



Reprinted  
January 29, 2008

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## SENATE BILL No. 212

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DIGEST OF SB 212 (Updated January 28, 2008 5:30 pm - DI 102)

**Citations Affected:** IC 22-2.

**Synopsis:** Expense advances; wage payment. Authorizes under certain circumstances an employer that is engaged in the transportation of property or household goods over public highways to deduct from wages earned in a subsequent pay period amounts advanced to a driver employee for wages and business expenses that are not adequately substantiated. Requires an employer to provide notice to the driver employee that amounts in excess of substantiated expenses may be deducted from a subsequent paycheck. Provides that the deduction may not be considered a fine, wage deduction, or wage assignment. Allows an employer and employee to agree to a pay period or pay date other than the periods and dates established by statute, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code.

**Effective:** July 1, 2008.

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### Bray, Hume

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January 8, 2008, read first time and referred to Committee on Pensions and Labor.  
January 24, 2008, amended, reported favorably — Do Pass.  
January 28, 2008, read second time, amended, ordered engrossed.

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SB 212—LS 6582/DI 102+



Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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## SENATE BILL No. 212

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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 22-2-5-0.8 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2008]: **Sec. 0.8. As used in this chapter, "Internal Revenue Code"**  
4 **has the meaning set forth in IC 6-3-1-11.**

5 SECTION 2. IC 22-2-5-1, AS AMENDED BY P.L.51-2007,  
6 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2008]: Sec. 1. (a) Every person, firm, corporation, limited  
8 liability company, or association, their trustees, lessees, or receivers  
9 appointed by any court, doing business in Indiana (**collectively, the**  
10 **"employer"**) shall pay each employee at least semimonthly or  
11 biweekly, if requested, the amount due the employee. **In addition, an**  
12 **employer and an employee may agree to any other pay period,**  
13 **including an agreement to defer compensation that satisfies the**  
14 **requirements of Section 409A of the Internal Revenue Code.** The  
15 payment shall be made in lawful money of the United States, by  
16 negotiable check, draft, or money order, or by electronic transfer to the  
17 financial institution designated by the employee. ~~Any contract in~~

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violation of this subsection is void.

(b) Payment shall be made for all wages earned ~~to in a date pay period~~ not more than ten (10) business days ~~prior to the date of payment.~~ However, this subsection does not prevent payments being made at shorter intervals than specified in this subsection, nor repeat any law providing for payments at shorter intervals. **following the close of the pay period, unless an employer and an employee agree to a different payment date, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code.** However, if an employee voluntarily leaves employment, either permanently or temporarily, the employer shall not be required to pay the employee an amount due the employee until the next usual and regular day for payment of wages, as established by the employer. If an employee leaves employment voluntarily, and without the employee's whereabouts or address being known to the employer, the employer is not subject to section 2 of this chapter until:

- (1) ten (10) business days have elapsed after the employee has made a demand for the wages due the employee; or
- (2) the employee has furnished the employer with the employee's address where the wages may be sent or forwarded.

SECTION 3. IC 22-2-6-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 5. (a) This section applies to an employer that:**

- (1) is engaged in the business of interstate or intrastate transportation of property or household goods over public highways in Indiana; and
- (2) either:
  - (A) holds a registration issued by the Federal Motor Carrier Safety Administration under 49 U.S.C. 13902; or
  - (B) is subject to the safety and certification requirements of the department of state revenue under IC 8-2.1-24.

**(b) An employer that:**

- (1) uses cash, an electronic transfer, or another means after June 30, 2008, to advance to a driver employee:
  - (A) the amount of an anticipated business expense not yet incurred; or
  - (B) wages not yet earned; and
- (2) provides the notice described in subsection (c);

may deduct from wages earned by the driver employee in a subsequent pay period the amount of the advance in excess of the amount that the driver employee adequately substantiates as described in subsection (c).

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1           (c) An employer may not make a deduction under subsection (b)  
2 unless the employer has provided notice to the driver employee  
3 that the amount of the advance may be deducted from a  
4 subsequent paycheck to the extent the amount exceeds the amount  
5 that is substantiated with:  
6           (1) a receipt; or  
7           (2) other appropriate documentary evidence;  
8 that at least complies with the requirements applicable to  
9 reimbursement or other expense allowance arrangements under 26  
10 U.S.C. 62(c).  
11          (d) A deduction under subsection (b) may not be considered:  
12           (1) a fine under IC 22-2-8-1;  
13           (2) a wage deduction under this article; or  
14           (3) a wage assignment under IC 22-2-7 or section 2 of this  
15 chapter.

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SENATE MOTION

Madam President: I move that Senator Hume be added as coauthor of Senate Bill 212.

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 212, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 14, after "employee" insert ":

(A)".

Page 1, line 15, after "incurred;" insert "**or**

**(B) wages not yet earned;**".

Page 2, line 5, after "unless" delete ", at the time of the advance,".

Page 2, line 5, delete "provides" and insert "**has provided**".

Page 2, line 6, delete "advanced" and insert "**of the advance**".

and when so amended that said bill do pass.

(Reference is to SB 212 as introduced.)

KRUSE, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 212 be amended to read as follows: Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 22-2-5-0.8 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 0.8. As used in this chapter, "Internal Revenue Code" has the meaning set forth in IC 6-3-1-11.**

SECTION 2. IC 22-2-5-1, AS AMENDED BY P.L.51-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) Every person, firm, corporation, limited liability company, or association, their trustees, lessees, or receivers

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appointed by any court, doing business in Indiana (**collectively, the "employer"**) shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee. **In addition, an employer and an employee may agree to any other pay period, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code.** The payment shall be made in lawful money of the United States, by negotiable check, draft, or money order, or by electronic transfer to the financial institution designated by the employee. ~~Any contract in violation of this subsection is void.~~

(b) Payment shall be made for all wages earned ~~to in a date pay period~~ not more than ten (10) business days ~~prior to the date of payment.~~ However, ~~this subsection does not prevent payments being made at shorter intervals than specified in this subsection, nor repeat any law providing for payments at shorter intervals.~~ **following the close of the pay period, unless an employer and an employee agree to a different payment date, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code.** However, if an employee voluntarily leaves employment, either permanently or temporarily, the employer shall not be required to pay the employee an amount due the employee until the next usual and regular day for payment of wages, as established by the employer. If an employee leaves employment voluntarily, and without the employee's whereabouts or address being known to the employer, the employer is not subject to section 2 of this chapter until:

- (1) ten (10) business days have elapsed after the employee has made a demand for the wages due the employee; or
- (2) the employee has furnished the employer with the employee's address where the wages may be sent or forwarded."

Renumber all SECTIONS consecutively.

(Reference is to SB 212 as printed January 25, 2008.)

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