# SENATE BILL No. 164

DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3-7-5; IC 22-3; IC 22-4-34-2.

**Synopsis:** False statements to state agencies. Provides that an employee who knowingly or intentionally makes a false statement of independent contractor status to the department of state revenue commits a Class D felony. Provides that an employer or employee shall not classify an employee as an independent contractor for the sole or primary purpose of avoiding the worker's compensation law, and that a violation is a Class A infraction. Provides that a person who makes a false representation that an employee is an independent contractor for the purpose of avoiding the unemployment compensation law commits a Class C misdemeanor. Makes technical corrections. Makes conforming amendments.

**Effective:** July 1, 2011.

**Mrvan**

January 5, 2011, read first time and referred to Committee on Pensions and Labor.

C o p y

Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

C o p y

# SENATE BILL No. 164

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, 2011]: 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

C o p y

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)~~ **IC 22-3-2-14.5(g)** and ~~IC 22-3-7-34.5(g).~~ **IC 22-3-7-34.5(h).**

(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) A contractor 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.

**(n) An employee who knowingly or intentionally files a false statement or false supporting documentation of independent contractor status commits a Class D felony.**

SECTION 2. IC 22-3-4-13, AS AMENDED BY P.L.1-2010, SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13. (a) Every employer shall keep a record of all injuries, fatal or otherwise, received by or claimed to have been received by the employer's employees in the course of their employment. Within seven (7) days after the occurrence and knowledge thereof, as provided in IC 22-3-3-1, of any injury to an employee causing death or absence from work for more than one (1) day, a report thereof shall be made in writing and mailed to the employer's insurance carrier or, if the employer is self insured, delivered to the worker's compensation board in the manner provided in subsections (b) and (c). The insurance carrier shall deliver the report to the worker's compensation board in the manner provided in subsections (b) and (c) not later than seven (7) days after receipt of the report or fourteen (14) days after the employer's knowledge of the injury, whichever is later. An employer or insurance carrier that fails to comply with this subsection is subject to a civil penalty of fifty dollars ($50), to be assessed and collected by the board. Civil penalties collected under this section shall be deposited in the state general fund.

(b) All insurance carriers, companies who carry risk without insurance, and third party administrators reporting accident information

C o p y

to the board in compliance with subsection (a) shall:

(1) report the information using electronic data interchange standards prescribed by the board no later than June 30, 1999; or

(2) in the alternative, the reporting entity shall have an implementation plan approved by the board no later than June 30, 2000, that provides for the ability to report the information using electronic data interchange standards prescribed by the board no later than December 31, 2000.

Prior to the June 30, 2000, and December 31, 2000, deadlines, the reporting entity may continue to report accidents to the board by mail in compliance with subsection (a).

(c) The report shall contain the name, nature, and location of the business of the employer, the name, age, sex, wages, **and** occupation of the injured employee, the date and hour of the accident causing the alleged injury, the nature and cause of the injury, and such other information as may be required by the board.

(d) A person who violates any provision of this article, except IC 22-3-5-1, **IC 22-3-6-4,** IC 22-3-7-34(b), or IC 22-3-7-34(c), commits a Class C infraction. A person who violates IC 22-3-5-1, **IC 22-3-6-4,** IC 22-3-7-34(b), or IC 22-3-7-34(c) commits a Class A infraction. The worker's compensation board in the name of the state may seek relief from any court of competent jurisdiction to enjoin any violation of this article.

(e) The venue of all actions under this section lies in the county in which the employee was injured. The prosecuting attorney of the county shall prosecute all such violations upon written request of the worker's compensation board. Such violations shall be prosecuted in the name of the state.

(f) In an action before the board against an employer who at the time of the injury to or occupational disease of an employee had failed to comply with IC 22-3-5-1, IC 22-3-7-34(b), or IC 22-3-7-34(c), the board may award to the employee or the dependents of a deceased employee:

(1) compensation not to exceed double the compensation provided by this article;

(2) medical expenses; and

(3) reasonable attorney fees in addition to the compensation and medical expenses.

(g) In an action under subsection (d), the court may:

(1) order the employer to cease doing business in Indiana until the employer furnishes proof of insurance as required by IC 22-3-5-1 and IC 22-3-7-34(b) or IC 22-3-7-34(c);

C o p y

(2) require satisfactory proof of the employer's financial ability to pay any compensation or medical expenses in the amount and manner and when due as provided for in IC 22-3, for any injuries which occurred during any period of noncompliance; and

(3) require the employer to deposit with the worker's compensation board an acceptable security, indemnity, or bond to secure the payment of such compensation and medical expense liabilities.

(h) The penalty provisions of subsection ~~(d)~~ **(f)** shall apply only to the employer and shall not apply for a failure to exact a certificate of insurance under IC 22-3-2-14 or IC 22-3-7-34(i) or IC 22-3-7-34(j).

SECTION 3. IC 22-3-6-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4. An employer or employee shall not classify an employee as an independent contractor for the sole or primary purpose of avoiding the:**

**(1) rights and remedies due to the employee under IC 22-3-2-6 or IC 22-3-7-6; or**

**(2) liability due under IC 22-3-5-1(a) or IC 22-3-7-34(c)(1).**

SECTION 4. IC 22-4-34-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. An employing unit or other person who:

**(1)** makes a false statement or representation knowing it to be false, ~~or who~~ **including misclassifying an employee as an independent contractor;**

**(2)** knowingly fails to disclose a material fact to:

**(A)** prevent or reduce the payment of benefits to any individual entitled ~~thereto, or~~ to **benefits;**

**(B)** avoid becoming or remaining subject to this article; or ~~to~~

**(C)** avoid or reduce any contribution or other payment required from an employing unit under:

**(i)** this article; or ~~under~~

**(ii)** the employment security law of any other state, or of the federal government or of a foreign government; or ~~who~~

**(3)** knowingly fails to:

**(A)** make any such contributions or other payment; ~~or to~~

**(B)** keep or furnish any reports required under this article; or ~~to~~

**(C)** produce or permit the inspection or copying of records as required under this article;

commits a Class C misdemeanor. Each day of a failure constitutes a separate offense.

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