February 17, 2009

HOUSE BILL No. 1379

DIGEST OF HB 1379 (Updated February 16, 2009 11:15 pm - DI 113)

Citations Affected: IC 6-3; IC 6-8.1; IC 22-1; IC 22-2; IC 22-3; IC 22-4.1; IC 34-11; IC 36-1.

Synopsis: Improper classification of employees. Provides that an individual performing services for a contractor or subcontractor on a construction project is considered to be an employee of the contractor or subcontractor, with certain exceptions. Provides for investigations of the employment relationship between an individual and a contractor or subcontractor by the department of labor, for certain procedures to be followed in investigations, and for various civil penalties to be assessed by the department of labor for the failure to properly classify individuals as employees. Provides for the sharing of information concerning the classification of individuals as independent contractors among the department of labor, the department of state revenue, the department of workforce development, and the worker's compensation board of Indiana. Provides that certain information pertaining to employee classification shared among the state agencies is confidential and may not be published or open to public inspection. Provides for criminal penalties for the improper classification of employees as independent contractors, and prohibits the awarding of contracts for public work projects to a contractor or subcontractor for four years after the contractor or subcontractor is found to have committed certain recurring improper classifications.

Effective: July 1, 2009.

Niezgodski, Barnes, Dvorak, Soliday

January 13, 2009, read first time and referred to Committee on Labor and Employment.
February 5, 2009, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.
February 17, 2009, reported — Do Pass.

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February 17, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1379

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:

SECTION 1. IC 6-3-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As used in this section, "independent contractor" refers to a person described in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5).

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

(c) An independent contractor who does not make an election under:

(1) IC 22-3-6-1(b)(4) or IC 22-3-6-1(b)(5) is not subject to the compensation provisions of IC 22-3-2 through IC 22-3-6; or

(2) IC 22-3-7-9(b)(2) or IC 22-3-7-9(b)(3) is not subject to the compensation provisions of IC 22-3-7;

and must file a statement with the department with supporting documentation of independent contractor status and obtain a certificate of exemption under this section.

(d) An independent contractor shall file with the department, in the form prescribed by the department, a statement providing the following

information:

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

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

(3) The name and:

(A) Social Security number;

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

(C) taxpayer identification number (TIN);

of each person or entity with whom the independent contractor has contracted.

(e) Along with the statement required in subsection (d), an independent contractor shall file annually with the department documentation in support of independent contractor status before being granted a certificate of exemption. The independent contractor must obtain clearance from the department of state revenue before issuance of the certificate.

(f) An independent contractor shall pay a filing fee of five dollars ($5) with the statement required in subsection (d). The fees collected under this subsection shall be deposited into a special account in the state general fund known as the independent contractor information account. Money in the independent contractor information account is annually appropriated to the department for its use in carrying out the purposes of this section.

(g) The department shall keep each statement and supporting documentation received under this section on file and on request may verify that a certificate of exemption is on file.

(h) The certificate of exemption required by this section must be on a form prescribed and provided by the department. A certificate issued under this section is valid for one (1) year. The department shall maintain the original certificate on file.

(i) A certificate of exemption must certify the following information:

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

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

(j) The department shall provide the certificate of exemption to the person requesting it not less than seven (7) business days after

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

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

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

(m) If the department determines during an investigation that a contractor or subcontractor has failed to properly classify as an employee an independent contractor on a construction project, and the contractor or subcontractor fully conforms to the departmental decision, either by:

(1) properly classifying all employees found to be misclassified as an independent contractor within seven (7) business days after notification of the determination by the department; or

(2) ceasing all work on the construction project within seven (7) business days after the notification;

the contractor or subcontractor shall be found to be in conformance with the department's decision, and no fee or penalty shall become due. In addition, the department shall revoke the certificate of exemption provided under subsection (j) to the employee who has not been properly classified. The filing fee paid under subsection (f) shall not be returned to the individual who had claimed to be an independent contractor.

(n) A contractor or subcontractor who continues to fail to properly classify an employee as an independent contractor on a construction project more than seven (7) business days after notification by the department of the determination of the failure to properly classify the employee under subsection (m) is subject to a civil penalty of five hundred dollars ($500) per employee to be paid to the department. The penalties collected under this subsection shall be deposited into the special account in the state general fund established under subsection (f) and known as the independent contractor information account. IC 6-8.1-3-12 applies to the investigation and IC 6-8.1-5-1 applies to the assessment of

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tax due concerning the determination of the failure to properly classify an employee under this section.

(o) If a contractor or a subcontractor has conformed to the department's decision under subsection (m) regarding the failure to properly classify an employee of the contractor or subcontractor, and upon further investigation the contractor or subcontractor is found to be in direct disregard of the department's decision in an attempt to deceive the department, the contractor or subcontractor shall be subject immediately to double the civil penalty that the contractor or subcontractor would otherwise be subject to under subsection (n) per employee who has failed to have been properly classified.

~~(m)~~ **(p)** A contractor **or a subcontractor** who knowingly or intentionally causes or assists employees, including temporary employees, to file a false statement and supporting documentation of independent contractor status commits a Class D felony.

(q) If an interested party (as defined in IC 22-2-15-11) is found by the department to have requested four (4) investigations concerning the alleged failure to properly classify an independent contractor as an employee by the department within a period of one (1) year, whether the interested party:

(1) requested four (4) investigations of the same contractor or subcontractor; or

(2) requested four (4) investigations of different contractors or subcontractors;

and if the department finds all of the requests for investigations to have been groundless, the interested party shall be assessed a civil penalty of five hundred dollars ($500) per requested investigation by the department. A civil penalty assessed and paid under this subsection shall be deposited into the special account in the state general fund established under subsection (f) and known as the independent contractor information account.

(r) An independent contractor who fails to file a statement as required by subsection (d) shall be assessed a civil penalty of five hundred dollars ($500) by the department. A civil penalty assessed and paid under this subsection shall be deposited into the special account in the state general fund established under subsection (f) and known as the independent contractor information account.

SECTION 2. IC 6-8.1-3-21 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 21. (a) This section applies after December 31, 2009.**

(b) The department shall cooperate with the:

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(1) department of labor created by IC 22-1-1-1;
(2) worker's compensation board of Indiana created by IC 22-3-1-1(a); and
(3) department of workforce development established by IC 22-4.1-2-1;

by sharing information concerning any suspected improper classification by a contractor (as defined in IC 22-2-15-7) of an employee as an independent contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)). For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

SECTION 3. IC 6-8.1-9-14, AS AMENDED BY P.L.103-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) Except as provided in subsection (n), the department shall establish, administer, and make available a centralized debt collection program for use by state agencies to collect delinquent accounts, charges, fees, loans, taxes, **civil penalties assessed by agencies,** or other indebtedness owed to or being collected by state agencies. The department's collection facilities shall be available for use by other state agencies only when resources are available to the department.

(b) The commissioner shall prescribe the appropriate form and manner in which collection information is to be submitted to the department.

(c) The debt must be delinquent and not subject to litigation, claim, appeal, or review under the appropriate remedies of a state agency.

(d) The department has the authority to collect for the state or claimant agency (as defined in IC 6-8.1-9.5-1) delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or claimant agency that has a formal agreement with the department for central debt collection.

(e) The formal agreement must provide that the information provided to the department be sufficient to establish the obligation in court and to render the agreement as a legal judgment on behalf of the state. After transferring a file for collection to the department for collection, the claimant agency shall terminate all collection procedures and be available to provide assistance to the department. Upon receipt of a file for collection, the department shall comply with all applicable state and federal laws governing collection of the debt.

(f) The department may use a claimant agency's statutory authority to collect the claimant agency's delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to the claimant agency.

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(g) The department's right to credit against taxes due may not be impaired by any right granted the department or other state agency under this section.

(h) The department of state revenue may charge the claimant agency a fee not to exceed fifteen percent (15%) of any funds the department collects for a claimant agency. Notwithstanding any law concerning delinquent accounts, charges, fees, loans, taxes, or other indebtedness, the fifteen percent (15%) fee shall be added to the amount due to the state or claimant agency when the collection is made.

(i) Fees collected under subsection (h) shall be retained by the department after the debt is collected for the claimant agency and are appropriated to the department for use by the department in administering this section.

(j) The department shall transfer any funds collected from a debtor to the claimant agency within thirty (30) days after the end of the month in which the funds were collected.

(k) When a claimant agency requests collection by the department, the claimant agency shall provide the department with:

(1) the full name;

(2) the Social Security number or federal identification number, or both;

(3) the last known mailing address; and

(4) additional information that the department may request;

concerning the debtor.

(l) The department shall establish a minimum amount that the department will attempt to collect for the claimant agency.

(m) The commissioner shall report, not later than March 1 for the previous calendar year, to the governor, the budget director, and the legislative council concerning the implementation of the centralized debt collection program, the number of debts, the dollar amounts of debts collected, and an estimate of the future costs and benefits that may be associated with the collection program. A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(n) The department may not assess a fee to a state agency or a custodial parent for seeking a setoff to a state or federal income tax refund for past due child support.

SECTION 4. IC 22-1-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. The commissioner of labor and ~~his~~ **an** authorized representative **of the commissioner of labor** shall have the power and the authority to enter any place of employment for the purpose of collecting facts and statistics relating to

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the employment of workers and of making inspections for the proper enforcement of all of the labor laws of this state, including IC 5-16-7 **and IC 22-2-15.** No employer or owner shall refuse to admit the commissioner of labor or ~~his~~ authorized representatives **of the commissioner of labor** to ~~his~~ **the employer's** place of employment.

SECTION 5. IC 22-1-1-22 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 22. The department of labor shall cooperate with the:**

(1) department of workforce development established by IC 22-4.1-2-1;

(2) department of state revenue established by IC 6-8.1-2-1; and

(3) worker's compensation board of Indiana created by IC 22-3-1-1(a);

by sharing information concerning any suspected improper classification by a contractor (as defined in IC 22-2-15-7) of an employee as an independent contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)). For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

SECTION 6. IC 22-2-15 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 15. Employee Classification Act

Sec. 1. This chapter applies after December 31, 2009.

Sec. 2. This chapter is intended to address the improper classification of an employee as an independent contractor.

Sec. 3. This chapter does not apply to:

(1) private residential home construction, including the construction of:

(A) single family homes;

(B) duplex design homes; or

(C) quadruplex homes; or

(2) a redevelopment project subject to IC 36-1-12-4.

Sec. 4. As used in this chapter, "agent of the contractor" means:

(1) an individual having management authority or enforcement powers with respect to a practice or policy of the contractor regarding the classification of an employee of the contractor;

(2) a corporate officer of the contractor; or

(3) a member of the board of directors of the contractor.

Sec. 5. (a) As used in this chapter, "board" refers to the

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worker's compensation board of Indiana created by IC 22-3-1-1(a).

(b) The term includes the board, the secretary of the board, employees of the board, and agents authorized by the board to act on behalf of the board.

Sec. 6. (a) As used in this chapter, "construction" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintaining, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, airport facility, highway, roadway, street, bridge, alley, sewer, drain, ditch, sewage disposal plant, waterworks, parking facility, railroad, excavation, or other project, development, real property or improvement, or doing any part of these actions.

(b) For purposes of subsection (a), it is immaterial whether or not the performance of the work described involves the addition of any material or article of merchandise to, or fabrication into, a structure, project, development, real property, or improvement described in this section.

(c) The term defined in subsection (a) includes moving construction related materials to or from the job site.

Sec. 7. (a) As used in this chapter, "contractor" means any sole proprietor, partnership, firm, corporation, limited liability company, association, or other legal entity that engages in construction authorized by law to do business within Indiana.

(b) The term includes a general contractor, a subcontractor, and a lower tiered contractor.

(c) The term does not include the state, the federal government, or a political subdivision.

Sec. 8. (a) As used in this chapter, "department" refers to the department of labor created by IC 22-1-1-1.

(b) The term includes the commissioner, employees of the department of labor, and agents authorized by the commissioner to act on behalf of the department of labor.

Sec. 9. (a) As used in this chapter, "department of revenue" refers to the department of state revenue established by IC 6-8.1-2-1.

(b) The term includes the commissioner, employees of the department of revenue, and agents authorized by the commissioner to act on behalf of the department of revenue.

Sec. 10. (a) As used in this chapter, "department of workforce development" refers to the department of workforce development

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established by IC 22-4.1-2-1.

(b) The term includes the commissioner, employees of the department of workforce development, and agents authorized by the commissioner to act on behalf of the department of workforce development.

Sec. 11. (a) As used in this chapter, "interested party" means a person with an interest in compliance with this chapter, including the state or a political subdivision.

(b) This section does not require that a person be aggrieved in order to be considered an interested party.

Sec. 12. As used in this chapter, "performing services" means performing construction services.

Sec. 13. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 14. As used in this chapter, "subcontractor" has the meaning set forth in IC 36-1-12-1.2(3).

Sec. 15. (a) An individual performing services for a contractor or a subcontractor is considered to be an employee of the contractor or subcontractor unless the individual is an independent contractor under IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5).

(b) For purposes of this chapter, the term "independent contractor" includes an individual who is an owner-operator and who provides a motor vehicle and the services of a driver to a motor carrier under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057.

Sec. 16. (a) It is a violation of this chapter for a contractor, an agent of a contractor, or a subcontractor to fail to properly classify an individual as an employee of the contractor or subcontractor unless the relationship between the individual and the contractor or subcontractor is excluded under section 15(a) of this chapter.

(b) A contractor is jointly liable under this chapter for the failure of a subcontractor or a lower tiered subcontractor to properly classify persons performing services as employees.

Sec. 17. (a) A contractor or subcontractor shall maintain records for a period as required in IC 6-3-6-10 and IC 6-8.1-5-4 for an individual performing services for the contractor or subcontractor, regardless of whether the individual is classified as:

(1) an employee;

(2) an independent contractor;

(3) a sole proprietor; or

(4) a partnership.

(b) Records to be maintained by the contractor or subcontractor

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must include all documents related to, or tending to establish the nature of, the relationship between the contractor or subcontractor and an individual performing services for the contractor or subcontractor. Records that must be maintained under this section for an individual performing services for the contractor or subcontractor include, but are not limited to:

(1) the:

(A) name;

(B) address;

(C) phone number; and

(D) Social Security number, individual taxpayer identification number, or federal tax identification number;

(2) the type of work performed and the total number of days and hours worked;

(3) the method, frequency, and basis on which wages were paid or payments were made;

(4) all invoices, billing statements, or other payment records, including the dates of payments, and any miscellaneous income paid or deductions made;

(5) copies of all contracts with the individual, agreements with the individual, applications for employment by the individual with the contractor or subcontractor, and policy or employment manuals of the employer for the period that the individual performed services for the contractor or subcontractor; and

(6) any federal and state tax documents or other information the department considers relevant or necessary.

Sec. 18. (a) An interested party may file a complaint with the department against a contractor or a subcontractor if the interested party has a reasonable belief that the contractor or subcontractor is in violation of this chapter. The department may not investigate a complaint for a violation alleged to have occurred before January 1, 2010.

(b) Upon receiving a complaint under subsection (a), the department immediately shall commence an investigation to ascertain the facts relating to the violation alleged in the complaint and determine whether a violation under this chapter has occurred. The investigation may be made by written or oral inquiry, field visit, conference, or any method or combination of methods the department considers suitable. The department:

(1) may conduct investigations in connection with the

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administration and enforcement of this chapter;

(2) shall enforce the provisions of this chapter; and

(3) may hire investigators and other personnel necessary to carry out the purpose of this chapter.

(c) The department has authority to visit and inspect, at all reasonable times, a worksite subject to the provisions of this chapter and has authority to inspect, at all reasonable times, documents related to the determination of whether an individual is an independent contractor under section 15 of this chapter.

(d) The department may:

(1) compel, by subpoena, the attendance and testimony of witnesses and the production of books, payrolls, records, papers, and other evidence in an investigation; and

(2) administer oaths to witnesses.

Sec. 19. (a) The department, the department of workforce development, the department of revenue, and the board shall cooperate under this chapter by sharing information concerning suspected failure to properly classify an independent contractor as an employee by a contractor, an agent of a contractor, or a subcontractor.

(b) Before January 1, 2010, the department, the department of workforce development, the department of revenue, and the board shall develop a computerized system in order to investigate suspected failure to properly classify an independent contractor as an employee. For purposes of IC 5-14-3-4, information exchanged under this section is confidential.

Sec. 20. (a) Whenever the department determines, after investigation, that a violation of this chapter has occurred, the department shall issue and cause to be served on the contractor or the subcontractor, by posting at the site in a location visible to the workers, if construction is still occurring, an order to cease and desist from further violation of this chapter. If construction has ceased, the notice shall be sent by first class mail to the business address of the contractor as shown in the records of the secretary of state. If a subcontractor has committed the violation, the department shall notify the contractor either at the job site or by first class mail sent to the business address of the contractor as shown in the records of the secretary of state, and to the subcontractor, either at the job site or by first class mail sent to the business address of the subcontractor as shown in the records of the secretary of state. An order issued under this section is a matter of public record.

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(b) Upon determining that a contractor, an agent of a contractor, or a subcontractor has classified an employee as an independent contractor in violation of this chapter, the department shall notify:

(1) the department of workforce development, which shall investigate the contractor's compliance with laws under IC 22-4 and IC 22-4.1;

(2) the department of revenue, which shall investigate the contractor's compliance with laws under IC 6; and

(3) the board, which shall investigate the contractor's compliance with laws under IC 22-3.

The department of workforce development, the department of revenue, and the board have the option to join in the investigation with the department or to commence a separate investigation.

Sec. 21. (a) Seven (7) business days after the department serves a cease and desist order upon a violator under section 20 of this chapter, if services are continuing to be performed, the investigating department shall return to the job site and continue investigation of the classification of employees. If the department concludes that the failure to properly classify employees is continuing, the department shall impose a civil penalty of five hundred dollars ($500) per improperly classified employee against the contractor or on both the contractor and the subcontractor, if a subcontractor has committed the violation. The civil penalty shall be deposited in the employee classification fund established by section 24 of this chapter. A civil penalty imposed under this section is a matter of public record.

(b) Fifteen (15) days after the investigating department has made an investigation at a job site under subsection (a), if services are continuing to be performed, the department shall return to the job site and continue the investigation of the proper classification of employees. If the department concludes that improper classification of employees is continuing to occur, the department shall impose a civil penalty of:

(1) one thousand dollars ($1,000) per employee who has been improperly classified against the contractor or against both the contractor and the subcontractor, if the subcontractor has committed the violation, in cases in which the contractor or subcontractor has employed five (5) or fewer improperly classified employees;

(2) two thousand five hundred dollars ($2,500) per employee who has been improperly classified against the contractor or

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against both the contractor and the subcontractor, if the subcontractor has committed the violation, in cases in which the contractor or subcontractor has employed six (6) to ten (10) improperly classified employees; and

(3) five thousand dollars ($5,000) per employee who has been improperly classified, against the contractor or against both the subcontractor and contractor, if the subcontractor has committed the violation, in cases in which the contractor or subcontractor has employed more than ten (10) improperly classified employees.

The civil penalty shall be deposited in the employee classification fund established by section 24 of this chapter. A civil penalty imposed under this section is a matter of public record.

Sec. 22. At the time of the imposition of the civil penalty under section 21(a) and 21(b) of this chapter, the department shall inform the contractor by written notice, sent by first class mail to the business address of the contractor as shown in the records of the secretary of state, that a further investigation by the department will be made thirty (30) business days after the initiation of the investigation. The notice also shall inform the contractor that if further investigation reveals the continuing failure to properly classify employees, the department will take the action set forth in section 27(b) of this chapter, which will deny the contractor a contract for a public work project (as defined in IC 36-1-12-2) for four (4) years after the posting of the name of the contractor on a list kept by the department and posted on the department's Internet web site.

Sec. 23. (a) A contractor, an agent of a contractor, or a subcontractor that receives:

(1) a cease and desist order;

(2) a civil penalty assessment; or

(3) both an order under subdivision (1) and a civil penalty under subdivision (2);

from the department may seek a hearing on the determination by filing a written petition for review with the department within ten (10) business days after receipt of the determination and in accordance with IC 4-21.5-3-2. The petition for review must contain a statement of the basis for contesting the determination of the department. The department shall mail a copy of the petition for review to the complainant and to any interested party designated on the complaint. The contractor or subcontractor shall post a copy of the petition for review contemporaneously with the

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filing of the petition at or near the place where the alleged violation occurred or, if the contractor or subcontractor is no longer performing services at the place where the alleged violation occurred, at the contractor's or subcontractor's principal place of business in a conspicuous place where labor notices regularly are posted. Further, the contractor or subcontractor, when filing the petition, shall post a bond in an amount sufficient to pay wages, salary, employment benefits, or other compensation lost or denied to the individual as determined by the department and civil penalties assessed by the department. If the contractor, agent of the contractor, or subcontractor does not file a petition for review and post a bond within the ten (10) business day period, the department's determination shall be final.

(b) If the contractor, agent of the contractor, or subcontractor files a petition for review of an action under section 27(b) of this chapter within ten (10) business days after notification of the proposed action by the department, the commissioner shall set a hearing on the proposed action. The hearing must take place not more than forty-five (45) calendar days after the receipt of the request for the hearing by the department. The hearing must be held in accordance with IC 4-21.5.

Sec. 24. (a) The employee classification fund is established to provide funds for:

(1) administering this chapter;

(2) investigating contractors, agents of contractors, and subcontractors;

(3) determining whether there is proof to substantiate allegations of failure to properly classify employees; and

(4) meeting other expenses incurred in carrying out the duties of the department under this chapter.

The fund consists of civil penalties collected by the department under this chapter. The fund shall be administered by the department.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. The interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 25. IC 22-1-1-18 applies to a violation of this chapter. When

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it appears to the department that a contractor, an agent of a contractor, or a subcontractor has violated a valid order of the department issued under this chapter, the department may:

(1) commence an action through the attorney general; and

(2) seek an order from the superior or circuit court in the county in which the contractor or subcontractor does business;

mandating the contractor or the subcontractor to obey the order of the department. The failure of the contractor or the subcontractor to obey a court order obtained under this section is contempt of court.

Sec. 26. (a) Except as provided in subsection (b), a contractor, an agent of a contractor, or a subcontractor that intentionally fails to properly classify an individual as an employee under section 16 of this chapter commits a Class C misdemeanor.

(b) A contractor, an agent of a contractor, or a subcontractor that recklessly, knowingly, or intentionally attempts to induce an individual to waive any provision of this chapter commits a Class D felony.

(c) IC 6-3-7-5(p) applies to a contractor or subcontractor who knowingly or intentionally causes or assists an employee, including a temporary employee, to file a false statement and supporting documentation for purposes of this chapter.

Sec. 27. (a) The department shall post a summary of the requirements of this chapter on the Internet web site of the department.

(b) After the imposition of a civil penalty under section 21(b) of this chapter, thirty (30) business days after the initiation of the investigation, the department shall place the contractor's or subcontractor's name on a list maintained on the Internet web site of the department. A contract for a public work may not be awarded by the state or a political subdivision to:

(1) a contractor or subcontractor whose name appears on the list; or

(2) a firm, a corporation, a partnership, or an association in which the contractor or subcontractor has an interest;

until four (4) years after the posting of the contractor's or subcontractor's name on the list. If a contractor, agent of the contractor, or subcontractor files a timely petition for review under section 23(b) of this chapter, the contractor's or subcontractor's name shall not be added to the list until the department's determination that the contractor or subcontractor

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has violated this chapter is final.

Sec. 28. (a) It is a violation of this chapter for a contractor, an agent of a contractor, or a subcontractor to retaliate through discharge or in any other manner against a person for exercising a right granted under this chapter.

(b) It is a violation of this chapter for a contractor, an agent of a contractor, or a subcontractor to retaliate against a person for:

(1) making a complaint to a contractor or an agent of a contractor, to a coworker, to a community organization, to a state or federal agency, or within a public hearing that rights guaranteed under this chapter have been violated;

(2) causing a proceeding under or related to this chapter to be instituted; or

(3) testifying or preparing to testify in an investigation or proceeding under this chapter.

(c) Retaliation through discharge or in any other manner subjects a contractor, an agent of a contractor, or a subcontractor to a private civil action brought by the aggrieved person.

(d) In a civil action for unlawful retaliation, the court may award:

(1) all legal or equitable relief, or both, as appropriate; and

(2) attorney's fees and costs.

(e) The right of an aggrieved person to bring a civil action under this section terminates three (3) years after the final date of performing services for the contractor or subcontractor by the affected employee. However, the period of limitation established by this subsection is tolled if the contractor, an agent of the contractor, or a subcontractor has deterred a person's exercise of rights under this chapter.

Sec. 29. If an interested party is found by the department to have requested four (4) investigations under section 18(a) of this chapter concerning the alleged failure to properly classify an independent contractor as an employee by the department within a period of one (1) year, whether the interested party:

(1) requested four (4) investigations of the same contractor or subcontractor; or

(2) requested four (4) investigations of different contractors or subcontractors;

and if the department finds all of the requests for investigations to have been groundless, the interested party shall be assessed a civil penalty of five hundred dollars ($500) per requested investigation by the department. A civil penalty assessed and paid under this

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section shall be deposited in the employee classification fund established by section 24 of this chapter.

Sec. 30. (a) Beginning July 1, 2010, the:

(1) department of revenue;

(2) department;

(3) board; and

(4) department of workforce development;

shall, after June 30 of each year and before January 1 of the following year, report to the legislative council on the activities of each agency under this chapter concerning any suspected improper classification of an employee as an independent contractor by a contractor, an agent of a contractor, or a subcontractor. The agencies may collaborate on the report.

(b) A report to the legislative council under this section must be in an electronic format under IC 5-14-6. The legislative council shall transmit a copy of the report to the chairpersons of the house of representatives and senate standing committees concerned with labor and employment issues.

Sec. 31. A person may not waive any provision of this chapter.

Sec. 32. A finding made under this chapter:

(1) is for the purpose of enforcing this chapter; and

(2) is not admissible or binding against a party in a proceeding other than a proceeding under this chapter.

SECTION 7. IC 22-3-1-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5. (a) This section applies after December 31, 2009.**

(b) The worker's compensation board of Indiana shall cooperate with the:

(1) department of state revenue established by IC 6-8.1-2-1;

(2) department of labor created by IC 22-1-1-1; and

(3) department of workforce development established by IC 22-4.1-2-1;

by sharing information concerning any suspected improper classification by a contractor (as defined in IC 22-2-15-7) of an employee as an independent contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)). For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

SECTION 8. IC 22-3-5-5.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5.7. (a) If the worker's compensation board of Indiana discovers that a contractor or subcontractor failed to**

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carry worker's compensation insurance or is unable to furnish to the worker's compensation board satisfactory proof of the contractor's or subcontractor's financial ability to pay the compensation as required under IC 22-3-2-5, section 1 of this chapter, and IC 22-3-7-34, the contractor or subcontractor is subject to a civil penalty of five hundred dollars ($500), to be assessed and collected by the board.

(b) The worker's compensation board has the authority to investigate an allegation of improper classification of an employee as an independent contractor in violation of IC 22-2-15.

(c) If the worker's compensation board, during its investigation, determines that a contractor or subcontractor has failed to properly classify an independent contractor as an employee on a construction project and the contractor or subcontractor fully conforms to the decision of the worker's compensation board, either by:

(1) properly classifying all employees found to be improperly classified as an independent contractor within seven (7) business days after notification by the worker's compensation board of the determination; or

(2) ceasing all work on the construction project within seven (7) business days after notification;

the contractor or subcontractor shall be found to be in conformance with the decision of the the worker's compensation board, and no fee or penalty is due.

(d) If the worker's compensation board discovers, more than seven (7) business days after notification by the worker's compensation board of the determination under subsection (c), that the contractor or subcontractor continues to improperly classify an employee as an independent contractor, the contractor or subcontractor is subject to a civil penalty of five hundred dollars ($500) per improperly classified employee, to be assessed and collected by the board.

(e) Civil penalties assessed and collected under this section shall be deposited in the worker's compensation supplemental administrative fund established by section 6 of this chapter.

(f) If an interested party (as defined in IC 22-2-15-11) is found by the worker's compensation board to have requested four (4) investigations concerning the alleged improper classification of an employee as an independent contractor by the worker's compensation board within a period of one (1) year, whether the interested party:

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(1) requested four (4) investigations of the same contractor or subcontractor; or

(2) requested four (4) investigations of different contractors or subcontractors;

and, if the worker's compensation board finds all requests to have been groundless, the interested party shall be assessed a civil penalty of five hundred dollars ($500) per requested investigation by the worker's compensation board. A civil penalty assessed and paid under this subsection shall be deposited in the worker's compensation supplemental administrative fund established by section 6 of this chapter.

SECTION 9. IC 22-3-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) The worker's compensation supplemental administrative fund is established for the purpose of carrying out the administrative purposes and functions of the worker's compensation board. The fund consists of fees collected from employers under sections 1 through 2 of this chapter and from fees collected under IC 22-3-2-14.5, ~~and~~ IC 22-3-7-34.5, **and IC 22-3-5-5.7.** The fund shall be administered by the worker's compensation board. Money in the fund is annually appropriated to the worker's compensation board and shall be used for all expenses incurred by the worker's compensation board.

(b) The money in the fund is not to be used to replace funds otherwise appropriated to the board. Money in the fund at the end of the state fiscal year does not revert to the state general fund.

SECTION 10. IC 22-4.1-4-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) This section applies after December 31, 2009.**

(b) The department shall cooperate with the:

(1) department of labor created by IC 22-1-1-1;

(2) department of state revenue established by IC 6-8.1-2-1; and

(3) worker's compensation board of Indiana created by IC 22-3-1-1(a);

by sharing information concerning any suspected improper classification by a contractor (as defined in IC 22-2-15-7) of an employee as an independent contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)). For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

SECTION 11. IC 22-4.1-4-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2009]: **Sec. 5. (a) The department has the authority to investigate an allegation of improper classification of an employee as an independent contractor in violation of IC 22-2-15.**

(b) If the department, during its investigation, determines that a contractor or subcontractor has improperly classified an employee as an independent contractor on a construction project and the contractor or subcontractor fully conforms to the decision of the department, either by:

(1) properly classifying all employees found to be improperly classified as an independent contractor within seven (7) business days after notification by the department; or

(2) ceasing all work on the construction project within seven (7) business days after the notification;

the contractor or subcontractor shall be found to be in conformance with the decision of the department, and no fee or penalty is due.

(c) If the department discovers, more than seven (7) business days after notification by the department of the determination under subsection (b) that the contractor or subcontractor continues to improperly classify an employee as an independent contractor, the contractor or subcontractor is subject to a civil penalty of five hundred dollars ($500) per improperly classified employee, to be assessed and collected by the board.

(d) Civil penalties assessed and collected under this section shall be deposited in the fund.

(e) If an interested party (as defined in IC 22-2-15-11) is found by the department to have requested four (4) investigations concerning the alleged improper classification of an employee as an independent contractor by the department within a period of one (1) year, whether the interested party:

(1) requested four (4) investigations of the same contractor or subcontractor; or

(2) requested four (4) investigations of different contractors or subcontractors;

if the department finds all of the requests to have been groundless, the interested party shall be assessed a civil penalty of five hundred dollars ($500) per requested investigation by the department. A civil penalty assessed and paid under this subsection shall be deposited in the fund.

SECTION 12. IC 34-11-2-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 13. (a) This section applies**

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beginning January 1, 2010.

(b) The definitions in IC 22-2-15 apply throughout this section.

(c) A civil action brought by an aggrieved person under IC 22-2-15 must be commenced not later than three (3) years after the final date of performing services for the contractor, as provided in IC 22-2-15-28(e).

SECTION 13. IC 36-1-12-1, AS AMENDED BY P.L.168-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in this section, this chapter applies to all public work performed or contracted for by:

(1) political subdivisions; and

(2) their agencies;

regardless of whether it is performed on property owned or leased by the political subdivision or agency.

(b) This chapter does not apply to an officer or agent who, on behalf of a municipal utility, maintains, extends, and installs services of the utility if the necessary work is done by the employees of the utility.

(c) This chapter does not apply to hospitals organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public work is financed in whole or in part with cumulative building fund revenue.

(d) This chapter does not apply to tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(e) As an alternative to this chapter, the governing body of a school corporation may:

(1) participate in a utility efficiency program; ~~or may~~

(2) enter into a guaranteed savings contract as permitted under IC 36-1-12.5; **or**

(3) enter into a project labor agreement.

(f) This chapter does not apply to a person that has entered into an operating agreement with a political subdivision or an agency of a political subdivision under IC 5-23.

(g) In addition to this chapter, IC 22-2-15 applies to contractors, subcontractors, employees, and independent contractors with respect to construction services performed on public work projects, excepting a redevelopment project subject to IC 36-1-12-4.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1379, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STILWELL, Chair

Committee Vote: yeas 6, nays 5.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1379, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

CRAWFORD, Chair

Committee Vote: yeas 16, nays 5.

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