
HOUSE BILL No. 1461

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; IC 35-51-16-1.

Synopsis: Health care professionals conscience clause. Provides that a health care professional may not be required to dispense a drug or medical device if the health care professional believes 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 these circumstances may not be the basis for: (1) a claim for damages against the health care professional, the health care professional's employer, or the facility where the health care professional is employed; or (2) disciplinary, recriminatory, or discriminatory 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 these circumstances commits health care professional 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, 2013.

Davisson, Wesco

January 23, 2013, read first time and referred to Committee on Public Health.

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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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HOUSE BILL No. 1461



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:

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, 2013]: 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, 2013]: **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 who is enrolled in an educational program**
16 **and is studying 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 health care professional believes
2 that the drug 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 health care professional
19 discrimination, a Class A misdemeanor. However, the offense is a
20 Class D felony if the employer has a prior unrelated conviction
21 under this 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, 2013]: 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

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- 1 the board.
- 2 (2) Administer oaths in matters relating to the discharge of its
- 3 official duties.
- 4 (3) Enforce this article and assign to the personnel of the agency
- 5 duties as may be necessary in the discharge of the board's duty.
- 6 (4) Maintain, through the agency, full and complete records of all
- 7 applicants for licensure or permit and of all licenses and permits
- 8 issued.
- 9 (5) Make available, upon request, the complete schedule of
- 10 minimum requirements for licensure or permit.
- 11 (6) Issue, at the board's discretion, a temporary permit to an
- 12 applicant for the interim from the date of application until the
- 13 next regular meeting of the board.
- 14 (7) Issue an unlimited license, a limited license, or a temporary
- 15 medical permit, depending upon the qualifications of the
- 16 applicant, to any applicant who successfully fulfills all of the
- 17 requirements of this article.
- 18 (8) Adopt rules establishing standards for the competent practice
- 19 of medicine, osteopathic medicine, or any other form of practice
- 20 regulated by a limited license or permit issued under this article.
- 21 (9) Adopt rules regarding the appropriate prescribing of Schedule
- 22 III or Schedule IV controlled substances for the purpose of weight
- 23 reduction or to control obesity.
- 24 (10) Adopt rules establishing standards for office based
- 25 procedures that require moderate sedation, deep sedation, or
- 26 general anesthesia.
- 27 (b) The board may adopt rules that establish:
 - 28 (1) certification requirements for child death pathologists;
 - 29 (2) an annual training program for child death pathologists under
 - 30 IC 16-35-7-3(b)(2); and
 - 31 (3) a process to certify a qualified child death pathologist.
- 32 **(c) The board may fine an employer under IC 16-34-1-5.5(e).**
- 33 SECTION 4. IC 25-23-1-7, AS AMENDED BY P.L.134-2008,
- 34 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 35 JULY 1, 2013]: Sec. 7. (a) The board shall do the following:
 - 36 (1) Adopt under IC 4-22-2 rules necessary to enable it to carry
 - 37 into effect this chapter.
 - 38 (2) Prescribe standards and approve curricula for nursing
 - 39 education programs preparing persons for licensure under this
 - 40 chapter.
 - 41 (3) Provide for surveys of such programs at such times as it
 - 42 considers necessary.

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- 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.

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- 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, 2013]: 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

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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

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- 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, 2013]: **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).**

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

- 4 IC 16-19-12-1 (Concerning the state department of health).
 5 IC 16-20-9-1 (Concerning local health departments).
 6 IC 16-21-2-2.5 (Concerning licensure of hospitals).
 7 IC 16-21-5-3 (Concerning licensure of hospitals).
 8 IC 16-21-6-12 (Concerning hospital financial disclosure law).
 9 IC 16-21-7-5 (Concerning hospitals).
 10 IC 16-25-5-8 (Concerning hospices).
 11 IC 16-25-6-1 (Concerning hospices).
 12 IC 16-27-1-15 (Concerning home health agencies).
 13 IC 16-27-2-3 (Concerning home health agencies).
 14 IC 16-27-4-23 (Concerning home health agencies).
 15 IC 16-28-7-5 (Concerning monitors).
 16 IC 16-28-9-3 (Concerning monitors).
 17 IC 16-28-9-4 (Concerning monitors).
 18 IC 16-28-9-5 (Concerning monitors).
 19 IC 16-30-5-1 (Concerning health planning).
 20 IC 16-31-3-16 (Concerning emergency medical services).
 21 IC 16-31-3-22 (Concerning emergency medical services).
 22 IC 16-31-10-2 (Concerning emergency medical services).
 23 **IC 16-34-1-5.5 (Concerning drugs and medical devices).**
 24 IC 16-34-2-5 (Concerning abortion).
 25 IC 16-34-2-6 (Concerning abortion).
 26 IC 16-34-2-7 (Concerning abortion).
 27 IC 16-36-4-15 (Concerning medical consent).
 28 IC 16-36-4-16 (Concerning medical consent).
 29 IC 16-36-5-27 (Concerning medical consent).
 30 IC 16-36-5-28 (Concerning medical consent).
 31 IC 16-37-1-12 (Concerning vital statistics).
 32 IC 16-37-1-13 (Concerning vital statistics).
 33 IC 16-37-2-2.1 (Concerning vital statistics).
 34 IC 16-37-2-19 (Concerning vital statistics).
 35 IC 16-37-3-16 (Concerning vital statistics).
 36 IC 16-38-5-4 (Concerning health registries).
 37 IC 16-39-7.1-3 (Concerning health records).
 38 IC 16-39-7.1-6 (Concerning health records).
 39 IC 16-41-1-3 (Concerning communicable diseases).
 40 IC 16-41-2-9 (Concerning communicable diseases).
 41 IC 16-41-3-3 (Concerning communicable diseases).
 42 IC 16-41-4-3 (Concerning communicable diseases).

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

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- 1 Act).
- 2 IC 16-42-1-34 (Concerning Uniform Food, Drug, and Cosmetic
- 3 Act).
- 4 IC 16-42-2-8 (Concerning Uniform Food, Drug, and Cosmetic
- 5 Act).
- 6 IC 16-42-2-9 (Concerning Uniform Food, Drug, and Cosmetic
- 7 Act).
- 8 IC 16-42-3-12 (Concerning Uniform Food, Drug, and Cosmetic
- 9 Act).
- 10 IC 16-42-4-5 (Concerning Uniform Food, Drug, and Cosmetic
- 11 Act).
- 12 IC 16-42-5-26 (Concerning sanitary requirements for food
- 13 establishments).
- 14 IC 16-42-5-27 (Concerning sanitary requirements for food
- 15 establishments).
- 16 IC 16-42-10-13 (Concerning food).
- 17 IC 16-42-18-7 (Concerning food).
- 18 IC 16-42-19-27 (Concerning the Indiana Legend Drug Act).
- 19 IC 16-42-21-4 (Concerning the Indiana Legend Drug Act).
- 20 IC 16-44-1-1 (Concerning product labeling and inspection).
- 21 IC 16-44-2-22 (Concerning product labeling and inspection).
- 22 IC 16-46-6-12 (Concerning state health grants and programs).

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