

# HOUSE BILL No. 1299

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-22; IC 5-28-17-6; IC 25-1-1.1-6.

**Synopsis:** Occupational regulation oversight and review. Provides that the small business ombudsman (ombudsman) shall review a proposed rule that is an occupational regulation and imposes requirements or costs on persons subject to the occupational regulation. Requires the attorney general to disapprove a proposed rule if it violates federal antitrust laws. Requires that a statement must be filed concerning the economic impact of the proposed occupational regulation on persons who are subject to the occupational regulation. Requires a regulatory flexibility analysis that considers any less intrusive or less costly alternative methods of achieving the purpose of the proposed occupational regulation, including the establishment of the least restrictive regulation that is necessary to regulate the occupation or protect consumers. Establishes guidelines to analyze an occupation regulation to determine if it is the least restrictive regulation. Makes conforming changes to include regulated occupations in the laws that affect adoption of rules that affect small businesses. Allows an individual who has a criminal record to submit a petition to the board that issues a license, certificate, or permit that an individual is required by law to hold to engage in a business, profession, or occupation to determine if the individual's criminal record will disqualify the individual from obtaining a license, certificate, or permit. Establishes criteria and procedures to determine if an individual's criminal record disqualifies the individual from obtaining a license, certificate, or permit.

**Effective:** July 1, 2018.

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January 16, 2018, read first time and referred to Committee on Employment, Labor and Pensions.

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Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

# HOUSE BILL No. 1299

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

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

1 SECTION 1. IC 4-22-2-28, AS AMENDED BY P.L.237-2017,  
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2018]: Sec. 28. (a) The following definitions apply throughout  
4 this section:  
5 (1) "Ombudsman" refers to the small business ombudsman  
6 designated under IC 5-28-17-6.  
7 (2) "Total estimated economic impact" means the direct annual  
8 economic impact of a rule on all regulated persons after the rule  
9 is fully implemented under subsection (g).  
10 (b) The ombudsman:  
11 (1) shall review **the following**:  
12 (A) A proposed rule that:  
13 ~~(A) (i)~~ imposes requirements or costs on small businesses  
14 (as defined in IC 4-22-2.1-4); and  
15 ~~(B) (ii)~~ is referred to the ombudsman by an agency under  
16 IC 4-22-2.1-5(c). ~~and~~  
17 **(B) A proposed rule that imposes an occupational**



1                   **regulation (as defined by IC 4-22-2.1-2.5), on a person;**  
 2                   (2) may review a proposed rule that imposes requirements or  
 3                   costs on businesses other than small businesses (as defined in  
 4                   IC 4-22-2.1-4).

5                   After conducting a review under subdivision (1) or (2), the ombudsman  
 6                   may suggest alternatives to reduce any regulatory burden that the  
 7                   proposed rule imposes on ~~small businesses or other businesses.~~  
 8                   **persons subject to the rule.** The agency that intends to adopt the  
 9                   proposed rule shall respond in writing to the ombudsman concerning  
 10                  the ombudsman's comments or suggested alternatives before adopting  
 11                  the proposed rule under section 29 of this chapter.

12                  (c) Subject to subsection (e) and not later than fifty (50) days before  
 13                  the public hearing for a proposed rule required by section 26 of this  
 14                  chapter, an agency shall submit the proposed rule to the office of  
 15                  management and budget for a review under subsection (d), if the  
 16                  agency proposing the rule determines that the rule will have a total  
 17                  estimated economic impact greater than five hundred thousand dollars  
 18                  (\$500,000) on all regulated persons. In determining the total estimated  
 19                  economic impact under this subsection, the agency shall consider any  
 20                  applicable information submitted by the regulated persons affected by  
 21                  the rule. To assist the office of management and budget in preparing  
 22                  the fiscal impact statement required by subsection (d), the agency shall  
 23                  submit, along with the proposed rule, the data used and assumptions  
 24                  made by the agency in determining the total estimated economic  
 25                  impact of the rule.

26                  (d) Except as provided in subsection (e), before the adoption of the  
 27                  rule, and not more than forty-five (45) days after receiving a proposed  
 28                  rule under subsection (c), the office of management and budget shall  
 29                  prepare, using the data and assumptions provided by the agency  
 30                  proposing the rule, along with any other data or information available  
 31                  to the office of management and budget, a fiscal impact statement  
 32                  concerning the effect that compliance with the proposed rule will have  
 33                  on:

- 34                   (1) the state; and  
 35                   (2) all persons regulated by the proposed rule.

36                  The fiscal impact statement must contain the total estimated economic  
 37                  impact of the proposed rule and a determination concerning the extent  
 38                  to which the proposed rule creates an unfunded mandate on a state  
 39                  agency or political subdivision. The fiscal impact statement is a public  
 40                  document. The office of management and budget shall make the fiscal  
 41                  impact statement available to interested parties upon request and to the  
 42                  agency proposing the rule. The agency proposing the rule shall



1 consider the fiscal impact statement as part of the rulemaking process  
2 and shall provide the office of management and budget with the  
3 information necessary to prepare the fiscal impact statement, including  
4 any economic impact statement prepared by the agency under  
5 IC 4-22-2.1-5. The office of management and budget may also receive  
6 and consider applicable information from the regulated persons  
7 affected by the rule in preparation of the fiscal impact statement.

8 (e) With respect to a proposed rule subject to IC 13-14-9:

9 (1) the department of environmental management shall give  
10 written notice to the office of management and budget of the  
11 proposed date of preliminary adoption of the proposed rule not  
12 less than sixty-six (66) days before that date; and

13 (2) the office of management and budget shall prepare the fiscal  
14 impact statement referred to in subsection (d) not later than  
15 twenty-one (21) days before the proposed date of preliminary  
16 adoption of the proposed rule.

17 (f) In determining whether a proposed rule has a total estimated  
18 economic impact greater than five hundred thousand dollars  
19 (\$500,000), the agency proposing the rule shall consider the impact of  
20 the rule on any regulated person that already complies with the  
21 standards imposed by the rule on a voluntary basis.

22 (g) For purposes of this section, a rule is fully implemented after:

23 (1) the conclusion of any phase-in period during which:

24 (A) the rule is gradually made to apply to certain regulated  
25 persons; or

26 (B) the costs of the rule are gradually implemented; and

27 (2) the rule applies to all regulated persons that will be affected  
28 by the rule.

29 In determining the total estimated economic impact of a proposed rule  
30 under this section, the agency proposing the rule shall consider the  
31 annual economic impact on all regulated persons beginning with the  
32 first twelve (12) month period after the rule is fully implemented. The  
33 agency may use actual or forecasted data and may consider the actual  
34 and anticipated effects of inflation and deflation. The agency shall  
35 describe any assumptions made and any data used in determining the  
36 total estimated economic impact of a rule under this section.

37 (h) An agency shall provide the legislative council in an electronic  
38 format under IC 5-14-6 with any analysis, data, and description of  
39 assumptions submitted to the office of management and budget under  
40 this section or section 40 of this chapter at the same time the agency  
41 submits the information to the office of management and budget. The  
42 office of management and budget shall provide the legislative council



1 in an electronic format under IC 5-14-6 any fiscal impact statement and  
 2 related supporting documentation prepared by the office of  
 3 management and budget under this section or section 40 of this chapter  
 4 at the same time the office of management and budget provides the  
 5 fiscal impact statement to the agency proposing the rule. Information  
 6 submitted under this subsection must identify the rule to which the  
 7 information is related by document control number assigned by the  
 8 publisher.

9 (i) An agency shall provide the legislative council in an electronic  
 10 format under IC 5-14-6 with any economic impact or fiscal impact  
 11 statement, including any supporting data, studies, or analysis, prepared  
 12 for a rule proposed by the agency or subject to readoption by the  
 13 agency to comply with:

14 (1) a requirement in section 19.5 of this chapter to minimize the  
 15 expenses to regulated entities that are required to comply with the  
 16 rule;

17 (2) a requirement in section 24 of this chapter to publish a  
 18 justification of any requirement or cost that is imposed on a  
 19 regulated entity under the rule;

20 (3) a requirement in IC 4-22-2.1-5 to prepare a statement that  
 21 describes the annual economic impact of a rule, ~~on all small~~  
 22 ~~businesses~~ after the rule is fully implemented, **on all small**  
 23 **businesses or persons subject to the rule;**

24 (4) a requirement in IC 4-22-2.5-3.1 to conduct a review to  
 25 consider whether there are any alternative methods of achieving  
 26 the purpose of the rule that are less costly or less intrusive, or that  
 27 would otherwise minimize the economic impact of the proposed  
 28 rule on small businesses **or persons subject to the rule;**

29 (5) a requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish  
 30 information concerning the fiscal impact of a rule or alternatives  
 31 to a rule subject to these provisions; or

32 (6) a requirement under any other law to conduct an analysis of  
 33 the cost, economic impact, or fiscal impact of a rule;

34 regardless of whether the total estimated economic impact of the  
 35 proposed rule is more than five hundred thousand dollars (\$500,000),  
 36 as soon as practicable after the information is prepared. Information  
 37 submitted under this subsection must identify the rule to which the  
 38 information is related by document control number assigned by the  
 39 publisher.

40 **(j) The ombudsman shall presume that market competition and**  
 41 **private remedies are sufficient to protect consumers when**  
 42 **conducting an analysis of an occupation regulation under**



1 subsection (b)(1)(B). However, if the ombudsman finds credible  
2 empirical evidence of a systematic problem that justifies the  
3 adoption of an occupational regulation to protect consumers, the  
4 ombudsman shall recommend the least restrictive regulation that  
5 addresses the problem. The ombudsman shall use the following  
6 guidelines when analyzing an occupational regulation:

7 (1) If the need is to protect consumers against fraud, the  
8 ombudsman's comment to the agency must recommend a rule  
9 that prohibits specific deceptive trade practices or requires  
10 disclosures that will reduce misleading attributes of the  
11 specific good or service.

12 (2) If the need is to protect consumers against unsanitary  
13 facilities or to promote general health and safety, the  
14 ombudsman's comment to the agency must recommend a rule  
15 that requires periodic inspections of the person's facility.

16 (3) If the need is to protect consumers against potential  
17 damages from a person's failure to complete a contract fully  
18 or to specific standards, the ombudsman's comment to the  
19 agency will recommend a rule that requires the person to be  
20 bonded.

21 (4) If the need is to protect a person who is not party to a  
22 contract between the person and consumer, the ombudsman's  
23 comment to the agency must recommend a rule that requires  
24 the person to have insurance.

25 (5) If the need is to protect consumers against potential  
26 damages by a transient or deceitful person not domiciled in  
27 the state, the ombudsman's comment to the agency must  
28 recommend a rule that requires the person to register the  
29 person's business with the secretary of state.

30 (6) If the need is to protect consumers against an imbalance of  
31 knowledge about the goods or services relative to the seller's  
32 knowledge, the ombudsman's comment to the agency must  
33 recommend a rule that requires voluntary private or  
34 government certification.

35 (7) If the need is to qualify persons of new or highly  
36 specialized medical services for reimbursement by the state,  
37 the ombudsman's comment to the agency must recommend a  
38 rule that requires a specialty license for medical  
39 reimbursement.

40 (8) If the need is to address a permanent failure that prevents  
41 the average consumer from obtaining sufficient information  
42 to judge the quality of a person of complex services, the



- 1           **ombudsman's comment to the agency must recommend a rule**  
 2           **that requires an occupational license.**  
 3           SECTION 2. IC 4-22-2-32, AS AMENDED BY P.L.1-2006,  
 4           SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5           JULY 1, 2018]: Sec. 32. (a) The attorney general shall review each rule  
 6           submitted under section 31 of this chapter for legality.  
 7           (b) In the review, the attorney general shall determine whether the  
 8           rule adopted by the agency complies with the requirements under  
 9           section 29 of this chapter. The attorney general shall consider the  
 10          following:  
 11           (1) The extent to which all persons affected by the adopted rule  
 12           should have understood from the published rule or rules that their  
 13           interests would be affected.  
 14           (2) The extent to which the subject matter of the adopted rule or  
 15           the issues determined in the adopted rule are different from the  
 16           subject matter or issues that were involved in the published rule  
 17           or rules.  
 18           (3) The extent to which the effects of the adopted rule differ from  
 19           the effects that would have occurred if the published rule or rules  
 20           had been adopted instead.  
 21           **(4) If the adopted rule is necessary but would displace**  
 22           **competition, the least restrictive regulation (as defined by**  
 23           **IC 4-22-2.1-2.2) that would protect consumers from present,**  
 24           **significant, and substantiated harms that threaten public**  
 25           **health and safety.**  
 26          In the review, the attorney general shall consider whether the adopted  
 27          rule may constitute the taking of property without just compensation to  
 28          an owner.  
 29          (c) Except as provided in subsections (d) and (h), the attorney  
 30          general shall disapprove a rule under this section only if it:  
 31           (1) has been adopted without statutory authority;  
 32           (2) has been adopted without complying with this chapter;  
 33           (3) does not comply with requirements under section 29 of this  
 34           chapter; ~~or~~  
 35           (4) violates another law; **or**  
 36           **(5) violates federal antitrust laws.**  
 37          Otherwise, the attorney general shall approve the rule without making  
 38          a specific finding of fact concerning the subjects.  
 39          (d) If an agency submits a rule to the attorney general without  
 40          complying with section 20(a)(2) of this chapter, the attorney general  
 41          may:  
 42           (1) disapprove the rule; or



- 1 (2) return the rule to the agency without disapproving the rule.
- 2 (e) If the attorney general returns a rule under subsection (d)(2), the
- 3 agency may bring the rule into compliance with section 20(a)(2) of this
- 4 chapter and resubmit the rule to the attorney general without readopting
- 5 the rule.
- 6 (f) If the attorney general determines in the course of the review
- 7 conducted under subsection (b) that a rule may constitute a taking of
- 8 property, the attorney general shall advise the following:
- 9 (1) The governor.
- 10 (2) The agency head.
- 11 Advice given under this subsection shall be regarded as confidential
- 12 attorney-client communication.
- 13 (g) The attorney general has forty-five (45) days from the date that
- 14 an agency:
- 15 (1) submits a rule under section 31 of this chapter; or
- 16 (2) resubmits a rule under subsection (e);
- 17 to approve or disapprove the rule. If the attorney general neither
- 18 approves nor disapproves the rule, the rule is deemed approved, and the
- 19 agency may submit it to the governor for approval under section 33 of
- 20 this chapter without the approval of the attorney general.
- 21 (h) For rules adopted under IC 13-14-9, the attorney general:
- 22 (1) shall determine whether the rule adopted by the agency under
- 23 IC 13-14-9-9(2) is a logical outgrowth of the proposed rule as
- 24 published under IC 13-14-9-5(a)(2) and of testimony presented at
- 25 the board meeting held under IC 13-14-9-5(a)(3); and
- 26 (2) may disapprove a rule under this section only if the rule:
- 27 (A) has been adopted without statutory authority;
- 28 (B) has been adopted without complying with this chapter or
- 29 IC 13-14-9;
- 30 (C) is not a logical outgrowth of the proposed rule as
- 31 published under IC 13-14-9-5(a)(2) and of the testimony
- 32 presented at the board meeting held under IC 13-14-9-5(a)(3);
- 33 or
- 34 (D) violates another law.
- 35 SECTION 3. IC 4-22-2.1-2.2 IS ADDED TO THE INDIANA
- 36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 37 [EFFECTIVE JULY 1, 2018]: **Sec. 2.2. As used in this chapter, "least**
- 38 **restrictive regulation" means, from least restrictive to most**
- 39 **restrictive, the following types of regulation:**
- 40 (1) **Market competition.**
- 41 (2) **Third party or consumer created ratings and reviews.**
- 42 (3) **Private certification.**





- 1           **(4) Voluntary bonding or insurance.**  
 2           **(5) Specific private civil cause of action to remedy consumer**  
 3           **harm.**  
 4           **(6) Prohibiting deceptive trade practices.**  
 5           **(7) Mandatory disclosure of attributes of specific goods or**  
 6           **services.**  
 7           **(8) Regulating the process of providing specific goods or**  
 8           **services.**  
 9           **(9) Government inspection.**  
 10          **(10) Required bonding.**  
 11          **(11) Required insurance.**  
 12          **(12) Required registration.**  
 13          **(13) Government certification.**  
 14          **(14) Specialty occupational license for medical reimbursement**  
 15          **that allows an individual to qualify for payment or**  
 16          **reimbursement from a government agency for the**  
 17          **nonexclusive provision of medical services based on the**  
 18          **individual meeting certain qualifications.**  
 19          **(15) Required occupational license.**
- 20          SECTION 4. IC 4-22-2.1-2.5 IS ADDED TO THE INDIANA  
 21          CODE AS A NEW SECTION TO READ AS FOLLOWS  
 22          [EFFECTIVE JULY 1, 2018]: **Sec. 2.5. (a) As used in this chapter,**  
 23          **"occupational regulation" refers to a rule adopted under**  
 24          **IC 4-22-2, procedure, policy, or other official action of a board**  
 25          **governing a regulated occupation that:**
- 26                **(1) allows a person to work, or prohibits a person from**  
 27                **working, in a regulated occupation, including issuing a cease**  
 28                **and desist letter or seeking an injunction against a person; or**  
 29                **(2) affects a person's ability to obtain a license, certification,**  
 30                **registration, or permit to work in a regulated occupation.**
- 31          **(b) The term does not include the following:**
- 32                **(1) A business license, a facility license, a regulation**  
 33                **concerning a building permit, a regulation concerning zoning**  
 34                **or land use, or an emergency rule adopted under**  
 35                **IC 4-22-2-37.1, unless the board's action relates to an**  
 36                **individual's qualifications to perform a regulated occupation.**  
 37                **(2) A disciplinary action regarding an individual who is in a**  
 38                **regulated occupation for a violation of a duty or standard of**  
 39                **practice under IC 25-1.**  
 40                **(3) A rule of a board governing a regulated occupation that**  
 41                **does not restrict or prohibit a person who is not licensed by**  
 42                **the board from engaging in the occupation without an**



1           **occupational license.**

2           **(4) An occupational regulation that was submitted for**  
 3           **publication in the Indiana Register under IC 4-22-2-24 before**  
 4           **July 1, 2018.**

5           SECTION 5. IC 4-22-2.1-3.1 IS ADDED TO THE INDIANA  
 6           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 7           [EFFECTIVE JULY 1, 2018]: **Sec. 3.1. As used in this chapter,**  
 8           **"regulated occupation" means an occupation in which a person is**  
 9           **licensed, certified, registered, or issued a permit by one (1) of the**  
 10           **entities described in IC 25-0.5-8.**

11           SECTION 6. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015,  
 12           SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13           JULY 1, 2018]: **Sec. 5. (a) If an agency intends to adopt a rule under**  
 14           **IC 4-22-2 that will impose requirements or costs on small businesses,**  
 15           **or on persons subject to the rule if the rule is an occupational**  
 16           **regulation, the agency shall prepare a statement that describes the**  
 17           **annual economic impact of a the rule on all small businesses or**  
 18           **persons subject to the occupational regulation after the rule is fully**  
 19           **implemented as described in subsection (b). The statement required by**  
 20           **this section must include the following:**

21           (1) An estimate of the number of small businesses **or persons in**  
 22           **the regulated occupation, classified by industry sector, that will**  
 23           **be subject to the proposed rule.**

24           (2) An estimate of the average annual reporting, record keeping,  
 25           and other administrative costs that small businesses **or persons**  
 26           **in the regulated occupation will incur to comply with the**  
 27           **proposed rule.**

28           (3) An estimate of the total annual economic impact that  
 29           compliance with the proposed rule will have on all small  
 30           businesses **or persons in the regulated occupation** subject to the  
 31           rule. The agency is not required to submit the proposed rule to the  
 32           office of management and budget for a fiscal analysis under  
 33           IC 4-22-2-28 unless the estimated economic impact of the rule is  
 34           greater than five hundred thousand dollars (\$500,000) on all  
 35           regulated entities, as set forth in IC 4-22-2-28.

36           (4) A statement justifying any requirement or cost that is:

37           (A) imposed on small businesses **or persons in the regulated**  
 38           **occupation by the rule; and**

39           (B) not expressly required by:

40           (i) the statute authorizing the agency to adopt the rule; or

41           (ii) any other state or federal law.

42           The statement required by this subdivision must include a



1 reference to any data, studies, or analyses relied upon by the  
 2 agency in determining that the imposition of the requirement or  
 3 cost is necessary.

4 (5) A regulatory flexibility analysis that considers any less  
 5 intrusive or less costly alternative methods of achieving the  
 6 purpose of the proposed rule. The analysis under this subdivision  
 7 must consider the following methods of minimizing the economic  
 8 impact of the proposed rule on small businesses **or persons in the**  
 9 **regulated occupation, as applicable:**

10 (A) The establishment of less stringent compliance or  
 11 reporting requirements for small businesses **or regulated**  
 12 **occupations.**

13 (B) The establishment of less stringent schedules or deadlines  
 14 for compliance or reporting requirements for small businesses  
 15 **or regulated occupations.**

16 (C) The consolidation or simplification of compliance or  
 17 reporting requirements for small businesses **or regulated**  
 18 **occupations.**

19 (D) The establishment of performance standards for small  
 20 businesses **or regulated occupations** instead of design or  
 21 operational standards imposed on other regulated entities by  
 22 the rule.

23 (E) The exemption of small businesses **or persons in the**  
 24 **regulated occupation** from part or all of the requirements or  
 25 costs imposed by the rule.

26 **(F) The establishment of the least restrictive regulation**  
 27 **that is necessary to regulate the occupation or protect**  
 28 **consumers.**

29 If the agency has made a preliminary determination not to  
 30 implement one (1) or more of the alternative methods considered,  
 31 the agency shall include a statement explaining the agency's  
 32 reasons for the determination, including a reference to any data,  
 33 studies, or analyses relied upon by the agency in making the  
 34 determination.

35 (b) For purposes of subsection (a), a proposed rule will be fully  
 36 implemented with respect to small businesses **or regulated**  
 37 **occupations** after:

38 (1) the conclusion of any phase-in period during which:

39 (A) the rule is gradually made to apply to small businesses, **or**  
 40 certain types of small businesses, **or regulated occupations;**  
 41 or

42 (B) the costs of the rule are gradually implemented; and



1 (2) the rule applies to all small businesses, **or to regulated**  
 2 **occupations**, that will be affected by the rule.  
 3 In determining the total annual economic impact of the rule under  
 4 subsection (a)(3), the agency shall consider the annual economic  
 5 impact on all small businesses **or on regulated occupations**,  
 6 beginning with the first twelve (12) month period after the rule is fully  
 7 implemented. The agency may use actual or forecasted data and may  
 8 consider the actual and anticipated effects of inflation and deflation.  
 9 The agency shall describe any assumptions made and any data used in  
 10 determining the total annual economic impact of a rule under  
 11 subsection (a)(3).

12 (c) The agency shall:  
 13 (1) publish the statement required under subsection (a) in the  
 14 Indiana Register as required by IC 4-22-2-24; and  
 15 (2) deliver a copy of the statement, along with the proposed rule,  
 16 to the small business ombudsman not later than the date of  
 17 publication under subdivision (1).

18 **(d) The agency shall presume that market competition and**  
 19 **private remedies are sufficient to protect consumers when**  
 20 **conducting an analysis of an occupation regulation under**  
 21 **subsection (a)(5). However, if the agency finds credible empirical**  
 22 **evidence of a systematic problem that justifies the adoption of an**  
 23 **occupational regulation to protect consumers, the agency shall**  
 24 **recommend the least restrictive regulation that addresses the**  
 25 **problem. The agency shall use the guidelines under**  
 26 **IC 4-22-2-28(j)(1) through IC 4-22-2-28(j)(8) when analyzing an**  
 27 **occupational regulation.**

28 SECTION 7. IC 4-22-2.1-6, AS AMENDED BY P.L.109-2015,  
 29 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JULY 1, 2018]: Sec. 6. (a) Not later than seven (7) days before the date  
 31 of the public hearing set forth in the agency's notice under  
 32 IC 4-22-2-24, the small business ombudsman shall do the following:

- 33 (1) Review the proposed rule and economic impact statement  
 34 submitted to the small business ombudsman by the agency under  
 35 section 5(c) of this chapter.  
 36 (2) Submit written comments to the agency on the proposed rule  
 37 and the economic impact statement prepared by the agency under  
 38 section 5 of this chapter. The small business ombudsman's  
 39 comments may:  
 40 (A) recommend that the agency implement one (1) or more of  
 41 the regulatory alternatives considered by the agency under  
 42 section 5(a)(5) of this chapter;



- 1 (B) suggest regulatory alternatives not considered by the  
 2 agency under section 5(a)(5) of this chapter;  
 3 (C) recommend any other changes to the proposed rule that  
 4 would minimize the economic impact of the proposed rule on  
 5 small businesses **or, if the rule is an occupational**  
 6 **regulation, on persons subject to the occupational**  
 7 **regulation;** or  
 8 (D) recommend that the agency abandon or delay the  
 9 rulemaking action until:  
 10 (i) more data **can be gathered and evaluated** on the impact  
 11 of the proposed rule on small businesses ~~can be gathered~~  
 12 ~~and evaluated;~~ **or, if the rule is an occupational**  
 13 **regulation, on persons subject to the occupational**  
 14 **regulation;** or  
 15 (ii) less intrusive or less costly alternative methods of  
 16 achieving the purpose of the proposed rule can be effectively  
 17 implemented with respect to small businesses **or, if the rule**  
 18 **is an occupational regulation, on persons subject to the**  
 19 **occupational regulation.**  
 20 (b) Upon receipt of the small business ombudsman's written  
 21 comments under subsection (a), the agency shall make the comments  
 22 available:  
 23 (1) for public inspection and copying at the offices of the agency  
 24 under IC 5-14-3;  
 25 (2) electronically through the electronic gateway administered  
 26 under IC 4-13.1-2-2(a)(5) by the office of technology; and  
 27 (3) for distribution at the public hearing required by IC 4-22-2-26.  
 28 (c) Before finally adopting a rule under IC 4-22-2-29, and in the  
 29 same manner that the agency considers public comments under  
 30 IC 4-22-2-27, the agency must fully consider the comments submitted  
 31 by the small business ombudsman under subsection (a). After  
 32 considering the comments under this subsection, the agency may:  
 33 (1) adopt any version of the rule permitted under IC 4-22-2-29; or  
 34 (2) abandon or delay the rulemaking action as recommended by  
 35 the small business ombudsman under subsection (a)(2)(D), if  
 36 applicable.  
 37 SECTION 8. IC 4-22-2.1-8, AS AMENDED BY P.L.53-2014,  
 38 SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2018]: Sec. 8. (a) This section applies to a small business, **or**  
 40 **a person who is subject to a rule concerning a regulated**  
 41 **occupation,** that is adversely affected or aggrieved by a rule that:  
 42 (1) is subject to this chapter;



1 (2) is finally adopted by an agency under IC 4-22-2-29; and

2 (3) has taken effect under IC 4-22-2-36.

3 (b) Subject to subsection (c), a small business **or person** described  
4 in subsection (a) may file, in a court having jurisdiction, an action  
5 seeking a determination of the agency's compliance with the  
6 requirements of this chapter during the rulemaking process. Upon  
7 receipt of a complaint under this section, the court shall, at the earliest  
8 date possible, hear evidence on the matter and make a determination as  
9 to the agency's compliance with this chapter during the rulemaking  
10 process. If the court determines that the agency failed to comply with  
11 one (1) or more requirements of this chapter, the court may issue an  
12 order or injunction enjoining the agency from enforcing the rule with  
13 respect to the complaining small business **or person** and any similarly  
14 situated small businesses **or persons**. A determination of the court  
15 under this section is final, subject to the right of direct appeal by either  
16 party.

17 (c) A small business **or person** that seeks a determination by a court  
18 under subsection (b) must file the action described in subsection (b) not  
19 later than one (1) year ~~(†)~~ after the date the rule described in subsection  
20 (a) takes effect under IC 4-22-2-36.

21 SECTION 9. IC 4-22-2.5-3.1, AS ADDED BY P.L.188-2005,  
22 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
23 JULY 1, 2018]: Sec. 3.1. (a) This section applies to a rule that:

24 (1) expires under this chapter after June 30, 2005; and

25 (2) imposes requirements or costs on small businesses **or, if the**  
26 **rule is an occupational regulation, on persons subject to the**  
27 **occupational regulation.**

28 (b) ~~As used in this section, "small business" has the meaning The~~  
29 ~~definitions set forth in IC 4-22-2.1-4. IC 4-22-2.1 apply to this~~  
30 **section.**

31 (c) Before an agency may act under section 3 of this chapter to  
32 readopt a rule described in subsection (a), the agency shall conduct a  
33 review to consider whether there are any alternative methods of  
34 achieving the purpose of the rule that are less costly or less intrusive,  
35 or that would otherwise minimize the economic impact of the proposed  
36 rule on small businesses **or on persons subject to the occupational**  
37 **regulation.** In reviewing a rule under this section, the agency shall  
38 consider the following:

39 (1) The continued need for the rule.

40 (2) The nature of any complaints or comments received from the  
41 public, including small businesses **or, if the rule is an**  
42 **occupational regulation, persons subject to the occupational**



- 1           **regulation**, concerning the rule or the rule's implementation by  
 2           the agency.
- 3           (3) The complexity of the rule, including any difficulties  
 4           encountered by:
- 5                 (A) the agency in administering the rule; or  
 6                 (B) small businesses **or, if the rule is an occupational**  
 7                 **regulation, persons subject to the occupational regulation**  
 8                 in complying with the rule.
- 9           (4) The extent to which the rule overlaps, duplicates, or conflicts  
 10           with other federal, state, or local laws, rules, regulations, or  
 11           ordinances.
- 12           (5) The length of time since the rule was last reviewed under this  
 13           section or otherwise evaluated by the agency, and the degree to  
 14           which technology, economic conditions, or other factors have  
 15           changed in the area affected by the rule since that time.
- 16           (d) This subsection applies to a rule that was adopted through a  
 17           rulemaking action initiated by the agency under IC 4-22-2-23 after June  
 18           30, 2005. In reviewing the rule under this section, the agency shall  
 19           reexamine the most recent economic impact statement prepared by the  
 20           agency under IC 4-22-2.1-5. The agency shall consider **the following**:
- 21                 (1) The degree to which the factors analyzed in the statement have  
 22                 changed since the statement was prepared. ~~and~~
- 23                 (2) Whether:
- 24                         (A) any regulatory alternatives included in the statement under  
 25                         IC 4-22-2.1-5(a)(5); or
- 26                         (B) any regulatory alternatives not considered by the agency  
 27                         at the time the statement was prepared;  
 28                         could be implemented to replace one (1) or more of the rule's  
 29                         existing requirements.
- 30                 **(3) Whether the agency used the least restrictive regulation**  
 31                 **(as defined by IC 4-22-2.1-2.2) for the occupational regulation**  
 32                 **(as defined by IC 4-22-2.1-2.5). The agency shall use the**  
 33                 **guidelines under IC 4-22-2-28(j)(1) through IC 4-22-2-28(j)(8)**  
 34                 **when analyzing an occupational regulation.**
- 35           (e) After conducting the review required by this section, the agency  
 36           shall:
- 37                 (1) readopt the rule without change, if no alternative regulatory  
 38                 methods exist that could minimize the economic impact of the  
 39                 rule on small businesses **or, if the rule is an occupational**  
 40                 **regulation, on persons subject to the occupational regulation,**  
 41                 while still achieving the purpose of the rule;  
 42                 (2) amend the rule to implement alternative regulatory methods



1 that will minimize the economic impact of the rule on small  
 2 businesses **or, if the rule is an occupational regulation, on**  
 3 **persons subject to the occupational regulation; or**

4 (3) repeal the rule, if the need for the rule no longer exists.

5 SECTION 10. IC 5-28-17-6, AS ADDED BY P.L.237-2017,  
 6 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2018]: Sec. 6. The corporation shall designate an employee to  
 8 be the small business ombudsman. The small business ombudsman  
 9 shall carry out the following duties:

10 (1) Work with state agencies to permit increased enforcement  
 11 flexibility and the ability to grant common sense exemptions for  
 12 first time offenders of state rules and policies, including,  
 13 notwithstanding any other law, policies for the compromise of  
 14 interest and penalties related to a listed tax (as defined in  
 15 IC 6-8.1-1-1) and other taxes and fees collected or administered  
 16 by a state agency.

17 (2) Work with state agencies to seek ways to consolidate forms  
 18 and eliminate the duplication of paperwork, harmonize data, and  
 19 coordinate due dates.

20 (3) Coordinate with OMB (as defined in IC 4-3-22-3) to perform  
 21 cost benefit analyses.

22 (4) Work with state agencies to monitor any outdated, ineffective,  
 23 or overly burdensome information requests from state agencies to  
 24 small businesses.

25 (5) Carry out the duties specified under IC 4-22-2-28 and  
 26 IC 4-22-2.1 to review proposed rules and participate in  
 27 rulemaking actions that affect small businesses **or regulated**  
 28 **occupations (as defined by IC 4-22-2.1-3.1).**

29 (6) Coordinate with the ombudsman designated under  
 30 IC 13-28-3-2 and the office of voluntary compliance established  
 31 by IC 13-28-1-1 to coordinate the provision of services required  
 32 under IC 4-22-2-28.1 and IC 13-28-3.

33 (7) Prepare written and electronic information for periodic  
 34 distribution to small businesses describing the small business  
 35 services provided by coordinators (as defined in IC 4-3-22-16)  
 36 and work with the office of technology established by  
 37 IC 4-13.1-2-1 to place information concerning the availability of  
 38 these services on state Internet web sites that the small business  
 39 ombudsman or a state agency determines are most likely to be  
 40 visited by small business owners and managers.

41 (8) Assist in training agency coordinators who will be assigned to  
 42 rules under IC 4-22-2-28.1(e).





1 (9) Investigate and attempt to resolve any matter regarding  
 2 compliance by a small business with a law, rule, or policy  
 3 administered by a state agency, either as a party to a proceeding  
 4 or as a mediator.

5 State agencies **and governing boards of regulated occupations that**  
 6 **are subject to IC 4-22-2** shall cooperate with the small business  
 7 ombudsman to carry out the purpose of this section. The department of  
 8 state revenue and the department of workforce development shall  
 9 establish a program to distribute the information described in  
 10 subdivision (7) to small businesses that are required to file returns or  
 11 information with these state agencies.

12 SECTION 11. IC 25-1-1.1-6 IS ADDED TO THE INDIANA CODE  
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 14 1, 2018]: **Sec. 6. (a) As used in this section, "applicant" means an**  
 15 **individual who has a criminal record and has submitted a petition**  
 16 **under subsection (b).**

17 **(b) Notwithstanding any other law, an individual who has a**  
 18 **criminal record may submit a petition to the board that issues a**  
 19 **license, certificate, or permit that an individual is required by law**  
 20 **to hold to engage in a business, profession, or occupation at any**  
 21 **time, including before obtaining any required education or**  
 22 **training, to determine if the individual's criminal record will**  
 23 **disqualify the individual from obtaining a license, certificate, or**  
 24 **permit issued by the board.**

25 **(c) The petition in subsection (b):**

- 26 **(1) must include the applicant's criminal record or authorize**  
 27 **the board to obtain the applicant's criminal record; and**  
 28 **(2) may include additional information about the applicant's**  
 29 **current circumstances, including the length of time since the**  
 30 **applicant committed the offense, completion of the criminal**  
 31 **sentence, any other evidence of rehabilitation, testimonials,**  
 32 **employment history, and employment aspirations.**

33 **(d) The board shall determine not later than ninety (90) days**  
 34 **after receiving a petition under this section if the applicant's**  
 35 **criminal record disqualifies the applicant from obtaining a license,**  
 36 **certificate, or permit.**

37 **(e) Notwithstanding any other law, the board may find the**  
 38 **criminal record of the applicant who has filed a petition under this**  
 39 **section disqualifies the applicant from obtaining a license,**  
 40 **certificate, or permit only if the board determines by clear and**  
 41 **convincing evidence all of the following:**

- 42 **(1) The applicant's criminal record includes a conviction for**



1 a felony or violent misdemeanor.

2 (2) That an important interest exists in protecting public  
3 safety that is superior to the applicant's right to obtain a  
4 license, certificate, or permit. The board may make this  
5 conclusion only if it determines that:

6 (A) the specific offense for which the applicant was  
7 convicted is substantially related to protecting public  
8 safety;

9 (B) the applicant, based on the nature of the specific  
10 offense for which the applicant was convicted and the  
11 applicant's current circumstances, is more likely to  
12 reoffend by virtue of having the license, certificate, or  
13 permit than if the applicant did not have the license,  
14 certificate, or permit; and

15 (C) a conviction for a new offense will cause greater harm  
16 than it would if the applicant did not have the license,  
17 certificate, or permit.

18 (f) The board's determination under subsection (e) must be in  
19 writing and include the applicant's criminal record, findings of  
20 fact, and conclusions of law.

21 (g) If the board determines the state's interest is superior to the  
22 applicant's right to obtain a license, certificate, or permit, the  
23 board may allow the applicant to take actions to remedy the  
24 disqualification. The applicant may submit a revised petition after  
25 the completion of the board's remedies at any time, but not sooner  
26 than ninety (90) days after the board's determination.

27 (h) The applicant may appeal the board's determination in  
28 subsection (e) to the professional licensing agency for an  
29 administrative review under IC 4-21.5-3.

30 (i) An applicant may submit a new petition under subsection (b)  
31 to the board not sooner than two (2) years following a final  
32 determination by the board in the initial petition.

33 (j) The board may rescind its determination at any time if the  
34 applicant is convicted of an additional offense that the board  
35 determines disqualifies the applicant under this section.

36 (k) The board may charge a fee not to exceed one hundred  
37 dollars (\$100) for each petition filed under subsection (b).

38 (l) The professional licensing agency shall annually publish on  
39 the agency's Internet web site a report on the petitions filed under  
40 this section that includes the following information:

41 (1) The number of applicants petitioning each board.

42 (2) The number of each board's approvals and denials.



- 1           **(3) The type of offenses for which each board approved or**
- 2           **denied the petitions.**
- 3           **(4) Any other data the agency determines is relevant.**

