



February 9, 2001

HOUSE BILL No. 1553

DIGEST OF HB 1553 (Updated February 8, 2001 11:57 AM - DI 96)

Citations Affected: IC 22-3; noncode.

Synopsis: Independent contractor documentation. Exempts an owner who contracts for performance of work on the owner's owner-occupied residential property from the requirement that a certificate of worker's compensation insurance be secured from a contractor. Provides that a fee of \$20 must accompany the documentation required to be filed with the worker's compensation board in support of an independent contractor's status. Provides that 80% of the filing fee concerning independent status shall be deposited in the worker's compensation supplemental administrative fund and used for expenses of the worker's compensation board, and that 20% be deposited in the independent contractor information account. Specifies documentation required to be filed with the worker's compensation board in support of an independent contractor's status. Provides that a validated affidavit of exemption of worker's compensation coverage becomes effective seven business days after the date of receipt by the worker's compensation board. Provides that a contractor who knowingly or intentionally causes or assists employees to file an affidavit of exemption commits a Class D felony. Makes conforming amendments.

Effective: July 1, 2001.

Lawson L, Liggett, Smith M, Torr

January 11, 2001, read first time and referred to Committee on Labor and Employment.
February 8, 2001, amended, reported — Do Pass.

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HB 1553—LS 7716/DI 102+



February 9, 2001

First Regular Session 112th General Assembly (2001)

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 2000 General Assembly.

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HOUSE BILL No. 1553

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-3-2-14 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. (a) **As used in this**
3 **section, "person" does not include an owner who contracts for**
4 **performance of work on the owner's owner-occupied residential**
5 **property.**

6 (b) The state, any political division thereof, any municipal
7 corporation, any corporation, limited liability company, partnership, or
8 person, contracting for the performance of any work exceeding one
9 thousand dollars (\$1,000) in value by a contractor subject to the
10 compensation provisions of IC 22-3-2 through IC 22-3-6, without
11 exacting from such contractor a certificate from the worker's
12 compensation board showing that such contractor has complied with
13 section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2, shall be liable
14 to the same extent as the contractor for compensation, physician's fees,
15 hospital fees, nurse's charges, and burial expenses on account of the
16 injury or death of any employee of such contractor, due to an accident
17 arising out of and in the course of the performance of the work covered

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1 by such contract.

2 ~~(b)~~ (c) Any contractor who shall sublet any contract for the
3 performance of any work, to a subcontractor subject to the
4 compensation provisions of IC 22-3-2 through IC 22-3-6, without
5 obtaining a certificate from the worker's compensation board showing
6 that such subcontractor has complied with section 5 of this chapter,
7 IC 22-3-5-1, and IC 22-3-5-2, shall be liable to the same extent as such
8 subcontractor for the payment of compensation, physician's fees,
9 hospital fees, nurse's charges, and burial expenses on account of the
10 injury or death of any employee of such subcontractor due to an
11 accident arising out of and in the course of the performance of the work
12 covered by such subcontract.

13 ~~(e)~~ (d) The state, any political division thereof, any municipal
14 corporation, any corporation, limited liability company, partnership,
15 person, or contractor paying compensation, physician's fees, hospital
16 fees, nurse's charges, or burial expenses under this section may recover
17 the amount paid or to be paid from any person who, independently of
18 such provisions, would have been liable for the payment thereof and
19 may, in addition, recover the litigation expenses and attorney's fees
20 incurred in the action before the worker's compensation board as well
21 as the litigation expenses and attorney's fees incurred in an action to
22 collect the compensation, medical expenses, and burial expenses.

23 ~~(d)~~ (e) Every claim filed with the worker's compensation board
24 under this section shall be instituted against all parties liable for
25 payment. The worker's compensation board, in an award under
26 subsection ~~(a)~~; (b), shall fix the order in which said parties shall be
27 exhausted, beginning with the immediate employer, and, in an award
28 under subsection ~~(b)~~; (c), shall determine whether the subcontractor has
29 the financial ability to pay the compensation and medical expenses
30 when due and, if not, shall order the contractor to pay the compensation
31 and medical expenses.

32 SECTION 2. IC 22-3-2-14.5 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.5. (a) As used in this
34 section, "independent contractor" refers to a person described in
35 IC 22-3-6-1(b)(7).

36 (b) As used in this section, "person" means an individual, a
37 proprietorship, a partnership, a joint venture, a firm, an association, a
38 corporation, or other legal entity.

39 (c) An independent contractor who does not make an election under
40 IC 22-3-6-1(b)(4) or IC 22-3-6-1(b)(5) is not subject to the
41 compensation provisions of IC 22-3-2 through IC 22-3-6 and must file
42 a statement **with supporting documentation of independent**

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1 **contractor status** and obtain a validated affidavit of exemption under
2 this section.

3 (d) An independent contractor shall file with the worker's
4 compensation board, in the form prescribed by the worker's
5 compensation board, a statement providing the following information:

6 (1) The independent contractor's name, trade name, address, and
7 telephone number.

8 (2) The independent contractor's federal identification number or
9 Social Security number.

10 (e) **Along with the statement required in subsection (d), an**
11 **independent contractor shall file annually with the worker's**
12 **compensation board documentation in support of that status before**
13 **being granted an exemption, as shown by an affidavit of exemption**
14 **filed under subsection (j). The documentation must include at least**
15 **three (3) of the following items:**

16 (1) **Documentation of the legal entity under which the**
17 **independent contractor conducts business.**

18 (2) **Proof of payment of, or non-liability for, self-employment**
19 **taxes.**

20 (3) **Proof of payment of quarterly estimated taxes for the**
21 **current year.**

22 (4) **Proof of payment of unemployment taxes for the current**
23 **year.**

24 (5) **Other documentation establishing an independent**
25 **contractor's status, such as contracts, unreimbursed business**
26 **expenses, or proof of liability insurance coverage.**

27 (f) An independent contractor shall pay a filing fee in the amount of
28 ~~five dollars (\$5)~~ **twenty dollars (\$20)** with the statement required in
29 subsection (d). The fees collected under this subsection shall be
30 deposited as follows:

31 (1) ~~Fifty percent (50%)~~ **Eighty percent (80%)** in the worker's
32 compensation supplemental administrative fund **and shall be**
33 **used for all expenses the board incurs.**

34 (2) ~~Fifty percent (50%)~~ **Twenty percent (20%)** into a special
35 account in the state general fund known as the independent
36 contractor information account. Money in the independent
37 contractor information account is annually appropriated to the
38 department of state revenue for its use in carrying out the
39 purposes of IC 6-3-7-5.

40 (f) (g) The worker's compensation board shall keep each statement
41 **and supporting documentation** received under this section on file and
42 on request may verify that a validated affidavit is on file.



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1 (g) (h) The affidavit of exemption required by this section must be
 2 on a form prescribed and provided by the worker's compensation board.
 3 An affidavit issued under this section is valid for one (1) year.

4 (h) (i) An affidavit of exemption must certify the following
 5 information:

6 (1) That the independent contractor has worker's compensation
 7 coverage for the independent contractor's employees in
 8 accordance with IC 22-3-2 through IC 22-3-6.

9 (2) That the independent contractor desires to be exempt from
 10 being able to recover under the worker's compensation policy or
 11 self-insurance of a person for whom the independent contractor
 12 will perform work only as an independent contractor.

13 (i) (j) An affidavit of exemption must be filed with the worker's
 14 compensation board. The board shall validate the affidavit by stamping
 15 the affidavit with the date of receipt and returning a validated copy to
 16 the person executing the affidavit. A validated affidavit becomes
 17 effective as of midnight ~~on the date received:~~ **seven (7) business days**
 18 **after the date of receipt by the worker's compensation board.** The
 19 board shall maintain the original affidavits filed and validated by the
 20 board.

21 (j) (k) Not more than thirty (30) days after the worker's
 22 compensation board receives an independent contractor's statement,
 23 **documentation required by subsection (e)**, validated affidavit, and
 24 filing fee required by this section, the worker's compensation board
 25 shall provide the department of state revenue with a copy of the
 26 statement and validated affidavit.

27 (k) (l) A person who contracts for services of another person not
 28 covered by IC 22-3-2 through IC 22-3-6 to perform work must secure
 29 a copy of a validated affidavit issued under this section from the person
 30 hired. A person may not require a person who has provided a validated
 31 affidavit to have worker's compensation coverage. The worker's
 32 compensation insurance carrier of a person who contracts with an
 33 independent contractor shall accept a validated affidavit in the same
 34 manner as a certificate of insurance.

35 (l) (m) An affidavit validated under this section is binding on and
 36 holds harmless from all claims:

37 (1) a person who contracts with an independent contractor after
 38 receiving a copy of the validated affidavit; and

39 (2) the worker's compensation insurance carrier of the person who
 40 contracts with the independent contractor.

41 The independent contractor may not collect compensation under
 42 IC 22-3-2 through IC 22-3-6 for an injury from a person or the person's

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1 worker's compensation carrier to whom the independent contractor has
2 furnished a validated affidavit.
3 **(n) A contractor who knowingly or intentionally causes or**
4 **assists employees, including temporary employees, to file an**
5 **affidavit of exemption commits a Class D felony.**
6 SECTION 3. [EFFECTIVE JULY 1, 2001] (a) Notwithstanding
7 IC 22-3-2-14.5 (e), as amended by this act, if an independent
8 contractor has filed an affidavit of exemption under
9 IC 22-3-2-14.5(j) for calendar year 2001 before July 1, 2001, and
10 has received a validated copy from the worker's compensation
11 board, the independent contractor shall not be required to file
12 additional documentation for 2001.
13 **(b) This SECTION expires January 1, 2003.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1553, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 4.

Page 5, delete lines 1 through 34, begin a new paragraph and insert:

"SECTION 1. IC 22-3-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. (a) **As used in this section, "person" does not include an owner who contracts for performance of work on the owner's owner-occupied residential property.**

(b) The state, any political division thereof, any municipal corporation, any corporation, limited liability company, partnership, or person, contracting for the performance of any work exceeding one thousand dollars (\$1,000) in value by a contractor subject to the compensation provisions of IC 22-3-2 through IC 22-3-6, without exacting from such contractor a certificate from the worker's compensation board showing that such contractor has complied with section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2, shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such contractor, due to an accident arising out of and in the course of the performance of the work covered by such contract.

(b) (c) Any contractor who shall sublet any contract for the performance of any work, to a subcontractor subject to the compensation provisions of IC 22-3-2 through IC 22-3-6, without obtaining a certificate from the worker's compensation board showing that such subcontractor has complied with section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2, shall be liable to the same extent as such subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract.

(c) (d) The state, any political division thereof, any municipal corporation, any corporation, limited liability company, partnership, person, or contractor paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses under this section may recover the amount paid or to be paid from any person who, independently of

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such provisions, would have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

~~(d)~~ **(e)** Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. The worker's compensation board, in an award under subsection ~~(a)~~; **(b)**, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer, and, in an award under subsection ~~(b)~~; **(c)**, shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall order the contractor to pay the compensation and medical expenses."

Page 6, line 16, delete "exemption." and insert "**exemption, as shown by an affidavit of exemption filed under subsection (j).**".

Page 6, line 20, delete "Copies of the preceding year's federal and state income tax".

Page 6, line 21, delete "returns showing" and insert "**Proof of**".

Page 6, run in lines 20 through 21.

Page 6, lines 21, after "of" insert "**, or non-liability for,**".

Page 6, delete lines 29 through 31.

Page 6, line 33, strike "five dollars (\$5)" and insert "**twenty dollars (\$20)**".

Page 6, line 35, strike "Fifty percent (50%)" and insert "**Eighty percent (80%)**".

Page 6, line 36, delete "." and insert "**and shall be used for all expenses the board incurs.**".

Page 6, line 37, strike "Fifty percent (50%)" and insert "**Twenty percent (20%)**".

Page 7, line 19, strike "on the date received." and insert "**seven (7) business days after the date of receipt by the worker's compensation board.**".

Page 8, after line 2, begin a new paragraph and insert:

"(n) A contractor who knowingly or intentionally causes or assists employees, including temporary employees, to file an affidavit of exemption commits a Class D felony.

SECTION 3. [EFFECTIVE JULY 1, 2001] (a) Notwithstanding IC 22-3-2-14.5 (e), as amended by this act, if an independent contractor has filed an affidavit of exemption under IC 22-3-2-14.5(j) for calendar year 2001 before July 1, 2001, and has received a validated copy from the worker's compensation



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board, the independent contractor shall not be required to file additional documentation for 2001.

(b) This SECTION expires January 1, 2003."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1553 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 10, nays 0.

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