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# SENATE BILL No. 143

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3-7-5; IC 22-3; IC 22-4-34-2; IC 35-51-22-1.

**Synopsis:** False statements to state agencies. Provides that a person 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 who misclassifies a person as an independent contractor for the sole or primary purpose of avoiding the worker's compensation law commits a Class A misdemeanor. Provides that a person who makes a false representation that an employee is an independent contractor to avoid liability under the unemployment compensation law commits a Class C misdemeanor. Makes technical corrections. Makes conforming amendments.

**Effective:** July 1, 2013.

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### Mrvan

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January 7, 2013, read first time and referred to Committee on Corrections & Criminal Law.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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## SENATE BILL No. 143



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, 2013]: 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 **IC 22-3-2-14.5(g)** and ~~IC 22-3-7-34.5(g)~~. **IC 22-3-7-34.5(h)**.

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) A contractor who knowingly or intentionally causes or assists  
 16 employees, including temporary employees, to file a false statement  
 17 and supporting documentation of independent contractor status  
 18 commits a Class D felony.

19 **(n) A person who knowingly or intentionally files a false**  
 20 **statement or false supporting documentation of independent**  
 21 **contractor status commits a Class D felony.**

22 SECTION 2. IC 22-3-4-13, AS AMENDED BY P.L.168-2011,  
 23 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2013]: Sec. 13. (a) Every employer shall keep a record of all  
 25 injuries, fatal or otherwise, received by or claimed to have been  
 26 received by the employer's employees in the course of their  
 27 employment and shall provide a copy of the record to the board upon  
 28 request. Within seven (7) days after the first day of a disability that  
 29 arises from a workplace injury and the employer's knowledge of the  
 30 disability, as provided in IC 22-3-3-1, and that causes an employee's  
 31 death or absence from work for more than one (1) day, a report thereof  
 32 shall be made in writing and mailed to the employer's insurance carrier  
 33 or, if the employer is self insured, delivered to the worker's  
 34 compensation board in the manner provided in subsections (b) and (c).  
 35 The insurance carrier shall deliver the report to the worker's  
 36 compensation board in the manner provided in subsections (b) and (c)  
 37 not later than seven (7) days after receipt of the report or fourteen (14)  
 38 days after the employer's knowledge of the injury, whichever is later.  
 39 An employer or insurance carrier that fails to comply with this  
 40 subsection is subject to a civil penalty under section 15 of this chapter.

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

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1 to the board in compliance with subsection (a) shall report the  
 2 information using electronic data interchange standards prescribed by  
 3 the board.

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

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

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

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

- 26 (1) compensation not to exceed double the compensation
- 27 provided by this article;
- 28 (2) medical expenses; and
- 29 (3) reasonable attorney fees in addition to the compensation and
- 30 medical expenses.

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

- 32 (1) require the employer to obtain coverage and furnish proof of
- 33 insurance as required by IC 22-3-5-1 and IC 22-3-7-34(b) or
- 34 IC 22-3-7-34(c) every six (6) months for a period not to exceed
- 35 three (3) years;
- 36 (2) require satisfactory proof of the employer's financial ability to
- 37 pay any compensation or medical expenses in the amount and
- 38 manner, and when due, as provided for in IC 22-3, for all injuries
- 39 which occurred during any period of noncompliance; and
- 40 (3) require the employer to deposit with the worker's
- 41 compensation board an acceptable security, indemnity, or bond to
- 42 secure the payment of such compensation and medical expense

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1 liabilities.

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

6 (i) In an action under subsection (d), if a compensable worker's  
7 compensation or occupational disease claim has been filed and the  
8 employer fails or refuses to pay benefits when due, a court may order  
9 the employer to temporarily cease doing business in Indiana until the  
10 employer:

11 (1) furnishes proof of insurance as required by IC 22-3-5-1 and  
12 IC 22-3-7-34(b) or IC 22-3-7-34(c); and

13 (2) provides any other assurances required by the board to  
14 establish that the employer has the ability to meet all worker's  
15 compensation liabilities incurred during the employer's period of  
16 noncompliance.

17 (j) An appeal of the court's decision under subsection (i) to enjoin  
18 the employer from doing business in Indiana automatically stays the  
19 court's order.

20 SECTION 3. IC 22-3-6-4 IS ADDED TO THE INDIANA CODE  
21 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY  
22 1, 2013]: **Sec. 4. An employer or employee shall not classify a  
23 person as an independent contractor for the sole or primary  
24 purpose of avoiding the:**

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

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

28 SECTION 4. IC 22-4-34-2 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. **(a) An employing  
30 unit or other person who does any of the following commits a Class  
31 C misdemeanor:**

32 **(1) Makes a false statement or representation knowing it to be  
33 false, or who including misclassifying an employee as an  
34 independent contractor.**

35 **(2) Knowingly fails to disclose a material fact to:**

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

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

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

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

42 **(ii) the employment security law of any other state, or of the**

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1 federal government, or of a foreign government. ~~or who~~  
 2 (3) Knowingly fails to:  
 3 (A) make any ~~such~~ contributions or other payment **required**  
 4 **under this article; or to**  
 5 (B) keep or furnish any reports required under this article; or  
 6 ~~to~~  
 7 (C) produce or permit the inspection or copying of records as  
 8 required under this article.

9 ~~commits a Class E misdemeanor.~~

10 (b) Each day of a **misrepresentation** or a failure **occurs or**  
 11 **continues** constitutes a separate offense.

12 SECTION 5. IC 35-51-22-1, AS AMENDED BY P.L.107-2012,  
 13 SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 14 JULY 1, 2013]: Sec. 1. The following statutes define crimes in IC 22:

- 15 IC 22-1-1-22 (Concerning the department of labor).
- 16 IC 22-2-2-11 (Concerning wages, hours, and benefits).
- 17 IC 22-2-7-7 (Concerning wages, hours, and benefits).
- 18 IC 22-3-1-5 (Concerning worker's compensation system).
- 19 **IC 22-3-4-13 (Concerning worker's compensation system).**
- 20 IC 22-4-11.5-10 (Concerning unemployment compensation
- 21 system).
- 22 IC 22-4-19-6 (Concerning unemployment compensation system).
- 23 IC 22-4-29-14 (Concerning unemployment compensation system).
- 24 **IC 22-4-34-2 (Concerning unemployment compensation**
- 25 **system).**
- 26 IC 22-4-34-3 (Concerning unemployment compensation system).
- 27 IC 22-4-34-4 (Concerning unemployment compensation system).
- 28 IC 22-4-34-5 (Concerning unemployment compensation system).
- 29 IC 22-4.1-4-4 (Concerning department of workforce
- 30 development).
- 31 IC 22-4.1-21-38 (Concerning postsecondary proprietary
- 32 educational institution accreditation).
- 33 IC 22-5-1-1 (Concerning unlawful labor practices).
- 34 IC 22-6-2-13 (Concerning labor relations).
- 35 IC 22-7-1-3 (Concerning labor organizations).
- 36 IC 22-8-1.1-24.2 (Concerning occupational health and safety).
- 37 IC 22-8-1.1-49 (Concerning occupational health and safety).
- 38 IC 22-9.5-10-1 (Concerning Indiana fair housing).
- 39 IC 22-11-14-3 (Concerning building and safety regulations).
- 40 IC 22-11-14-6 (Concerning building and safety regulations).
- 41 IC 22-11-14.5-9 (Concerning building and safety regulations).
- 42 IC 22-11-14.5-10 (Concerning building and safety regulations).

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- 1 IC 22-11-14.5-11 (Concerning building and safety regulations).
- 2 IC 22-11-14.5-12 (Concerning building and safety regulations).
- 3 IC 22-11-15-6 (Concerning building and safety regulations).
- 4 IC 22-11-17-3 (Concerning building and safety regulations).
- 5 IC 22-11-17-4 (Concerning building and safety regulations).
- 6 IC 22-11-18-5 (Concerning building and safety regulations).
- 7 IC 22-11-20-6 (Concerning building and safety regulations).
- 8 IC 22-15-4-7 (Concerning building and equipment laws).
- 9 IC 22-15-7-9 (Concerning building and equipment laws).

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