



February 23, 2018

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# ENGROSSED HOUSE BILL No. 1245

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DIGEST OF HB 1245 (Updated February 21, 2018 11:55 am - DI 102)

**Citations Affected:** IC 25-1; IC 36-1.

**Synopsis:** Occupational licensing. Provides that the state and a local governmental unit (unit) shall explicitly list the crimes that will disqualify an individual from receiving an occupational license. Provides that the use of an individual's conviction of a crime as a disqualifying criminal conviction is limited to a crime that specifically and directly relates to the duties and responsibilities of the occupation for which the individual is applying for or holds a license. Provides that the period of disqualification may not exceed five years unless the individual: (1) was convicted of a crime of violence or an offense relating to a criminal sexual act; or (2) is convicted of a second or subsequent crime during the disqualification period. Provides that an individual having a criminal conviction may at any time petition the board or unit requiring a license for a determination as to whether the individual's criminal conviction will disqualify the individual from receiving that license.

**Effective:** July 1, 2018.

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## DeVon, VanNatter, Morris

(SENATE SPONSORS — BOOTS, BROWN L)

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January 16, 2018, read first time and referred to Committee on Employment, Labor and Pensions.

January 23, 2018, reported — Do Pass.

February 1, 2018, read second time, amended, ordered engrossed.

February 2, 2018, engrossed.

February 5, 2018, read third time, passed. Yeas 54, nays 39.

SENATE ACTION

February 7, 2018, read first time and referred to Committee on Pensions and Labor.

February 22, 2018, amended, reported favorably — Do Pass.

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EH 1245—LS 7030/DI 102





February 23, 2018

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.

## ENGROSSED HOUSE BILL No. 1245

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

1 SECTION 1. IC 25-1-1.1-6 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2018]: **Sec. 6. (a) This section applies to a license or certificate**  
4 **under this title that is in effect on July 1, 2018, or created on or**  
5 **established after that date.**  
6 **(b) As used in this section, "crime" has the meaning set forth in**  
7 **IC 33-23-1-4.**  
8 **(c) As used in this section, "criminal history information" has**  
9 **the meaning set forth in IC 5-2-4-1.**  
10 **(d) Not later than November 1, 2018, a board, commission, or**  
11 **committee shall revise its licensing or certification requirements to**  
12 **the extent necessary to explicitly list the crimes that will disqualify**  
13 **an individual from receiving a license or certificate under this title.**  
14 **The board, commission, or committee may not:**  
15 **(1) use nonspecific terms, such as moral turpitude or good**  
16 **character, as a licensing or certification requirement; or**

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- 1           (2) consider an arrest that does not result in a conviction.
- 2           (e) A board's, commission's, or committee's use of an  
3 individual's conviction of a crime as a disqualifying criminal  
4 conviction is limited to a crime that is specifically and directly  
5 related to the duties and responsibilities of the occupation or  
6 profession for which the individual is applying for or holds a  
7 license or certification.
- 8           (f) If an applicant has a disqualifying criminal history, the  
9 board, commission, or committee shall consider the following in  
10 determining whether to deny a license to the applicant, based on a  
11 clear and convincing showing:
- 12           (1) The nature and seriousness of the crime for which the  
13 individual was convicted.
- 14           (2) The passage of time since the commission of the crime.
- 15           (3) The relationship of the crime to the ability, capacity, and  
16 fitness required to perform the duties and discharge the  
17 responsibilities of the occupation.
- 18           (4) Evidence of rehabilitation or treatment undertaken by the  
19 individual that might mitigate against a direct relation to the  
20 ability, capacity, and fitness required to perform the duties  
21 and discharge the responsibilities of the occupation.
- 22           (g) If an individual has a disqualifying criminal conviction, the  
23 period of disqualification may not exceed five (5) years after the  
24 date of the conviction, unless the individual:
- 25           (1) was convicted of a crime of violence (as defined by  
26 IC 35-50-1-2(a));
- 27           (2) was convicted of an offense relating to a criminal sexual  
28 act (as defined by IC 35-31.5-2-216); or
- 29           (3) is convicted of a second or subsequent crime during the  
30 disqualification period.
- 31           (h) An individual having a misdemeanor or felony criminal  
32 conviction may at any time petition a board, commission, or  
33 committee requiring a license or certificate for a determination as  
34 to whether the individual's misdemeanor or felony criminal  
35 conviction will disqualify the individual from receiving the license  
36 or certification. An individual filing a petition under this subsection  
37 must submit:
- 38           (1) the individual's criminal history information or an  
39 authorization for the board, commission, or committee to  
40 obtain the individual's criminal history information; and
- 41           (2) any additional information requested by the board,  
42 commission, or committee to assist the board, commission, or



1 committee in its review of the individual's petition.

2 (i) If a board, commission, or committee denies an individual a  
3 license solely or in part because of the applicant's criminal history,  
4 the board, commission, or committee shall notify the individual in  
5 writing of the following:

6 (1) The grounds and reasons for the denial or disqualification.

7 (2) The applicant has the right to a hearing to challenge the  
8 licensing authority's decision.

9 (3) The earliest date the applicant may reapply for a license.

10 (4) Evidence of rehabilitation may be considered upon  
11 reapplication.

12 Any written determination by the board, commission, or  
13 committee that an individual's criminal history is specifically listed  
14 as a disqualifying conviction and is directly related to the duties  
15 and responsibilities for the licensed occupation must be  
16 documented in written findings for each of the factors specified in  
17 subdivisions (1) through (4) by clear and convincing evidence  
18 sufficient for review by a court. In an administrative hearing or  
19 civil action reviewing the denial of a license, a board, commission,  
20 or committee has the burden of proof on the question of whether  
21 the individual's criminal history directly relates to the occupation  
22 for which the license is sought.

23 (j) The board, commission, or committee shall inform the  
24 individual of its determination concerning the individual's petition  
25 not later than thirty (30) days after the petition, criminal history  
26 information, and any other information requested under  
27 subsection (h) is received by the board, commission, or committee.

28 (k) The board, commission, or committee may charge a fee  
29 established under IC 25-1-8 that does not exceed twenty-five  
30 dollars (\$25) to pay its costs of reviewing a petition filed under  
31 subsection (h).

32 (l) A board, commission, or committee may adopt rules under  
33 IC 4-22-2 to implement this section, including emergency rules  
34 under IC 4-22-2-37.1.

35 SECTION 2. IC 36-1-26 IS ADDED TO THE INDIANA CODE AS  
36 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
37 1, 2018]:

38 **Chapter 26. Effect of Criminal Convictions on Licensed Persons**

39 **Sec. 1.** As used in this chapter, "crime" has the meaning set  
40 forth in IC 33-23-1-4.

41 **Sec. 2.** As used in this chapter, "criminal history information"  
42 has the meaning set forth in IC 5-2-4-1.



1           **Sec. 3. As used in this chapter, "license" means any license,**  
 2 **registration, certification, permit, or endorsement required by a**  
 3 **unit for an individual to practice an occupation or profession in an**  
 4 **area over which the unit has jurisdiction.**

5           **Sec. 4. (a) Not later than November 1, 2018, a unit shall revise**  
 6 **its licensing requirements to the extent necessary to explicitly list**  
 7 **the crimes that will disqualify an individual from receiving a**  
 8 **license required by the unit. The unit may not:**

9           **(1) use nonspecific terms, such as moral turpitude or good**  
 10 **character, as a licensing requirement; or**

11           **(2) consider an arrest that does not result in a conviction.**

12           **(b) A unit's use of an individual's conviction of a crime as a**  
 13 **disqualifying criminal conviction is limited to a crime that is**  
 14 **specifically and directly related to the duties and responsibilities of**  
 15 **the occupation or profession for which the individual is applying**  
 16 **for or holds a license.**

17           **(c) If an applicant has a disqualifying criminal history, the unit**  
 18 **shall consider the following in determining whether to deny a**  
 19 **license to the applicant, based on a clear and convincing showing:**

20           **(1) The nature and seriousness of the crime for which the**  
 21 **individual was convicted.**

22           **(2) The passage of time since the commission of the crime.**

23           **(3) The relationship of the crime to the ability, capacity, and**  
 24 **fitness required to perform the duties and discharge the**  
 25 **responsibilities of the occupation.**

26           **(4) Evidence of rehabilitation or treatment undertaken by the**  
 27 **individual that might mitigate against a direct relation to the**  
 28 **ability, capacity, and fitness required to perform the duties**  
 29 **and discharge the responsibilities of the occupation.**

30           **(d) If an individual has a disqualifying criminal conviction, the**  
 31 **period of disqualification may not exceed five (5) years after the**  
 32 **date of the conviction or release from incarceration, whichever is**  
 33 **later, unless the individual:**

34           **(1) was convicted of a crime of violence (as defined by**  
 35 **IC 35-50-1-2(a));**

36           **(2) was convicted of an offense relating to a criminal sexual**  
 37 **act (as defined by IC 35-31.5-2-216); or**

38           **(3) is convicted of a second or subsequent crime during the**  
 39 **disqualification period.**

40           **Sec. 5. (a) An individual having a misdemeanor or felony**  
 41 **criminal conviction may at any time petition a unit requiring a**  
 42 **license for a determination as to whether the individual's**



1        **misdemeanor or felony criminal conviction will disqualify the**  
2        **individual from receiving a license. An individual filing a petition**  
3        **under this subsection must submit:**

4            **(1) the individual's criminal history information or an**  
5            **authorization for the unit to obtain the individual's criminal**  
6            **history information; and**

7            **(2) any additional information requested by the unit to assist**  
8            **the unit in its review of the individual's petition.**

9            **(b) If a unit denies an individual a license solely or in part**  
10        **because of the applicant's criminal history, the unit shall notify the**  
11        **individual in writing of the following:**

12            **(1) The grounds and reasons for the denial or disqualification.**

13            **(2) The applicant has the right to a hearing to challenge the**  
14            **licensing authority's decision.**

15            **(3) The earliest date the applicant may reapply for a license.**

16            **(4) Evidence of rehabilitation may be considered upon**  
17            **reapplication.**

18        **Any written determination by the unit that an individual's criminal**  
19        **history is specifically listed as a disqualifying conviction and is**  
20        **directly related to the duties and responsibilities for the licensed**  
21        **occupation must be documented in written findings for each of the**  
22        **factors specified in subdivisions (1) through (4) by clear and**  
23        **convincing evidence sufficient for review by a court. In an**  
24        **administrative hearing or civil action reviewing the denial of a**  
25        **license, a unit has the burden of proof on the question of whether**  
26        **the individual's criminal history directly relates to the occupation**  
27        **for which the license is sought.**

28            **(c) The unit shall inform the individual of its determination**  
29            **concerning the individual's petition not later than thirty (30) days**  
30            **after the petition, criminal history information, and any other**  
31            **information requested under subsection (a) are received by the**  
32            **unit.**

33            **(d) The unit may charge a fee established under IC 36-1-3-6 that**  
34            **does not exceed twenty-five dollars (\$25) to pay the unit's costs of**  
35            **reviewing a petition filed under subsection (a).**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred House Bill 1245, 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 HB 1245 as introduced.)

VANNATTER

Committee Vote: Yeas 8, Nays 3

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1245 be amended to read as follows:

Page 2, between lines 8 and 9, begin a new paragraph and insert:

**"(f) If an applicant has a disqualifying criminal history, the board, commission, or committee shall consider the following in determining whether to deny a license to the applicant, based on a clear and convincing showing:**

- (1) The nature and seriousness of the crime for which the individual was convicted.**
- (2) The passage of time since the commission of the crime.**
- (3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation.**
- (4) Evidence of rehabilitation or treatment undertaken by the individual that might mitigate against a direct relation to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation."**

Page 2, line 9, delete "(f)" and insert "(g)".

Page 2, line 18, delete "(g)" and insert "(h)".

Page 2, between lines 30 and 31, begin a new paragraph and insert:

**"(i) If a board, commission, or committee denies an individual a license solely or in part because of the applicant's criminal history, the board, commission, or committee shall notify the individual in writing of the following:**

- (1) The grounds and reasons for the denial or disqualification.**
- (2) The applicant has the right to a hearing to challenge the licensing authority's decision.**
- (3) The earliest date the applicant may reapply for a license.**
- (4) Evidence of rehabilitation may be considered upon**

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**reapplication.**

**Any written determination by the board, commission, or committee that an individual's criminal history is specifically listed as a disqualifying conviction and is directly related to the duties and responsibilities for the licensed occupation must be documented in written findings for each of the factors specified in subdivisions (1) through (4) by clear and convincing evidence sufficient for review by a court. In an administrative hearing or civil action reviewing the denial of a license, a board, commission, or committee has the burden of proof on the question of whether the individual's criminal history directly relates to the occupation for which the license is sought."**

Page 2, line 31, delete "(h)" and insert "**(j)**".

Page 2, line 35, delete "(g)" and insert "**(h)**".

Page 2, line 36, delete "(i)" and insert "**(k)**".

Page 2, line 39, delete "(g)." and insert "**(h)**".

Page 2, line 40, delete "(j)" and insert "**(I)**".

Delete page 3.

Page 4, delete line 1.

Page 4, delete lines 32 through 40, begin a new paragraph and insert:

**"(e) IC 36-1-3-8(a)(5) applies to a fee imposed by a unit for an occupational or professional license."**

Page 4, delete lines 41 through 42.

Page 5, delete lines 1 through 39.

Page 6, between lines 21 and 22, begin a new paragraph and insert:

**"(c) If an applicant has a disqualifying criminal history, the unit shall consider the following in determining whether to deny a license to the applicant, based on a clear and convincing showing:**

**(1) The nature and seriousness of the crime for which the individual was convicted.**

**(2) The passage of time since the commission of the crime.**

**(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation.**

**(4) Evidence of rehabilitation or treatment undertaken by the individual that might mitigate against a direct relation to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation."**

Page 6, line 22, delete "(c)" and insert "**(d)**".

Page 6, line 24, delete "conviction," and insert "**conviction or release from incarceration, whichever is later,**".



Page 6, between lines 41 and 42, begin a new paragraph and insert:

**"(b) If a unit denies an individual a license solely or in part because of the applicant's criminal history, the unit shall notify the individual in writing of the following:**

- (1) The grounds and reasons for the denial or disqualification.**
- (2) The applicant has the right to a hearing to challenge the licensing authority's decision.**
- (3) The earliest date the applicant may reapply for a license.**
- (4) Evidence of rehabilitation may be considered upon reapplication.**

**Any written determination by the unit that an individual's criminal history is specifically listed as a disqualifying conviction and is directly related to the duties and responsibilities for the licensed occupation must be documented in written findings for each of the factors specified in subdivisions (1) through (4) by clear and convincing evidence sufficient for review by a court. In an administrative hearing or civil action reviewing the denial of a license, a unit has the burden of proof on the question of whether the individual's criminal history directly relates to the occupation for which the license is sought."**

Page 6, line 42, delete "(b)" and insert "(c)".

Page 7, line 5, delete "(c)" and insert "(d)".

Renumber all SECTIONS consecutively.

(Reference is to HB 1245 as printed January 23, 2018.)

DEVON

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1245, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, delete lines 35 through 42.



Page 4, delete lines 1 through 24.  
Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.

(Reference is to HB 1245 as reprinted February 2, 2018.)

BOOTS, Chairperson

Committee Vote: Yeas 9, Nays 0.

