

SENATE BILL No. 48

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2-88.3; IC 16-20; IC 16-22-8.

Synopsis: Local health board and officer limitations. Limits the time in which an order, mandate, or prohibition issued by a local health board or local health officer may be in effect unless approved by the relevant county executive or city executive. Limits the fines that may be assessed for a violation of the order, mandate, or prohibition. Establishes a cause of action for an individual to file a court action concerning certain enforcement actions taken by a local health officer or local health board.

Effective: Upon passage.

Tomes, Doriot, Alting

January 4, 2021, read first time and referred to Committee on Health and Provider Services.



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. 48

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 16-18-2-88.3 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 88.3. "COVID-19", for**
4 **purposes of IC 16-20-1, means:**

- 5 (1) **severe acute respiratory syndrome coronavirus 2**
- 6 **(SARS-CoV-2); or**
- 7 (2) **the disease caused by severe acute respiratory syndrome**
- 8 **coronavirus 2.**

9 SECTION 2. IC 16-20-1-21 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) **Subject to**
11 **subsections (b) through (d)**, each local health board has the
12 responsibility and authority to take any action authorized by statute or
13 rule of the state department to control communicable diseases. The
14 board of each local health department or a designated representative
15 may make sanitary and health inspections to carry out this chapter and
16 IC 16-20-8.

17 (b) **If a local health board or local health officer issues an**



1 enforcement action, order, mandate, or prohibition concerning
 2 communicable diseases under this section or a governor declared
 3 disaster emergency under IC 10-14-3-12 for an epidemic, the
 4 enforcement action, order, mandate, or prohibition may not be in
 5 effect as follows:

6 (1) For more than fourteen (14) days unless the enforcement
 7 action, prohibition, order, or mandate is approved by the:

8 (A) county executive, in the case of a county health
 9 department; or

10 (B) city executive, in the case of a city health department.

11 (2) Until the enforcement action, prohibition, order, or
 12 mandate is approved by the:

13 (A) county executive, in the case of a county health
 14 department; or

15 (B) city executive, in the case of a city health department;
 16 if the enforcement action, prohibition, order, or mandate is
 17 concerning the wearing of masks or social distancing related
 18 to COVID-19.

19 (c) The local health board or local health officer may not issue
 20 a subsequent substantially similar enforcement action, order,
 21 mandate, or prohibition in replacement of an enforcement action,
 22 order, mandate, or prohibition described in subsection (b) unless
 23 the enforcement action, order, mandate, or prohibition is approved
 24 as set forth in subsection (b).

25 (d) This subsection does not apply to a violation of quarantine.
 26 A local health officer may not assess a fine for a violation of an
 27 enforcement action, order, mandate, or prohibition described in
 28 subsection (b) that exceeds the following:

29 (1) Two hundred fifty dollars (\$250) for a violation of not:

30 (A) wearing a mask or face covering; or

31 (B) social distancing;

32 during a declared emergency concerning COVID-19.

33 (2) Five hundred dollars (\$500) for a first violation of any
 34 other offense not described in subdivision (1).

35 (3) One thousand dollars (\$1,000) for a second violation of an
 36 offense not described in subdivision (1).

37 (4) One thousand five hundred dollars (\$1,500) for a third or
 38 subsequent violation of an offense not described in subdivision
 39 (1).

40 SECTION 3. IC 16-20-1-23, AS AMENDED BY P.L.122-2012,
 41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 UPON PASSAGE]: Sec. 23. (a) Upon:



1 (1) showing official identification; and

2 (2) except as provided in subsection (b), receiving consent of the
3 owner or occupant of the premises;

4 a local health officer or the officer's designee **as long as the designee**
5 **is an employee of the local health board or state department** may
6 enter any premises at any reasonable time and inspect, investigate,
7 evaluate, conduct tests, or take specimens or samples for testing that
8 may be reasonably necessary to determine compliance with public
9 health laws and rules and for the prevention and suppression of disease.

10 **The local health officer or the officer's designee may only inspect**
11 **the premises concerning matters in which the local health officer**
12 **or the state department have direct jurisdictional authority.**

13 (b) A local health officer or the officer's designee shall obtain the
14 consent of the owner or the occupant of the premises under subsection
15 (a), except as provided in any of the following circumstances:

16 (1) Subject to subsection (c), the local health officer or the
17 officer's designee obtains an order from a circuit or superior court
18 in the jurisdiction where the premises is located to authorize the
19 inspection, investigation, evaluation, testing, or taking of
20 specimens or samples for testing.

21 (2) An emergency condition that poses an imminent and serious
22 threat to the health of an individual or the public and the local
23 health officer or the officer's designee believes that a delay could
24 result in a greater health risk.

25 (3) Entry by a local health officer or the officer's designee to a
26 public place or an area in plain and open view to determine
27 compliance with public health laws and rules.

28 (4) Entry under the terms and conditions of a license issued by the
29 local health department at any reasonable time if reasonably
30 necessary to determine compliance with public health laws and
31 rules and the terms and conditions of the license.

32 (c) A court described in subsection (b)(1) may issue an order to
33 inspect, investigate, evaluate, conduct tests, or take specimens or
34 samples for testing if the court finds that the local health officer or the
35 officer's designee, by oath or affirmation, provided reliable information
36 establishing the violation of a public health law or rule at the premises.

37 (d) However, a local health officer, or the officer's designee, shall
38 not inspect property in which the local health officer has any interest,
39 whether real, equitable, or otherwise. Any such inspection or any
40 attempt to make such inspection is grounds for removal as provided for
41 in this article.

42 (e) This section does not prevent inspection of premises in which a



1 local health officer has an interest if the premises cannot otherwise be
 2 inspected. If the premises cannot otherwise be inspected, the county
 3 health officer shall inspect the premises personally.

4 SECTION 4. IC 16-20-1-25, AS AMENDED BY P.L.292-2013,
 5 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 UPON PASSAGE]: Sec. 25. (a) A person shall not institute, permit, or
 7 maintain any conditions that may transmit, generate, or promote
 8 disease.

9 (b) A health officer, upon receiving a complaint asserting the
 10 existence of unlawful conditions described in subsection (a) within the
 11 officer's jurisdiction, shall document the complaint as provided in
 12 subsection (d). **A health officer may not contract with a person to**
 13 **investigate other persons for a violation of subsection (a). Only an**
 14 **individual employed by the local health board or the state**
 15 **department may verify a complaint under this section.** Upon
 16 verifying the information contained in the complaint, the health officer
 17 shall order the abatement of those conditions. The order must:

- 18 (1) be in writing;
- 19 (2) specify the conditions that may transmit disease; and
- 20 (3) name the shortest reasonable time for abatement.

21 (c) If a person refuses or neglects to obey an order issued under this
 22 section, the attorney representing the county of the health jurisdiction
 23 where the offense occurs shall, upon receiving the information from the
 24 health officer, institute proceedings in the courts for enforcement. An
 25 order may be enforced by injunction. If the action concerning public
 26 health is a criminal offense, a law enforcement authority with
 27 jurisdiction over the place where the offense occurred shall be notified.

28 (d) A complaint made under subsection (b) must include adequate
 29 details to allow the health officer to verify the existence of the unlawful
 30 conditions that are the subject of the complaint. A health officer shall
 31 provide a copy of a complaint upon request to the person who is the
 32 subject of the complaint.

33 (e) A person who provides false information upon which a health
 34 officer relies in issuing an order under this section commits a Class C
 35 misdemeanor.

36 SECTION 5. IC 16-20-1-26.5 IS ADDED TO THE INDIANA
 37 CODE AS A NEW SECTION TO READ AS FOLLOWS
 38 [EFFECTIVE UPON PASSAGE]: **Sec. 26.5. (a) A person that has an**
 39 **enforcement action taken against the person for a violation of an**
 40 **order, mandate, or prohibition described in section 21(b) of this**
 41 **chapter may file an action in any court of competent jurisdiction**
 42 **to:**



- 1 **(1) obtain a declaratory judgment;**
 2 **(2) enjoin a local health officer or the state department from**
 3 **continuing to take action; or**
 4 **(3) declare void any enforcement action, order, mandate, or**
 5 **prohibition.**

6 **(b) An action must be filed not later than thirty (30) days from**
 7 **the date of the enforcement action.**

8 **(c) In determining whether to declare any enforcement action,**
 9 **order, mandate, or prohibition to be void, a court shall consider the**
 10 **following factors among other relevant factors:**

11 **(1) The extent to which the violation affected the substance of**
 12 **the order, mandate, prohibition, or enforcement action.**

13 **(2) Whether voiding of the order, mandate, prohibition, or**
 14 **enforcement action is a necessary prerequisite to a substantial**
 15 **reconsideration of the subject matter.**

16 **(3) Whether the public interest will be served by voiding the**
 17 **order, mandate, prohibition, or enforcement action, by**
 18 **determining which of the following factors outweigh the**
 19 **other:**

20 **(A) The remedial benefits gained by effectuating the public**
 21 **policy of the state in controlling the communicable disease.**

22 **(B) The prejudice likely to accrue to the public if the order,**
 23 **mandate, prohibition, or enforcement action is voided.**

24 **(d) If a court declares an order, mandate, prohibition, or**
 25 **enforcement action void, the court may do any or both of the**
 26 **following:**

27 **(1) Enjoin the local health officer or state department from**
 28 **subsequently acting upon the subject matter of the voided act.**

29 **(2) Award damages or expenses that were incurred by the**
 30 **person concerning the enforcement action and bringing an**
 31 **action under this section.**

32 **(e) A court shall expedite the hearing of an action filed under**
 33 **this section.**

34 SECTION 6. IC 16-20-2-2, AS AMENDED BY P.L.119-2012,
 35 SECTION 124, IS AMENDED TO READ AS FOLLOWS
 36 [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Except as provided in
 37 IC 16-20-3, the executive of each county shall by ordinance establish
 38 and maintain a local health department.

39 (b) The executive of a county having a population of more than one
 40 hundred seventy thousand (170,000) but less than one hundred
 41 seventy-five thousand (175,000) may only establish and maintain one
 42 (1) local health department having countywide jurisdiction.



1 (c) The county executive in a county having a population of more
 2 than one hundred seventy thousand (170,000) but less than one
 3 hundred seventy-five thousand (175,000) may adopt health ordinances
 4 that apply to the entire county.

5 (d) A health ordinance adopted by a city legislative body after
 6 December 31, 1993, in a county having a population of more than one
 7 hundred seventy thousand (170,000) but less than one hundred
 8 seventy-five thousand (175,000) is void.

9 **(e) The restrictions set forth in IC 16-20-1-21(b) through**
 10 **IC 16-20-1-21(d) apply to this chapter.**

11 SECTION 7. IC 16-20-4-13 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. A board of
 13 health that manages a city health department under this chapter has the
 14 powers and duties prescribed for all health boards. **The board of**
 15 **health is subject to the restrictions set forth in IC 16-20-1-21(b)**
 16 **through IC 16-20-1-21(d).**

17 SECTION 8. IC 16-22-8-31, AS AMENDED BY P.L.194-2007,
 18 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 UPON PASSAGE]: Sec. 31. (a) The director of the division of public
 20 health has the powers, functions, and duties of a local health officer.
 21 **The restrictions set forth in IC 16-20-1-21(b) through**
 22 **IC 16-20-1-21(d) apply to this chapter.**

23 (b) Orders, citations, and administrative notices of violation issued
 24 by the director of the division of public health, the director's authorized
 25 representative, a supervisor in the division, or an environmental health
 26 specialist may be enforced by the corporation in a court with
 27 jurisdiction by filing a civil action in accordance with IC 16-42-5-28,
 28 IC 33-36-3-5(b), IC 34-28-5-1, IC 36-1-6-4, or IC 36-7-9-17.

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

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

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

37 SECTION 9. IC 16-22-8-31.5 IS ADDED TO THE INDIANA
 38 CODE AS A NEW SECTION TO READ AS FOLLOWS
 39 [EFFECTIVE UPON PASSAGE]: **Sec. 31.5. (a) A person that has an**
 40 **enforcement action taken against the person for a violation of a**
 41 **public health order, mandate, or prohibition issued under section**
 42 **31 of this chapter may file an action in any court of competent**



- 1 jurisdiction to:
- 2 (1) obtain a declaratory judgment;
- 3 (2) enjoin a local health officer or the state department from
- 4 continuing to take action; or
- 5 (3) declare void any enforcement action, order, mandate, or
- 6 prohibition.
- 7 (b) An action must be filed not later than thirty (30) days from
- 8 the date of the enforcement action.
- 9 (c) In determining whether to declare any enforcement action,
- 10 order, mandate, or prohibition to be void, a court shall consider the
- 11 following factors among other relevant factors:
- 12 (1) The extent to which the violation affected the substance of
- 13 the order, mandate, prohibition, or enforcement action.
- 14 (2) Whether voiding of the order, mandate, prohibition, or
- 15 enforcement action is a necessary prerequisite to a substantial
- 16 reconsideration of the subject matter.
- 17 (3) Whether the public interest will be served by voiding the
- 18 order, mandate, prohibition, or enforcement action, by
- 19 determining which of the following factors outweigh the
- 20 other:
- 21 (A) The remedial benefits gained by effectuating the public
- 22 policy of the state in controlling the communicable disease.
- 23 (B) The prejudice likely to accrue to the public if the order,
- 24 mandate, prohibition, or enforcement action is voided.
- 25 (d) If a court declares an order, mandate, prohibition, or
- 26 enforcement action void, the court may do any or both of the
- 27 following:
- 28 (1) Enjoin the local health officer or state department from
- 29 subsequently acting upon the subject matter of the voided act.
- 30 (2) Award damages or expenses that were incurred by the
- 31 person concerning the enforcement action and bringing an
- 32 action under this section.
- 33 (e) A court shall expedite the hearing of an action filed under
- 34 this section.
- 35 SECTION 10. An emergency is declared for this act.

