



Reprinted
March 24, 2017

ENGROSSED SENATE BILL No. 413

DIGEST OF SB 413 (Updated March 23, 2017 11:37 am - DI 87)

Citations Affected: IC 4-21.5; IC 34-30.

Synopsis: Opportunity to correct violation. Imposes a duty on certain state agencies under certain circumstances to give a person an opportunity to correct an alleged violation of a state rule or state statute that is discovered in an inspection.

Effective: July 1, 2017.

Koch, Messmer, Randolph Lonnie M, Zakas

(HOUSE SPONSORS — LEHMAN, MILLER D, LUCAS, STEMLER)

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.
February 24, 2017, engrossed.
February 27, 2017, technical correction pursuant to Rule 35(c). Read third time, passed.
Yeas 46, nays 3.
February 28, 2017, re-engrossed.

HOUSE ACTION

March 7, 2017, read first time and referred to Committee on Government and Regulatory Reform.
March 21, 2017, reported — Do Pass.
March 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.

ENGROSSED 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;
 10 (D) constitutes an immediate risk to:
 11 (i) any person;
 12 (ii) the public health, safety, or welfare; or
 13 (iii) the environment; or
 14 (E) constitutes a major violation of the agency's rules as
 15 expressly provided by the rules of the agency;
 16 (2) if another statute (including IC 13-30-3) provides a
 17 substantially similar procedure for correction of an alleged
 18 violation of a rule or state statute before the agency:
 19 (A) imposes a sanction on a person; or
 20 (B) terminates a legal right, duty, privilege, immunity, or
 21 other legal interest of a person;
 22 (3) if application of this chapter to a violation would violate a
 23 federal law or regulation;
 24 (4) if the alleged violation is a violation of:
 25 (A) a rule or state statute governing the conduct of an
 26 agency employee or contractor in the procurement or
 27 performance of services or the delivery of property to a
 28 governmental entity; or
 29 (B) an ethics code;
 30 (5) if the alleged violation was discovered as part of the
 31 preparation of a health care licensing and certification survey
 32 by the state department of health;
 33 (6) if the alleged violation constitutes an act or omission that
 34 is charged by a state law enforcement agency as a crime or
 35 delinquent act or the agency forwards notice of the alleged
 36 violation to the attorney general, a state or local law
 37 enforcement agency, or a prosecuting attorney for
 38 investigation or prosecution as a crime or delinquent act;
 39 (7) to a day care regulation under IC 12-17.2; or
 40 (8) to the responsibilities of the department of child services
 41 under IC 31.

42 **Sec. 3. This chapter does not limit an agency's authority to issue**



1 an emergency or a temporary order under IC 4-21.5-4 or another
2 law if:

- 3 (1) an emergency exists; or
- 4 (2) a statute authorizes the agency to issue a temporary order
- 5 or otherwise take immediate agency action.

6 Sec. 4. As used in this chapter, "inspection" means:

- 7 (1) visual analysis; or
 - 8 (2) performance of tests;
- 9 undertaken to evaluate the operation, use, or condition of real or
10 personal property.

11 Sec. 5. As used in this chapter, "violation" refers to a violation
12 of a state rule adopted by an agency or a state statute, except for a
13 violation exempt under section 2 of this chapter.

14 Sec. 6. If an inspection discloses a possible violation, the agency
15 shall proceed under:

- 16 (1) section 7 of this chapter; or
- 17 (2) first section 7 of this chapter, and then section 10 of this
- 18 chapter.

19 Sec. 7. The agency shall:

- 20 (1) notify the alleged violator in writing that the agency
- 21 believes a violation may exist; and
- 22 (2) extend an offer in writing to the alleged violator giving the
- 23 alleged violator an opportunity to enter into a corrective plan
- 24 to correct the alleged violation before the agency imposes a
- 25 civil penalty or takes another enforcement action permitted
- 26 under section 10 of this chapter or another law.

27 Sec. 8. (a) The notice to the alleged violator under section 7 of
28 this chapter must include the following:

- 29 (1) A description of the actions that must be taken to correct
- 30 the alleged violation.
- 31 (2) The date before which the alleged violator must enter into
- 32 a corrective plan with the agency in order to avoid an
- 33 enforcement action under section 10 of this chapter or
- 34 another law.
- 35 (3) A statement that an alleged violator may enter into a
- 36 corrective plan without admitting that the violation occurred.

37 (b) The agency may condition an offer on a requirement that the
38 alleged violator take one (1) or more actions to protect the safety
39 and property of other persons during the time in which the alleged
40 violator reviews the proposed corrective plan.

41 (c) A corrective plan must require the alleged violator to notify
42 the agency within the time specified in the corrective plan that the



1 violation has been corrected.

2 **Sec. 9. The agency shall determine if the alleged violator has**
 3 **substantially corrected the violation and notify the alleged violator**
 4 **whether the alleged violator is in substantial compliance with the**
 5 **applicable rule or state statute not more than thirty (30) days after**
 6 **the earlier of the date that:**

7 (1) the alleged violation must be corrected under the
 8 corrective plan; or

9 (2) the alleged violator notifies the agency that the alleged
 10 violator has corrected the violation.

11 **Sec. 10. If:**

12 (1) a corrective plan is not entered into; or

13 (2) an alleged violator fails to substantially correct an alleged
 14 violation within the time specified in a corrective plan entered
 15 into under this chapter;

16 the agency may issue a corrective order and take any enforcement
 17 action authorized by law for the violation.

18 **Sec. 11. The following are public records:**

19 (1) A corrective plan entered into under this chapter.

20 (2) The results of an inspection under section 9 of this chapter.

21 (3) Any corrective order described in section 10 of this
 22 chapter.

23 An agency shall retain the public records described in subdivisions
 24 (1) through (3) in accordance with the appropriate retention
 25 schedule established under IC 5-15.

26 **Sec. 12. The state, a state agency, and an agency's officers,**
 27 **agents, and employees are immune from liability for any act done**
 28 **or omitted in connection with the performance of their duties**
 29 **under this chapter.**

30 SECTION 3. IC 34-30-2-3.4 IS ADDED TO THE INDIANA CODE
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2017]: IC 4-21.5-2.5-12 (Concerning corrective action plans of
 33 the state and state agencies for alleged rule violations).



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**



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

COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure reports that pursuant to Senate Rule 35(c), the following technical corrections are to be made to Engrossed Senate Bill 413.

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

Page 2, line 31, after "(6)" insert "**if**".

Page 2, line 37, delete "(6)" and insert "**(7)**".

LONG, Chairperson

(Reference is to ESB 413 as reprinted February 24, 2017.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 413, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 413 as printed February 28, 2017.)

LUCAS

Committee Vote: Yeas 10, Nays 0

 HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 413 be amended to read as follows:

Page 2, line 9, delete "or".

Page 2, line 13, after ";" insert "**or**".

Page 2, between lines 13 and 14, begin a new line double block indented and insert:

"(E) constitutes a major violation of the agency's rules as expressly provided by the rules of the agency;".

Page 2, line 30, delete "or".

Page 2, line 36, delete "." and insert ";".

Page 2, line 37, delete "IC 12-17.2." and insert "**IC 12-17.2; or**".

Page 2, between lines 37 and 38, begin a new line block indented and insert:

"(8) to the responsibilities of the department of child services under IC 31."

Page 3, line 8, delete "." and insert ", **except for a violation exempt under section 2 of this chapter.**".

Page 4, delete lines 21 through 22, begin a new paragraph and insert:

"Sec. 12. The state, a state agency, and an agency's officers, agents, and employees are immune from liability for any act done or omitted in connection with the performance of their duties under this chapter.

SECTION 3. IC 34-30-2-3.4 IS ADDED TO THE INDIANA CODE



AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2017]: **IC 4-21.5-2.5-12 (Concerning corrective action plans of the state and state agencies for alleged rule violations).**".

Renumber all SECTIONS consecutively.

(Reference is to ESB 413 as printed March 21, 2017.)

LEHMAN

