

SENATE BILL No. 622

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-3; IC 16-18-2; IC 16-28-14.7; IC 34-30-2-67.7; IC 35-52-16-16.5.

Synopsis: Health facility employee criminal background check. Requires a health facility to obtain a national criminal history background check or an expanded criminal history check for the health facility's employees. Provides immunity to persons for: (1) denying or terminating an individual's employment because of the individual's criminal history; or (2) reporting to or participating in the proceedings of the state department of health or the registry of nurse aides.

Effective: July 1, 2019.

Breaux

January 15, 2019, read first time and referred to Committee on Health and Provider Services.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 622

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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

1 SECTION 1. IC 10-13-3-16, AS AMENDED BY P.L.197-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 16. (a) As used in this chapter, "qualified entity"
4 means a business or an organization, whether public, private, for-profit,
5 nonprofit, or voluntary, that provides care or care placement services.
6 (b) The term includes the following:
7 (1) A business or an organization that licenses or certifies others
8 to provide care or care placement services.
9 (2) A home health agency licensed under IC 16-27-1.
10 (3) A personal services agency licensed under IC 16-27-4.
11 **(4) A health facility licensed under IC 16-28-2.**
12 SECTION 2. IC 10-13-3-39, AS AMENDED BY P.L.183-2017,
13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2019]: Sec. 39. (a) The department is designated as the
15 authorized agency to receive requests for, process, and disseminate the
16 results of national criminal history background checks that comply with
17 this section and 42 U.S.C. 5119a.



1 (b) A qualified entity may contact the department to request a
2 national criminal history background check on any of the following
3 persons:

4 (1) A person who seeks to be or is employed with the qualified
5 entity. A request under this subdivision must be made not later
6 than three (3) months after the person is initially employed by the
7 qualified entity.

8 (2) A person who seeks to volunteer or is a volunteer with the
9 qualified entity. A request under this subdivision must be made
10 not later than three (3) months after the person initially volunteers
11 with the qualified entity.

12 (3) A person for whom a national criminal history background
13 check is required under any law relating to the licensing of a
14 home, center, or other facility for purposes of day care or
15 residential care of children.

16 (4) A person for whom a national criminal history background
17 check is permitted for purposes of:

18 (A) placement of a child in a foster family home, a prospective
19 adoptive home, or the home of a relative, legal guardian to
20 whom IC 29-3-8-9 applies, or other caretaker under section
21 27.5 of this chapter or IC 31-34;

22 (B) a report concerning an adoption as required by IC 31-19-8;

23 (C) collaborative care host homes and supervised independent
24 living arrangements as provided in IC 31-28-5.8-5.5; or

25 (D) reunification of a child with a parent, guardian, or
26 custodian as provided in IC 31-34-21-5.5.

27 (5) A person for whom a national criminal history background
28 check is required for the licensing of a group home, child caring
29 institution, child placing agency, or foster home under IC 31-27.

30 (6) A person for whom a national criminal history background
31 check is required for determining the individual's suitability as an
32 employee of a contractor of the state under section 38.5(a)(1) of
33 this chapter.

34 (c) A qualified entity must submit a request under subsection (b) in
35 the form required by the department and provide a set of the person's
36 fingerprints and any required fees with the request.

37 (d) If a qualified entity makes a request in conformity with
38 subsection (b), the department shall submit the set of fingerprints
39 provided with the request to the Federal Bureau of Investigation for a
40 national criminal history background check. The department shall
41 respond to the request in conformity with:

42 (1) the requirements of 42 U.S.C. 5119a; and



- 1 (2) the regulations prescribed by the Attorney General of the
 2 United States under 42 U.S.C. 5119a.
- 3 (e) Subsection (f):
- 4 (1) applies to a qualified entity that:
- 5 (A) is not a school corporation or a special education
 6 cooperative; or
- 7 (B) is a school corporation or a special education cooperative
 8 and seeks a national criminal history background check for a
 9 volunteer; and
- 10 (2) does not apply to a qualified entity that is a:
- 11 (A) home health agency licensed under IC 16-27-1; ~~or~~
 12 (B) personal services agency licensed under IC 16-27-4; ~~or~~
 13 **(C) health facility licensed under IC 16-28-2.**
- 14 (f) After receiving the results of a national criminal history
 15 background check from the Federal Bureau of Investigation, the
 16 department shall make a determination whether the person who is the
 17 subject of a request has been convicted of:
- 18 (1) an offense described in IC 20-26-5-11;
- 19 (2) in the case of a foster family home, a nonwaivable offense as
 20 defined in IC 31-9-2-84.8;
- 21 (3) in the case of a prospective adoptive home, an offense
 22 described in IC 31-19-11-1(c);
- 23 (4) any other felony; or
- 24 (5) any misdemeanor;
- 25 and convey the determination to the requesting qualified entity.
- 26 (g) This subsection applies to a qualified entity that:
- 27 (1) is a school corporation or a special education cooperative; and
- 28 (2) seeks a national criminal history background check to
 29 determine whether to employ or continue the employment of a
 30 certificated employee or a noncertificated employee of a school
 31 corporation or an equivalent position with a special education
 32 cooperative.
- 33 After receiving the results of a national criminal history background
 34 check from the Federal Bureau of Investigation, the department may
 35 exchange identification records concerning convictions for offenses
 36 described in IC 20-26-5-11 with the school corporation or special
 37 education cooperative solely for purposes of making an employment
 38 determination. The exchange may be made only for the official use of
 39 the officials with authority to make the employment determination. The
 40 exchange is subject to the restrictions on dissemination imposed under
 41 P.L.92-544, (86 Stat. 1115) (1972).
- 42 (h) This subsection applies to a qualified entity (as defined in



1 IC 10-13-3-16) that is a public agency under IC 5-14-1.5-2(a)(1). After
 2 receiving the results of a national criminal history background check
 3 from the Federal Bureau of Investigation, the department shall provide
 4 a copy to the public agency. Except as permitted by federal law, the
 5 public agency may not share the information contained in the national
 6 criminal history background check with a private agency.

7 (i) This subsection applies to a qualified entity that is a:

8 (1) home health agency licensed under IC 16-27-1; or

9 (2) personal services agency licensed under IC 16-27-4.

10 After receiving the results of a national criminal history background
 11 check from the Federal Bureau of Investigation, the department shall
 12 make a determination whether the applicant has been convicted of an
 13 offense described in IC 16-27-2-5(a) and convey the determination to
 14 the requesting qualified entity.

15 **(j) This subsection applies to a qualified entity that is a health**
 16 **facility licensed under IC 16-28-2. After receiving the results of a**
 17 **national criminal history background check from the Federal**
 18 **Bureau of Investigation, the department shall make a**
 19 **determination whether the applicant has been convicted of an**
 20 **offense described in IC 16-28-14.7-3 and convey the determination**
 21 **to the requesting qualified entity.**

22 (j) **(k)** The department:

23 (1) may permanently retain an applicant's fingerprints submitted
 24 under this section; and

25 (2) shall retain the applicant's fingerprints separately from
 26 fingerprints collected under section 24 of this chapter.

27 SECTION 3. IC 16-18-2-121.3, AS ADDED BY P.L.42-2011,
 28 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2019]: Sec. 121.3. "Expanded criminal history check" **means**
 30 **the following:**

31 **(1)** For purposes of IC 16-27-2, ~~has~~ the meaning set forth in
 32 IC 16-27-2-0.5.

33 **(2)** For purposes of IC 16-28-14.7, the meaning set forth in
 34 **IC 16-28-14.7-1.**

35 SECTION 4. IC 16-18-2-244.5, AS ADDED BY P.L.197-2007,
 36 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2019]: Sec. 244.5. "National criminal history background
 38 check" **means the following:**

39 **(1)** For purposes of IC 16-27-2, ~~has~~ the meaning set forth in
 40 IC 16-27-2-2.1.

41 **(2)** For purposes of IC 16-28-14.7, the meaning set forth in
 42 **IC 16-28-14.7-2.**



1 SECTION 5. IC 16-28-14.7 IS ADDED TO THE INDIANA CODE
 2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2019]:

4 **Chapter 14.7. Criminal Background Checks of Employees**

5 **Sec. 1. As used in this chapter, "expanded criminal history**
 6 **check" means a criminal history check of an individual, obtained**
 7 **through a private agency, that includes the following:**

8 (1) A search of the records maintained by all counties in
 9 Indiana in which the individual who is the subject of the
 10 background check resided.

11 (2) A search of the records maintained by all counties or
 12 similar governmental units in another state, if the individual
 13 who is the subject of the background check resided or worked
 14 in another state.

15 **Sec. 2. As used in this chapter, "national criminal history**
 16 **background check" means the determination provided by the state**
 17 **police department under IC 10-13-3-39(j).**

18 **Sec. 3. (a) A person may not operate a health facility if the**
 19 **person has been convicted of any of the following:**

20 (1) Rape (IC 35-42-4-1).

21 (2) Criminal deviate conduct (IC 35-42-4-2) (repealed) or
 22 other sexual conduct (IC 35-31.5-2-221.5).

23 (3) Exploitation of an endangered adult (IC 35-46-1-12).

24 (4) Failure to report battery, neglect, or exploitation of an
 25 endangered adult (IC 35-46-1-13).

26 (5) Theft (IC 35-43-4), if the person's conviction for theft
 27 occurred less than ten (10) years before the date of submission
 28 by the person of an application for licensure as a health
 29 facility.

30 (b) A person who knowingly or intentionally violates this section
 31 commits a Class A misdemeanor.

32 **Sec. 4. (a) A person who operates a health facility shall apply,**
 33 **not more than three (3) business days after the date that an**
 34 **employee who will have direct contact with a patient begins**
 35 **employment, for a copy of the employee's national criminal history**
 36 **background check or expanded criminal history check.**

37 (b) A health facility may not employ a person for more than
 38 three (3) business days without applying for the person's national
 39 criminal history background check or expanded criminal history
 40 check.

41 **Sec. 5. (a) Except as provided in subsection (b), a person who**
 42 **operates a health facility may not employ a person who has direct**



1 contact with a patient if that person's national criminal history
 2 background check or expanded criminal history check indicates
 3 that the person has been convicted of any of the following:

4 (1) Rape (IC 35-42-4-1).

5 (2) Criminal deviate conduct (IC 35-42-4-2) (repealed) or
 6 other sexual conduct (IC 35-31.5-2-221.5).

7 (3) Exploitation of an endangered adult (IC 35-46-1-12).

8 (4) Failure to report battery, neglect, or exploitation of an
 9 endangered adult (IC 35-46-1-13).

10 (5) Theft (IC 35-43-4), if the conviction for theft occurred less
 11 than ten (10) years before the person's employment
 12 application date.

13 (6) A felony that is substantially equivalent to a felony listed
 14 in:

15 (A) subdivisions (1) through (4); or

16 (B) subdivision (5), if the conviction for theft occurred less
 17 than ten (10) years before the person's employment
 18 application date;

19 for which the conviction was entered in another state.

20 (b) A health facility may not employ a person who has direct
 21 contact with a patient for more than twenty-one (21) calendar days
 22 without receipt of the person's national criminal history
 23 background check or expanded criminal history check unless the
 24 state police department, the Federal Bureau of Investigation under
 25 IC 10-13-3-39, or the private agency providing the national
 26 criminal history background check or expanded criminal history
 27 check is responsible for failing to provide the person's national
 28 criminal history background check or expanded criminal history
 29 check to the health facility within the time required under this
 30 subsection.

31 Sec. 6. (a) A person who operates a health facility is responsible
 32 for the payment of fees under IC 10-13-3-39 and other fees
 33 required under this chapter.

34 (b) A health facility may require a person who applies to the
 35 health facility for employment that involves direct contact with a
 36 patient:

37 (1) to pay the cost of fees described in subsection (a) to the
 38 health facility at the time the person submits an application
 39 for employment; or

40 (2) to reimburse the health facility for the cost of fees
 41 described in subsection (a).

42 Sec. 7. A person who:



1 (1) operates a health facility; and
 2 (2) violates section 4 or 5 of this chapter;
 3 commits a Class A infraction.

4 **Sec. 8. A person (other than a person denied employment or**
 5 **dismissed under this chapter or regarding whom a finding is placed**
 6 **on the registry of nurse aides under 42 CFR 483.156) who in good**
 7 **faith:**

8 (1) denies employment to an individual or dismisses an
 9 individual from employment under this chapter;

10 (2) testifies or participates in an investigation or an
 11 administrative or a judicial proceeding arising from:

12 (A) this chapter; or

13 (B) 42 CFR 483 regarding the registry of nurse aides; or

14 (3) makes a report to the state department or the registry of
 15 nurse aides;

16 **is immune from both civil and criminal liability arising from those**
 17 **actions.**

18 SECTION 6. IC 34-30-2-67.7 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2019]: **Sec. 67.7. IC 16-28-14.7-8 (Concerning**
 21 **persons for denying or terminating employment of an individual**
 22 **with a criminal history, or reporting to or participating in the**
 23 **proceedings of the state department of health or the registry of**
 24 **nurse aides).**

25 SECTION 7. IC 35-52-16-16.5 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2019]: **Sec. 16.5. IC 16-28-14.7-3 defines a**
 28 **crime concerning health facilities.**

