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# HOUSE BILL No. 1136

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## DIGEST OF INTRODUCED BILL

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

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

**Effective:** July 1, 2011.

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**Stevenson**

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January 6, 2011, read first time and referred to Committee on Employment, Labor and Pensions.

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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.

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## HOUSE BILL No. 1136

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 22-8-1.1-1, AS AMENDED BY P.L.32-2008,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 1. As used in this chapter, unless otherwise  
4 provided:

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

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

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

14 "Commissioner" means the commissioner of labor or the  
15 commissioner's duly designated representative.

16 "Department" means the department of labor.

17 "Employee" means a person permitted to work by an employer in



1 employment.

2 "Employer" means any individual or type of organization, including

3 the state and all its political subdivisions, that has in its employ one (1)

4 or more individuals.

5 "INSafe" means the division of the department created by section 40

6 of this chapter.

7 **"Political subdivision" has the meaning set forth in**

8 **IC 36-1-2-13.**

9 "Safety order" refers to a notice issued to employers by the

10 commissioner of labor for alleged violations of this chapter, including

11 any health and safety standards.

12 **"Serious bodily injury" has the meaning set forth in**

13 **IC 35-41-1-25.**

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

15 "Voluntary protection program" means a program offered by the

16 United States **Department of Labor**, Occupational Safety and Health

17 Administration to employers subject to this chapter that exempts the

18 employers from general scheduled inspections.

19 SECTION 2. IC 22-8-1.1-2 IS AMENDED TO READ AS

20 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. Each employer shall

21 establish and maintain conditions of work which are:

22 (1) reasonably safe and healthful for employees; and

23 (2) free from recognized hazards that are causing or are likely to

24 cause death or serious ~~physical harm~~ **bodily injury** to employees.

25 SECTION 3. IC 22-8-1.1-3.1 IS AMENDED TO READ AS

26 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3.1. Every employer **or**

27 **agent of the employer** shall:

28 (1) comply with the occupational health and safety standards

29 promulgated under this chapter; and

30 (2) pursuant to any directions in such standards, keep ~~his~~ **the**

31 employees informed of:

32 (A) their protections and obligations under the chapter; **and**

33 (B) the hazards of the workplace and suitable precautions,

34 relevant symptoms, and emergency treatment for such hazards.

35 SECTION 4. IC 22-8-1.1-5 IS AMENDED TO READ AS

36 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. No person,

37 **employer, or agent of the employer** may:

38 (1) interfere with the use of any method or process adopted for the

39 protection of any employee in ~~his~~ **the employee's** employment or

40 place of employment, or of any other person lawfully within the

41 place of employment; or

42 (2) fail to follow orders necessary to protect the life, health, and

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1 safety of employees and any other person lawfully within the  
2 place of employment.

3 SECTION 5. IC 22-8-1.1-17.1 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17.1. (a) Any standard  
5 promulgated under this chapter shall prescribe the use of labels or other  
6 appropriate forms of warning ~~as are~~ necessary to insure that employees  
7 are apprised of all hazards to which they are exposed, relevant  
8 symptoms and appropriate emergency treatment, and proper conditions  
9 and precautions of safe use or exposure. Where appropriate, such a  
10 standard shall also:

11 (1) prescribe suitable protective equipment and control or  
12 technological procedures to be used in connection with the  
13 hazards; and

14 (2) ~~shall~~ provide for monitoring or measuring employee exposure  
15 at such locations and intervals and in such manner as may be  
16 necessary for the protection of employees.

17 In addition where appropriate, any standard shall prescribe the type or  
18 frequency of medical examinations or other tests which shall be made  
19 available by the employer, at employer's cost, to employees exposed to  
20 hazards in order to most effectively determine whether the health of the  
21 employees is adversely affected by the exposure. Upon request, the  
22 results of examinations or tests shall be furnished to the department and  
23 shall remain confidential within the department. At the request of the  
24 employee, results shall be furnished to ~~his~~ **the employee's** physician.

25 (b) The commission, in promulgating standards dealing with toxic  
26 materials or harmful physical agents, shall set the standard which most  
27 adequately assures, to the extent feasible, on the basis of the best  
28 available evidence, that no employee will suffer material impairment  
29 of health or functional capacity even if the employee has regular  
30 exposure to the hazard dealt with by the standard for the period of ~~his~~  
31 **the employee's** working life. Development of standards shall be based  
32 upon research, demonstrations, experiments, and such other  
33 information as may be appropriate. In addition to the attainment of the  
34 highest degree of health and safety protection for the employee, other  
35 considerations shall be:

- 36 (1) the latest available scientific data in the field;
- 37 (2) the feasibility of the standards; and
- 38 (3) experience gained under this and other health and safety laws.

39 Whenever practicable, the standard promulgated shall be expressed in  
40 terms of objective criteria and of the performance desired.

41 (c) The commission, in promulgating standards, shall adopt rules  
42 requiring employers to maintain accurate records of employee

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1 exposures to potentially toxic material or harmful physical agents  
 2 which are required to be monitored or measured under the standards.  
 3 These rules shall provide employees or their representatives with an  
 4 opportunity to observe monitoring or measuring and to have access to  
 5 the records thereof. These rules shall also make appropriate provisions  
 6 for each employee to have access to such records as will indicate ~~his~~  
 7 **the employee's** own exposure to toxic materials or harmful physical  
 8 agents. Under these rules, each employer **or an agent of each**  
 9 **employer** shall notify any employee who is being consistently exposed  
 10 to toxic materials or harmful physical agents in concentrations or at  
 11 levels which exceed those prescribed by an occupational safety and  
 12 health standard and shall inform any employee who is ~~being~~ thus  
 13 exposed of the corrective action being taken.

14 SECTION 6. IC 22-8-1.1-37.1 IS AMENDED TO READ AS  
 15 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 37.1. (a) No person  
 16 may make a false statement, representation, or certification in any  
 17 application, record, report, plan, or other document required pursuant  
 18 to this chapter.

19 (b) **An employer or agent of the employer may not:**  
 20 (1) **destroy; or**  
 21 (2) **negligently or intentionally allow the destruction of;**  
 22 **documents concerning hazards to the public or the employees of**  
 23 **the employer.**

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

26 SECTION 7. IC 22-8-1.1-39.1 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 39.1. (a) Whenever the  
 28 commissioner is of the opinion that imminent danger exists in any  
 29 workplace in this state, which condition can reasonably be expected to  
 30 cause death or serious ~~physical harm;~~ **bodily injury**, the commissioner,  
 31 through the attorney general, may petition the circuit court of the  
 32 county in which ~~such the~~ workplace is located for appropriate relief.  
 33 Any order issued under this section may require ~~such~~ steps to be taken  
 34 ~~as may be~~ necessary to avoid, correct, or remove such imminent danger  
 35 and prohibit the employment or presence of any individual in locations  
 36 or under conditions where ~~such the~~ imminent danger exists, except  
 37 individuals whose presence is necessary to avoid, correct, or remove  
 38 ~~such the~~ imminent danger or to maintain the capacity of a continuous  
 39 process operation to resume normal operations without a complete  
 40 cessation of operations, or where a cessation of operations is necessary,  
 41 to permit such to be accomplished in a safe and orderly manner.

42 (b) Whenever and as soon as an inspector concludes that conditions

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1 or practices described in subsection (a) exist in any place of  
2 employment, ~~he~~ **the inspector** shall inform the affected employers and  
3 employees of the danger and that ~~he~~ **the inspector** is recommending to  
4 the commissioner that relief be sought.

5 (c) If the commissioner arbitrarily or capriciously fails to seek relief  
6 under this section, any employee who may be injured by reason of such  
7 failure, or the representative of such employees, may bring an action  
8 against the commissioner, in the circuit court of the county in which the  
9 imminent danger is alleged to exist or the employer has its principal  
10 office, for a writ of mandamus to compel the commissioner to seek  
11 such an order and for such further relief as may be appropriate.

12 SECTION 8. IC 22-8-1.1-48.3 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 48.3. **(a) Except as  
14 provided in subsection (b)**, nothing in this chapter shall be construed  
15 to supersede or in any manner affect any worker's compensation or  
16 occupational diseases law, or any other statutory rights, duties, or  
17 liabilities or create any private right of action.

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

22 SECTION 9. IC 22-8-1.1-49 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 49. **(a) Subsections (c)  
24 through (e) do not apply to:**

- 25 **(1) the state; or**
- 26 **(2) a political subdivision.**

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

29 **(c) An employer or agent of the employer who:**  
30 **(1) recklessly, knowingly, or intentionally violates a rule  
31 adopted under this chapter; and**  
32 **(2) causes serious bodily injury to an employee;**  
33 **commits a Class A misdemeanor.**

34 **(d) An employer or agent of the employer who:**  
35 **(1) recklessly violates a rule adopted under this chapter; and**  
36 **(2) causes the death of an employee;**  
37 **commits corporate manslaughter, a Class D felony.**

38 **(e) An employer or agent of the employer who:**  
39 **(1) knowingly or intentionally violates a rule adopted under  
40 this chapter; and**  
41 **(2) causes the death of an employee;**  
42 **commits corporate manslaughter, a Class C felony.**

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