HOUSE BILL No. 1533

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-2-6.

Synopsis: Indiana ethics commission. Redefines the terms "employer" and "employee" as used in the state ethics statute. Provides that the state ethics commission has jurisdiction over certain individuals who are under contract or are employed by a person under a contract with a state agency. Permits the commission to delegate its authority to its director to issue subpoenas under certain circumstances. Authorizes the commission to dismiss a complaint if the commission is satisfied that a governmental entity has dealt with the complaint appropriately. Provides that commission evidence relating to an investigation is confidential until certain events occur. (Current law provides that commission records relating to a preliminary investigation are confidential until the stated events occur.) Provides that a commission

(Continued next page)

Effective: July 1, 1999.

Liggett

January 19, 1999, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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Digest Continued

report may recommend that an appointing authority or a state officer issue a letter of counseling to a respondent to a complaint filed with the commission. Makes changes to the information required to be stated on financial disclosure statements filed with the commission. Provides that a state officer or employee may not retaliate against a former employee because the former employee filed a complaint with the commission, provided information to the commission, or testified before the commission. Prohibits a person from taking certain actions that would interfere with a commission proceeding or investigation. Makes other changes in terminology in the state ethics statute.

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Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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HOUSE BILL No. 1533

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 4-2-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this chapter, and unless the context clearly denotes otherwise:

(1) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a council, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic set up as an instrumentality of the state that chooses to be under the jurisdiction of the state ethics commission. The term does not include any of the following:

(A) The judicial department of state government.

(B) The legislative department of state government.

(C) A state educational institution (as defined in IC 20-12-0.5-1).

(D) A political subdivision.

(E) A private nonprofit government related corporation.

(2) "Appointing authority" means the chief administrative officer of an agency. The term does not include a state officer.

(3) "Assist" means to:

(A) help;

(B) aid;

(C) advise; or

(D) furnish information to;

a person. The term includes an offer to do any of the actions in clauses (A) through (D).

(4) "Business relationship" means dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:

(A) a pecuniary interest in a contract or purchase with the agency; or

(B) a license or permit requiring the exercise of judgment or discretion by the agency.

(5) "Commission" refers to the state ethics commission created under section 2 of this chapter.

(6) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(7) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services for more than ~~thirty (30)~~ **twenty (20)** hours a week for more than twenty-six (26) weeks during any one (1) year period.

(8) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received ~~more than thirty-three percent (33%) of the officer's, employee's, or spouse's nonstate income in a year.~~ **compensation.**

(9) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings

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in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(10) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) the information is not in a public record, but if it were, would be confidential.

(11) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

(12) "Political subdivision" means a county, city, town, township, school district, municipal corporation, special taxing district, or other local instrumentality. The term includes an officer of a political subdivision.

(13) "Property" has the meaning set forth in IC 35-41-1-23.

(14) "Represent" means to do any of the following on behalf of a person:

(A) Attend an agency proceeding.

(B) Write a letter.

(C) Communicate with an employee of an agency.

(15) "Special state appointee" means a person who is:

(A) not a state officer or employee; and

(B) elected or appointed to an authority, a board, a commission, a committee, a ~~counsel,~~ **council,** a task force, or other body designated by any name that:

(i) is authorized by statute or executive order; and

(ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.

(16) "State officer" means any of the following:

(A) The governor.

(B) The lieutenant governor.

(C) The secretary of state.

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(D) The auditor of state.
(E) The treasurer of state.
(F) The attorney general.
(G) The superintendent of public instruction.
(17) The masculine gender includes the masculine and feminine.
(18) The singular form of any noun includes the plural wherever appropriate.

SECTION 2. IC 4-2-6-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2.5. The commission has jurisdiction over the following persons:

(1) A current or former state officer.
(2) A current or former employee.
(3) A person who has or had a business relationship with an agency.
(4) A special state appointee.
(5) An individual who:
(A) is under contract with or employed by an entity under contract with a state agency; and
(B) in the capacity described in clause (A), provides personal services to a state agency for more than twenty (20) hours a week for more than twenty-six (26) weeks during any one (1) year period.

SECTION 3. IC 4-2-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The commission may do any of the following:

(1) Upon a vote of four (4) members, or upon the written request of the governor, initiate and conduct an investigation.
(2) Receive and hear any complaint which alleges a violation of this chapter, a rule adopted under this chapter, or any other statute or rule ~~governing~~ **establishing standards of** official conduct of state officers, employees, or special state appointees.
(3) Obtain information and, upon a vote of four (4) members, compel the attendance and testimony of witnesses and the production of pertinent books and papers by a subpoena enforceable by the circuit or superior court of the county where the subpoena is to be issued. **The commission may delegate to the director the authority to issue subpoenas concerning a matter if the commission has determined that an investigation of that matter is appropriate.**
(4) Recommend legislation to the general assembly relating to the conduct and ethics of state officers, employees, and special state appointees, including whether additional specific state officers or

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employees should be required to file a financial disclosure statement under section 8 of this chapter.

(5) Adopt rules under IC 4-22-2 to implement this chapter.

(6) Prescribe and provide forms for statements required to be filed under this chapter.

(7) Accept and file information:

(A) voluntarily supplied; and

(B) that exceeds the requirements of this chapter.

(8) Inspect financial disclosure forms.

(9) Notify persons who fail to file forms required under this chapter.

(10) Develop a filing, a coding, and an indexing system required by this chapter and IC 35-44-1-3(f).

(11) Conduct research.

(12) Prepare interpretive and educational materials and programs.

(b) The commission shall do the following:

(1) Act as an advisory body by issuing advisory opinions to interpret this chapter, the commission's rules, or any other statute or rule ~~governing~~ **establishing standards of** official conduct upon:

(A) request of:

(i) a state officer or a former state officer;

(ii) an employee or a former employee;

(iii) a person who has or had a business relationship with an agency; or

(iv) a special state appointee; or

(B) motion of the commission.

(2) Conduct its proceedings in the following manner:

(A) When a complaint is filed with the commission, the commission may:

(i) reject, without further proceedings, a complaint that the commission considers frivolous or inconsequential;

(ii) reject, without further proceedings, a complaint that the commission is satisfied has been dealt with appropriately by a governmental entity;

~~(ii)~~ **(iii)** upon the vote of four (4) members, determine that the complaint does not allege facts sufficient to constitute a violation of this chapter or the code of ethics and dismiss the complaint; or

~~(iii)~~ **(iv)** forward a copy of the complaint to the attorney general, the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a

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state officer, the appointing authority, or other appropriate person for action, and stay the commission's proceedings pending the other action.

(B) If a complaint is not disposed of under clause (A), a copy of the complaint shall be sent to the person alleged to have committed the violation.

(C) If the complaint is not disposed of under clause (A), or when the commission initiates an investigation on its own motion or upon request of the governor, the commission shall promptly investigate the alleged violation. If, after the preliminary investigation, the commission finds by a majority vote that probable cause exists to support an alleged violation, it shall convene a public hearing on the matter within sixty (60) days after making the determination. The respondent shall be notified within fifteen (15) days of the commission's determination. ~~Commission records~~ **The commission's evidence** relating to ~~a preliminary~~ **an** investigation ~~are~~ **is** confidential until the earlier of:

(i) the time the respondent is notified of the hearing; or

(ii) the time the respondent elects to have the records divulged.

However, the commission may acknowledge the existence and scope of an investigation or that the commission did not find probable cause to support an alleged violation.

(D) If a hearing is to be held, the respondent may examine and make copies of all evidence in the commission's possession relating to the charges. At the hearing, the charged party shall be afforded appropriate due process protection consistent with IC 4-21.5, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.

(E) After the hearing, the commission shall state its findings of fact. If the commission, based on competent and substantial evidence, finds by a majority vote that the respondent has violated this chapter, a rule adopted under this chapter, or any other statute or rule ~~governing~~ **establishing standards of** official conduct of state officers, employees, or special state appointees, it shall state its findings in writing in a report, which shall be supported and signed by a majority of the commission members and shall be made public. The report may make a recommendation for the sanctions to be imposed by the appointing authority or state officer for the violation,

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including:

(i) a letter of counseling;

~~(i)~~ **(ii) a** reprimand;

~~(ii)~~ **(iii) a** suspension with or without pay; or

~~(iii)~~ **(iv) the** dismissal of an employee.

(F) If the commission, based on competent and substantial evidence, finds by a majority vote a violation of this chapter, a rule adopted under this chapter, or any other statute or rule ~~governing~~ **establishing standards of** official conduct of state officers, employees, or special state appointees, the commission may also take any of the actions provided in section 12 of this chapter.

(G) The report required under clause (E) shall be presented to:

(i) the respondent;

(ii) the appointing authority or state officer of the employee, former employee, or special state appointee; and

(iii) the governor.

(H) The commission may also forward the report to any of the following:

(i) The prosecuting attorney of each county in which the violation occurred.

(ii) The state board of accounts.

(iii) The state personnel director.

(iv) The attorney general.

(v) A state officer.

(vi) The appointing authority.

(vii) Any other appropriate person.

(I) If the commission finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.

(3) Maintain an index of conflict of interest disclosures received by the commission under IC 35-44-1-3.

(c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the commission concerning the case of a respondent that are not confidential under subsection (b)(2)(C) shall be available for inspection and copying in accordance with IC 5-14-3.

SECTION 4. IC 4-2-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The following persons shall file a written financial disclosure statement:

(1) The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.

(2) Any candidate for one (1) of the offices in subdivision (1) who

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is not the holder of one (1) of those offices.

(3) Any person who is the appointing authority of an agency.

(4) The director of each division of the department of administration.

(5) Any purchasing agent within the procurement division of the department of administration.

(6) An employee required to do so by rule adopted by the commission.

(b) The statement shall be filed with the commission as follows:

(1) ~~No~~ **Not** later than February 1 of every year, in the case of the state officers and employees enumerated in subsection (a).

(2) Before filing a declaration of candidacy under IC 3-8-2, petition of nomination under IC 3-8-6, or declaration of intent to be a write-in candidate under IC 3-8-2-2.5, or before a certificate of nomination is filed under IC 3-8-7-8, in the case of a candidate for one (1) of the state offices.

(3) Not later than sixty (60) days after employment or taking office, unless the previous employment or office required the filing of a statement under this section.

(4) Not later than thirty (30) days after leaving employment or office, unless the subsequent employment or office requires the filing of a statement under this section.

The statement must be made under affirmation.

(c) The statement shall set forth the following information for the preceding calendar year or, in the case of a state officer or employee who leaves office or employment, the period since a previous statement was filed:

(1) The name and address of any person known:

(A) to have a business relationship with ~~an~~ **the** agency **of the state officer or employee or the office sought by the candidate;** and

(B) from whom the state officer, candidate, or the employee, or that individual's spouse or unemancipated children received a gift or gifts having a total fair market value in excess of one hundred dollars ($100).

(2) The location of all real property in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children has an equitable or legal interest either amounting to five thousand dollars ($5,000) or more or comprising ten percent (10%) of the state officer's, candidate's, or the employee's net worth or the net worth of that individual's spouse or unemancipated children. **An individual's primary**

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personal residence need not be listed, unless it also serves as income property.

(3) The names and the nature of the business of the employers of the state officer, candidate, or the employee and that individual's spouse. ~~The state need not be listed as an employer.~~

(4) The ~~name of~~ **following information about** any sole proprietorship owned or professional practice operated by the state officer, candidate, or the employee or that individual's spouse: ~~and~~

(A) The name of the sole proprietorship or professional practice.

(B) The nature of the business.

(C) Whether any clients are known to have had a business relationship with the agency of the state officer or employee or the office sought by the candidate.

(5) The name of any partnership of which the state officer, candidate, or the employee or that individual's spouse is a member and the nature of the partnership's business.

(6) The name of any corporation (other than a church) of which the state officer, candidate, or the employee or that individual's spouse is an officer or a director and the nature of the corporation's business.

(7) The name of any corporation in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children own stock or stock options having a fair market value in excess of ten thousand dollars ($10,000). A time or demand deposit in a financial institution or insurance policy need not be listed.

(8) The name and address of the most recent former employer.

(9) Additional information that the person making the disclosure chooses to include.

Any such state officer, candidate, or employee may file an amended statement upon discovery of additional information required to be reported.

(d) A person who:

(1) fails to file a statement required by rule or this section in a timely manner; or

(2) files a deficient statement;

upon a majority vote of the commission, is subject to a civil penalty at a rate of not more than ten dollars ($10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars ($1,000).

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(e) A person who intentionally or knowingly files a false statement commits a Class A infraction.

SECTION 5. IC 4-2-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) Subject to subsection (b), a state officer or employee shall not retaliate or threaten to retaliate against an employee **or former employee** because the employee **or former employee** did any of the following:

(1) Filed a complaint with the commission.

(2) Provided information to the commission.

(3) Testified at a commission proceeding.

(b) Notwithstanding subsection (a), a state officer or an employee may take appropriate action against an employee who took any of the actions listed in subsection (a) if the employee:

(1) did not act in good faith; or

(2) knowingly or recklessly provided false information or testimony to the commission.

SECTION 6. IC 4-2-6-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 14. A person may not do any of the following:**

(1) Knowingly or intentionally induce or attempt to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a commission proceeding or investigation to do any of the following:

(A) Withhold or unreasonably delay the production of any testimony, information, document, or thing.

(B) Avoid legal process summoning the person to testify or supply evidence.

(C) Fail to appear at a proceeding or investigation to which the person has been summoned.

(D) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

(2) Alter, damage, or remove a record, document, or thing with the intent to prevent the record, document, or thing from being produced or used in a commission proceeding or investigation.

(3) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

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