



Legislative Monitoring Analysis: Indiana House Bill 1271

Bill: [H.B. 1271](#)

Principal Sponsor: Rep. Wesco (R)

Introduced: 1/10/2019

Status: (as of 1/22/2019): Active. First reading: Referred to Committee on Employment, Labor and Pensions.

Overview: The bill provides that if an individual is required to have an occupational license to practice one of the twenty-two occupations affected by the bill, the individual may practice the occupation without an occupational license, “notwithstanding any other law,” if the individual provides a signed disclosure to the consumer before entering into a contract and complies with all health, safety, security, confidentiality, reporting, and consumer protection requirements that are imposed on an individual with an occupational license. The term “occupational license” means any requirement to obtain a license, permit, registration, certificate, or other authority issued by a state agency or local unit of government to work in an “occupation,” defined to include only the twenty-two listed occupations.

The following occupations are affected by the bill:

Automotive dealers	Hearing aid dealers
Pest inspectors and registered technicians	Home inspectors
Securities dealers	Interior designers
Certified public accountants, public accountants, and accounting practitioners	Massage therapists
Architects and landscape architects	Manufactured home installers
Athlete agents	Plumbers
Auctioneers	Professional engineers
Barbers, cosmetologists, electrologists, estheticians, instructors, and beauty culturists	Private investigators and polygraph examiners
Dietitians	Soil scientists
Employee assistance professionals	Timber buyers
Geologists	Transient merchants

Analysis: The bill effectively negates the licensure requirements for the listed occupations by allowing unlicensed professionals to practice in Indiana with only a disclosure and signature by the consumer. The required disclosure is fairly minimal. Section 7(a) of the bill would require an unlicensed individual wishing to practice the occupation to provide a potential customer a disclosure that contains only:

- (1) A conspicuous statement in bold face type that the person is not licensed by a state agency or a local unit of government and does not have an occupational license.
- (2) The physical address and telephone number where the individual may be contacted.
- (3) The dated signature of the individual engaged in the occupation, and
- (4) The dated signature of the consumer entering into the contract.

The bill also provides that the unlicensed individual “may disclose” any industry group affiliations or certifications relevant to the individual’s qualifications.

The disclosure must be provided “before entering into a contract to provide the goods or services for compensation,” but there is not otherwise any requirement about notice to the consumer. A consumer could, for example, invest extensive time in meetings and discussions with a potential architect or accountant before entering into a contract with the individual, without understanding that the individual is unlicensed.

The bill does **not** require any of the following elements that would support informed decision-making by a consumer:

- That any website, business card, or other advertisement of the unlicensed individual disclose that the individual does not have a license.
- That the disclosure be a standalone document.
- That the unlicensed individual orally highlight to the consumer his or her unlicensed status and invite discussion or questions about it.
- That the disclosure list the requirements for obtaining a license to practice the occupation and identify which of those requirements the individual does not meet.
- That the disclosure list the educational, work experience, and other relevant qualifications of the individual to practice the occupation.
- That the disclosure state whether the individual has been denied a license or has been the subject of any disciplinary or regulatory action by the licensing board for the profession.

Section 9 of the bill exempts unlicensed individuals who follow the disclosure procedures from complying with “any experience, examination, education, or continuing education requirements or ... registration fees,” but they must comply with “health, safety, security, confidentiality, reporting, and consumer protection requirements that are imposed on an individual with an occupational license, including applicable inspections, permits, insurance, and bonding.”

This bill, if enacted as drafted, shifts considerable risk onto consumers. When occupations are licensed, consumers have an expectation that any individual practicing that occupation holds a license. The state has created through enacting a licensure requirement an assumption by consumers that practitioners of that occupation meet state requirements for qualifications for a license and that practitioners are subject to state enforcement oversight. The bill opens the door for unscrupulous individuals to take advantage of that assumption and contains insufficient safeguards for consumers to make an informed decision regarding using the services of an unlicensed individual. The required disclosure could, for example, be

included in a sheaf of paperwork that the consumer signs, without fully reading or understanding the import of the document. Similarly, nothing in the bill bars an individual whose license has been revoked for unsafe practices, fraud, or other disciplinary reasons from continuing to practice the occupation by means of this minimal disclosure procedure.

Members of the PCC without ties to the twenty-two listed occupations are not directly affected by this legislation. Nonetheless, the bill presents a dangerous slippery slope for traditionally regulated professions. Once there is legal recognition for consumer disclosures as a safe harbor from licensure requirements, this approach could easily be applied to other regulated professions.

Question for Consideration: *Should the PCC engage in efforts to oppose or modify this bill?*