

**SENATE BILL No. 242**

**DIGEST OF INTRODUCED BILL**

**Citations Affected:** IC 20-26-5.5; IC 20-28.

**Synopsis:** School employee records; misconduct. Provides that certain employment records of licensed school employees, including substantiated reports of certain types of misconduct or offenses, must be provided to a school requesting the records as a part of the hiring process. Requires a school to report substantiated reports of misconduct or offenses by a licensed school employee to the state superintendent of public instruction. Requires records of substantiated reports of misconduct or offenses be expunged if the subject of the report is formally exonerated. Provides that a school that enters into an agreement with a licensed school employee to suppress information concerning misconduct or ongoing disciplinary investigations or allowing the employee to resign must report the agreement to the state superintendent of public instruction. Requires the department of education to revoke the license of a licensed school employee if the employee is convicted: (1) in another state or under federal statutes of an offense; or (2) of a misdemeanor; that is comparable to the felonies for which the employee's license would be revoked if committed in Indiana. Allows a governing body to withhold salary and employment related benefits from a licensed school employee if there is a substantiated report of certain misconduct or offenses by the employee.

**Effective:** July 1, 2010.

**Merritt**

January 11, 2010, read first time and referred to Committee on Education and Career Development.

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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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## SENATE BILL No. 242



A BILL FOR AN ACT to amend the Indiana Code concerning education.

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

1 SECTION 1. IC 20-26-5.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2010]:

4 **Chapter 5.5. Employee Records**

5 **Sec. 1. (a) As used in this chapter, "licensed school employee"**  
6 **means an individual employed by a school who is licensed for**  
7 **employment by the department.**

8 **(b) As used in this chapter, "school" means:**

- 9 (1) a school corporation;
- 10 (2) a charter school;
- 11 (3) an accredited nonpublic school; and
- 12 (4) a school or an educational program operated by:
  - 13 (A) the department of correction;
  - 14 (B) the Indiana School for the Blind and Visually
  - 15 Impaired; or
  - 16 (C) the Indiana School for the Deaf.

17 **(c) As used in this chapter, "substantiated report" means:**



- 1           (1) A report from the department of child services under
- 2           IC 31-33-8 that substantiates abuse or neglect by a licensed
- 3           school employee.
- 4           (2) A report from an adult protective services unit under
- 5           IC 12-10-3 that determines a student to be an endangered
- 6           adult based on the conduct of a licensed school employee.
- 7           (3) A formal disciplinary action documented in a licensed
- 8           school employee's personnel file after the employee had an
- 9           opportunity to challenge and either:
- 10           (A) did not challenge; or
- 11           (B) unsuccessfully challenged;
- 12           the action.
- 13           (4) Formal findings regarding the conduct of a licensed school
- 14           employee resulting from a hearing or other judicial or
- 15           administrative proceeding.
- 16           Sec. 2. (a) In reviewing the employment history of an individual
- 17           who is applying for a position as a licensed school employee with a
- 18           school, the school may:
- 19           (1) require the individual to provide:
- 20           (A) the name of the school that currently employs the
- 21           individual;
- 22           (B) the names of all schools that have previously employed
- 23           the individual; and
- 24           (C) written consent for the current and former school
- 25           employers to disclose the information requested under
- 26           subdivision (2); and
- 27           (2) request the following information from the individual's
- 28           current and former school employers:
- 29           (A) The dates of the individual's employment.
- 30           (B) Whether the individual was the subject of any
- 31           substantiated reports, including:
- 32           (i) the date of the substantiated report; and
- 33           (ii) the conduct identified in the substantiated report.
- 34           (C) Whether, on the date the school employer receives the
- 35           request for information, the individual is the subject of an
- 36           investigation related to an offense set forth under
- 37           IC 20-28-5-8(c) or IC 20-28-5-8(d).
- 38           (b) A school shall disclose the information requested under
- 39           subsection (a) to the requesting school in a timely manner.
- 40           (c) A school:
- 41           (1) may provide the information requested under subsection
- 42           (a) in a standardized form; and

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1 (2) is not required to provide additional information  
2 concerning a substantiated report that is not set forth under  
3 subsection (a)(2)(B).

4 (d) A school may not use any information received under  
5 subsection (a)(2) for any purpose other than the limited purpose of  
6 determining whether to employ an individual.

7 (e) A school employee who discloses requested information  
8 under this section has qualified immunity with respect to providing  
9 the information.

10 Sec. 3. If a school or the governing body of a school enters into  
11 an agreement with a licensed school employee that:

12 (1) suppresses or has the effect of suppressing information  
13 relating to an ongoing investigation of the employee's alleged  
14 involvement in one (1) or more offenses set forth under  
15 IC 20-28-5-8(c) or IC 20-28-5-8(d);

16 (2) suppresses or has the effect of suppressing a substantiated  
17 report concerning the employee;

18 (3) allows the employee to resign in order to avoid further  
19 investigation, disciplinary action, or termination for  
20 immorality, misconduct in office, incompetency, or willful  
21 neglect of duty; or

22 (4) requires the school to expunge a substantiated report or  
23 information about a substantiated report from records  
24 maintained by the school regarding the employee;

25 the superintendent or the equivalent authority in a charter or  
26 nonpublic school shall report the terms of the agreement and the  
27 name of the employee to the state superintendent not later than ten  
28 (10) days after the date on which the school executes the  
29 agreement.

30 Sec. 4. A collective bargaining agreement entered into under  
31 IC 20-29 may not include provisions that are contrary to or  
32 preclude a school's authority or duties under this chapter.

33 Sec. 5. Upon a current or former licensed school employee's  
34 production of written proof of the employee's formal exoneration  
35 from the claims set forth in a substantiated report, a school holding  
36 a record of the substantiated report shall expunge the  
37 substantiated report and any references to the substantiated report  
38 from the school's records.

39 SECTION 2. IC 20-28-5-8, AS AMENDED BY P.L.121-2009,  
40 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
41 JULY 1, 2010]: Sec. 8. (a) This section applies when a prosecuting  
42 attorney knows that a licensed employee of a public school or a

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1 nonpublic school has been convicted of an offense listed in subsection  
2 (c). The prosecuting attorney shall immediately give written notice of  
3 the conviction to the following:

- 4 (1) The state superintendent.
- 5 (2) Except as provided in subdivision (3), the superintendent of  
6 the school corporation that employs the licensed employee or the  
7 equivalent authority if a nonpublic school employs the licensed  
8 employee.
- 9 (3) The presiding officer of the governing body of the school  
10 corporation that employs the licensed employee, if the convicted  
11 licensed employee is the superintendent of the school corporation.

12 (b) The superintendent of a school corporation, presiding officer of  
13 the governing body, or equivalent authority for a nonpublic school shall  
14 immediately notify the state superintendent when the individual knows  
15 that a current or former licensed employee of the public school or  
16 nonpublic school has been convicted of an offense listed in subsection  
17 (c), **(d), or (e)**, or when the governing body or equivalent authority for  
18 a nonpublic school takes any final action in relation to an employee  
19 who engaged in any offense listed in subsection (c), **(d), or (e)**.

20 (c) The department, after holding a hearing on the matter, shall  
21 permanently revoke the license of a person who is known by the  
22 department to have been convicted of any of the following felonies:

- 23 (1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen  
24 (18) years of age.
- 25 (2) Criminal confinement (IC 35-42-3-3), if the victim is less than  
26 eighteen (18) years of age.
- 27 (3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)  
28 years of age.
- 29 (4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less  
30 than eighteen (18) years of age.
- 31 (5) Child molesting (IC 35-42-4-3).
- 32 (6) Child exploitation (IC 35-42-4-4(b)).
- 33 (7) Vicarious sexual gratification (IC 35-42-4-5).
- 34 (8) Child solicitation (IC 35-42-4-6).
- 35 (9) Child seduction (IC 35-42-4-7).
- 36 (10) Sexual misconduct with a minor (IC 35-42-4-9).
- 37 (11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)  
38 years of age.
- 39 (12) Dealing in or manufacturing cocaine or a narcotic drug  
40 (IC 35-48-4-1).
- 41 (13) Dealing in methamphetamine (IC 35-48-4-1.1).
- 42 (14) Dealing in a schedule I, II, or III controlled substance

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- 1 (IC 35-48-4-2).
- 2 (15) Dealing in a schedule IV controlled substance
- 3 (IC 35-48-4-3).
- 4 (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 5 (17) Dealing in a counterfeit substance (IC 35-48-4-5).
- 6 (18) Dealing in marijuana, hash oil, or hashish
- 7 (IC 35-48-4-10(b)).
- 8 (19) Possession of child pornography (IC 35-42-4-4(c)).

9 **(d) The department, after holding a hearing on the matter, shall**  
 10 **permanently revoke the license of a person who is known by the**  
 11 **department to have been convicted of a federal offense or an**  
 12 **offense in another state that is comparable to a felony listed in**  
 13 **subsection (c).**

14 **(e) Upon the request of a governing body, the department, after**  
 15 **holding a hearing on the matter, shall permanently revoke the**  
 16 **license of a person who is known by the department to have been**  
 17 **convicted of a misdemeanor that is comparable to a felony listed in**  
 18 **subsection (c).**

19 **(f) The department may suspend or revoke under section 7(2) of**  
 20 **this chapter the license of a superintendent or the equivalent**  
 21 **authority in a charter school, nonpublic school, or state operated**  
 22 **school or educational program who fails to comply with the**  
 23 **reporting requirements of IC 20-26-5.5-3.**

24 ~~(g)~~ **(g)** A license may be suspended by the state superintendent as  
 25 specified in IC 20-28-7-7.

26 ~~(h)~~ **(h)** The department shall develop a data base of information on  
 27 school corporation employees who have been reported to the  
 28 department under this section.

29 SECTION 3. IC 20-28-7-4, AS ADDED BY P.L. 1-2005, SECTION  
 30 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 31 2010]: Sec. 4. **(a)** If a permanent or semipermanent teacher is  
 32 suspended under section 3(8) of this chapter, and except as provided  
 33 in **subsection (b)** and IC 20-28-9-18, the governing body may not,  
 34 while the teacher is suspended, withhold from the teacher any salary  
 35 payments or other employment related benefits that before the  
 36 suspension the teacher was entitled to receive.

37 **(b) The governing body may withhold salary payments and**  
 38 **other employment related benefits while a permanent or**  
 39 **semipermanent teacher is suspended under section 3(8) of this**  
 40 **chapter only if the superintendent has received a substantiated**  
 41 **report (as defined in IC 20-26-5.5-1(c)) concerning the teacher.**

42 **(c) If the governing body returns a permanent or**

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1 **semipermanent teacher to duty, the governing body shall**  
2 **immediately compensate the teacher for the full amount of the**  
3 **salary and other employment related benefits withheld during the**  
4 **period of suspension.**

5 SECTION 4. IC 20-28-7-13, AS ADDED BY P.L.1-2005,  
6 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2010]: Sec. 13. (a) **Except as provided in section 4 of this**  
8 **chapter and IC 20-28-9-21**, this chapter may not be construed to limit  
9 the provisions of a collective bargaining agreement negotiated under  
10 IC 20-29. **The provisions of a collective bargaining agreement may**  
11 **not alter or preclude a school's authority under section 4 of this**  
12 **chapter and IC 20-28-9-21.**

13 (b) This chapter does not prohibit a school employer and an  
14 exclusive representative from collectively bargaining contracts that  
15 alter the requirements of sections 1 through 3, **sections 5 through 6**,  
16 and sections 8 through 12 of this chapter and ~~IC 20-28-9-21~~  
17 **IC 20-28-9-22** through IC 20-28-9-23.

18 (c) This chapter may not be construed to limit the rights of a school  
19 employer and an exclusive representative (as defined in IC 20-29-2-9)  
20 to mutually agree to binding arbitration concerning teacher dismissals.

21 (d) If the school employer and the exclusive representative mutually  
22 agree to binding arbitration of teacher dismissals:

23 (1) the arbitrator shall determine whether the hearing will be open  
24 to the public; and

25 (2) the written decision of the arbitrator must be:

26 (A) presented to the governing body in an open meeting; and

27 (B) made available to the public for inspection and copying.

28 SECTION 5. IC 20-28-9-21, AS ADDED BY P.L.1-2005,  
29 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
30 JULY 1, 2010]: Sec. 21. (a) This section and sections 22 through 23 of  
31 this chapter apply to the suspension of a teacher without pay when the  
32 procedure for the cancellation of the teacher's contract under  
33 IC 20-28-7-3 through IC 20-28-7-5 do not apply.

34 (b) A teacher may be suspended from duty without pay only for the  
35 following reasons:

36 (1) Immorality.

37 (2) Insubordination, which means the willful refusal to obey the  
38 state school laws or reasonable rules prescribed for the  
39 government of the school corporation.

40 (3) Neglect of duty.

41 (4) Substantial inability to perform teaching duties.

42 (5) Good and just cause.

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1           **(6) Conduct covered in a substantiated report (as defined in**  
2           **IC 20-26-5.5-1(c)).**

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