

HOUSE BILL No. 1146

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-30-2-149.8; IC 35-38-11.

Synopsis: Certificate of employability. Creates a certificate of employability for persons convicted of misdemeanors and certain felonies. Provides that a court shall issue a certificate of employability to persons convicted of misdemeanors and Class D or Level 6 felonies under certain circumstances, and that a court may issue a certificate of employability to persons convicted of certain more serious felonies. Establishes a procedure to petition for a certificate of employability and requires payment of the civil filing fee to petition for a certificate of employability. Provides that a petition for a certificate of employability may be filed not earlier than: (1) six months after the date of conviction, in the case of a misdemeanor; (2) one year after the date of conviction, in the case of Class D or Level 6 felonies; (3) three years after the date of conviction or one year after the date the sentence is completed, in the case of more serious felonies; and (4) six years after the date of conviction or two years after the date the sentence is completed, in the case of the most serious felonies. Prohibits the granting of a certificate of employability to sex and violent offenders and persons convicted of specified serious crimes. Provides immunity to employers in negligent hiring cases who hire persons with a certificate of employability under certain circumstances.

Effective: July 1, 2018.

Harris

January 8, 2018, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1146

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

- 1 SECTION 1. IC 34-30-2-149.8 IS ADDED TO THE INDIANA
- 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2018]: **Sec. 149.8. IC 35-38-11-15**
- 4 **(Concerning negligent hiring and certificates of employability).**
- 5 SECTION 2. IC 35-38-11 IS ADDED TO THE INDIANA CODE
- 6 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 7 JULY 1, 2018]:
- 8 **Chapter 11. Certificate of Employability**
- 9 **Sec. 1. This chapter does not apply to the following:**
- 10 (1) **A sex or violent offender (as defined in IC 11-8-8-5).**
- 11 (2) **A person convicted of an offense described in:**
- 12 (A) **IC 35-42-1;**
- 13 (B) **IC 35-42-3.5; or**
- 14 (C) **IC 35-42-4.**
- 15 (3) **A person convicted of two (2) or more felony offenses that:**
- 16 (A) **involved the unlawful use of a deadly weapon; and**
- 17 (B) **were not committed as part of the same episode of**



1 criminal conduct.

2 **Sec. 2. (a) This section applies only to a person convicted of a**
 3 **misdemeanor, including a Class D felony (for a crime committed**
 4 **before July 1, 2014) or a Level 6 felony (for a crime committed**
 5 **after June 30, 2014) that has been reduced to a misdemeanor.**

6 **(b) Not earlier than six (6) months after the date of conviction,**
 7 **a person described in subsection (a) may petition a court for a**
 8 **certificate of employability.**

9 **(c) A person who files a petition for a certificate of**
 10 **employability under this section shall file the petition in a circuit**
 11 **or superior court in the county where the person resides.**

12 **(d) If the court finds by a preponderance of the evidence that:**
 13 **(1) the period required by this section has elapsed;**
 14 **(2) no charges are pending against the person;**
 15 **(3) the person has paid all fines, fees, and court costs, and**
 16 **satisfied any restitution obligation placed on the person as**
 17 **part of the person's sentence;**
 18 **(4) the person has not been convicted of a crime within the**
 19 **previous six (6) months;**
 20 **(5) the grant of the petition will materially assist the person in**
 21 **obtaining employment or occupational licensing;**
 22 **(6) the grant of the petition would not pose an unreasonable**
 23 **risk to the safety of the public or any individual; and**
 24 **(7) the person has a substantial need for the relief requested**
 25 **in order to live a law abiding life;**

26 **the court shall issue a certificate of employability in the form**
 27 **provided under section 12 of this chapter.**

28 **Sec. 3. (a) This section applies only to a person convicted of a**
 29 **Class D felony (for a crime committed before July 1, 2014) or a**
 30 **Level 6 felony (for a crime committed after June 30, 2014).**

31 **(b) This section does not apply to a person if the person's Class**
 32 **D felony or Level 6 felony was reduced to a Class A misdemeanor.**

33 **(c) Not earlier than one (1) year after the date of conviction, a**
 34 **person described in subsection (a) may petition a court for a**
 35 **certificate of employability.**

36 **(d) A person who files a petition for certificate of employability**
 37 **under this section shall file the petition in a circuit or superior**
 38 **court in the county where the person resides.**

39 **(e) If the court finds by a preponderance of the evidence that:**
 40 **(1) the period required by this section has elapsed;**
 41 **(2) no charges are pending against the person;**
 42 **(3) the person has paid all fines, fees, and court costs, and**



1 satisfied any restitution obligation placed on the person as
2 part of the person's sentence;

3 (4) the person has not been convicted of a crime in the past
4 year;

5 (5) the grant of the petition will materially assist the person in
6 obtaining employment or occupational licensing;

7 (6) the grant of the petition would not pose an unreasonable
8 risk to the safety of the public or any individual; and

9 (7) the person has a substantial need for the relief requested
10 in order to live a law abiding life;

11 the court shall issue a certificate of employability in the form
12 provided under section 12 of this chapter.

13 Sec. 4. (a) Except as provided in section 1 of this chapter and
14 subsection (b), this section applies only to a person convicted of a
15 felony who may not seek a certificate of employability under
16 section 3 of this chapter.

17 (b) This section does not apply to:

18 (1) an elected official convicted of an offense while serving the
19 elected official's term or as a candidate for public office; and

20 (2) a person convicted of a felony that resulted in serious
21 bodily injury to another person.

22 (c) Not earlier than three (3) years after the date of conviction
23 or one (1) year after the completion of the person's sentence, a
24 person described in subsection (a) may petition a court for a
25 certificate of employability.

26 (d) A person who files a petition for a certificate of
27 employability shall file the petition in a circuit or superior court in
28 the county where the person resides.

29 (e) If the court finds by a preponderance of the evidence that:

30 (1) the period required by this section has elapsed;

31 (2) no charges are pending against the person;

32 (3) the person has paid all fines, fees, and court costs, and
33 satisfied any restitution obligation placed on the person as
34 part of the person's sentence;

35 (4) the person has not been convicted of a crime within the
36 previous year;

37 (5) the grant of the petition will materially assist the person in
38 obtaining employment or occupational licensing;

39 (6) the grant of the petition would not pose an unreasonable
40 risk to the safety of the public or any individual; and

41 (7) the person has a substantial need for the relief requested
42 in order to live a law abiding life;



1 the court may issue a certificate of employability in the form
2 provided under section 12 of this chapter.

3 **Sec. 5. (a)** Except as provided in section 1 of this chapter, this
4 section applies only to a person convicted of a felony who may not
5 seek a certificate of employability under section 4 of this chapter.

6 (b) Not earlier than six (6) years after the date of conviction or
7 two (2) years after the completion of the person's sentence, a
8 person described in subsection (a) may petition a court for a
9 certificate of employability.

10 (c) A person who files a petition for a certificate of
11 employability under this section shall file the petition in a circuit
12 or superior court in the county where the person resides.

13 (d) If the court finds by a preponderance of the evidence that:

14 (1) the period required by this section has elapsed;

15 (2) no charges are pending against the person;

16 (3) the person has paid all fines, fees, and court costs, and
17 satisfied any restitution obligation placed on the person as
18 part of the person's sentence;

19 (4) the person has not been convicted of a crime within the
20 previous two (2) years;

21 (5) the grant of the petition will materially assist the person in
22 obtaining employment or occupational licensing;

23 (6) the grant of the petition would not pose an unreasonable
24 risk to the safety of the public or any individual; and

25 (7) the person has a substantial need for the relief requested
26 in order to live a law abiding life;

27 the court may issue a certificate of employability in the form
28 provided under section 12 of this chapter.

29 **Sec. 6. (a)** A petition filed under sections 2 through 5 of this
30 chapter must be verified and must include the following:

31 (1) The petitioner's full name and all other legal names or
32 aliases by which the petitioner is or has been known.

33 (2) The petitioner's Social Security number and any Social
34 Security numbers associated with the aliases provided in
35 subdivision (1).

36 (3) The petitioner's driver's license number.

37 (4) The petitioner's date of birth.

38 (5) The petitioner's address, including city, county, state, and
39 zip code.

40 (6) The length of time the petitioner has been a resident of
41 Indiana, expressed in years and months.

42 (7) The petitioner's employment history, specifying the name



1 of, and dates of employment with, each employer and the
2 positions held.

3 **(8) The petitioner shall affirm that no criminal investigation**
4 **or charges are pending against the petitioner.**

5 **(9) The petitioner shall affirm that the petitioner has not**
6 **committed another crime within the period required for a**
7 **certificate of employability.**

8 **(10) The petitioner shall list all convictions, the cause number**
9 **of each conviction, if known, the date of the conviction, and**
10 **any appeals from the conviction, and the date any appellate**
11 **opinion was issued, if applicable.**

12 **(11) The petitioner shall provide verifiable references and**
13 **endorsements, including the names of three (3) immediate**
14 **family members of the petitioner, or other persons with whom**
15 **the petitioner has a close relationship, who support the**
16 **person's reentry plan.**

17 **(12) The petitioner shall provide a summary of the reasons the**
18 **petitioner believes the certificate of employability should be**
19 **granted.**

20 **(13) The petitioner shall affirm that the required period of**
21 **time has elapsed.**

22 **(b) The petitioner may include in the petition any other**
23 **information that the petitioner believes may assist the court.**

24 **(c) A person who files a petition under this chapter is required**
25 **to pay the filing fee required in civil cases. The court may reduce**
26 **or waive this fee if the person is indigent.**

27 **Sec. 7. (a) A person who files a petition under this chapter shall**
28 **serve a copy of the petition on the following persons, in accordance**
29 **with the Indiana Rules of Trial Evidence:**

30 **(1) The prosecuting attorney in the county where the**
31 **petitioner resides.**

32 **(2) The prosecuting attorney in the county where the**
33 **petitioner was convicted.**

34 **(b) A prosecuting attorney described in subsection (a)(2) shall**
35 **inform any victims of crimes perpetrated by the petitioner of the**
36 **victims' rights under section 8 of this chapter by sending notice to**
37 **the last known address of the victims. However, if a court has no**
38 **discretion in granting a petition for a certificate of employability**
39 **under this chapter, the prosecuting attorney is not required to send**
40 **notice to victims under this subsection.**

41 **(c) A prosecuting attorney has thirty (30) days to file an**
42 **objection to a petition served on the prosecuting attorney under**



1 subsection (a). If no objection is filed in the time prescribed under
2 this subsection:

3 (1) the prosecuting attorney waives any objection to the
4 petition; and

5 (2) the court shall proceed to consider the petition.

6 Sec. 8. (a) If no objection is filed under section 7 of this chapter,
7 the court may grant a petition for a certificate of employability
8 without a hearing.

9 (b) A court may summarily deny a petition for a certificate of
10 employability if the petition does not meet the requirements of
11 section 6 of this chapter or if the statements made in the petition
12 demonstrate that the petitioner is not entitled to relief.

13 (c) If a prosecuting attorney objects to a petition under section
14 7 of this chapter, the prosecuting attorney shall file the reasons for
15 objecting to the petition with the court and serve a copy of the
16 objections on the petitioner at the time the prosecuting attorney
17 objects to the petition. The court shall set the matter for hearing
18 not sooner than sixty (60) days after service of the petition on the
19 prosecuting attorney.

20 (d) A victim of an offense for which the petitioner was convicted
21 may submit an oral or written statement in support of or in
22 opposition to the petition at the time of the hearing.

23 (e) The petitioner must prove by a preponderance of the
24 evidence that the facts alleged in the petition are true.

25 Sec. 9. (a) A court that receives a petition for a certificate of
26 employability under this chapter shall review:

27 (1) the petition;

28 (2) the petitioner's criminal history;

29 (3) filings submitted by a prosecuting attorney;

30 (4) statements received from a victim described in section 8(d)
31 of this chapter; and

32 (5) all other relevant evidence.

33 (b) The court may order any:

34 (1) report;

35 (2) investigation; or

36 (3) additional disclosure by the petitioner;

37 that the court believes is necessary for the court to rule on the
38 petition.

39 Sec. 10. The grant or denial of a petition for a certificate of
40 employability is an appealable final order.

41 Sec. 11. (a) If a court grants a petition for a certificate of
42 employability, the court shall provide the petitioner a certificate of



1 employability for the petitioner's use in obtaining employment.

2 (b) If the court denies the petition for a certificate of
3 employability, the court shall provide notice to the petitioner of the
4 court's denial. The court may place conditions on the petitioner
5 regarding the petitioner's filing of any further petitions for a
6 certificate of employment.

7 **Sec. 12. (a) The office of judicial administration shall create:**

8 (1) a standard petition for a certificate of employability that
9 provides for submission of all information required under
10 section 6 of this chapter; and

11 (2) a standard certificate of employability to be issued by a
12 court.

13 (b) The form described in subsection (a)(1) shall be made
14 available on the office of judicial administration's Internet web
15 site.

16 **Sec. 13. A certificate of employability issued under this chapter**
17 **shall be presumptively revoked if the person to whom the**
18 **certificate of employability was issued is convicted of an offense**
19 **after the issuance of the certificate of employability.**

20 **Sec. 14. In a judicial or administrative proceeding alleging**
21 **negligence or other fault, a certificate of employability may be**
22 **introduced as evidence of the person's exercise of due care in**
23 **hiring, retaining, certifying, admitting to a school or program, or**
24 **otherwise transacting business or engaging in activity with the**
25 **person to whom the certificate of employability was issued.**

26 **Sec. 15. (a) In a proceeding on a claim against an employer for**
27 **negligent hiring of a person to whom a certificate of employability**
28 **has been issued under this chapter, the certificate of employability**
29 **provides immunity for the employer as to the claim, if the**
30 **employer knew of the certificate of employability at the time of the**
31 **alleged negligence.**

32 (b) An employer who hires a person who has been issued a
33 certificate of employability under this chapter may be held liable
34 in a civil action based on or relating to the retention of the person
35 as an employee only if:

36 (1) the person, after being hired, subsequently demonstrates
37 dangerous behavior or is convicted of a crime;

38 (2) the person is retained by the employer as an employee
39 after the demonstration of dangerous behavior or conviction
40 of a crime;

41 (3) the plaintiff proves by a preponderance of evidence that
42 the employer had actual knowledge that the person was



1 **dangerous or had been convicted of a crime; and**
2 **(4) the employer willfully retained the person as an employee.**
3 **Sec. 16. (a) A person may not waive the right to a certificate of**
4 **employability under this chapter as part of a plea agreement. Any**
5 **purported waiver of the right to a certificate of employability is**
6 **invalid and unenforceable as against public policy.**
7 **(b) This section does not prohibit the finding of a waiver of the**
8 **right to a certificate of employability based on a failure to comply**
9 **with this chapter.**

