



January 23, 2012

HOUSE BILL No. 1280

DIGEST OF HB 1280 (Updated January 20, 2012 9:01 am - DI 87)

Citations Affected: IC 1-1; IC 2-5; IC 4-3; IC 4-12; IC 4-21.5; IC 4-22; IC 8-1; IC 25-26; IC 34-6; IC 34-13; IC 35-48.

Synopsis: Regulatory matters. Provides that intrastate commerce in Indiana is not subject to the authority of the United States Congress. Provides for a retrospective review of agency rules. Imposes a duty on a state agency under certain circumstances to give a person an opportunity to correct an alleged violation of law that is discovered in an inspection. Requires hearing officers and administrative law judges to be attorneys licensed to practice law in Indiana. Requires state agencies and instrumentalities to implement continuous process improvement techniques. Requires agencies to evaluate the benefits and costs of rules, seek alternatives to regulation, establish and publish a rulemaking docket, and encourage public participation in rulemaking proceedings. Requires that state documents provided to the public must be written in plain English. Requires each unit of local government that receives franchise fees paid to a unit from an entity providing video services to submit to the IURC an annual report on the unit's receipt and use of those franchise fees during the calendar year for which the report is submitted. Consolidates six categories of pharmacy licenses into three categories. Extends the provisions of the public lawsuit statute to cover all actions against a municipal corporation in which the petitioner has public standing.

Effective: Upon passage; July 1, 2012.

Koch

January 11, 2012, read first time and referred to Committee on Government and Regulatory Reform.
January 23, 2012, amended, reported — Do Pass.

HB 1280—LS 6631/DI 51+



COPY

January 23, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

C
O
P
Y

HOUSE BILL No. 1280

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

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

- 1 SECTION 1. IC 1-1-2.5 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]:
4 **Chapter 2.5. Regulation of Intrastate Commerce**
5 **Sec. 1. This chapter applies to all:**
6 **(1) goods grown, manufactured, or made; and**
7 **(2) services performed;**
8 **in Indiana after July 1, 2012.**
9 **Sec. 2. The general assembly declares the following:**
10 **(1) The Tenth Amendment to the Constitution of the United**
11 **States provides that the only powers that the federal**
12 **government may exercise are those that have been delegated**
13 **to the federal government in the Constitution of the United**
14 **States.**
15 **(2) The Ninth Amendment to the Constitution of the United**
16 **States guarantees to the people rights not enumerated in the**
17 **Constitution and reserves to the people of Indiana those**

HB 1280—LS 6631/DI 51+



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

rights.

(3) Under Article I, Section 8, Clause 3 of the Constitution of the United States, the federal government is empowered to regulate commerce among the several states.

(4) The power to regulate intrastate commerce is reserved to the states or the people under the Ninth and Tenth Amendments to the Constitution of the United States.

(5) During the Constitutional Convention, the founders considered a plan that would have authorized the federal government not only to regulate commerce among the several states, but also to regulate any activity having spillover effects across state lines. The founders rejected this latter idea.

(6) All:

- (A) goods grown, manufactured, or made in Indiana; and**
- (B) services performed in Indiana;**

when the goods or services are sold, maintained, and retained in Indiana are not subject to the authority of the Congress of the United States under the constitutional power of Congress to regulate commerce among the several states.

SECTION 2. IC 2-5-18-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2.7. As used in this chapter, "retrospective review" means a review of a rule by an agency for any change in the relevance, clarity, and reasonableness of the rule between the time of the rule's initial adoption and the time of the review.

SECTION 3. IC 2-5-18-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) The committee shall receive and may, at its discretion, review a complaint filed by a person regarding a rule or practice of an agency.

- (b) The committee may review an agency rule, an agency practice, or a failure of an agency to adopt a rule.**
- (c) The committee may recommend that a rule be modified, repealed, or adopted.**
- (d) When appropriate, the committee shall prepare and arrange for the introduction of a bill to clarify the intent of the general assembly when the general assembly enacted a law or to correct the misapplication of a law by an agency.**
- (e) Not more than one (1) time in any budget period (as defined in IC 4-12-1-2), the committee may, in writing, direct an agency to undertake a retrospective review of one (1) or more rules.**

SECTION 4. IC 2-5-18-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

C
O
P
Y



1 1, 2012]: **Sec. 12. (a) An agency shall carry out a periodic review of**
 2 **the agency's significant rules under this section.**

3 **(b) A retrospective review under this section is in addition to a**
 4 **review required under section 13 of this chapter or IC 4-22-2.5.**

5 **(c) An agency shall develop a plan to retrospectively review**
 6 **significant rules of the agency to determine the extent to which the**
 7 **rules are outmoded, ineffective, insufficient, or excessively**
 8 **burdensome. An agency shall submit the plan to the office of**
 9 **management and budget with the frequency, on the schedule, and**
 10 **in the form prescribed by the office of management and budget.**

11 **(d) The agency shall publish supporting data regarding the**
 12 **agencies rules on the agency's Internet web site whenever possible**
 13 **in the format specified by the office of management and budget.**

14 **(e) The agency shall adopt the rules necessary or appropriate to**
 15 **modify, streamline, expand, or repeal rules to implement the**
 16 **findings of the retrospective analysis.**

17 SECTION 5. IC 2-5-18-13 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2012]: **Sec. 13. (a) This section applies to an agency if the**
 20 **committee directs the agency to conduct a review under section**
 21 **8(e) of this chapter.**

22 **(b) A retrospective review under this section is in addition to a**
 23 **review required under section 12 of this chapter or IC 4-22-2.5.**

24 **(c) If requested by the committee, an agency shall conduct a**
 25 **retrospective review of the rules described by the committee in the**
 26 **committee's request. In considering:**

27 **(1) the continuing relevance of a rule, the agency shall**
 28 **consider the extent to which the rule may have over time**
 29 **become redundant, inconsistent, or in conflict with:**

30 **(A) the original goals and objectives for which the rule was**
 31 **first proposed; or**

32 **(B) other rules or any underlying federal or state law or**
 33 **regulation that initially served as the basis for the rule;**

34 **(2) the clarity of a rule, the agency shall consider whether the**
 35 **language of the rule:**

36 **(A) has retained its clarity and use of plain and clear**
 37 **English;**

38 **(B) continues to comply with the format, numbering**
 39 **system, standards, and techniques that were developed by**
 40 **the legislative council for the drafting and preparation of**
 41 **rules; and**

42 **(C) could be made less complex or more understandable to**

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

the general public; and
(3) the reasonableness of a rule, the agency shall consider whether:

- (A) the rule has been reasonably and consistently applied with respect to the public or particular persons; and
- (B) less costly or more limited regulatory methods of achieving the original purposes of the rule have become available.

(d) Not more than one (1) year after receiving a request to review a rule, the agency shall submit a report to the committee in an electronic format under IC 5-14-6 and, at the request of the committee, make a presentation regarding the report in a public meeting of the committee. The report must:

- (1) address each of the criteria described in subsection (c);
- (2) identify ways in which the agency proposes to amend the rule; and
- (3) recommend whether the legislative authority for the rule should be retained, repealed, or modified.

SECTION 6. IC 4-3-22-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1.5. As used in this chapter, "continuous process improvement" means a management methodology (commonly referred to as lean six sigma) that combines tools to improve process speed, reduce waste, and incorporate requirements with data driven project analysis to provide products and services with improved quality at lower cost.

SECTION 7. IC 4-3-22-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 18. (a) Each instrumentality, agency, authority, board, commission, and officers of the executive, including the administrative, department of state government and each body corporate and politic established as an instrumentality of the state, shall implement continuous process improvement for the entity.

(b) The OMB shall advise and assist each agency in implementing continuous process improvement within the agency.

(c) The director shall designate a center of excellence for continuous process improvement training. The director shall ensure that the center provides agencies with a common set of approaches to training in and deployment of continuous process improvement.

(d) The executive head of each instrumentality, agency, authority, board, commission, office, and body corporate and

C
o
p
y



1 **politic shall submit a report to the OMB with the frequency, on the**
2 **schedule, and in the form specified by the OMB that describes the**
3 **implementation of the entity's continuous process improvement,**
4 **including information on each of the following:**

5 (1) **The extent to which each employee of the entity has**
6 **received continuous process improvement training**
7 **appropriate to the position of the employee, and the**
8 **relationship of the training to the deployment goals in a**
9 **typical application of continuous process improvement.**

10 (2) **A description of the application of continuous process**
11 **improvement in cost-reduction projects, including any**
12 **performance or quality improvements and cost savings**
13 **realized as a result of the application.**

14 (3) **A comparison of the implementation results to the goal of**
15 **a twenty-five percent (25%) cost reduction per project.**

16 **The OMB shall post on the OMB's Internet web site a description**
17 **of the results of the government-wide implementation of**
18 **continuous process improvement.**

19 SECTION 8. IC 4-12-1-7 IS AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) On or before the first day of
21 September, in any year that the budget director makes a request under
22 this chapter, each and every state agency shall prepare and file with the
23 budget agency on forms designated by it **the budget agency** a written
24 statement, showing in detail the following:

25 (1) The several amounts actually expended for the administration,
26 operation, maintenance, and support of such state agency for at
27 least the two (2) fiscal years which ended immediately preceding
28 such first day of September, and the several amounts estimated by
29 such state agency to be actually expended for the fiscal year to
30 end on June 30 following the next regular session of the general
31 assembly; and the actual and estimated income of such state
32 agency for like periods.

33 (2) An estimate of the necessary expenditures of such state
34 agency for the proposed budget period as specified in the budget
35 director's request beginning on the first day of July of the calendar
36 year next succeeding the filing of such statement; such estimates
37 or requests for appropriations to defray the estimated expenditures
38 of such department shall be set forth separately for each fiscal
39 year; and the estimated income of such state agency for like
40 period.

41 (3) A written statement showing concisely the reasons for all
42 estimated expenditures and requests for appropriations

C
O
P
Y



1 contemplated in ~~the preceding~~ subdivision (2), showing
 2 particularly the reason for any requested increase or decrease over
 3 former appropriations.
 4 (4) Proposals for expenditures for new projects, special purposes
 5 or objects, construction, additions, building, improvements,
 6 undertakings, or expansion of the work of any state agency
 7 requiring additional expenditures and capital outlays.
 8 **(5) Information on the results of cost-reduction projects using**
 9 **continuous process improvement (as defined in IC 4-3-22-1.5)**
 10 **in each relevant appropriation request for the agency, and an**
 11 **explanation of how any savings from the implementation of**
 12 **these projects have affected the agency's request.**
 13 ~~(5)~~ **(6)** Any other information related to the subject matter of the
 14 preceding subdivisions of this subsection, ~~(a)~~; or otherwise
 15 required to effect the purposes of this chapter, to the extent the
 16 budget agency or budget committee deems such information
 17 necessary or required, including when requested, citations to any
 18 statutes regulating, governing, or providing for continuing annual
 19 appropriations, fees, or other sources of income.
 20 (b) The budget agency shall examine such written statements and
 21 review and analyze all of the information, data, estimates, requests for
 22 appropriations and for other authorizations to spend state funds as the
 23 several state agencies have prepared and filed them. As promptly as
 24 possible the budget agency shall complete its examination, review, and
 25 analysis and shall prepare recommendations for a budget report, and
 26 from time to time shall submit these to the budget committee for its
 27 consideration at one **(1)** of ~~its~~ **the budget committee's** meetings.
 28 SECTION 9. IC 4-21.5-1-3 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. **(a)** "Agency" means,
 30 **except as provided in subsection (b)**, any officer, board, commission,
 31 department, division, bureau, or committee of state government that is
 32 responsible for any stage of a proceeding under this article. Except as
 33 provided in IC 4-21.5-7, the term does not include the judicial
 34 department of state government, the legislative department of state
 35 government, or a political subdivision.
 36 **(b) "Agency", for purposes of IC 4-21.5-2-7, IC 4-21.5-2-8,**
 37 **IC 4-21.5-2.5, and IC 4-21.5-2.7, means any officer, board,**
 38 **commission, department, division, bureau, or committee of state**
 39 **government in the executive department of state government,**
 40 **including the administrative department.**
 41 SECTION 10. IC 4-21.5-1-13 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. **(a)** "Proceeding"

COPY



1 refers, **except as provided in subsection (b)**, to a proceeding under
2 this article.

3 **(b) "Proceeding", for purposes of IC 4-21.5-2.7, means any part**
4 **of:**

- 5 **(1) a preliminary proceeding required to issue an order after**
6 **giving notice of the proposed order to the affected party; or**
7 **(2) a proceeding conducted to administratively review an**
8 **affected person's petition to review an order;**

9 **including the consideration of related motions.**

10 SECTION 11. IC 4-21.5-2-7 IS ADDED TO THE INDIANA CODE
11 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
12 1, 2012]: **Sec. 7. Notwithstanding sections 4, 5, and 6 of this chapter,**
13 **IC 4-21.5-2.5 applies to all agencies in the executive department of**
14 **state government, including the administrative department.**

15 SECTION 12. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE
16 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
17 1, 2012]: **Sec. 8. Notwithstanding sections 4, 5, and 6 of this chapter,**
18 **IC 4-21.5-2.7 applies to all agencies in the executive department of**
19 **state government, including the administrative department.**

20 SECTION 13. IC 4-21.5-2.5 IS ADDED TO THE INDIANA CODE
21 AS A **NEW CHAPTER TO READ AS FOLLOWS** [EFFECTIVE
22 JULY 1, 2012]:

23 **Chapter 2.5. Opportunity to Correct**

24 **Sec. 1. Except as provided in sections 2 and 3 of this chapter,**
25 **this chapter applies to the resolution of an alleged violation of a**
26 **state rule within the jurisdiction of an agency that is discovered in**
27 **an inspection conducted after June 30, 2011.**

28 **Sec. 2. This chapter does not apply if:**

29 **(1) the agency conducting the inspection determines that the**
30 **alleged violation:**

- 31 **(A) represents intentional misconduct or an act of fraud by**
32 **a responsible person or an agent of the responsible person;**
33 **(B) is not correctable within a reasonable time, as**
34 **determined by the agency;**
35 **(C) demonstrates, by a continuing pattern of conduct, a**
36 **willful disregard by the responsible person of the person's**
37 **obligation to remedy the violation after the responsible**
38 **person becomes aware of the violation; or**
39 **(D) constitutes an immediate risk to:**
40 **(i) any person;**
41 **(ii) the public health, safety, or welfare; or**
42 **(iii) the environment;**



C
o
p
y

- 1 (2) another statute (including IC 13-30-3) provides a
- 2 substantially similar procedure for correction of an alleged
- 3 violation of a rule before the agency:
- 4 (A) imposes a sanction on a person; or
- 5 (B) terminates a legal right, duty, privilege, immunity, or
- 6 other legal interest of a person;
- 7 (3) application of this chapter to a violation would violate a
- 8 federal law or regulation;
- 9 (4) the alleged violation is a violation of an ethics code or
- 10 another rule governing the conduct of an agency employee or
- 11 contractor in the procurement or performance of services or
- 12 the delivery of property to a governmental entity; or
- 13 (5) the alleged violation was discovered as part of the
- 14 preparation of a health care licensing and certification survey
- 15 by the department of health.

16 **Sec. 3.** This chapter does not limit an agency's authority to issue
 17 an emergency or a temporary order under IC 4-21.5-4 or another
 18 law if:

- 19 (1) an emergency exists; or
- 20 (2) a statute authorizes the agency to issue a temporary order
- 21 or otherwise take immediate agency action.

22 **Sec. 4.** As used in this chapter, "inspection" means:

- 23 (1) visual analysis; or
 - 24 (2) performance of tests;
- 25 undertaken to evaluate the operation, use, or condition of real or
 26 personal property.

27 **Sec. 5.** As used in this chapter, "violation" refers to a violation
 28 of a state rule adopted by an agency.

29 **Sec. 6.** If an investigation discloses a possible violation, the
 30 agency shall proceed under:

- 31 (1) section 7 of this chapter; or
- 32 (2) first section 7 of this chapter and then section 10 of this
- 33 chapter.

34 **Sec. 7.** The agency shall:

- 35 (1) notify the alleged violator in writing that the agency
- 36 believes a violation may exist; and
- 37 (2) extend an offer in writing to the alleged violator giving the
- 38 alleged violator an opportunity to enter into a corrective plan
- 39 to correct the alleged violation before the agency imposes a
- 40 civil penalty or takes another enforcement action permitted
- 41 under section 10 of this chapter or another law.

42 **Sec. 8. (a)** The notice to an alleged violator under section 7 of

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

this chapter must include the following:

- (1) A description of the actions that must be taken to correct the alleged violation.**
- (2) The date before which the alleged violator must enter into a corrective plan with the agency in order to avoid an enforcement action under section 10 of this chapter or another law.**
- (3) A statement that the alleged violator may enter into a corrective plan without admitting that the violation occurred.**

(b) The agency may condition an offer on a requirement that the alleged violator take one (1) or more actions to protect the safety and property of other persons during the time in which the alleged violator reviews the proposed corrective plan.

(c) A corrective plan must require the alleged violator to notify the agency within the time specified in the corrective plan that the violation has been corrected.

Sec. 9. The agency shall determine whether an alleged violator has substantially corrected the violation under a corrective plan under this chapter and notify the alleged violator as to whether the alleged violator is in substantial compliance with the applicable rule not more than thirty (30) days after the earlier of the date that:

- (1) the alleged violation must be corrected under the corrective plan; or**
- (2) the alleged violator notifies the agency that the alleged violator has corrected the violation.**

Sec. 10. If:

- (1) a corrective plan is not entered into; or**
- (2) an alleged violator fails to substantially correct an alleged violation within the time specified in a corrective plan entered into under this chapter;**

the agency may issue a corrective order and take any enforcement action authorized by law for the violation.

Sec. 11. The following are public records:

- (1) A corrective plan entered into under this chapter.**
- (2) The results of an inspection under section 9 of this chapter.**
- (3) Any corrective order described in section 10 of this chapter.**

An agency shall retain the public records described in subdivisions (1) through (3) in accordance with the appropriate retention schedule established under IC 5-15.

SECTION 14. IC 4-21.5-2.7 IS ADDED TO THE INDIANA CODE

C
O
P
Y



1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2012]:

3 **Chapter 2.7. Qualifications of Administrative Law Judge or**
4 **Other Hearing Officer**

5 **Sec. 1. This chapter applies to all agencies notwithstanding any**
6 **law enacted before April 1, 2012.**

7 **Sec. 2. This chapter does not apply to the ultimate authority for**
8 **an agency or a member of the ultimate authority for an agency**
9 **when the ultimate authority is a panel of individuals.**

10 **Sec. 3. The administrative law judge or other hearing officer for**
11 **a proceeding must be an attorney licensed to practice law in**
12 **Indiana.**

13 **Sec. 4. An agency may not knowingly assign an individual to**
14 **serve alone or with others as an administrative law judge or other**
15 **hearing officer who is subject to disqualification under this**
16 **chapter.**

17 **Sec. 5. If an individual appointed as an administrative law judge**
18 **or other hearing officer believes that the individual is disqualified**
19 **under this chapter from serving as an administrative law judge or**
20 **other hearing officer, the individual shall withdraw as the**
21 **administrative law judge or other hearing officer.**

22 **Sec. 6. Any party to a proceeding may petition for the**
23 **disqualification of an individual serving alone or with others as an**
24 **administrative law judge or other hearing officer upon discovering**
25 **facts establishing grounds for disqualification under this chapter.**
26 **The administrative law judge or other hearing officer assigned to**
27 **the proceeding shall determine whether to grant the petition,**
28 **stating facts and reasons for the determination. If the**
29 **administrative law judge or other hearing officer ruling on the**
30 **disqualification issue is not the ultimate authority for the agency,**
31 **the party petitioning for disqualification may petition the ultimate**
32 **authority in writing for review of the ruling not later than ten (10)**
33 **days after notice of the ruling is served. The ultimate authority**
34 **shall conduct proceedings described by IC 4-21.5-3-28 to review**
35 **the petition and affirm, modify, or dissolve the ruling not later than**
36 **thirty (30) days after the petition is filed. A determination by the**
37 **ultimate authority under this section is a final order subject to**
38 **judicial review under IC 4-21.5-5.**

39 **Sec. 7. If a substitute is required for an administrative law judge**
40 **or other hearing officer who is disqualified or becomes unavailable**
41 **for any other reason, the substitute must be appointed by the**
42 **ultimate authority for the agency. Any action taken by an**



C
o
p
y

1 **appointed substitute for a disqualified or unavailable**
2 **administrative law judge or other hearing officer is as effective as**
3 **if taken by the administrative law judge or other hearing officer.**

4 SECTION 15. IC 4-21.5-3-9 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) Except to the
6 extent that a statute other than this article limits an agency's discretion
7 to select an administrative law judge, the ultimate authority for an
8 agency may:

- 9 (1) act as an administrative law judge;
- 10 (2) designate one (1) or more members of the ultimate authority
11 (if the ultimate authority is a panel of individuals) to act as an
12 administrative law judge; or
- 13 (3) designate one (1) or more other individuals, not necessarily
14 employees of the agency, to act as an administrative law judge.

15 A designation under subdivision (2) or (3) may be made in advance of
16 the commencement of any particular proceeding for a generally
17 described class of proceedings or may be made for a particular
18 proceeding. A general designation may provide procedures for the
19 assignment of designated individuals to particular proceedings.

20 **(b) An individual designated under subsection (a)(3) must be an**
21 **attorney licensed to practice law in Indiana.**

22 ~~(b)~~ (c) An agency may not knowingly assign an individual to serve
23 alone or with others as an administrative law judge who is subject to
24 disqualification under this chapter.

25 ~~(c)~~ (d) If the judge believes that the judge's impartiality might
26 reasonably be questioned, or believes that the judge's personal bias,
27 prejudice, or knowledge of a disputed evidentiary fact might influence
28 the decision, an individual assigned to serve alone or with others as an
29 administrative law judge shall:

- 30 (1) withdraw as the administrative law judge; or
- 31 (2) inform the parties of the potential basis for disqualification,
32 place a brief statement of this basis on the record of the
33 proceeding, and allow the parties an opportunity to petition for
34 disqualification under subsection ~~(d)~~: (e).

35 ~~(d)~~ (e) Any party to a proceeding may petition for the
36 disqualification of an individual serving alone or with others as an
37 administrative law judge upon discovering facts establishing grounds
38 for disqualification under this chapter. The administrative law judge
39 assigned to the proceeding shall determine whether to grant the
40 petition, stating facts and reasons for the determination. If the
41 administrative law judge ruling on the disqualification issue is not the
42 ultimate authority for the agency, the party petitioning for

C
o
p
y



1 disqualification may petition the ultimate authority in writing for
 2 review of the ruling within ten (10) days after notice of the ruling is
 3 served. The ultimate authority shall conduct proceedings described by
 4 section 28 of this chapter to review the petition and affirm, modify, or
 5 dissolve the ruling within thirty (30) days after the petition is filed. A
 6 determination by the ultimate authority under this subsection is a final
 7 order subject to judicial review under IC 4-21.5-5.

8 ~~(e)~~ (f) If a substitute is required for an administrative law judge who
 9 is disqualified or becomes unavailable for any other reason, the
 10 substitute must be appointed in accordance with subsection (a).

11 ~~(f)~~ (g) Any action taken by a duly appointed substitute for a
 12 disqualified or unavailable administrative law judge is as effective as
 13 if taken by the latter.

14 SECTION 16. IC 4-21.5-7-6, AS AMENDED BY P.L.99-2005,
 15 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2012]: Sec. 6. (a) An environmental law judge ~~hired after July~~
 17 ~~1, 1995~~; and the director must:

- 18 (1) be attorneys admitted to the bar of Indiana;
- 19 (2) have at least five (5) years of experience practicing
 20 administrative or environmental law in Indiana;
- 21 (3) be independent of the department of environmental
 22 management; and
- 23 (4) be subject to all provisions applicable to an administrative law
 24 judge under this article.

25 (b) The director or an environmental law judge may be removed for
 26 cause under:

- 27 (1) this article;
- 28 (2) IC 4-15-2 (**before its repeal**), through application of the
 29 standards for removal for cause of a person in the state service (as
 30 defined in IC 4-15-2-3.8 (**repealed**)); or
- 31 (3) applicable provisions of the code of judicial conduct.

32 (c) The director may appoint a special environmental law judge. The
 33 special environmental law judge must meet the requirements of
 34 subsection (a).

35 SECTION 17. IC 4-22-2-19.5 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 19.5. (a) To the extent
 37 possible, a rule adopted under this article or under IC 13-14-9.5 shall
 38 comply with the following:

- 39 (1) Minimize the expenses **and other burdens** to:
 - 40 (A) regulated entities that are required to comply with the rule;
 - 41 (B) persons who pay taxes or pay fees for government services
 42 affected by the rule; and



C
o
p
y

- 1 (C) consumers of products and services of regulated entities
- 2 affected by the rule;
- 3 **taking into account, among other things and to the extent**
- 4 **practicable, the costs of cumulative rules of the same and**
- 5 **other agencies.**
- 6 (2) Achieve the regulatory goal in the least restrictive manner.
- 7 (3) Avoid duplicating standards found in state or federal laws.
- 8 (4) Be written for ease of comprehension.
- 9 (5) Have practicable enforcement.
- 10 **(6) To the extent feasible, specify performance objectives**
- 11 **rather than a specific behavior or manner of compliance that**
- 12 **regulated entities must adopt.**
- 13 **(7) Be based on a reasoned determination that the rule's**
- 14 **benefits justify the rule's costs (recognizing that some benefits**
- 15 **and costs are difficult to quantify).**
- 16 **(b) To the extent possible, an agency shall do the following:**
- 17 **(1) To the extent permitted by law, identify and assess**
- 18 **available alternatives to direct regulation, including**
- 19 **providing:**
- 20 **(A) economic incentives to encourage the desired behavior;**
- 21 **or**
- 22 **(B) information upon which choices can be made by the**
- 23 **public.**
- 24 **(2) When relevant, feasible, and consistent with regulatory**
- 25 **objectives, and to the extent permitted by law, identify and**
- 26 **consider regulatory approaches that reduce burdens and**
- 27 **maintain flexibility and freedom of choice for the public.**
- 28 **(3) Select, in choosing among alternative regulatory**
- 29 **approaches, those approaches that maximize net benefits**
- 30 **(including potential economic, environmental, public health**
- 31 **and safety, and other advantages, distributive impacts, and**
- 32 **equity).**
- 33 **Regulatory approaches that comply with this subsection include**
- 34 **warnings, appropriate default rules, and disclosure requirements,**
- 35 **as well as provision of information to the public in a form that is**
- 36 **clear and intelligible.**
- 37 **(c) In applying the principles under subsections (a) and (b), each**
- 38 **agency is directed to use the best available techniques to quantify**
- 39 **anticipated present and future benefits and costs as accurately as**
- 40 **possible.**
- 41 **(d) In developing regulatory actions and identifying appropriate**
- 42 **approaches, each agency shall attempt to promote coordination,**

COPY



1 simplification, and harmonization of rules among agencies. Each
2 agency shall also seek to identify, as appropriate, means to achieve
3 regulatory goals that are designed to promote innovation.

4 ~~(b)~~ (e) Subsection (a), does (b), (c), and (d) do not
5 apply to a rule that must be adopted in a certain form to comply with
6 federal law.

7 (f) Each agency shall ensure the objectivity of any scientific and
8 technological information and processes used to support the
9 agency's rulemaking actions.

10 SECTION 18. IC 4-22-2-19.7 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2012]: Sec. 19.7. To the extent feasible and
13 consistent with law, rules that an agency intends to adopt under
14 sections 24 through 36 of this chapter shall be based on the open
15 exchange of information and perspectives among state and local
16 officials, experts with relevant disciplines, affected stakeholders in
17 the private sector, and the public as a whole. An agency, to the
18 extent feasible and permitted by law, shall afford the public a
19 meaningful opportunity to comment through the Internet on
20 proposed rules. An agency shall consider providing a comment
21 period that exceeds the minimum required by law.

22 SECTION 19. IC 4-22-2-22.5 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2012]: Sec. 22.5. (a) This section applies to a
25 rule that an agency intends to adopt under sections 24 through 36
26 of this chapter.

27 (b) Each agency shall maintain a current rulemaking docket
28 that is indexed.

29 (c) A current rulemaking docket must list each pending
30 rulemaking proceeding. The docket must state or contain:

- 31 (1) the subject matter of the proposed rule;
- 32 (2) notices related to the proposed rule;
- 33 (3) how comments may be made;
- 34 (4) the time within which comments may be made;
- 35 (5) where comments may be inspected;
- 36 (6) requests for a public hearing;
- 37 (7) appropriate information about a public hearing, if any,
- 38 including the names of the persons making the request;
- 39 (8) a description of relevant scientific and technical findings
- 40 related to the proposed rule; and
- 41 (9) the timetable for action.

42 (d) The agency shall maintain the rulemaking docket on the

C
o
p
y



1 agency's Internet web site. The information must be in an open
2 format that can be easily searched and downloaded. Access to the
3 docket shall, to the extent feasible and permitted by law, provide
4 an opportunity for public comment on the pertinent parts of the
5 rulemaking docket, including relevant scientific and technical
6 findings. Upon request, the agency shall provide a written
7 rulemaking docket.

8 SECTION 20. IC 4-22-2-23, AS AMENDED BY P.L.215-2005,
9 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2012]: Sec. 23. (a) This section does not apply to rules
11 adopted under IC 4-22-2-37.1.

12 (b) At least twenty-eight (28) days before an agency notifies the
13 public of the agency's intention to adopt a rule under section 24 of this
14 chapter, the agency shall notify the public of its intention to adopt a
15 rule by publishing a notice of intent to adopt a rule in the Indiana
16 Register. The publication notice must include an overview of the intent
17 and scope of the proposed rule and the statutory authority for the rule.

18 (c) The requirement to publish a notice of intent to adopt a rule
19 under subsection (b) does not apply to rulemaking under IC 13-14-9.

20 (d) In addition to the procedures required by this article, an agency
21 may shall solicit comments from the public on the need for a rule, the
22 drafting of a rule, or any other subject related to a rulemaking action,
23 including members of the public who are likely to be affected
24 because they are the subject of the potential rulemaking or are
25 likely to benefit from the potential rulemaking. The procedures that
26 the agency may use include the holding of conferences and the inviting
27 of written suggestions, facts, arguments, or views.

28 (e) The agency shall prepare a written response that contains a
29 summary of the comments received during any part of the rulemaking
30 process. The written response is a public document. The agency shall
31 make the written response available to interested parties upon request.

32 SECTION 21. IC 4-22-10 IS ADDED TO THE INDIANA CODE
33 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2012]:

35 **Chapter 10. Document Drafting Standards**

36 **Sec. 1. As used in this chapter, "agency" has the meaning set**
37 **forth in IC 4-22-2-3.**

38 **Sec. 2. As used in this chapter, "covered document" means any**
39 **document that:**

- 40 (1) is necessary for obtaining any benefit or service
- 41 administered or provided by an agency, or for filing taxes
- 42 with an agency;

C
o
p
y



1 (2) provides information about any state benefit or service; or
2 (3) explains to the public how to comply with a requirement
3 an agency administers or enforces.
4 The term includes (whether in paper or electronic form) a letter,
5 publication, form, notice, or instruction. The term does not include
6 a rule subject to the format, numbering system, standards, and
7 techniques established under IC 4-22-2-42.
8 Sec. 3. As used in this chapter, "plain writing" means writing
9 that is clear, concise, and well-organized, and follows other best
10 practices appropriate to the subject or field and intended audience.
11 Sec. 4. (a) The office of management and budget must be fully
12 in compliance with this section after September 30, 2012.
13 (b) The director of the office of management and budget shall
14 develop and issue guidance on implementing the requirements of
15 this chapter. The director may designate a lead agency, and may
16 use interagency working groups to assist, in developing and issuing
17 the guidance. Before issuance of guidance under this section,
18 agencies may follow:
19 (1) the writing guidelines developed by the Plain Language
20 Action and Information Network; or
21 (2) guidance provided by the head of the agency that is
22 consistent with the guidelines referred to in subdivision (1).
23 Sec. 5. (a) An agency must be fully in compliance with this
24 section after December 31, 2012.
25 (b) The head of each agency shall do the following:
26 (1) Designate one (1) or more senior officials within the
27 agency to oversee the agency's implementation of this chapter.
28 (2) Communicate the requirements of this chapter to
29 employees of the agency.
30 (3) Train employees of the agency in plain writing.
31 (4) Establish a process for overseeing the ongoing compliance
32 of the agency with the requirements of this chapter.
33 (5) Designate one (1) or more employees of the agency to be
34 the contact to receive and respond to public comments on
35 agency implementation of this chapter.
36 Sec. 6. (a) An agency must be fully in compliance with this
37 section after March 31, 2013.
38 (b) An agency shall use plain writing in every covered document
39 that the agency issues or substantially revises.
40 Sec. 7. (a) An agency must be fully in compliance with this
41 section after September 30, 2013.
42 (b) The head of each agency shall annually submit to the

C
O
P
Y



1 legislative council in an electronic format under IC 5-14-6 a report
2 on agency compliance with the requirements of this chapter.

3 **Sec. 8. An action or omission under this chapter or related to**
4 **guidance implementing this chapter is not subject to judicial**
5 **review.**

6 SECTION 22. IC 8-1-34-24.5 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE UPON PASSAGE]: **Sec. 24.5. (a) This section applies**
9 **to any unit that receives franchise fees paid to the unit under:**

10 (1) a certificate issued by the commission under this chapter;

11 or

12 (2) an unexpired local franchise issued by the unit before July
13 1, 2006;

14 with respect to a particular calendar year.

15 (b) For each calendar year, beginning with the calendar year
16 ending December 31, 2012, each unit to which this section applies
17 shall submit to the commission, on a form or in the manner
18 prescribed by the commission, a report that includes the following
19 information for each certificate or local franchise in effect in the
20 unit during the calendar year for which the report is submitted:

21 (1) The amount of franchise fees paid to the unit under the
22 certificate or local franchise.

23 (2) The account of the local unit into which the franchise fees
24 identified under subdivision (1) were deposited.

25 (3) The purposes for which any franchise fees received by the
26 unit during:

27 (A) the calendar year for which the report is submitted; or

28 (B) a previous calendar year;

29 were used or spent by the unit during the calendar year for
30 which the report is submitted.

31 (4) Any other information or data concerning the receipt and
32 use of franchise fees that the commission considers
33 appropriate.

34 (c) The commission shall prescribe the form of the report and
35 the process, deadlines, and other requirements for submitting the
36 report required under this section.

37 (d) Upon receiving the annual reports required under this
38 section, the commission shall compile and organize the data and
39 information contained in the reports. The commission shall include
40 a summary of the data and information contained in the reports in
41 the commission's annual report on the communications industry
42 provided to the regulatory flexibility committee established by

C
O
P
Y



1 **IC 8-1-2.6-4. However, this subsection does not empower the**
2 **commission to disclose confidential and proprietary business plans**
3 **and other confidential information without adequate protection of**
4 **the information. The commission shall exercise all necessary**
5 **caution to avoid disclosure of confidential information supplied**
6 **under this section.**

7 (e) The commission may adopt rules under IC 4-22-2, including
8 emergency rules under IC 4-22-2-37.1, to implement this section.
9 An emergency rule adopted by the commission under
10 IC 4-22-2-37.1 expires on the date a rule that supersedes the
11 emergency rule is adopted by the commission under IC 4-22-2-24
12 through IC 4-22-2-36. However, any emergency rules adopted by
13 the commission under this subsection must take effect by a date
14 that enables a unit subject to this section to comply with this
15 section with respect to the calendar year ending December 31,
16 2012.

17 SECTION 23. IC 25-26-13-17, AS AMENDED BY P.L.98-2006,
18 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2012]: Sec. 17. (a) The board shall establish classes of
20 pharmacy permits as follows:

21 **Type Category I.** A retail permit for a pharmacy that provides
22 pharmaceutical care to the general public by the dispensing of a
23 drug or device.

24 **Type Category II.** An institutional permit for hospitals, clinics,
25 health care facilities, sanitariums, nursing homes, or dispensaries
26 that offer pharmaceutical care by dispensing a drug product to an
27 inpatient under a drug order or to an outpatient of the institution
28 under a prescription.

29 **Type Category III.** A permit for a pharmacy that is not:
30 (A) open to the general public; or
31 (B) located in an institution listed under a Type II permit;
32 and provides pharmaceutical care to a patient who is located in an
33 institution or in the patient's home.

34 **Type IV.** A permit for a pharmacy not open to the general public
35 that provides pharmaceutical care by dispensing drugs and
36 devices to patients exclusively through the United States Postal
37 Services or other parcel delivery service.

38 **Type V.** A permit for a pharmacy that engages exclusively in the
39 preparation and dispensing of diagnostic or therapeutic
40 radioactive drugs.

41 **Type VI.** A permit for a pharmacy open to the general public that
42 provides pharmaceutical care by engaging in an activity under a

C
o
p
y



1 Type I or Type III permit. A pharmacy that obtains a Type VI
 2 permit may provide services to:
 3 (A) a home health care patient;
 4 (B) a long term care facility; or
 5 (C) a member of the general public that provides closed
 6 door, central fill, mail order, or other processing
 7 operations that are not open to the general public but
 8 include:
 9 (A) traditional pharmacy functions; or
 10 (B) nontraditional pharmacy functions, such as infusion,
 11 nuclear pharmacy, or sterile compounding.
 12 (b) The board may approve a remote or mobile location for
 13 Category I, II, or III permits. Pharmacy practice in a mobile or
 14 remote location may include, but is not limited to, telepharmacy,
 15 automated dispensing, or delivery of cognitive services.
 16 (b) (c) Hospitals and hospital systems holding a Type Category II
 17 permit may offer drugs or devices to an employee, student, or medical
 18 staff member or their dependents for their own use.
 19 (c) Nothing in this section prohibits a pharmacy holding a permit
 20 other than a Type IV permit from delivering drugs or devices through
 21 mail, parcel delivery, or hand delivery.
 22 (d) Hospitals holding a Type Category II permit may operate
 23 remote locations within a reasonable distance of the licensed area, as
 24 determined by the board, after:
 25 (1) filing an application on a form prepared by the board;
 26 (2) having each location inspected by the board; and
 27 (3) obtaining approval from the board.
 28 (e) Any applicable rule governing the practice of pharmacy in
 29 Indiana shall apply to all permits under this section.
 30 (f) After June 30, 2012, a person with:
 31 (1) a Type I permit shall be treated as holding a Category I
 32 permit;
 33 (2) a Type II permit shall be treated as holding a Category II
 34 permit; and
 35 (3) a Type III, IV, V, or VI permit shall be treated as holding
 36 a Category III permit.
 37 The change in the name of the permit does not change the
 38 expiration date of the permit.
 39 (g) After June 30, 2012, a reference in any rule or other
 40 document to:
 41 (1) a Type I permit shall be treated as a reference to a
 42 Category I permit;

COPY



- 1 (2) a **Type II** permit shall be treated as a reference to a
- 2 **Category II** permit; or
- 3 (3) a **Type III, IV, V, or VI** permit shall be treated as a
- 4 **reference to a Category III** permit.

5 SECTION 24. IC 25-26-13-19 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 19. (a) A pharmacy
 7 holding a ~~Type Category I~~ or ~~Type VI~~ **Category III** permit may be
 8 open to the general public without a pharmacist on duty if the following
 9 conditions are met:

- 10 (1) Approval is obtained from the board.
- 11 (2) All legend drugs and other merchandise that can only be
- 12 dispensed by a pharmacist are securely locked or secured by an
- 13 alternative system approved by the board when the pharmacist is
- 14 absent.
- 15 (3) During the pharmacist's absence, a sign at least twenty (20)
- 16 inches by thirty (30) inches is prominently displayed in the
- 17 prescription department stating: "Prescription Department Closed,
- 18 No Pharmacist on Duty".
- 19 (4) Only a pharmacist has access to the secured area.

20 (b) The board may revoke or limit a pharmacy's privilege under this
 21 section after a hearing under IC 4-21.5-3.

22 SECTION 25. IC 25-26-13-20, AS AMENDED BY P.L.98-2006,
 23 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2012]: Sec. 20. (a) A person desiring to open, establish,
 25 operate, or maintain a pharmacy shall apply to the board for a
 26 pharmacy permit on a form provided by the board. The applicant shall
 27 set forth:

- 28 (1) the name and occupation of the persons desiring the permit;
- 29 (2) the location, including street address and city, of the
- 30 pharmacy;
- 31 (3) the name of the pharmacist who will qualify the pharmacy by
- 32 being responsible to the board for the legal operation of the
- 33 pharmacy under the permit; and
- 34 (4) such other information as the board may require.

35 (b) If the applicant desires to open, establish, operate, or maintain
 36 more than one (1) pharmacy, ~~he~~ **the applicant** must file a separate
 37 application for each. Each pharmacy must be qualified by a different
 38 pharmacist.

39 (c) The board shall permit a pharmacist to serve as a qualifying
 40 pharmacist for more than one (1) pharmacy holding a ~~Type Category~~
 41 **II** pharmacy permit upon the holder of the ~~Type Category~~ **II** permit
 42 showing circumstances establishing that:

C
o
p
y



1 (1) the permit holder has made a reasonable effort, without
2 success, to obtain a qualifying pharmacist who is not serving as
3 a qualifying pharmacist at another ~~Type~~ **Category II** pharmacy;
4 and

5 (2) the single pharmacist could effectively fulfill all duties and
6 responsibilities of the qualifying pharmacist at both locations.

7 (d) The board shall grant or deny an application for a permit not
8 later than one hundred twenty (120) days after the application and any
9 additional information required by the board are submitted.

10 (e) The board may not issue a pharmacy permit to a person who
11 desires to operate the pharmacy out of a residence.

12 SECTION 26. IC 25-26-13-25, AS AMENDED BY P.L.174-2011,
13 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2012]: Sec. 25. (a) All original prescriptions, whether in
15 written or electronic format, shall be numbered and maintained in
16 numerical and chronological order, or in a manner approved by the
17 board and accessible for at least two (2) years in the pharmacy. A
18 prescription transmitted from a practitioner by means of
19 communication other than writing must immediately be reduced to
20 writing or recorded in an electronic format by the pharmacist. The files
21 shall be open for inspection to any member of the board or ~~its~~ **the**
22 **board's** duly authorized agent or representative.

23 (b) A prescription may be electronically transmitted from the
24 practitioner by computer or another electronic device to a pharmacy
25 that is licensed under this article or any other state or territory. An
26 electronic data intermediary that is approved by the board:

27 (1) may transmit the prescription information between the
28 prescribing practitioner and the pharmacy;

29 (2) may archive copies of the electronic information related to the
30 transmissions as necessary for auditing and security purposes; and

31 (3) must maintain patient privacy and confidentiality of all
32 archived information as required by applicable state and federal
33 laws.

34 (c) Except as provided in subsection (d), a prescription for any drug,
35 the label of which bears either the legend, "Caution: Federal law
36 prohibits dispensing without prescription" or "Rx Only", may not be
37 refilled without written, electronically transmitted, or oral authorization
38 of a licensed practitioner.

39 (d) A prescription for any drug, the label of which bears either the
40 legend, "Caution: Federal law prohibits dispensing without
41 prescription" or "Rx Only", may be refilled by a pharmacist one (1)
42 time without the written, electronically transmitted, or oral

C
o
p
y



- 1 authorization of a licensed practitioner if all of the following conditions
- 2 are met:
- 3 (1) The pharmacist has made every reasonable effort to contact
- 4 the original prescribing practitioner or the practitioner's designee
- 5 for consultation and authorization of the prescription refill.
- 6 (2) The pharmacist believes that, under the circumstances, failure
- 7 to provide a refill would be seriously detrimental to the patient's
- 8 health.
- 9 (3) The original prescription authorized a refill but a refill would
- 10 otherwise be invalid for either of the following reasons:
- 11 (A) All of the authorized refills have been dispensed.
- 12 (B) The prescription has expired under subsection (g).
- 13 (4) The prescription for which the patient requests the refill was:
- 14 (A) originally filled at the pharmacy where the request for a
- 15 refill is received and the prescription has not been transferred
- 16 for refills to another pharmacy at any time; or
- 17 (B) filled at or transferred to another location of the same
- 18 pharmacy or its affiliate owned by the same parent corporation
- 19 if the pharmacy filling the prescription has full access to
- 20 prescription and patient profile information that is
- 21 simultaneously and continuously updated on the parent
- 22 corporation's information system.
- 23 (5) The drug is prescribed for continuous and uninterrupted use
- 24 and the pharmacist determines that the drug is being taken
- 25 properly in accordance with IC 25-26-16.
- 26 (6) The pharmacist shall document the following information
- 27 regarding the refill:
- 28 (A) The information required for any refill dispensed under
- 29 subsection (e).
- 30 (B) The dates and times that the pharmacist attempted to
- 31 contact the prescribing practitioner or the practitioner's
- 32 designee for consultation and authorization of the prescription
- 33 refill.
- 34 (C) The fact that the pharmacist dispensed the refill without
- 35 the authorization of a licensed practitioner.
- 36 (7) The pharmacist notifies the original prescribing practitioner
- 37 of the refill and the reason for the refill by the practitioner's next
- 38 business day after the refill has been made by the pharmacist.
- 39 (8) Any pharmacist initiated refill under this subsection may not
- 40 be for more than the minimum amount necessary to supply the
- 41 patient through the prescribing practitioner's next business day.
- 42 However, a pharmacist may dispense a drug in an amount greater

COPY



1 than the minimum amount necessary to supply the patient through
2 the prescribing practitioner's next business day if:

3 (A) the drug is packaged in a form that requires the pharmacist
4 to dispense the drug in a quantity greater than the minimum
5 amount necessary to supply the patient through the prescribing
6 practitioner's next business day; or

7 (B) the pharmacist documents in the patient's record the
8 amount of the drug dispensed and a compelling reason for
9 dispensing the drug in a quantity greater than the minimum
10 amount necessary to supply the patient through the prescribing
11 practitioner's next business day.

12 (9) Not more than one (1) pharmacist initiated refill is dispensed
13 under this subsection for a single prescription.

14 (10) The drug prescribed is not a controlled substance.

15 A pharmacist may not refill a prescription under this subsection if the
16 practitioner has designated on the prescription form the words "No
17 Emergency Refill".

18 (e) When refilling a prescription, the refill record shall include:

19 (1) the date of the refill;

20 (2) the quantity dispensed if other than the original quantity; and

21 (3) the dispenser's identity on:

22 (A) the original prescription form; or

23 (B) another board approved, uniformly maintained, readily
24 retrievable record.

25 (f) The original prescription form or the other board approved
26 record described in subsection (e) must indicate by the number of the
27 original prescription the following information:

28 (1) The name and dosage form of the drug.

29 (2) The date of each refill.

30 (3) The quantity dispensed.

31 (4) The identity of the pharmacist who dispensed the refill.

32 (5) The total number of refills for that prescription.

33 (g) A prescription is valid for not more than one (1) year after the
34 original date of issue.

35 (h) A pharmacist may not knowingly dispense a prescription after
36 the demise of the practitioner, unless in the pharmacist's professional
37 judgment it is in the best interest of the patient's health.

38 (i) A pharmacist may not knowingly dispense a prescription after
39 the demise of the patient.

40 (j) A pharmacist or a pharmacy shall not resell, reuse, or redistribute
41 a medication that is returned to the pharmacy after being dispensed
42 unless the medication:

C
O
P
Y



- 1 (1) was dispensed to an individual:
- 2 (A) residing in an institutional facility (as defined in 856
- 3 IAC 1-28.1-1(6));
- 4 (B) in a hospice program under IC 16-25; or
- 5 (C) in a county jail or department of correction facility;
- 6 (2) was properly stored and securely maintained according to
- 7 sound pharmacy practices;
- 8 (3) is returned unopened and:
- 9 (A) was dispensed in the manufacturer's original:
- 10 (i) bulk, multiple dose container with an unbroken tamper
- 11 resistant seal; or
- 12 (ii) unit dose package; or
- 13 (B) was packaged by the dispensing pharmacy in a:
- 14 (i) multiple dose blister container; or
- 15 (ii) unit dose package;
- 16 (4) was dispensed by the same pharmacy as the pharmacy
- 17 accepting the return;
- 18 (5) is not expired; and
- 19 (6) is not a controlled substance (as defined in IC 35-48-1-9),
- 20 unless the pharmacy holds a ~~Type~~ **Category** II permit (as
- 21 described in section 17 of this chapter).
- 22 (k) A pharmacist or a pharmacy shall not resell, reuse, or
- 23 redistribute medical devices or medical supplies used for prescription
- 24 drug therapy that have been returned to the pharmacy after being
- 25 dispensed unless the medical devices or medical supplies:
- 26 (1) were dispensed to an individual in a county jail or department
- 27 of correction facility;
- 28 (2) are not expired; and
- 29 (3) are returned unopened and in the original sealed packaging.
- 30 (l) A pharmacist may use the pharmacist's professional judgment as
- 31 to whether to accept medication for return under this section.
- 32 (m) A pharmacist who violates subsection (d) commits a Class A
- 33 infraction.
- 34 SECTION 27. IC 34-6-2-124 IS AMENDED TO READ AS
- 35 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 124. (a) "Public
- 36 lawsuit", for purposes of IC 34-13-5, means:
- 37 (1) any action in which the validity, location, wisdom, feasibility,
- 38 extent, or character of construction, financing, or leasing of a
- 39 public improvement by a municipal corporation is questioned
- 40 directly or indirectly, including but not limited to suits for
- 41 declaratory judgments or injunctions to declare invalid or to
- 42 enjoin the construction, financing, or leasing; ~~and~~

COPY



- 1 (2) any action to declare invalid or enjoin the creation,
- 2 organization, or formation of any municipal corporation;
- 3 **(3) any action to enforce a public right or duty of a municipal**
- 4 **corporation;**
- 5 **(4) any action challenging directly or indirectly the**
- 6 **constitutionality of an action of a municipal corporation or an**
- 7 **ordinance or resolution of a municipal corporation;**
- 8 **(5) any action challenging directly or indirectly an action of a**
- 9 **municipal corporation on the grounds that the action is in**
- 10 **excess of statutory jurisdiction, authority, or limitations, or**
- 11 **short of statutory right; and**
- 12 **(6) any other action in which a petitioner has public standing**
- 13 **to enforce a duty of a municipal corporation affecting not a**
- 14 **private right, but a public right, common to citizens of the**
- 15 **municipal corporation or the taxpayers of the municipal**
- 16 **corporation.**

17 (b) The definition of "public lawsuit", as used in IC 34-13-5, shall
 18 not be construed to broaden any right of action as is validly limited by
 19 applicable law.

20 SECTION 28. IC 34-13-5-1 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. All public lawsuits
 22 shall be brought solely in conformity with and governed by the
 23 provisions of this chapter. **This chapter is supplemental to any other**
 24 **cause of action that a plaintiff may have under any other law. A**
 25 **statute that limits a cause of action to persons adversely affected or**
 26 **aggrieved by an action of a municipal corporation does not**
 27 **prohibit a plaintiff from bringing a public lawsuit under this**
 28 **chapter.**

29 SECTION 29. IC 35-48-7-8.1, AS AMENDED BY P.L.42-2011,
 30 SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2012]: Sec. 8.1. (a) The board shall provide for a controlled
 32 substance prescription monitoring program that includes the following
 33 components:

- 34 (1) Each time a controlled substance designated by the board
- 35 under IC 35-48-2-5 through IC 35-48-2-10 is dispensed, the
- 36 dispenser shall transmit to the INSPECT program the following
- 37 information:
- 38 (A) The controlled substance recipient's name.
- 39 (B) The controlled substance recipient's or the recipient
- 40 representative's identification number or the identification
- 41 number or phrase designated by the INSPECT program.
- 42 (C) The controlled substance recipient's date of birth.

COPY



- 1 (D) The national drug code number of the controlled substance
- 2 dispensed.
- 3 (E) The date the controlled substance is dispensed.
- 4 (F) The quantity of the controlled substance dispensed.
- 5 (G) The number of days of supply dispensed.
- 6 (H) The dispenser's United States Drug Enforcement Agency
- 7 registration number.
- 8 (I) The prescriber's United States Drug Enforcement Agency
- 9 registration number.
- 10 (J) An indication as to whether the prescription was
- 11 transmitted to the pharmacist orally or in writing.
- 12 (K) Other data required by the board.
- 13 (2) The information required to be transmitted under this section
- 14 must be transmitted not more than seven (7) days after the date on
- 15 which a controlled substance is dispensed.
- 16 (3) A dispenser shall transmit the information required under this
- 17 section by:
- 18 (A) uploading to the INSPECT web site;
- 19 (B) a computer diskette; or
- 20 (C) a CD-ROM disk;
- 21 that meets specifications prescribed by the board.
- 22 (4) The board may require that prescriptions for controlled
- 23 substances be written on a one (1) part form that cannot be
- 24 duplicated. However, the board may not apply such a requirement
- 25 to prescriptions filled at a pharmacy with a ~~Type~~ **Category II**
- 26 permit (as described in IC 25-26-13-17) and operated by a
- 27 hospital licensed under IC 16-21, or prescriptions ordered for and
- 28 dispensed to bona fide enrolled patients in facilities licensed
- 29 under IC 16-28. The board may not require multiple copy
- 30 prescription forms for any prescriptions written. The board may
- 31 not require different prescription forms for any individual drug or
- 32 group of drugs. Prescription forms required under this subdivision
- 33 must be approved by the Indiana board of pharmacy established
- 34 by IC 25-26-13-3.
- 35 (5) The costs of the program.
- 36 (b) This subsection applies only to a retail pharmacy. A pharmacist,
- 37 pharmacy technician, or person authorized by a pharmacist to dispense
- 38 a controlled substance may not dispense a controlled substance to a
- 39 person who is not personally known to the pharmacist, pharmacy
- 40 technician, or person authorized by a pharmacist to dispense a
- 41 controlled substance unless the person taking possession of the
- 42 controlled substance provides documented proof of the person's

COPY



1 identification to the pharmacist, pharmacy technician, or person
2 authorized by a pharmacist to dispense a controlled substance.

3 SECTION 30. **An emergency is declared for this act.**

C
o
p
y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1280, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 19, line 8, delete "do not include customer-facing activities" and insert "**are not open to the general public**".

Page 19, between lines 12 and 13, begin a new paragraph and insert:

"(b) The board may approve a remote or mobile location for Category I, II, or III permits. Pharmacy practice in a mobile or remote location may include, but is not limited to, telepharmacy, automated dispensing, or delivery of cognitive services."

Page 19, line 13, strike "(b)" and insert "(c)".

Page 19, line 13, after "Hospitals" insert "**and hospital systems**".

Page 19, line 16, strike "(c) Nothing in this section prohibits a pharmacy holding a".

Page 19, line 16, delete "Category".

Page 19, line 17, delete "I or Category II".

Page 19, line 17, strike "permit".

Page 19, line 17, strike "from delivering".

Page 19, strike line 18.

and when so amended that said bill do pass.

(Reference is to HB 1280 as introduced.)

MAHAN, Chair

Committee Vote: yeas 8, nays 3.

C
o
p
y

