

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE ENROLLED ACT No. 1223

AN ACT to amend the Indiana Code concerning state offices and administration.

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

SECTION 1. IC 4-2-7-3, AS AMENDED BY P.L.72-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The inspector general shall do the following:

- (1) Initiate, supervise, and coordinate investigations.
- (2) Recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government.
- (3) Receive complaints alleging the following:
 - (A) A violation of the code of ethics.
 - (B) Bribery (IC 35-44.1-1-2).
 - (C) Official misconduct (IC 35-44.1-1-1).
 - (D) Conflict of interest (IC 35-44.1-1-4).
 - (E) Profiteering from public service (IC 35-44.1-1-5).
 - (F) A violation of the executive branch lobbying rules.
 - (G) A violation of a statute or rule relating to the purchase of goods or services by a current or former employee, state officer, special state appointee, lobbyist, or person who has a business relationship with an agency.
- (4) If the inspector general has reasonable cause to believe that a crime has occurred or is occurring, report the suspected crime to:

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- (A) the governor; and
- (B) appropriate state or federal law enforcement agencies and prosecuting authorities having jurisdiction over the matter.
- (5) Adopt rules under IC 4-22-2 to implement IC 4-2-6 and this chapter.
- (6) Adopt rules under IC 4-22-2 and section 5 of this chapter to implement a code of ethics.
- (7) Ensure that every:
 - (A) employee;
 - (B) state officer;
 - (C) special state appointee; and
 - (D) person who has a business relationship with an agency;
 is properly trained in the code of ethics.
- (8) Provide advice to an agency on developing, implementing, and enforcing policies and procedures to prevent or reduce the risk of fraudulent or wrongful acts within the agency.
- (9) Recommend legislation to the governor and general assembly to strengthen public integrity laws, including the code of ethics for state officers, employees, special state appointees, and persons who have a business relationship with an agency, including whether additional specific state officers, employees, or special state appointees should be required to file a financial disclosure statement under IC 4-2-6-8.
- (10) Annually submit a report to the legislative council detailing the inspector general's activities. The report must be in an electronic format under IC 5-14-6.
- (11) Prescribe and provide forms for statements required to be filed under IC 4-2-6 or this chapter.
- (12) Accept and file information that:
 - (A) is voluntarily supplied; and
 - (B) exceeds the requirements of this chapter.
- (13) Inspect financial disclosure forms.
- (14) Notify persons who fail to file forms required under IC 4-2-6 or this chapter.
- (15) Develop a filing, a coding, and an indexing system required by IC 4-2-6 and IC 35-44.1-1.
- (16) Prepare interpretive and educational materials and programs.
- ~~(17) Adopt rules under IC 4-22-2 and section 9 of this chapter to implement a statewide code of judicial conduct for administrative law judges. The inspector general may adopt emergency rules in the manner provided under IC 4-22-2-37.1 to implement a statewide code of judicial conduct for administrative law judges.~~



SECTION 2. IC 4-2-7-9 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 9: (a) The inspector general shall adopt rules under IC 4-22-2 establishing a statewide code of judicial conduct for administrative law judges. The statewide code of judicial conduct for administrative law judges must apply to every person acting as an administrative law judge for a state agency.

(b) The inspector general:

(1) shall review 312 IAC 3-1-2.5 and 315 IAC 1-1-2 in adopting a statewide code of judicial conduct for administrative law judges; and

(2) may base the statewide code of judicial conduct for administrative law judges on 312 IAC 3-1-2.5 and 315 IAC 1-1-2.

(c) A state agency may adopt rules under IC 4-22-2 to establish a supplemental code of judicial conduct for a person acting as an administrative law judge for that agency, if the supplemental code is at least as restrictive as the statewide code of judicial conduct for administrative law judges.

(d) The inspector general may adopt emergency rules in the manner provided under IC 4-22-2-37.1 to implement a statewide code of judicial conduct for administrative law judges.

(e) The statewide code of judicial conduct for administrative law judges shall be enforced under IC 4-21.5. The inspector general is not responsible for enforcing the statewide code of judicial conduct for administrative law judges or for investigating a possible violation of the statewide code.

SECTION 3. IC 4-15-2.2-15, AS ADDED BY P.L.229-2011, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. The director shall do the following:

(1) Direct and supervise all administrative and technical activities of the department.

(2) Survey the administrative organization and procedures, including personnel procedures, of all state agencies, and submit to the governor measures to do the following among state agencies:

(A) Secure greater efficiency and economy.

(B) Minimize the duplication of activities.

(C) Effect better organization and procedures.

(3) Develop personnel policies, methods, procedures, and standards for all state agencies.

(4) Establish and maintain a roster of all employees in the state civil service.

(5) Prepare, or cause to be prepared, a classification and pay plan



for the state civil service.

(6) Administer the classification and pay plan prepared under subdivision (5).

(7) Allocate each position in the state civil service to its proper class.

(8) Approve individuals for appointment to positions in the state civil service.

(9) Approve employees for transfer, demotion, or promotion within the state civil service.

(10) Approve employees for suspension, layoff, or dismissal from the state civil service.

(11) Rate the service of employees.

(12) Arrange, in cooperation with the directors of the divisions of the service, for employee training.

(13) Make available employee relations specialists to help employees:

(A) resolve employment related problems; and

(B) understand the procedures that are available for redress of grievances that the employee relations specialists do not resolve.

(14) Investigate systems of appointment and promotion in operation in various departments or divisions of the state government.

(15) Investigate and approve the need for existing and new positions in the state civil service.

(16) Investigate periodically the operation and effectiveness of this chapter and rules adopted under this chapter.

(17) Implement, administer, and enforce this chapter and rules and policies adopted under this chapter.

(18) Appoint employees, experts, and special assistants, as necessary, to effectively carry out this chapter.

(19) Perform any other lawful acts that the director considers necessary or desirable to carry out this chapter.

(20) Perform any other duties imposed by this chapter or assigned by the governor.

(21) Provide offices, rooms, and staff assistance to the office of administrative law proceedings established by IC 4-15-10.5-7.

SECTION 4. IC 4-15-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 10.5. Office of Administrative Law Proceedings



Sec. 1. (a) Beginning July 1, 2020, this chapter applies when an agency is required to assign, appoint, or otherwise make use of an individual to act in the capacity of an administrative law judge to preside over administrative proceedings to review a disputed agency action for the agency.

(b) Except as provided in subsection (c) and section 2 of this chapter, this chapter applies to each state agency that has the authority to employ or engage one (1) or more administrative law judges to adjudicate contested cases.

(c) This chapter does not apply to an agency that uses a board or commission to act in the capacity of an administrative law judge to preside over administrative proceedings, and should not be construed as limiting an agency's ability to use its board or commission to act in the capacity of an administrative law judge to preside over administrative proceedings to review a disputed agency action for the agency.

Sec. 2. This chapter does not apply to:

- (1) the department of workforce development;**
- (2) the unemployment insurance review board of the department of workforce development;**
- (3) the worker's compensation board of Indiana;**
- (4) the Indiana utility regulatory commission;**
- (5) the department of state revenue;**
- (6) the department of local government finance;**
- (7) the Indiana board of tax review;**
- (8) the natural resources commission;**
- (9) the office of environmental adjudication;**
- (10) the Indiana education employment relations board;**
- (11) the state employees appeals commission; or**
- (12) before July 1, 2022, any other agency or category of proceeding determined by the governor to be exempt from this chapter for good cause.**

Sec. 3. As used in this chapter, "administrative law judge" means an individual who presides over an administrative proceeding that results in a finding of fact determining the legal rights, duties, or privileges of a party after an opportunity for an evidentiary hearing.

Sec. 4. As used in this chapter, "agency" means an authority, board, branch, bureau, commission, committee, council, department, division, office, service, or other instrumentality of the executive, including the administrative, department of state government. The term does not include any of the following:



- (1) Any body corporate and politic set up as an instrumentality of the state.
- (2) Any private, nonprofit, government related corporation.
- (3) The judicial department of state government.
- (4) The legislative department of state government.
- (5) A state educational institution.
- (6) A political subdivision.

Sec. 5. As used in this chapter, "director" means the director of the office of administrative law proceedings.

Sec. 6. As used in this chapter, "office" means the office of administrative law proceedings established by section 7 of this chapter. The term includes the director.

Sec. 7. The office of administrative law proceedings is established as a separate department within the state personnel department.

Sec. 8. The office shall have a director who is responsible for administering the office. The governor shall appoint the director.

Sec. 9. The state personnel department shall provide offices, rooms, and staff assistance to the director for the office.

Sec. 10. The director shall do the following:

- (1) Hire or contract with administrative law judges and other employees as necessary to carry out the purposes of this chapter.
- (2) Assign administrative law judges from the office to preside over administrative proceedings.
- (3) Adopt rules under IC 4-22-2 establishing a code of judicial conduct for administrative law judges. The code of judicial conduct for administrative law judges applies to each person acting as an administrative law judge for the office. The director may adopt emergency rules in the manner provided under IC 4-22-2-37.1 to implement a code of judicial conduct for administrative law judges.
- (4) Receive complaints alleging violations of the code of judicial conduct for administrative law judges, investigate the complaints, and take administrative or disciplinary action as deemed appropriate and warranted.
- (5) Establish and administer a program to train and educate administrative law judges.
- (6) Require all administrative law judges for the office to annually complete a number of hours of training and education determined by the director.
- (7) Provide and coordinate education for administrative law



judges on the code of judicial conduct for administrative law judges, professionalism, administrative practices, and other subjects necessary to carry out the purposes of this chapter.

(8) Render advisory opinions to administrative law judges concerning the code of judicial conduct for administrative law judges. Information and advice contained in an advisory opinion are considered:

(A) specific to the person who requests the opinion and to the facts presented; and

(B) confidential records under IC 5-14-3-4(b)(6).

(9) Consult with agency heads on hiring and performance evaluations of administrative law judges for the agencies of the agency heads.

Sec. 11. The office may:

(1) enter into contracts or agreements; and

(2) adopt rules under IC 4-22-2;

necessary to carry out the purposes of this chapter.

Sec. 12. (a) Beginning July 1, 2020, and except as provided in sections 1 and 2 of this chapter, the office has jurisdiction over all administrative proceedings concerning agency administrative actions under:

(1) IC 4-21.5; or

(2) any other statute that requires or allows the office to take action.

(b) Notwithstanding anything in this chapter or any other statute to the contrary:

(1) the office shall not be considered the ultimate authority in any administrative proceeding; and

(2) a decision by the office in an administrative proceeding is not a final agency action;

unless expressly designated by the agency. This subsection may not be construed as preventing the rescission of an agency's delegation.

Sec. 13. (a) The director shall assign one (1) or more administrative law judges to:

(1) one (1) or more agencies to handle all administrative proceedings filed with that agency or agencies; or

(2) preside over any administrative proceeding filed within an agency.

(b) When assigning an administrative law judge to an agency or an administrative proceeding, the director shall consider an administrative law judge's experience, technical competence, and specialized knowledge.



Sec. 14. (a) The procedures of the office in an administrative proceeding are governed by:

- (1) IC 4-21.5; or**
- (2) if IC 4-21.5 does not apply, any other statute that governs an agency's administrative proceedings.**

(b) The office shall render its decisions in writing.

Sec. 15. (a) Except as provided in subsection (b), an administrative law judge employed by the office must be:

- (1) a citizen of Indiana; and**
- (2) an attorney in good standing admitted to the practice of law in Indiana.**

(b) An individual who does not meet the requirement under subsection (a)(2) but who served as an administrative law judge for an agency in Indiana before May 1, 2019, may be employed by the office as an administrative law judge.

Sec. 16. An agency must provide office space, hearing rooms, and administrative support for administrative proceedings for the agency.

SECTION 5. IC 4-21.5-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. "Administrative law judge" refers to:

(1) before July 1, 2020, an individual or panel of individuals acting in the capacity of an administrative law judge in a proceeding; and

(2) after June 30, 2020:

(A) an administrative law judge assigned to preside over a proceeding by the director of the office of administrative law proceedings, if the proceeding is subject to the jurisdiction of the office of administrative law proceedings;

(B) a board or commission acting in the capacity of an administrative law judge to preside over a proceeding for the agency; or

(C) an individual or panel of individuals acting in the capacity of an administrative law judge in a proceeding, if the proceeding is not subject to the jurisdiction of the office of administrative law proceedings.

SECTION 6. IC 4-21.5-1-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8.5. "Office of administrative law proceedings" refers to the office of administrative law proceedings established by IC 4-15-10.5-7. The term includes an administrative law judge or administrative law judges assigned to a proceeding by



the office of administrative law proceedings.

SECTION 7. IC 4-21.5-3-7, AS AMENDED BY P.L.6-2012, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) To qualify for review of a personnel action to which IC 4-15-2.2 applies, a person must comply with IC 4-15-2.2-42. To qualify for review of any other order described in section 4, 5, or 6 of this chapter, a person must petition for review in a writing that does the following:

- (1) States facts demonstrating that:
 - (A) the petitioner is a person to whom the order is specifically directed;
 - (B) the petitioner is aggrieved or adversely affected by the order; or
 - (C) the petitioner is entitled to review under any law.
- (2) Includes, with respect to determinations of notice of program reimbursement and audit findings described in section 6(a)(3) and 6(a)(4) of this chapter, a statement of issues that includes:
 - (A) the specific findings, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning from which the provider is appealing;
 - (B) the reason the provider believes that the finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning was in error; and
 - (C) with respect to each finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning, the statutes or rules that support the provider's contentions of error.

Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of issues contained in a petition for review to add one (1) or more additional issues.

- (3) Is filed:
 - (A) with respect to an order described in section 4, 5, 6(a)(1), 6(a)(2), or 6(a)(5) of this chapter, with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order or any longer period set by statute; or
 - (B) with respect to a determination described in section 6(a)(3) or 6(a)(4) of this chapter, with the office of Medicaid policy



and planning not more than one hundred eighty (180) days after the hospital is provided notice of the determination.

The issuance of an amended notice of program reimbursement by the office of Medicaid policy and planning does not extend the time within which a hospital must file a petition for review from the original notice of program reimbursement under clause (B), except for matters that are the subject of the amended notice of program reimbursement.

If the petition for review is denied, the petition shall be treated as a petition for intervention in any review initiated under subsection (d).

(b) If an agency denies a petition for review under subsection (a) and the petitioner is not allowed to intervene as a party in a proceeding resulting from the grant of the petition for review of another person, the agency shall serve a written notice on the petitioner that includes the following:

- (1) A statement that the petition for review is denied.
- (2) A brief explanation of the available procedures and the time limit for seeking administrative review of the denial under subsection (c).

(c) An agency shall assign an administrative law judge, **or after June 30, 2020, if the proceeding is subject to the jurisdiction of the office of administrative law proceedings, an agency shall request assignment of an administrative law judge by the office of administrative law proceedings**, to conduct a preliminary hearing on the issue of whether a person is qualified under subsection (a) to obtain review of an order when a person requests reconsideration of the denial of review in a writing that:

- (1) states facts demonstrating that the person filed a petition for review of an order described in section 4, 5, or 6 of this chapter;
- (2) states facts demonstrating that the person was denied review without an evidentiary hearing; and
- (3) is filed with the ultimate authority for the agency denying the review within fifteen (15) days after the notice required by subsection (b) was served on the petitioner.

Notice of the preliminary hearing shall be given to the parties, each person who has a pending petition for intervention in the proceeding, and any other person described by section 5(d) of this chapter. The resulting order must be served on the persons to whom notice of the preliminary hearing must be given and include a statement of the facts and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party to the proceeding and:



(1) the agency shall assign the matter to an administrative law judge or, **after June 30, 2020, if the proceeding is subject to the jurisdiction of the office of administrative law proceedings, request assignment of an administrative law judge by the office of administrative law proceedings; or**

(2) certify the matter to another agency for the assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency).

The agency granting the administrative review or the agency to which the matter is transferred may conduct informal proceedings to settle the matter to the extent allowed by law.

SECTION 8. IC 4-21.5-3-8.5, AS ADDED BY P.L.72-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8.5. (a) **After June 30, 2020, this section does not apply to an agency that is subject to the jurisdiction of the office of administrative law proceedings.**

(b) An agency may share an administrative law judge with another agency:

- (1) to avoid bias, prejudice, interest in the outcome, or another conflict of interest;
- (2) if a party requests a change of administrative law judge;
- (3) to ease scheduling difficulties; or
- (4) for another good cause.

An agency may adopt rules under IC 4-22-2 to implement this subsection.

~~(b)~~ (c) To the extent practicable, an administrative law judge must have expertise in the area of law being adjudicated.

~~(c)~~ (d) An agency shall post on the agency's Internet web site the:

- (1) name;
- (2) salary and other remuneration; and
- (3) relevant professional experience;

of every person who serves as an administrative law judge for the agency.

SECTION 9. IC 4-21.5-3-9, AS AMENDED BY P.L.72-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) Except to the extent that a statute other than this article limits an agency's discretion to select an administrative law judge, the ultimate authority for an agency may:

- (1) act as an administrative law judge;
- (2) designate one (1) or more members of the ultimate authority (if the ultimate authority is a panel of individuals) to act as an administrative law judge; or



- (3) **before July 1, 2020**, designate one (1) or more:
- (A) attorneys licensed to practice law in Indiana; or
 - (B) persons who served as administrative law judges for a state agency before January 1, 2014;
- to act as an administrative law judge. **After June 30, 2020, the ultimate authority for an agency may request assignment of an administrative law judge by the office of administrative law proceedings.**

A person designated under subdivision (3) is not required to be an employee of the agency. A designation under subdivision (2) or (3) may be made in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be made for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

(b) An agency may not knowingly assign an individual to serve alone or with others as an administrative law judge who is subject to disqualification under this chapter.

(c) If the **administrative law judge assigned to the proceeding** believes that the judge's impartiality might reasonably be questioned, or believes that the judge's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision, ~~an individual assigned to serve alone or with others as an~~ the administrative law judge shall:

- (1) withdraw as the administrative law judge; or
- (2) inform the parties of the potential basis for disqualification, place a brief statement of this basis on the record of the proceeding, and allow the parties an opportunity to petition for disqualification under subsection (d).

(d) Any party to a proceeding may petition for the disqualification of an ~~individual serving alone or with others as an~~ administrative law judge upon discovering facts establishing grounds for disqualification under this chapter. The administrative law judge assigned to the proceeding shall determine whether to grant the petition, stating facts and reasons for the determination.

(e) If the administrative law judge ruling on the disqualification issue is not the ultimate authority for the agency, the party petitioning for disqualification may petition the ultimate authority in writing for review of the ruling within ten (10) days after notice of the ruling is served. The ultimate authority shall conduct proceedings described by section 28 of this chapter to review the petition and affirm, modify, or dissolve the ruling within thirty (30) days after the petition is filed. A



determination by the ultimate authority under this subsection is a final order subject to judicial review under IC 4-21.5-5.

~~(e)~~ **(f)** If a substitute is required for an administrative law judge who is disqualified or becomes unavailable for any other reason, the substitute must be appointed in accordance with subsection (a).

~~(f)~~ **(g)** Any action taken by a duly appointed substitute for a disqualified or unavailable administrative law judge is as effective as if taken by the latter.

~~(g)~~ **(h)** If there is a reasonable likelihood that the ultimate authority will be called upon to:

- (1) review; or
- (2) issue a final order with respect to;

a matter pending before or adjudicated by an administrative law judge, the provisions of section 11 of this chapter that apply to an administrative law judge or to a person communicating with an administrative law judge apply to a member of the ultimate authority and to a person communicating with a member of the ultimate authority.

SECTION 10. IC 4-21.5-3-10, AS AMENDED BY P.L.32-2011, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) ~~Any individual serving or designated to serve alone or with others as~~ An administrative law judge is subject to disqualification for:

- (1) bias, prejudice, or interest in the outcome of a proceeding;
- (2) failure to dispose of the subject of a proceeding in an orderly and reasonably prompt manner after a written request by a party;
- (3) unless waived or extended with the written consent of all parties or for good cause shown, failure to issue an order not later than ninety (90) days after the latest of:

(A) the filing of a motion to dismiss or a motion for summary judgment under section 23 of this chapter that is filed after June 30, 2011;

(B) the conclusion of a hearing that begins after June 30, 2011; or

(C) the completion of any schedule set for briefing or for submittal of proposed findings of fact and conclusions of law for a disposition under clauses (A) or (B); or

- (4) any cause for which a judge of a court may be disqualified.

Before July 1, 2020, nothing in this subsection prohibits an individual who is an employee of an agency from serving as an administrative law judge.

- (b) This subsection does not apply to a proceeding concerning a



regulated occupation (as defined in IC 25-1-7-1), except for a proceeding concerning a water well driller (as described in IC 25-39-3) or an out of state mobile health care entity regulated by the state department of health. An individual who is disqualified under subsection (a)(2) or (a)(3) shall provide the parties a list of at least three (3) special administrative law judges who meet the requirements of:

- (1) IC 4-21.5-7-6, if the case is pending in the office of environmental adjudication.
- (2) IC 14-10-2-2, if the case is pending before the division of hearings of the natural resources commission; or
- (3) **subject to subsection (d)**, any other statute or rule governing qualification to serve an agency other than those described in subdivision (1) or (2).

Subject to subsection (c), the parties may agree to the selection of one (1) individual from the list.

(c) If the parties do not agree to the selection of an individual as provided in subsection (b) not later than ten (10) days after the parties are provided a list of judges under subsection (b), a special administrative law judge who meets the requirements of subsection (b) shall be selected under the procedure set forth in Trial Rule 79(D), 79(E), or 79(F).

(d) This subsection applies after June 30, 2020, to an agency whose proceedings are subject to the jurisdiction of the office of administrative law proceedings. If an administrative law judge is disqualified under this section, the director of the office of administrative law proceedings shall assign another administrative law judge.

SECTION 11. IC 4-21.5-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. (a) An individual who has served as investigator, prosecutor, or advocate in a proceeding or in its preadjudicative stage may not serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding.

(b) An individual who is subject to the authority, direction, or discretion of an individual who has served as investigator, prosecutor, or advocate in a proceeding or in its preadjudicative stage may not serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding.

(c) An individual who has made a determination of probable cause or other equivalent preliminary determination in a proceeding may serve as an administrative law judge or assist or advise the



administrative law judge in the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter. **This subsection does not apply after June 30, 2020, to an agency whose proceedings are subject to the jurisdiction of the office of administrative law proceedings.**

(d) An individual may serve as an administrative law judge or a person presiding under sections 28, 29, 30, and 31 of this chapter at successive stages of the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter. **This subsection does not apply after June 30, 2020, to an agency whose proceedings are subject to the jurisdiction of the office of administrative law proceedings.**

(e) A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

SECTION 12. IC 4-21.5-3.5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 21. (a) If the parties do not reach an agreement on any matter as a result of mediation, the mediator shall report the lack of an agreement without comment or recommendation to the administrative law judge assigned to the proceeding. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party that, if resolved or completed, would facilitate the possibility of a settlement.

(b) An agreement as a result of mediation must be in writing and signed by the parties. The agreement must be filed with the administrative law judge assigned to the proceeding. If the agreement is complete on all issues, it must be accompanied by a joint stipulation of disposition. Upon approval of a joint stipulation of disposition by the administrative law judge, it has the same force and effect as an agreed order approved by ~~an the~~ administrative law judge. ~~from the agency involved.~~

(c) An approved joint stipulation of disposition under this chapter is considered a contract between the parties.

SECTION 13. IC 4-33-3-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 23. (a) A commission member, ~~or before July 1, 2020,~~ an administrative law judge appointed by the commission, ~~or, after June 30, 2020, an administrative law judge (as defined in IC 4-21.5-1-2)~~ may do the following:

- (1) Conduct a hearing authorized under this article.
- (2) Recommend findings of fact and decisions to the commission.

(b) The commission member or administrative law judge conducting a hearing has all the powers and rights granted to the commission. A



hearing under this article shall be conducted under IC 4-21.5.

(c) When conducting a public hearing, the commission shall not limit the number of speakers who may testify. However, the commission may set reasonable time limits on the length of an individual's testimony or the total amount of time allotted to proponents and opponents of an issue before the commission.

SECTION 14. IC 4-33-19-4, AS ADDED BY P.L.227-2007, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 4. The commission shall hire ~~an administrative law judge~~, attorneys and other personnel necessary to carry out the division's duties under this chapter.

SECTION 15. IC 4-33-19-8, AS ADDED BY P.L.227-2007, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. (a) A memorandum of understanding required by section 7 of this chapter must describe the responsibilities of each participating agency in coordinating the agencies' administrative enforcement actions with respect to suspected violations of IC 35-45-5-3, IC 35-45-5-3.5, and IC 35-45-5-4.

(b) Each party to the memorandum of understanding required by section 7 of this chapter must agree to permit the license revocation actions subject to this chapter to be heard, **before July 1, 2020**, by an administrative law judge employed by the division, **and after June 30, 2020, an administrative law judge (as defined in IC 4-21.5-1-2)**.

(c) A memorandum of understanding required by section 7 of this chapter must set forth the administrative procedures applicable to each revocation action conducted under this chapter.

SECTION 16. IC 4-33-22-48, AS ADDED BY P.L.113-2010, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 48. A licensee who has been subjected to disciplinary sanctions may be required by the commission to pay the costs of the proceeding. The licensee's ability to pay shall be considered when costs are assessed. If the licensee fails to pay the costs, a suspension may not be imposed solely upon the licensee's inability to pay the amount assessed. These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.



(8) Depositions.

(9) Notarizations.

(10) **Before July 1, 2020**, administrative law judges.

SECTION 17. IC 5-2-1-12.5, AS ADDED BY P.L.52-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 12.5. (a) The board may revoke a diploma, certificate, badge, or other document showing compliance and qualification issued by the board for any of the following reasons:

(1) The officer has been convicted of:

(A) a felony; or

(B) two (2) or more misdemeanors that would cause a reasonable person to believe that the officer is potentially dangerous or violent or has a propensity to violate the law.

(2) The officer has been found not guilty of a felony by reason of mental disease or defect.

(3) The officer's diploma, certificate, badge, or other document showing compliance and qualification was issued in error or was issued on the basis of information later determined to be false.

(b) A person who knows of cause for the revocation of an officer's diploma, certificate, badge, or other document showing compliance and qualification shall inform the officer's hiring or appointing authority or the board. A person who makes a good faith report of cause for revocation of an officer's diploma, certificate, badge, or other document showing compliance and qualification is immune from civil liability.

(c) If the chief executive officer receives a report of cause for revocation concerning an officer within the chief executive officer's agency, the chief executive officer shall:

(1) cause the internal affairs division (or a similar unit) of the agency to investigate the report without unnecessary delay; or

(2) request that the investigation be conducted by a law enforcement agency other than the law enforcement agency to which the subject of the investigation belongs.

(d) If a hiring or appointing authority receives a report of cause for revocation concerning the chief executive officer, the hiring or appointing authority shall cause an appropriate investigative agency to investigate without unnecessary delay.

(e) If the board receives a report or otherwise learns of cause for revocation concerning a law enforcement officer or chief executive officer, the board shall consider the report and direct the executive director to notify the subject officer's hiring or appointing authority about the report and request an investigation. The hiring or appointing authority shall cause an investigation to be conducted by an appropriate



investigative agency without unnecessary delay.

(f) When a hiring or appointing authority completes an investigation of cause for revocation, the hiring or appointing authority shall forward a complete report of its investigation, findings, and recommendations, if any, to the board. The hiring or appointing authority shall also forward to the board a description of any administrative or disciplinary action taken as a result of the investigation not later than sixty (60) days after the hiring or appointing authority takes administrative or disciplinary action.

(g) Except as provided in subsection (h), if the board receives the results of an investigation described in subsection (f), the board shall conduct a hearing on the report, considering the report, the recommendations, and any additional information. The board shall provide the officer who is the subject of the report with notice and an opportunity to be heard. The board may appoint the executive director or another qualified person to present the report and the results of the investigation to the board. In determining whether to revoke the subject officer's diploma, certificate, badge, or other document showing compliance and qualification, the board shall consider the opinion and testimony of the hiring or appointing authority. If the board determines that cause for revocation exists, the board may revoke the subject officer's diploma, certificate, badge, or other document showing compliance and qualification. The board shall send notice of revocation by certified mail to the subject officer's hiring or appointing authority. The subject officer may pursue judicial review of the board's action under IC 4-21.5-5-13.

(h) When the board receives the results of an investigation described in subsection (f), the board may, instead of conducting a hearing under subsection (g):

(1) before July 1, 2020, direct the executive director or another qualified person to serve as an administrative law judge; or

(2) after June 30, 2020, request assignment of an administrative law judge assigned by the office of administrative law proceedings established by IC 4-15-10.5-7;

to conduct the hearing described in subsection (g). If the administrative law judge determines that cause for revocation exists, the administrative law judge shall revoke the subject officer's diploma, certificate, badge, or other document showing compliance and qualification and notify the subject officer by certified mail of the decision, with notice of the subject officer's right to appeal to the board not later than fifteen (15) days after receipt of the notice. An appeal to the board must be in writing and may be decided by the board without



a hearing. The board shall notify the subject officer of the board's appellate decision under this subsection by certified mail. The subject officer may pursue judicial review of the board's action under IC 4-21.5-5-13.

(i) An officer whose diploma, certificate, badge, or other document showing compliance and qualification has been revoked may apply to the board for reinstatement. The application for reinstatement:

(1) must be in writing; and

(2) must show:

(A) that the cause for revocation no longer exists legally; or

(B) that reinstatement is otherwise appropriate and that the applicant poses no danger to the public and can perform as a law enforcement officer according to the board's standards.

The board may direct the executive director to investigate the application for reinstatement and make a report to the board. The board shall consider the application and notify the applicant by certified mail of the board's decision.

SECTION 18. IC 16-19-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) This section does not apply to medical or epidemiological information protected from disclosure under IC 16-41-8-1 or data or information that is confidential under IC 16-21-6-7 or IC 16-39-5-3.

(b) Except as provided in subsection (c), medical or epidemiological information:

(1) collected from or volunteered by a person; and

(2) that results in or from:

(A) a public health surveillance;

(B) a public health investigation; or

(C) an epidemiological investigation or study;

may be released only in a form that protects the identity of a person whose medical or epidemiological information was obtained.

(c) Medical or epidemiological information described in subsection (b) may be released in a form that does not protect the identity of a person whose medical or epidemiological information was obtained if:

(1) the person consents in writing to the release of the person's medical or epidemiological information; or

(2) the investigation or study results in an administrative or a judicial proceeding and release of the medical or epidemiological information is ordered by, **before July 1, 2020**, the administrative law judge, **after June 30, 2020, the administrative law judge (as defined in IC 4-21.5-1-2)**, or the court.

SECTION 19. IC 16-21-4-2 IS AMENDED TO READ AS



FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) The state department shall appoint an appeals panel consisting of three (3) members as follows:

- (1) One (1) member of the executive board.
- (2) One (1) attorney admitted to the practice of law in Indiana.
- (3) One (1) individual with qualifications determined by the state department.

(b) An employee of the state department may not be a member of the panel.

(c) The panel shall conduct proceedings for review of an order issued by, **before July 1, 2020**, an administrative law judge under this chapter, **or, after June 30, 2020, an administrative law judge (as defined in IC 4-21.5-1-2)**. The panel is the ultimate authority under IC 4-21.5.

SECTION 20. IC 16-25-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) For an appeal under section 6 of this chapter, the executive board shall appoint an appeals panel consisting of three (3) members as follows:

- (1) One (1) member of the executive board.
- (2) One (1) attorney admitted to the practice of law in Indiana.
- (3) One (1) individual with qualifications determined by the executive board.

(b) An employee of the state department may not be a member of the appeals panel.

(c) The appeals panel shall conduct proceedings for review of an order issued by, **before July 1, 2020**, an administrative law judge under this chapter, **or, after June 30, 2020, an administrative law judge (as defined in IC 4-21.5-1-2)**. The appeals panel is the ultimate authority under IC 4-21.5.

(d) The costs of the proceedings, including the fees of the appeals panel, shall be paid as follows:

- (1) By the hospice, if the appeals panel finds in favor of the state department.
- (2) By the state department, if the appeals panel finds in favor of the hospice.

SECTION 21. IC 16-27-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 14. (a) The executive board shall appoint an appeals panel consisting of three (3) members as follows:

- (1) One (1) member of the executive board.
- (2) One (1) attorney admitted to the practice of law in Indiana who is not an employee of the state department.



(3) One (1) individual with qualifications determined by the executive board.

(b) An employee of the state department may not be a member of the panel.

(c) The panel shall conduct proceedings for review of an order issued by, **before July 1, 2020**, an administrative law judge under this chapter, **or, after June 30, 2020, an administrative law judge (as defined in IC 4-21.5-1-2)**. The panel is the ultimate authority under IC 4-21.5.

SECTION 22. IC 16-27-4-22, AS ADDED BY P.L.212-2005, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 22. (a) In response to a request for review of an order referred to in subsection (c), the executive board shall appoint an appeals panel that consists of three (3) members as follows:

- (1) One (1) member of the executive board.
- (2) One (1) attorney admitted to the practice of law in Indiana.
- (3) One (1) individual with qualifications determined by the executive board.

(b) An employee of the state department may not be a member of the panel.

(c) The panel shall conduct proceedings for review of an order issued by, **before July 1, 2020**, an administrative law judge under this chapter, **or, after June 30, 2020, an administrative law judge (as defined in IC 4-21.5-1-2)**. The panel is the ultimate authority under IC 4-21.5.

SECTION 23. IC 16-28-10-1, AS AMENDED BY P.L.141-2014, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) Hearings under this article shall be conducted in accordance with IC 4-21.5.

(b) Except for hearings held on the adoption of rules, an administrative law judge must meet the following conditions:

- (1) Be admitted to the practice of law in Indiana.
- (2) Not be an employee of the state.

This subsection expires June 30, 2020.

~~(b)~~ (c) A health facility shall pay the costs of appointing an administrative law judge if the administrative law judge finds in favor of the state. However, if the administrative law judge finds in favor of the health facility, the state shall pay the costs of appointing the administrative law judge.

SECTION 24. IC 16-28-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) The executive board shall appoint an appeals panel consisting of three (3) members



as follows:

- (1) One (1) member of the executive board.
 - (2) One (1) attorney admitted to the practice of law in Indiana.
 - (3) One (1) individual with qualifications determined by the executive board.
 - (b) An employee of the state may not be a member of the panel.
 - (c) An appeals panel shall conduct proceedings for review of an order issued by, **before July 1, 2020**, an administrative law judge under this chapter, **or, after June 30, 2020, an administrative law judge (as defined in IC 4-21.5-1-2)**. The panel is the ultimate authority under IC 4-21.5.
 - (d) The cost of the proceedings, including the fees of the appeals panel, shall be paid as follows:
 - (1) By the health facility if the panel finds in favor of the state.
 - (2) By the state if the panel finds in favor of the health facility.
- SECTION 25. IC 22-9-1-6, AS AMENDED BY P.L.136-2018, SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) The commission shall establish and maintain a permanent office in the city of Indianapolis.
- (b) Except as it concerns judicial review, the commission may adopt rules under IC 4-22-2 to implement this chapter.
 - (c) The commission shall formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or local subdivisions thereof to effectuate such policies. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state or any political subdivision or agency thereof shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any matter before the commission.
 - (d) The commission shall receive and investigate complaints alleging discriminatory practices. The commission shall not hold hearings in the absence of a complaint. All investigations of complaints shall be conducted by staff members of the civil rights commission or their agents.
 - (e) The commission may create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this chapter. The commission may itself, or it may empower these agencies and councils to:
 - (1) study the problems of discrimination in the areas covered by section 2 of this chapter when based on race, religion, color, sex, handicap, national origin, or ancestry; and
 - (2) foster through community effort, or otherwise, good will



among the groups and elements of the population of the state. These agencies and councils may make recommendation to the commission for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for reasonable and necessary actual expenses.

(f) The commission may issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, handicap, national origin, or ancestry.

(g) The commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because the person filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under its investigation.

(h) The commission may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books and papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena issued under this section shall constitute a contempt. All hearings shall be held within Indiana at a location determined by the commission. A citation of contempt may be issued upon application by the commission to the circuit or superior court in the county in which the hearing is held or in which the witness resides or transacts business.

(i) The commission may:

(1) before July 1, 2020, appoint administrative law judges other than commissioners; and

(2) after June 30, 2020, request assignment of an administrative law judge (as defined in IC 4-21.5-1-2);

when an appointment is deemed necessary by a majority of the commission. The administrative law judges shall be members in good standing before the bar of Indiana and shall be appointed by the chairman of the commission. An administrative law judge appointed under this subsection shall have the same powers and duties as a commissioner sitting as an administrative law judge. However, the administrative law judge may not issue subpoenas.

(j) The commission shall state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order



requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:

- (1) to restore **the** complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice; however, except in discriminatory practices involving veterans, this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commissions;
- (2) to require the posting of notice setting forth the public policy of Indiana concerning civil rights and **the** respondent's compliance with the policy in places of public accommodations;
- (3) to require proof of compliance to be filed by **the** respondent at periodic intervals; and
- (4) to require a person who has been found to be in violation of this chapter and who is licensed by a state agency authorized to grant a license to show cause to the licensing agency why the person's license should not be revoked or suspended.

When an employer has been found to have committed a discriminatory practice in employment by failing to employ an applicant on the basis that the applicant is a veteran, the order to restore the veteran's losses may include placing the veteran in the employment position with the employer for which the veteran applied.

(k) Judicial review of a cease and desist order or other affirmative action as referred to in this chapter may be obtained under IC 22-9-8. If no proceeding to obtain judicial review is instituted within thirty (30) days from receipt of notice by a person that an order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of the order in circuit or superior court upon showing that the person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(l) If, upon all the evidence, the commission shall find that a person has not engaged in any unlawful practice or violation of this chapter, the commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the complaint as to the person.

(m) The commission may furnish technical assistance requested by persons subject to this chapter to further compliance with this chapter



or with an order issued under this chapter.

(n) The commission shall promote the creation of local civil rights agencies to cooperate with individuals, neighborhood associations, and state, local, and other agencies, both public and private, including agencies of the federal government and of other states.

(o) The commission may reduce the terms of conciliation agreed to by the parties to writing (to be called a consent agreement) that the parties and a majority of the commissioners shall sign. When signed, the consent agreement shall have the same effect as a cease and desist order issued under subsection (j). If the commission determines that a party to the consent agreement is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement and the party is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(p) In lieu of investigating a complaint and holding a hearing under this section, the commission may issue an order based on findings and determinations by the federal Department of Housing and Urban Development or the federal Equal Employment Opportunity Commission concerning a complaint that has been filed with one (1) of these federal agencies and with the commission. The commission shall adopt by rule standards under which the commission may issue such an order.

(q) Upon notice that a complaint is the subject of an action in a federal court, the commission shall immediately cease investigation of the complaint and may not conduct hearings or issue findings of fact or orders concerning that complaint.

SECTION 26. IC 23-2.5-11-9, AS ADDED BY HEA 1440-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) This section applies when a person or witness takes an action as follows:

- (1) A person disobeys a lawful:
 - (A) subpoena issued under this article; or
 - (B) order or demand requiring the production of books, accounts, papers, records, documents, or other evidence or information as provided in this article.
- (2) A witness in a hearing, inquiry, or investigation refuses to:
 - (A) appear when subpoenaed;
 - (B) testify to a matter about which the witness may be lawfully interrogated; or
 - (C) take or subscribe to an oath required by this article.



(b) If a person or witness takes an action described in subsection (a):
~~the:~~

(1) ~~the~~ circuit or superior court of the county in which the hearing, inquiry, or investigation described in subsection (a) is held, if:

(A) demand is made; or

(B) upon written petition, the production is ordered to be made; ~~or~~

(2) ~~the~~ commissioner; ~~or~~

(3) **before July 1, 2020**, a hearing officer appointed by the commissioner; **or**

(4) **after June 30, 2020, an administrative law judge assigned, after request by the commissioner, by the office of administrative law proceedings established by IC 4-15-10.5-7;**

shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel the witness to attend in an Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

SECTION 27. IC 23-19-6-2, AS AMENDED BY P.L.126-2012, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) The commissioner may:

(1) conduct public or private investigations within or outside this state which the commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this article or a rule adopted or order issued under this article, or to aid in the enforcement of this article or in the adoption of rules and forms under this article;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this article or a rule adopted or order issued under this article if the commissioner determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation under this article, the commissioner or the commissioner's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of



attendance, take evidence, require the filing of statements, and require the production of any records that the commissioner considers relevant or material to the investigation. Upon order of the commissioner, ~~or before July 1, 2020,~~ a hearing officer appointed by the commissioner, **or, after June 30, 2020, an administrative law judge assigned, after request by the commissioner, by the office of administrative law proceedings established by IC 4-15-10.5-7,** in any hearing, depositions may be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner, ~~or a hearing officer appointed by the commissioner, or administrative law judge.~~

(c) If a person does not appear or refuses to testify, file a statement, or produce records, or otherwise does not obey a subpoena as required by this article, the commissioner, ~~or before July 1, 2020, a hearing officer appointed by the commissioner, or, after June 30, 2020, an administrative law judge assigned, after request by the commissioner, by the office of administrative law proceedings established by IC 4-15-10.5-7,~~ may apply to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted to enforce compliance. The court may:

- (1) hold the person in contempt;
- (2) order the person to appear before the commissioner, ~~or hearing officer appointed by the commissioner, or administrative law judge;~~
- (3) order the person to testify about the matter under investigation or in question;
- (4) order the production of records;
- (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;
- (6) impose a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation; and
- (7) grant any other necessary or appropriate relief.

(d) This section does not preclude a person from applying to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) If a witness, in any hearing, inquiry, or investigation conducted under this article, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to



answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested. A grant of use immunity does not prohibit the use of evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44.1-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(f) At the request of the securities regulator of another state or a foreign jurisdiction, the commissioner may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The commissioner may provide the assistance by using the authority to investigate and the powers conferred by this section as the commissioner determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this article or other law of this state if occurring in this state. In deciding whether to provide the assistance, the commissioner may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the commissioner on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the commissioner to carry out the request for assistance.

(g) In any prosecution, action, suit, or proceeding based upon or arising out of or under the provisions of this article, a certificate duly signed by the commissioner showing compliance or noncompliance with the provisions of this article, respecting the security in question or respecting compliance or noncompliance of this article, by any issuer,



broker-dealer, investment advisor, or agent, shall constitute prima facie evidence of compliance or noncompliance with the provisions of this article, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce this article.

(h) Each witness who shall appear before the commissioner or a hearing officer appointed by the commissioner by order shall receive for the witness's attendance the fees and mileage provided for witnesses in civil cases, which shall be audited and paid by the state in the same manner as other expenses of the securities division are audited and paid upon the presentation of proper vouchers sworn to by the witnesses and approved by the commissioner. However, no witnesses subpoenaed at the instance of parties other than the commissioner, or a hearing officer appointed by the commissioner shall be entitled to any fee or compensation from the state.

SECTION 28. [EFFECTIVE JULY 1, 2019] (a) Notwithstanding the amendments made by this act or the provisions added by this act (including the establishment of the office of administrative law proceedings), in the case of a matter pending before an administrative law judge at any time during the period after June 30, 2019, and before July 1, 2020, the matter should be decided by the administrative law judge under the laws in effect before their amendment by this act.

(b) Notwithstanding the amendments made by this act or the provisions added by this act (including the establishment of the office of administrative law proceedings), a contract in effect on July 1, 2020, between an agency and an administrative law judge terminates on the termination date provided in the contract. A contract may not be extended or renewed by the agency.

(c) This SECTION expires July 1, 2022.

SECTION 29. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

HEA 1223 — Concur

