

SENATE BILL No. 384

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-22; IC 5-28-17-6.

Synopsis: Occupational licensing. 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 an agency file a statement concerning the economic impact of the proposed occupational regulation on persons who are subject to the occupational regulation. Requires the ombudsman to approve or deny the occupational regulation after determining if the least restrictive regulation is used. 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 occupational regulation to determine if it is the least restrictive regulation. Makes conforming changes to include regulated occupations in the laws that affect the adoption of rules that affect small businesses. Provides that an occupational regulation that is adopted by an agency during: (1) an odd-numbered year may not become effective until March 15 during the subsequent year; and (2) an even-numbered year may not become effective until May 1 during the subsequent year.

Effective: April 29, 2019 (retroactive); July 1, 2019.

Koch

January 14, 2019, read first time and referred to Committee on Commerce and Technology.



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.

SENATE BILL No. 384

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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, 2019]: 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:

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; and**
 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. The
 8 agency that intends to adopt the proposed rule shall respond in writing
 9 to the ombudsman concerning the ombudsman's comments or
 10 suggested alternatives before adopting the proposed rule under section
 11 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 occupational 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 determine if the least restrictive regulation (as
5 defined in IC 4-22-2.1-2.2) that addresses the problem is used in the
6 occupational regulation. The ombudsman shall use the following
7 guidelines when analyzing an occupational regulation:

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

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

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

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

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

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

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

41 (8) If the need is to address a permanent failure that prevents
42 the average consumer from obtaining sufficient information



1 **to judge the qualifications of a person who is a provider of**
 2 **complex services, the ombudsman's comment to the agency**
 3 **must recommend a rule that requires an occupational license.**

4 **(k) After analyzing the occupational regulation under subsection**
 5 **(j), the ombudsman shall either approve or deny the occupational**
 6 **regulation. If the ombudsman denies the occupational regulation,**
 7 **the ombudsman shall inform the agency of the part of the**
 8 **occupational regulation that does not use the least restrictive**
 9 **regulation (as defined in IC 4-22-2.1-2.2).**

10 SECTION 2. IC 4-22-2-32, AS AMENDED BY P.L.1-2006,
 11 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2019]: Sec. 32. (a) The attorney general shall review each rule
 13 submitted under section 31 of this chapter for legality.

14 (b) In the review, the attorney general shall determine whether the
 15 rule adopted by the agency complies with the requirements under
 16 section 29 of this chapter. The attorney general shall consider the
 17 following:

18 (1) The extent to which all persons affected by the adopted rule
 19 should have understood from the published rule or rules that their
 20 interests would be affected.

21 (2) The extent to which the subject matter of the adopted rule or
 22 the issues determined in the adopted rule are different from the
 23 subject matter or issues that were involved in the published rule
 24 or rules.

25 (3) The extent to which the effects of the adopted rule differ from
 26 the effects that would have occurred if the published rule or rules
 27 had been adopted instead.

28 **(4) If the adopted rule is necessary but would displace**
 29 **competition, the least restrictive regulation (as defined in**
 30 **IC 4-22-2.1-2.2) that would protect consumers from present,**
 31 **significant, and substantiated harms that threaten public**
 32 **health and safety.**

33 In the review, the attorney general shall consider whether the adopted
 34 rule may constitute the taking of property without just compensation to
 35 an owner.

36 (c) Except as provided in subsections (d) and (h), the attorney
 37 general shall disapprove a rule under this section only if it:

38 (1) has been adopted without statutory authority;

39 (2) has been adopted without complying with this chapter;

40 (3) does not comply with requirements under section 29 of this
 41 chapter; **or**

42 (4) violates another law; **or**



- 1 **(5) violates federal antitrust laws.**
 2 Otherwise, the attorney general shall approve the rule without making
 3 a specific finding of fact concerning the subjects.
 4 (d) If an agency submits a rule to the attorney general without
 5 complying with section 20(a)(2) of this chapter, the attorney general
 6 may:
 7 (1) disapprove the rule; or
 8 (2) return the rule to the agency without disapproving the rule.
 9 (e) If the attorney general returns a rule under subsection (d)(2), the
 10 agency may bring the rule into compliance with section 20(a)(2) of this
 11 chapter and resubmit the rule to the attorney general without readopting
 12 the rule.
 13 (f) If the attorney general determines in the course of the review
 14 conducted under subsection (b) that a rule may constitute a taking of
 15 property, the attorney general shall advise the following:
 16 (1) The governor.
 17 (2) The agency head.
 18 Advice given under this subsection shall be regarded as confidential
 19 attorney-client communication.
 20 (g) The attorney general has forty-five (45) days from the date that
 21 an agency:
 22 (1) submits a rule under section 31 of this chapter; or
 23 (2) resubmits a rule under subsection (e);
 24 to approve or disapprove the rule. If the attorney general neither
 25 approves nor disapproves the rule, the rule is deemed approved, and the
 26 agency may submit it to the governor for approval under section 33 of
 27 this chapter without the approval of the attorney general.
 28 (h) For rules adopted under IC 13-14-9, the attorney general:
 29 (1) shall determine whether the rule adopted by the agency under
 30 IC 13-14-9-9(2) is a logical outgrowth of the proposed rule as
 31 published under IC 13-14-9-5(a)(2) and of testimony presented at
 32 the board meeting held under IC 13-14-9-5(a)(3); and
 33 (2) may disapprove a rule under this section only if the rule:
 34 (A) has been adopted without statutory authority;
 35 (B) has been adopted without complying with this chapter or
 36 IC 13-14-9;
 37 (C) is not a logical outgrowth of the proposed rule as
 38 published under IC 13-14-9-5(a)(2) and of the testimony
 39 presented at the board meeting held under IC 13-14-9-5(a)(3);
 40 or
 41 (D) violates another law.
 42 SECTION 3. IC 4-22-2-47 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
2 APRIL 29, 2019 (RETROACTIVE)]: **Sec. 47. (a) This section applies
3 only to occupational regulations adopted after April 29, 2019.**

4 **(b) As used in this section, "occupational regulation" has the
5 meaning set forth in IC 4-22-2.1-2.5.**

6 **(c) Notwithstanding section 36 of this chapter or any other law,
7 an occupational regulation that is adopted under this chapter
8 during:**

9 **(1) an odd-numbered year may not become effective until
10 March 15 during the subsequent year; or**

11 **(2) an even-numbered year may not become effective until
12 May 1 during the subsequent year.**

13 SECTION 4. IC 4-22-2.1-2.2 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2019]: **Sec. 2.2. As used in this chapter, "least
16 restrictive regulation" means, from least restrictive to most
17 restrictive, the following types of regulation:**

18 **(1) Market competition.**

19 **(2) Third party or consumer created ratings and reviews.**

20 **(3) Private certification.**

21 **(4) Voluntary bonding or insurance.**

22 **(5) Specific private civil cause of action to remedy consumer
23 harm.**

24 **(6) Prohibiting deceptive trade practices.**

25 **(7) Mandatory disclosure of attributes of specific goods or
26 services.**

27 **(8) Regulating the process of providing specific goods or
28 services.**

29 **(9) Government inspection.**

30 **(10) Required bonding.**

31 **(11) Required insurance.**

32 **(12) Required registration.**

33 **(13) Government certification.**

34 **(14) Specialty occupational license for medical reimbursement
35 that allows an individual to qualify for payment or
36 reimbursement from a government agency for the
37 nonexclusive provision of medical services based on the
38 individual meeting certain qualifications.**

39 **(15) Required occupational license.**

40 SECTION 5. IC 4-22-2.1-2.5 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2019]: **Sec. 2.5. (a) As used in this chapter,**



1 "occupational regulation" refers to a rule adopted under
 2 IC 4-22-2, procedure, policy, or another official action of a board
 3 governing a regulated occupation that:

- 4 (1) allows a person to work, or prohibits a person from
 5 working, in a regulated occupation, including issuing a cease
 6 and desist letter or seeking an injunction against a person; or
 7 (2) affects a person's ability to obtain a license, certification,
 8 registration, or permit to work in a regulated occupation.

9 (b) The term does not include the following:

10 (1) A business license, a facility license, a regulation
 11 concerning a building permit, a regulation concerning zoning
 12 or land use, or an emergency rule adopted under
 13 IC 4-22-2-37.1, unless the board's action relates to an
 14 individual's qualifications to perform a regulated occupation.

15 (2) A disciplinary action regarding an individual who is in a
 16 regulated occupation for a violation of a duty or standard of
 17 practice under IC 25-1.

18 (3) A rule of a board governing a regulated occupation that
 19 does not restrict or prohibit a person who is not licensed by
 20 the board from engaging in the occupation without an
 21 occupational license.

22 (4) An occupational regulation that was submitted for
 23 publication in the Indiana Register under IC 4-22-2-24 before
 24 July 1, 2019.

25 SECTION 6. IC 4-22-2.1-3.1 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2019]: Sec. 3.1. As used in this chapter,
 28 "regulated occupation" means an occupation in which a person is
 29 licensed, certified, registered, or issued a permit by one (1) of the
 30 entities described in IC 25-0.5-8.

31 SECTION 7. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015,
 32 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2019]: Sec. 5. (a) If an agency intends to adopt a rule under
 34 IC 4-22-2 that will impose requirements or costs on small businesses,
 35 or on persons subject to the rule if the rule is an occupational
 36 regulation, the agency shall prepare a statement that describes the
 37 annual economic impact of a the rule on all small businesses or
 38 persons subject to the occupational regulation after the rule is fully
 39 implemented as described in subsection (b). The statement required by
 40 this section must include the following:

- 41 (1) An estimate of the number of small businesses or persons in
 42 the regulated occupation, classified by industry sector, that will



- 1 be subject to the proposed rule.
- 2 (2) An estimate of the average annual reporting, record keeping,
3 and other administrative costs that small businesses **or persons**
4 **in the regulated occupation** will incur to comply with the
5 proposed rule.
- 6 (3) An estimate of the total annual economic impact that
7 compliance with the proposed rule will have on all small
8 businesses **or persons in the regulated occupation** subject to the
9 rule. The agency is not required to submit the proposed rule to the
10 office of management and budget for a fiscal analysis under
11 IC 4-22-2-28 unless the estimated economic impact of the rule is
12 greater than five hundred thousand dollars (\$500,000) on all
13 regulated entities, as set forth in IC 4-22-2-28.
- 14 (4) A statement justifying any requirement or cost that is:
- 15 (A) imposed on small businesses **or persons in the regulated**
16 **occupation** by the rule; and
- 17 (B) not expressly required by:
- 18 (i) the statute authorizing the agency to adopt the rule; or
19 (ii) any other state or federal law.
- 20 The statement required by this subdivision must include a
21 reference to any data, studies, or analyses relied upon by the
22 agency in determining that the imposition of the requirement or
23 cost is necessary.
- 24 (5) A regulatory flexibility analysis that considers any less
25 intrusive or less costly alternative methods of achieving the
26 purpose of the proposed rule. The analysis under this subdivision
27 must consider the following methods of minimizing the economic
28 impact of the proposed rule on small businesses **or persons in the**
29 **regulated occupation, as applicable:**
- 30 (A) The establishment of less stringent compliance or
31 reporting requirements for small businesses **or regulated**
32 **occupations.**
- 33 (B) The establishment of less stringent schedules or deadlines
34 for compliance or reporting requirements for small businesses
35 **or regulated occupations.**
- 36 (C) The consolidation or simplification of compliance or
37 reporting requirements for small businesses **or regulated**
38 **occupations.**
- 39 (D) The establishment of performance standards for small
40 businesses **or regulated occupations** instead of design or
41 operational standards imposed on other regulated entities by
42 the rule.



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

4 **(F) The establishment of the least restrictive regulation**
 5 **that is necessary to regulate the occupation or protect**
 6 **consumers.**

7 If the agency has made a preliminary determination not to
 8 implement one (1) or more of the alternative methods considered,
 9 the agency shall include a statement explaining the agency's
 10 reasons for the determination, including a reference to any data,
 11 studies, or analyses relied upon by the agency in making the
 12 determination.

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

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

17 (A) the rule is gradually made to apply to small businesses, **or**
 18 certain types of small businesses, **or regulated occupations;**
 19 or

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

21 (2) the rule applies to all small businesses, **or to regulated**
 22 **occupations**, that will be affected by the rule.

23 In determining the total annual economic impact of the rule under
 24 subsection (a)(3), the agency shall consider the annual economic
 25 impact on all small businesses **or on regulated occupations**,
 26 beginning with the first twelve (12) month period after the rule is fully
 27 implemented. The agency may use actual or forecasted data and may
 28 consider the actual and anticipated effects of inflation and deflation.
 29 The agency shall describe any assumptions made and any data used in
 30 determining the total annual economic impact of a rule under
 31 subsection (a)(3).

32 (c) The agency shall:

33 (1) publish the statement required under subsection (a) in the
 34 Indiana Register as required by IC 4-22-2-24; and

35 (2) deliver a copy of the statement, along with the proposed rule,
 36 to the small business ombudsman not later than the date of
 37 publication under subdivision (1).

38 **(d) The agency shall presume that market competition and**
 39 **private remedies are sufficient to protect consumers when**
 40 **conducting an analysis of an occupational regulation under**
 41 **subsection (a)(5). However, if the agency finds credible empirical**
 42 **evidence of a systematic problem that justifies the adoption of an**



1 **occupational regulation to protect consumers, the agency shall**
 2 **recommend the least restrictive regulation that addresses the**
 3 **problem. The agency shall use the guidelines under**
 4 **IC 4-22-2-28(j)(1) through IC 4-22-2-28(j)(8) when analyzing an**
 5 **occupational regulation.**

6 SECTION 8. IC 4-22-2.1-6, AS AMENDED BY P.L.109-2015,
 7 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2019]: Sec. 6. (a) Not later than seven (7) days before the date
 9 of the public hearing set forth in the agency's notice under
 10 IC 4-22-2-24, the small business ombudsman shall do the following:

11 (1) Review the proposed rule and economic impact statement
 12 submitted to the small business ombudsman by the agency under
 13 section 5(c) of this chapter.

14 (2) Submit written comments to the agency on the proposed rule
 15 and the economic impact statement prepared by the agency under
 16 section 5 of this chapter. The small business ombudsman's
 17 comments may:

18 (A) recommend that the agency implement one (1) or more of
 19 the regulatory alternatives considered by the agency under
 20 section 5(a)(5) of this chapter;

21 (B) suggest regulatory alternatives not considered by the
 22 agency under section 5(a)(5) of this chapter;

23 (C) recommend any other changes to the proposed rule that
 24 would minimize the economic impact of the proposed rule on
 25 small businesses; ~~or~~

26 (D) recommend that the agency abandon or delay the
 27 rulemaking action until:

28 (i) more data on the impact of the proposed rule on small
 29 businesses can be gathered and evaluated; or

30 (ii) less intrusive or less costly alternative methods of
 31 achieving the purpose of the proposed rule can be effectively
 32 implemented with respect to small businesses; ~~or~~

33 **(E) make a determination regarding whether an**
 34 **occupational regulation is the least restrictive occupational**
 35 **regulation under IC 4-22-2-28.**

36 (b) Upon receipt of the small business ombudsman's written
 37 comments under subsection (a), the agency shall make the comments
 38 available:

39 (1) for public inspection and copying at the offices of the agency
 40 under IC 5-14-3;

41 (2) electronically through the electronic gateway administered
 42 under IC 4-13.1-2-2(a)(5) by the office of technology; and



1 (3) for distribution at the public hearing required by IC 4-22-2-26.
 2 (c) Before finally adopting a rule under IC 4-22-2-29, and in the
 3 same manner that the agency considers public comments under
 4 IC 4-22-2-27, the agency must fully consider the comments submitted
 5 by the small business ombudsman under subsection (a). After
 6 considering the comments under this subsection, the agency may:

- 7 (1) adopt any version of the rule permitted under IC 4-22-2-29; or
 8 (2) abandon or delay the rulemaking action as recommended by
 9 the small business ombudsman under subsection (a)(2)(D), if
 10 applicable.

11 SECTION 9. IC 4-22-2.1-8, AS AMENDED BY P.L.53-2014,
 12 SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2019]: Sec. 8. (a) This section applies to a small business, **or**
 14 **a person who is subject to a rule concerning a regulated**
 15 **occupation**, that is adversely affected or aggrieved by a rule that:

- 16 (1) is subject to this chapter;
 17 (2) is finally adopted by an agency under IC 4-22-2-29; and
 18 (3) has taken effect under IC 4-22-2-36.

19 (b) Subject to subsection (c), a small business **or person** described
 20 in subsection (a) may file, in a court having jurisdiction, an action
 21 seeking a determination of the agency's compliance with the
 22 requirements of this chapter during the rulemaking process. Upon
 23 receipt of a complaint under this section, the court shall, at the earliest
 24 date possible, hear evidence on the matter and make a determination as
 25 to the agency's compliance with this chapter during the rulemaking
 26 process. If the court determines that the agency failed to comply with
 27 one (1) or more requirements of this chapter, the court may issue an
 28 order or injunction enjoining the agency from enforcing the rule with
 29 respect to the complaining small business **or person** and any similarly
 30 situated small businesses **or persons**. A determination of the court
 31 under this section is final, subject to the right of direct appeal by either
 32 party.

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

37 SECTION 10. IC 4-22-2.5-3.1, AS ADDED BY P.L.188-2005,
 38 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2019]: Sec. 3.1. (a) This section applies to a rule that:

- 40 (1) expires under this chapter after June 30, 2005; and
 41 (2) imposes requirements or costs on small businesses **or, if the**
 42 **rule is an occupational regulation, on persons subject to the**



1 **occupational regulation.**

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

5 (c) Before an agency may act under section 3 of this chapter to
6 readopt a rule described in subsection (a), the agency shall conduct a
7 review to consider whether there are any alternative methods of
8 achieving the purpose of the rule that are less costly or less intrusive,
9 or that would otherwise minimize the economic impact of the proposed
10 rule on small businesses **or on persons subject to the occupational**
11 **regulation.** In reviewing a rule under this section, the agency shall
12 consider the following:

13 (1) The continued need for the rule.

14 (2) The nature of any complaints or comments received from the
15 public, including small businesses **or, if the rule is an**
16 **occupational regulation, persons subject to the occupational**
17 **regulation,** concerning the rule or the rule's implementation by
18 the agency.

19 (3) The complexity of the rule, including any difficulties
20 encountered by:

21 (A) the agency in administering the rule; or

22 (B) small businesses **or, if the rule is an occupational**
23 **regulation, persons subject to the occupational regulation**
24 in complying with the rule.

25 (4) The extent to which the rule overlaps, duplicates, or conflicts
26 with other federal, state, or local laws, rules, regulations, or
27 ordinances.

28 (5) The length of time since the rule was last reviewed under this
29 section or otherwise evaluated by the agency, and the degree to
30 which technology, economic conditions, or other factors have
31 changed in the area affected by the rule since that time.

32 (d) This subsection applies to a rule that was adopted through a
33 rulemaking action initiated by the agency under IC 4-22-2-23 after June
34 30, 2005. In reviewing the rule under this section, the agency shall
35 reexamine the most recent economic impact statement prepared by the
36 agency under IC 4-22-2.1-5. The agency shall consider **the following:**

37 (1) The degree to which the factors analyzed in the statement have
38 changed since the statement was prepared. ~~and~~

39 (2) Whether:

40 (A) any regulatory alternatives included in the statement under
41 IC 4-22-2.1-5(a)(5); or

42 (B) any regulatory alternatives not considered by the agency



- 1 at the time the statement was prepared;
- 2 could be implemented to replace one (1) or more of the rule's
- 3 existing requirements.
- 4 **(3) Whether the agency used the least restrictive regulation**
- 5 **(as defined by IC 4-22-2.1-2.2) for the occupational regulation**
- 6 **(as defined by IC 4-22-2.1-2.5). The agency shall use the**
- 7 **guidelines under IC 4-22-2-28(j)(1) through IC 4-22-2-28(j)(8)**
- 8 **when analyzing an occupational regulation.**
- 9 (e) After conducting the review required by this section, the agency
- 10 shall:
- 11 (1) readopt the rule without change, if no alternative regulatory
- 12 methods exist that could minimize the economic impact of the
- 13 rule on small businesses **or, if the rule is an occupational**
- 14 **regulation, on persons subject to the occupational regulation,**
- 15 while still achieving the purpose of the rule;
- 16 (2) amend the rule to implement alternative regulatory methods
- 17 that will minimize the economic impact of the rule on small
- 18 businesses **or, if the rule is an occupational regulation, on**
- 19 **persons subject to the occupational regulation; or**
- 20 (3) repeal the rule, if the need for the rule no longer exists.
- 21 SECTION 11. IC 5-28-17-6, AS AMENDED BY P.L.130-2018,
- 22 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 23 JULY 1, 2019]: Sec. 6. The corporation shall designate an employee to
- 24 be the small business ombudsman. The small business ombudsman
- 25 shall carry out the following duties:
- 26 (1) Work with state agencies to permit increased enforcement
- 27 flexibility and the ability to grant common sense exemptions for
- 28 first time offenders of state rules and policies, including,
- 29 notwithstanding any other law, policies for the compromise of
- 30 interest and penalties related to a listed tax (as defined in
- 31 IC 6-8.1-1-1) and other taxes and fees collected or administered
- 32 by a state agency.
- 33 (2) Work with state agencies to seek ways to consolidate forms
- 34 and eliminate the duplication of paperwork, harmonize data, and
- 35 coordinate due dates.
- 36 (3) Coordinate with OMB (as defined in IC 4-3-22-3) to perform
- 37 cost benefit analyses.
- 38 (4) Work with state agencies to monitor any outdated, ineffective,
- 39 or overly burdensome information requests from state agencies to
- 40 small businesses.
- 41 (5) Carry out the duties specified under IC 4-22-2-28 and
- 42 IC 4-22-2.1 to review proposed rules and participate in



- 1 rulemaking actions that affect small businesses **or regulated**
 2 **occupations (as defined by IC 4-22-2.1-3.1).**
 3 (6) Coordinate with the ombudsman designated under
 4 IC 13-28-3-2 and the office of voluntary compliance established
 5 by IC 13-28-1-1 to coordinate the provision of services required
 6 under IC 4-22-2-28.1 and IC 13-28-3.
 7 (7) Prepare written and electronic information for periodic
 8 distribution to small businesses describing the small business
 9 services provided by coordinators (as defined in
 10 IC 4-22-2-28.1(b)) and work with the office of technology
 11 established by IC 4-13.1-2-1 to place information concerning the
 12 availability of these services on state Internet web sites that the
 13 small business ombudsman or a state agency determines are most
 14 likely to be visited by small business owners and managers.
 15 (8) Assist in training agency coordinators who will be assigned to
 16 rules under IC 4-22-2-28.1(e).
 17 (9) Investigate and attempt to resolve any matter regarding
 18 compliance by a small business with a law, rule, or policy
 19 administered by a state agency, either as a party to a proceeding
 20 or as a mediator.
 21 State agencies **and governing boards of regulated occupations that**
 22 **are subject to IC 4-22-2** shall cooperate with the small business
 23 ombudsman to carry out the purpose of this section. The department of
 24 state revenue and the department of workforce development shall
 25 establish a program to distribute the information described in
 26 subdivision (7) to small businesses that are required to file returns or
 27 information with these state agencies.
 28 **SECTION 12. An emergency is declared for this act.**

