

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 ENROLLED ACT No. 5

AN ACT to amend the Indiana Code concerning health.

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

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

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

(b) For purposes of IC 16-20-1-21.5, "legislative body" has the meaning set forth in IC 16-20-1-21.5(c).

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

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

(b) Any enforcement action taken under subsection (a) in response to:

(1) a declared local public health emergency determined by a local health department or local health officer; or

SEA 5 — CC 2



**(2) a disaster emergency declared by the governor under IC 10-14-3-12;
is appealable under IC 16-20-5.5.**

SECTION 4. IC 16-20-1-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 21.5. (a) This section applies only if the governor has declared an emergency under IC 10-14-3.**

(b) As used in this section, "executive order" refers to an executive order issued by the governor under IC 10-14-3.

(c) As used in this section, "legislative body" means the following:

(1) Except as provided in subdivision (2), the board of county commissioners for a county operating a county health department under IC 16-20-2 or participating 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.

(d) As used in this section, "local order" refers to the health laws, ordinances, orders, rules, and regulations of a board of health under this chapter.

(e) If a local order addresses any aspect of a declared emergency addressed by an executive order, the local order may be less stringent than the executive order to the extent permitted by the executive order.

(f) If a local order addresses any aspect of a declared emergency that is not addressed by an executive order or if a local order addresses an aspect of a declared emergency more stringently than an executive order, the local order may not take effect, or remain in effect, unless the local order is approved as follows:

(1) If the local order is issued by the health department of a county, the local order must be approved by the county legislative body.

(2) If the local health order is issued by a health department that serves multiple counties, the local order may take effect, or remain in effect, for a particular county served by the department if the legislative body of that county approves the local order.

(3) If the local order is issued by the health department of a city, the local order must be approved by an ordinance adopted by the city legislative body that is:



(A) approved by the mayor; or

(B) passed over the mayor's veto by a two-thirds (2/3) vote.

(g) A legislative body may approve a local order under subsection (f) at a meeting called to deal with an emergency as long as notice of the meeting is provided in accordance with IC 5-14-1.5-5(d).

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) **Except as provided in subsection (b),** 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.

(b) This subsection only applies to an enforcement action described in IC 16-20-5.5-2(a). A local board of health or local health officer may not file an action under subsection (a) to enforce an order, citation, or administrative notice unless the appropriate legislative body under IC 16-20-5.5-1 has authorized the local board of health or local health officer to file the action.

(c) 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.

(d) 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.



(e) 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.

However, a recipient who brings an action directly in the circuit or superior court waives the right to appeal under IC 16-20-5.5, and any appeal under IC 16-20-5.5 that is pending at the time the recipient files an action in the circuit or superior court is dismissed by operation of law.

SECTION 6. IC 16-20-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. (a) A local health officer may be removed only for ~~failure to:~~ **one (1) of the following reasons:**

(1) **A failure to** perform the officer's statutory duties. ~~or~~

(2) **A failure to** enforce the rules of the state department.

(3) **Other good cause.**

(b) Except as provided in IC 16-19-3-12, IC 16-19-3-13, and IC 16-19-3-15, a local health officer may be removed only by the board that appointed the health officer.

(c) When removal of a local health officer is sought by the appointing authority, the local health officer is entitled to the following:

(1) At least five (5) days notice.

(2) An open hearing.

(3) Representation by counsel.

SECTION 7. IC 16-20-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) All members of a local board of health shall be appointed for a term of four (4) years. **Each member serves until a successor is appointed and qualified.**

(b) Unless otherwise required by law, after December 31, 1991, the board members serve staggered terms. The appointing authority shall appoint the members of a board in existence on December 31, 1991, and the initial members of a board established after December 31, 1991, as follows:

(1) One (1) member must be appointed for one (1) year.

(2) Two (2) members must be appointed for two (2) years.

(3) Two (2) members must be appointed for three (3) years.

(4) Two (2) members must be appointed for four (4) years.

SECTION 8. IC 16-20-2-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) Each local board of health shall appoint a health officer to serve for a term of four (4) years. **The health officer serves until a successor is appointed**



and qualified. The health officer must be a licensed physician. **After June 30, 2021, the appointment of a local health officer is subject to the approval of the appropriate county legislative body. If the appropriate county legislative body fails to approve a nominated individual on two (2) separate occasions, the individual is barred from further consideration for the position.**

(b) The appointment shall be certified by the county executive and sent to the state department. The state department shall maintain a record of the certification.

(c) The health officer is eligible for reappointment.

(d) The health officer is the executive officer of the local health department and shall serve as secretary of the local board of health.

SECTION 9. IC 16-20-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A multiple county board of health shall appoint a health officer to serve for a term of four (4) years. The health officer must be a licensed physician. **After June 30, 2021, the appointment of the health officer is subject to the approval of the legislative body of each participating county. If the legislative bodies of the participating counties fail to approve the nominated individual on two (2) separate occasions, the individual is barred from further consideration for the position.**

(b) The appointment of the health officer shall be certified by the county executive of each participating county and sent to the state department for the state department's records.

(c) The health officer is eligible for reappointment **and serves until a successor is appointed and qualified.**

(d) The health officer is the executive officer of the multiple county health department and shall serve as secretary of the multiple county board of health.

SECTION 10. 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) a declared local public health emergency determined by a local health department or local health officer; or

(2) a disaster emergency declared 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 seven (7) days from the issuance of the enforcement action. Upon the proper filing of an appeal under this section by a recipient, the legislative body may stay the enforcement action 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 fifteen (15) 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 held not later than fifteen (15) days after the date that the legislative body determines to hear the appeal.

(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) Standards for evaluating an enforcement action appealed under this chapter.

(2) A procedure for consolidating appeals if there are at least two (2) appeals filed:

(A) from the same order; or

(B) involving a common question of law and fact.

(3) 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.

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



(5) The order of the proceedings.

(6) 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.

(7) 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 fifteen (15) 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.

Sec. 4. The appellant, or a representative of 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.

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

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

SECTION 11. IC 16-22-8-30, AS AMENDED BY P.L.184-2005, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 30. **(a)** The board shall appoint a director of the division of public health to serve for a term of four (4) years unless sooner removed for cause. The director is eligible for reappointment **and serves until a successor is appointed and qualified.** The director must hold a license to practice medicine in Indiana.

(b) After June 30, 2021, the appointment of the director of the division of public health is subject to the approval of the city-county council. If the city-county council fails to approve a



nominated individual on two (2) separate occasions, the individual is barred from further consideration for the position.

SECTION 12. IC 16-22-8-31, AS AMENDED BY P.L.194-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 31. (a) The director of the division of public health has the powers, functions, and duties of a local health officer.

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

(c) **This subsection only applies to an enforcement action described in section 31.5(a) of this chapter. The corporation may not file a civil action under subsection (b) to enforce an order, citation, or administrative notice unless the Marion County city-county council has authorized the corporation to file the civil action.**

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

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

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

SECTION 13. IC 16-22-8-31.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 31.3. (a) **This section applies only if the governor has declared an emergency under IC 10-14-3.**

(b) As used in this section, "executive order" refers to an executive order issued by the governor under IC 10-14-3.

(c) As used in this section, "local order" refers to the health laws, ordinances, orders, rules, and regulations issued under this chapter.

(d) If a local order addresses any aspect of a declared emergency addressed by an executive order, the local order may be less stringent than the executive order to the extent permitted by the executive order.

(e) If a local order addresses any aspect of a declared emergency that is not addressed by an executive order or if a local order



addresses an aspect of a declared emergency more stringently than an executive order, the local order may not take effect, or remain in effect, unless the order is approved by an ordinance adopted by the Marion County city-county council that is:

- (1) approved by the mayor of the consolidated city; or
- (2) passed over the mayor's veto by a two-thirds (2/3) vote.

(f) The Marion County city-county council may approve a local order under subsection (e) at a meeting called to deal with an emergency as long as notice of the meeting is provided in accordance with IC 5-14-1.5-5(d).

SECTION 14. IC 16-22-8-31.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 31.5. (a) The recipient of an enforcement action taken by the division of public health through its powers, functions, and duties described in section 31(a) of this chapter in response to:

- (1) a declared local public health emergency determined by a local health department or local health officer; or
- (2) a disaster emergency declared by the governor under IC 10-14-3-12;

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

(b) In order to appeal the enforcement action under this section, the recipient of the enforcement action must file an appeal of the enforcement action with the city-county council not later than seven (7) days from the issuance of the enforcement action. Upon the proper filing of an appeal under this section by a recipient, the city-county council may stay the enforcement action until final disposition of the appeal.

(c) The city-county council may determine whether or not to hear an appeal filed under subsection (b) and may issue a denial of an appeal at any time. If the city-county council determines to hear an appeal, the city-county council must hear the appeal at a public meeting of the city-county council held not later than fifteen (15) days after the date that the city-county council determines to hear the appeal.

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

- (1) Standards for evaluating an enforcement action appealed under this section.



(2) A procedure for consolidating appeals if there are at least two (2) appeals filed:

(A) from the same order; or

(B) involving a common question of law and fact.

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

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

(5) The order of the proceedings.

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

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

(e) The following apply unless the city-county council has, not later than fifteen (15) days after the filing of the appeal, placed the appeal on the agenda for a meeting of the city-county council:

(1) The appeal is considered denied.

(2) The city-county council 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.

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

(g) The city-county council 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 city-county council.

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

(i) If an appeal is denied by the city-county council or the city-county council rules in favor of the division of public health,



the enforcement actions under section 31 of this chapter apply.

SECTION 15. IC 16-22-8-31.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 31.7. (a) This section applies to a recipient of an enforcement action taken by the division of public health through its powers, functions, and duties described in section 31(a) of this chapter in response to:**

- (1) a declared local public health emergency determined by a local health department or local health officer; or**
- (2) a disaster emergency declared by the governor under IC 10-14-3-12.**

(b) A recipient of any enforcement action described in subsection (a) may:

- (1) appeal the enforcement action under section 31.5 of this chapter; or**
- (2) bring an action directly in the circuit or superior court.**

However, a recipient who brings an action directly in the circuit or superior court waives the right to appeal under section 31.5 of this chapter, and any appeal under section 31.5 of this chapter that is pending at the time the recipient files an action in the circuit or superior court is dismissed by operation of law.

SECTION 16. An emergency is declared for this act



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 5 — CC 2

