
SENATE BILL No. 385

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-7-5; IC 6-8.1; IC 22-1-1; IC 22-2-15; IC 22-3; IC 22-4.1-4; IC 34-11-2-13; IC 36-1-12-1.

Synopsis: Improper classification of employees. Provides that an individual performing services for a contractor or subcontractor on a public work 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that certain information pertaining to employee classification shared among the state agencies is confidential and may not be published or open to public inspection.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.

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January 8, 2009, read first time and referred to Committee on Pensions and Labor.

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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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SENATE BILL No. 385



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 6-3-7-5 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As used in this section,
- 3 "independent contractor" refers to a person described in
- 4 IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5).
- 5 (b) As used in this section, "person" means an individual, a
- 6 proprietorship, a partnership, a joint venture, a firm, an association, a
- 7 corporation, or other legal entity.
- 8 (c) An independent contractor who does not make an election under:
- 9 (1) IC 22-3-6-1(b)(4) or IC 22-3-6-1(b)(5) is not subject to the
- 10 compensation provisions of IC 22-3-2 through IC 22-3-6; or
- 11 (2) IC 22-3-7-9(b)(2) or IC 22-3-7-9(b)(3) is not subject to the
- 12 compensation provisions of IC 22-3-7;
- 13 and must file a statement with the department with supporting
- 14 documentation of independent contractor status and obtain a certificate
- 15 of exemption under this section.
- 16 (d) An independent contractor shall file with the department, in the
- 17 form prescribed by the department, a statement providing the following



1 information:

2 (1) The independent contractor's name, trade name, address, and

3 telephone number.

4 (2) The independent contractor's federal identification number or

5 Social Security number.

6 (3) The name and:

7 (A) Social Security number;

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

9 (C) taxpayer identification number (TIN);

10 of each person or entity with whom the independent contractor

11 has contracted.

12 (e) Along with the statement required in subsection (d), an

13 independent contractor shall file annually with the department

14 documentation in support of independent contractor status before being

15 granted a certificate of exemption. The independent contractor must

16 obtain clearance from the department of state revenue before issuance

17 of the certificate.

18 (f) An independent contractor shall pay a filing fee of five dollars

19 (\$5) with the statement required in subsection (d). The fees collected

20 under this subsection shall be deposited into a special account in the

21 state general fund known as the independent contractor information

22 account. Money in the independent contractor information account is

23 annually appropriated to the department for its use in carrying out the

24 purposes of this section.

25 (g) The department shall keep each statement and supporting

26 documentation received under this section on file and on request may

27 verify that a certificate of exemption is on file.

28 (h) The certificate of exemption required by this section must be on

29 a form prescribed and provided by the department. A certificate issued

30 under this section is valid for one (1) year. The department shall

31 maintain the original certificate on file.

32 (i) A certificate of exemption must certify the following

33 information:

34 (1) That the independent contractor has worker's compensation

35 coverage for the independent contractor's employees in

36 accordance with IC 22-3-2 through IC 22-3-7.

37 (2) That the independent contractor desires to be exempt from

38 being able to recover under the worker's compensation policy or

39 self-insurance of a person for whom the independent contractor

40 will perform work only as an independent contractor.

41 (j) The department shall provide the certificate of exemption to the

42 person requesting it not less than seven (7) business days after

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

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

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

15 (m) **If the department determines during an investigation that
16 a contractor or subcontractor has failed to properly classify as an
17 employee an independent contractor on a public work (as defined
18 in IC 36-1-12-2), and the contractor or subcontractor fully
19 conforms to the departmental decision, either by:**

20 (1) properly classifying all employees found to be misclassified
21 as an independent contractor not later than seven (7) business
22 days after notification of the determination by the
23 department; or

24 (2) ceasing all work on the public work project not later than
25 seven (7) business days after the notification;

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

33 (n) **A contractor or subcontractor who continues to properly
34 classify an employee as an independent contractor on a public
35 work project more than seven (7) business days after notification
36 by the department of the determination of the failure to properly
37 classify under subsection (m) is subject to a civil penalty of five
38 hundred dollars (\$500) per employee to be paid to the department.
39 The penalties collected under this subsection shall be deposited into
40 the special account in the state general fund established under
41 subsection (f) and known as the independent contractor
42 information account. IC 6-8.1-3-12 applies to the investigation and**

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1 IC 6-8.1-5-1 applies to the assessment of tax due concerning the
 2 determination of the failure to properly classify an employee under
 3 this section.

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

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

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

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

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

27 and if the department finds all the requests for investigations to
 28 have been groundless, the interested party shall be assessed a civil
 29 penalty of five hundred dollars (\$500) per requested investigation
 30 by the department. A civil penalty assessed and paid under this
 31 subsection shall be deposited in the independent contractor
 32 information account established under subsection (f).

33 SECTION 2. IC 6-8.1-3-21 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 35 1, 2009]: Sec. 21. (a) This section applies after December 31, 2009.

36 (b) The department shall cooperate with the:

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

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

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

42 by sharing information concerning any suspected improper

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

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

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

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

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

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

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

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

40 (h) The department of state revenue may charge the claimant agency
41 a fee not to exceed fifteen percent (15%) of any funds the department
42 collects for a claimant agency. Notwithstanding any law concerning

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1 delinquent accounts, charges, fees, loans, taxes, or other indebtedness,
2 the fifteen percent (15%) fee shall be added to the amount due to the
3 state or claimant agency when the collection is made.

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

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

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

- 13 (1) the full name;
- 14 (2) the Social Security number or federal identification number,
15 or both;
- 16 (3) the last known mailing address; and
- 17 (4) additional information that the department may request;
18 concerning the debtor.

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

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

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

32 SECTION 4. IC 22-1-1-16 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. The commissioner
34 of labor and ~~his~~ **an** authorized representative **of the commissioner of**
35 **labor** shall have the power and the authority to enter any place of
36 employment for the purpose of collecting facts and statistics relating to
37 the employment of workers and of making inspections for the proper
38 enforcement of all of the labor laws of this state, including IC 5-16-7
39 **and IC 22-2-15**. No employer or owner shall refuse to admit the
40 commissioner of labor or ~~his~~ authorized representatives **of the**
41 **commissioner of labor** to ~~his~~ **the employer's or owner's** place of
42 employment.

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1 SECTION 5. IC 22-1-1-22 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2009]: **Sec. 22. The department of labor shall cooperate with the:**

- 4 (1) department of workforce development established by
 5 IC 22-4.1-2-1;
 6 (2) department of state revenue established by IC 6-8.1-2-1;
 7 and
 8 (3) worker's compensation board of Indiana created by
 9 IC 22-3-1-1(a);

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

16 SECTION 6. IC 22-2-15 IS ADDED TO THE INDIANA CODE AS
 17 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2009]:

19 **Chapter 15. Employee Classification Act**

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

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

23 **Sec. 3. This chapter does not apply to:**

- 24 (1) private residential home construction, including the
 25 construction of:
 26 (A) single family homes;
 27 (B) duplex design homes; or
 28 (C) quadruplex homes; or
 29 (2) a public work project consisting of new home construction
 30 or a redevelopment project subject to IC 36-1-12-4.

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

- 32 (1) an individual having management authority or
 33 enforcement powers with respect to a practice or policy of the
 34 contractor regarding the classification of an employee of the
 35 contractor;
 36 (2) a corporate officer of the contractor; or
 37 (3) a member of the board of directors of the contractor.

38 **Sec. 5. (a) As used in this chapter, "board" refers to the**
 39 **worker's compensation board of Indiana created by IC 22-3-1-1(a).**

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

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

11 **(b)** For purposes of subsection (a), it is immaterial whether the
 12 performance of the work described involves the addition of any
 13 material or article of merchandise to, or fabrication into, a
 14 structure, project, development, real property, or improvement
 15 described in this section.

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

18 **Sec. 7.** As used in this chapter, "contractor" has the meaning set
 19 forth in IC 36-1-12-1.2(2).

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

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

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

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

31 **Sec. 10. (a)** As used in this chapter, "department of workforce
 32 development" refers to the department of workforce development
 33 established by IC 22-4.1-2-1.

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

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

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

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1 **Sec. 12.** As used in this chapter, "performing services" means
2 performing construction services on a public work project.

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

5 **Sec. 14.** As used in this chapter, "public work" has the meaning
6 set forth in IC 36-1-12-2.

7 **Sec. 15.** As used in this chapter, "subcontractor" has the
8 meaning set forth in IC 36-1-12-1.2(3).

9 **Sec. 16. (a)** An individual performing services for a contractor
10 or a subcontractor is considered to be an employee of the
11 contractor or subcontractor unless the individual is an independent
12 contractor under IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5).

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

18 **Sec. 17. (a)** It is a violation of this chapter for a contractor, an
19 agent of a contractor, or a subcontractor to fail to properly classify
20 an individual as an employee of the contractor or subcontractor
21 unless the relationship between the individual and the contractor
22 or subcontractor is excluded under section 16(a) of this chapter.

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

26 **Sec. 18. (a)** A contractor or subcontractor shall maintain
27 records for a period as required in IC 6-3-6-10 and IC 6-8.1-5-4 for
28 an individual performing services for the contractor or
29 subcontractor, regardless of whether the individual is classified as:

- 30 (1) an employee;
- 31 (2) an independent contractor;
- 32 (3) a sole proprietor; or
- 33 (4) a partnership.

34 **(b)** Records to be maintained by the contractor or subcontractor
35 must include all documents related to, or tending to establish the
36 nature of, the relationship between the contractor or subcontractor
37 and an individual performing services for the contractor or
38 subcontractor. Records that must be maintained under this section
39 for an individual performing services for the contractor or
40 subcontractor include, but are not limited to:

- 41 (1) the:
- 42 (A) name;

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- 1 (B) address;
- 2 (C) phone number; and
- 3 (D) Social Security number, individual taxpayer
- 4 identification number, or federal tax identification
- 5 number;
- 6 (2) the type of work performed and the total number of days
- 7 and hours worked;
- 8 (3) the method, frequency, and basis on which wages were
- 9 paid or payments were made;
- 10 (4) all invoices, billing statements, or other payment records,
- 11 including the dates of payments, and any miscellaneous
- 12 income paid or deductions made;
- 13 (5) copies of all contracts with the individual, agreements with
- 14 the individual, applications for employment by the individual
- 15 with the contractor or subcontractor, and policy or
- 16 employment manuals of the employer for the period that the
- 17 individual performed services for the contractor or
- 18 subcontractor; and
- 19 (6) any federal and state tax documents or other information
- 20 the department considers relevant or necessary.

21 **Sec. 19. (a) An interested party may file a complaint with the**
 22 **department against a contractor or a subcontractor if the**
 23 **interested party has a reasonable belief that the contractor or**
 24 **subcontractor is in violation of this chapter. The department may**
 25 **not investigate a complaint for a violation alleged to have occurred**
 26 **before January 1, 2010.**

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

- 34 (1) may conduct investigations in connection with the
- 35 administration and enforcement of this chapter;
- 36 (2) shall enforce the provisions of this chapter; and
- 37 (3) may hire investigators and other personnel necessary to
- 38 carry out the purpose of this chapter.

39 (c) The department may visit and inspect, at all reasonable
 40 times, a worksite subject to this chapter and may inspect, at all
 41 reasonable times, documents related to the determination of
 42 whether an individual is an independent contractor under section

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16 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. 20. (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 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. 21. (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.

(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

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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. 22. (a) Seven (7) business days after the department serves a cease and desist order upon a violator under section 21 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 25 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 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

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1 subcontractor has employed more than ten (10) improperly
 2 classified employees.
 3 The civil penalty shall be deposited in the employee classification
 4 fund established by section 25 of this chapter. A civil penalty
 5 imposed under this section is a matter of public record.
 6 Sec. 23. At the time of the imposition of the civil penalty under
 7 section 22(a) and 22(b) of this chapter, the department shall inform
 8 the contractor by written notice, sent by first class mail to the
 9 business address of the contractor as shown in the records of the
 10 secretary of state, that a further investigation by the department
 11 will be made thirty (30) business days after the initiation of the
 12 investigation. The notice also must inform the contractor that if
 13 further investigation reveals the continuing failure to properly
 14 classify employees, the department will take the action set forth in
 15 section 28(b) of this chapter, which will deny the contractor a
 16 contract for a public work project for four (4) years after the
 17 posting of the name of the contractor on a list kept by the
 18 department and posted on the web site of the department on the
 19 Internet.
 20 Sec. 24. (a) A contractor, an agent of a contractor, or a
 21 subcontractor that receives:
 22 (1) a cease and desist order;
 23 (2) a civil penalty assessment; or
 24 (3) both an order under subdivision (1) and a civil penalty
 25 under subdivision (2);
 26 from the department may seek a hearing on the determination by
 27 filing a written petition for review with the department within ten
 28 (10) business days after receipt of the determination and in
 29 accordance with IC 4-21.5-3-2. The petition for review must
 30 contain a statement of the basis for contesting the determination of
 31 the department. The department shall mail a copy of the petition
 32 for review to the complainant and to any interested party
 33 designated on the complaint. The contractor or subcontractor shall
 34 post a copy of the petition for review contemporaneously with the
 35 filing of the petition at or near the place where the alleged violation
 36 occurred or, if the contractor or subcontractor is no longer
 37 performing services at the place where the alleged violation
 38 occurred, at the contractor's or subcontractor's principal place of
 39 business in a conspicuous place where labor notices regularly are
 40 posted. Further, the contractor or subcontractor, when filing the
 41 petition, shall post a bond in an amount sufficient to pay wages,
 42 salary, employment benefits, or other compensation lost or denied

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1 to the individual as determined by the department and civil
2 penalties assessed by the department. If the contractor, agent of the
3 contractor, or subcontractor does not file a petition for review and
4 post a bond within the ten (10) business day period, the
5 department's determination is final.

6 (b) If the contractor, agent of the contractor, or subcontractor
7 files a petition for review of an action under section 28(b) of this
8 chapter within ten (10) business days after notification of the
9 proposed action by the department, the commissioner shall set a
10 hearing on the proposed action. The hearing must take place not
11 more than forty-five (45) calendar days after the receipt of the
12 request for the hearing by the department. The hearing must be
13 held in accordance with IC 4-21.5.

14 Sec. 25. (a) The employee classification fund is established to
15 provide funds for:

- 16 (1) administering this chapter;
- 17 (2) investigating contractors, agents of contractors, and
18 subcontractors;
- 19 (3) determining whether there is proof to substantiate
20 allegations of failure to properly classify employees; and
- 21 (4) meeting other expenses incurred in carrying out the duties
22 of the department under this chapter.

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

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

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

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

34 Sec. 26. IC 22-1-1-18 applies to a violation of this chapter. When
35 it appears to the department that a contractor, an agent of a
36 contractor, or a subcontractor has violated a valid order of the
37 department issued under this chapter, the department may:

- 38 (1) commence an action through the attorney general; and
- 39 (2) seek an order from the superior or circuit court in the
40 county in which the contractor or subcontractor does
41 business;

42 mandating the contractor or the subcontractor to obey the order

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

4 Sec. 27. (a) Except as provided in subsection (b), a contractor,
5 an agent of a contractor, or a subcontractor that intentionally fails
6 to properly classify an individual as an employee under section 16
7 of this chapter commits a Class C misdemeanor.

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

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

16 Sec. 28. (a) The department shall post a summary of the
17 requirements of this chapter on the Internet web site of the
18 department.

19 (b) After the imposition of a civil penalty under section 22(b) of
20 this chapter, thirty (30) business days after the initiation of the
21 investigation, the department shall place the contractor's or
22 subcontractor's name on a list maintained on the Internet web site
23 of the department. A contract for a public work may not be
24 awarded by the state or a political subdivision to:

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

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

29 until four (4) years after the posting of the contractor's or
30 subcontractor's name on the list. If a contractor, agent of the
31 contractor, or subcontractor files a timely petition for review
32 under section 24(b) of this chapter, the contractor's or
33 subcontractor's name shall not be added to the list until the
34 department's determination that the contractor or subcontractor
35 has violated this chapter is final.

36 Sec. 29. (a) It is a violation of this chapter for a contractor, an
37 agent of a contractor, or a subcontractor to retaliate through
38 discharge or in any other manner against a person for exercising
39 a right granted under this chapter.

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

42 (1) making a complaint to a contractor or an agent of a

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1 contractor, to a coworker, to a community organization, to a
 2 state or federal agency, or within a public hearing that rights
 3 guaranteed under this chapter have been violated;
 4 (2) causing a proceeding under or related to this chapter to be
 5 instituted; or
 6 (3) testifying or preparing to testify in an investigation or
 7 proceeding under this chapter.

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

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

- 13 (1) all legal or equitable relief, or both, as appropriate; and
- 14 (2) attorney's fees and costs.

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

22 **Sec. 30.** If an interested party is found by the department to
 23 have requested four (4) investigations under section 19(a) of this
 24 chapter concerning the alleged failure to properly classify an
 25 independent contractor as an employee by the department within
 26 a period of one (1) year, whether the interested party:

- 27 (1) requested four (4) investigations of the same contractor or
 28 subcontractor; or
- 29 (2) requested four (4) investigations of different contractors
 30 or subcontractors;

31 and if the department finds all the requests for investigations to
 32 have been groundless, the interested party shall be assessed a civil
 33 penalty of five hundred dollars (\$500) per requested investigation
 34 by the department. A civil penalty assessed and paid under this
 35 section shall be deposited in the employee classification fund
 36 established by section 25 of this chapter.

37 **Sec. 31. (a)** Beginning July 1, 2010, the:

- 38 (1) department of revenue;
- 39 (2) department;
- 40 (3) board; and
- 41 (4) department of workforce development;

42 shall, after June 30 and before January 1 of each year, report to

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1 the legislative council on the activities of each agency under this
2 chapter concerning any suspected improper classification of an
3 employee as an independent contractor by a contractor, an agent
4 of a contractor, or a subcontractor. The agencies may collaborate
5 on the report.

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

11 Sec. 32. A person may not waive any provision of this chapter.

12 Sec. 33. A finding made under this chapter:

- 13 (1) is for the purpose of enforcing this chapter; and
- 14 (2) is not admissible or binding against a party in a
15 proceeding other than a proceeding under this chapter.

16 SECTION 7. IC 22-3-1-5 IS ADDED TO THE INDIANA CODE
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
18 1, 2009]: Sec. 5. (a) This section applies after December 31, 2009.

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

- 21 (1) department of state revenue established by IC 6-8.1-2-1;
- 22 (2) department of labor created by IC 22-1-1-1; and
- 23 (3) department of workforce development established by
24 IC 22-4.1-2-1;

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

31 SECTION 8. IC 22-3-5-5.7 IS ADDED TO THE INDIANA CODE
32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
33 1, 2009]: Sec. 5.7. (a) If the worker's compensation board of
34 Indiana discovers that a contractor or subcontractor failed to
35 carry worker's compensation insurance or is unable to furnish to
36 the worker's compensation board satisfactory proof of the
37 contractor's or subcontractor's financial ability to pay the
38 compensation as required under IC 22-3-2-5, section 1 of this
39 chapter, and IC 22-3-7-34, the contractor or subcontractor is
40 subject to a civil penalty of five hundred dollars (\$500), to be
41 assessed and collected by the board.

42 (b) The worker's compensation board may investigate an

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1 allegation of improper classification of an employee as an
2 independent contractor in violation of IC 22-2-15.

3 (c) If the workers' compensation board, during its investigation,
4 determines that a contractor or subcontractor has failed to
5 properly classify an independent contractor as an employee on a
6 public work (as defined in IC 36-1-12-2), and the contractor or
7 subcontractor fully conforms to the decision of the worker's
8 compensation board, either by:

9 (1) properly classifying all employees found to be improperly
10 classified as an independent contractor not later than seven
11 (7) business days after notification by the worker's
12 compensation board of the determination; or

13 (2) ceasing all work on the public work not later than seven
14 (7) business days after notification;

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

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

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

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

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

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

39 and, if the worker's compensation board finds all requests to have
40 been groundless, the interested party shall be assessed a civil
41 penalty of five hundred dollars (\$500) per requested investigation
42 by the worker's compensation board. A civil penalty assessed and

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1 **paid under this subsection shall be deposited in the worker's**
 2 **compensation supplemental administrative fund established by**
 3 **section 6 of this chapter.**

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

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

18 SECTION 10. IC 22-4.1-4-4 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2009]: **Sec. 4. (a) This section applies after December 31, 2009.**

21 **(b) The department shall cooperate with the:**

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

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

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

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

33 SECTION 11. IC 22-4.1-4-5 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 35 1, 2009]: **Sec. 5. (a) The department may investigate an allegation**
 36 **of improper classification of an employee as an independent**
 37 **contractor in violation of IC 22-12-15.**

38 **(b) If the department, during its investigation, determines that**
 39 **a contractor or subcontractor has improperly classified an**
 40 **employee as an independent contractor on a public work (as**
 41 **defined in IC 36-1-12-2), and the contractor or subcontractor fully**
 42 **conforms to the decision of the department, either by:**

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1 **(1) properly classifying all employees found to be improperly**
 2 **classified as an independent contractor not later than seven**
 3 **(7) business days after notification by the department; or**
 4 **(2) ceasing all work on the public work not later than seven**
 5 **(7) business days after the notification;**
 6 **the contractor or subcontractor shall be found to be in**
 7 **conformance with the decision of the department, and no fee or**
 8 **penalty becomes due.**

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

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

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

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

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

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

32 **SECTION 12. IC 34-11-2-13 IS ADDED TO THE INDIANA**
 33 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 34 **[EFFECTIVE JULY 1, 2009]: Sec. 13. (a) This section applies**
 35 **beginning January 1, 2010.**

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

37 **(c) A civil action brought by an aggrieved person under**
 38 **IC 22-2-15 must be commenced not later than three (3) years after**
 39 **the final date of performing services for the contractor, as**
 40 **provided in IC 22-2-15-29(e).**

41 **SECTION 13. IC 36-1-12-1, AS AMENDED BY P.L.168-2006,**
 42 **SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**

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1 JULY 1, 2009]: Sec. 1. (a) Except as provided in this section, this
 2 chapter applies to all public work performed or contracted for by

3 ~~(1)~~ political subdivisions and

4 ~~(2)~~ their agencies

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

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

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

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

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

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

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

22 **(3) enter into a project labor agreement.**

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

26 **(g) In addition to this chapter, IC 22-2-14 applies to contractors,**
 27 **subcontractors, employees, and independent contractors with**
 28 **respect to construction services performed on public work**
 29 **projects.**

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