

# SENATE BILL No. 201

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-3-21.2; IC 22-1; IC 22-3-1-5; IC 22-4-19-15.

**Synopsis:** Worker misclassification. Requires the department of labor (DOL), the department of workforce development (DWD), the department of state revenue (DOR), and the worker's compensation board (WCB) to share information concerning instances in which a construction contractor paid a worker in cash. Establishes the payroll fraud task force (task force), consisting of the commissioners of the DOL, DWD, and DOR, and the chair of the WCB, or their designees, to investigate suspected instances of payroll fraud, employee misclassification, and violations of other state labor and employment statutes occurring on commercial and industrial construction projects. Requires the DOL to hire and assign to the task force an investigator to conduct the task force's investigation and enforcement activities. Establishes a nonreverting and annually appropriated payroll fraud task force administrative fund to carry out the administrative purposes and functions of the task force.

**Effective:** July 1, 2020.

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January 13, 2020, read first time and referred to Committee on Tax and Fiscal Policy.

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Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## SENATE BILL No. 201

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

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

- 1 SECTION 1. IC 6-8.1-3-21.2, AS ADDED BY P.L.164-2009,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2020]: Sec. 21.2. (a) This section applies after December 31,  
4 2009.  
5 (b) As used in this section, "contractor" means:  
6 (1) a sole proprietor;  
7 (2) a partnership;  
8 (3) a firm;  
9 (4) a corporation;  
10 (5) a limited liability company;  
11 (6) an association; or  
12 (7) another legal entity;  
13 that engages in construction and is authorized by law to do business in  
14 Indiana. The term includes a general contractor, a subcontractor, and  
15 a lower tiered contractor. The term does not include the state, the  
16 federal government, or a political subdivision.  
17 (c) The department shall cooperate with the:



1 (1) department of labor created by IC 22-1-1-1;

2 (2) worker's compensation board of Indiana created by  
3 IC 22-3-1-1(a); and

4 (3) department of workforce development established by  
5 IC 22-4.1-2-1;

6 by sharing information concerning any suspected improper  
7 classification by a contractor of an individual as an independent  
8 contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)) **or a**  
9 **contractor paying a worker in cash.**

10 (d) For purposes of IC 5-14-3-4, information shared under this  
11 section is confidential, may not be published, and is not open to public  
12 inspection.

13 (e) An officer or employee of the department who knowingly or  
14 intentionally discloses information that is confidential under this  
15 section commits a Class A misdemeanor.

16 SECTION 2. IC 22-1-1-18 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 18. **Except as**  
18 **provided under IC 22-1-7**, it shall be the duty of the several  
19 prosecuting attorneys of the respective judicial circuits or the attorney  
20 general of the state of Indiana on the relation of the state of Indiana,  
21 upon the request of the commissioner of labor, or any of ~~his~~ **the**  
22 **commissioner's** authorized representatives, to prosecute any violation  
23 of any law, rule or order which it is made the duty of the commissioner  
24 to enforce.

25 SECTION 3. IC 22-1-1-22, AS ADDED BY P.L.164-2009,  
26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2020]: Sec. 22. (a) This section applies after December 31,  
28 2009.

29 (b) As used in this section, "contractor" means:

30 (1) a sole proprietor;

31 (2) a partnership;

32 (3) a firm;

33 (4) a corporation;

34 (5) a limited liability company;

35 (6) an association; or

36 (7) another legal entity;

37 that engages in construction and is authorized by law to do business in  
38 Indiana. The term includes a general contractor, a subcontractor, and  
39 a lower tiered contractor. The term does not include the state, the  
40 federal government, or a political subdivision.

41 (c) The department of labor shall cooperate with the:

42 (1) department of workforce development established by



- 1 IC 22-4.1-2-1;  
 2 (2) department of state revenue established by IC 6-8.1-2-1; and  
 3 (3) worker's compensation board of Indiana created by  
 4 IC 22-3-1-1(a);  
 5 by sharing information concerning any suspected improper  
 6 classification by a contractor of an individual as an independent  
 7 contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)) **or a**  
 8 **contractor paying a worker in cash.**  
 9 (d) For purposes of IC 5-14-3-4, information shared under this  
 10 section is confidential, may not be published, and is not open to public  
 11 inspection.  
 12 (e) An officer or employee of the department of labor who  
 13 knowingly or intentionally discloses information that is confidential  
 14 under this section commits a Class A misdemeanor.  
 15 SECTION 4. IC 22-1-7 IS ADDED TO THE INDIANA CODE AS  
 16 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 17 1, 2020]:  
 18 **Chapter 7. Payroll Fraud Task Force**  
 19 **Sec. 1. As used in this chapter, "fund" refers to the payroll**  
 20 **fraud task force administrative fund established by section 10 of**  
 21 **this chapter.**  
 22 **Sec. 2. As used in this chapter, "task force" refers to the payroll**  
 23 **fraud task force established by section 3 of this chapter.**  
 24 **Sec. 3. The payroll fraud task force is established.**  
 25 **Sec. 4. The task force shall do the following:**  
 26 **(1) Identify those commercial and industrial construction**  
 27 **projects where payroll fraud or employee misclassification is**  
 28 **suspected of occurring and use all available resources to**  
 29 **identify for enforcement any party to the project in violation**  
 30 **of payroll fraud or employee misclassification.**  
 31 **(2) Assess existing investigative and enforcement methods,**  
 32 **and develop and recommend strategies to improve those**  
 33 **methods.**  
 34 **(3) Encourage businesses and individuals to identify suspected**  
 35 **violators by soliciting information from the public, facilitating**  
 36 **the filing of complaints, and enhancing the available**  
 37 **mechanisms for workers to report suspected violations.**  
 38 **(4) Supervise and direct the work of the investigator hired by**  
 39 **the department of labor and assigned to the task force to**  
 40 **conduct the investigation and enforcement activities described**  
 41 **in section 9 of this chapter.**  
 42 **(5) Solicit the cooperation and participation of and establish**



1 procedures for conducting investigations with relevant law  
2 enforcement agencies as appropriate.

3 (6) Identify potential statutory or regulatory changes that  
4 would strengthen enforcement efforts, including any changes  
5 needed to resolve legal ambiguities or inconsistencies.

6 (7) Submit, not later than October 1, 2021, and not later than  
7 October 1 each year thereafter, to the governor and to the  
8 legislative council in an electronic format under IC 5-14-6 an  
9 annual report concerning the task force's activities, including  
10 the dollar amount of payroll fraud and employee  
11 misclassification identified by the task force and the dollar  
12 amount recovered for the state as a result of the enforcement  
13 of state statutes that apply to the payroll fraud and  
14 misclassified employees.

15 (8) Perform other duties prescribed in this chapter or  
16 necessary to administer this chapter.

17 Sec. 5. (a) The task force consists of four (4) members as  
18 follows:

19 (1) The commissioner of labor or the commissioner's designee.

20 (2) The commissioner of the department of workforce  
21 development or the commissioner's designee.

22 (3) The commissioner of the department of state revenue or  
23 the commissioner's designee.

24 (4) The chair of the worker's compensation board or the  
25 chair's designee.

26 (b) The commissioner of labor or the commissioner's designee  
27 shall serve as the chair of the task force.

28 (c) The task force shall meet quarterly or at the call of the chair.

29 Sec. 6. (a) A majority of the members of the task force  
30 constitutes a quorum for the purpose of conducting business.

31 (b) The affirmative votes of a majority of the members of the  
32 task force are necessary for the task force to take official action on  
33 any measure.

34 Sec. 7. Each member of the task force who is a state employee  
35 is entitled to the following:

36 (1) Reimbursement for traveling expenses as provided under  
37 IC 4-13-1-4.

38 (2) Other expenses actually incurred in connection with the  
39 member's duties as provided in the state policies and  
40 procedures established by the Indiana department of  
41 administration and approved by the budget agency.

42 Sec. 8. (a) The department of labor shall staff the task force,



1 including the hiring of an investigator assigned to the task force to  
2 conduct the investigation and enforcement activities described in  
3 section 9 of this chapter. The investigator shall work with all  
4 members of the task force and has all the investigative and  
5 enforcement powers given to the department of labor under  
6 IC 22-1-1-8, IC 22-1-1-15, IC 22-1-1-16, and IC 22-1-1-17.

7 (b) The expenses of the task force shall be shared by the  
8 departments and offices that are members of the task force.

9 Sec. 9. (a) This section applies to the following:

- 10 (1) The department of labor.  
11 (2) The department of workforce development.  
12 (3) The department of state revenue.  
13 (4) The worker's compensation board.

14 (b) Whenever the investigator hired by the department of labor  
15 under section 8 of this chapter and assigned to the task force  
16 investigates a report of a suspected employee misclassification or  
17 payroll fraud and determines that an employer has failed to  
18 comply with state statutes that require minimum wage payment,  
19 worker's compensation coverage, unemployment insurance  
20 coverage, withholding of taxes and other required amounts, or  
21 other employee required provisions, the investigator may refer the  
22 matter to one (1) or more appropriate federal or state agencies or  
23 offices for enforcement proceedings.

24 (c) The investigator investigating a report of suspected employee  
25 misclassification or payroll fraud under subsection (b):

- 26 (1) may investigate other suspected violations of state statutes  
27 that require minimum wage payment, worker's compensation  
28 coverage, unemployment insurance coverage, withholding of  
29 taxes and other required amounts, or other employee  
30 required provisions that are brought to the investigator's  
31 attention during the investigation; and  
32 (2) is not limited to the violation alleged in the initial report.

33 (d) For those claims the investigator has not referred to a  
34 federal or state agency or office under this section for enforcement,  
35 the investigator hired by the department of labor under section 8  
36 of this chapter and assigned to the task force shall bring the  
37 enforcement action against the employer involved. The  
38 enforcement action must be heard and adjudicated by an  
39 administrative law judge employed by the state agency or office  
40 that enforces the state statutes involved. An enforcement action  
41 heard by and any appeal of a final order issued by the  
42 administrative law judge are governed by the procedures used by



1 the state agency or office that enforces the state statutes involved.

2 **Sec. 10. (a) The payroll fraud task force administrative fund is**  
 3 **established for the purpose of carrying out the administrative**  
 4 **purposes and functions of the payroll fraud task force.**

5 **(b) The fund consists of:**

6 **(1) penalties and interest assessed against an employer as the**  
 7 **result of an investigation or enforcement action conducted**  
 8 **under this chapter;**

9 **(2) amounts appropriated or transferred to the fund by the**  
 10 **general assembly; and**

11 **(3) donations, gifts, bequests, devises, or grants made to the**  
 12 **fund.**

13 **(c) The fund shall be administered by the payroll fraud task**  
 14 **force.**

15 **(d) Money in the fund is annually appropriated to the payroll**  
 16 **fraud task force and shall be used for all expenses incurred by the**  
 17 **payroll fraud task force.**

18 **(e) Money in the fund at the end of the state fiscal year does not**  
 19 **revert to the state general fund.**

20 SECTION 5. IC 22-3-1-5, AS ADDED BY P.L.164-2009,  
 21 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2020]: Sec. 5. (a) This section applies after December 31,  
 23 2009.

24 (b) As used in this section, "contractor" means:

25 (1) a sole proprietor;

26 (2) a partnership;

27 (3) a firm;

28 (4) a corporation;

29 (5) a limited liability company;

30 (6) an association; or

31 (7) another legal entity;

32 that engages in construction and is authorized by law to do business in  
 33 Indiana. The term includes a general contractor, a subcontractor, and  
 34 a lower tiered contractor. The term does not include the state, the  
 35 federal government, or a political subdivision.

36 (c) The worker's compensation board of Indiana shall cooperate with  
 37 the:

38 (1) department of state revenue established by IC 6-8.1-2-1;

39 (2) department of labor created by IC 22-1-1-1; and

40 (3) department of workforce development established by  
 41 IC 22-4.1-2-1;

42 by sharing information concerning any suspected improper



1 classification by a contractor of an individual as an independent  
 2 contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)) **or a**  
 3 **contractor paying a worker in cash.**

4 (d) For purposes of IC 5-14-3-4, information shared under this  
 5 section is confidential, may not be published, and is not open to public  
 6 inspection.

7 (e) An officer or employee of the worker's compensation board of  
 8 Indiana who knowingly or intentionally discloses information that is  
 9 confidential under this section commits a Class A misdemeanor.

10 SECTION 6. IC 22-4-19-15, AS ADDED BY P.L.69-2015,  
 11 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2020]: Sec. 15. (a) As used in this section, "contractor"  
 13 means:

- 14 (1) a sole proprietor;
- 15 (2) a partnership;
- 16 (3) a firm;
- 17 (4) a corporation;
- 18 (5) a limited liability company;
- 19 (6) an association; or
- 20 (7) another legal entity;

21 that engages in construction and is authorized by law to do business in  
 22 Indiana. The term includes a general contractor, a subcontractor, and  
 23 a lower tiered contractor. The term does not include the state, the  
 24 federal government, or a political subdivision.

25 (b) The department shall cooperate with the:

- 26 (1) department of labor created by IC 22-1-1-1;
- 27 (2) department of state revenue established by IC 6-8.1-2-1; and
- 28 (3) worker's compensation board of Indiana created by  
 29 IC 22-3-1-1(a);

30 by sharing information concerning any suspected improper  
 31 classification by a contractor of an individual as an independent  
 32 contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)) **or a**  
 33 **contractor paying a worker in cash.**

34 (c) For purposes of IC 5-14-3-4, information shared under this  
 35 section is confidential, may not be published, and is not open to public  
 36 inspection.

37 (d) An officer or employee of the department who knowingly or  
 38 intentionally discloses information that is confidential under this  
 39 section commits a Class A misdemeanor.

