

HOUSE BILL No. 1267

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-3-38.5; IC 22-5-8; IC 25-1-1.1.

Synopsis: Former offenders. Prohibits a public employer from asking an applicant for employment to disclose orally or in writing, whether on an employment application or otherwise, information concerning the applicant's criminal record or history until the public employer has determined that the applicant meets the public employer's minimum employment qualifications. Provides that the requirement does not apply to employment with a law enforcement agency or when federal or Indiana law provides otherwise. Provides that a board, commission, or committee regulated by the Indiana professional licensing agency may deny, revoke, or suspend a professional license or certificate of registration of an individual who commits a criminal offense only if the underlying offense is substantially related to the practice of the individual's profession or presents a threat to public safety. Requires the professional licensing agency to adopt rules regarding the effect of criminal conviction on persons in a regulated profession.

Effective: July 1, 2017.

Shackleford

January 10, 2017, read first time and referred to Committee on Employment, Labor and Pensions.



First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1267

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

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

1 SECTION 1. IC 10-13-3-38.5, AS AMENDED BY P.L.155-2011,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 38.5. (a) Under federal P.L.92-544 (86 Stat.
4 1115), the department may use an individual's fingerprints submitted
5 by the individual for the following purposes:
6 (1) Determining the individual's suitability for employment with
7 the state, or as an employee of a contractor of the state, in a
8 position:
9 (A) that has a job description that includes contact with, care
10 of, or supervision over a person less than eighteen (18) years
11 of age;
12 (B) that has a job description that includes contact with, care
13 of, or supervision over an endangered adult (as defined in
14 IC 12-10-3-2), except the individual is not required to meet the
15 standard for harmed or threatened with harm set forth in
16 IC 12-10-3-2(a)(3);
17 (C) at a state institution managed by the office of the secretary



- 1 of family and social services or state department of health;
 2 (D) at the Indiana School for the Deaf established by
 3 IC 20-22-2-1;
 4 (E) at the Indiana School for the Blind and Visually Impaired
 5 established by IC 20-21-2-1;
 6 (F) at a juvenile detention facility;
 7 (G) with the Indiana gaming commission under IC 4-33-3-16;
 8 (H) with the department of financial institutions under
 9 IC 28-11-2-3; or
 10 (I) that has a job description that includes access to or
 11 supervision over state financial or personnel data, including
 12 state warrants, banking codes, or payroll information
 13 pertaining to state employees.
- 14 (2) Identification in a request related to an application for a
 15 teacher's license submitted to the department of education
 16 established by IC 20-19-3-1.
- 17 (3) Use by the gaming commission established under IC 4-33-3-1
 18 for licensure of a promoter (as defined in IC 4-33-22-6) under
 19 IC 4-33-22.
- 20 (4) Use by the Indiana board of pharmacy in determining the
 21 individual's suitability for a position or employment with a
 22 wholesale drug distributor, as specified in IC 25-26-14-16(b),
 23 IC 25-26-14-16.5(b), IC 25-26-14-17.8(c), and IC 25-26-14-20.
- 24 (5) Identification in a request related to an individual applying for
 25 or renewing a license or certificate described in IC 25-1-1.1-4 and
 26 a conviction described in IC 25-1-1.1-2 or IC 25-1-1.1-3.
 27 **determination made by a board, commission, or committee**
 28 **under IC 25-1-1.1-6.**
- 29 An applicant shall submit the fingerprints in an appropriate format or
 30 on forms provided for the employment, license, or certificate
 31 application. The department shall charge each applicant the fee
 32 established under section 28 of this chapter and by federal authorities
 33 to defray the costs associated with a search for and classification of the
 34 applicant's fingerprints. The department may forward fingerprints
 35 submitted by an applicant to the Federal Bureau of Investigation or any
 36 other agency for processing. The state personnel department, the
 37 Indiana professional licensing agency, or the agency to which the
 38 applicant is applying for employment or a license may receive the
 39 results of all fingerprint investigations.
- 40 (b) An applicant who is an employee of the state may not be charged
 41 under subsection (a).
- 42 (c) Subsection (a)(1) does not apply to an employee of a contractor



1 of the state if the contract involves the construction or repair of a
 2 capital project or other public works project of the state.

3 (d) The department:

- 4 (1) may permanently retain an applicant's fingerprints submitted
 5 under this section; and
 6 (2) shall retain the applicant's fingerprints separately from
 7 fingerprints collected under section 24 of this chapter.

8 SECTION 2. IC 22-5-8 IS ADDED TO THE INDIANA CODE AS
 9 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2017]:

11 **Chapter 8. Public Employer Inquiry Regarding an Applicant's**
 12 **Criminal History**

13 **Sec. 1. This chapter does not apply to any of the following:**

- 14 (1) A law enforcement agency (as defined in IC 35-47-15-2).
 15 (2) A position for which a public employer, as an employer, is
 16 required by federal or Indiana law to conduct a criminal
 17 history record information check.
 18 (3) A position for which federal or Indiana law specifically
 19 disqualifies an applicant with a criminal background.

20 **Sec. 2. This chapter does not prohibit the following:**

- 21 (1) A public employer that is a school corporation from
 22 requiring an applicant for employment to disclose an
 23 applicant's criminal record or criminal history relating to
 24 sexual or physical abuse.
 25 (2) A public employer from preparing or delivering an
 26 employment application that conspicuously states that a
 27 criminal history record information check is required by
 28 federal law, Indiana law, or the employer's policy.
 29 (3) A public employer from conducting a criminal history
 30 record information check after the public employer has
 31 determined that the applicant meets the minimum
 32 employment qualifications.

33 **Sec. 3. As used in this chapter, "public employer" refers to any**
 34 **of the following:**

- 35 (1) A state agency (as defined in IC 4-13-1-1(b)).
 36 (2) The legislative branch of state government.
 37 (3) The judicial branch of state government.
 38 (4) A state educational institution.
 39 (5) A political subdivision.
 40 (6) A body corporate and politic created by Indiana law.
 41 (7) An agency or other instrumentality of any of the entities
 42 described in subdivisions (1) through (6).



1 **Sec. 4. Except as otherwise provided in this chapter, a public**
 2 **employer may not ask an applicant for employment to disclose**
 3 **orally or in writing, whether on an employment application or**
 4 **otherwise, information concerning the applicant's criminal record**
 5 **or criminal history until the public employer has determined that**
 6 **the applicant meets the public employer's minimum employment**
 7 **qualifications.**

8 SECTION 3. IC 25-1-1.1-1, AS AMENDED BY P.L.177-2015,
 9 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2017]: Sec. 1. (a) Except as provided under sections ~~2 4~~
 11 through ~~5 6~~ of this chapter **and rules adopted under section 6 of this**
 12 **chapter**, a license or certificate of registration that an individual is
 13 required by law to hold to engage in a business, profession, or
 14 occupation may not be denied, revoked, or suspended because the
 15 applicant or holder has been convicted of an offense. The acts from
 16 which the applicant's or holder's conviction resulted may, however, be
 17 considered as to whether the applicant or holder should be entrusted to
 18 serve the public in a specific capacity.

19 (b) An individual licensed or certified under this title shall, not later
 20 than ninety (90) days after the entry of an order or judgment, notify the
 21 board in writing of any misdemeanor or felony criminal conviction,
 22 except traffic related misdemeanors other than operating a motor
 23 vehicle under the influence of a drug or alcohol. A certified copy of the
 24 order or judgment with a letter of explanation must be submitted to the
 25 board along with the written notice.

26 SECTION 4. IC 25-1-1.1-2 IS REPEALED [EFFECTIVE JULY 1,
 27 2017]. Sec. 2. ~~Notwithstanding IC 25-1-7, a board, a commission, or a~~
 28 ~~committee may suspend, deny, or revoke a license or certificate issued~~
 29 ~~under this title by the board, the commission, or the committee without~~
 30 ~~an investigation by the office of the attorney general if the individual~~
 31 ~~who holds the license or certificate is convicted of any of the following~~
 32 ~~and the board, commission, or committee determines, after the~~
 33 ~~individual has appeared in person, that the offense affects the~~
 34 ~~individual's ability to perform the duties of the profession:~~

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

36 ~~(2) Possession of methamphetamine under IC 35-48-4-6.1.~~

37 ~~(3) Possession of a controlled substance under IC 35-48-4-7(a).~~

38 ~~(4) Fraudulently obtaining a controlled substance under~~
 39 ~~IC 35-48-4-7(c).~~

40 ~~(5) Manufacture of paraphernalia as a Class D felony (for a crime~~
 41 ~~committed before July 1, 2014) or a Level 6 felony (for a crime~~
 42 ~~committed after June 30, 2014) under IC 35-48-4-8.1(b).~~



- 1 (6) Dealing in paraphernalia as a Class D felony (for a crime
 2 committed before July 1, 2014) or a Level 6 felony (for a crime
 3 committed after June 30, 2014) under IC 35-48-4-8.5(b).
 4 (7) Possession of paraphernalia as a Class D felony (for a crime
 5 committed before July 1, 2014) or a Level 6 felony (for a crime
 6 committed after June 30, 2014) under IC 35-48-4-8.3(b) (before
 7 its amendment on July 1, 2015).
 8 (8) Possession of marijuana, hash oil, hashish, or salvia as a Class
 9 D felony (for a crime committed before July 1, 2014) or a Level
 10 6 felony (for a crime committed after June 30, 2014) under
 11 IC 35-48-4-11.
 12 (9) Possession of a synthetic drug or synthetic drug lookalike
 13 substance as a:
 14 (A) Class D felony for a crime committed before July 1, 2014,
 15 under:
 16 (i) IC 35-48-4-11, before its amendment in 2013; or
 17 (ii) IC 35-48-4-11.5; or
 18 (B) Level 6 felony for a crime committed after June 30, 2014,
 19 under IC 35-48-4-11.5.
 20 (10) Maintaining a common nuisance under IC 35-48-4-13
 21 (repealed) or IC 35-45-1-5, if the common nuisance involves a
 22 controlled substance.
 23 (11) An offense relating to registration, labeling, and prescription
 24 forms under IC 35-48-4-14.
 25 (12) Conspiracy under IC 35-41-5-2 to commit an offense listed
 26 in this section.
 27 (13) Attempt under IC 35-41-5-1 to commit an offense listed in
 28 this section.
 29 (14) A sex crime under IC 35-42-4.
 30 (15) A felony that reflects adversely on the individual's fitness to
 31 hold a professional license.
 32 (16) An offense in any other jurisdiction in which the elements of
 33 the offense for which the conviction was entered are substantially
 34 similar to the elements of an offense described in this section.
- 35 SECTION 5. IC 25-1-1.1-3 IS REPEALED [EFFECTIVE JULY 1,
 36 2017]. Sec. 3: A board, a commission, or a committee shall revoke or
 37 suspend a license or certificate issued under this title by the board, the
 38 commission, or the committee if the individual who holds the license
 39 or certificate is convicted of any of the following:
 40 (1) Dealing in or manufacturing cocaine or a narcotic drug under
 41 IC 35-48-4-1.
 42 (2) Dealing in methamphetamine under IC 35-48-4-1.1.



- 1 (3) Dealing in a schedule I, H; or HH controlled substance under
 2 IC 35-48-4-2.
 3 (4) Dealing in a schedule IV controlled substance under
 4 IC 35-48-4-3.
 5 (5) Dealing in a schedule V controlled substance under
 6 IC 35-48-4-4.
 7 (6) Dealing in a substance represented to be a controlled
 8 substance under IC 35-48-4-4.5.
 9 (7) Knowingly or intentionally manufacturing, advertising,
 10 distributing, or possessing with intent to manufacture, advertise,
 11 or distribute a substance represented to be a controlled substance
 12 under IC 35-48-4-4.6.
 13 (8) Dealing in a counterfeit substance under IC 35-48-4-5.
 14 (9) Dealing in marijuana, hash oil, hashish, or salvia as a felony
 15 under IC 35-48-4-10.
 16 (10) Dealing in a synthetic drug or synthetic drug lookalike
 17 substance under IC 35-48-4-10.5 (or under IC 35-48-4-10(b)
 18 before its amendment in 2013).
 19 (11) Conspiracy under IC 35-41-5-2 to commit an offense listed
 20 in this section.
 21 (12) Attempt under IC 35-41-5-1 to commit an offense listed in
 22 this section.
 23 (13) An offense in any other jurisdiction in which the elements of
 24 the offense for which the conviction was entered are substantially
 25 similar to the elements of an offense described in this section.
 26 (14) A violation of any federal or state drug law or rule related to
 27 wholesale legend drug distributors licensed under IC 25-26-14.
- 28 SECTION 6. IC 25-1-1.1-6 IS ADDED TO THE INDIANA CODE
 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 30 1, 2017]: **Sec. 6. (a) If an individual holding or applying for a
 31 license or certificate of registration issued under this title commits
 32 an offense, the board, commission, or committee regulating the
 33 profession for which the license or certificate is issued may revoke,
 34 suspend, or deny the license or certificate only if the board,
 35 commission, or committee determines, after the individual has
 36 appeared before the board, commission, or committee in person,
 37 that the offense substantially relates to the practice of the
 38 individual's profession or presents a threat to public safety.**
 39 **(b) The Indiana professional licensing agency shall adopt rules
 40 under IC 4-22-2 to implement this chapter, including determining
 41 a definition of "substantially relates" for purposes of this section.**

