



# STATE OF INDIANA

Eric J. Holcomb  
Governor

STATE BUDGET AGENCY  
212 State House  
Indianapolis, Indiana 46204-2796  
317/232-5610

Zachary Q. Jackson  
Director

April 27, 2020

Tracy Hicks  
Board Director  
Indiana Professional Licensing Agency  
State Board of Cosmetology and Barber Examiners  
State Board of Funeral and Cemetery Service  
402 W. Washington Street, Room W072  
Indianapolis, IN 46204

Dear Ms. Hicks,

Pursuant to the provisions of Executive Order 2-89 and Budget Agency Financial Management circular 2010-4, the State Budget Agency has reviewed the proposed rule that adds 820 IAC 9 (LSA # 19-433), which you submitted to the State Budget Agency on December 18, 2019. After reviewing the proposed rule, the recommendation of the State Budget Agency is that the rule changes be approved.

Furthermore, the statement and analysis (attached hereto) provided by the Indiana Professional Licensing Agency is hereby adopted as the Office of Management and Budget's own Fiscal Impact Statement for the purpose of satisfying the requirements under IC 4-22-2-28(d). Also, it is adopted as the Office of Management and Budget's Cost Benefit Analysis under IC 4-3-22-13(a).

If you have questions concerning this action, please contact your budget analyst or SBA at 232-5610.

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary Q. Jackson".

Zachary Q. Jackson  
Director

ZQJ/jnm

**Professional Licensing Agency**  
402 West Washington Street  
Room W072  
Indianapolis, IN 46204



**Eric J. Holcomb**  
*Governor of Indiana*  
**Deborah J. Frye**  
*PLA Executive Director*

To: State Budget Agency

From: Darren R. Covington, J.D.  
Director, Medical Licensing Board of Indiana

cc: Deborah Frye, Executive Director  
Michael A. Minglin, J.D., General Counsel and Deputy Director

Date: December 11, 2019

Re: Fiscal Analysis regarding convictions of concern final rules

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**Introduction:** The Indiana Professional Licensing Agency (“IPLA”) is submitting this fiscal impact statement for your review and approval pursuant to the October 8, 2010 Financial Management Circular #2010-4 on the behalf of the boards, commissions and committees housed under IPLA who are each adopting their own rule to implement the provisions of HEA 1569 (2019) as found in IC 25-1-1.1-6.

IC 25-1-1.1-6 required every board, commission or committee under IC 25 to revise its licensing or certification requirements to explicitly list the convictions of concern that may disqualify an individual from receiving a license; to establish criteria to determine whether an applicant should be denied a license if they have been convicted of a crime on the convictions of concern list; and to establish a procedure for an individual to receive a pre-application determination as to whether their criminal history would preclude them from obtaining a license. All boards, commissions, and committees within the Professional Licensing Agency have adopted emergency rules to this effect, which are effective until the implementation of these final rules.

**Proposed Hearing Date: Vary by Board**

**Effective Date:** **TBD** – 30 days after filing with Publisher.

**I. Calculation of the Estimated Fiscal Impact on State and Local Government**

The agency has the ability to implement the provisions of these rules within its current resources. There will be no fiscal impact on local government.

**II. Sources of Revenue Affected by the Rule**

This rule provides for the collection of a \$25 fee for a petition for a pre-application determination that an applicant's criminal history will not preclude them from obtaining a license.

**III. Identification of any Appropriations, Distributions or Expenditures of State and Local Government that Would Result from the Implementation of the Rule**

This rule will not result in additional appropriations, distributions or expenditures by either state or local governments.

**IV. Estimated Increase or Decrease in Revenues or Expenditures of State and Local Government that Would Result from the Implementation of the Rule**

This rule will increase revenues, although this is expected to be a nominal amount. Between November 1, 2018 and January 30, 2019<sup>1</sup>, the agency received one pre-application petition. It is assumed that more pre-application petitions will be received as the process becomes more well-known. Expected revenues will likely not exceed \$1,000 in any calendar year.

**V. Estimated Administrative Impact to State and Local Governments**

This rule will have no administrative impact on local government. Neither IPLA nor the Boards will need to expend additional administrative resources beyond those currently in place to implement this rule.

**VI. Extent to Which Proposed Rules Creates an Unfunded Mandate on a State Agency or Political Subdivision**

This rule will not create an unfunded mandate on state agencies or political subdivisions.

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<sup>1</sup> Effective period of first emergency rules.

## **VII. Assumptions Used in Making the Fiscal Impact Calculation**

This rule effectively describes current processes for evaluating applicants with criminal histories. It is estimated that no more 100 individuals per calendar year will elect to petition a board for a pre-application determination.

## **COST BENEFIT ANALYSIS Rules Implementing HEA 1569 (2019)**

The following is the Cost-Benefit Analysis prepared by the Indiana Professional Licensing Agency on behalf of its boards, commissions and committees. These rules implement the provisions of HEA 1569 (2019) as found in IC 25-1-1.1-6. IC 25-1-1.1-6 required every board, commission or committee under IC 25 to revise its licensing or certification requirements to explicitly list the convictions of concern that may disqualify an individual from receiving a license; to establish criteria to determine whether an applicant should be denied a license if they have been convicted of a crime on the disqualifying list; and to establish a procedure for an individual to receive a pre-application determination as to whether their criminal history would preclude them from obtaining a license. All boards, commissions, and committees within the Professional Licensing Agency have adopted emergency rules that are effective until these final rules are approved.

### **I. Statement of Need**

#### **A. Explanation of the Issue the Rule is Intended to Address and Policy Rationale or Goal of Proposed Rule**

IC 25-1-1.1-6 requires every board, commission or committee under IC 25 to revise its licensing or certification requirements to explicitly list the crimes that would disqualify an individual from receiving a license; to establish criteria to determine whether an applicant should be denied a license if they have been convicted of a crime on the disqualifying list; and to establish a procedure for an individual to receive a pre-application determination as to whether their criminal history would preclude them from obtaining a license.

The agency identified a list of all potential crimes, in conjunction with the Attorney General's Office, which may have a bearing on professional practice. Each board then adopted its own list from those identified crimes. The Medical Board's rule, for reference, contains all of the crimes identified as having a potential bearing on professional practice.

#### **B. Estimate of Number of Individuals and Businesses Affected by the Rule**

These rules will apply to all individuals applying for a license issued by a Board under IC 25.

### **II. Evaluation of Benefits and Costs**

Currently, Boards may deny an applicant a license based upon a criminal conviction if the conviction has a bearing on the individual's ability to practice competently or is a conviction that is harmful to the public. These rules would provide explicit notice to applicants of what criminal convictions may result in the denial of an application. The rules will also allow an individual to petition a board prior to filing an application to seek a determination whether or not an applicant's criminal history will result in the denial of an application.

The benefit of these two provisions is that it will allow potential applicants with criminal histories to know in advance of obtaining formal education or training if they will be precluded from obtaining a specific license prior to the expenditure of resources and time to meet the requirements for licensure.

The rules also prohibit a board from denying a license if a criminal conviction is older than 5 years, unless it is a crime of violence or a sex crime, or if an individual has multiple convictions. This would permit individuals with misdemeanor and lower level felony convictions the opportunity to obtain professional licensure after a period of time with no further convictions.

While IC 25-1-1.1-6 requires the various boards to adopt a list of “convictions of concern,” a conviction is not an automatic grounds for denial. The board must still take into account the nature of the offense, the passage of time, evidence of rehabilitation and the relationship of the crime to the duties required or performed under a license.

The cost to obtain a pre-application determination is \$25.00.

### **III. Examination of Alternatives**

The rule is consistent with the specific statutory requirements in IC 25-1-1.1-6, which itself does not define any alternatives and requires each board to adopt the proposed rules.

### **IV. Total Estimated Impact**

It is difficult to estimate the total estimated impact. The fiscal impact analysis estimates less than \$1,000 in revenue per year from pre-application petitions. The process required for evaluation of criminal convictions by the rule has been the historic practice of the boards and will not result in additional administrative burdens. For those individuals with a criminal history, it will result in them saving time and resources in obtaining education or training for a license they cannot receive if they receive a pre-application determination that an application would be denied. Historically, the boards have denied very few applications solely based on a criminal conviction.

### **V. Independent Verification Studies**

The Board is not aware of any independent verification studies.

### **VI. Sources Relied Upon**

IPLA staff, Attorney General’s Office staff