

SENATE BILL No. 412

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8.1-3-21.2; IC 22-1-1-22; IC 22-3; IC 22-4.1-4-4.

Synopsis: Improper worker classification. Authorizes the department of state revenue, the department of labor, the worker's compensation board, and the department of workforce development to issue subpoenas for the attendance of witnesses and the production of records and to question witnesses under oath when conducting an investigation of any suspected improper worker classification by a construction contractor. Allows the worker's compensation board to issue a stop work order as an additional remedy against an employer that does not have the required insurance and has not furnished satisfactory proof of self-insurance. Provides that service of a stop work order on a work site is effective as to the employer's operations on that work site, and that service of a stop work order on an employer is effective as to all of the employer's work sites where the employer has not complied with the insurance or self-insurance requirements. Provides a civil penalty of \$1,000 for each day an employer violates a stop work order.

Effective: July 1, 2014.

Mrvan

January 14, 2014, read first time and referred to Committee on Pensions and Labor.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 412

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

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

1 SECTION 1. IC 6-8.1-3-21.2, AS ADDED BY P.L.164-2009,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 21.2. (a) This section applies after December 31,
4 2009.
5 (b) As used in this section, "contractor" means:
6 (1) a sole proprietor;
7 (2) a partnership;
8 (3) a firm;
9 (4) a corporation;
10 (5) a limited liability company;
11 (6) an association; or
12 (7) another legal entity;
13 that engages in construction and is authorized by law to do business in
14 Indiana. The term includes a general contractor, a subcontractor, and
15 a lower tiered contractor. The term does not include the state, the
16 federal government, or a political subdivision.



1 (c) The department shall cooperate with the:

2 (1) department of labor created by IC 22-1-1-1;

3 (2) worker's compensation board of Indiana created by
4 IC 22-3-1-1(a); and

5 (3) department of workforce development established by
6 IC 22-4.1-2-1;

7 by sharing information concerning any suspected improper
8 classification by a contractor of an individual as an independent
9 contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

10 (d) For purposes of IC 5-14-3-4, information shared under this
11 section is confidential, may not be published, and is not open to public
12 inspection.

13 (e) An officer or employee of the department who knowingly or
14 intentionally discloses information that is confidential under this
15 section commits a Class A misdemeanor.

16 **(f) For purposes of conducting an investigation of any suspected**
17 **improper classification by a contractor based on information**
18 **shared under this section, the department has the authority to do**
19 **the following as necessary:**

20 **(1) Issue and serve subpoenas that compel the attendance of**
21 **witnesses and the production of books, papers,**
22 **correspondence, memoranda, and other records.**

23 **(2) Question witnesses under oath.**

24 **The department may enforce its authority under this section as**
25 **provided in section 12 of this chapter.**

26 SECTION 2. IC 22-1-1-22, AS ADDED BY P.L.164-2009,
27 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2014]: Sec. 22. (a) This section applies after December 31,
29 2009.

30 (b) As used in this section, "contractor" means:

31 (1) a sole proprietor;

32 (2) a partnership;

33 (3) a firm;

34 (4) a corporation;

35 (5) a limited liability company;

36 (6) an association; or

37 (7) another legal entity;

38 that engages in construction and is authorized by law to do business in
39 Indiana. The term includes a general contractor, a subcontractor, and
40 a lower tiered contractor. The term does not include the state, the
41 federal government, or a political subdivision.

42 (c) The department of labor shall cooperate with the:



- 1 (1) department of workforce development established by
 2 IC 22-4.1-2-1;
 3 (2) department of state revenue established by IC 6-8.1-2-1; and
 4 (3) worker's compensation board of Indiana created by
 5 IC 22-3-1-1(a);

6 by sharing information concerning any suspected improper
 7 classification by a contractor of an individual as an independent
 8 contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

9 (d) For purposes of IC 5-14-3-4, information shared under this
 10 section is confidential, may not be published, and is not open to public
 11 inspection.

12 (e) An officer or employee of the department of labor who
 13 knowingly or intentionally discloses information that is confidential
 14 under this section commits a Class A misdemeanor.

15 **(f) For purposes of conducting an investigation of any suspected**
 16 **improper classification by a contractor based on information**
 17 **shared under this section, the department of labor has the**
 18 **authority to do the following as necessary:**

- 19 (1) **Issue and serve subpoenas that compel the attendance of**
 20 **witnesses and the production of books, papers,**
 21 **correspondence, memoranda, and other records.**
 22 (2) **Question witnesses under oath.**

23 **The department of labor may enforce its authority under this**
 24 **section as provided in section 17 of this chapter.**

25 SECTION 3. IC 22-3-1-5, AS ADDED BY P.L.164-2009,
 26 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2014]: Sec. 5. (a) This section applies after December 31,
 28 2009.

29 (b) As used in this section, "contractor" means:

- 30 (1) a sole proprietor;
 31 (2) a partnership;
 32 (3) a firm;
 33 (4) a corporation;
 34 (5) a limited liability company;
 35 (6) an association; or
 36 (7) another legal entity;

37 that engages in construction and is authorized by law to do business in
 38 Indiana. The term includes a general contractor, a subcontractor, and
 39 a lower tiered contractor. The term does not include the state, the
 40 federal government, or a political subdivision.

41 (c) The worker's compensation board of Indiana shall cooperate with
 42 the:



- 1 (1) department of state revenue established by IC 6-8.1-2-1;
 2 (2) department of labor created by IC 22-1-1-1; and
 3 (3) department of workforce development established by
 4 IC 22-4.1-2-1;

5 by sharing information concerning any suspected improper
 6 classification by a contractor of an individual as an independent
 7 contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

8 (d) For purposes of IC 5-14-3-4, information shared under this
 9 section is confidential, may not be published, and is not open to public
 10 inspection.

11 (e) An officer or employee of the worker's compensation board of
 12 Indiana who knowingly or intentionally discloses information that is
 13 confidential under this section commits a Class A misdemeanor.

14 **(f) For purposes of conducting an investigation of any suspected**
 15 **improper classification by a contractor based on information**
 16 **shared under this section, the worker's compensation board of**
 17 **Indiana has the authority to do the following as necessary:**

- 18 (1) Issue and serve subpoenas that compel the attendance of
 19 witnesses and the production of books, papers,
 20 correspondence, memoranda, and other records.

- 21 (2) Question witnesses under oath.

22 **The worker's compensation board of Indiana may enforce its**
 23 **authority under this section as provided in IC 22-3-4-2 and**
 24 **IC 22-3-7-24.**

25 SECTION 4. IC 22-3-5-2.8 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2014]: **Sec. 2.8. (a) In addition to any other penalties provided by**
 28 **this article, an employer that fails to comply with IC 22-3-2-5 and**
 29 **section 1 of this chapter may be subject to a stop work order issued**
 30 **under this section.**

31 **(b) If the worker's compensation board determines after an**
 32 **investigation that an employer has failed to comply with**
 33 **IC 22-3-2-5 and section 1 of this chapter, the worker's**
 34 **compensation board may issue a stop work order against the**
 35 **employer requiring the cessation of business operations. Service of**
 36 **the stop work order must comply with subsection (c).**

37 **(c) When a stop work order is served on a work site by posting**
 38 **a copy of the stop work order in a conspicuous location at the work**
 39 **site, the stop work order is effective as to the employer's operations**
 40 **on that work site. When a stop work order is served on the**
 41 **employer, the stop work order is effective as to all of the**
 42 **employer's work sites for which the employer is not in compliance**



1 with IC 22-3-2-5 and section 1 of this chapter. The business
2 operations of the employer must cease immediately upon service of
3 the stop work order. The order remains in effect until the worker's
4 compensation board issues:

- 5 (1) an order releasing the stop work order upon a finding that
6 the employer has complied with IC 22-3-2-5 and section 1 of
7 this chapter and has paid any premiums, penalties, and
8 interest assessed under this article against the employer; or
9 (2) an order of conditional release under subsection (g).

10 (d) An employer that violates a stop work order issued under
11 this section is subject to a civil penalty not to exceed one thousand
12 dollars (\$1,000) for each day the employer does not comply with
13 the stop work order. Civil penalties collected under this section
14 shall be deposited in the worker's compensation supplemental
15 administrative fund established by section 6 of this chapter.

16 (e) An employer may request that the worker's compensation
17 board reconsider a stop work order issued under this section
18 against the employer. The employer's request must be in writing
19 and filed with the worker's compensation board not later than ten
20 (10) days after the date the employer receives the stop work order.
21 The worker's compensation board shall complete the
22 reconsideration not later than ten (10) days after the date the
23 worker's compensation board receives the request from the
24 employer. If the worker's compensation board affirms the issuance
25 of the stop work order, the employer has the remedies prescribed
26 under IC 4-21.5.

27 (f) A stop work order remains in effect during the period of
28 reconsideration or appeal, unless the employer furnishes to the
29 worker's compensation board a cash deposit or bond in the amount
30 that is the greater of:

- 31 (1) five thousand dollars (\$5,000); or
32 (2) one thousand dollars (\$1,000) per worker covered by this
33 article.

34 If there is a final order affirming the stop work order, the
35 employer's bond or cash deposit is applied to the premium,
36 penalties, and interest assessed under this article against the
37 employer.

38 (g) The worker's compensation board may issue an order of
39 conditional release from the stop work order if the employer
40 complies with IC 22-3-2-5 and section 1 of this chapter and agrees
41 to pay the premiums, penalties, and interest assessed under this
42 article against the employer using a payment schedule. If the terms



1 of the payment schedule are not met, the stop work order may be
 2 reinstated, and the employer's unpaid premium, penalty, and
 3 interest balance becomes due.

4 (h) A stop work order and penalties assessed under this section
 5 remain in effect against a successor corporation or business entity:

6 (1) that has one (1) or more of the same principals or officers
 7 as the employer against which a stop work order was issued;
 8 and

9 (2) that is engaged in the same or equivalent trade or activity.

10 (i) The worker's compensation board may adopt rules under
 11 IC 4-22-2 to administer this section.

12 SECTION 5. IC 22-3-5-6, AS AMENDED BY P.L.168-2011,
 13 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2014]: Sec. 6. (a) The worker's compensation supplemental
 15 administrative fund is established for the purpose of carrying out the
 16 administrative purposes and functions of the worker's compensation
 17 board.

18 (b) The fund consists of:

19 (1) fees collected from employers under sections 1 through 2 of
 20 this chapter;

21 (2) fees collected under IC 22-3-2-14.5, IC 22-3-3-5(d),
 22 IC 22-3-7-17(g), and IC 22-3-7-34.5; and

23 (3) civil penalties assessed under IC 22-3-4-15, ~~section sections~~
 24 2.5 and 2.8 of this chapter, and IC 22-3-7-34.3.

25 (c) The fund shall be administered by the worker's compensation
 26 board. Money in the fund is annually appropriated to the worker's
 27 compensation board and shall be used for all expenses incurred by the
 28 worker's compensation board.

29 (d) The money in the fund is not to be used to replace funds
 30 otherwise appropriated to the board. Money in the fund at the end of
 31 the state fiscal year does not revert to the state general fund.

32 SECTION 6. IC 22-4.1-4-4, AS ADDED BY P.L.164-2009,
 33 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2014]: Sec. 4. (a) This section applies after December 31,
 35 2009.

36 (b) As used in this section, "contractor" means:

37 (1) a sole proprietor;

38 (2) a partnership;

39 (3) a firm;

40 (4) a corporation;

41 (5) a limited liability company;

42 (6) an association; or



1 (7) another legal entity;
 2 that engages in construction and is authorized by law to do business in
 3 Indiana. The term includes a general contractor, a subcontractor, and
 4 a lower tiered contractor. The term does not include the state, the
 5 federal government, or a political subdivision.

6 (c) The department shall cooperate with the:

7 (1) department of labor created by IC 22-1-1-1;

8 (2) department of state revenue established by IC 6-8.1-2-1; and

9 (3) worker's compensation board of Indiana created by
 10 IC 22-3-1-1(a);

11 by sharing information concerning any suspected improper
 12 classification by a contractor of an individual as an independent
 13 contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

14 (d) For purposes of IC 5-14-3-4, information shared under this
 15 section is confidential, may not be published, and is not open to public
 16 inspection.

17 (e) An officer or employee of the department who knowingly or
 18 intentionally discloses information that is confidential under this
 19 section commits a Class A misdemeanor.

20 **(f) For purposes of conducting an investigation of any suspected**
 21 **improper classification by a contractor based on information**
 22 **shared under this section, the department has the authority to do**
 23 **the following as necessary:**

24 (1) Issue and serve subpoenas that compel the attendance of
 25 witnesses and the production of books, papers,
 26 correspondence, memoranda, and other records.

27 (2) Question witnesses under oath.

28 **The department may enforce its authority under this section as**
 29 **provided in IC 22-4-19-7, IC 22-4-19-8, and IC 22-4-34-5.**

