



February 10, 1999

SENATE BILL No. 538

DIGEST OF SB 538 (Updated February 9, 1999 12:41 pm - DI 51)

Citations Affected: IC 4-2.

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. 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 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
(Continued next page)

Effective: July 1, 1999.

Kenley, Lewis

January 21, 1999, read first time and referred to Committee on Ethics.
February 9, 1999, amended, reported favorably — Do Pass.

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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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February 10, 1999

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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SENATE BILL No. 538

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

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

- 1 SECTION 1. IC 4-2-6-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this chapter, and
3 unless the context clearly denotes otherwise:
4 (1) "Agency" means an authority, a board, a branch, a bureau, a
5 commission, a committee, a council, a department, a division, an
6 office, a service, or other instrumentality of the executive,
7 including the administrative, department of state government. The
8 term includes a body corporate and politic set up as an
9 instrumentality of the state that chooses to be under the
10 jurisdiction of the state ethics commission. The term does not
11 include any of the following:
12 (A) The judicial department of state government.
13 (B) The legislative department of state government.
14 (C) A state educational institution (as defined in
15 IC 20-12-0.5-1).

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- 1 (D) A political subdivision.
 2 (E) A private nonprofit government related corporation.
 3 (2) "Appointing authority" means the chief administrative officer
 4 of an agency. The term does not include a state officer.
 5 (3) "Assist" means to:
 6 (A) help;
 7 (B) aid;
 8 (C) advise; or
 9 (D) furnish information to;
 10 a person. The term includes an offer to do any of the actions in
 11 clauses (A) through (D).
 12 (4) "Business relationship" means dealings of a person with an
 13 agency seeking, obtaining, establishing, maintaining, or
 14 implementing:
 15 (A) a pecuniary interest in a contract or purchase with the
 16 agency; or
 17 (B) a license or permit requiring the exercise of judgment or
 18 discretion by the agency.
 19 (5) "Commission" refers to the state ethics commission created
 20 under section 2 of this chapter.
 21 (6) "Compensation" means any money, thing of value, or financial
 22 benefit conferred on, or received by, any person in return for
 23 services rendered, or for services to be rendered, whether by that
 24 person or another.
 25 (7) "Employee" means an individual, other than a state officer,
 26 who is employed by an agency on a full-time, a part-time, a
 27 temporary, an intermittent, or an hourly basis. The term includes
 28 an individual who contracts with an agency for personal services
 29 for more than ~~thirty (30)~~ **twenty (20)** hours a week for more than
 30 twenty-six (26) weeks during any one (1) year period.
 31 (8) "Employer" means any person from whom a state officer or
 32 employee or the officer's or employee's spouse received ~~more than~~
 33 ~~thirty-three percent (33%) of the officer's, employee's, or spouse's~~
 34 ~~nonstate income in a year.~~ **compensation.**
 35 (9) "Financial interest" means an interest:
 36 (A) in a purchase, sale, lease, contract, option, or other
 37 transaction between an agency and any person; or
 38 (B) involving property or services.
 39 The term includes an interest arising from employment or
 40 prospective employment for which negotiations have begun. The
 41 term does not include an interest of a state officer or employee in
 42 the common stock of a corporation unless the combined holdings

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

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

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

9 (B) which:

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

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

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

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

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

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

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

27 (A) Attend an agency proceeding.

28 (B) Write a letter.

29 (C) Communicate with an employee of an agency.

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

31 (A) not a state officer or employee; and

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

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

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

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

40 (A) The governor.

41 (B) The lieutenant governor.

42 (C) The secretary of state.

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

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

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

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

- 26 (1) Upon a vote of four (4) members, or upon the written request
- 27 of the governor, initiate and conduct an investigation.
- 28 (2) Receive and hear any complaint which alleges a violation of
- 29 this chapter, a rule adopted under this chapter, or any other statute
- 30 or rule ~~governing~~ **establishing standards of** official conduct of
- 31 state officers, employees, or special state appointees.
- 32 (3) Obtain information and, upon a vote of four (4) members,
- 33 compel the attendance and testimony of witnesses and the
- 34 production of pertinent books and papers by a subpoena
- 35 enforceable by the circuit or superior court of the county where
- 36 the subpoena is to be issued.
- 37 (4) Recommend legislation to the general assembly relating to the
- 38 conduct and ethics of state officers, employees, and special state
- 39 appointees, including whether additional specific state officers or
- 40 employees should be required to file a financial disclosure
- 41 statement under section 8 of this chapter.
- 42 (5) Adopt rules under IC 4-22-2 to implement this chapter.

COPY



- 1 (6) Prescribe and provide forms for statements required to be filed
 2 under this chapter.
 3 (7) Accept and file information:
 4 (A) voluntarily supplied; and
 5 (B) that exceeds the requirements of this chapter.
 6 (8) Inspect financial disclosure forms.
 7 (9) Notify persons who fail to file forms required under this
 8 chapter.
 9 (10) Develop a filing, a coding, and an indexing system required
 10 by this chapter and IC 35-44-1-3(f).
 11 (11) Conduct research.
 12 (12) Prepare interpretive and educational materials and programs.
 13 (b) The commission shall do the following:
 14 (1) Act as an advisory body by issuing advisory opinions to
 15 interpret this chapter, the commission's rules, or any other statute
 16 or rule ~~governing~~ **establishing standards of** official conduct
 17 upon:
 18 (A) request of:
 19 (i) a state officer or a former state officer;
 20 (ii) an employee or a former employee;
 21 (iii) a person who has or had a business relationship with an
 22 agency; or
 23 (iv) a special state appointee; or
 24 (B) motion of the commission.
 25 (2) Conduct its proceedings in the following manner:
 26 (A) When a complaint is filed with the commission, the
 27 commission may:
 28 (i) reject, without further proceedings, a complaint that the
 29 commission considers frivolous or inconsequential;
 30 **(ii) reject, without further proceedings, a complaint that**
 31 **the commission is satisfied has been dealt with**
 32 **appropriately by a governmental entity;**
 33 ~~(ii)~~ **(iii)** upon the vote of four (4) members, determine that
 34 the complaint does not allege facts sufficient to constitute a
 35 violation of this chapter or the code of ethics and dismiss the
 36 complaint; or
 37 ~~(iii)~~ **(iv)** forward a copy of the complaint to the attorney
 38 general, the prosecuting attorney of the county in which the
 39 alleged violation occurred, the state board of accounts, a
 40 state officer, the appointing authority, or other appropriate
 41 person for action, and stay the commission's proceedings
 42 pending the other action.



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

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

- 16 (i) the time the respondent is notified of the hearing; or
 17 (ii) the time the respondent elects to have the records
 18 divulged.

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

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

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

- 41 (i) **a letter of counseling;**
 42 (†) (ii) **a reprimand;**



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- 1 ~~(ii)~~ **(iii)** a suspension with or without pay; or
 2 ~~(iii)~~ **(iv)** the dismissal of an employee.
 3 (F) If the commission, based on competent and substantial
 4 evidence, finds by a majority vote a violation of this chapter,
 5 a rule adopted under this chapter, or any other statute or rule
 6 ~~governing~~ **establishing standards of** official conduct of state
 7 officers, employees, or special state appointees, the
 8 commission may also take any of the actions provided in
 9 section 12 of this chapter.
 10 (G) The report required under clause (E) shall be presented to:
 11 (i) the respondent;
 12 (ii) the appointing authority or state officer of the employee,
 13 former employee, or special state appointee; and
 14 (iii) the governor.
 15 (H) The commission may also forward the report to any of the
 16 following:
 17 (i) The prosecuting attorney of each county in which the
 18 violation occurred.
 19 (ii) The state board of accounts.
 20 (iii) The state personnel director.
 21 (iv) The attorney general.
 22 (v) A state officer.
 23 (vi) The appointing authority.
 24 (vii) Any other appropriate person.
 25 (I) If the commission finds the respondent has not violated a
 26 code or statutory provision, it shall dismiss the charges.
 27 (3) Maintain an index of conflict of interest disclosures received
 28 by the commission under IC 35-44-1-3.
 29 (c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the
 30 commission concerning the case of a respondent that are not
 31 confidential under subsection (b)(2)(C) shall be available for inspection
 32 and copying in accordance with IC 5-14-3.
 33 SECTION 4. IC 4-2-6-8 IS AMENDED TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The following persons shall
 35 file a written financial disclosure statement:
 36 (1) The governor, lieutenant governor, secretary of state, auditor
 37 of state, treasurer of state, attorney general, and state
 38 superintendent of public instruction.
 39 (2) Any candidate for one (1) of the offices in subdivision (1) who
 40 is not the holder of one (1) of those offices.
 41 (3) Any person who is the appointing authority of an agency.
 42 (4) The director of each division of the department of

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- 1 administration.
- 2 (5) Any purchasing agent within the procurement division of the
- 3 department of administration.
- 4 (6) An employee required to do so by rule adopted by the
- 5 commission.
- 6 (b) The statement shall be filed with the commission as follows:
- 7 (1) ~~No~~ **Not** later than February 1 of every year, in the case of the
- 8 state officers and employees enumerated in subsection (a).
- 9 (2) **Before** filing a declaration of candidacy under IC 3-8-2,
- 10 petition of nomination under IC 3-8-6, or declaration of intent to
- 11 be a write-in candidate under IC 3-8-2-2.5, or before a certificate
- 12 of nomination is filed under IC 3-8-7-8, in the case of a candidate
- 13 for one (1) of the state offices.
- 14 (3) Not later than sixty (60) days after employment or taking
- 15 office, unless the previous employment or office required the
- 16 filing of a statement under this section.
- 17 (4) Not later than thirty (30) days after leaving employment or
- 18 office, unless the subsequent employment or office requires the
- 19 filing of a statement under this section.
- 20 The statement must be made under affirmation.
- 21 (c) The statement shall set forth the following information for the
- 22 preceding calendar year or, in the case of a state officer or employee
- 23 who leaves office or employment, the period since a previous statement
- 24 was filed:
- 25 (1) The name and address of any person known:
- 26 (A) to have a business relationship with ~~an~~ **the agency of the**
- 27 **state officer or employee or the office sought by the**
- 28 **candidate; and**
- 29 (B) from whom the state officer, candidate, or the employee,
- 30 or that individual's spouse or unemancipated children received
- 31 a gift or gifts having a total fair market value in excess of one
- 32 hundred dollars (\$100).
- 33 (2) The location of all real property in which the state officer,
- 34 candidate, or the employee or that individual's spouse or
- 35 unemancipated children has an equitable or legal interest either
- 36 amounting to five thousand dollars (\$5,000) or more or
- 37 comprising ten percent (10%) of the state officer's, candidate's, or
- 38 the employee's net worth or the net worth of that individual's
- 39 spouse or unemancipated children. **An individual's primary**
- 40 **personal residence need not be listed, unless it also serves as**
- 41 **income property.**
- 42 (3) The names and the nature of the business of the employers of

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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).

(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



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1 [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) Subject to subsection (b), a
2 state officer or employee shall not retaliate or threaten to retaliate
3 against an employee **or former employee** because the employee **or**
4 **former employee** did any of the following:

- 5 (1) Filed a complaint with the commission.
- 6 (2) Provided information to the commission.
- 7 (3) Testified at a commission proceeding.

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

- 11 (1) did not act in good faith; or
- 12 (2) knowingly or recklessly provided false information or
13 testimony to the commission.

14 SECTION 6. IC 4-2-6-14 IS ADDED TO THE INDIANA CODE
15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 1999]: Sec. 14. A person may not do any of the following:

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

- 21 (A) **Withhold or unreasonably delay the production of any**
22 **testimony, information, document, or thing.**
- 23 (B) **Avoid legal process summoning the person to testify or**
24 **supply evidence.**
- 25 (C) **Fail to appear at a proceeding or investigation to which**
26 **the person has been summoned.**
- 27 (D) **Make, present, or use a false record, document, or**
28 **thing with the intent that the record, document, or thing**
29 **appear in a commission proceeding or investigation to**
30 **mislead a commissioner or commission employee.**

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

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

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SENATE MOTION

Mr. President: I move that Senator Lewis be added as second author of Senate Bill 538.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Ethics, to which was referred Senate Bill No. 538, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 36, delete "The commission may delegate to".

Page 4, delete lines 37 through 39.

and when so amended that said bill do pass.

(Reference is to SB 538 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 5, Nays 0.

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