

House File 410 - Introduced

HOUSE FILE 410

BY STAED, HUNTER, and GAINES

A BILL FOR

1 An Act relating to the regulation of objectionable odors and
2 providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 136.3, Code 2019, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 13. Hear appeals of compliance orders
4 issued by the director pursuant to chapter 136E and affirm,
5 modify, or vacate such orders.

6 Sec. 2. NEW SECTION. 136E.1 **Definitions.**

7 As used in this chapter, unless the context otherwise
8 requires:

9 1. "*County health department*" means the same as in section
10 137.102.

11 2. "*Scent-detecting device*" means a device in which an
12 air sample is diluted with odor-free air and such mixture is
13 directed to a trained inspector's nasal passages.

14 Sec. 3. NEW SECTION. 136E.2 **Odor regulation — procedure.**

15 1. A person shall not allow an objectionable odor to emit
16 from the person's property.

17 2. The department shall be responsible for investigating
18 complaints into objectionable odors and enforcing compliance
19 orders to suppress objectionable odors.

20 3. For purposes of this chapter and pursuant to criteria
21 provided in subsection 6 of this section, an odor is
22 objectionable if it unreasonably interferes with the proper
23 enjoyment of life or the proper use of property of others. The
24 odor must be detectable, distinct from other background odors,
25 and specific to a particular source. The duration of the odor
26 must be of a sufficiently long duration to interfere with the
27 activities at the property of a complainant.

28 4. When a complaint is filed with the department, the
29 department shall notify the relevant county health department.
30 The department or a county health department shall send
31 necessary personnel to the site of the complaint as soon as
32 possible to sample the air.

33 5. The department or a responding county health department
34 shall have staff members trained in the operation and use of a
35 scent-detecting device.

1 6. a. The department or a responding county health
2 department shall use all of the following criteria, as
3 applicable, to determine if an odor is objectionable for
4 purposes of this chapter:

5 (1) On or adjacent to a residential, recreational,
6 institutional, retail sales, hotel, or educational property,
7 the odor is detectable using a scent-detecting device when the
8 sample is diluted with odor-free air eight times the volume of
9 the sample.

10 (2) On or adjacent to an industrial property, the odor is
11 detectable using a scent-detecting device when the sample is
12 diluted with odor-free air twenty-four times the volume of the
13 sample.

14 (3) On or adjacent to properties not included in paragraph
15 "a" or "b", the odor is detectable using a scent-detecting
16 device when the sample is diluted with odor-free air sixteen
17 times the volume of the sample.

18 b. An odor is objectionable if at least two out of three
19 inspectors trained in using a scent-detecting device shall
20 agree within a one-hour period and at intervals of not
21 less than fifteen minutes that an odor properly diluted is
22 detectable at levels at or greater than those provided in
23 paragraph "a".

24 7. A sample taken pursuant to this section shall be taken
25 at or within the property line from which the complaint was
26 received or at or near places where people live or work.

27 **Sec. 4. NEW SECTION. 136E.3 Enforcement - civil penalty —**
28 **civil action not precluded.**

29 1. The director may issue any order necessary to secure
30 compliance with or prevent a violation of the provisions of
31 this chapter or any rule adopted or permit or order issued
32 pursuant to this chapter. The person to whom such compliance
33 order is issued may cause to be commenced a contested case
34 within the meaning of chapter 17A by filing within thirty days
35 a notice of appeal to the state board of health. On appeal, the

1 board may affirm, modify, or vacate the order of the director.

2 2. The department shall assess a civil penalty of ten
3 thousand dollars per day for each day a violation of terms set
4 forth in a compliance order occurs.

5 3. Enforcement against an objectionable odor shall not
6 preclude a person from proceeding in a civil action pursuant
7 to chapter 657.

8 Sec. 5. NEW SECTION. 136E.4 Rulemaking authority.

9 The department shall adopt rules pursuant to chapter 17A to
10 administer this chapter.

11 EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 This bill creates an administrative system to regulate
15 objectionable odors. The bill places responsibility for
16 investigating odor complaints and enforcing compliance orders
17 with the department of public health. The department or a
18 county health department shall respond to a complaint and
19 use a scent-detecting device to determine whether an odor
20 is objectionable. After the department or a county health
21 department determines that an odor is objectionable, the
22 department may issue a compliance order. A person may appeal
23 the issuance of a compliance order to the state board of
24 health. A violation of the terms of a compliance order is
25 punishable by a civil penalty of \$10,000 per day for each
26 day a violation occurs. Enforcement under the bill does not
27 preclude a person from proceeding in a nuisance action for the
28 objectionable odor. The bill requires the department to adopt
29 rules to administer provisions of the bill.