

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 488 be amended to read as follows:

- 1 Page 31, between lines 9 and 10, begin a new paragraph and insert:  
2 "SECTION 33. IC 22-15-6-7 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2002]: **Sec. 7. (a) As used in this section, "practitioner" means a  
5 person that holds a:**  
6 (1) boiler and pressure vessel inspector license issued under  
7 IC 22-15-6-5; or  
8 (2) an owner or user boiler and pressure vessel inspection  
9 agency license issued under IC 22-15-6-6;  
10 even if that license is suspended, limited or probationary.  
11 (b) A practitioner shall comply with the standards established  
12 under this licensing program. A practitioner is subject to the  
13 exercise of the disciplinary sanctions under subsection (c) if the  
14 department finds that a practitioner has:  
15 (1) engaged in or knowingly cooperated in fraud or material  
16 deception in order to obtain a license to practice, including  
17 cheating on a licensing examination;  
18 (2) engaged in fraud or material deception in the course of  
19 professional services or activities;  
20 (3) advertised services or goods in a false or misleading  
21 manner;  
22 (4) been convicted of a crime that has a direct bearing on the  
23 practitioner's ability to continue to practice competently;  
24 (5) knowingly violated a state statute or rule or federal statute

1 or regulation regulating the profession for which the  
2 practitioner is licensed;

3 (6) continued to practice although the practitioner has become  
4 unfit to practice due to:

5 (A) professional incompetence;

6 (B) failure to keep abreast of current professional theory  
7 or practice;

8 (C) physical or mental disability; or

9 (D) addiction to, abuse of, or severe dependency on alcohol  
10 or other drugs that endanger the public by impairing a  
11 practitioner's ability to practice safely;

12 (7) engaged in a course of lewd or immoral conduct in  
13 connection with the delivery of services to the public;

14 (8) allowed the practitioner's name or a license issued under  
15 this chapter to be used in connection with an individual or  
16 business who renders services beyond the scope of that  
17 individual's or business's training, experience, or competence;

18 (9) had disciplinary action taken against the practitioner or  
19 the practitioner's license to practice in another state or  
20 jurisdiction on grounds similar to those under this chapter;

21 (10) assisted another person in committing an act that would  
22 constitute a ground for disciplinary sanction under this  
23 chapter; or

24 (11) allowed a license issued by the department to be:

25 (A) used by another person; or

26 (B) displayed to the public when the license has expired, is  
27 inactive, is invalid, or has been revoked or suspended.

28 For purposes of subdivision (9), a certified copy of a record of  
29 disciplinary action constitutes prima facie evidence of a  
30 disciplinary action in another jurisdiction.

31 (c) The department may impose one (1) or more of the following  
32 sanctions if the department finds that a practitioner is subject to  
33 disciplinary sanctions under subsection (b):

34 (1) Permanently revoke a practitioner's license.

35 (2) Suspend a practitioner's license.

36 (3) Censure a practitioner.

37 (4) Issue a letter of reprimand.

38 (5) Assess a civil penalty against the practitioner in  
39 accordance with the following:

40 (A) The civil penalty may not be more than one thousand  
41 dollars (\$1,000) for each violation listed in subsection (a),  
42 except for a finding of incompetency due to a physical or  
43 mental disability.

44 (B) When imposing a civil penalty, the department shall  
45 consider a practitioner's ability to pay the amount  
46 assessed. If the practitioner fails to pay the civil penalty  
47 within the time specified by the department, the

- 1           department may suspend the practitioner's license without  
 2           additional proceedings. However, a suspension may not be  
 3           imposed if the sole basis for the suspension is the  
 4           practitioner's inability to pay a civil penalty.
- 5           **(6) Place a practitioner on probation status and require the**  
 6           **practitioner to:**
- 7                **(A) report regularly to the department upon the matters**  
 8                **that are the basis of probation;**
- 9                **(B) limit practice to those areas prescribed by the**  
 10               **department;**
- 11               **(C) continue or renew professional education approved by**  
 12               **the department until a satisfactory degree of skill has been**  
 13               **attained in those areas that are the basis of the probation;**  
 14               **or**
- 15               **(D) perform or refrain from performing any acts,**  
 16               **including community restitution or service without**  
 17               **compensation, that the department considers appropriate**  
 18               **to the public interest or to the rehabilitation or treatment**  
 19               **of the practitioner.**
- 20           The department may withdraw or modify probation if the  
 21           department finds after a hearing that the deficiency that  
 22           required disciplinary action has been remedied or that  
 23           changed circumstances warrant a modification of the order.
- 24           **(d) If an applicant or a practitioner has engaged in or knowingly**  
 25           **cooperated in fraud or material deception to obtain a license to**  
 26           **practice, including cheating on the licensing examination, the**  
 27           **department may rescind the license if it has been granted, void the**  
 28           **examination or other fraudulent or deceptive material, and**  
 29           **prohibit the applicant from reapplying for the license for a length**  
 30           **of time established by the department.**
- 31           **(e) The department may deny licensure to an applicant who has**  
 32           **had disciplinary action taken against the applicant or the**  
 33           **applicant's license to practice in another state or jurisdiction or**  
 34           **who has practiced without a license in violation of the law. A**  
 35           **certified copy of the record of disciplinary action is conclusive**  
 36           **evidence of the other jurisdiction's disciplinary action.**
- 37           **(f) The department may order a practitioner to submit to a**  
 38           **reasonable physical or mental examination if the practitioner's**  
 39           **physical or mental capacity to practice safely and competently is**  
 40           **at issue in a disciplinary proceeding. Failure to comply with a**  
 41           **department order to submit to a physical or mental examination**  
 42           **makes a practitioner liable to temporary suspension under**  
 43           **subsection (k).**
- 44           **(g) Except as provided under subsection (h) or (i), a license may**  
 45           **not be denied, revoked, or suspended because the applicant or**  
 46           **holder has been convicted of an offense. The acts from which the**  
 47           **applicant's or holder's conviction resulted may, however, be**

1 considered as to whether the applicant or holder should be  
2 entrusted to serve the public in a specific capacity.

3 (h) The department may deny, suspend, or revoke a license  
4 issued under this chapter if the individual who holds the license is  
5 convicted of any of the following:

6 (1) Possession of cocaine, a narcotic drug, or  
7 methamphetamine under IC 35-48-4-6.

8 (2) Possession of a controlled substance under IC 35-48-4-7(a).

9 (3) Fraudulently obtaining a controlled substance under  
10 IC 35-48-4-7(b).

11 (4) Manufacture of paraphernalia as a Class D felony under  
12 IC 35-48-4-8.1(b).

13 (5) Dealing in paraphernalia as a Class D felony under  
14 IC 35-48-4-8.5(b).

15 (6) Possession of paraphernalia as a Class D felony under  
16 IC 35-48-4-8.3(b).

17 (7) Possession of marijuana, hash oil, or hashish as a Class D  
18 felony under IC 35-48-4-11.

19 (8) Maintaining a common nuisance under IC 35-48-4-13.

20 (9) An offense relating to registration, labeling, and  
21 prescription forms under IC 35-48-4-14.

22 (10) Conspiracy under IC 35-41-5-2 to commit an offense  
23 listed in clauses (1) through (9).

24 (11) Attempt under IC 35-41-5-1 to commit an offense listed  
25 in clauses (1) through (10).

26 (12) An offense in any other jurisdiction in which the elements  
27 of the offense for which the conviction was entered are  
28 substantially similar to the elements of an offense described  
29 under clauses (1) through (11).

30 (i) The department shall deny, revoke or suspend a license  
31 issued under this chapter if the individual who holds the license is  
32 convicted of any of the following:

33 (1) Dealing in cocaine, a narcotic drug, or methamphetamine  
34 under IC 35-48-4-1.

35 (2) Dealing in a schedule I, II, or III controlled substance  
36 under IC 35-48-4-2.

37 (3) Dealing in a schedule IV controlled substance under  
38 IC 35-48-4-3.

39 (4) Dealing in a schedule V controlled substance under  
40 IC 35-48-4-4.

41 (5) Dealing in a substance represented to be a controlled  
42 substance under IC 35-48-4-4.5.

43 (6) Knowingly or intentionally manufacturing, advertising,  
44 distributing, or possessing with intent to manufacture,  
45 advertise, or distribute a substance represented to be a  
46 controlled substance under IC 35-48-4-4.6.

47 (7) Dealing in a counterfeit substance under IC 35-48-4-5.

- 1           **(8) Dealing in marijuana, hash oil, or hashish under**  
2           **IC 35-48-4-10(b).**
- 3           **(9) Conspiracy under IC 35-41-5-2 to commit an offense listed**  
4           **in clauses (1) through (8).**
- 5           **(10) Attempt under IC 35-41-5-1 to commit an offense listed**  
6           **in clauses (1) through (9).**
- 7           **(11) An offense in any other jurisdiction in which the elements**  
8           **of the offense for which the conviction was entered are**  
9           **substantially similar to the elements of an offense described**  
10           **under clauses (1) through (10).**
- 11           **(12) A violation of any federal or state drug law or rule**  
12           **related to wholesale legend drug distributors licensed under**  
13           **IC 25-26-14.**
- 14           **(j) A decision of the department under subsections (b) through**  
15           **(i) may be appealed to the commission under IC 4-21.5-3-7.**
- 16           **(k) The department may temporarily suspend a practitioner's**  
17           **license under IC 4-21.5-4 before a final adjudication or during the**  
18           **appeals process if the department finds that a practitioner**  
19           **represents a clear and immediate danger to the public's health,**  
20           **safety, or property if the practitioner is allowed to continue to**  
21           **practice.**
- 22           **(l) On receipt of a complaint or an information alleging that a**  
23           **person licensed under this chapter has engaged in or is engaging in**  
24           **a practice that jeopardizes the public health, safety, or welfare, the**  
25           **department shall initiate an investigation against the person.**
- 26           **(m) Any complaint filed with the office of the attorney general**  
27           **alleging a violation of this licensing program shall be referred to**  
28           **the department for summary review and for its general**  
29           **information and any authorized action at the time of the filing.**
- 30           **(n) The department shall conduct a fact-finding investigation as**  
31           **the department considers proper in relation to the complaint.**
- 32           **(o) The department may reinstate a license that has been**  
33           **suspended under this section if, after a hearing, the department is**  
34           **satisfied that the applicant is able to practice with reasonable skill,**  
35           **safety, and competency to the public. As a condition of**  
36           **reinstatement, the department may impose disciplinary or**  
37           **corrective measures authorized under this chapter.**
- 38           **(p) The department may not reinstate a license that has been**  
39           **revoked under this chapter. An individual whose license has been**  
40           **revoked under this chapter may not apply for a new license until**  
41           **seven (7) years after the date of revocation.**
- 42           **(q) The department shall seek to achieve consistency in the**  
43           **application of sanctions authorized in this chapter. Significant**  
44           **departures from prior decisions involving similar conduct must be**  
45           **explained in the department's findings or orders.**
- 46           **(r) A practitioner may petition the department to accept the**  
47           **surrender of the practitioner's license instead of having a hearing**

1 before the commission. The practitioner may not surrender the  
2 practitioner's license without the written approval of the  
3 department, and the department may impose any conditions  
4 appropriate to the surrender or reinstatement of a surrendered  
5 license.

6 (s) A practitioner who has been subjected to disciplinary  
7 sanctions may be required by the commission to pay the costs of  
8 the proceeding. The practitioner's ability to pay shall be considered  
9 when costs are assessed. If the practitioner fails to pay the costs, a  
10 suspension may not be imposed solely upon the practitioner's  
11 inability to pay the amount assessed. The costs are limited to costs  
12 for the following:

- 13 (1) Court reporters.
- 14 (2) Transcripts.
- 15 (3) Certification of documents.
- 16 (4) Photo duplication.
- 17 (5) Witness attendance and mileage fees.
- 18 (6) Postage.
- 19 (7) Expert witnesses.
- 20 (8) Depositions.
- 21 (9) Notarizations."

22 Renumber all SECTIONS consecutively.

(Reference is to ESB 488 as printed February 22, 2002.)

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Representative Kruse