

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7581

BILL NUMBER: SB 404

NOTE PREPARED: Jan 7, 2007

BILL AMENDED:

SUBJECT: False Statements to State Agencies.

FIRST AUTHOR: Sen. Mrvan

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Employee False Statements:* The bill provides that an employee who knowingly or intentionally makes a false statement of independent contractor status to the Department of State Revenue commits a Class D felony.

Employee Classification: It also provides that an employer or employee shall not classify an employee as an independent contractor for the sole or primary purpose of avoiding worker's compensation law, and that a violation is a Class A infraction.

False Representation: It provides that a person who makes a false representation that an employee is an independent contractor for the purpose of avoiding unemployment compensation law commits a Class C misdemeanor.

Corrections and Conformance: The bill also makes technical corrections and conforming amendments.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Employee False Statements:* There are no data available to indicate how many employees may knowingly or intentionally file a false statement or false supporting documentation concerning independent contractor status, a Class D felony. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually,

or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Employee False Statements:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

False Representation: The bill also species that a Class C misdemeanor applies to an employing unit or other person who makes a false statement or representation if an employee is misclassified as an independent contractor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C misdemeanor is \$500. Criminal fines are deposited in the Common School Fund.

Employee False Statements and False Representation: If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Employee Classification: The bill adds a Class A infraction for an employer or employee who misclassifies an employee as an independent contractor to avoid rights or remedies due to the employee or liability for workers' compensation. If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class A infraction is \$10,000, which is deposited in the state General Fund.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Employee False Statements and False Representation:* Local expenditures for jail operations may increase if more defendants are detained in county jails prior to their court hearings or incarcerated in local jails. A Class C misdemeanor is punishable by up to 60 days in jail. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Employee False Statements and False Representation:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

Employee Classification: If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70

court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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