



Reprinted
February 3, 2021

SENATE BILL No. 5

DIGEST OF SB 5 (Updated February 2, 2021 2:03 pm - DI 104)

Citations Affected: IC 16-18; IC 16-20; IC 16-22.

Synopsis: Appeal of local health enforcement actions. Establishes an appeals process before legislative bodies of enforcement actions taken by local boards of health and local health officers.

Effective: Upon passage.

**Garten, Alting, Messmer, Doriot,
Zay, Holdman, Houchin, Baldwin,
Sandlin, Buchanan, Koch, Perfect,
Rogers, Brown L, Buck, Leising,
Charbonneau, Raatz, Tomes, Freeman,
Bassler, Niemeyer, Young M, Crane,
Boots, Ford Jon, Gaskill, Walker G,
Busch, Walker K, Donato, Glick,
Grooms, Kruse, Bohacek**

January 7, 2021, read first time and referred to Committee on Public Policy.
January 28, 2021, amended, reported favorably — Do Pass.
February 2, 2021, read second time, amended, ordered engrossed.

SB 5—LS 6992/DI 104



Reprinted
February 3, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 5

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

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

1 SECTION 1. IC 16-18-2-114.8 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 114.8. "Enforcement action",**
4 **for purposes of IC 16-20 and IC 16-22-8, includes an order,**
5 **mandate, citation, administrative notice, business closure, or other**
6 **action taken by the local board of health or the local health officer.**

7 SECTION 2. IC 16-18-2-200 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 200. **(a) Except as**
9 **provided in subsection (b), "legislative body" has the meaning set**
10 **forth in IC 36-1-2-9.**

11 **(b) For purposes of IC 16-20-5.5, "legislative body" has the**
12 **meaning set forth in IC 16-20-5.5-1.**

13 SECTION 3. IC 16-20-1-19 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. **(a)** Local health
15 officers shall enforce the health laws, ordinances, orders, rules, and
16 regulations of the officer's own and superior boards of health.

17 **(b) Any enforcement action taken under subsection (a) in**

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response to:

(1) an emergency order issued by a local health department or local health officer; or

(2) a declared disaster emergency by the governor under IC 10-14-3-12;

is appealable under IC 16-20-5.5.

SECTION 4. IC 16-20-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 24. (a) Local health officers may order schools and churches closed and forbid public gatherings when considered necessary to prevent and stop epidemics.

(b) An individual who takes action under this section shall comply with state laws and rules.

(c) An order issued under this section as part of:

(1) an emergency order issued by a local health department or local health officer; or

(2) a declared disaster emergency by the governor under IC 10-14-3-12;

is subject to appeal under IC 16-20-5.5.

SECTION 5. IC 16-20-1-26, AS AMENDED BY P.L.122-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) **Unless an enforcement action is being appealed under IC 16-20-5.5**, a local board of health or local health officer may enforce the board's or officer's orders, citations, and administrative notices by an action in the circuit or superior court. The court may take any appropriate action in a proceeding under this section, including any of the following:

(1) Issuing an injunction.

(2) Entering a judgment.

(3) Issuing an order and conditions under IC 16-41-9.

(4) Ordering the suspension or revocation of a license.

(5) Ordering an inspection.

(6) Ordering that a property be vacated.

(7) Ordering that a structure be demolished.

(8) Imposing a penalty not to exceed an amount set forth in IC 36-1-3-8(a)(10).

(9) Imposing court costs and fees under IC 33-37-4-2 and IC 33-37-5.

(10) Ordering the respondent to take appropriate action in a specified time to comply with the order of the local board of health or local health officer.

(11) Ordering a local board of health or local health officer to take appropriate action to enforce an order within a specified time.



(b) The county attorney in which a local board of health or local health officer has jurisdiction shall represent the local health board and local health officer in the action unless the county executive, local board of health, or health and hospital corporation employs other legal counsel or the matter has been referred through law enforcement authorities to the prosecuting attorney.

(c) A recipient of any enforcement action described in section 19(b) of this chapter may:

(1) appeal the enforcement action under IC 16-20-5.5; or

(2) bring an action directly in the circuit or superior court.

SECTION 6. IC 16-20-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 5.5. Appeal of Local Health Enforcement Actions

Sec. 1. As used in this chapter, "legislative body" means the following:

(1) Except as provided in subdivision (2):

(A) the board of county commissioners, for a county that operates a local board of health under IC 16-20-2; or

(B) the board of county commissioners in the county where the person or property that is the subject of the enforcement action is located, if the county participates in a multiple county health department under IC 16-20-3.

(2) The county council for a county that is subject to IC 36-2-3.5.

(3) The common council, for a city (as defined in IC 36-1-2-3) that operates a city health department under IC 16-20-4.

Sec. 2. (a) A recipient may appeal to the legislative body an enforcement action issued or taken by a local board of health or local health officer under IC 16-20-1 in response to:

(1) an emergency order issued by a local health department or local health officer; or

(2) a declared disaster emergency by the governor under IC 10-14-3-12;

in a manner prescribed by the legislative body.

(b) In order to make an appeal under this chapter, the recipient of the enforcement action must file the appeal with the legislative body not later than fourteen (14) days from the issuance of the enforcement action. Upon the proper filing of an appeal under this section by a recipient, the enforcement action is stayed until final disposition of the appeal.

Sec. 3. (a) The legislative body shall determine whether to hear



an appeal filed under section 2 of this chapter not later than thirty (30) days from the filing of the appeal and may issue a denial of an appeal at any time after the filing of the appeal. Any appeal granted consideration by the legislative body must be heard at a public meeting of the legislative body.

(b) The legislative body shall develop procedures for the review, consideration, and hearing of an appeal filed under this chapter. The procedures must include the following:

(1) Written notice to the appellant and the local board of health or local health officer that issued the enforcement action of the appeal of that action, and the date, time, and location of any hearing concerning the appeal.

(2) Procedures for the sharing of information between parties and the legislative body concerning the circumstances resulting in the enforcement action.

(3) The order of the proceedings.

(4) The issuance of a ruling on the appeal following the public hearing by the legislative body not later than fifteen (15) days from the date of the hearing.

(5) The maintenance of records concerning a request for appeal and any documentation resulting from the investigation and hearing of the appeal.

(c) The following apply unless the legislative body has, not later than thirty (30) days after the filing of the appeal, placed the appeal on the agenda for a meeting of the legislative body:

(1) The appeal is considered denied.

(2) The legislative body shall inform the person that filed the appeal in writing that the appeal will not be heard and is considered denied.

(3) The considered denial of the appeal is a final disposition of the appeal and the stay of the enforcement action under section 2(b) of this chapter is lifted.

Sec. 4. The appellant must be present at a hearing conducted by the legislative body. The failure of the local board of health or local health officer that issued the enforcement action to be present is not a cause for postponement of the hearing unless the local board of health or local health officer requests and is granted a continuance. The granting of a continuance does not modify any time requirements under this chapter.

Sec. 5. (a) The legislative body shall issue a written decision for any appeal that receives a hearing under this chapter. The written decision must appear in the written records of the legislative body.



1 **(b) A decision under this section is appealable to a circuit or**
 2 **superior court with jurisdiction in the county.**

3 **(c) If an appeal is denied by the legislative body or is ruled in**
 4 **favor of the local board of health or local health officer, the**
 5 **enforcement actions under IC 16-20-1-26 apply.**

6 SECTION 7. IC 16-22-8-31, AS AMENDED BY P.L.194-2007,
 7 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 UPON PASSAGE]: Sec. 31. (a) The director of the division of public
 9 health has the powers, functions, and duties of a local health officer.

10 **(b) Unless an enforcement action is being appealed under section**
 11 **31.5 of this chapter,** orders, citations, and administrative notices of
 12 violation issued by the director of the division of public health, the
 13 director's authorized representative, a supervisor in the division, or an
 14 environmental health specialist may be enforced by the corporation in
 15 a court with jurisdiction by filing a civil action in accordance with
 16 IC 16-42-5-28, IC 33-36-3-5(b), IC 34-28-5-1, IC 36-1-6-4, or
 17 IC 36-7-9-17.

18 (c) A public health authority may petition a circuit or superior court
 19 for an order of isolation or quarantine by filing a civil action in
 20 accordance with IC 16-41-9.

21 (d) Unless otherwise provided by law, a change of venue from the
 22 county may not be granted for court proceedings initiated under this
 23 section.

24 (e) A change of venue from a judge must meet the requirements in
 25 IC 34-35-3-3 for court proceedings initiated under this section.

26 SECTION 8. IC 16-22-8-31.5 IS ADDED TO THE INDIANA
 27 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 28 [EFFECTIVE UPON PASSAGE]: **Sec. 31.5. (a) The recipient of an**
 29 **enforcement action taken by the division of public health through**
 30 **its powers, functions, and duties described in section 31(a) of this**
 31 **chapter in response to:**

32 **(1) an emergency order issued by the division of public health**
 33 **or the director of the division; or**

34 **(2) a declared disaster emergency by the governor under**
 35 **IC 10-14-3-12;**

36 **may appeal the enforcement action to the Marion County**
 37 **city-county council in the manner prescribed by the city-county**
 38 **council.**

39 **(b) In order to appeal the enforcement action under this section,**
 40 **the recipient of the enforcement action must file an appeal of the**
 41 **enforcement action with the city-county council not later than**
 42 **fourteen (14) days from the issuance of the enforcement action.**



1 Upon the proper filing of an appeal under this section by a
2 recipient, the enforcement action is stayed until final disposition of
3 the appeal.

4 (c) The city-county council may determine whether or not to
5 hear an appeal filed under subsection (b) and may issue a denial of
6 an appeal at any time. If the city-county council determines to hear
7 an appeal, the city-county council must hear the appeal at a public
8 meeting of the city-county council that is not later than thirty (30)
9 days from the filing of the appeal under subsection (b).

10 (d) The city-county council shall develop procedures for the
11 review, consideration, and hearing of an appeal under this section.
12 The procedures must include the following:

13 (1) Written notice to the appellant and the division of public
14 health that issued the enforcement action of the appeal of that
15 action, and the date, time, and location of any hearing
16 concerning the appeal.

17 (2) Procedures for the sharing of information between parties
18 and the city-county council concerning the circumstances
19 resulting in the enforcement action.

20 (3) The order of the proceedings.

21 (4) The issuance of a ruling on the appeal following the public
22 hearing by the city-county council not later than fifteen (15)
23 days from the date of the hearing.

24 (5) The maintenance of records concerning a request for
25 appeal and any documentation resulting from the
26 investigation and hearing of the appeal.

27 (e) The following apply unless the city-county council has, not
28 later than thirty (30) days after the filing of the appeal, placed the
29 appeal on the agenda for a meeting of the city-county council:

30 (1) The appeal is considered denied.

31 (2) The city-county council shall inform the person that filed
32 the appeal in writing that the appeal will not be heard and is
33 considered denied.

34 (f) The appellant must be present at a hearing conducted by the
35 city-county council in order for the appeal to be heard. The failure
36 of the division of public health to be present is not a cause for
37 postponement of the hearing unless the division requests and is
38 granted a continuance. The granting of a continuance does not
39 modify any time requirements under this section.

40 (g) The city-county council shall issue a written decision for any
41 appeal that receives a hearing under this chapter. The written
42 decision must appear in the written records of the city-county



1 council.

2 (h) A decision under this section is appealable to a circuit or
3 superior court with jurisdiction in the county.

4 (i) If an appeal is denied by the city-county council or the
5 city-county council rules in favor of the division of public health,
6 the enforcement actions under section 31 of this chapter apply.

7 SECTION 9. An emergency is declared for this act.



COMMITTEE REPORT

Madam President: The Senate Committee on Public Policy, to which was referred Senate Bill No. 5, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 8 with "[EFFECTIVE UPON PASSAGE]".

Page 2, line 1, after "to" insert ":

- (1) an emergency order issued by a local health department or local health officer; or**
- (2)".**

Page 2, line 2, delete "IC 10-14-3-12 is" and insert "**IC 10-14-3-12; is**".

Page 2, line 9, after "of" insert ":

- (1) an emergency order issued by a local health department or local health officer; or**
- (2)".**

Page 2, line 10, delete "IC 10-14-3-12 is" and insert "**IC 10-14-3-12; is**".

Page 3, delete lines 1 through 2 and insert:

"19(b) of this chapter may:

- (1) appeal the enforcement action under IC 16-20-5.5; or**
- (2) bring an action directly in the circuit or superior court."**

Page 3, line 22, after "to" insert ":

- (1) an emergency order issued by a local health department or local health officer; or**
- (2)".**

Page 3, line 23, delete "IC 10-14-3-12 in" and insert "**IC 10-14-3-12; in**".

Page 5, line 17, after "to" insert ":

- (1) an emergency order issued by the division of public health or the director of the division; or**
- (2)".**

Page 5, line 18, delete "IC 10-14-3-12 may" and insert "**IC 10-14-3-12; may**".

Page 6, after line 30, begin a new paragraph and insert:

"SECTION 9. An emergency is declared for this act."

and when so amended that said bill do pass.



(Reference is to SB 5 as introduced.)

ALTING, Chairperson

Committee Vote: Yeas 9, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 5 be amended to read as follows:

Page 4, between lines 29 and 30, begin a new line block indented and insert:

"(3) The considered denial of the appeal is a final disposition of the appeal and the stay of the enforcement action under section 2(b) of this chapter is lifted."

(Reference is to SB 5 as printed January 29, 2021.)

GARTEN

