

# SENATE BILL No. 212

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-2-17.

**Synopsis:** Employee work schedules. Requires an employer that owns or operates at least one retail sales establishment in Indiana and employs 15 or more employees to provide each newly hired employee with a good faith estimate in writing of: (1) the minimum number of scheduled shifts that the employee may expect per month; and (2) the hours and days that the shifts generally will be scheduled. Provides that the employer is not bound by the estimate. Provides that an employee may request a modification of the employee's schedule. Requires the employer to consider the employee's requested modification, and at the employer's discretion, accept or reject the request. Requires an employer to offer part-time employees additional hours before hiring additional part-time employees. Requires an employer to provide notice to employees of the schedule of the hours and days of work, including on-call shifts, at least 14 days before the schedule's start date. Provides that whenever an employer changes a schedule after giving the 14 day notice, the employer must provide notice of the change and pay compensation to the affected employee depending on how much notice is given. Requires an employer to pay compensation to an employee for each on-call shift for which the employee is required to be available, but is not called in for work. Provides additional compensation for a split shift. Provides for exceptions to payment of compensation for schedule changes. Provides that an employer or any other person may not interfere with, restrain, or deny an employee's exercise of or attempt to exercise these rights. Provides that an employer may not take any adverse employment action against an employee for exercising the employee's rights. Establishes a procedure for the commissioner of the department of labor to investigate and enforce violations of these rights.

**Effective:** July 1, 2016.

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January 6, 2016, read first time and referred to Committee on Pensions & Labor.

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Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

# SENATE BILL No. 212

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 22-2-17 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2016]:

4 **Chapter 17. Employee Work Schedules**

5 **Sec. 1. (a) This chapter applies to an employer that:**

6 (1) owns or operates at least one (1) retail sales establishment  
7 in Indiana; and

8 (2) employs fifteen (15) or more employees.

9 (b) This chapter does not apply to the federal government, the  
10 state, a political subdivision (as defined in IC 36-1-2-13), or a  
11 nonprofit corporation.

12 **Sec. 2. As used in this chapter, "commissioner" means the**  
13 **commissioner of labor appointed under IC 22-1-1-2, or the**  
14 **commissioner's authorized representative.**

15 **Sec. 3. As used in this chapter, "department" refers to the**  
16 **Indiana department of labor created by IC 22-1-1-1.**

17 **Sec. 4. As used in this chapter, "employee" means an individual**



1 who works directly in the service of a person under an express or  
2 implied contract of hire.

3 **Sec. 5.** As used in this chapter, "employer" means a person that  
4 owns or operates ten (10) or more retail sales establishments  
5 worldwide.

6 **Sec. 6.** As used in this chapter, "on-call shift" refers to a shift in  
7 which an employee learns less than twenty-four (24) hours before  
8 the shift is scheduled to start whether the employer requires the  
9 employee to report for work. The term applies without regard to  
10 whether the employer contacts the employee or the employee  
11 contacts the employer regarding the shift.

12 **Sec. 7.** As used in this chapter, "part-time" means a schedule for  
13 an employee in which the work hours total thirty-five (35) hours or  
14 less in a week.

15 **Sec. 8.** As used in this chapter, "retail sales establishment"  
16 refers to a business site or location where goods or services are  
17 offered for sale or are sold to consumers. The term includes a food  
18 service establishment (as defined in IC 16-31-9-1).

19 **Sec. 9.** As used in this chapter, "shift" means a scheduled period  
20 of time for work or duty.

21 **Sec. 10.** As used in this chapter, "split shift" refers to a shift  
22 during which the hours worked are not consecutive. The term does  
23 not apply to a shift in which the total time taken for meals during  
24 the shift does not exceed one (1) hour.

25 **Sec. 11. (a)** In determining the number of employees employed  
26 by an employer for purposes of this chapter, the following  
27 individuals must be included as employees:

28 (1) Corporate officers.

29 (2) All workers employed on a full-time, part-time,  
30 temporary, intermittent, or hourly basis.

31 (3) Workers hired through temporary staffing services or  
32 other sources if the employer exerts control over the workers'  
33 wages, hours, or working conditions.

34 (4) All workers in all locations owned or operated under the  
35 same trade name.

36 (b) If the number of employees fluctuates during a calendar  
37 year because of climatic conditions or the seasonal nature of the  
38 goods or services offered for sale, then a calendar year average  
39 may be used to determine the number of employees.

40 **Sec. 12. (a)** Before a newly hired employee begins employment,  
41 an employer shall provide the employee with a good faith estimate  
42 in writing of:



1 (1) the minimum number of scheduled shifts that the  
2 employee may expect per month; and

3 (2) the hours and days that the shifts generally will be  
4 scheduled.

5 (b) The estimate required under subsection (a) does not include  
6 on-call shifts. However, the employer shall notify the employee as  
7 to whether the employee's schedule will include on-call shifts.

8 (c) The estimate required under subsection (a) is not an offer for  
9 a contract or a contract for employment. The employer is not  
10 bound by the estimate.

11 (d) After receiving the estimate required under subsection (a)  
12 and before beginning employment, a newly hired employee may  
13 request a modification of the employee's schedule. The employer  
14 shall consider the employee's requested modification, and the  
15 employer, at the employer's discretion, may accept or reject the  
16 requested modification. The employer shall notify the employee of  
17 the employer's decision before the time the employee starts  
18 employment.

19 Sec. 13. (a) At any time after an employee begins employment,  
20 the employee may apply to the employer to change the terms and  
21 conditions of the employee's employment related to:

22 (1) the number of hours worked;

23 (2) the number of on-call shifts scheduled;

24 (3) the times of work;

25 (4) the location of work; and

26 (5) minimizing fluctuations in the number of hours worked.

27 (b) An employer shall engage in a timely, good faith, interactive  
28 discussion with the employee regarding the employee's request  
29 under subsection (a).

30 Sec. 14. In order to encourage full-time work schedules, an  
31 employer shall offer part-time employees additional hours before  
32 hiring additional part-time employees.

33 Sec. 15. (a) At least fourteen (14) days in advance of a schedule's  
34 start date, an employer shall provide to each employee shown on  
35 the schedule notice of the hours and days of work of all employees  
36 on the schedule.

37 (b) The notice required under subsection (a) must be given by  
38 either or both of the following methods:

39 (1) Posting the schedule in a conspicuous place readily  
40 accessible to all employees in the area where employees are  
41 employed.

42 (2) Transmitting the schedule in an electronic format.



1 (c) The schedule described in subsection (a) must include all  
2 on-call shifts, if applicable.

3 (d) If an employer changes a schedule after giving the notice  
4 required under subsection (a), the changes are subject to the notice  
5 and compensation requirements described in section 17 of this  
6 chapter.

7 **Sec. 16. (a)** An employer shall provide an employee with a notice  
8 of any change to the employee's schedule after the notice provided  
9 under section 15 of this chapter.

10 (b) The notice required under subsection (a) must be given in  
11 person, by telephone, or in an electronic format.

12 (c) The notice requirement under subsection (a) does not apply  
13 to schedule changes requested by the employee, including sick  
14 leave, time off, shift trades, and added shifts.

15 **Sec. 17. (a)** This section does not apply to on-call shifts.

16 (b) This section applies whenever any of the following occur  
17 after the notice provided under section 15 of this chapter:

18 (1) An employer moves or cancels a previously scheduled  
19 shift.

20 (2) An employee reports to work for a previously scheduled  
21 shift and works less than four (4) hours.

22 (3) An employer requires an employee to work a shift that the  
23 employee was not previously scheduled to work.

24 (c) An employer shall provide the following compensation to an  
25 employee in a situation described in subsection (b):

26 (1) Whenever an employer provides less than seven (7) days  
27 notice, but more than twenty-four (24) hours notice in a  
28 situation described in subsection (b), two (2) hours of  
29 compensation at the greater of:

30 (A) the employee's regular hourly rate; or

31 (B) Indiana's minimum hourly wage as determined under  
32 IC 22-2-2.

33 (2) Whenever an employer provides less than twenty-four (24)  
34 hours notice in a situation described in subsection (b) and the  
35 shift is less than four (4) hours, two (2) hours of compensation  
36 at the greater of:

37 (A) the employee's regular hourly rate; or

38 (B) Indiana's minimum hourly wage as determined under  
39 IC 22-2-2.

40 (3) Whenever an employer provides less than twenty-four (24)  
41 hours notice in a situation described in subsection (b) and the  
42 shift is four (4) hours or more, four (4) hours of compensation



1           at the greater of:

2           (A) the employee's regular hourly rate; or

3           (B) Indiana's minimum hourly wage as determined under  
4           IC 22-2-2.

5           (d) When an employer requires an employee to work in a  
6           situation described in subsection (b)(3), the compensation paid to  
7           the employee under this section is in addition to the employee's  
8           regular pay for the shift.

9           Sec. 18. (a) This section applies to on-call shifts.

10          (b) This section does not apply if:

11           (1) an employee is actually called in for the shift; or

12           (2) the employer gives at least twenty-four (24) hours notice  
13           that the shift is canceled or moved.

14          (c) An employer shall provide the following compensation to an  
15          employee for each on-call shift for which the employee is required  
16          to be available but is not called in for work:

17           (1) For each on-call shift scheduled for less than four (4)  
18           hours, two (2) hours of compensation at the employee's  
19           regular hourly rate.

20           (2) For each on-call shift scheduled for four (4) hours or more,  
21           four (4) hours of compensation at the employee's regular  
22           hourly rate.

23          Sec. 19. For each day in which an employee works a split shift,  
24          the employer shall compensate the employee one (1) additional  
25          hour of pay at the employee's regular hourly rate.

26          Sec. 20. (a) An employer is not required to pay the compensation  
27          described in sections 17 through 19 of this chapter whenever  
28          operations at a retail sales establishment cannot begin or continue  
29          because of any of the following circumstances:

30           (1) Threats exist to the employees or to the property on which  
31           the retail sales establishment is located, or civil authorities  
32           recommend that operations not begin or continue.

33           (2) Public utilities, including electricity, water, gas, or sewers,  
34           fail.

35           (3) An act of God or other circumstance not within the  
36           employer's control occurs, such as an earthquake, a flood, a  
37           fire, snow, ice, or a declared state of emergency.

38          (b) An employer is not required to pay the compensation  
39          described in sections 17 through 19 of this chapter whenever any  
40          of the following occur:

41           (1) Another employee previously scheduled to work has not  
42           reported to work, has been fired, or has been sent home.



1           (2) The employee trades a shift with another employee.

2           (3) The employee requests that the employer change the  
3           employee's shift or work schedule.

4           **Sec. 21. (a) This chapter may not be construed so as to:**

5           (1) discourage an employer from adopting or retaining work  
6           scheduling policies, including compensation, that are more  
7           generous than the provisions required by this chapter; or

8           (2) diminish the obligation of an employer to comply with any  
9           contract, collective bargaining agreement, or employer policy  
10          that provides to employees greater work scheduling rights,  
11          including reporting pay, than the rights established under this  
12          chapter.

13          (b) A bona fide contract or collective bargaining agreement may  
14          waive all or part of the requirements of this chapter, if the waiver  
15          is explicitly stated in clear and unambiguous language.

16          **Sec. 22. (a) An employer or any other person shall not interfere**  
17          **with, restrain, or deny the exercise of or the attempt to exercise any**  
18          **right provided under this chapter.**

19          (b) An employer shall not take any adverse employment action  
20          against an employee, including hiring, evaluation, demotion,  
21          disciplinary action, or termination, because the employee exercises  
22          the employee's rights or supports the exercise of rights of another  
23          person under this chapter. The exercise of rights under this  
24          chapter includes:

25           (1) the right to request a modification to a proposed schedule;

26           (2) the right to inform another person about an employer's  
27           alleged violation of this chapter;

28           (3) the right to file a complaint with the department;

29           (4) the right to cooperate in the investigation or prosecution  
30           of an alleged violation of this chapter; or

31           (5) the right to inform any person of the rights provided  
32           under this chapter.

33          **Sec. 23. (a) An employee may file a complaint that alleges a**  
34          **violation or threatened violation of this chapter with the**  
35          **commissioner. Upon receiving a complaint under this section the**  
36          **commissioner may:**

37           (1) investigate the complaint; and

38           (2) enforce compliance if a violation of this chapter is found.

39          (b) The commissioner shall provide notice to an employer that  
40          is the subject of a complaint filed under subsection (a) and allow  
41          the employer an opportunity to respond.

42          (c) The commissioner may order temporary or interim relief to



1 mitigate a violation or maintain the status quo during an  
2 investigation under subsection (a).

3 (d) If the commissioner determines that a violation of this  
4 chapter occurred, the commissioner:

5 (1) shall identify the violation and describe the factual basis  
6 for the violation; and

7 (2) for each employee whose rights were violated and for each  
8 day that the violation occurred or continued:

9 (A) shall require the employer to pay to the employee lost  
10 wages; and

11 (B) may fine the employer an amount not to exceed one  
12 thousand dollars (\$1,000).

13 (e) A determination by the commissioner is subject to review  
14 under IC 4-21.5.

15 Sec. 24. The commission may adopt rules under IC 4-22-2,  
16 including emergency rules in the manner provided under  
17 IC 4-22-2-37.1, to carry out the department's responsibilities under  
18 this chapter.

19 Sec. 25. This chapter does not apply to or abrogate a written  
20 employment contract or agreement entered into before July 1,  
21 2016.

