



Reprinted  
February 13, 2019

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## SENATE BILL No. 289

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DIGEST OF SB 289 (Updated February 12, 2019 4:01 pm - DI 132)

**Citations Affected:** IC 6-8.1; IC 22-1; IC 22-3; IC 22-4; noncode.

**Synopsis:** Reporting on worker misclassification. Requires the department of state revenue, the state department of labor, the worker's compensation board of Indiana, and the department of workforce development to report before November 1 of each year for three years, beginning November 1, 2019, to the interim study committee on employment and labor for the immediately preceding state fiscal year: (1) the number of employers that each department or the board determined during the immediately preceding state fiscal year improperly classified at least one worker as an independent contractor; (2) the total number of improperly classified workers employed by those employers; (3) the department's or board's calculation of actual revenue not collected or the additional costs to the state that the department or board attributes to the improperly classified workers; (4) the amount of the penalties and interest assessed against those employers by each department or the board, and the amount of the penalties and interest assessed that has been collected; and (5) the classification criteria used by the department to classify workers. Requires that the reports include only information in the form of aggregate statistics and not include information that can be used to identify specific employers or workers. Urges the legislative council to assign to an appropriate interim study committee the task of studying the topic of uniformity in definitions across the Indiana Code for the terms "employee" and "independent contractor".

**Effective:** Upon passage; July 1, 2019.

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**Niezgodski, Boots, Walker, Tallian,  
Doriot, Ford J.D., Kruse,  
Randolph Lonnie M**

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January 7, 2019, read first time and referred to Committee on Pensions and Labor.  
February 7, 2019, reported favorably — Do Pass.  
February 12, 2019, read second time, amended, ordered engrossed.

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SB 289—LS 6349/DI 128





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February 13, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## SENATE BILL No. 289

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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 6-8.1-3-21.3 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2019]: **Sec. 21.3. (a) The department shall**  
4 **report before November 1 of each year to the interim study**  
5 **committee on employment and labor (established under**  
6 **IC 2-5-1.3-4) for the immediately preceding state fiscal year:**  
7       **(1) the number of employers that the department determined**  
8 **during the immediately preceding state fiscal year improperly**  
9 **classified at least one (1) worker as an independent**  
10 **contractor;**  
11       **(2) the total number of improperly classified workers**  
12 **employed by the employers described in subdivision (1);**  
13       **(3) based on the findings reported under subdivision (2), a**  
14 **calculation of actual revenue not collected by the state that the**  
15 **department attributes to the improperly classified workers;**  
16       **(4) the amount of the penalties and interest assessed against**  
17 **the employers described in subdivision (1) by the department,**

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1           **and the amount of the penalties and interest assessed that has**  
2           **been collected; and**

3           **(5) the classification criteria used by the department to**  
4           **classify workers.**

5           **(b) The information required by subsection (a)(1) through (a)(4)**  
6           **must be in the form of aggregate statistics. The report must not**  
7           **include information that can be used to identify specific employers**  
8           **or workers.**

9           **(c) This section expires December 31, 2021.**

10          SECTION 2. IC 22-1-1-23 IS ADDED TO THE INDIANA CODE  
11          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
12          1, 2019]: **Sec. 23. (a) The department of labor shall report before**  
13          **November 1 of each year to the interim study committee on**  
14          **employment and labor (established under IC 2-5-1.3-4) for the**  
15          **immediately preceding state fiscal year:**

16               **(1) the number of employers that the department of labor**  
17               **determined during the immediately preceding state fiscal year**  
18               **improperly classified at least one (1) worker as an**  
19               **independent contractor;**

20               **(2) the total number of improperly classified workers**  
21               **employed by the employers described in subdivision (1);**

22               **(3) based on the findings reported under subdivision (2), a**  
23               **calculation of actual revenue not collected by the state that the**  
24               **department of labor attributes to the improperly classified**  
25               **workers;**

26               **(4) the amount of the penalties and interest assessed against**  
27               **the employers described in subdivision (1) by the department**  
28               **of labor, and the amount of the penalties and interest assessed**  
29               **that has been collected; and**

30               **(5) the classification criteria used by the department of labor**  
31               **to classify workers.**

32           **(b) The information required by subsection (a)(1) through (a)(4)**  
33           **must be in the form of aggregate statistics. The report must not**  
34           **include information that can be used to identify specific employers**  
35           **or workers.**

36           **(c) This section expires December 31, 2021.**

37          SECTION 3. IC 22-3-1-6 IS ADDED TO THE INDIANA CODE  
38          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
39          1, 2019]: **Sec. 6. (a) The worker's compensation board shall report**  
40          **before November 1 of each year to the interim study committee on**  
41          **employment and labor (established under IC 2-5-1.3-4) for the**  
42          **immediately preceding state fiscal year:**



1 (1) the number of employers that the worker's compensation  
2 board determined during the immediately preceding state  
3 fiscal year improperly classified at least one (1) worker as an  
4 independent contractor;

5 (2) the total number of improperly classified workers  
6 employed by the employers described in subdivision (1);

7 (3) based on the findings reported under subdivision (2), a  
8 calculation of actual additional costs to the state that the  
9 worker's compensation board attributes to the improperly  
10 classified workers;

11 (4) the amount of the penalties and interest assessed against  
12 the employers described in subdivision (1) by the worker's  
13 compensation board, and the amount of the penalties and  
14 interest assessed that has been collected; and

15 (5) the classification criteria used by the worker's  
16 compensation board to classify workers.

17 (b) The information required by subsection (a)(1) through (a)(4)  
18 must be in the form of aggregate statistics. The report must not  
19 include information that can be used to identify specific employers  
20 or workers.

21 (c) This section expires December 31, 2021.

22 SECTION 4. IC 22-4-19-16 IS ADDED TO THE INDIANA CODE  
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
24 1, 2019]: Sec. 16. (a) The department shall report before November  
25 1 of each year to the interim study committee on employment and  
26 labor (established under IC 2-5-1.3-4) for the immediately  
27 preceding state fiscal year:

28 (1) the number of employers that the department determined  
29 during the immediately preceding state fiscal year improperly  
30 classified at least one (1) worker as an independent  
31 contractor;

32 (2) the total number of improperly classified workers  
33 employed by the employers described in subdivision (1);

34 (3) based on the findings reported under subdivision (2), a  
35 calculation of actual additional costs to the state that the  
36 department attributes to the improperly classified workers;

37 (4) the amount of the penalties and interest assessed against  
38 the employers described in subdivision (1) by the department,  
39 and the amount of the penalties and interest assessed that has  
40 been collected; and

41 (5) the classification criteria used by the department to  
42 classify workers.



1           **(b) The information required by subsection (a)(1) through (a)(4)**  
2 **must be in the form of aggregate statistics. The report must not**  
3 **include information that can be used to identify specific employers**  
4 **or workers.**  
5           **(c) This section expires December 31, 2021.**  
6           SECTION 5. [EFFECTIVE UPON PASSAGE] **(a) The legislative**  
7 **council is urged to assign to an appropriate interim study**  
8 **committee the task of studying the topic of uniformity in definitions**  
9 **across the Indiana Code for the terms "employee" and**  
10 **"independent contractor".**  
11           **(b) This SECTION expires January 1, 2020.**  
12           SECTION 6. **An emergency is declared for this act.**



## COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 289, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 289 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 11, Nays 0

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 SENATE MOTION

Madam President: I move that Senate Bill 289 be amended to read as follows:

Page 1, line 13, delete "an estimate of the" and insert "**based on the findings reported under subdivision (2), a calculation of actual**".

Page 1, line 15, delete "and".

Page 2, line 2, delete "collected." and insert "**collected; and (5) the classification criteria used by the department to classify workers.**".

Page 2, line 20, delete "an estimate of the" and insert "**based on the findings reported under subdivision (2), a calculation of actual**".

Page 2, line 22, delete "and".

Page 2, line 26, delete "collected." and insert "**collected; and (5) the classification criteria used by the department of labor to classify workers.**".

Page 3, line 2, delete "an estimate of the" and insert "**based on the findings reported under subdivision (2), a calculation of actual**".

Page 3, line 4, delete "and".

Page 3, line 8, delete "collected." and insert "**collected; and (5) the classification criteria used by the worker's compensation board to classify workers.**".

Page 3, line 26, delete "an estimate of the" and insert "**based on the findings reported under subdivision (2), a calculation of actual**".

Page 3, line 28, delete "and".



Page 3, line 32, delete "collected." and insert "**collected; and (5) the classification criteria used by the department to classify workers.**".

(Reference is to SB 289 as printed February 8, 2019.)

WALKER

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SENATE MOTION

Madam President: I move that Senate Bill 289 be amended to read as follows:

Page 3, after line 37, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE UPON PASSAGE] **(a) The legislative council is urged to assign to an appropriate interim study committee the task of studying the topic of uniformity in definitions across the Indiana Code for the terms "employee" and "independent contractor".**

**(b) This SECTION expires January 1, 2020.**

**SECTION 6. An emergency is declared for this act."**

Re-number all SECTIONS consecutively.

(Reference is to SB 289 as printed February 8, 2019.)

NIEZGODSKI

