

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 ENROLLED ACT No. 1245

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

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

SECTION 1. IC 25-1-1.1-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 6. (a) This section applies to a license or certificate under this title that is in effect on July 1, 2018, or created on or established after that date.**

(b) As used in this section, "crime" has the meaning set forth in IC 33-23-1-4.

(c) As used in this section, "criminal history information" has the meaning set forth in IC 5-2-4-1.

(d) Not later than November 1, 2018, a board, commission, or committee shall revise its licensing or certification requirements to the extent necessary to explicitly list the crimes that will disqualify an individual from receiving a license or certificate under this title. The board, commission, or committee may not:

- (1) use nonspecific terms, such as moral turpitude or good character, as a licensing or certification requirement; or**
- (2) consider an arrest that does not result in a conviction.**

(e) A board's, commission's, or committee's use of an individual's conviction of a crime as a disqualifying criminal conviction is limited to a crime that is specifically and directly



related to the duties and responsibilities of the occupation or profession for which the individual is applying for or holds a license or certification.

(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.

(g) If an individual has a disqualifying criminal conviction, the period of disqualification may not exceed five (5) years after the date of the conviction, unless the individual:

- (1) was convicted of a crime of violence (as defined by IC 35-50-1-2(a));
- (2) was convicted of an offense relating to a criminal sexual act (as defined by IC 35-31.5-2-216); or
- (3) is convicted of a second or subsequent crime during the disqualification period.

(h) An individual having a misdemeanor or felony criminal conviction may at any time petition a board, commission, or committee requiring a license or certificate for a determination as to whether the individual's misdemeanor or felony criminal conviction will disqualify the individual from receiving the license or certification. An individual filing a petition under this subsection must submit:

- (1) the individual's criminal history information or an authorization for the board, commission, or committee to obtain the individual's criminal history information; and
- (2) any additional information requested by the board, commission, or committee to assist the board, commission, or committee in its review of the individual's petition.

(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 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.

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

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

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

SECTION 2. IC 25-1-9.1-12, AS ADDED BY P.L.147-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) This section does not apply to a referral made by a provider that has confirmed that the provider to which a covered individual is referred is a network provider with respect to the covered individual's health plan.

(b) A provider that makes a referral shall provide to the covered individual an electronic or paper copy of written notice that states all of the following:

- (1) That an out of network provider may be called upon to render health care items or services to the covered individual during the course of treatment.



(2) That an out of network provider described in subdivision (1) is not bound by the payment provisions that apply to health care items or services rendered by a network provider under the covered individual's health plan.

(3) That the covered individual may contact the covered individual's health plan before receiving health care items or services rendered by an out of network provider described in subdivision (1):

(A) to obtain a list of network providers that may render the health care items or services; and

(B) for additional assistance.

(c) A provider that makes a referral via telephone to a patient of record shall provide to the covered individual all of the following information:

(1) That an out of network provider may be called upon to render health care items or services to the covered individual during the course of treatment.

(2) That an out of network provider described in subdivision (1) is not bound by the payment provisions that apply to health care items or services rendered by a network provider under the covered individual's health plan.

(3) That the covered individual may contact the covered individual's health plan before receiving health care items or services rendered by an out of network provider described in subdivision (1):

(A) to obtain a list of network providers that may render the health care items or services; and

(B) for additional assistance.

(4) The provider shall note in the covered individual's medical chart:

(A) the name of the provider to whom the covered individual was referred; and

(B) that the referral was made via telephone.

SECTION 3. IC 25-1-16-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) As used in this section, "unit" has the meaning set forth in IC 36-1-2-23.

(b) The agency shall develop proposed policies and parameters for licensing, registration, and certification of occupations and professions by units to reduce or eliminate redundant and duplicative licensing, regulation, and certification of an occupation or profession by both the state and multiple units. When



developing the proposed policies and parameters, the agency shall consult with:

- (1) the small business ombudsman (designated under IC 5-28-17-6);**
- (2) the office; and**
- (3) representatives of units.**

(c) Not later than November 1, 2018, the agency shall submit to the legislative council in an electronic format under IC 5-14-6 a report that includes:

- (1) the proposed policies and parameters developed under subsection (b); and**
- (2) any recommended legislation.**

(d) This section expires January 1, 2019.

SECTION 4. IC 33-42-13-1, AS AMENDED BY SEA 372-2018, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) The secretary of state may do any of the following with respect to a commission under IC 33-42-12:

- (1) Deny the commission.
- (2) Refuse a subsequent commission.
- (3) Revoke the commission.
- (4) Suspend the commission.
- (5) Impose a condition on the commission.

(b) The secretary of state may investigate any violation of this chapter by a notary public.

(c) An action described in subsection (a) may be taken against any notary public for any act or omission that demonstrates a deficiency in competence, honesty, integrity, or reliability, including the following:

- (1) Any failure to comply with this article or rules adopted under this article.
- (2) Any deceitful, dishonest, or fraudulent statement or omission made during the application for a commission as a notary public.
- (3) Any conviction for a felony offense or a crime involving deceit, dishonesty, or fraud.
- (4) An adverse ruling or admission of liability in any legal proceeding pertaining to deceit, dishonesty, or fraud.
- (5) Any failure to discharge any duty required of a notary public.
- (6) Any use of false or misleading advertisements.
- (7) Use of any false or misleading statement claiming a right or privilege that the notary public does not have.
- (8) Any of the following with respect to a commission as a notary public in another state:

- (A) Denial of the commission.



- (B) Refusal of a subsequent commission.
- (C) Revocation of the commission.
- (D) Suspension of the commission.
- (E) Imposition of a condition on the commission.
- (9) Any violation of a rule or requirement that:
 - (A) pertains to a notary public; and
 - (B) is required by the secretary of state.
- (10) Any failure to maintain an assurance as described in IC 33-42-12.

(~~e~~) (d) If the secretary of state acts under subsection (a) on an applicant or notary public's commission, the affected party is entitled to timely notice and a hearing as described in IC 4-21.5.

(~~d~~) (e) The secretary of state's decision to discipline an applicant or notary public as described in this section does not prevent a person from pursuing any civil or criminal cause of action against the offending applicant or notary public.

SECTION 5. IC 36-1-3-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 12. (a) This section does not prohibit any of the following:**

- (1) A requirement for a license, registration, certification, or permit required under an ordinance or rule adopted under IC 36-7.
- (2) A requirement for a permit or registration for a particular project for:
 - (A) the alteration, construction, demolition, or repair of a building; or
 - (B) other work on real property;
 required under an ordinance or rule adopted under another provision of this title.
- (3) The ability to revoke, suspend, or impose additional conditions on a permit or registration previously given if the person:
 - (A) holding the permit; or
 - (B) registered;
 has performed substandard work or has otherwise violated any condition of the permit or registration.
- (4) A requirement for a license for an individual to practice an occupation or profession when the unit determines the establishment and enforcement of health and safety standards for the occupation or profession are appropriate and necessary to protect the public.



(b) Except as provided in subsection (a), a unit does not have the power to license, register, or certify a person to practice the person's profession or occupation within the unit if the occupation or profession is subject to licensure, registration, or certification under the Indiana Code.

SECTION 6. IC 36-1-26 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:

Chapter 26. Effect of Criminal Convictions on Licensed Persons

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

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

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

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

- (1) use nonspecific terms, such as moral turpitude or good character, as a licensing requirement; or**
- (2) consider an arrest that does not result in a conviction.**

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

(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.**



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

- (1) was convicted of a crime of violence (as defined by IC 35-50-1-2(a));
- (2) was convicted of an offense relating to a criminal sexual act (as defined by IC 35-31.5-2-216); or
- (3) is convicted of a second or subsequent crime during the disqualification period.

Sec. 5. (a) An individual having a misdemeanor or felony criminal conviction may at any time petition a unit requiring a license for a determination as to whether the individual's misdemeanor or felony criminal conviction will disqualify the individual from receiving a license. An individual filing a petition under this subsection must submit:

- (1) the individual's criminal history information or an authorization for the unit to obtain the individual's criminal history information; and
- (2) any additional information requested by the unit to assist the unit in its review of the individual's petition.

(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.

(c) The unit shall inform the individual of its determination concerning the individual's petition not later than thirty (30) days



after the petition, criminal history information, and any other information requested under subsection (a) are received by the unit.

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

SECTION 7. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

HEA 1245 — CC 1

