of the state department of health or the registry of nurse aides.

Effective: July 1, 2013.

Randolph

January 7, 2013, read first time and referred to Committee on Corrections & Criminal Law.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 111



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 10-13-3-16, AS AMENDED BY P.L.197-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 16. (a) As used in this chapter, "qualified entity"
4 means a business or an organization, whether public, private, for-profit,
5 nonprofit, or voluntary, that provides care or care placement services.
6 (b) The term includes the following:
7 (1) A business or an organization that licenses or certifies others
8 to provide care or care placement services.
9 (2) A home health agency licensed under IC 16-27-1.
10 (3) A personal services agency licensed under IC 16-27-4.
11 **(4) A health facility licensed under IC 16-28-2.**
12 SECTION 2. IC 10-13-3-39, AS AMENDED BY P.L.155-2011,
13 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2013]: Sec. 39. (a) The department is designated as the
15 authorized agency to receive requests for, process, and disseminate the
16 results of national criminal history background checks that comply with
17 this section and 42 U.S.C. 5119a.



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

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

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

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

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

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

24 (d) If a qualified entity makes a request in conformity with
 25 subsection (b), the department shall submit the set of fingerprints
 26 provided with the request to the Federal Bureau of Investigation for a
 27 national criminal history background check. The department shall
 28 respond to the request in conformity with:

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

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

32 (e) Subsection (f):

33 (1) applies to a qualified entity that:

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

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

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

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

41 (B) personal services agency licensed under IC 16-27-4; ~~or~~

42 (C) **health facility licensed under IC 16-28-2.**

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

- 5 (1) an offense described in IC 20-26-5-11;
 6 (2) in the case of a foster family home, an offense described in
 7 IC 31-27-4-13(a);
 8 (3) in the case of a prospective adoptive home, an offense
 9 described in IC 31-19-11-1(c);
 10 (4) any other felony; or
 11 (5) any misdemeanor;

12 and convey the determination to the requesting qualified entity.

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

- 14 (1) is a school corporation or a special education cooperative; and
 15 (2) seeks a national criminal history background check to
 16 determine whether to employ or continue the employment of a
 17 certificated employee or a noncertificated employee of a school
 18 corporation or an equivalent position with a special education
 19 cooperative.

20 After receiving the results of a national criminal history background
 21 check from the Federal Bureau of Investigation, the department may
 22 exchange identification records concerning convictions for offenses
 23 described in IC 20-26-5-11 with the school corporation or special
 24 education cooperative solely for purposes of making an employment
 25 determination. The exchange may be made only for the official use of
 26 the officials with authority to make the employment determination. The
 27 exchange is subject to the restrictions on dissemination imposed under
 28 P.L.92-544, (86 Stat. 1115) (1972).

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

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

- 37 (1) home health agency licensed under IC 16-27-1; or
 38 (2) personal services agency licensed under IC 16-27-4.

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

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1 the requesting qualified entity.

2 (j) This subsection applies to a qualified entity that is a health
3 facility licensed under IC 16-28-2. After receiving the results of a
4 national criminal history background check from the Federal
5 Bureau of Investigation, the department shall make a
6 determination whether the applicant has been convicted of an
7 offense described in IC 16-28-14.7-3 and convey the determination
8 to the requesting qualified entity.

9 (j) (k) The department:

- 10 (1) may permanently retain an applicant's fingerprints submitted
- 11 under this section; and
- 12 (2) shall retain the applicant's fingerprints separately from
- 13 fingerprints collected under section 24 of this chapter.

14 SECTION 3. IC 16-18-2-121.2 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2013]: Sec. 121.2. "Expanded criminal
17 history check" means the following:

- 18 (1) For purposes of IC 16-27-2, the meaning set forth in
- 19 IC 16-27-2-0.5.
- 20 (2) For purposes of IC 16-28-14.7, the meaning set forth in
- 21 IC 16-28-14.7-1.

22 SECTION 4. IC 16-18-2-244.5, AS ADDED BY P.L.197-2007,
23 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2013]: Sec. 244.5. "National criminal history background
25 check" means the following:

- 26 (1) For purposes of IC 16-27-2, has the meaning set forth in
- 27 IC 16-27-2-2.1.
- 28 (2) For purposes of IC 16-28-14.7, the meaning set forth in
- 29 IC 16-28-14.7-2.

30 SECTION 5. IC 16-28-14.7 IS ADDED TO THE INDIANA CODE
31 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2013]:

33 **Chapter 14.7. Criminal Background Checks of Employees**

34 **Sec. 1. As used in this chapter, "expanded criminal history**
35 **check" means a criminal history check of an individual, obtained**
36 **through a private agency, that includes the following:**

- 37 (1) A search of the records maintained by all counties in
- 38 Indiana in which the individual who is the subject of the
- 39 background check resided.
- 40 (2) A search of the records maintained by all counties or
- 41 similar governmental units in another state, if the individual
- 42 who is the subject of the background check resided or worked

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1 in another state.

2 **Sec. 2.** As used in this chapter, "national criminal history
3 background check" means the determination provided by the state
4 police department under IC 10-13-3-39(j).

5 **Sec. 3. (a)** A person may not operate a health facility if the
6 person has been convicted of any of the following:

7 (1) Rape (IC 35-42-4-1).

8 (2) Criminal deviate conduct (IC 35-42-4-2).

9 (3) Exploitation of an endangered adult (IC 35-46-1-12).

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

12 (5) Theft (IC 35-43-4), if the person's conviction for theft
13 occurred less than ten (10) years before the date of submission
14 by the person of an application for licensure as a health
15 facility.

16 (b) A person who knowingly or intentionally violates this section
17 commits a Class A misdemeanor.

18 **Sec. 4. (a)** A person who operates a health facility shall apply,
19 not more than three (3) business days after the date that an
20 employee who will have direct contact with a patient begins
21 employment, for a copy of the employee's national criminal history
22 background check or an expanded criminal history check.

23 (b) A health facility may not employ a person for more than
24 three (3) business days without applying for a national criminal
25 history background check or an expanded criminal history check.

26 **Sec. 5. (a)** Except as provided in subsection (b), a person who
27 operates a health facility may not employ a person who has direct
28 contact with a patient if that person's national criminal history
29 background check or expanded criminal history check indicates
30 that the person has been convicted of any of the following:

31 (1) Rape (IC 35-42-4-1).

32 (2) Criminal deviate conduct (IC 35-42-4-2).

33 (3) Exploitation of an endangered adult (IC 35-46-1-12).

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

36 (5) Theft (IC 35-43-4), if the conviction for theft occurred less
37 than ten (10) years before the person's employment
38 application date.

39 (6) A felony that is substantially equivalent to a felony listed
40 in:

41 (A) subdivisions (1) through (4); or

42 (B) subdivision (5), if the conviction for theft occurred less

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1 than ten (10) years before the person's employment
 2 application date;
 3 for which the conviction was entered in another state.
 4 (b) A health facility may not employ a person who has direct
 5 contact with a patient for more than twenty-one (21) calendar days
 6 without receipt of that person's national criminal history
 7 background check or expanded criminal history check unless the
 8 state police department, the Federal Bureau of Investigation under
 9 IC 10-13-3-39, or the private agency providing the national
 10 background check or expanded criminal history check is
 11 responsible for failing to provide the person's national criminal
 12 history background check or expanded criminal history check to
 13 the health facility within the time required under this subsection.
 14 Sec. 6. (a) A person who operates a health facility is responsible
 15 for the payment of fees under IC 10-13-3-39 and other fees
 16 required under this chapter.
 17 (b) A health facility may require a person who applies to the
 18 health facility for employment that involves direct contact with a
 19 patient:
 20 (1) to pay the cost of fees described in subsection (a) to the
 21 health facility at the time the person submits an application
 22 for employment; or
 23 (2) to reimburse the health facility for the cost of fees
 24 described in subsection (a).
 25 Sec. 7. A person who:
 26 (1) operates a health facility; and
 27 (2) violates section 4 or 5 of this chapter;
 28 commits a Class A infraction.
 29 Sec. 8. A person (other than a person denied employment or
 30 dismissed under this chapter or against whom a finding is made for
 31 the registry of nurse aides under 42 CFR 483.156) who in good
 32 faith:
 33 (1) denies employment to an individual or dismisses an
 34 individual from employment under this chapter;
 35 (2) testifies or participates in an investigation or an
 36 administrative or a judicial proceeding arising from:
 37 (A) this chapter; or
 38 (B) 42 CFR 483 regarding the registry of nurse aides; or
 39 (3) makes a report to the state department or the registry of
 40 nurse aides;
 41 is immune from both civil and criminal liability arising from those
 42 actions.

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1 SECTION 6. IC 34-30-2-67.7 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2013]: **Sec. 67.7. IC 16-28-14.7-8 (Concerning**
 4 **persons for denying or terminating employment of an individual**
 5 **with a criminal history, or reporting to or participating in the**
 6 **proceedings of the state department of health or the registry of**
 7 **nurse aides).**

8 SECTION 7. IC 35-51-16-1, AS ADDED BY P.L.70-2011,
 9 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2013]: Sec. 1. The following statutes define crimes in IC 16:

- 11 IC 16-19-12-1 (Concerning the state department of health).
- 12 IC 16-20-9-1 (Concerning local health departments).
- 13 IC 16-21-2-2.5 (Concerning licensure of hospitals).
- 14 IC 16-21-5-3 (Concerning licensure of hospitals).
- 15 IC 16-21-6-12 (Concerning hospital financial disclosure law).
- 16 IC 16-21-7-5 (Concerning hospitals).
- 17 IC 16-25-5-8 (Concerning hospices).
- 18 IC 16-25-6-1 (Concerning hospices).
- 19 IC 16-27-1-15 (Concerning home health agencies).
- 20 IC 16-27-2-3 (Concerning home health agencies).
- 21 IC 16-27-4-23 (Concerning home health agencies).
- 22 IC 16-28-7-5 (Concerning monitors).
- 23 IC 16-28-9-3 (Concerning monitors).
- 24 IC 16-28-9-4 (Concerning monitors).
- 25 IC 16-28-9-5 (Concerning monitors).
- 26 **IC 16-28-14.7 (Concerning health facilities).**
- 27 IC 16-30-5-1 (Concerning health planning).
- 28 IC 16-31-3-16 (Concerning emergency medical services).
- 29 IC 16-31-3-22 (Concerning emergency medical services).
- 30 IC 16-31-10-2 (Concerning emergency medical services).
- 31 IC 16-34-2-5 (Concerning abortion).
- 32 IC 16-34-2-6 (Concerning abortion).
- 33 IC 16-34-2-7 (Concerning abortion).
- 34 IC 16-36-4-15 (Concerning medical consent).
- 35 IC 16-36-4-16 (Concerning medical consent).
- 36 IC 16-36-5-27 (Concerning medical consent).
- 37 IC 16-36-5-28 (Concerning medical consent).
- 38 IC 16-37-1-12 (Concerning vital statistics).
- 39 IC 16-37-1-13 (Concerning vital statistics).
- 40 IC 16-37-2-2.1 (Concerning vital statistics).
- 41 IC 16-37-2-19 (Concerning vital statistics).
- 42 IC 16-37-3-16 (Concerning vital statistics).

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- 1 IC 16-38-5-4 (Concerning health registries).
- 2 IC 16-39-7.1-3 (Concerning health records).
- 3 IC 16-39-7.1-6 (Concerning health records).
- 4 IC 16-41-1-3 (Concerning communicable diseases).
- 5 IC 16-41-2-9 (Concerning communicable diseases).
- 6 IC 16-41-3-3 (Concerning communicable diseases).
- 7 IC 16-41-4-3 (Concerning communicable diseases).
- 8 IC 16-41-5-3 (Concerning communicable diseases).
- 9 IC 16-41-6-3 (Concerning communicable diseases).
- 10 IC 16-41-7-5 (Concerning communicable diseases).
- 11 IC 16-41-8-1 (Concerning communicable diseases).
- 12 IC 16-41-8-3 (Concerning communicable diseases).
- 13 IC 16-41-8-5 (Concerning communicable diseases).
- 14 IC 16-41-9-1.5 (Concerning communicable diseases).
- 15 IC 16-41-10-5 (Concerning communicable diseases).
- 16 IC 16-41-10-7 (Concerning communicable diseases).
- 17 IC 16-41-12-13 (Concerning communicable diseases).
- 18 IC 16-41-12-14 (Concerning communicable diseases).
- 19 IC 16-41-12-15 (Concerning communicable diseases).
- 20 IC 16-41-13-3 (Concerning communicable diseases).
- 21 IC 16-41-13-4 (Concerning communicable diseases).
- 22 IC 16-41-13-6 (Concerning communicable diseases).
- 23 IC 16-41-14-13 (Concerning communicable diseases).
- 24 IC 16-41-14-15 (Concerning communicable diseases).
- 25 IC 16-41-14-16 (Concerning communicable diseases).
- 26 IC 16-41-14-17 (Concerning communicable diseases).
- 27 IC 16-41-14-20 (Concerning communicable diseases).
- 28 IC 16-41-15-18 (Concerning communicable diseases).
- 29 IC 16-41-16-11 (Concerning communicable diseases).
- 30 IC 16-41-18-6 (Concerning prevention and treatment programs).
- 31 IC 16-41-19-10 (Concerning prevention and treatment programs).
- 32 IC 16-41-20-13 (Concerning health, sanitation, and safety).
- 33 IC 16-41-21-18 (Concerning health, sanitation, and safety).
- 34 IC 16-41-21-19 (Concerning health, sanitation, and safety).
- 35 IC 16-41-22-21 (Concerning health, sanitation, and safety).
- 36 IC 16-41-22-22 (Concerning health, sanitation, and safety).
- 37 IC 16-41-23-4 (Concerning health, sanitation, and safety).
- 38 IC 16-41-24-11 (Concerning health, sanitation, and safety).
- 39 IC 16-41-25-2 (Concerning health, sanitation, and safety).
- 40 IC 16-41-27-34 (Concerning health, sanitation, and safety).
- 41 IC 16-41-29-5 (Concerning regulation of lodging facilities and
- 42 bedding materials).

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- 1 IC 16-41-32-30 (Concerning regulation of lodging facilities and
2 bedding materials).
3 IC 16-41-33-9 (Concerning pest control).
4 IC 16-41-34-8 (Concerning pest control).
5 IC 16-41-35-40 (Concerning radiation).
6 IC 16-41-38-10 (Concerning radon gas).
7 IC 16-42-1-16 (Concerning Uniform Food, Drug, and Cosmetic
8 Act).
9 IC 16-42-1-34 (Concerning Uniform Food, Drug, and Cosmetic
10 Act).
11 IC 16-42-2-8 (Concerning Uniform Food, Drug, and Cosmetic
12 Act).
13 IC 16-42-2-9 (Concerning Uniform Food, Drug, and Cosmetic
14 Act).
15 IC 16-42-3-12 (Concerning Uniform Food, Drug, and Cosmetic
16 Act).
17 IC 16-42-4-5 (Concerning Uniform Food, Drug, and Cosmetic
18 Act).
19 IC 16-42-5-26 (Concerning sanitary requirements for food
20 establishments).
21 IC 16-42-5-27 (Concerning sanitary requirements for food
22 establishments).
23 IC 16-42-10-13 (Concerning food).
24 IC 16-42-18-7 (Concerning food).
25 IC 16-42-19-27 (Concerning the Indiana Legend Drug Act).
26 IC 16-42-21-4 (Concerning the Indiana Legend Drug Act).
27 IC 16-44-1-1 (Concerning product labeling and inspection).
28 IC 16-44-2-22 (Concerning product labeling and inspection).
29 IC 16-46-6-12 (Concerning state health grants and programs).

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