

SENATE BILL No. 249

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8.1-3-21.2; IC 22-1-1-22; IC 22-3; IC 22-4-19-15.

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 worksite is effective as to the employer's operations on that worksite, and that service of a stop work order on an employer is effective as to all of the employer's worksites 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, 2018.

Mrvan

January 3, 2018, read first time and referred to Committee on Pensions and Labor.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 249

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, 2018]: 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.
17 (c) The department shall cooperate with the:



- 1 (1) department of labor created by IC 22-1-1-1;
 2 (2) worker's compensation board of Indiana created by
 3 IC 22-3-1-1(a); and
 4 (3) department of workforce development established by
 5 IC 22-4.1-2-1;
 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 who knowingly or
 13 intentionally discloses information that is confidential under this
 14 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 has the authority to do**
 18 **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 may enforce its authority under this section as**
 24 **provided in section 12 of this chapter.**
 25 SECTION 2. IC 22-1-1-22, AS ADDED BY P.L.164-2009,
 26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2018]: Sec. 22. (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 department of labor shall cooperate with the:
 42 (1) department of workforce development established by



- 1 IC 22-4.1-2-1;
 2 (2) department of state revenue established by IC 6-8.1-2-1; and
 3 (3) worker's compensation board of Indiana created by
 4 IC 22-3-1-1(a);
 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 department of labor who
 12 knowingly or intentionally discloses information that is confidential
 13 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 department of labor has the**
 17 **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 department of labor may enforce its authority under this**
 23 **section as provided in section 17 of this chapter.**
 24 SECTION 3. IC 22-3-1-5, AS ADDED BY P.L.164-2009,
 25 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2018]: Sec. 5. (a) This section applies after December 31,
 27 2009.
 28 (b) As used in this section, "contractor" means:
 29 (1) a sole proprietor;
 30 (2) a partnership;
 31 (3) a firm;
 32 (4) a corporation;
 33 (5) a limited liability company;
 34 (6) an association; or
 35 (7) another legal entity;
 36 that engages in construction and is authorized by law to do business in
 37 Indiana. The term includes a general contractor, a subcontractor, and
 38 a lower tiered contractor. The term does not include the state, the
 39 federal government, or a political subdivision.
 40 (c) The worker's compensation board of Indiana shall cooperate with
 41 the:
 42 (1) department of state revenue established by IC 6-8.1-2-1;



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

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

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

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

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

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

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

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

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

24 SECTION 4. IC 22-3-5-2.8 IS ADDED TO THE INDIANA CODE
25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
26 1, 2018]: **Sec. 2.8. (a) In addition to any other penalties provided by**
27 **this article, an employer that fails to comply with IC 22-3-2-5 and**
28 **section 1 of this chapter may be subject to a stop work order issued**
29 **under this section.**

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

36 **(c) When a stop work order is served on a worksite by posting**
37 **a copy of the stop work order in a conspicuous location at the**
38 **worksite, the stop work order is effective as to the employer's**
39 **operations on that worksite. When a stop work order is served on**
40 **the employer, the stop work order is effective as to all of the**
41 **employer's worksites for which the employer is not in compliance**
42 **with IC 22-3-2-5 and section 1 of this chapter. The business**



1 operations of the employer must cease immediately upon service of
2 the stop work order. The stop work order remains in effect until
3 the worker's compensation board issues:

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

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

15 (e) An employer may request that the worker's compensation
16 board reconsider a stop work order issued under this section
17 against the employer. The employer's request must be in writing
18 and filed with the worker's compensation board not later than ten
19 (10) days after the date the employer receives the stop work order.
20 The worker's compensation board shall complete the
21 reconsideration not later than ten (10) days after the date the
22 worker's compensation board receives the request from the
23 employer.

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

- 28 (1) five thousand dollars (\$5,000); or
29 (2) one thousand dollars (\$1,000) per worker covered by this
30 article.

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

35 (g) The worker's compensation board may issue an order of
36 conditional release from the stop work order if the employer
37 complies with IC 22-3-2-5 and section 1 of this chapter and agrees
38 to pay the premiums, penalties, and interest assessed under this
39 article against the employer using a payment schedule. If the terms
40 of the payment schedule are not met, the stop work order may be
41 reinstated, and the employer's unpaid premium, penalty, and
42 interest balance become due.



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

3 **(1) that has one (1) or more of the same principals or officers**
 4 **as the employer against which a stop work order was issued;**
 5 **and**

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

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

9 SECTION 5. IC 22-3-5-6, AS AMENDED BY P.L.168-2011,
 10 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2018]: Sec. 6. (a) The worker's compensation supplemental
 12 administrative fund is established for the purpose of carrying out the
 13 administrative purposes and functions of the worker's compensation
 14 board.

15 (b) The fund consists of:

16 (1) fees collected from employers under sections 1 through 2 of
 17 this chapter;

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

20 (3) civil penalties assessed under IC 22-3-4-15, ~~section sections~~
 21 **2.5 and 2.8** of this chapter, and IC 22-3-7-34.3.

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

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

29 SECTION 6. IC 22-4-19-15, AS ADDED BY P.L.69-2015,
 30 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2018]: Sec. 15. (a) As used in this section, "contractor"
 32 means:

33 (1) a sole proprietor;

34 (2) a partnership;

35 (3) a firm;

36 (4) a corporation;

37 (5) a limited liability company;

38 (6) an association; or

39 (7) another legal entity;

40 that engages in construction and is authorized by law to do business in
 41 Indiana. The term includes a general contractor, a subcontractor, and
 42 a lower tiered contractor. The term does not include the state, the



- 1 federal government, or a political subdivision.
2 (b) The department shall cooperate with the:
3 (1) department of labor created by IC 22-1-1-1;
4 (2) department of state revenue established by IC 6-8.1-2-1; and
5 (3) worker's compensation board of Indiana created by
6 IC 22-3-1-1(a);
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 (c) 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 (d) 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 **(e) 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 sections 7 and 8 of this chapter and IC 22-4-34-5.**

