



Reprinted
February 24, 2017

SENATE BILL No. 413

DIGEST OF SB 413 (Updated February 23, 2017 3:26 pm - DI 97)

Citations Affected: IC 4-21.5.

Synopsis: Opportunity to correct violation. Imposes a duty on an agency, other than the Indiana occupational safety and health administration, under certain circumstances to give a person an opportunity to correct an alleged violation of a state rule adopted by an agency that is discovered in an inspection.

Effective: July 1, 2017.

**Koch, Messmer, Randolph Lonnie M,
Zakas**

January 10, 2017, read first time and referred to Committee on Commerce and Technology.
February 6, 2017, amended, reported favorably — Do Pass.
February 23, 2017, read second time, amended, ordered engrossed.

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

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1 **alleged violation:**

- 2 (A) represents intentional misconduct or an act of fraud by
 3 a responsible person or an agent of the responsible person;
 4 (B) is not correctable within a reasonable time, as
 5 determined by the agency;
 6 (C) demonstrates, by a continuing pattern of conduct, a
 7 willful disregard by the responsible person of the person's
 8 obligation to remedy the errors after the responsible
 9 person becomes aware of the errors; or
 10 (D) constitutes an immediate risk to:
 11 (i) any person;
 12 (ii) the public health, safety, or welfare; or
 13 (iii) the environment;
 14 (2) if another statute (including IC 13-30-3) provides a
 15 substantially similar procedure for correction of an alleged
 16 violation of a rule or state statute before the agency:
 17 (A) imposes a sanction on a person; or
 18 (B) terminates a legal right, duty, privilege, immunity, or
 19 other legal interest of a person;
 20 (3) if application of this chapter to a violation would violate a
 21 federal law or regulation;
 22 (4) the alleged violation is a violation of:
 23 (A) a rule or state statute governing the conduct of an
 24 agency employee or contractor in the procurement or
 25 performance of services or the delivery of property to a
 26 governmental entity; or
 27 (B) an ethics code;
 28 (5) if the alleged violation was discovered as part of the
 29 preparation of a health care licensing and certification survey
 30 by the state department of health; or
 31 (6) the alleged violation constitutes an act or omission that is
 32 charged by a state law enforcement agency as a crime or
 33 delinquent act or the agency forwards notice of the alleged
 34 violation to the attorney general, a state or local law
 35 enforcement agency, or a prosecuting attorney for
 36 investigation or prosecution as a crime or delinquent act.
 37 (6) to a day care regulation under IC 12-17.2.

38 **Sec. 3. This chapter does not limit an agency's authority to issue**
 39 **an emergency or a temporary order under IC 4-21.5-4 or another**
 40 **law if:**

- 41 (1) an emergency exists; or
 42 (2) a statute authorizes the agency to issue a temporary order



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



1 **the earlier of the date that:**
2 **(1) the alleged violation must be corrected under the**
3 **corrective plan; or**
4 **(2) the alleged violator notifies the agency that the alleged**
5 **violator has corrected the violation.**
6 **Sec. 10. If:**
7 **(1) a corrective plan is not entered into; or**
8 **(2) an alleged violator fails to substantially correct an alleged**
9 **violation within the time specified in a corrective plan entered**
10 **into under this chapter;**
11 **the agency may issue a corrective order and take any enforcement**
12 **action authorized by law for the violation.**
13 **Sec. 11. The following are public records:**
14 **(1) A corrective plan entered into under this chapter.**
15 **(2) The results of an inspection under section 9 of this chapter.**
16 **(3) Any corrective order described in section 10 of this**
17 **chapter.**
18 **An agency shall retain the public records described in subdivisions**
19 **(1) through (3) in accordance with the appropriate retention**
20 **schedule established under IC 5-15.**
21 **Sec. 12. IC 4-21.5-3 does not apply to an act or a failure to act**
22 **under this chapter.**



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred Senate Bill No. 413, 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:

Page 1, line 3, after "7." insert **"(a) Except as provided in subsection (b),"**.

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"(b) IC 4-21.5-2.5 does not apply to the Indiana occupational safety and health administration."

and when so amended that said bill do pass.

(Reference is to SB 413 as introduced.)

MESSMER, Chairperson

Committee Vote: Yeas 6, Nays 0.

 SENATE MOTION

Madam President: I move that Senate Bill 413 be amended to read as follows:

Page 1, line 14, after "rule" insert **"or state statute"**.

Page 2, line 16, after "rule" insert **"or state statute"**.

Page 2, delete lines 22 through 25, begin a new line block indented and insert:

"(4) the alleged violation is a violation of:

(A) a rule or state statute governing the conduct of an agency employee or contractor in the procurement or performance of services or the delivery of property to a governmental entity; or

(B) an ethics code;"

Page 2, line 28, delete "health." and insert **"health; or**

(6) the alleged violation constitutes an act or omission that is charged by a state law enforcement agency as a crime or delinquent act or the agency forwards notice of the alleged violation to the attorney general, a state or local law enforcement agency, or a prosecuting attorney for investigation or prosecution as a crime or delinquent act."

Page 2, line 41, delete "agency." and insert **"agency or a state**

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statute."

Page 3, line 33, after "rule" insert "**or state statute**".

Page 4, after line 11, begin a new paragraph and insert:

"Sec. 12. IC 4-21.5-3 does not apply to an act or a failure to act under this chapter."

(Reference is to SB 413 as printed February 7, 2017.)

KOCH

SENATE MOTION

Madam President: I move that Senate Bill 413 be amended to read as follows:

Page 1, line 16, delete "if".

Page 1, line 17, after "(1)" insert "**if**".

Page 2, line 14, after "(2)" insert "**if**".

Page 2, line 20, after "(3)" insert "**if**".

Page 2, line 22, after "(4)" insert "**if**".

Page 2, line 25, delete "or".

Page 2, line 26, after "(5)" insert "**if**".

Page 2, line 28, delete "." and insert "**; or**".

Page 2, between lines 28 and 29, begin a new line block indented and insert:

"(6) to a day care regulation under IC 12-17.2."

(Reference is to SB 413 as printed February 7, 2017.)

STOOPS

