SENATE BILL No. 399

DIGEST OF SB 399 (Updated February 5, 2018 3:15 pm - DI 132)

Citations Affected: IC 4-22; IC 5-28; IC 25-1.

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.

Holdman, Koch, Doriot, Merritt, Zakas, Spartz

January 8, 2018, read first time and referred to Committee on Commerce and Technology. February 1, 2018, reported favorably — Do Pass. February 5, 2018, read second time, amended, ordered engrossed.

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Second Regular Session 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.

SENATE BILL No. 399

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:

SECTION 1. IC 4-22-2-28, AS AMENDED BY P.L.237-2017, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 28. (a) The following definitions apply throughout this section:

(1) "Ombudsman" refers to the small business ombudsman designated under IC 5-28-17-6.

(2) "Total estimated economic impact" means the direct annual economic impact of a rule on all regulated persons after the rule is fully implemented under subsection (g).

(b) The ombudsman:

(1) shall review the following:

(A) A proposed rule that:

( i) imposes requirements or costs on small businesses (as defined in IC 4-22-2.1-4); and

( ii) is referred to the ombudsman by an agency under IC 4-22-2.1-5(c), and

(B) A proposed rule that imposes an occupational
regulation (as defined by IC 4-22-2.1-2.5) on a person.

(2) may review a proposed rule that imposes requirements or costs on businesses other than small businesses (as defined in IC 4-22-2.1-4).

After conducting a review under subdivision (1) or (2), the ombudsman may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on small businesses or other businesses.

persons subject to the rule. The agency that intends to adopt the proposed rule shall respond in writing to the ombudsman concerning the ombudsman's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

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

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

(1) the state; and

(2) all persons regulated by the proposed rule.

The fiscal impact statement must contain the total estimated economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal impact statement is a public document. The office of management and budget shall make the fiscal impact statement available to interested parties upon request and to the agency proposing the rule. The agency proposing the rule shall
consider the fiscal impact statement as part of the rulemaking process and shall provide the office of management and budget with the information necessary to prepare the fiscal impact statement, including any economic impact statement prepared by the agency under IC 4-22-2.1-5. The office of management and budget may also receive and consider applicable information from the regulated persons affected by the rule in preparation of the fiscal impact statement.

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

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

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

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

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

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

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

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

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

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

(h) An agency shall provide the legislative council in an electronic format under IC 5-14-6 with any analysis, data, and description of assumptions submitted to the office of management and budget under this section or section 40 of this chapter at the same time the agency submits the information to the office of management and budget. The office of management and budget shall provide the legislative council with any analysis, data, and description of assumptions submitted to the office of management and budget under this section or section 40 of this chapter at the same time the office of management and budget submits the information to the legislative council.
in an electronic format under IC 5-14-6 any fiscal impact statement and related supporting documentation prepared by the office of management and budget under this section or section 40 of this chapter at the same time the office of management and budget provides the fiscal impact statement to the agency proposing the rule. Information submitted under this subsection must identify the rule to which the information is related by document control number assigned by the publisher.

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

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

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

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

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

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

(6) a requirement under any other law to conduct an analysis of the cost, economic impact, or fiscal impact of a rule; regardless of whether the total estimated economic impact of the proposed rule is more than five hundred thousand dollars ($500,000), as soon as practicable after the information is prepared. Information submitted under this subsection must identify the rule to which the information is related by document control number assigned by the publisher.

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

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

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

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

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

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

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

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

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

(8) If the need is to address a permanent failure that prevents the average consumer from obtaining sufficient information to judge the quality of a person of complex services, the
ombudsman's comment to the agency must recommend a rule that requires an occupational license.

SECTION 2. IC 4-22-2-32, AS AMENDED BY P.L.1-2006, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 32. (a) The attorney general shall review each rule submitted under section 31 of this chapter for legality.

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

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

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

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

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

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

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

(1) has been adopted without statutory authority;

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

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

(4) violates another law; or

(5) violates federal antitrust laws.

Otherwise, the attorney general shall approve the rule without making a specific finding of fact concerning the subjects.

(d) If an agency submits a rule to the attorney general without complying with section 20(a)(2) of this chapter, the attorney general may:

(1) disapprove the rule; or
(2) return the rule to the agency without disapproving the rule.

(e) If the attorney general returns a rule under subsection (d)(2), the
agency may bring the rule into compliance with section 20(a)(2) of this
chapter and resubmit the rule to the attorney general without readopting
the rule.

(f) If the attorney general determines in the course of the review
conducted under subsection (b) that a rule may constitute a taking of
property, the attorney general shall advise the following:

(1) The governor.

(2) The agency head.

Advice given under this subsection shall be regarded as confidential
attorney-client communication.

(g) The attorney general has forty-five (45) days from the date that
an agency:

(1) submits a rule under section 31 of this chapter; or

(2) resubmits a rule under subsection (e);

to approve or disapprove the rule. If the attorney general neither
approves nor disapproves the rule, the rule is deemed approved, and the
agency may submit it to the governor for approval under section 33 of
this chapter without the approval of the attorney general.

(h) For rules adopted under IC 13-14-9, the attorney general:

(1) shall determine whether the rule adopted by the agency under
IC 13-14-9-9(2) is a logical outgrowth of the proposed rule as
published under IC 13-14-9-5(a)(2) and of testimony presented at
the board meeting held under IC 13-14-9-5(a)(3); and

(2) may disapprove a rule under this section only if the rule:

(A) has been adopted without statutory authority;

(B) has been adopted without complying with this chapter or
IC 13-14-9;

(C) is not a logical outgrowth of the proposed rule as
published under IC 13-14-9-5(a)(2) and of the testimony
presented at the board meeting held under IC 13-14-9-5(a)(3); or

(D) violates another law.

SECTION 3. IC 4-22-2.1-2.2 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2018]: Sec. 2.2. As used in this chapter, "least
restrictive regulation" means, from least restrictive to most
restrictive, the following types of regulation:

(1) Market competition.

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

(3) Private certification.

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(4) Voluntary bonding or insurance.
(5) Specific private civil cause of action to remedy consumer harm.
(6) Prohibiting deceptive trade practices.
(7) Mandatory disclosure of attributes of specific goods or services.
(8) Regulating the process of providing specific goods or services.
(9) Government inspection.
(10) Required bonding.
(11) Required insurance.
(12) Required registration.
(13) Government certification.
(14) Specialty occupational license for medical reimbursement that allows an individual to qualify for payment or reimbursement from a government agency for the nonexclusive provision of medical services based on the individual meeting certain qualifications.
(15) Required occupational license.

SECTION 4. IC 4-22-2.1-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 2.5. (a) As used in this chapter, "occupational regulation" refers to a rule adopted under IC 4-22-2, procedure, policy, or other official action of a board governing a regulated occupation that:

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

(b) The term does not include the following:

(1) A business license, a facility license, a regulation concerning a building permit, a regulation concerning zoning or land use, or an emergency rule adopted under IC 4-22-2-37.1, unless the board's action relates to an individual's qualifications to perform a regulated occupation.
(2) A disciplinary action regarding an individual who is in a regulated occupation for a violation of a duty or standard of practice under IC 25-1.
(3) A rule of a board governing a regulated occupation that does not restrict or prohibit a person who is not licensed by the board from engaging in the occupation without an
occupational license.

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

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

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

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

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

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

4. A statement justifying any requirement or cost that is:
   (A) imposed on small businesses or persons in the regulated
       occupation by the rule; and
   (B) not expressly required by:
       (i) the statute authorizing the agency to adopt the rule; or
       (ii) any other state or federal law.

   The statement required by this subdivision must include a
reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 7. IC 4-22-2.1-6, AS AMENDED BY P.L.109-2015, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 6. (a) Not later than seven (7) days before the date of the public hearing set forth in the agency's notice under IC 4-22-2-24, the small business ombudsman shall do the following:
   (1) Review the proposed rule and economic impact statement submitted to the small business ombudsman by the agency under section 5(c) of this chapter.
   (2) Submit written comments to the agency on the proposed rule and the economic impact statement prepared by the agency under section 5 of this chapter. The small business ombudsman's comments may:
      (A) recommend that the agency implement one (1) or more of the regulatory alternatives considered by the agency under section 5(a)(5) of this chapter;
(B) suggest regulatory alternatives not considered by the agency under section 5(a)(5) of this chapter;
(C) recommend any other changes to the proposed rule that would minimize the economic impact of the proposed rule on small businesses or, if the rule is an occupational regulation, on persons subject to the occupational regulation; or
(D) recommend that the agency abandon or delay the rulemaking action until:
   (i) more data can be gathered and evaluated on the impact of the proposed rule on small businesses can be gathered and evaluated; or, if the rule is an occupational regulation, on persons subject to the occupational regulation; or
   (ii) less intrusive or less costly alternative methods of achieving the purpose of the proposed rule can be effectively implemented with respect to small businesses or, if the rule is an occupational regulation, on persons subject to the occupational regulation.

(b) Upon receipt of the small business ombudsman's written comments under subsection (a), the agency shall make the comments available:
   (1) for public inspection and copying at the offices of the agency under IC 5-14-3;
   (2) electronically through the electronic gateway administered under IC 4-13.1-2-2(a)(5) by the office of technology; and
   (3) for distribution at the public hearing required by IC 4-22-2-26.

(c) Before finally adopting a rule under IC 4-22-2-29, and in the same manner that the agency considers public comments under IC 4-22-2-27, the agency must fully consider the comments submitted by the small business ombudsman under subsection (a). After considering the comments under this subsection, the agency may:
   (1) adopt any version of the rule permitted under IC 4-22-2-29; or
   (2) abandon or delay the rulemaking action as recommended by the small business ombudsman under subsection (a)(2)(D), if applicable.

SECTION 8. IC 4-22-2.1-8, AS AMENDED BY P.L.53-2014, SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 8. (a) This section applies to a small business, or a person who is subject to a rule concerning a regulated occupation, that is adversely affected or aggrieved by a rule that:
   (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.

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

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

SECTION 9. IC 4-22-2.5-3.1, AS ADDED BY P.L.188-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 3.1. (a) This section applies to a rule that:
(1) expires under this chapter after June 30, 2005; and
(2) imposes requirements or costs on small businesses or, if the rule is an occupational regulation, on persons subject to the occupational regulation.

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

(c) Before an agency may act under section 3 of this chapter to readopt a rule described in subsection (a), the agency shall conduct a review to consider whether there are any alternative methods of achieving the purpose of the rule that are less costly or less intrusive, or that would otherwise minimize the economic impact of the proposed rule on small businesses or on persons subject to the occupational regulation. In reviewing a rule under this section, the agency shall consider the following:
(1) The continued need for the rule.
(2) The nature of any complaints or comments received from the public, including small businesses or, if the rule is an occupational regulation, persons subject to the occupational
(3) The complexity of the rule, including any difficulties encountered by:
   (A) the agency in administering the rule; or
   (B) small businesses or, if the rule is an occupational regulation, persons subject to the occupational regulation in complying with the rule.

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

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

(d) This subsection applies to a rule that was adopted through a rulemaking action initiated by the agency under IC 4-22-2-23 after June 30, 2005. In reviewing the rule under this section, the agency shall reexamine the most recent economic impact statement prepared by the agency under IC 4-22-2.1-5. The agency shall consider the following:
   (1) The degree to which the factors analyzed in the statement have changed since the statement was prepared. and
   (2) Whether:
      (A) any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5); or
      (B) any regulatory alternatives not considered by the agency at the time the statement was prepared;
      could be implemented to replace one (1) or more of the rule's existing requirements.

(3) Whether the agency used the least restrictive regulation (as defined by IC 4-22-2.1-2.2) for the occupational regulation (as defined by IC 4-22-2.1-2.5). The agency shall use the guidelines under IC 4-22-2-28(j)(1) through IC 4-22-2-28(j)(8) when analyzing an occupational regulation.

(e) After conducting the review required by this section, the agency shall:
   (1) readopt the rule without change, if no alternative regulatory methods exist that could minimize the economic impact of the rule on small businesses or, if the rule is an occupational regulation, on persons subject to the occupational regulation,
   while still achieving the purpose of the rule;
   (2) amend the rule to implement alternative regulatory methods
that will minimize the economic impact of the rule on small businesses or, if the rule is an occupational regulation, on persons subject to the occupational regulation; or
(3) repeal the rule, if the need for the rule no longer exists.

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

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

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

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

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

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

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

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

(8) Assist in training agency coordinators who will be assigned to rules under IC 4-22-2-28.1(e).
(9) Investigate and attempt to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

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

SECTION 11. IC 25-1-1.1-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:

Sec. 6. (a) As used in this section, "applicant" means an individual who has a criminal record and has submitted a petition under subsection (b).

(b) Notwithstanding any other law, an individual who has a criminal record may 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 at any time, including before obtaining any required education or training, to determine if the individual's criminal record will disqualify the individual from obtaining a license, certificate, or permit issued by the board.

(c) The petition in subsection (b):
(1) must include the applicant's criminal record or authorize the board to obtain the applicant's criminal record; and
(2) may include additional information about the applicant's current circumstances, including the length of time since the applicant committed the offense, completion of the criminal sentence, any other evidence of rehabilitation, testimonials, employment history, and employment aspirations.

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

(e) Notwithstanding any other law, the board may find the criminal record of the applicant who has filed a petition under this section disqualifies the applicant from obtaining a license, certificate, or permit only if the board determines by clear and convincing evidence all of the following:
(1) The applicant's criminal record includes a conviction for
a felony or violent misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

(1) The number of applicants petitioning each board.

(2) The number of each board's approvals and denials.
(3) The type of offenses for which each board approved or denied the petitions.
(4) Any other data the agency determines is relevant.
COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred Senate Bill No. 399, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 399 as introduced.)

MESSMER, Chairperson

Committee Vote: Yeas 7, Nays 2

SENATE MOTION

Madam President: I move that Senate Bill 399 be amended to read as follows:

Page 2, line 1, delete "(as defined by IC 4-22-2.1-2.5)," and insert "(as defined by IC 4-22-2.1-2.5)".

Page 11, line 21, delete "(a)(5)(5)." and insert "(a)(5)."

(Reference is to SB 399 as printed February 2, 2018.)

HOLDMAN