

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 ENROLLED ACT No. 413

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

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

SECTION 1. IC 4-21.5-2-7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:** **Sec. 7. (a) Except as provided in subsection (b), IC 4-21.5-2.5 applies to all agencies in the executive department of state government, including the administrative department.**

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

SECTION 2. IC 4-21.5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:**

Chapter 2.5. Opportunity to Correct

Sec. 1. Except as provided in sections 2 and 3 of this chapter, this chapter applies to the resolution of an alleged violation of a state rule or state statute within the jurisdiction of an agency that is discovered in an inspection conducted after June 30, 2017.

Sec. 2. This chapter does not apply:

(1) if the agency conducting the inspection determines that the alleged violation:

(A) represents intentional misconduct or an act of fraud by a responsible person or an agent of the responsible person;

(B) is not correctable within a reasonable time, as



- determined by the agency;
- (C) demonstrates, by a continuing pattern of conduct, a willful disregard by the responsible person of the person's obligation to remedy the errors after the responsible person becomes aware of the errors;
- (D) constitutes an immediate risk to:
- (i) any person;
 - (ii) the public health, safety, or welfare; or
 - (iii) the environment; or
- (E) constitutes a major violation of the agency's rules as expressly provided by the rules of the agency;
- (2) if another statute (including IC 13-30) provides a substantially similar procedure for correction of an alleged violation of a rule or state statute before the agency:
- (A) imposes a sanction on a person; or
 - (B) terminates a legal right, duty, privilege, immunity, or other legal interest of a person;
- (3) if application of this chapter to a violation would violate a federal law or regulation;
- (4) if 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;
- (5) if the alleged violation was discovered as part of the preparation of a health care licensing and certification survey by the state department of health;
- (6) if 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;
- (7) to a day care regulation under IC 12-17.2; or
- (8) to the responsibilities of the department of child services under IC 31.

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

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



or otherwise take immediate agency action.

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

- (1) visual analysis; or
- (2) performance of tests;

undertaken to evaluate the operation, use, or condition of real or personal property.

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

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

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

Sec. 7. The agency shall:

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

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

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

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

(c) A corrective plan must require the alleged violator to notify the agency within the time specified in the corrective plan that the violation has been corrected.

Sec. 9. The agency shall determine if the alleged violator has substantially corrected the violation and notify the alleged violator whether the alleged violator is in substantial compliance with the



applicable rule or state statute not more than thirty (30) days after the earlier of the date that:

- (1) the alleged violation must be corrected under the corrective plan; or
- (2) the alleged violator notifies the agency that the alleged violator has corrected the violation.

Sec. 10. If:

- (1) a corrective plan is not entered into; or
- (2) an alleged violator fails to substantially correct an alleged violation within the time specified in a corrective plan entered into under this chapter;

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

Sec. 11. The following are public records:

- (1) A corrective plan entered into under this chapter.
- (2) The results of an inspection under section 9 of this chapter.
- (3) Any corrective order described in section 10 of this chapter.

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

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).



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

