
SENATE BILL No. 404

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-7-5; IC 22-3; IC 22-4-34-2.

Synopsis: False statements to state agencies. 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. 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. 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. Makes technical corrections. Makes conforming amendments.

Effective: July 1, 2007.

Mrvan

January 16, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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SENATE BILL No. 404



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 6-3-7-5 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) As used in this section,
3 "independent contractor" refers to a person described in
4 IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5).
5 (b) As used in this section, "person" means an individual, a
6 proprietorship, a partnership, a joint venture, a firm, an association, a
7 corporation, or other legal entity.
8 (c) An independent contractor who does not make an election under:
9 (1) IC 22-3-6-1(b)(4) or IC 22-3-6-1(b)(5) is not subject to the
10 compensation provisions of IC 22-3-2 through IC 22-3-6; or
11 (2) IC 22-3-7-9(b)(2) or IC 22-3-7-9(b)(3) is not subject to the
12 compensation provisions of IC 22-3-7;
13 and must file a statement with the department with supporting
14 documentation of independent contractor status and obtain a certificate
15 of exemption under this section.
16 (d) An independent contractor shall file with the department, in the
17 form prescribed by the department, a statement providing the following



1 information:

2 (1) The independent contractor's name, trade name, address, and

3 telephone number.

4 (2) The independent contractor's federal identification number or

5 Social Security number.

6 (3) The name and:

7 (A) Social Security number;

8 (B) federal employer identification number (FEIN); or

9 (C) taxpayer identification number (TIN);

10 of each person or entity with whom the independent contractor

11 has contracted.

12 (e) Along with the statement required in subsection (d), an

13 independent contractor shall file annually with the department

14 documentation in support of independent contractor status before being

15 granted a certificate of exemption. The independent contractor must

16 obtain clearance from the department of state revenue before issuance

17 of the certificate.

18 (f) An independent contractor shall pay a filing fee of five dollars

19 (\$5) with the statement required in subsection (d). The fees collected

20 under this subsection shall be deposited into a special account in the

21 state general fund known as the independent contractor information

22 account. Money in the independent contractor information account is

23 annually appropriated to the department for its use in carrying out the

24 purposes of this section.

25 (g) The department shall keep each statement and supporting

26 documentation received under this section on file and on request may

27 verify that a certificate of exemption is on file.

28 (h) The certificate of exemption required by this section must be on

29 a form prescribed and provided by the department. A certificate issued

30 under this section is valid for one (1) year. The department shall

31 maintain the original certificate on file.

32 (i) A certificate of exemption must certify the following

33 information:

34 (1) That the independent contractor has worker's compensation

35 coverage for the independent contractor's employees in

36 accordance with IC 22-3-2 through IC 22-3-7.

37 (2) That the independent contractor desires to be exempt from

38 being able to recover under the worker's compensation policy or

39 self-insurance of a person for whom the independent contractor

40 will perform work only as an independent contractor.

41 (j) The department shall provide the certificate of exemption to the

42 person requesting it not less than seven (7) business days after

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1 verifying the accuracy of the supporting documentation. To be given
2 effect, a certificate of exemption must be filed with the worker's
3 compensation board of Indiana in accordance with ~~IC 22-3-2-14.5(f)~~
4 **IC 22-3-2-14.5(g)** and ~~IC 22-3-7-34.5(g)~~. **IC 22-3-7-34.5(h)**.

5 (k) Not more than thirty (30) days after the department receives an
6 independent contractor's statement and supporting documentation and
7 issues a certificate of exemption, the department shall provide the
8 independent contractor with an explanation of the department's tax
9 treatment of independent contractors and the duty of the independent
10 contractor to remit any taxes owed.

11 (l) The information received from an independent contractor's
12 statement and supporting documentation is to be treated as confidential
13 by the department and is to be used solely for the purposes of this
14 section.

15 (m) A contractor who knowingly or intentionally causes or assists
16 employees, including temporary employees, to file a false statement
17 and supporting documentation of independent contractor status
18 commits a Class D felony.

19 **(n) An employee who knowingly or intentionally files a false
20 statement or false supporting documentation of independent
21 contractor status commits a Class D felony.**

22 SECTION 2. IC 22-3-4-13 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. (a) Every employer
24 shall keep a record of all injuries, fatal or otherwise, received by or
25 claimed to have been received by ~~his~~ **the employer's** employees in the
26 course of their employment. Within seven (7) days after the occurrence
27 and knowledge thereof, as provided in IC 22-3-3-1, of any injury to an
28 employee causing ~~his~~ **the employee's** death or ~~his~~ absence from work
29 for more than one (1) day, a report thereof shall be made in writing and
30 mailed to the employer's insurance carrier or, if the employer is self
31 insured, delivered to the worker's compensation board in the manner
32 provided in subsections (b) and (c). The insurance carrier shall deliver
33 the report to the worker's compensation board in the manner provided
34 in subsections (b) and (c) not later than seven (7) days after receipt of
35 the report or fourteen (14) days after the employer's knowledge of the
36 injury, whichever is later. An employer or insurance carrier that fails
37 to comply with this subsection is subject to a civil penalty of fifty
38 dollars (\$50), to be assessed and collected by the board. Civil penalties
39 collected under this section shall be deposited in the state general fund.

40 (b) All insurance carriers, companies who carry risk without
41 insurance, and third party administrators reporting accident information
42 to the board in compliance with subsection (a) shall:

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- 1 (1) report the information using electronic data interchange
 2 standards prescribed by the board no later than June 30, 1999; or
 3 (2) in the alternative, the reporting entity shall have an
 4 implementation plan approved by the board no later than June 30,
 5 2000, that provides for the ability to report the information using
 6 electronic data interchange standards prescribed by the board no
 7 later than December 31, 2000.

8 Prior to the June 30, 2000, and December 31, 2000, deadlines, the
 9 reporting entity may continue to report accidents to the board by mail
 10 in compliance with subsection (a).

11 (c) The report shall contain the name, nature, and location of the
 12 business of the employer, the name, age, sex, wages, **and** occupation
 13 of the injured employee, the date and hour of the accident causing the
 14 alleged injury, the nature and cause of the injury, and such other
 15 information as may be required by the board.

16 (d) A person who violates any provision of this article, except
 17 IC 22-3-5-1, ~~or IC 22-3-7-34(a)~~ **IC 22-3-6-4, IC 22-3-7-34(b),** or
 18 ~~IC 22-3-7-34(b),~~ **IC 22-3-7-34(c),** commits a Class C infraction. A
 19 person who violates IC 22-3-5-1, ~~or IC 22-3-7-34(a)~~ **or IC 22-3-6-4,**
 20 IC 22-3-7-34(b), **or IC 22-3-7-34(c)** commits a Class A infraction. The
 21 worker's compensation board in the name of the state may seek relief
 22 from any court of competent jurisdiction to enjoin any violation of this
 23 article.

24 (e) The venue of all criminal actions under this section lies in the
 25 county in which the employee was injured. The prosecuting attorney of
 26 the county shall prosecute all such violations upon written request of
 27 the worker's compensation board. Such violations shall be prosecuted
 28 in the name of the state.

29 (f) In an action before the board against an employer who at the time
 30 of the injury to or occupational disease of an employee had failed to
 31 comply with IC 22-3-5-1, ~~or IC 22-3-7-34(a)~~ **or IC 22-3-7-34(b), or**
 32 **IC 22-3-7-34(c),** the board may award to the employee or the
 33 dependents of a deceased employee:

- 34 (1) compensation not to exceed double the compensation
 35 provided by this article;
 36 (2) medical expenses; and
 37 (3) reasonable attorney fees in addition to the compensation and
 38 medical expenses.

39 (g) In an action under subsection ~~(c)~~ **(d)** the court may:

- 40 (1) order the employer to cease doing business in Indiana until the
 41 employer furnishes proof of insurance as required by IC 22-3-5-1
 42 and ~~IC 22-3-7-34(a)~~ **or IC 22-3-7-34(b) or IC 22-3-7-34(c);**

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- 1 (2) require satisfactory proof of the employer's financial ability to
- 2 pay any compensation or medical expenses in the amount and
- 3 manner and when due as provided for in IC 22-3, for any injuries
- 4 which occurred during any period of noncompliance; and
- 5 (3) require the employer to deposit with the worker's
- 6 compensation board an acceptable security, indemnity, or bond to
- 7 secure the payment of such compensation and medical expense
- 8 liabilities.

9 (h) The penalty provisions of subsection ~~(e)~~ (f) shall apply only to
 10 the employer and shall not apply for a failure to exact a certificate of
 11 insurance under IC 22-3-2-14 or IC 22-3-7-34(i) or IC 22-3-7-34(j).

12 SECTION 3. IC 22-3-6-4 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 14 1, 2007]: **Sec. 4. An employer or employee shall not classify an**
 15 **employee as an independent contractor for the sole or primary**
 16 **purpose of avoiding the:**

- 17 (1) rights and remedies due to the employee under IC 22-3-2-6
- 18 or IC 22-3-7-6; or
- 19 (2) liability due under IC 22-3-5-1(a) or IC 22-3-7-34(c)(1).

20 SECTION 4. IC 22-4-34-2 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. An employing unit
 22 or other person who:

- 23 (1) makes a false statement or representation knowing it to be
- 24 false, ~~or who~~ **including misclassifying an employee as an**
- 25 **independent contractor;**
- 26 (2) knowingly fails to disclose a material fact, to:
 - 27 (A) prevent or reduce the payment of benefits to any
 - 28 individual entitled ~~thereto~~; **or to benefits;**
 - 29 (B) avoid becoming or remaining subject to this article; ~~or to~~
 - 30 (C) avoid or reduce any contribution or other payment
 - 31 required from an employing unit under:
 - 32 (i) this article; ~~or under~~
 - 33 (ii) the employment security law of any other state, or of the
 - 34 federal government or of a foreign government; ~~or who~~
- 35 (3) knowingly fails to:
 - 36 (A) make any such contributions or other payment; ~~or to~~
 - 37 (B) keep or furnish any reports required under this article; ~~or to~~
 - 38 (C) produce or permit the inspection or copying of records as
 - 39 required under this article;

40 commits a Class C misdemeanor. Each day of a failure constitutes a
 41 separate offense.
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