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2011 Indiana Code

TITLE 36. LOCAL GOVERNMENT

ARTICLE 8. PUBLIC SAFETY

CHAPTER 3.5. POLICE AND FIRE MERIT SYSTEMS

IC 36-8-3.5

Chapter 3.5. Police and Fire Merit Systems

IC 36-8-3.5-1

Application of chapter; retention of existing systems; establishment of new system

Sec. 1. (a) This chapter applies to each municipality or township that has a full-time paid police or fire department. A municipality may exercise the power of establishing a merit system for its police or fire department under this chapter or by ordinance adopted under IC 36-1-4-14. A township may exercise the power of establishing a merit system for its fire department under this chapter or by resolution under IC 36-1-4-14. This chapter does not affect merit systems established:

(1) by ordinance under IC 36-1-4-14, except as provided by subsection (e) and section 19.3 of this chapter;

(2) by resolution under IC 36-1-4-14, except as provided by subsection (f) and section 19.3 of this chapter; or

(3) by a prior statute, except as provided by subsection (b) and section 19.3 of this chapter.

(b) If a city had a merit system for its police or fire department under the former IC 18-4-12, IC 19-1-7, IC 19-1-14, IC 19-1-14.2, IC 19-1-14.3, IC 19-1-14.5, IC 19-1-20, IC 19-1-21, IC 19-1-29, IC 19-1-29.5, IC 19-1-31, IC 19-1-31.5, or IC 19-1-37.5, it may retain that system by ordinance of the city legislative body passed before January 1, 1983. The ordinance must initially incorporate all the provisions of the prior statute but may be amended by the legislative body after December 31, 1984. The ordinance retaining the system must be amended, if necessary, to include a provision under which the commission (or governing board of the merit system) has at least one-third (1/3)

of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must:

- (1) be a person of good moral character; and
- (2) except for a member of a fire department having a merit system established under IC 19-1-37.5, not be an active member of a police or fire department or agency.

(c) After December 31, 1984, the legislative body also may repeal the ordinance described in subsection (b), but the legislative body shall in the repealing ordinance concurrently establish a new merit system under section 3 of this chapter. (This subsection does not require the legislative body to establish a new merit system when it exercises its power to amend the ordinance under subsection (b).) After the new merit system takes effect, all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

(d) If a city had a merit system for its police or fire department under a prior statute but fails to retain that system under subsection (b), the city legislative body shall, before July 1, 1983, pass an

ordinance to establish a new merit system under section 3 of this chapter. If the new merit system is approved as provided by section 4 of this chapter, it takes effect as provided by that section. However, if the new merit system is rejected under section 4 of this chapter, within thirty (30) days the city legislative body shall adopt an ordinance to retain the prior merit system. The prior merit system remains in effect until the new merit system takes effect, after which time all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

(e) An ordinance adopted under IC 36-1-4-14 to establish a police or fire merit system must include a provision under which the commission, or governing board of the merit system, has at least one-third ($1/3$) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must be a person of good moral character who is not an active member of a police or fire department or agency. If an ordinance was adopted under IC 36-1-4-14 before July 1, 1988, the ordinance must be amended to include this requirement.

(f) This chapter does not prevent a township or other unit that has adopted a merit system under section 3 of this chapter from later amending or deleting any provisions of the merit system contained in this chapter. However, the merit system must include a provision under which the commission has at least one-third ($1/3$) of its members elected by the active members of the department, as set forth in section 8 of this chapter and a provision that incorporates the requirements of section 6(a) of this chapter. This subsection does not require the legislative body to establish a new merit system when it exercises its power to amend under this subsection.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.189-1988, SEC.7; P.L.310-1989, SEC.1; P.L.3-1990, SEC.128; P.L.180-2002, SEC.1; P.L.1-2003, SEC.100; P.L.13-2010, SEC.3.

IC 36-8-3.5-2

Definitions

Sec. 2. As used in this chapter:

"Commission" refers to the merit commission for a merit system established under this chapter.

"Department" refers to the police or fire department of a unit.

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-3

Establishment; separate systems

Sec. 3. (a) The legislative body of a unit (other than a township) may, by ordinance, establish a merit system under this chapter for the police or fire department of the unit. The legislative body of a township may, by resolution, establish a merit system under this chapter for the township's fire department. Before the merit system takes effect, however, the system must be approved by a majority of the active members of the department in a referendum. (b) The legislative body shall specify in the adopting ordinance or resolution which of the provisions of this chapter that are left to its discretion are being adopted.

(c) If a merit system is established under this chapter for each department of a unit, each department has a separate merit system.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.180-2002, SEC.2.

IC 36-8-3.5-4

Approval or rejection of system by members; notice; voting; subsequent proposals

Sec. 4. (a) Within sixty (60) days after the adoption of an ordinance or resolution establishing a merit system, the safety board shall give at least three (3) weeks' notice to all active members of the department that a meeting will be held to approve or reject the merit system. The notice shall be given by posting it in prominent places in all stations of the department. The notice must designate the time, place, and purpose of the meeting.

(b) A copy of the ordinance or resolution shall be distributed to each active member of the department at least one (1) week before the date of the meeting.

(c) Only active members of the department may attend the meeting, and at the meeting one (1) of them shall be selected as chairman. All voting must be by secret written ballot. The other procedures for holding the meeting may be determined by the safety board and shall be posted in accordance with subsection (a).

(d) If a majority of the active members of the department vote to approve the merit system, the merit system takes effect on January 1 following the vote. Appointments to the merit commission shall be made by March 1 following that January 1.

(e) If a majority of the active members of the department vote to reject the merit system, another proposal may not be put to a vote within one (1) year after the day the meeting is held.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.180-2002, SEC.3.

IC 36-8-3.5-5

Request to establish system; referendum; legislative action

Sec. 5. (a) A majority of the active members of the department, by referendum under section 4 of this chapter, may request the unit's legislative body to establish a merit system for the department. The legislative body shall vote on the request within sixty (60) days after it is filed with the clerk of the legislative body of a county or a municipality or the executive of a township.

(b) If the legislative body votes to grant the request, the legislative body shall adopt an ordinance or resolution establishing a merit system under this chapter. A copy of the ordinance or resolution shall be distributed to each active member of the department, and another referendum under section 4 of this chapter is required before the merit system takes effect. (c) If the legislative body votes to deny the request, the request may not be resubmitted to the legislative body for one (1) year. Before the request may be resubmitted, another referendum under section 4 of this chapter must be held.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.180-2002, SEC.4.

IC 36-8-3.5-6

Merit commission; establishment; appointment of members; qualifications; oath

Sec. 6. (a) A merit commission consisting of five (5) commissioners shall be established for each department of a unit having a merit system. The commissioners are:

- (1) two (2) persons, who must be of different political parties, appointed by the unit's executive;
- (2) one (1) person appointed by the unit's legislative body; and
- (3) two (2) persons, who must be of different political parties, elected by the active members of the department.

Notwithstanding IC 36-1-8-10, political affiliation shall be determined through the voters' registration records of the three (3) most recent primary elections.

(b) Each commissioner must have been a legal resident of the unit for three (3) consecutive years immediately preceding the commissioner's term and must be a person of good moral character. The legislative body may, upon the recommendation of the safety board, determine a per diem to be paid to each commissioner for each day of actual service for the commission. A commissioner

must be at least twenty-one (21) years of age. A commissioner may not be an active member of a police or fire department or agency and not more than two (2) of the commissioners may be past members of a police or fire department or agency. In addition, a person may not serve on the commission if the person receives any remuneration as salary from the unit.

(c) Each commissioner shall take an oath of office to conscientiously discharge the commissioner's duties. A signed copy of the oath shall be filed with the safety board.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.185-1988, SEC.4.

IC 36-8-3.5-7

Commissioners; terms; tenure

Sec. 7. (a) The term of a commissioner is four (4) years. However, one (1) of the executive's initial selections and one (1) of the department's initial selections are for terms of two (2) years.

(b) A vacancy on the commission shall be filled within thirty (30) days by the appointing or electing authority. The selection is for the remainder of the unexpired term.

(c) A commissioner serves at the pleasure of the appointing or electing authority and may be removed at any time. In the case of a commissioner elected by the department, the safety board shall call

a meeting of the active members of the department under the procedures specified in section 4 of this chapter if a recall petition signed by a majority of the active members is submitted to the board.

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-8

Elections; meeting; notice

Sec. 8. (a) An election to be made by the active members of the department shall be made at a meeting called specifically for that purpose by the safety board. The board shall give at least three (3) weeks' notice of the meeting to all active members of the department by posting the notice in prominent locations in stations of the department. The notice shall also be read during shift roll calls. The notice must designate the time, place, and purpose of the meeting.

(b) Only active members of the department may attend the meeting, and at the meeting one (1) of them shall be selected as chairman. All voting must be by secret written ballot. The other procedures for holding the meeting may be determined by the safety board and shall be posted in accordance with subsection (a).

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-9

Rules governing commission; transaction of business; selection of officers; records; budget

Sec. 9. (a) Within thirty (30) days after the commission is selected, the commission shall adopt rules to govern the commission, including the time and place of regular monthly meetings and special meetings that are necessary to transact the business of the commission. A majority of the commissioners constitutes a quorum, and a majority vote of all the commissioners is necessary to transact the business of the commission. Each year the commissioners shall select from among their number a president, vice president, and secretary. The commission shall keep a permanent record of its proceedings.

(b) The commission shall submit a proposed annual budget to the unit as other budgets of the unit are submitted. The legislative body shall include in its budget an amount sufficient for the necessary expenses of the commission.

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-10**Rules; adoption; notice and hearing**

Sec. 10. (a) Within ninety (90) days after the commission is selected, the commission shall adopt rules governing:

- (1) the selection and appointment of persons to be employed as members of the department, subject to applicable pension statutes;
- (2) promotions and demotions of members of the department; and
- (3) disciplinary action or dismissal of members of the

department.

(b) Before the rules required by this chapter are adopted by the commission, the commission must hold a public hearing to consider the adoption of the proposed rules. At least ten (10) days before the public hearing, the commission must have a notice of the hearing published in accordance with IC 5-3-1. The notice must state the time and place of the hearing and give briefly the subject matter of the proposed rules.

(c) At least ten (10) days before the hearing, one (1) copy of the proposed rules must be placed on file in the office of the:

- (1) clerk of a county, city, or town; or
- (2) executive of a township;

for inspection by residents of the unit.

(d) At least ten (10) days before the hearing, three (3) copies of the proposed rules must be forwarded to the chief of the department and retained on file in the chief's office for inspection at

all times by members of the department.

(e) At the hearing, any interested person of the unit and any member of the department must be afforded an opportunity to present both oral and written evidence on any matter relating to the adoption of the proposed rules. The commission shall give due consideration to this evidence in making its final decision concerning the adoption of the proposed rules.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.180-2002, SEC.5.

IC 36-8-3.5-11

Department members; tenure; chief; appointment and qualifications

Sec. 11. (a) The commission may appoint and remove members of the department, except for a member in an upper level policymaking position. The executive of the unit shall appoint and may remove a member in an upper level policymaking position.

(b) The chief of a fire department shall be selected from the members of the department, and he must have at least five (5) years service in the department before his appointment. These requirements may be waived by a majority vote of the unit's legislative body upon request of the unit's executive. However, the chief must still have at least five (5) years service in a full-time, paid fire department or agency.

(c) To be appointed chief or deputy chief of a police department, an applicant must meet the qualifications in IC 36-8-4-6.5.

(d) The removal of a member from an upper level policymaking position is removal from rank only and not from the department. When the member is removed, he shall be appointed by the commission to the rank in the department that he held at the time of his upper level appointment or to any rank to which he had been promoted during his tenure in the upper level position. If such a rank is not open in either case, the member is entitled to the pay of that rank and shall be promoted to that rank as soon as an opening is

available.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.348-1987, SEC.1.

IC 36-8-3.5-12

Department members; appointment; qualifications; application; general aptitude test; ratings; eligibility list; vacancies; physical agility test; probation

Sec. 12. (a) To be appointed to the department, an applicant must be:

- (1) a citizen of the United States;
- (2) a high school graduate or equivalent; and
- (3) at least twenty-one (21) years of age, but under thirty-six (36) years of age.

However, the age requirements do not apply to a person who has been previously employed as a member of the department.

(b) A person may not be appointed, reappointed, or reinstated if he has a felony conviction on his record.

(c) Applications for appointment or reappointment to the department must be filed with the commission. The applicant must produce satisfactory proof of the date and place of his birth.

(d) Applicants for appointment or reappointment to the department must pass the general aptitude test required under IC 36-8-3.2-3 or IC 36-8-3.2-3.5. The general aptitude test shall:

(1) reflect the essential functions of the job;

(2) be conducted according to procedures adopted by the commission; and

(3) be administered in a manner that reasonably accommodates the needs of applicants with a disability.

The results of the general aptitude test shall be filed with the commission. If the commission finds that the applicant lacks the proper qualifications, it shall reject the applicant.

(e) The applicants shall then be rated on the selection criteria and testing methods adopted by the commission, which may include mental alertness, character, habits, and reputation. The commission shall adopt rules for grading the applicants, including the establishment of a passing score. The commission shall place the names of applicants with passing scores on an eligibility list by the order of their scores and shall certify the list to the safety board.

(f) If an applicant for original appointment reaches his thirty-sixth birthday, his name shall be removed from the eligibility list. Applicants remain on the list for two (2) years from the date of certification. After two (2) years a person may reapply as an applicant.

(g) When a vacancy occurs in the department, the commission, upon a written request of the chief of the department, shall administer the physical agility test under IC 36-8-3.2-3 or IC 36-8-3.2-3.5 to the applicant having the highest score on the eligibility list. If the appointed applicant successfully completes the physical agility test, the applicant shall then be enrolled as a member

of the department to fill the vacancy if:

(1) the applicant is still of good character; and

(2) the applicant passes the required examinations identified in IC 36-8-3.2-6 and IC 36-8-8-19.

(h) All appointments are probationary for a period not to exceed one (1) year. If the commission finds, upon the recommendation of the department during the probationary period, that the conduct or capacity of the probationary member is not satisfactory, the commission shall notify him in writing that he is being reprimanded, that he is being suspended, or that he will not receive a permanent appointment. If a member is notified that he will not receive a permanent appointment, his employment immediately ceases. Otherwise, at the expiration of the probationary

period the member is considered regularly employed.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.4-1992, SEC.30; P.L.99-2007, SEC.214.

IC 36-8-3.5-13

Promotions; rules; requisites; eligibility list

Sec. 13. (a) Rules governing promotions must provide that the following factors be considered in rating a member of the department for a promotion:

- (1) The score received by the member on a written competitive examination.
- (2) The score received by the member on an oral competitive interview.
- (3) The performance record of the member in the department.
- (4) The member's length of service.

The commission shall determine the weight to be given to each of the factors. However, neither a member's length of service nor the score received on the oral interview may comprise more than twenty percent (20%) each of the rating.

(b) Promotions to a rank must be from the next lower rank. In addition, the member being promoted must have served at the lower rank for a period determined by the commission.

(c) Only members who are qualified in rank and length of service may be given the competitive examinations and placed on an eligibility list. The eligibility list for a position consists of members who have been placed on the list in order of their cumulative score on all rating factors. The eligibility list shall be maintained for two (2) years from the date of certification, after which time the list shall be retired and a new list established. The retired list shall be kept for five (5) years and then destroyed.

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-14

Promotions; competitive examinations; procedures

Revisor's Note: The version of IC 36-8-3.5-14 appearing in the 1993 Edition of the Indiana Code was printed incorrectly. Use the following version of IC 36-8-3.5-14.

Sec. 14. (a) Before a written competitive examination may be held to fill a current or expected vacancy in the ranks, the members eligible to take the examination must be notified of the written materials from which the questions will be taken. The commission may employ instructors, purchase materials, and make other expenditures to provide information for applicants for promotion examinations.

(b) The identity of a member taking the written examination shall be withheld from the person or persons grading the examination, and all written examinations are confidential. The commission shall notify each member in writing of the score that the member received on the examination. The score received by a member on the written examination becomes a part of the permanent file of the

member, and the member is entitled to access to this file for examination at any time.

(c) The examination papers shall be kept under the commission's supervision. A member who is aggrieved with the score received on the written examination may appeal to the commission for review of the score. The appeal must be filed within ten (10) days after notice of the score has been sent to him. He may review the questions incorrectly answered by him and challenge the answer considered correct by the examiner. The commission shall either affirm the score or correct the score according to the findings of a review. The examination papers shall be retired after the two (2) year period during which the eligibility list is valid. The retired papers shall be kept for five (5) years and then destroyed.

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-15

Performance ratings; rules; appeal

Sec. 15. (a) The commission shall adopt rules for determining a performance rating. The rules must require that a performance rating be made at least once every six (6) months for each member of the department, including probationary members. The rating shall be made by one (1) or more of the member's superiors, as defined in the commission's rules. Probationary members shall be rated in the same manner as other members of the department. The ratings shall be submitted to the chief of the department and kept on file in his office under his supervision. The chief shall notify each member in writing of the rating that the member received.

(b) A member who is aggrieved with the performance rating given to him by his superior may appeal to the commission for a review of the rating. The appeal must be filed within ten (10) days after notice of the rating has been sent to him. The commission shall either affirm or correct the rating.

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-16

Promotions; certification of eligible members; probation; procedures Sec. 16. (a) When a vacancy in rank occurs, the commission shall certify to the chief of the department the three (3) members with the highest scores on the eligibility list for that particular rank. Within six (6) months the commission, upon the recommendation of the chief, shall promote one (1) of those members to fill the vacant position.

(b) All promotions are probationary for a period not to exceed one (1) year. At the end of the period, a probationary member's superior shall review the member's performance and recommend to the commission that:

(1) the promotion be made permanent; or

(2) the promotion be revoked.

(c) The commission shall prepare a rating chart for the superior's use in making the report. The commission shall review the report and decide what action should be taken. The probationary member is entitled to appear before the commission and be heard on any matter detrimental to him in his superior's report. He is also entitled to be represented by counsel or another representative of his choice. If the promotion is finally revoked the member may not be returned to a rank lower than that he held before the probationary promotion.

(d) Actions by the commission other than making the promotion permanent may be appealed within thirty (30) days to the circuit or superior court of the county, with the unit being named as the sole defendant.

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-17

Disciplinary actions; grounds; hearing; notice; requisites; procedures; appeal

Sec. 17. (a) The commission may take the following disciplinary actions against a regular member of the department:

- (1) Suspension with or without pay.
- (2) Demotion.
- (3) Dismissal.

If a member is suspended under this subsection, the member is entitled to the member's remuneration and allowances for insurance benefits to which the member was entitled before the suspension. In addition, the local unit may provide the member's allowances for any other fringe benefits to which the member was entitled before the suspension. The commission shall determine if a member of the department who is suspended in excess of five (5) days shall continue to receive the member's salary during suspension.

(b) A member may be disciplined by the commission if:

- (1) the member is convicted of a crime; or
- (2) the commission finds the member guilty of a breach of discipline, including:
 - (A) neglect of duty;
 - (B) violation of commission rules;
 - (C) neglect or disobedience of orders;
 - (D) continuing incapacity; (E) absence without leave;
 - (F) immoral conduct;
 - (G) conduct injurious to the public peace or welfare;
 - (H) conduct unbecoming a member; or
 - (I) furnishing information to an applicant for appointment or promotion that gives that person an

advantage over another applicant.

(c) If the chief of the department, after an investigation within the department, prefers charges against a member of the department for an alleged breach of discipline under subsection (b), including any civilian complaint of an alleged breach of discipline under subsection (b)(2)(F), (b)(2)(G), or (b)(2)(H), a hearing shall be conducted upon the request of the member. If a hearing is requested within five (5) days of the chief preferring charges, the parties may by agreement designate a hearing officer who is qualified by education, training, or experience. If the parties do not agree within this five (5) day period, the commission may hold the hearing or designate a person or board to conduct the hearing, as provided in the commission's rules. The designated person or board must be qualified by education, training, or experience to conduct such a hearing and may not hold an upper level policy making position. The hearing conducted under this subsection shall be held within thirty (30) days after it is requested by the member.

(d) Written notice of the hearing shall be served upon the accused member in person or by a copy left at the member's last and usual place of residence at least fourteen (14) days before the date set for the hearing. The notice must state:

- (1) the time and place of the hearing;
- (2) the charges against the member;
- (3) the specific conduct that comprises the charges;
- (4) that the member is entitled to be represented by counsel or another representative of the member's choice;
- (5) that the member is entitled to call and cross-examine witnesses;
- (6) that the member is entitled to require the production of evidence; and
- (7) that the member is entitled to have subpoenas issued, served, and executed.

(e) The commission may:

- (1) compel the attendance of witnesses by issuing subpoenas;
- (2) examine witnesses under oath; and
- (3) order the production of books, papers, and other evidence by issuing subpoenas.

(f) If a witness refuses to appear at a hearing of the commission after having received written notice requiring the witness's attendance, or refuses to produce evidence that the commission requests by written notice, the commission may file an affidavit in the circuit court of the county setting forth the facts of the refusal. Upon the filing of the affidavit, a summons shall be issued from the circuit court and served by the sheriff of the county requiring the

appearance of the witness or the production of information or evidence to the commission.

(g) Disobedience of a summons constitutes contempt of the circuit court from which the summons has been issued. Expenses related to the filing of an affidavit and the issuance and service of a

summons shall be charged to the witness against whom the summons has been issued, unless the circuit court finds that the action of the witness was taken in good faith and with reasonable cause. In that case, and in any case in which an affidavit has been filed without the issuance of a summons, the expenses shall be charged to the commission.

(h) A decision to discipline a member may be made only if the preponderance of the evidence presented at the hearing indicates such a course of action.

(i) A member who is aggrieved by the decision of a person or board designated to conduct a disciplinary hearing under subsection (c) may appeal to the commission within ten (10) days of the decision. The commission shall on appeal review the record and either affirm, modify, or reverse the decision on the basis of the record and such oral or written testimony that the commission determines, including additional or newly discovered evidence.

(j) The commission, or the designated person or board, shall keep a record of the proceedings in cases of suspension, demotion, or dismissal. The commission shall give a free copy of the transcript to the member upon request if an appeal is filed.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.58-1989, SEC.4; P.L.265-1993, SEC.3.

IC 36-8-3.5-18

Appeal to court; suspension or dismissal; precedence

Sec. 18. (a) A member who is aggrieved by a decision of the commission to suspend him for a period greater than ten (10) calendar days, demote him, or dismiss him may appeal to the circuit or superior court of the county in which the unit is located.

(b) The appeal shall be made according to the Indiana rules of trial procedure with the following exceptions:

(1) The verified appeal must be filed within thirty (30) days after the date of the board's decision.

(2) The unit shall be named as the sole defendant.

(3) The unit is assumed to have denied the allegations without filing a responsive pleading.

(4) The plaintiff must file a bond at the time of filing the complaint conditioned on the plaintiff prosecuting the appeal to a final determination and paying the court costs incurred in the appeal.

(5) Within thirty (30) days after the service of summons the commission shall file in court a complete transcript of all papers, entries, and other parts of the record relating to the case.

(c) The appeal takes precedence over other litigation pending before the court.

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-19

Summary disciplinary actions; reprimand or suspension

Sec. 19. (a) In addition to the disciplinary powers of the commission, the chief of the department, may, without a hearing, reprimand or suspend without pay a member, including a police radio or

signal alarm operator or a fire alarm operator, for a maximum of five (5) working days. For the purposes of this subsection, eight (8) hours of paid time constitutes one (1) working day.

(b) If a chief reprimands a member in writing or suspends a member, he shall, within forty-eight (48) hours, notify the commission in writing of the action and the reasons for the action. A member who is reprimanded in writing or suspended under this section may, within forty-eight (48) hours after receiving notice of the reprimand or suspension, request in writing that the commission review the reprimand or suspension and either uphold or reverse the chief's decision. At its discretion, the commission may hold a hearing during this review. If the board holds a hearing, written notice must be given either by service upon the member in person or by a copy left at the member's last and usual place of residence at least fourteen (14) days before the date set for the hearing. The notice must contain the information listed under section 17(d) of this chapter. If the decision is reversed, the individual who was suspended is entitled to any wages withheld as a result of the suspension.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.265-1993, SEC.4.

IC 36-8-3.5-19.3

Suspension or termination of EMS personnel; right to hearing and appeal

Sec. 19.3. (a) This section applies to a department that has at least one (1) certified employee, without regard to whether:

- (1) the employee is an appointed police officer or firefighter; or
- (2) the department has a merit system to which this chapter does not otherwise apply as provided under section 1 of this chapter.

(b) As used in this section, "certified employee" means an individual who, as a condition of employment, holds a valid certification issued under IC 16-31-3 by the Indiana emergency medical services commission established by IC 16-31-2-1.

(c) As used in this section, "medical director" means a physician with an unlimited license to practice medicine in Indiana and who performs the duties and responsibilities described in 836 IAC 2-2-1.

(d) If a medical director takes any of the following actions against a certified employee, the medical director shall provide to the certified employee and to the chief of the certified employee's department a written explanation of the reasons for the action taken by the medical director:

- (1) The medical director refuses or fails to supervise or otherwise provide medical control and direction to the certified employee.
- (2) The medical director refuses or fails to attest to the

competency of the certified employee to perform emergency medical services.

(3) The medical director suspends the certified employee from performing emergency medical services.

(e) Before a department takes any employment related action as the result of a medical director's action described in subsection (d) against a certified employee, the certified employee is entitled to a hearing and appeal concerning the medical director's action as provided in sections 17 and 18 of this chapter.

(f) If the medical director's action that is the subject of an appeal under subsection (e) is based on a health care decision made by the certified employee in performing emergency medical services, the commission conducting the hearing shall consult with an independent medical expert to determine whether the certified employee followed the applicable emergency medical services protocol in making the health care decision. The independent medical expert:

(1) must be a physician trained in emergency medical services; and

(2) may not be affiliated with the same hospital as the medical director.

As added by P.L.13-2010, SEC.4.

IC 36-8-3.5-20

Retirement age

Sec. 20. A member of the department shall retire from the department when the member reaches the member's seventieth birthday. However, a member of the department who is seventy (70) years of age or older at the time the ordinance or resolution establishing the merit system takes effect may serve until the end of the calendar year.

As added by Acts 1981, P.L.316, SEC.1. Amended by P.L.38-1986, SEC.2; P.L.180-2002, SEC.6.

IC 36-8-3.5-21

Temporary leave of absence; seniority; reinstatement

Sec. 21. (a) If it is necessary for the safety board to reduce the number of members of the department, the reduction shall be made by granting a temporary leave of absence, without pay or financial obligation to the unit, to the appropriate number of members. The last member appointed shall be put on leave first, with other members also put on leave in reverse hiring order, until the desired level is achieved.

(b) If the department is increased in number again, the members of the department who have been granted leaves of absence under this section shall be reinstated before an applicant on the eligibility list is appointed to the department. The reinstatements begin with the last member granted a leave.

(c) A member on leave of absence shall keep the commission advised of his current address. A member shall be informed of his

reinstatement by written notice. Within ten (10) calendar days after a member receives notice of reinstatement, he must advise the commission that he accepts reinstatement and will be able to commence employment on the date specified in the notice. All reinstatement rights granted to a member terminate upon his failure to accept reinstatement within that period.

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-22

Rules; printing; copies to department members; effective date

Sec. 22. The department shall print all rules of the commission and furnish a copy to each member of the department. Amendments to the rules take effect thirty (30) days after their adoption if copies have been furnished to all members of the department within that period. Otherwise, they do not take effect until copies are furnished to all members of the department.

As added by Acts 1981, P.L.316, SEC.1.

IC 36-8-3.5-23

Offense; furnishing information to applicants

Sec. 23. A commissioner who knowingly furnishes information to an applicant for original appointment or to a member eligible for promotion that gives that person an advantage over another person commits a Class D felony.

As added by Acts 1981, P.L.316, SEC.1.

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