

# HOUSE BILL No. 1367

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-21.5.

**Synopsis:** Right to a jury in certain administrative proceedings. Provides that a person seeking judicial review of the final revocation of a professional license has the right to a jury trial.

**Effective:** July 1, 2018.

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## Borders

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January 16, 2018, read first time and referred to Committee on Judiciary.

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Second Regular Session of the 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

## HOUSE BILL No. 1367

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

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

- 1 SECTION 1. IC 4-21.5-1-13.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2018]: **Sec. 13.5. "Professional license"**  
4 **means a license, certificate, registration, or permit issued by a**  
5 **board under IC 25.**  
6 SECTION 2. IC 4-21.5-5-2 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 2. (a) Judicial review  
8 is initiated by filing a petition for review in the appropriate court.  
9 (b) Only a person who qualifies under:  
10 (1) section 3 of this chapter concerning standing;  
11 (2) section 4 of this chapter concerning exhaustion of  
12 administrative remedies;  
13 (3) section 5 of this chapter concerning the time for filing a  
14 petition for review;  
15 (4) section 13 of this chapter concerning the time for filing the  
16 agency record for review; and  
17 (5) any other statute that sets conditions for the availability of



- 1 judicial review;  
 2 is entitled to review of a final agency action.
- 3 (c) A person is entitled to judicial review of a nonfinal agency  
 4 action only if the person establishes both of the following:  
 5 (1) Immediate and irreparable harm.  
 6 (2) No adequate remedy exists at law. (The failure of a person to  
 7 comply with the procedural requirements of this article may not  
 8 be the basis for a finding of an inadequate remedy at law.)
- 9 **(d) A person seeking judicial review of a final agency**  
 10 **determination to revoke a professional license has the right to a**  
 11 **jury trial. If judicial review is conducted by jury trial, the jury**  
 12 **shall be selected and qualified in accordance with the rules**  
 13 **governing civil actions in the courts. Failure to include a demand**  
 14 **for a jury trial in the petition for review constitutes a waiver of the**  
 15 **right to a jury trial.**
- 16 (e) A person does not have the right to a jury trial if the person  
 17 is seeking judicial review of:  
 18 (1) a nonfinal agency action; or  
 19 (2) an emergency suspension;  
 20 with respect to a professional license.
- 21 SECTION 3. IC 4-21.5-5-7 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 7. (a) A petition for  
 23 review must be filed with the clerk of the court.
- 24 (b) A petition for review must be verified and set forth the  
 25 following:  
 26 (1) The name and mailing address of the petitioner.  
 27 (2) The name and mailing address of the agency whose action is  
 28 at issue.  
 29 (3) Identification of the agency action at issue, together with a  
 30 copy, summary, or brief description of the agency action.  
 31 (4) Identification of persons who were parties in any proceedings  
 32 that led to the agency action.  
 33 (5) Specific facts to demonstrate that the petitioner is entitled to  
 34 obtain judicial review under section 2 of this chapter.  
 35 **(6) Whether the person is seeking a jury trial and specific**  
 36 **facts to indicate that the person is entitled to a jury trial.**  
 37 ~~(7)~~ (7) Specific facts to demonstrate that the petitioner has been  
 38 prejudiced by one (1) or more of the grounds described in section  
 39 14 of this chapter.  
 40 ~~(7)~~ **(8)** A request for relief, specifying the type and extent of relief  
 41 requested.  
 42 SECTION 4. IC 4-21.5-5-11 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 11. (a) **Except as**  
 2 **provided in subsection (b)**, judicial review of disputed issues of fact  
 3 must be confined to the agency record for the agency action  
 4 supplemented by additional evidence taken under section 12 of this  
 5 chapter. The court may not try the cause de novo or substitute its  
 6 judgment for that of the agency.

7 (b) **In a judicial review proceeding conducted as a jury trial, the**  
 8 **jury may consider evidence of disputed facts and determine the**  
 9 **facts de novo. However, except as provided in section 12 of this**  
 10 **chapter, a party may not present as evidence:**

11 (1) **the testimony of a witness who did not testify during the**  
 12 **agency action; or**

13 (2) **any other evidence not presented to the agency.**

14 (c) **In a judicial review proceeding conducted as a jury trial, the**  
 15 **jury may consider the agency record, in whole or in part, and is**  
 16 **permitted to give deference to agency findings.**

17 SECTION 5. IC 4-21.5-5-12 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 12. (a) The court, **or**  
 19 **jury, if applicable**, may receive evidence, in addition to that contained  
 20 in the agency record, **or, in the case of a jury trial, presented to the**  
 21 **agency**, for judicial review, only if it relates to the validity of the  
 22 agency action at the time it was taken and is needed to decide disputed  
 23 issues regarding one (1) or both of the following:

24 (1) Improper constitution as a ~~decision-making~~ **decision making**  
 25 body or grounds for disqualification of those taking the agency  
 26 action.

27 (2) Unlawfulness of procedure or of ~~decision-making~~ **decision**  
 28 **making process.**

29 This subsection applies only if the additional evidence could not, by  
 30 due diligence, have been discovered and raised in the administrative  
 31 proceeding giving rise to a proceeding for judicial review.

32 (b) The court may remand a matter to the agency before final  
 33 disposition of a petition for review with directions that the agency  
 34 conduct further factfinding or that the agency prepare an adequate  
 35 record, if:

36 (1) the agency failed to prepare or preserve an adequate record;

37 (2) the agency improperly excluded or omitted evidence from the  
 38 record; or

39 (3) a relevant law changed after the agency action and the court  
 40 determines that the new provision of law may control the  
 41 outcome.

42 SECTION 6. IC 4-21.5-5-14 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 14. (a) The burden of  
 2 demonstrating the invalidity of agency action is on the party to the  
 3 judicial review proceeding asserting invalidity.

4 (b) The validity of agency action shall be determined in accordance  
 5 with the standards of review provided in this section, as applied to the  
 6 agency action at the time it was taken.

7 (c) The court, **or jury, if applicable**, shall make findings of fact on  
 8 each material issue on which the ~~court's~~ decision **of the court or jury**  
 9 is based.

10 (d) The court, **or jury, if applicable**, shall grant relief under section  
 11 15 of this chapter only if it determines that a person seeking judicial  
 12 relief has been prejudiced by an agency action that is:

- 13 (1) arbitrary, capricious, an abuse of discretion, or otherwise not  
 14 in accordance with law;
- 15 (2) contrary to constitutional right, power, privilege, or immunity;
- 16 (3) in excess of statutory jurisdiction, authority, or limitations, or  
 17 short of statutory right;
- 18 (4) without observance of procedure required by law; or
- 19 (5) unsupported by substantial evidence.

20 SECTION 7. IC 4-21.5-5-15 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 15. If the court, **or**  
 22 **jury, if applicable**, finds that a person has been prejudiced under  
 23 section 14 of this chapter, the court may set aside an agency action and:

- 24 (1) remand the case to the agency for further proceedings; or
- 25 (2) compel agency action that has been unreasonably delayed or  
 26 unlawfully withheld.

