



Reprinted
April 5, 2017

ENGROSSED SENATE BILL No. 513

DIGEST OF SB 513 (Updated April 4, 2017 3:37 pm - DI 104)

Citations Affected: IC 16-18; IC 16-27; IC 22-4; IC 34-30.

Synopsis: Drug testing of home health care employees. Requires home health agencies to drug test job applicants and employees who come in direct contact with patients. Exempts from drug testing certain licensed home health employees employed by a home health agency. Requires
(Continued next page)

Effective: July 1, 2017.

Hershman, Doriot, Niezgodski, Kruse

(HOUSE SPONSORS — BROWN T, SIEGRIST, PRESSEL)

January 17, 2017, read first time and referred to Committee on Pensions and Labor.
January 26, 2017, reported favorably — Do Pass.
January 31, 2017, read second time, amended, ordered engrossed.
February 1, 2017, engrossed.
February 2, 2017, read third time, passed. Yeas 43, nays 2.

HOUSE ACTION

February 28, 2017, read first time and referred to Committee on Public Health.
March 27, 2017, reported — Do Pass.
April 4, 2017, read second time, amended, ordered engrossed.

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Digest Continued

random drug testing of at least 50% of certain home health agency employees to occur at least annually. Allows for random drug testing upon reasonable suspicion of illegal controlled substance use. Requires verification of a positive drug test, and requires the employee to pay for the verification test. Specifies that, unless an employee has a valid prescription for the substance for which the employee tests positive on a drug test, a home health agency shall either discharge an employee or suspend an employee from direct contact with patients for at least six months if the drug test is positive. Specifies that a home health agency that discharges or suspends an employee or refuses to hire a job applicant because of a positive drug test is considered to have discharged, suspended, or refused to hire for just cause. Provides that a home health agency, when acting in good faith and in compliance with state law, is immune from civil liability for conducting employee drug testing or taking an employee disciplinary action or discharging an employee as the result of employee drug testing. Provides that immunity does not apply to actions that constitute gross negligence or wanton misconduct.

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Reprinted
April 5, 2017

First Regular Session 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.

ENGROSSED SENATE BILL No. 513

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 16-18-2-173 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 173. (a) "Home health
3 agency", for purposes of IC 16-27-1, has the meaning set forth in
4 IC 16-27-1-2.

5 (b) "Home health agency", for purposes of IC 16-27-2 **and**
6 **IC 16-27-2.5**, has the meaning set forth in IC 16-27-2-2.

7 SECTION 2. IC 16-27-2.5 IS ADDED TO THE INDIANA CODE
8 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2017]:

10 **Chapter 2.5. Drug Testing of Employees**

11 **Sec. 0.5. This chapter does not apply to a home health employee**
12 **licensed under IC 25.**

13 **Sec. 1. (a) After giving a job applicant written notice of the**
14 **home health agency's drug testing policy, a home health agency**
15 **shall require a job applicant who is seeking employment with the**
16 **home health agency for a position that will have direct contact with**
17 **a patient to be tested for the illegal use of a controlled substance.**

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1 **(b) A home health agency may use a job applicant's:**

2 **(1) refusal to submit to a drug test; or**

3 **(2) positive test result from a drug test;**

4 **as a basis for refusing to hire the job applicant.**

5 **(c) If a job applicant is hired by the home health agency before**
 6 **the job applicant's results of the drug test are received, the hired**
 7 **individual may not have any contact with patients until the home**
 8 **health agency obtains results of the drug test that indicate that the**
 9 **individual tested negative on the drug test. If the drug test results**
 10 **indicate that the individual tested positive on the drug test, the**
 11 **home health agency shall discharge or discipline the individual. If**
 12 **the home health agency disciplines the individual, the individual**
 13 **may have no direct contact with a patient for at least six (6)**
 14 **months.**

15 **Sec. 2. (a) A home health agency must:**

16 **(1) have a written drug testing policy that is distributed to all**
 17 **employees; and**

18 **(2) require each employee to acknowledge receipt of the**
 19 **policy.**

20 **(b) A home health agency shall randomly test:**

21 **(1) at least fifty percent (50%) of the home health agency's**
 22 **employees who:**

23 **(A) have direct contact with patients; and**

24 **(B) are not licensed by a board or commission under IC 25;**
 25 **at least annually; or**

26 **(2) when the home health agency has reasonable suspicion**
 27 **that an employee is engaged in the illegal use of a controlled**
 28 **substance.**

29 **(c) A home health agency shall either discharge or discipline**
 30 **with a minimum of a six (6) month suspension an employee who**
 31 **refuses to submit to a drug test.**

32 **Sec. 3. If an employee tests positive on a drug test, and the**
 33 **employee does not have a valid prescription for the substance for**
 34 **which the employee tested positive on the drug test, the home**
 35 **health agency shall have the results of the test verified by a**
 36 **confirmation test. The employee shall pay for the confirmation test.**
 37 **If the positive test result is confirmed, the home health agency shall**
 38 **either discharge the employee or suspend the employee from**
 39 **coming into direct contact with patients for at least six (6) months**
 40 **after the date of the confirmation test result. An employee who has**
 41 **a valid prescription for the substance for which the employee**
 42 **tested positive on a drug test may not be terminated or suspended**



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under this subsection.

Sec. 4. A home health agency that:

- (1) discharges or disciplines an employee; or**
- (2) refuses to hire a job applicant;**

because of a positive drug test result or a refusal to submit to a drug test is considered to have discharged, disciplined, or refused to hire the individual for just cause.

Sec. 5. (a) A home health agency, when acting in good faith, is immune from civil liability for:

- (1) conducting employee drug testing in compliance with this chapter; or**
- (2) taking an employee disciplinary action or discharging an employee in compliance with this chapter as a result of the employee drug testing.**

(b) Subsection (a) does not apply to actions that constitute gross negligence or willful or wanton misconduct.

SECTION 3. IC 22-4-15-1, AS AMENDED BY P.L.183-2015, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) Regarding an individual's most recent separation from employment before filing an initial or additional claim for benefits, an individual who voluntarily left the employment without good cause in connection with the work or was discharged from the employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until:

- (1) the individual has earned remuneration in employment in at least eight (8) weeks; and
- (2) the remuneration earned equals or exceeds the product of the weekly benefit amount multiplied by eight (8).

If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by an amount determined as follows:

- (1) For the first separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:
 - (A) the maximum benefit amount of the individual's current



- 1 claim, as initially determined; multiplied by
 2 (B) seventy-five percent (75%);
 3 rounded (if not already a multiple of one dollar (\$1)) to the next
 4 higher dollar.
- 5 (2) For the second separation from employment under
 6 disqualifying conditions, the maximum benefit amount of the
 7 individual's current claim is equal to the result of:
 8 (A) the maximum benefit amount of the individual's current
 9 claim determined under subdivision (1); multiplied by
 10 (B) eighty-five percent (85%);
 11 rounded (if not already a multiple of one dollar (\$1)) to the next
 12 higher dollar.
- 13 (3) For the third and any subsequent separation from employment
 14 under disqualifying conditions, the maximum benefit amount of
 15 the individual's current claim is equal to the result of:
 16 (A) the maximum benefit amount of the individual's current
 17 claim determined under subdivision (2); multiplied by
 18 (B) ninety percent (90%);
 19 rounded (if not already a multiple of one dollar (\$1)) to the next
 20 higher dollar.
- 21 (c) The disqualifications provided in this section shall be subject to
 22 the following modifications:
 23 (1) An individual shall not be subject to disqualification because
 24 of separation from the individual's employment if:
 25 (A) the individual left to accept with another employer
 26 previously secured permanent full-time work which offered
 27 reasonable expectation of continued covered employment and
 28 betterment of wages or working conditions and thereafter was
 29 employed on said job;
 30 (B) having been simultaneously employed by two (2)
 31 employers, the individual leaves one (1) such employer
 32 voluntarily without good cause in connection with the work
 33 but remains in employment with the second employer with a
 34 reasonable expectation of continued employment; or
 35 (C) the individual left to accept recall made by a base period
 36 employer.
- 37 (2) An individual whose unemployment is the result of medically
 38 substantiated physical disability and who is involuntarily
 39 unemployed after having made reasonable efforts to maintain the
 40 employment relationship shall not be subject to disqualification
 41 under this section for such separation.
- 42 (3) An individual who left work to enter the armed forces of the



- 1 United States shall not be subject to disqualification under this
2 section for such leaving of work.
- 3 (4) An individual whose employment is terminated under the
4 compulsory retirement provision of a collective bargaining
5 agreement to which the employer is a party, or under any other
6 plan, system, or program, public or private, providing for
7 compulsory retirement and who is otherwise eligible shall not be
8 deemed to have left the individual's work voluntarily without
9 good cause in connection with the work. However, if such
10 individual subsequently becomes reemployed and thereafter
11 voluntarily leaves work without good cause in connection with the
12 work, the individual shall be deemed ineligible as outlined in this
13 section.
- 14 (5) An otherwise eligible individual shall not be denied benefits
15 for any week because the individual is in training approved under
16 Section 236(a)(1) of the Trade Act of 1974, nor shall the
17 individual be denied benefits by reason of leaving work to enter
18 such training, provided the work left is not suitable employment,
19 or because of the application to any week in training of provisions
20 in this law (or any applicable federal unemployment
21 compensation law), relating to availability for work, active search
22 for work, or refusal to accept work. For purposes of this
23 subdivision, the term "suitable employment" means with respect
24 to an individual, work of a substantially equal or higher skill level
25 than the individual's past adversely affected employment (as
26 defined for purposes of the Trade Act of 1974), and wages for
27 such work at not less than eighty percent (80%) of the individual's
28 average weekly wage as determined for the purposes of the Trade
29 Act of 1974.
- 30 (6) An individual is not subject to disqualification because of
31 separation from the individual's employment if:
- 32 (A) the employment was outside the individual's labor market;
 - 33 (B) the individual left to accept previously secured full-time
34 work with an employer in the individual's labor market; and
 - 35 (C) the individual actually became employed with the
36 employer in the individual's labor market.
- 37 (7) An individual who, but for the voluntary separation to move
38 to another labor market to join a spouse who had moved to that
39 labor market, shall not be disqualified for that voluntary
40 separation, if the individual is otherwise eligible for benefits.
41 Benefits paid to the spouse whose eligibility is established under
42 this subdivision shall not be charged against the employer from



1 whom the spouse voluntarily separated.

2 (8) An individual shall not be subject to disqualification if the
3 individual voluntarily left employment or was discharged due to
4 circumstances directly caused by domestic or family violence (as
5 defined in IC 31-9-2-42). An individual who may be entitled to
6 benefits based on this modification may apply to the office of the
7 attorney general under IC 5-26.5 to have an address designated by
8 the office of the attorney general to serve as the individual's
9 address for purposes of this article.

10 As used in this subsection, "labor market" means the area surrounding
11 an individual's permanent residence, outside which the individual
12 cannot reasonably commute on a daily basis. In determining whether
13 an individual can reasonably commute under this subdivision, the
14 department shall consider the nature of the individual's job.

15 (d) "Discharge for just cause" as used in this section is defined to
16 include but not be limited to:

17 (1) separation initiated by an employer for falsification of an
18 employment application to obtain employment through
19 subterfuge;

20 (2) knowing violation of a reasonable and uniformly enforced rule
21 of an employer, including a rule regarding attendance;

22 (3) if an employer does not have a rule regarding attendance, an
23 individual's unsatisfactory attendance, if good cause for absences
24 or tardiness is not established;

25 (4) damaging the employer's property through willful negligence;

26 (5) refusing to obey instructions;

27 (6) reporting to work under the influence of alcohol or drugs or
28 consuming alcohol or drugs on employer's premises during
29 working hours;

30 (7) conduct endangering safety of self or coworkers;

31 (8) incarceration in jail following conviction of a misdemeanor or
32 felony by a court of competent jurisdiction; ~~or~~

33 (9) any breach of duty in connection with work which is
34 reasonably owed an employer by an employee; **or**

35 **(10) testing positive on a drug test under IC 16-27-2.5.**

36 (e) To verify that domestic or family violence has occurred, an
37 individual who applies for benefits under subsection (c)(8) shall
38 provide one (1) of the following:

39 (1) A report of a law enforcement agency (as defined in
40 IC 10-13-3-10).

41 (2) A protection order issued under IC 34-26-5.

42 (3) A foreign protection order (as defined in IC 34-6-2-48.5).



1 (4) An affidavit from a domestic violence service provider
2 verifying services provided to the individual by the domestic
3 violence service provider.

4 SECTION 4. IC 34-30-2-66.7 IS ADDED TO THE INDIANA
5 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2017]: **Sec. 66.7. IC 16-27-2.5-5 (Concerning**
7 **drug testing of home health employees by home health agencies).**



COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 513, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 513 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 11, Nays 0

 SENATE MOTION

Madam President: I move that Senate Bill 513 be amended to read as follows:

Page 1, between lines 10 and 11, begin a new paragraph and insert:

"Sec. 0.5. This chapter does not apply to a home health employee licensed under IC 25 who is employed by a home health agency owned by a hospital licensed under IC 16-21-2."

Page 2, line 29, after "test," insert **"and the employee does not have a valid prescription for the substance for which the employee tested positive on the drug test,"**.

Page 2, line 31, after "test." insert **"The employee shall pay for the confirmation test."**

Page 2, line 34, after "result." insert **"An employee who has a valid prescription for the substance for which the employee tested positive on a drug test may not be terminated or suspended under this subsection."**

Page 2, between lines 40 and 41, begin a new paragraph and insert:

"Sec. 5. (a) A home health agency, when acting in good faith, is immune from civil liability for:

(1) conducting employee drug testing in compliance with this chapter; or

(2) taking an employee disciplinary action or discharging an employee in compliance with this chapter as a result of the employee drug testing.

(b) Subsection (a) does not apply to actions that constitute gross negligence or willful or wanton misconduct."

Page 6, after line 27, begin a new paragraph and insert:

"SECTION 4. IC 34-30-2-66.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2017]: **Sec. 66.7. IC 16-27-2.5-5 (Concerning drug testing of home health employees by home health agencies)."**

Renumber all SECTIONS consecutively.

(Reference is to SB 513 as printed January 27, 2017.)

Senator HERSHMAN

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 513, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 513 as reprinted February 1, 2017.)

KIRCHHOFER

Committee Vote: Yeas 7, Nays 0

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 513 be amended to read as follows:

Page 1, line 12, delete "who is employed by a home health agency" and insert ".".

Page 1, delete line 13.

Page 2, delete lines 21 through 28, begin a new paragraph and insert:

"(b) A home health agency shall randomly test:

(1) at least fifty percent (50%) of the home health agency's employees who:

(A) have direct contact with patients; and

(B) are not licensed by a board or commission under IC 25; at least annually; or

(2) when the home health agency has reasonable suspicion that an employee is engaged in the illegal use of a controlled substance."

Page 2, line 29, delete "(d)" and insert "(c)".

(Reference is to ESB 513 as printed March 28, 2017.)

SIEGRIST

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