February 17, 2012

ENGROSSED
HOUSE BILL No. 1173

DIGEST OF HB 1173 (Updated February 15, 2012 10:59 am - DI 102)

Citations Affected: IC 22-8.

Synopsis: Various IOSHA matters. Provides that when an employee believes that a workplace violation of safety or health standards exists, the name of the complainant and any identifying information and the name and identifying information of other individual employees may be nondisclosable and confidential for purposes of public records law. Provides that neither the commissioner of the department of labor (department) nor any employee or former employee of the department is subject to subpoena for purposes of inquiry into any occupational safety and health inspection, except when: (1) enforcement proceedings are brought under the Indiana Occupational Safety and Health Act; (2) an action is filed in which the department is a party; (3) the commissioner consents in writing to waive the exemption; or (4) a court finds that: (A) the information sought is essential to the underlying case; (B) there are no reasonable alternate means for acquiring the information; and (C) a significant injustice would occur if the requested testimony was not available. Provides that the annual tax imposed to finance the safety and health consultation services for the INsafe division of the department is due and payable on or before May 1 of each year when the tax is imposed. (Current law provides that the tax is due and payable on or before April 10 of each year when the tax is imposed.) Makes technical corrections.

Effective: July 1, 2012.

Ellspermann
(SENATE SPONSOR — WALKER)

January 9, 2012, read first time and referred to Committee on Employment, Labor and Pensions.
January 23, 2012, reported — Do Pass.
January 26, 2012, read second time, ordered engrossed. Engrossed.
January 27, 2012, read third time, passed. Yeas 65, nays 26.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Pensions and Labor.
February 16, 2012, amended, reported favorably — Do Pass.

C o p y

February 17, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

C o p y

ENGROSSED
HOUSE BILL No. 1173

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 22-8-1.1-24.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 24.1. ~~Employee Requests for Inspection.~~ **(a)** In the case of a written request for an inspection by an employee or ~~his~~ **a** representative **of an employee** who believes that a violation of a safety or health standard exists that threatens physical harm or that an imminent danger exists, a copy shall be provided the employer at the time of inspection, except that, upon request of the complainant ~~his,~~ **or by a decision by the commissioner:**

(1) the name **of the complainant** and **any identifying information; and**

(2) the name **and identifying information** of individual employees referred to therein;

shall not appear in such copy or on any record published, released, or made available by the commissioner. The commissioner shall make the inspection, or shall reply in writing within twenty (20) days giving the reasons why ~~he~~ **the commissioner** is not making the requested inspection. In the event a requested inspection is made, and no safety

order issued, the commissioner shall reply in writing within twenty (20) days giving the reason for ~~his~~ **the** decision.

(b) The employee or ~~his~~ **a** representative **of the employee,** after receipt of the commissioner's reply **under subsection (a),** or upon the failure of the commissioner to reply, may request informal review of ~~its~~ **the** request for an inspection **made under subsection (a),** or after inspection, upon the refusal to issue a safety order, by filing a written request for such informal review with the commissioner. Within twenty (20) days of receipt of the request, informal review shall commence with a final decision to be rendered within ten (10) days thereafter.

SECTION 2. IC 22-8-1.1-24.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 24.3. Subject to regulations issued by the commissioner, a representative of the employer and a representative of the employees shall be given the opportunity to accompany the inspector during the physical inspection of the place of employment. Where there is no authorized employee representative, the inspector shall consult with a reasonable number of employees concerning matters of health and safety in the place of employment. **The name and any identifying information of those employees interviewed are confidential for purposes of IC 5-14-3-4(a)(1).**

SECTION 3. IC 22-8-1.1-48, AS AMENDED BY P.L.32-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 48. (a) The tax shall be paid directly to the director who shall deposit the revenues in a special fund to be used solely for safety and health consultation, education, and training services for employer groups and for onsite consultation service as provided in section 41 of this chapter. These revenues shall not be transferable to any other fund and shall not revert to the general fund at the end of any fiscal year.

(b) Tax revenues as provided for in section 47 of this chapter shall be made available to INSafe only by appropriation of the general assembly based upon the needs of INSafe as determined by the department and submitted in the form of a budget in the manner provided by law.

(c) The annual tax payment is due and payable on or before ~~April 10~~ **May 1** of each year in which the tax is imposed.

SECTION 4. IC 22-8-1.1-52 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 52. This section does not apply to a subpoena requesting only documents or other records. Neither the commissioner nor any employee or former employee of the**

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department is subject to subpoena for purposes of inquiry into any occupational safety and health inspection, except in the following circumstances:

(1) An enforcement proceeding is brought under this chapter.

(2) An action is filed in which the department is a party.

(3) The commissioner consents in writing to waive the exemption provided by this section.

(4) A court finds that:

(A) the information sought is essential to the underlying case;

(B) there are no reasonable alternative means for acquiring the information; and

(C) a significant injustice would occur if the requested testimony was not available.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred House Bill 1173, 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.

GUTWEIN, Chair

Committee Vote: yeas 8, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1173, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 40, delete "Neither the commissioner nor any employee or" and insert "**This section does not apply to a subpoena requesting only documents or other records. Neither the commissioner nor any employee or former employee of the department is subject to subpoena for purposes of inquiry into any occupational safety and health inspection, except in the following circumstances:**

(1) An enforcement proceeding is brought under this chapter.

(2) An action is filed in which the department is a party.

(3) The commissioner consents in writing to waive the exemption provided by this section.

(4) A court finds that:

(A) the information sought is essential to the underlying case;

(B) there are no reasonable alternative means for acquiring the information; and

(C) a significant injustice would occur if the requested testimony was not available.".

Page 2, delete lines 41 through 42.

Delete page 3.

and when so amended that said bill do pass.

(Reference is to HB 1173 as printed January 23, 2012.)

BOOTS, Chairperson

Committee Vote: Yeas 9, Nays 0.

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