

SENATE BILL No. 162

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-16-7; IC 22-2-2.

Synopsis: Enforcement of wage requirements. Increases the penalties imposed on an employer whose violation of the state common construction wage law or minimum wage law involves an employee who is an illegal alien. Provides that a determination by a federal immigration agency that an alien has come to, entered, or remained in the United States in violation of law creates a rebuttable presumption that the alien is in the United States in violation of law.

Effective: July 1, 2011.

Mrvan

January 5, 2011, read first time and referred to Committee on Pensions and Labor.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 162



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 5-16-7-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2011]: Sec. 3. **(a)** A contractor or subcontractor
3 who knowingly fails to pay the rate of wages determined under this
4 chapter commits a Class B misdemeanor.

5 **(b) The offense under subsection (a) is a Class A misdemeanor**
6 **if the contractor or subcontractor committing the offense fails to**
7 **pay the rate of wages determined under this chapter to an alien:**

8 **(1) knowing; or**
9 **(2) in reckless disregard of the fact;**
10 **that the alien has come to, entered, or remained in the United**
11 **States in violation of law.**

12 **(c) For purposes of subsection (b), a determination by a federal**
13 **immigration agency that an alien has come to, entered, or**
14 **remained in the United States in violation of law creates a**
15 **rebuttable presumption that the alien is in the United States in**
16 **violation of law.**

17 **(d) If the contractor or subcontractor has committed a prior offense**



1 under this section, the contract on which the instant offense occurred
2 shall be forfeited and the contractor or subcontractor may not receive
3 any further payment on the contract nor may the state or the municipal
4 corporation making the contract make any further payments on the
5 contract from any of the funds under its charge or control.

6 SECTION 2. IC 5-16-7-4 IS AMENDED TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2011]: Sec. 4. The definitions in this section
8 apply throughout this chapter:

9 **(1) "Alien" has the meaning set forth in 8 U.S.C. 1101(a).**

10 ~~(1)~~ **(2) "Common construction wage"** means a scale of wages for
11 each class of work described in section 1(c)(1) of this chapter that
12 is not less than the common construction wage of all construction
13 wages being paid in the county where a project is located, as
14 determined by the committee described in section 1(b) of this
15 chapter after having considered:

16 (A) reports from the department of workforce development;
17 and

18 (B) any other information submitted by any person to the
19 committee established under section 1(b) of this chapter.

20 **(3) "Federal immigration agency" means an agency of the**
21 **federal government responsible for the determination of the**
22 **immigration status of aliens present in the United States.**

23 ~~(2)~~ **(4) "State of Indiana"** includes any officer, board, commission,
24 or other agency authorized by law to award contracts for the
25 performance of public work on behalf of the state, excepting as
26 otherwise provided in this chapter.

27 ~~(3)~~ **(5) "Municipal corporation"** includes any county, city, town,
28 or school corporation, as well as any officer, board, commission,
29 or other agency authorized by law to award contracts for the
30 performance of public work on behalf of any such municipal
31 corporation. The term also includes a redevelopment commission
32 established under IC 36-7-14-3.

33 ~~(4)~~ **(6) "Public work"** includes any public building, highway,
34 street, alley, bridge, sewer, drain, improvement, or any other work
35 of any nature or character whatsoever which is paid for out of
36 public funds, excepting as otherwise provided in this chapter.

37 SECTION 3. IC 22-2-2-3 IS AMENDED TO READ AS FOLLOWS
38 [EFFECTIVE JULY 1, 2011]: Sec. 3. As used in this chapter:

39 **"Alien" has the meaning set forth in 8 U.S.C. 1101(a).**

40 "Commissioner" means the commissioner of labor or the
41 commissioner's authorized representative.

42 "Department" means the department of labor.

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1 "Occupation" means an industry, trade, business, or class of work
 2 in which employees are gainfully employed.

3 "Employer" means any individual, partnership, association, limited
 4 liability company, corporation, business trust, the state, or other
 5 governmental agency or political subdivision during any work week in
 6 which they have two (2) or more employees. However, it shall not
 7 include any employer who is subject to the minimum wage provisions
 8 of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C.
 9 201-209).

10 "Employee" means any person employed or permitted to work or
 11 perform any service for remuneration or under any contract of hire,
 12 written or oral, express or implied by an employer in any occupation,
 13 but shall not include any of the following:

14 (a) Persons less than sixteen (16) years of age.

15 (b) Persons engaged in an independently established trade,
 16 occupation, profession, or business who, in performing the
 17 services in question, are free from control or direction both under
 18 a contract of service and in fact.

19 (c) Persons performing services not in the course of the
 20 employing unit's trade or business.

21 (d) Persons employed on a commission basis.

22 (e) Persons employed by their own parent, spouse, or child.

23 (f) Members of any religious order performing any service for that
 24 order, any ordained, commissioned, or licensed minister, priest,
 25 rabbi, sexton, or Christian Science reader, and volunteers
 26 performing services for any religious or charitable organization.

27 (g) Persons performing services as student nurses in the employ
 28 of a hospital or nurses training school while enrolled and
 29 regularly attending classes in a nurses training school chartered
 30 or approved under law, or students performing services in the
 31 employ of persons licensed as both funeral directors and
 32 embalmers as a part of their requirements for apprenticeship to
 33 secure an embalmer's license or a funeral director's license from
 34 the state, or during their attendance at any schools required by law
 35 for securing an embalmer's or funeral director's license.

36 (h) Persons who have completed a four (4) year course in a
 37 medical school approved by law when employed as interns or
 38 resident physicians by any accredited hospital.

39 (i) Students performing services for any school, college, or
 40 university in which they are enrolled and are regularly attending
 41 classes.

42 (j) Persons with physical or mental disabilities performing

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services for nonprofit organizations organized primarily for the purpose of providing employment for persons with disabilities or for assisting in their therapy and rehabilitation.

(k) Persons employed as insurance producers, insurance solicitors, and outside salesmen, if all their services are performed for remuneration solely by commission.

(l) Persons performing services for any camping, recreational, or guidance facilities operated by a charitable, religious, or educational nonprofit organization.

(m) Persons engaged in agricultural labor. The term shall include only services performed:

(1) on a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment if the major part of the service is performed on a farm;

(3) in connection with:

(A) the production or harvesting of maple sugar or maple syrup or any commodity defined as an agricultural commodity in the Agricultural Marketing Act, as amended (12 U.S.C. 1141j);

(B) the raising or harvesting of mushrooms;

(C) the hatching of poultry; or

(D) the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, to market, or to a carrier for transportation to market, any agricultural or horticultural commodity, but only if service is performed as an incident to ordinary farming operation or, in the case of fruits and vegetables, as an incident to the preparation of fruits and vegetables for market. However, this exception shall not apply to services performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market or processor for preparation or distribution for consumption.

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- 1 As used in this subdivision, "farm" includes stock, dairy, poultry,
- 2 fruit, furbearing animals, and truck farms, nurseries, orchards, or
- 3 greenhouses or other similar structures used primarily for the
- 4 raising of agricultural or horticultural commodities.
- 5 (n) Those persons employed in executive, administrative, or
- 6 professional occupations who have the authority to employ or
- 7 discharge and who earn one hundred fifty dollars (\$150) or more
- 8 a week, and outside salesmen.
- 9 (o) Any person not employed for more than four (4) weeks in any
- 10 four (4) consecutive three (3) month periods.
- 11 (p) Any employee with respect to whom the Interstate Commerce
- 12 Commission has power to establish qualifications and maximum
- 13 hours of service under the federal Motor Carrier Act of 1935 (49
- 14 U.S.C. 304(3)) or any employee of a carrier subject to IC 8-2.1.

15 **"Federal immigration agency" means an agency of the federal**
 16 **government responsible for the determination of the immigration**
 17 **status of aliens present in the United States.**

18 SECTION 4. IC 22-2-2-11 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) An employer or
 20 **his an employer's agent who:**

- 21 (1) discharges or otherwise discriminates in regard to tenure or
- 22 condition of employment against any employee because the
- 23 employee has:
- 24 (A) instituted or participated in the institution of any action to
- 25 recover wages under this chapter; or
- 26 (B) demanded the payment of wages under this chapter;
- 27 (2) pays or agrees to pay any employee less than the minimum
- 28 wage prescribed by section 4 of this chapter; or
- 29 (3) fails to keep records required by section 8 of this chapter;
- 30 commits a Class C infraction.

31 **(b) A violation under subsection (a) is a Class B infraction if the**
 32 **employer or employer's agent commits the violation against an**
 33 **employee:**

- 34 (1) **knowing; or**
- 35 (2) **in reckless disregard of the fact;**
- 36 **that the employee is an alien who has come to, entered, or**
 37 **remained in the United States in violation of law.**

38 ~~(b)~~ (c) An employer or the employer's agent who knowingly or
 39 intentionally violates section 4 or 8 of this chapter commits a Class A
 40 infraction.

41 **(d) A violation under subsection (c) is a Class C misdemeanor**
 42 **if the employer or employer's agent commits the violation against**

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an employee:

(1) knowing; or

(2) in reckless disregard of the fact;

that the employee is an alien who has come to, entered, or remained in the United States in violation of law.

~~(c)~~ **(e)** An employer or the employer's agent who violates section 4 of this chapter, having a prior unrelated judgment for a violation of section 4 of this chapter, commits a Class B misdemeanor.

(f) The offense under subsection (e) is a Class A misdemeanor if the employer or employer's agent commits the offense against an employee:

(1) knowing; or

(2) in reckless disregard of the fact;

that the employee is an alien who has come to, entered, or remained in the United States in violation of law.

~~(d)~~ **(g)** An employer or the employer's agent who violates section 8 of this chapter, having a prior unrelated judgment for a violation of section 8 of this chapter, commits a Class B misdemeanor.

(h) The offense under subsection (g) is a Class A misdemeanor if the employer or employer's agent commits the offense against an employee:

(1) knowing; or

(2) in reckless disregard of the fact;

that the employee is an alien who has come to, entered, or remained in the United States in violation of law.

(i) For purposes of this section, a determination by a federal immigration agency that an alien has come to, entered, or remained in the United States in violation of law creates a rebuttable presumption that the alien is in the United States in violation of law.

SECTION 5. IC 22-2-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. **(a)** An employer who consistently discharges persons within four (4) weeks of their employment and replaces the discharged person without work stoppage commits a Class A infraction.

(b) The offense under subsection (a) is a Class C misdemeanor if the employer commits the offense against an employee:

(1) knowing; or

(2) in reckless disregard of the fact;

that the employee is an alien who has come to, entered, or remained in the United States in violation of law.

(c) For purposes of this section, a determination by a federal

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1 immigration agency that an alien has come to, entered, or
2 remained in the United States in violation of law creates a
3 rebuttable presumption that the alien is in the United States in
4 violation of law.

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