

---

---

# HOUSE BILL No. 1144

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-8-1.1.

**Synopsis:** Injuries to or death of an employee. Provides that certain employers or their agents that cause: (1) serious bodily injury to an employee as a result of a reckless violation of certain administrative rules commit a Class A misdemeanor; (2) serious bodily injury to an employee as a result of a knowing or intentional violation of certain administrative rules commit a Class A misdemeanor; (3) the death of an employee as a result of a reckless violation of certain administrative rules commit corporate manslaughter, a Class D felony; and (4) the death of an employee as a result of a knowing or intentional violation of certain administrative rules commit corporate manslaughter, a Class C felony. Authorizes a private right of action for the failure to warn of certain conditions under the state occupational safety and health act. Makes conforming amendments.

**Effective:** July 1, 2006.

---

---

**Stevenson**

---

---

January 5, 2006, read first time and referred to Committee on Courts and Criminal Code.

---

---

C  
O  
P  
Y



Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

C  
O  
P  
Y

# HOUSE BILL No. 1144



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 22-8-1.1-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this  
3 chapter, unless otherwise provided:

4 **"Agent of the employer" means a:**  
5 **(1) manager having management authority or enforcement**  
6 **powers with respect to a product, practice, or service;**  
7 **(2) corporate officer; or**  
8 **(3) member of the board of directors;**  
9 **of the employer.**

10 "Board" means the board of safety review created by this chapter.

11 "Bureau" means the safety education and training bureau created by  
12 this chapter.

13 "Commission" means the occupational safety standards commission  
14 created by this chapter.

15 "Commissioner" means the commissioner of labor or **his the**  
16 **commissioner's** duly designated representative.

17 "Department" means the department of labor.



1 "Employee" means a person permitted to work by an employer in  
2 employment.

3 "Employer" means any individual or type of organization, including  
4 the state and all its political subdivisions, that has in its employ one (1)  
5 or more individuals.

6 **"Political subdivision" has the meaning set forth in**  
7 **IC 36-1-2-13.**

8 "Safety order" refers to a notice issued to employers by the  
9 commissioner of labor for alleged violations of this chapter, including  
10 any health and safety standards.

11 **"Serious bodily injury" has the meaning set forth in**  
12 **IC 35-41-1-25.**

13 "Standard" refers to both health and safety standards.

14 "Voluntary protection program" means a program offered by the  
15 United States **Department of Labor**, Occupational Safety and Health  
16 Administration to employers subject to this chapter that exempts the  
17 employers from general scheduled inspections.

18 SECTION 2. IC 22-8-1.1-2 IS AMENDED TO READ AS  
19 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. Each employer shall  
20 establish and maintain conditions of work which are reasonably safe  
21 and healthful for employees, and free from recognized hazards that are  
22 causing or are likely to cause death or serious ~~physical harm~~ **bodily**  
23 **injury** to employees.

24 SECTION 3. IC 22-8-1.1-3.1 IS AMENDED TO READ AS  
25 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3.1. Every employer **or**  
26 **agent of the employer** shall comply with the occupational health and  
27 safety standards promulgated under this chapter, and pursuant to any  
28 directions in such standards, keep ~~his~~ **the** employees informed of their  
29 protections and obligations under the chapter, the hazards of the work  
30 place and suitable precautions, relevant symptoms and emergency  
31 treatment for such hazards.

32 SECTION 4. IC 22-8-1.1-5 IS AMENDED TO READ AS  
33 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. No person,  
34 **employer, or agent of the employer** may interfere with the use of any  
35 method or process adopted for the protection of any employee in ~~his~~  
36 **the employee's** employment or place of employment, or of any other  
37 person lawfully within the place of employment, or fail to follow orders  
38 necessary to protect the life, health, and safety of employees and any  
39 other person lawfully within the place of employment.

40 SECTION 5. IC 22-8-1.1-17.1 IS AMENDED TO READ AS  
41 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 17.1. (a) Any standard  
42 promulgated under this chapter shall prescribe the use of labels or other

C  
o  
p  
y



1 appropriate forms of warning as are necessary to insure that employees  
 2 are apprised of all hazards to which they are exposed, relevant  
 3 symptoms and appropriate emergency treatment, and proper conditions  
 4 and precautions of safe use or exposure. Where appropriate, such a  
 5 standard shall also prescribe suitable protective equipment and control  
 6 or technological procedures to be used in connection with the hazards  
 7 and shall provide for monitoring or measuring employee exposure at  
 8 such locations and intervals and in such manner as may be necessary  
 9 for the protection of employees. In addition where appropriate, any  
 10 standard shall prescribe the type or frequency of medical examinations  
 11 or other tests which shall be made available by the employer, at  
 12 employer's cost, to employees exposed to hazards in order to most  
 13 effectively determine whether the health of the employees is adversely  
 14 affected by the exposure. Upon request, the results of examinations or  
 15 tests shall be furnished to the department and shall remain confidential  
 16 within the department. At the request of the employee, results shall be  
 17 furnished to ~~his~~ **the employee's** physician.

18 (b) The commission, in promulgating standards dealing with toxic  
 19 materials or harmful physical agents, shall set the standard which most  
 20 adequately assures, to the extent feasible, on the basis of the best  
 21 available evidence, that no employee will suffer material impairment  
 22 of health or functional capacity even if the employee has regular  
 23 exposure to the hazard dealt with by the standard for the period of ~~his~~  
 24 **the employee's** working life. Development of standards shall be based  
 25 upon research, demonstrations, experiments, and such other  
 26 information as may be appropriate. In addition to the attainment of the  
 27 highest degree of health and safety protection for the employee, other  
 28 considerations shall be the latest available scientific data in the field,  
 29 the feasibility of the standards, and experience gained under this and  
 30 other health and safety laws. Whenever practicable, the standard  
 31 promulgated shall be expressed in terms of objective criteria and of the  
 32 performance desired.

33 (c) The commission, in promulgating standards, shall adopt rules  
 34 requiring employers to maintain accurate records of employee  
 35 exposures to potentially toxic material or harmful physical agents  
 36 which are required to be monitored or measured under the standards.  
 37 These rules shall provide employees or their representatives with an  
 38 opportunity to observe monitoring or measuring and to have access to  
 39 the records thereof. These rules shall also make appropriate provisions  
 40 for each employee to have access to such records as will indicate ~~his~~  
 41 **the employee's** own exposure to toxic materials or harmful physical  
 42 agents. Under these rules, each employer **or an agent of the employer**

C  
O  
P  
Y



1 shall notify any employee who is being consistently exposed to toxic  
2 materials or harmful physical agents in concentrations or at levels  
3 which exceed those prescribed by an occupational safety and health  
4 standard and shall inform any employee who is being thus exposed of  
5 the corrective action being taken.

6 SECTION 6. IC 22-8-1.1-37.1 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 37.1. (a) No person  
8 may make a false statement, representation, or certification in any  
9 application, record, report, plan, or other document required pursuant  
10 to this chapter.

11 (b) **An employer or agent of the employer may not destroy or**  
12 **negligently or intentionally allow the destruction of documents**  
13 **concerning hazards to the public or the employees of the employer.**

14 (c) **The falsification or destruction of each document constitutes**  
15 **a separate offense.**

16 SECTION 7. IC 22-8-1.1-39.1 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 39.1. (a) Whenever the  
18 commissioner is of the opinion that imminent danger exists in any  
19 workplace in this state, which condition can reasonably be expected to  
20 cause death or serious ~~physical harm~~, **bodily injury**, the commissioner,  
21 through the attorney general, may petition the circuit court of the  
22 county in which such workplace is located for appropriate relief. Any  
23 order issued under this section may require such steps to be taken as  
24 may be necessary to avoid, correct, or remove such imminent danger  
25 and prohibit the employment or presence of any individual in locations  
26 or under conditions where such imminent danger exists, except  
27 individuals whose presence is necessary to avoid, correct, or remove  
28 such imminent danger or to maintain the capacity of a continuous  
29 process operation to resume normal operations without a complete  
30 cessation of operations, or where a cessation of operations is necessary,  
31 to permit such to be accomplished in a safe and orderly manner.

32 (b) Whenever and as soon as an inspector concludes that conditions  
33 or practices described in subsection (a) exist in any place of  
34 employment, ~~he the inspector~~ shall inform the affected employers and  
35 employees of the danger and that ~~he the inspector~~ is recommending to  
36 the commissioner that relief be sought.

37 (c) If the commissioner arbitrarily or capriciously fails to seek relief  
38 under this section, any employee who may be injured by reason of such  
39 failure, or the representative of such employees, may bring an action  
40 against the commissioner, in the circuit court of the county in which the  
41 imminent danger is alleged to exist or the employer has its principal  
42 office, for a writ of mandamus to compel the commissioner to seek

C  
o  
p  
y



1 such an order and for such further relief as may be appropriate.

2 SECTION 8. IC 22-8-1.1-48.3 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 48.3. **(a) Except as**  
4 **provided in subsection (b)**, nothing in this chapter shall be construed  
5 to supersede or in any manner affect any worker's compensation or  
6 occupational diseases law, or any other statutory rights, duties, or  
7 liabilities or create any private right of action.

8 **(b) An employee who is harmed by the failure of the employee's**  
9 **employer or an agent of the employer to inform the employee of**  
10 **the responsibilities of the employer or agent under section 3.1 of**  
11 **this chapter may file a civil action for relief.**

12 SECTION 9. IC 22-8-1.1-49 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 49. **(a) Subsections (c)**  
14 **through (f) do not apply to:**

- 15 **(1) the state; or**
- 16 **(2) a political subdivision.**

17 **(b) A person who knowingly violates this chapter commits a Class**  
18 **B misdemeanor, except as otherwise provided.**

19 **(c) An employer or agent of the employer who:**

- 20 **(1) recklessly violates a rule adopted under this chapter; and**
  - 21 **(2) causes serious bodily injury to an employee;**
- 22 **commits a Class A misdemeanor.**

23 **(d) An employer or agent of the employer who:**

- 24 **(1) knowingly or intentionally violates a rule adopted under**
  - 25 **this chapter; and**
  - 26 **(2) causes serious bodily injury to an employee;**
- 27 **commits a Class A misdemeanor.**

28 **(e) An employer or agent of the employer who:**

- 29 **(1) recklessly violates a rule adopted under this chapter; and**
  - 30 **(2) causes the death of an employee;**
- 31 **commits corporate manslaughter, a Class D felony.**

32 **(f) An employer or agent of the employer who:**

- 33 **(1) knowingly or intentionally violates a rule adopted under**
  - 34 **this chapter; and**
  - 35 **(2) causes the death of an employee;**
- 36 **commits corporate manslaughter, a Class C felony.**

C  
O  
P  
Y

