

# SENATE BILL No. 338

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-9-10.

**Synopsis:** Employers and expungement. Specifies that the prohibition against questioning a person applying for: (1) employment; (2) a license; or (3) another right or privilege; concerning an expunged arrest or conviction also applies during an interview. Provides that a person who unlawfully questions an applicant about an expunged criminal record commits a Class C infraction, and increases the penalty to a Class B infraction for a subsequent violation. Limits the number of violations that may be charged to: (1) one violation against a person without a prior adjudication; and (2) not more than one violation per month against a person with one or more prior adjudications; regardless of the number of individual violations the person may have committed.

**Effective:** July 1, 2017.

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January 9, 2017, read first time and referred to Committee on Civil Law.

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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.

## SENATE BILL No. 338

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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 35-38-9-10, AS AMENDED BY P.L.142-2015,  
2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]: Sec. 10. (a) This section does not apply to a person to  
4 whom sealed records may be disclosed under section 6(a)(2) of this  
5 chapter.  
6 (b) It is unlawful discrimination for any person to:  
7 (1) suspend;  
8 (2) expel;  
9 (3) refuse to employ;  
10 (4) refuse to admit;  
11 (5) refuse to grant or renew a license, permit, or certificate  
12 necessary to engage in any activity, occupation, or profession; or  
13 (6) otherwise discriminate against;  
14 any person because of a conviction or arrest record expunged or sealed  
15 under this chapter.  
16 (c) Except as provided in section 6(f) of this chapter, the civil rights  
17 of a person whose conviction has been expunged shall be fully restored,



1 including the right to vote, to hold public office, to be a proper person  
2 under IC 35-47-1-7(2), and to serve as a juror.

3 (d) In any **interview or** application for employment, a license, or  
4 other right or privilege, a person may be questioned about a previous  
5 criminal record only in terms that exclude expunged convictions or  
6 arrests, such as: "Have you ever been arrested for or convicted of a  
7 crime that has not been expunged by a court?".

8 (e) A person whose record is expunged shall be treated as if the  
9 person had never been convicted of the offense. However, upon a  
10 subsequent arrest or conviction for an unrelated offense, the prior  
11 expunged conviction:

12 (1) may be considered by the court in determining the sentence  
13 imposed for the new offense;

14 (2) is a prior unrelated conviction for purposes of:

15 (A) a habitual offender enhancement; and

16 (B) enhancing the new offense based on a prior conviction;  
17 and

18 (3) may be admitted as evidence in the proceeding for a new  
19 offense as if the conviction had not been expunged.

20 (f) Any person that discriminates against a person as described in  
21 subsection (b) commits a Class C infraction and may be held in  
22 contempt by the court issuing the order of expungement or by any other  
23 court of general jurisdiction. Any person may file a written motion of  
24 contempt to bring an alleged violation of this section to the attention of  
25 a court. In addition, the person is entitled to injunctive relief.

26 (g) In any judicial or administrative proceeding alleging negligence  
27 or other fault, an order of expungement may be introduced as evidence  
28 of the person's exercise of due care in hiring, retaining, licensing,  
29 certifying, admitting to a school or program, or otherwise transacting  
30 business or engaging in activity with the person to whom the order of  
31 expungement was issued.

32 (h) A conviction that has been expunged under this chapter is not  
33 admissible as evidence in an action for negligent hiring, admission, or  
34 licensure against a person or entity who relied on the order.

35 (i) An expungement case, and all documents filed in the case,  
36 becomes confidential when the court issues the order granting the  
37 petition. However, until the court issues the order granting the petition,  
38 documents filed in the case are not confidential, and any hearing held  
39 in the case shall be open.

40 (j) **A person who unlawfully questions an applicant about an**  
41 **expunged criminal record in violation of subsection (d) commits a**  
42 **Class C infraction. However, the offense is a Class B infraction if**



1     **the person has a previous adjudication for a violation of subsection**  
2     **(d). A prosecuting attorney may file:**  
3         **(1) only one (1) action against a person for a violation of**  
4         **subsection (d) if the person does not have a previous**  
5         **adjudication for a violation of subsection (d); and**  
6         **(2) if the person has a previous adjudication for a violation of**  
7         **subsection (d), not more than one (1) additional action per**  
8         **calendar month against the person;**  
9     **regardless of the number of individual violations that the person**  
10    **may have committed.**

