

SENATE BILL No. 146

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-16-7; IC 22-2-2; IC 35-51-22-1.

Synopsis: Enforcement of wage requirements. Increases the penalties imposed on an employer whose violation of the state common construction wage law or minimum wage law involves an employee who is an illegal alien. Provides that a determination by a federal immigration agency that an alien has come to, entered, or remained in the United States in violation of law creates a rebuttable presumption that the alien is in the United States in violation of law.

Effective: July 1, 2013.

Mrvan

January 7, 2013, read first time and referred to Committee on Pensions and Labor.

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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. 146



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 5-16-7-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2013]: Sec. 3. **(a) Except as provided in**
3 **subsection (b), a contractor or subcontractor who knowingly fails to**
4 **pay the rate of wages determined under this chapter commits a Class**
5 **B misdemeanor.**
6 **(b) The offense described in subsection (a) is a Class A**
7 **misdemeanor if the contractor or subcontractor committing the**
8 **offense fails to pay the rate of wages determined under this chapter**
9 **to an alien:**
10 **(1) knowing; or**
11 **(2) in reckless disregard of the fact;**
12 **that the alien has come to, entered, or remained in the United**
13 **States in violation of law.**
14 **(c) For purposes of subsection (b), a determination by a federal**
15 **immigration agency that an alien has come to, entered, or**
16 **remained in the United States in violation of law creates a**
17 **rebuttable presumption that the alien is in the United States in**



1 **violation of law.**

2 (d) If the contractor or subcontractor has committed a prior offense
3 under this section, the contract on which the instant offense occurred
4 shall be forfeited and the contractor or subcontractor may not receive
5 any further payment on the contract nor may the state or the municipal
6 corporation making the contract make any further payments on the
7 contract from any of the funds under its charge or control.

8 SECTION 2. IC 5-16-7-4, AS AMENDED BY P.L.195-2011,
9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2013]: Sec. 4. The following definitions apply throughout this
11 chapter:

12 **(1) "Alien" has the meaning set forth in 8 U.S.C. 1101(a).**

13 ~~(+)~~ **(2) "Common construction wage"** means a scale of wages for
14 each class of work described in section 1(c)(1) of this chapter that
15 is not less than the common construction wage of all construction
16 wages being paid in the county where a project is located, as
17 determined by the committee described in section 1(b) of this
18 chapter after having considered the following:

19 (A) Any reports with respect to wage scales submitted by the
20 Indiana State Building and Construction Trades Council.

21 (B) Any reports with respect to wage scales submitted by the
22 Associated Builders and Contractors of Indiana.

23 (C) Any other information submitted by any person to the
24 committee established under section 1(b) of this chapter.

25 **(3) "Federal immigration agency" means an agency of the**
26 **federal government that is responsible for the determination**
27 **of the immigration status of aliens present in the United**
28 **States.**

29 ~~(2)~~ **(4) "State"** includes any officer, board, commission, or other
30 agency authorized by law to award contracts for the performance
31 of public work on behalf of the state, except as otherwise
32 provided in this chapter.

33 ~~(3)~~ **(5) "Municipal corporation"** includes any county, city, town,
34 school corporation, or any officer, board, commission, or other
35 agency authorized by law to award contracts for the performance
36 of public work on behalf of a municipal corporation. The term
37 also includes a redevelopment commission established under
38 IC 36-7-14-3.

39 ~~(4)~~ **(6) "Public work"** includes any public building, highway,
40 street, alley, bridge, sewer, drain, improvement, or any other work
41 of any nature or character that is paid for out of public funds,
42 except as otherwise provided in this chapter.

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1 SECTION 3. IC 22-2-2-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2013]: Sec. 3. As used in this chapter:

3 **"Alien" has the meaning set forth in 8 U.S.C. 1101(a).**

4 "Commissioner" means the commissioner of labor or the
5 commissioner's authorized representative.

6 "Department" means the department of labor.

7 "Occupation" means an industry, trade, business, or class of work
8 in which employees are gainfully employed.

9 "Employer" means any individual, partnership, association, limited
10 liability company, corporation, business trust, the state, or other
11 governmental agency or political subdivision during any work week in
12 which they have two (2) or more employees. However, it shall not
13 include any employer who is subject to the minimum wage provisions
14 of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C.
15 201-209).

16 "Employee" means any person employed or permitted to work or
17 perform any service for remuneration or under any contract of hire,
18 written or oral, express or implied by an employer in any occupation,
19 but shall not include any of the following:

20 (a) Persons less than sixteen (16) years of age.

21 (b) Persons engaged in an independently established trade,
22 occupation, profession, or business who, in performing the
23 services in question, are free from control or direction both under
24 a contract of service and in fact.

25 (c) Persons performing services not in the course of the
26 employing unit's trade or business.

27 (d) Persons employed on a commission basis.

28 (e) Persons employed by their own parent, spouse, or child.

29 (f) Members of any religious order performing any service for that
30 order, any ordained, commissioned, or licensed minister, priest,
31 rabbi, sexton, or Christian Science reader, and volunteers
32 performing services for any religious or charitable organization.

33 (g) Persons performing services as student nurses in the employ
34 of a hospital or nurses training school while enrolled and
35 regularly attending classes in a nurses training school chartered
36 or approved under law, or students performing services in the
37 employ of persons licensed as both funeral directors and
38 embalmers as a part of their requirements for apprenticeship to
39 secure an embalmer's license or a funeral director's license from
40 the state, or during their attendance at any schools required by law
41 for securing an embalmer's or funeral director's license.

42 (h) Persons who have completed a four (4) year course in a

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1 medical school approved by law when employed as interns or
2 resident physicians by any accredited hospital.

3 (i) Students performing services for any school, college, or
4 university in which they are enrolled and are regularly attending
5 classes.

6 (j) Persons with physical or mental disabilities performing
7 services for nonprofit organizations organized primarily for the
8 purpose of providing employment for persons with disabilities or
9 for assisting in their therapy and rehabilitation.

10 (k) Persons employed as insurance producers, insurance
11 solicitors, and outside salesmen, if all their services are performed
12 for remuneration solely by commission.

13 (l) Persons performing services for any camping, recreational, or
14 guidance facilities operated by a charitable, religious, or
15 educational nonprofit organization.

16 (m) Persons engaged in agricultural labor. The term shall include
17 only services performed:

18 (1) on a farm, in connection with cultivating the soil, or in
19 connection with raising or harvesting any agricultural or
20 horticultural commodity, including the raising, shearing,
21 feeding, caring for, training, and management of livestock,
22 bees, poultry, and furbearing animals and wildlife;

23 (2) in the employ of the owner or tenant or other operator of a
24 farm, in connection with the operation, management,
25 conservation, improvement, or maintenance of the farm and its
26 tools and equipment if the major part of the service is
27 performed on a farm;

28 (3) in connection with:

29 (A) the production or harvesting of maple sugar or maple
30 syrup or any commodity defined as an agricultural
31 commodity in the Agricultural Marketing Act, as amended
32 (12 U.S.C. 1141j);

33 (B) the raising or harvesting of mushrooms;

34 (C) the hatching of poultry; or

35 (D) the operation or maintenance of ditches, canals,
36 reservoirs, or waterways used exclusively for supplying and
37 storing water for farming purposes; and

38 (4) in handling, planting, drying, packing, packaging,
39 processing, freezing, grading, storing, or delivering to storage,
40 to market, or to a carrier for transportation to market, any
41 agricultural or horticultural commodity, but only if service is
42 performed as an incident to ordinary farming operation or, in

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1 the case of fruits and vegetables, as an incident to the
 2 preparation of fruits and vegetables for market. However, this
 3 exception shall not apply to services performed in connection
 4 with any agricultural or horticultural commodity after its
 5 delivery to a terminal market or processor for preparation or
 6 distribution for consumption.

7 As used in this subdivision, "farm" includes stock, dairy, poultry,
 8 fruit, furbearing animals, and truck farms, nurseries, orchards, or
 9 greenhouses or other similar structures used primarily for the
 10 raising of agricultural or horticultural commodities.

11 (n) Those persons employed in executive, administrative, or
 12 professional occupations who have the authority to employ or
 13 discharge and who earn one hundred fifty dollars (\$150) or more
 14 a week, and outside salesmen.

15 (o) Any person not employed for more than four (4) weeks in any
 16 four (4) consecutive three (3) month periods.

17 (p) Any employee with respect to whom the Interstate Commerce
 18 Commission has power to establish qualifications and maximum
 19 hours of service under the federal Motor Carrier Act of 1935 (49
 20 U.S.C. 304(3)) or any employee of a carrier subject to IC 8-2.1.

21 **"Federal immigration agency" means an agency of the federal**
 22 **government that is responsible for the determination of the**
 23 **immigration status of aliens present in the United States.**

24 SECTION 4. IC 22-2-2-11 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. (a) An employer or
 26 his **an employer's** agent who:

27 (1) discharges or otherwise discriminates in regard to tenure or
 28 condition of employment against any employee because the
 29 employee has:

30 (A) instituted or participated in the institution of any action to
 31 recover wages under this chapter; or

32 (B) demanded the payment of wages under this chapter;

33 (2) pays or agrees to pay any employee less than the minimum
 34 wage prescribed by section 4 of this chapter; or

35 (3) fails to keep records required by section 8 of this chapter;

36 commits a Class C infraction, **except as provided by subsection (b).**

37 **(b) An employer or employer's agent who violates subsection (a)**
 38 **commits a Class B infraction if the employer or employer's agent**
 39 **commits the violation against an employee:**

40 **(1) knowing; or**

41 **(2) in reckless disregard of the fact;**

42 **that the employee is an alien who has come to, entered, or**

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1 **remained in the United States in violation of law.**

2 ~~(b)~~ (c) An employer or the employer's agent who knowingly or
3 intentionally violates section 4 or 8 of this chapter commits a Class A
4 infraction, **except as provided by subsection (d).**

5 **(d) An employer or employer's agent who violates subsection (c)**
6 **commits a Class C misdemeanor if the employer or employer's**
7 **agent commits the violation against an employee:**

8 **(1) knowing; or**

9 **(2) in reckless disregard of the fact;**

10 **that the employee is an alien who has come to, entered, or**
11 **remained in the United States in violation of law.**

12 ~~(e)~~ (e) An employer or the employer's agent who violates section 4
13 of this chapter, having a prior unrelated judgment for a violation of
14 section 4 of this chapter, commits a Class B misdemeanor, **except as**
15 **provided by subsection (f).**

16 **(f) An employer or employer's agent who violates subsection (e)**
17 **commits a Class A misdemeanor if the employer or employer's**
18 **agent commits the violation against an employee:**

19 **(1) knowing; or**

20 **(2) in reckless disregard of the fact;**

21 **that the employee is an alien who has come to, entered, or**
22 **remained in the United States in violation of law.**

23 ~~(g)~~ (g) An employer or the employer's agent who violates section 8
24 of this chapter, having a prior unrelated judgment for a violation of
25 section 8 of this chapter, commits a Class B misdemeanor, **except as**
26 **provided by subsection (h).**

27 **(h) An employer or employer's agent who violates subsection (g)**
28 **commits a Class A misdemeanor if the employer or employer's**
29 **agent commits the violation against an employee:**

30 **(1) knowing; or**

31 **(2) in reckless disregard of the fact;**

32 **that the employee is an alien who has come to, entered, or**
33 **remained in the United States in violation of law.**

34 **(i) For purposes of this section, a determination by a federal**
35 **immigration agency that an alien has come to, entered, or**
36 **remained in the United States in violation of law creates a**
37 **rebuttable presumption that the alien is in the United States in**
38 **violation of law.**

39 SECTION 5. IC 22-2-2-12 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 12. **(a) Except as**
41 **provided by subsection (b), an employer who consistently discharges**
42 **persons within four (4) weeks of their employment and replaces the**

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1 discharged person without work stoppage commits a Class A
2 infraction.

3 **(b) The offense described in subsection (a) is a Class C**
4 **misdemeanor if the employer commits the offense against an**
5 **employee:**

6 **(1) knowing; or**

7 **(2) in reckless disregard of the fact;**

8 **that the employee is an alien who has come to, entered, or**
9 **remained in the United States in violation of law.**

10 **(c) For purposes of this section, a determination by a federal**
11 **immigration agency that an alien has come to, entered, or**
12 **remained in the United States in violation of law creates a**
13 **rebuttable presumption that the alien is in the United States in**
14 **violation of law.**

15 SECTION 6. IC 35-51-22-1, AS AMENDED BY P.L.107-2012,
16 SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2013]: Sec. 1. The following statutes define crimes in IC 22:

18 IC 22-1-1-22 (Concerning the department of labor).

19 IC 22-2-2-11 (Concerning wages, hours, and benefits).

20 **IC 22-2-2-12 (Concerning wages, hours, and benefits).**

21 IC 22-2-7-7 (Concerning wages, hours, and benefits).

22 IC 22-3-1-5 (Concerning worker's compensation system).

23 IC 22-4-11.5-10 (Concerning unemployment compensation
24 system).

25 IC 22-4-19-6 (Concerning unemployment compensation system).

26 IC 22-4-29-14 (Concerning unemployment compensation system).

27 IC 22-4-34-3 (Concerning unemployment compensation system).

28 IC 22-4-34-4 (Concerning unemployment compensation system).

29 IC 22-4-34-5 (Concerning unemployment compensation system).

30 IC 22-4.1-4-4 (Concerning department of workforce
31 development).

32 IC 22-4.1-21-38 (Concerning postsecondary proprietary
33 educational institution accreditation).

34 IC 22-5-1-1 (Concerning unlawful labor practices).

35 IC 22-6-2-13 (Concerning labor relations).

36 IC 22-7-1-3 (Concerning labor organizations).

37 IC 22-8-1.1-24.2 (Concerning occupational health and safety).

38 IC 22-8-1.1-49 (Concerning occupational health and safety).

39 IC 22-9.5-10-1 (Concerning Indiana fair housing).

40 IC 22-11-14-3 (Concerning building and safety regulations).

41 IC 22-11-14-6 (Concerning building and safety regulations).

42 IC 22-11-14.5-9 (Concerning building and safety regulations).

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- 1 IC 22-11-14.5-10 (Concerning building and safety regulations).
- 2 IC 22-11-14.5-11 (Concerning building and safety regulations).
- 3 IC 22-11-14.5-12 (Concerning building and safety regulations).
- 4 IC 22-11-15-6 (Concerning building and safety regulations).
- 5 IC 22-11-17-3 (Concerning building and safety regulations).
- 6 IC 22-11-17-4 (Concerning building and safety regulations).
- 7 IC 22-11-18-5 (Concerning building and safety regulations).
- 8 IC 22-11-20-6 (Concerning building and safety regulations).
- 9 IC 22-15-4-7 (Concerning building and equipment laws).
- 10 IC 22-15-7-9 (Concerning building and equipment laws).

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