

SENATE BILL No. 413

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-21.5.

Synopsis: Opportunity to correct violation. Imposes a duty on an agency under certain circumstances to give a person an opportunity to correct an alleged violation of law that is discovered in an inspection.

Effective: July 1, 2017.

Koch

January 10, 2017, read first time and referred to Committee on Commerce and Technology.



First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 413

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

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

- 1 SECTION 1. IC 4-21.5-2-7 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2017]: **Sec. 7. IC 4-21.5-2.5 applies to all agencies in the executive**
- 4 **department of state government, including the administrative**
- 5 **department.**
- 6 SECTION 2. IC 4-21.5-2.5 IS ADDED TO THE INDIANA CODE
- 7 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2017]:
- 9 **Chapter 2.5. Opportunity to Correct**
- 10 **Sec. 1. Except as provided in sections 2 and 3 of this chapter,**
- 11 **this chapter applies to the resolution of an alleged violation of a**
- 12 **state rule within the jurisdiction of an agency that is discovered in**
- 13 **an inspection conducted after June 30, 2017.**
- 14 **Sec. 2. This chapter does not apply if:**
- 15 **(1) the agency conducting the inspection determines that the**
- 16 **alleged violation:**
- 17 **(A) represents intentional misconduct or an act of fraud by**



- 1 a responsible person or an agent of the responsible person;
 2 (B) is not correctable within a reasonable time, as
 3 determined by the agency;
 4 (C) demonstrates, by a continuing pattern of conduct, a
 5 willful disregard by the responsible person of the person's
 6 obligation to remedy the errors after the responsible
 7 person becomes aware of the errors; or
 8 (D) constitutes an immediate risk to:
 9 (i) any person;
 10 (ii) the public health, safety, or welfare; or
 11 (iii) the environment;
 12 (2) another statute (including IC 13-30-3) provides a
 13 substantially similar procedure for correction of an alleged
 14 violation of a rule before the agency:
 15 (A) imposes a sanction on a person; or
 16 (B) terminates a legal right, duty, privilege, immunity, or
 17 other legal interest of a person;
 18 (3) application of this chapter to a violation would violate a
 19 federal law or regulation;
 20 (4) the alleged violation is a violation of an ethics code or
 21 another rule governing the conduct of an agency employee or
 22 contractor in the procurement or performance of services or
 23 the delivery of property to a governmental entity; or
 24 (5) the alleged violation was discovered as part of the
 25 preparation of a health care licensing and certification survey
 26 by the state department of health.
- 27 **Sec. 3. This chapter does not limit an agency's authority to issue**
 28 **an emergency or a temporary order under IC 4-21.5-4 or another**
 29 **law if:**
 30 (1) an emergency exists; or
 31 (2) a statute authorizes the agency to issue a temporary order
 32 or otherwise take immediate agency action.
- 33 **Sec. 4. As used in this chapter, "inspection" means:**
 34 (1) visual analysis; or
 35 (2) performance of tests;
 36 undertaken to evaluate the operation, use, or condition of real or
 37 personal property.
- 38 **Sec. 5. As used in this chapter, "violation" refers to a violation**
 39 **of a state rule adopted by an agency.**
- 40 **Sec. 6. If an inspection discloses a possible violation, the agency**
 41 **shall proceed under:**
 42 (1) section 7 of this chapter; or



- 1 (2) first section 7 of this chapter, and then section 10 of this
2 chapter.
- 3 **Sec. 7. The agency shall:**
- 4 (1) notify the alleged violator in writing that the agency
5 believes a violation may exist; and
- 6 (2) extend an offer in writing to the alleged violator giving the
7 alleged violator an opportunity to enter into a corrective plan
8 to correct the alleged violation before the agency imposes a
9 civil penalty or takes another enforcement action permitted
10 under section 10 of this chapter or another law.
- 11 **Sec. 8. (a) The notice to the alleged violator under section 7 of
12 this chapter must include the following:**
- 13 (1) A description of the actions that must be taken to correct
14 the alleged violation.
- 15 (2) The date before which the alleged violator must enter into
16 a corrective plan with the agency in order to avoid an
17 enforcement action under section 10 of this chapter or
18 another law.
- 19 (3) A statement that an alleged violator may enter into a
20 corrective plan without admitting that the violation occurred.
- 21 **(b) The agency may condition an offer on a requirement that the
22 alleged violator take one (1) or more actions to protect the safety
23 and property of other persons during the time in which the alleged
24 violator reviews the proposed corrective plan.**
- 25 **(c) A corrective plan must require the alleged violator to notify
26 the agency within the time specified in the corrective plan that the
27 violation has been corrected.**
- 28 **Sec. 9. The agency shall determine if the alleged violator has
29 substantially corrected the violation and notify the alleged violator
30 whether the alleged violator is in substantial compliance with the
31 applicable rule not more than thirty (30) days after the earlier of
32 the date that:**
- 33 (1) the alleged violation must be corrected under the
34 corrective plan; or
- 35 (2) the alleged violator notifies the agency that the alleged
36 violator has corrected the violation.
- 37 **Sec. 10. If:**
- 38 (1) a corrective plan is not entered into; or
- 39 (2) an alleged violator fails to substantially correct an alleged
40 violation within the time specified in a corrective plan entered
41 into under this chapter;
- 42 the agency may issue a corrective order and take any enforcement



1 **action authorized by law for the violation.**
2 **Sec. 11. The following are public records:**
3 **(1) A corrective plan entered into under this chapter.**
4 **(2) The results of an inspection under section 9 of this chapter.**
5 **(3) Any corrective order described in section 10 of this**
6 **chapter.**
7 **An agency shall retain the public records described in subdivisions**
8 **(1) through (3) in accordance with the appropriate retention**
9 **schedule established under IC 5-15.**

