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HOUSE BILL No. 1212

Proposed Changes to January 26, 2023 printing by AM121205

DIGEST OF PROPOSED AMENDMENT

Privacy protections for nonprofit organizations. Defines "personal information", with respect to certain information that is compiled by a nonprofit organization. Prohibits a public agency from doing the following: (1) Requiring a person or nonprofit organization to provide personal information to the public agency, or otherwise compelling the release of personal information. (2) Releasing, publicizing, or publicly disclosing personal information in its possession. (3) Requesting or requiring a current or prospective contractor or grantee to provide a list of nonprofit organizations to which the current or prospective contractor or grantee has provided financial or nonfinancial support. Provides exceptions to these prohibitions. Provides that personal information is considered confidential and is not subject to disclosure under Indiana's access to public records act (act). Provides that a person alleging a violation of the bill's provisions may bring a civil action for injunctive relief, specified damages, or both. Provides that: (1) a public employee; (2) a public official; or (3) an employee or officer of a contractor or subcontractor for a public agency; who violates the bill's provisions is subject to the penalties and discipline that apply with respect to violations of the act.

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

- 1 SECTION 1. IC 5-14-3.1 IS ADDED TO THE INDIANA CODE
- 2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2023]:
- 4 Chapter 3.1. Privacy ~~<of Nonprofit Donor~~
- 5 ~~Information>~~ [Protections of Nonprofit Organizations
- 6 Sec. 1. The personal information of a member, supporter,
- 7 volunteer, or donor of a nonprofit organization (as defined in
- 8 IC 23-17-32-2) is subject to certain protections under IC 23-17-32.
- 9 SECTION 2. IC 23-17-32 IS ADDED TO THE INDIANA CODE

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AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2023]:

**Chapter 32. Nonprofit Organizations: Privacy Protections for
Members, Volunteers, and Donors]**

Sec. 1. This chapter does not apply to ~~<a national securities
association registered under 15 U.S.C. 780-3 or information
provided by>~~:

(1) ~~a national securities association <to a public
agency>~~ [that is registered:

(A) under Section 15(a) of the Securities Exchange Act
of 1934 (15 U.S.C. 780-3); and

(B) in accordance with any regulations adopted under
the Securities Exchange Act of 1934 (15 U.S.C. 78a et
seq.); or

(2) any information a national securities association
described in subdivision (1) provides to the secretary of state
under IC 23-19 or under rules adopted or orders issued
under IC 23-19].

Sec. 2. As used in this chapter, "nonprofit organization"
means ~~<an entity that satisfies at least>~~ one (1) of the following:

(1) ~~<The entity>~~ [A domestic corporation (as defined in
IC 23-17-2-11).

(2) A foreign corporation (as defined in IC 23-17-2-13).

(3) An entity that is exempt from federal income
~~<taxation>~~ [tax] under Section 501(c) of the Internal Revenue
Code.

~~<4>~~ [4] ~~<The>~~ [An] entity [that] has submitted an
application with the Internal Revenue Service for
recognition of an exemption under Section 501(c) of the
Internal Revenue Code.

~~<(3) The entity is a nonprofit business entity organized under
state law or admitted to transact business in the state as a
foreign corporation.~~

> Sec. 3. As used in this chapter, "person" ~~<means an individual,
association, corporation, limited liability company, fiduciary, joint
stock company, joint venture, partnership, sole proprietorship, or
other private legal entity>~~ [has the meaning set forth in
IC 23-17-2-20].

Sec. 4. As used in this chapter, "personal information" means
~~<a>~~ [any compilation of data (including any] list, record, <register;
>registry, roll, [or]roster<, or other data compilation> [] that
directly or indirectly identifies a person as a:

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(1) member ~~<>~~ of;
 (2) supporter ~~<>~~ of;
 (3) volunteer ~~<>~~ for; or
 (4) donor of financial or nonfinancial support to
 a nonprofit organization.

Sec. 5. As used in this chapter, "public agency" means ~~<an authority, board, branch, commission, committee, department, division, or other instrumentality of the following:~~

- ~~— (1) The executive, including the administrative, department of state government.~~
- ~~— (2) The judicial department of state government.~~
- ~~— (3) The legislative department of state government.~~
- ~~— (4) A state educational institution.~~

- ~~— (5) A~~ [a]:
 - (1) state agency (as defined in IC 1-1-15-3); or
 - (2) political subdivision (as defined in IC 36-1-2-13).~~<~~

- ~~— (6) A body corporate and politic created by statute.~~

~~Sec. 6. Notwithstanding any other statute~~ [

Sec. 6. (a) Except as provided in subsection (b)], a public agency ~~<may>~~ [shall] not [do any of the following]:

(1) Either:

(A) require any ~~<individual>~~ [person] or nonprofit organization to provide the public agency with personal information [;] or

(B) otherwise compel the release of personal information ~~<~~;

- ~~— (2) request~~ [.

(2) Release, publicize, or otherwise publicly disclose personal information in the possession of the public agency.

(3) Request] or require a current or prospective:

(A) contractor for; or

(B) ~~<recipient of a>~~ grant ~~<from>~~ [ee of];

~~<a>~~ [the] public agency to provide ~~<the public agency with>~~ a list of nonprofit organizations to which the current or prospective contractor or ~~<recipient of a>~~ grant [ee] has provided financial or nonfinancial support ~~<~~; or

- ~~— (3) disclose a person's personal information in response to a request for inspection and copying under IC 5-14-3; except to the extent authorized under section 7 of this chapter.~~

~~Sec. 7. This chapter does not prohibit~~ [.

(b) Subsection (a) does not apply with respect to any of] the following:

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- 1 (1) ~~<A public agency from requesting, requiring, or~~
2 ~~disclosing personal information as required by federal law.~~
3 ~~(2) A public agency from requesting or requiring personal~~
4 ~~information for purposes of~~ [Any report or disclosure
5 required under state]:
6 (A) campaign finance ~~<reporting under IC 3-9-5;~~
7 ~~(B) a registration or report of the Indiana lobby~~
8 ~~registration commission under IC 2-7;~~
9 ~~(C) a disclosure of a conflict of interest under IC 4-2-6;~~
10 ~~(D) a statement of economic interest under IC 2-2-2;~~
11 ~~(E) an appointment to judicial office by a judicial~~
12 ~~nominating commission under IC 33-27-3, IC 33-33-2,~~
13 ~~IC 33-33-45, or IC 33-33-71; or~~
14 ~~(F) the licensing of a qualified organization under~~
15 ~~IC 4-32-3-4.~~
16 ~~(3) Disclosure of personal information by a public agency by~~
17 ~~order of~~ [law as required by IC 3-9-5; or
18 (B) lobbying disclosure law as required by IC 2-7.
19 (2) A lawful order or warrant, issued by a court of
20 competent jurisdiction[, for the provision, disclosure, or
21 release of personal information].
22 (~~<4>~~ [3]) A [lawful] request for discovery of personal
23 information ~~<from a person if the requestor:~~
24 ~~(A) demonstrates~~ [in the context of litigation if the
25 following conditions are met:
26 (A) The requesting party or person demonstrates, by
27 clear and convincing evidence, as determined by the
28 court[, a compelling need for the personal information
29 ~~by clear and convincing evidence; and~~ [.]
30 (B) [The requesting party or person] obtains a
31 protective order[, issued by the court,] barring
32 disclosure of the personal information to a [ny] person
33 ~~<or another entity that is not>~~ [not named as] a party in
34 the litigation.
35 (~~<5>~~ [4]) Admission of personal information as relevant
36 evidence ~~<in>~~ [before] a court of competent jurisdiction.
37 However, a court may not ~~<make a>~~ public [ly] disclos~~<ur>~~e
38 ~~<of>~~ [or release] personal information without a specific
39 finding of good cause.
40 (~~<6>~~ [5]) ~~<A>~~ [Release by a] public ~~<agency's~~
41 ~~disclosure>~~ [agency] of personal information that was
42 ~~<previously>~~ voluntarily ~~<disclosed>~~ [released] by:]



1 (A) the person ~~<or>~~ [to whom the personal information
 2 pertains; or
 3 (B) the nonprofit organization [with which the personal
 4 information is associated;
 5]to the public.
 6 (~~<7>~~ [6]) ~~<Requesting or requiring disclosure>~~ [A collection]
 7 of information that:
 8 (A) includes the identity of ~~<~~
 9 ~~— (A) a~~ [ny] director ~~<~~;
 10 ~~— (B) an~~ [.] officer ~~<~~;
 11 ~~— (C) a~~ [.] registered agent ~~<~~; [.] or ~~<~~
 12 ~~— (D) an~~ incorporator ~~<~~;
 13 ~~—~~ [.] of a nonprofit organization ~~<in>~~ [; and
 14 (B) is part of] a [ny] report [or disclosure] required ~~<by~~
 15 ~~law>~~ to be filed with ~~<the office of>~~ the secretary of
 16 state [under this article or any other statute].]
 17 [However, information that directly identifies ~~<an~~
 18 ~~individual>~~ [a person] as a donor of financial support to a
 19 nonprofit organization ~~<may not be disclosed>~~.
 20 ~~— (8) Disclosure of an individual's>~~ [shall not be collected by or
 21 disclosed to the secretary of state.
 22 (7) Disclosure of] personal information ~~<~~
 23 ~~— (A) [that is]~~ derived from a [financial] donation to a
 24 nonprofit organization [that is] affiliated with a public
 25 agency ~~<~~; ~~and>~~ [if:]
 26 (~~~~ [A]) [the disclosure is] required by ~~<state>~~ statute; [
 27 and]
 28 ~~<if>~~ [(B) the <individual> [person to whom the personal
 29 information pertains] has not previously ~~<requested~~
 30 ~~anonymity from the>~~ [made a request for
 31 anonymity to the nonprofit organization.
 32 (8) Information collected in an examination by the state
 33 board of accounts under IC 5-11-1-9. The information
 34 collected under IC 5-11-1-9 must be directly related to the
 35 examination by the state board of accounts or a related
 36 proceeding. Information collected under IC 5-11-1-9 may not
 37 be disclosed to the public, unless disclosure is expressly
 38 required by statute.
 39 (9) A request by the attorney general for information
 40 required for an audit, examination, review, or investigation.
 41 The request from the attorney general must be directly
 42 related to the audit, examination, review, or investigation



being completed. Information collected pursuant to an audit, examination, review, or investigation by the attorney general shall not be disclosed to the public, unless disclosure is expressly required by statute.

(10) Information submitted by a vendor to the auditor of state for the purpose of receiving payment from the state under IC 4-13-2-14.8 or IC 5-11-10-1.6. Information that directly identifies a person as a donor of financial support to a nonprofit organization shall not be collected by or disclosed to the auditor of state unless it is voluntarily submitted by the nonprofit organization.

~~<Sec. 8. A person may file a civil action for declaratory or injunctive relief with regard to an agency's collection or disclosure of personal information.~~

~~— Sec. 9. If an employee, board member, or officer of an agency discloses personal~~ [(c) Personal] information ~~<in>~~ [is considered confidential and is not subject to disclosure under IC 5-14-3.]

~~Sec. 7. (a) A person alleging a violation of this chapter, a plaintiff may recover from the officer, board member, or employee:~~

~~— (1) the plaintiff's actual damages resulting from the disclosure; or~~

~~— (2) liquidated damages in the amount of ten thousand dollars (\$10,000).~~

~~H>~~ [may bring a civil action in a court of competent jurisdiction for either or both the following:

(1) Injunctive relief.

(2) Damages as follows:

(A) a sum of money:

(i) to be determined by the court; but

(ii) not less than two thousand five hundred dollars

(\$2,500);

per violation to compensate the person for injury or loss caused by the violation; or

(B) if the court finds ~~<the defendant disclosed personal information in violation of this chapter, the court shall award court costs>~~ [that the violation was intentional, an increased sum of money in an amount not to exceed three (3) times the amount that would otherwise be awarded under clause (A).

(b) A court, in rendering a judgment in an action brought under this section, may award all or part of the costs of the action],



1 including reasonable attorney's fees and witness fees, to the
2 ~~<plaintiff>~~ [complainant] in the action if the court determines that
3 the award is appropriate.

4 Sec. 8. Any:

5 (1) public employee;

6 (2) public official; or

7 (3) employee or officer of a:

8 (A) contractor; or

9 (B) subcontractor;

10 of a public agency;

11 who violates this chapter is subject to penalties and discipline set
12 forth in IC 5-14-3-10].

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