

## Health Nuisances, Public Nuisances, And Property Nuisances

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### Introduction

Often, citizens complain to the State Department of Health about nuisances of various kinds, thinking that health authorities have the power to address any offensive condition. That is not the case. The State Department of Health has authority to enforce only those laws specifically assigned to it by the Indiana General Assembly. Often the State Department of Health and local health departments have no legal authority to act. Typical of complaints that are borderline or definitely not the province of the State Department of Health are those concerning weed patches, poison ivy, mud holes, poor drainage, line fences, accumulated junk, unfenced storm water retention ponds, livestock or poultry operations, rental disputes, offensive odors, and barking dogs. These problems can be addressed by local authorities, but only if they choose to enact an ordinance concerning the issue.

State law recognizes three types of nuisance. Public health nuisances are addressed by IC 16-20-1-25, with enforcement by the local health officer. Public nuisances are addressed by IC 35-43-1-2, with enforcement by the local prosecutor. Property nuisances are addressed by IC 32-30-6, with enforcement by the aggrieved party through their personal attorney. Health officials have no authority to address public or property nuisances.

### Health Nuisances

IC 16-20-1-25 provides:

"A person shall not institute, permit, or maintain any conditions that may transmit, generate, or promote disease. A health officer, upon hearing of the existence of such unlawful conditions within the officer's jurisdiction, shall order the abatement of those conditions. The order must: be in writing if demanded; specify the conditions that may transmit disease; and name the shortest reasonable time for abatement. If a person refuses or neglects to obey an order issued under this section, the attorney representing the county of the health jurisdiction where the offense occurs shall, upon receiving the information from the health officer, institute proceedings in the courts for enforcement. An order may be enforced by injunction. If the action concerning public health is a criminal offense, a law enforcement authority with jurisdiction over the place where the offense occurred shall be notified."

IC 16-20-1-26 provides:

"A local department of health or local health officer may enforce the department's or officer's orders by an action in the circuit or superior court. In the action, the court may enforce the order by injunction. The county attorney in which a local department of health or local health officer has jurisdiction shall represent the local health department and local health officer in the action unless the county executive employs other legal counsel or the matter has been referred through law enforcement authorities to the prosecuting attorney."

Thus, upon receiving a complain regarding a possible health hazard, it is the duty of the local health officer to investigate and to order its abatement if such is warranted. If such condition is thereafter permitted to exist, the local health officer shall refer enforcement to the county attorney.

### Dwellings Unfit For Human Habitation

The law covering Dwellings Unfit for Human Habitation is IC 16-41-20

By law, a dwelling is unfit for human habitation when it is dangerous or detrimental to life or health for want of repair; defects in drainage, plumbing, lighting, ventilation or construction; infected with contagious disease; or has upon its premises an unsanitary condition that is likely to cause sickness among dwelling occupants. In such cases IC 16-41-20 applies, and the local health department has authority to order the deficiency corrected. The State Department of Health can act only if the local health department fails to.

**IC 16-41-20**

## Chapter 20. Health, Sanitation, and Safety: Dwellings Unfit for Human Habitation

**IC 16-41-20-1****Dwellings unfit for human habitation**

Sec. 1. A dwelling is unfit for human habitation when the dwelling is dangerous or detrimental to life or health because of any of the following:

- (1) Want of repair.
- (2) Defects in the drainage, plumbing, lighting, ventilation, or construction.
- (3) Infection with contagious disease.
- (4) The existence on the premises of an unsanitary condition that is likely to cause sickness among occupants of the dwelling.

*As added by P.L.2-1993, SEC.24.*

**IC 16-41-20-2****Powers of local inspectors of buildings**

Sec. 2. The inspector of buildings in a city or town may exercise all the powers granted the inspector in the following:

- (1) A city or town ordinance dealing with housing.
- (2) This chapter to boards of health.

*As added by P.L.2-1993, SEC.24.*

**IC 16-41-20-3****Exercise of powers by the state health department**

Sec. 3. The state department may not exercise a power granted in this chapter without giving to the local board of health or county health officer having jurisdiction a notice setting forth the conditions that have been certified to the state department or of which the state department has knowledge. If the local board of health or county health officer fails to act not more than three (3) days after the notice, the state department may exercise the granted powers.

*As added by P.L.2-1993, SEC.24.*

**IC 16-41-20-4****Orders to vacate dwellings**

Sec. 4. Whenever the state department, the local board of health, or county health officer determines that a dwelling is unfit for human habitation, the state department, local board of health, or county health officer may issue an order requiring all persons living in the dwelling to vacate the dwelling within not less than five (5) days and not more than fifteen (15) days. The order must mention at least one (1) reason for the order.

*As added by P.L.2-1993, SEC.24.*

**IC 16-41-20-5****Extension or revocation of orders to vacate dwellings**

Sec. 5. (a) The state department, local board of health, or county health officer that issued an order to vacate under section 4 of this chapter shall, for a good reason, extend the time within which to comply with the order.

(b) The state department, local board of health, or county health officer may revoke the order if satisfied that the danger from the dwelling has ceased to exist and that the dwelling is fit for habitation.

*As added by P.L.2-1993, SEC.24.*

**IC 16-41-20-6****Public nuisances**

Sec. 6. The state department, local board of health, or county health officer may declare a dwelling that is unfit for human habitation a public nuisance. The state department, local board of health, or county health officer may order to be removed, abated, suspended, altered, improved, or purified a dwelling, structure, excavation, business, pursuit, or thing in or about the dwelling or the dwelling's lot, or the plumbing, sewerage,

drainage, light, or ventilation of the dwelling.

*As added by P.L.2-1993, SEC.24.*

#### **IC 16-41-20-7**

##### **Orders for cleaning, repairing, or improving**

Sec. 7. The state department, local board of health, or county health officer may order purified, cleansed, disinfected, renewed, altered, repaired, or improved a dwelling, excavation, building, structure, sewer, plumbing, pipe, passage, premises, ground, or thing in or about a dwelling that is found to be unfit for human habitation or the dwelling's lot.

*As added by P.L.2-1993, SEC.24.*

#### **IC 16-41-20-8**

##### **Service of orders**

Sec. 8. An order issued under this chapter shall be served on the tenant and the owner of the dwelling or the owner's rental agent. The order may be served on a person who by contract has assumed the duty of doing the things that the order specifies to be done.

*As added by P.L.2-1993, SEC.24.*

#### **IC 16-41-20-9**

##### **Judicial review of orders**

Sec. 9. (a) A person aggrieved by an order of a local board of health or county health officer issued under this chapter may, not more than ten (10) days after the making of the order, file with the circuit or superior court a petition seeking a review of the order.

(b) The court shall hear the appeal. The court's decision is final.

*As added by P.L.2-1993, SEC.24.*

#### **IC 16-41-20-10**

##### **Appeal bonds**

Sec. 10. The person appealing to the circuit or superior court shall file with the court a bond in an amount to be fixed by the court with sureties to be approved by the judge and conditioned to pay all the costs on the appeal if the person fails to sustain the appeal or the appeal is dismissed.

*As added by P.L.2-1993, SEC.24.*

#### **IC 16-41-20-11**

##### **Review proceedings**

Sec. 11. (a) Review proceedings shall be docketed as an action between the appellant and the local board of health or county health officer and shall be tried as civil actions are tried.

(b) The:

(1) corporation counsel or the department of law in the city or town; and

(2) prosecuting attorney in cases arising outside of cities and towns and in cities and towns that do not have a department of law or any other legal representative;  
shall attend to all the proceedings on the part of the local board of health or county health officer.

(c) If no appeal is taken within the required ten (10) days, the order of the local board of health or county health officer is final and conclusive.

*As added by P.L.2-1993, SEC.24.*

#### **IC 16-41-20-12**

##### **Costs and expenses**

Sec. 12. A person who:

(1) violates this chapter; or

(2) fails to comply with an order of:

(A) the state department or the state department's authorized agents;

(B) a local board of health; or

(C) a county health officer;

is liable for all costs and expenses paid or incurred by the state department, a local board of health or the local board of health's authorized agents, or a local health officer in executing the order. This amount may be recovered in a civil action brought by the state department, the local board of health or the local board of health's authorized agents, or the county health officer, who is entitled to recover reasonable attorney's fees.  
*As added by P.L.2-1993, SEC.24.*

### **IC 16-41-20-13**

#### **Violations**

Sec. 13. (a) Except as otherwise provided, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.

*As added by P.L.2-1993, SEC.24.*

**IC 32-30-6**

## Chapter 6. Nuisance Actions

**IC 32-30-6-1****"Agricultural operation" defined**

Sec. 1. As used in this chapter, "agricultural operation" includes any facility used for the production of crops, livestock, poultry, livestock products, poultry products, or horticultural products or for growing timber.

*As added by P.L.2-2002, SEC.15.*

**IC 32-30-6-1.5****"Forestry operation" defined**

Sec. 1.5. As used in this chapter, "forestry operation" includes facilities, activities, and equipment used to plant, raise, manage, harvest, and remove trees on private land. The term includes site preparation, fertilization, pest control, and wildlife management.

*As added by P.L.82-2005, SEC.2.*

**IC 32-30-6-2****"Industrial operation" defined**

Sec. 2. As added used in this chapter, "industrial operation" includes any facility used for the:

- (1) manufacture of a product from other products;
- (2) transformation of a material from one (1) form to another;
- (3) mining of a material and related mine activities; or
- (4) storage or disposition of a product or material.

*As added by P.L.2-2002, SEC.15.*

**IC 32-30-6-3****"Locality" defined**

Sec. 3. As used in this chapter, "locality" means the following:

- (1) For purposes of section 9 of this chapter, the specific area of land upon which an:

- (A) agricultural operation; or
- (B) industrial operation;

is conducted.

- (2) For purposes of section 10 of this chapter, the following:

- (A) The specific area of land upon which a public use airport operation is conducted.
- (B) The airport imaginary surfaces as described in IC 8-21-10-8.

- (3) For purposes of section 11 of this chapter, the specific area of land upon which a forestry operation is conducted.

*As added by P.L.2-2002, SEC.15. Amended by P.L.82-2005, SEC.3.*

**IC 32-30-6-4****"Public use airport operation" defined**

Sec. 4. As used in this chapter, "public use airport operation" includes any facility used as a public use airport for the landing, take

off, storage, or repair of aircraft.

*As added by P.L.2-2002, SEC.15.*

**IC 32-30-6-5****"Vicinity of the locality" defined**

Sec. 5. As used in this chapter, "vicinity of the locality" means the following:

- (1) Three (3) miles from the locality (as defined in section 3(2) of this chapter) of a public use airport operation that serves regularly scheduled air carrier or military turbojet aircraft.

- (2) One and one-half (1.5) miles from the locality of a public use airport operation that does not serve regularly scheduled air carrier or military turbojet aircraft.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-6-6**

#### **Nuisance described and considered subject to an action**

Sec. 6. Whatever is:

- (1) injurious to health;
- (2) indecent;
- (3) offensive to the senses; or
- (4) an obstruction to the free use of property;

so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-6-7**

#### **Nuisance actions; plaintiffs; attorney's fees in certain actions**

Sec. 7. (a) An action to abate or enjoin a nuisance may be brought by any person whose:

- (1) property is injuriously affected; or
- (2) personal enjoyment is lessened;

by the nuisance.

(b) A civil action to abate or enjoin a nuisance may also be brought by:

- (1) an attorney representing the county in which a nuisance exists; or
- (2) the attorney of any city or town in which a nuisance exists.

(c) A county, city, or town that brings a successful action under this section (or IC 34-1-52-2 or IC 34-19-1-2 before their repeal) to abate or enjoin a nuisance caused by the unlawful dumping of solid waste is entitled to recover reasonable attorney's fees incurred in bringing the action.

(d) A forestry operation that successfully defends an action under this section is entitled to reasonable costs and attorney's fees incurred in defending the action.

*As added by P.L.2-2002, SEC.15. Amended by P.L.82-2005, SEC.4.*

### **IC 32-30-6-8**

#### **Nuisance action; remedies**

Sec. 8. If a proper case is made, the nuisance may be enjoined or abated and damages recovered for the nuisance.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-6-9**

#### **Agricultural and industrial operations; findings; continuity of operations; circumstances in which nuisance does not exist**

Sec. 9. (a) This section does not apply if a nuisance results from the negligent operation of an agricultural or industrial operation or its appurtenances.

(b) The general assembly declares that it is the policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of this section to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

(c) For purposes of this section, the continuity of an agricultural or industrial operation shall be considered to have been interrupted when the operation has been discontinued for more than one (1) year.

(d) An agricultural or industrial operation or any of its appurtenances is not and does not become a nuisance, private or public, by any changed conditions in the vicinity of the locality after the agricultural or industrial operation, as the case may be, has been in operation continuously on the locality for more than one (1) year if the following conditions exist:

(1) There is no significant change in the type of operation. A significant change in the type of agricultural operation does not include the following:

- (A) The conversion from one type of agricultural operation to another type of agricultural operation.
- (B) A change in the ownership or size of the agricultural operation.
- (C) The:
  - (i) enrollment; or
  - (ii) reduction or cessation of participation; of the agricultural operation in a government program.
- (D) Adoption of new technology by the agricultural operation.

(2) The operation would not have been a nuisance at the time the agricultural or industrial operation began on that locality.

*As added by P.L.2-2002, SEC.15. Amended by P.L.23-2005, SEC.1.*

### **IC 32-30-6-10**

#### **Public use airport operation; purpose; circumstances in which nuisance does not exist; negligent operations**

Sec. 10. (a) This section does not apply if a nuisance results from the negligent operation of a public use airport operation or the operation's appurtenances.

(b) It is the purpose of this section to limit the circumstances under which a public use airport operation may be a nuisance in order to reduce the potential for the state to lose the benefits to the state's air transportation system that are provided by public use airports.

(c) A public use airport operation or any of the operation's appurtenances may not become a private or public nuisance by any changed condition in the vicinity of the locality that occurs after the public use airport operation operates continuously on the locality for more than one (1) year if the following conditions are met:

(1) The public use airport operation was not a nuisance at the time when the operation began operating at that locality.

(2) The public use airport operation is operated in accordance with the rules of the Indiana department of transportation, aeronautics section.

(3) There is no significant change in the hours of operation of the public use airport operation.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-6-11**

#### **Continuous forestry operation; circumstances under which forestry operation not a nuisance**

Sec. 11. (a) This section does not apply if a nuisance results from the negligent operation of a forestry operation.

(b) For purposes of subsection (d), a forestry operation is considered to be in continuous operation if the locality supports an actual or a developing timber crop.

(c) A forestry operation that:

(1) existed before a change in the land use or occupancy of land within one (1) mile of the boundaries of the locality; and

(2) would not have been a nuisance before the change in land use or occupancy; is not a private or public nuisance.

(d) A forestry operation that conforms to generally accepted forestry management practices and that has been in continuous operation is not a private or public nuisance as a result of any of the following:

- (1) A change in the ownership or size of the forestry operation.
- (2) Enrollment in a government forestry conservation program.
- (3) Use of new forestry technology.
- (4) A visual change due to removal of timber or vegetation.
- (5) Normal noise from forestry equipment.
- (6) Removal of timber or vegetation from a forest adjoining the locality.
- (7) The proper application of pesticides and fertilizers.

*As added by P.L.82-2005, SEC.5.*

**IC 35-43-1-2****Criminal mischief; penalties**

Sec. 2. (a) A person who:

(1) recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent; or

(2) knowingly or intentionally causes another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person; commits criminal mischief, a Class B misdemeanor. However, the offense is:

(A) a Class A misdemeanor if:

(i) the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500);

(ii) the property damaged was a moving motor vehicle;

(iii) the property damaged or defaced was a copy of the sex and violent offender directory (IC 5-2-6-3) and the person is not a sex offender or was not required to register as a sex offender;

(iv) the property damaged was a locomotive, a railroad car, a train, or equipment of a railroad company being operated on a railroad right-of-way;

(v) the property damaged was a part of any railroad signal system, train control system, centralized dispatching system, or highway railroad grade crossing warning signal on a railroad right-of-way owned, leased, or operated by a railroad company;

(vi) the property damaged was any rail, switch, roadbed, viaduct, bridge, trestle, culvert, or embankment on a right-of-way owned, leased, or operated by a railroad company; or

(vii) the property damage or defacement was caused by paint or other markings; and

(B) a Class D felony if:

(i) the pecuniary loss is at least two thousand five hundred dollars (\$2,500);

(ii) the damage causes a substantial interruption or impairment of utility service rendered to the public;

(iii) the damage is to a public record;

(iv) the property damaged or defaced was a copy of the sex and violent offender directory (IC 5-2-6-3) and the person is a sex offender or was required to register as a sex offender;

(v) the damage causes substantial interruption or impairment of work conducted in a scientific research facility;

(vi) the damage is to a law enforcement animal (as defined in IC 35-46-3-4.5); or

(vii) the damage causes substantial interruption or impairment of work conducted in a food processing facility.

(b) A person who recklessly, knowingly, or intentionally damages:

(1) a structure used for religious worship;

(2) a school or community center;

(3) the grounds:

(A) adjacent to; and

(B) owned or rented in common with;

a structure or facility identified in subdivision (1) or (2); or

(4) personal property contained in a structure or located at a facility identified in subdivision (1) or (2);

without the consent of the owner, possessor, or occupant of the property that is damaged, commits institutional criminal mischief, a Class A misdemeanor. However, the offense is a Class D felony if the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500), and a Class C felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).

(c) If a person is convicted of an offense under this section that involves the use of graffiti, the court may, in addition to any other penalty, order that the person's operator's license be suspended or invalidated by the bureau of motor vehicles for not more than one (1) year.

(d) The court may rescind an order for suspension or invalidation under subsection (c) and allow the person to receive a license or permit before the period of suspension or invalidation ends if the court determines that:

(1) the person has removed or painted over the graffiti or has made other suitable restitution; and

(2) the person who owns the property damaged or defaced by the criminal mischief or institutional criminal



mischief is satisfied with the removal, painting, or other restitution performed by the person.

*As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.41; P.L.326-1983, SEC.1; P.L.319-1985, SEC.1; P.L.151-1989, SEC.11; P.L.180-1991, SEC.6; P.L.94-1996, SEC.5; P.L.213-1997, SEC.1; P.L.100-1999, SEC.2; P.L.108-2002, SEC.1; P.L.116-2002, SEC.24; P.L.123-2002, SEC.37; P.L.1-2003, SEC.95.*