

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1276 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 health information and public records.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.120-2008,
- 7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2010]: Sec. 4. (a) The following public records are excepted
- 9 from section 3 of this chapter and may not be disclosed by a public
- 10 agency, unless access to the records is specifically required by a state
- 11 or federal statute or is ordered by a court under the rules of discovery:
- 12 (1) Those declared confidential by state statute.
- 13 (2) Those declared confidential by rule adopted by a public
- 14 agency under specific authority to classify public records as
- 15 confidential granted to the public agency by statute.
- 16 (3) Those required to be kept confidential by federal law.
- 17 (4) Records containing trade secrets.
- 18 (5) Confidential financial information obtained, upon request,
- 19 from a person. However, this does not include information that is
- 20 filed with or received by a public agency pursuant to state statute.
- 21 (6) Information concerning research, including actual research
- 22 documents, conducted under the auspices of a state educational
- 23 institution, including information:
- 24 (A) concerning any negotiations made with respect to the
- 25 research; and
- 26 (B) received from another party involved in the research.
- 27 (7) Grade transcripts and license examination scores obtained as
- 28 part of a licensure process.
- 29 (8) Those declared confidential by or under rules adopted by the
- 30 supreme court of Indiana.

- 1 (9) Patient medical records and charts created by a provider,
 2 unless the patient gives written consent under IC 16-39 **or as**
 3 **provided under IC 16-41-8.**
- 4 (10) Application information declared confidential by the board
 5 of the Indiana economic development corporation under
 6 IC 5-28-16.
- 7 (11) A photograph, a video recording, or an audio recording of an
 8 autopsy, except as provided in IC 36-2-14-10.
- 9 (12) A Social Security number contained in the records of a
 10 public agency.
- 11 (b) Except as otherwise provided by subsection (a), the following
 12 public records shall be excepted from section 3 of this chapter at the
 13 discretion of a public agency:
- 14 (1) Investigatory records of law enforcement agencies. However,
 15 certain law enforcement records must be made available for
 16 inspection and copying as provided in section 5 of this chapter.
- 17 (2) The work product of an attorney representing, pursuant to
 18 state employment or an appointment by a public agency:
- 19 (A) a public agency;
 20 (B) the state; or
 21 (C) an individual.
- 22 (3) Test questions, scoring keys, and other examination data used
 23 in administering a licensing examination, examination for
 24 employment, or academic examination before the examination is
 25 given or if it is to be given again.
- 26 (4) Scores of tests if the person is identified by name and has not
 27 consented to the release of the person's scores.
- 28 (5) The following:
- 29 (A) Records relating to negotiations between the Indiana
 30 economic development corporation, the ports of Indiana, the
 31 Indiana state department of agriculture, the Indiana finance
 32 authority, an economic development commission, a local
 33 economic development organization (as defined in
 34 IC 5-28-11-2(3)), or a governing body of a political
 35 subdivision with industrial, research, or commercial prospects,
 36 if the records are created while negotiations are in progress.
- 37 (B) Notwithstanding clause (A), the terms of the final offer of
 38 public financial resources communicated by the Indiana
 39 economic development corporation, the ports of Indiana, the
 40 Indiana finance authority, an economic development
 41 commission, or a governing body of a political subdivision to
 42 an industrial, a research, or a commercial prospect shall be
 43 available for inspection and copying under section 3 of this
 44 chapter after negotiations with that prospect have terminated.
- 45 (C) When disclosing a final offer under clause (B), the Indiana
 46 economic development corporation shall certify that the

- 1 information being disclosed accurately and completely
 2 represents the terms of the final offer.
- 3 (6) Records that are intra-agency or interagency advisory or
 4 deliberative material, including material developed by a private
 5 contractor under a contract with a public agency, that are
 6 expressions of opinion or are of a speculative nature, and that are
 7 communicated for the purpose of decision making.
- 8 (7) Diaries, journals, or other personal notes serving as the
 9 functional equivalent of a diary or journal.
- 10 (8) Personnel files of public employees and files of applicants for
 11 public employment, except for:
- 12 (A) the name, compensation, job title, business address,
 13 business telephone number, job description, education and
 14 training background, previous work experience, or dates of
 15 first and last employment of present or former officers or
 16 employees of the agency;
- 17 (B) information relating to the status of any formal charges
 18 against the employee; and
- 19 (C) the factual basis for a disciplinary action in which final
 20 action has been taken and that resulted in the employee being
 21 suspended, demoted, or discharged.
- 22 However, all personnel file information shall be made available
 23 to the affected employee or the employee's representative. This
 24 subdivision does not apply to disclosure of personnel information
 25 generally on all employees or for groups of employees without the
 26 request being particularized by employee name.
- 27 (9) Minutes or records of hospital medical staff meetings.
- 28 (10) Administrative or technical information that would
 29 jeopardize a record keeping or security system.
- 30 (11) Computer programs, computer codes, computer filing
 31 systems, and other software that are owned by the public agency
 32 or entrusted to it and portions of electronic maps entrusted to a
 33 public agency by a utility.
- 34 (12) Records specifically prepared for discussion or developed
 35 during discussion in an executive session under IC 5-14-1.5-6.1.
 36 However, this subdivision does not apply to that information
 37 required to be available for inspection and copying under
 38 subdivision (8).
- 39 (13) The work product of the legislative services agency under
 40 personnel rules approved by the legislative council.
- 41 (14) The work product of individual members and the partisan
 42 staffs of the general assembly.
- 43 (15) The identity of a donor of a gift made to a public agency if:
 44 (A) the donor requires nondisclosure of the donor's identity as
 45 a condition of making the gift; or
 46 (B) after the gift is made, the donor or a member of the donor's

- 1 family requests nondisclosure.
- 2 (16) Library or archival records:
- 3 (A) which can be used to identify any library patron; or
- 4 (B) deposited with or acquired by a library upon a condition
- 5 that the records be disclosed only:
- 6 (i) to qualified researchers;
- 7 (ii) after the passing of a period of years that is specified in
- 8 the documents under which the deposit or acquisition is
- 9 made; or
- 10 (iii) after the death of persons specified at the time of the
- 11 acquisition or deposit.
- 12 However, nothing in this subdivision shall limit or affect contracts
- 13 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 14 (17) The identity of any person who contacts the bureau of motor
- 15 vehicles concerning the ability of a driver to operate a motor
- 16 vehicle safely and the medical records and evaluations made by
- 17 the bureau of motor vehicles staff or members of the driver
- 18 licensing medical advisory board regarding the ability of a driver
- 19 to operate a motor vehicle safely. However, upon written request
- 20 to the commissioner of the bureau of motor vehicles, the driver
- 21 must be given copies of the driver's medical records and
- 22 evaluations.
- 23 (18) School safety and security measures, plans, and systems,
- 24 including emergency preparedness plans developed under 511
- 25 IAC 6.1-2-2.5.
- 26 (19) A record or a part of a record, the public disclosure of which
- 27 would have a reasonable likelihood of threatening public safety
- 28 by exposing a vulnerability to terrorist attack. A record described
- 29 under this subdivision includes:
- 30 (A) a record assembled, prepared, or maintained to prevent,
- 31 mitigate, or respond to an act of terrorism under IC 35-47-12-1
- 32 or an act of agricultural terrorism under IC 35-47-12-2;
- 33 (B) vulnerability assessments;
- 34 (C) risk planning documents;
- 35 (D) needs assessments;
- 36 (E) threat assessments;
- 37 (F) intelligence assessments;
- 38 (G) domestic preparedness strategies;
- 39 (H) the location of community drinking water wells and
- 40 surface water intakes;
- 41 (I) the emergency contact information of emergency
- 42 responders and volunteers;
- 43 (J) infrastructure records that disclose the configuration of
- 44 critical systems such as communication, electrical, ventilation,
- 45 water, and wastewater systems; and
- 46 (K) detailed drawings or specifications of structural elements,

1 floor plans, and operating, utility, or security systems, whether
 2 in paper or electronic form, of any building or facility located
 3 on an airport (as defined in IC 8-21-1-1) that is owned,
 4 occupied, leased, or maintained by a public agency. A record
 5 described in this clause may not be released for public
 6 inspection by any public agency without the prior approval of
 7 the public agency that owns, occupies, leases, or maintains the
 8 airport. The public agency that owns, occupies, leases, or
 9 maintains the airport:

10 (i) is responsible for determining whether the public
 11 disclosure of a record or a part of a record has a reasonable
 12 likelihood of threatening public safety by exposing a
 13 vulnerability to terrorist attack; and

14 (ii) must identify a record described under item (i) and
 15 clearly mark the record as "confidential and not subject to
 16 public disclosure under IC 5-14-3-4(b)(19)(J) without
 17 approval of (insert name of submitting public agency)".

18 This subdivision does not apply to a record or portion of a record
 19 pertaining to a location or structure owned or protected by a
 20 public agency in the event that an act of terrorism under
 21 IC 35-47-12-1 or an act of agricultural terrorism under
 22 IC 35-47-12-2 has occurred at that location or structure, unless
 23 release of the record or portion of the record would have a
 24 reasonable likelihood of threatening public safety by exposing a
 25 vulnerability of other locations or structures to terrorist attack.

26 (20) The following personal information concerning a customer
 27 of a municipally owned utility (as defined in IC 8-1-2-1):

28 (A) Telephone number.

29 (B) Address.

30 (C) Social Security number.

31 (21) The following personal information about a complainant
 32 contained in records of a law enforcement agency:

33 (A) Telephone number.

34 (B) The complainant's address. However, if the complainant's
 35 address is the location of the suspected crime, infraction,
 36 accident, or complaint reported, the address shall be made
 37 available for public inspection and copying.

38 (22) Notwithstanding subdivision (8)(A), the name,
 39 compensation, job title, business address, business telephone
 40 number, job description, education and training background,
 41 previous work experience, or dates of first employment of a law
 42 enforcement officer who is operating in an undercover capacity.

43 (23) Records requested by an offender that:

44 (A) contain personal information relating to:

45 (i) a correctional officer (as defined in IC 5-10-10-1.5);

46 (ii) the victim of a crime; or

1 (iii) a family member of a correctional officer or the victim
2 of a crime; or

3 (B) concern or could affect the security of a jail or correctional
4 facility.

5 (c) Nothing contained in subsection (b) shall limit or affect the right
6 of a person to inspect and copy a public record required or directed to
7 be made by any statute or by any rule of a public agency.

8 (d) Notwithstanding any other law, a public record that is classified
9 as confidential, other than a record concerning an adoption **or patient**
10 **medical records**, shall be made available for inspection and copying
11 seventy-five (75) years after the creation of that record.

12 **(e) Only the content of a public record may form the basis for**
13 **the adoption by any public agency of a rule or procedure creating**
14 **an exception from disclosure under this section.**

15 **(f) Except as provided by law, a public agency may not adopt a**
16 **rule or procedure that creates an exception from disclosure under**
17 **this section based upon whether a public record is stored or**
18 **accessed using paper, electronic media, magnetic media, optical**
19 **media, or other information storage technology.**

20 **(g) Except as provided by law, a public agency may not adopt a**
21 **rule or procedure nor impose any costs or liabilities that impede or**
22 **restrict the reproduction or dissemination of any public record.**

23 ~~(e)~~ **(h)** Notwithstanding subsection (d) and section 7 of this chapter:

24 (1) public records subject to IC 5-15 may be destroyed only in
25 accordance with record retention schedules under IC 5-15; or

26 (2) public records not subject to IC 5-15 may be destroyed in the
27 ordinary course of business.

28 SECTION 2. IC 16-39-2-6.5 IS ADDED TO THE INDIANA CODE
29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
30 1, 2010]: **Sec. 6.5. (a) Without the consent of the patient, the**
31 **patient's mental health record shall be disclosed to a court to the**
32 **extent necessary for the court to transmit the information required**
33 **under the following:**

34 (1) IC 12-26-6-8(g).

35 (2) IC 12-26-7-5(c).

36 (3) IC 35-36-2-4(e).

37 (4) IC 35-36-2-5(f).

38 (5) IC 35-36-3-1(c).

39 **(b) A person who discloses information under this section in**
40 **good faith is immune from civil and criminal liability."**

41 Page 8, between lines 2 and 3, begin a new paragraph and insert:

42 "SECTION 7. IC 34-30-2-77.6 IS ADDED TO THE INDIANA
43 CODE AS A NEW SECTION TO READ AS FOLLOWS
44 [EFFECTIVE JULY 1, 2010]: **Sec. 77.6. IC 16-39-2-6.5 (Concerning**
45 **a person who releases mental health records under certain**
46 **circumstances)."**

- 1 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1276 as printed February 19, 2010.)

Senator MILLER