

SENATE BILL No. 334

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-2.

Synopsis: Minimum wage and employment benefits. Repeals the prohibition of local units from establishing, mandating, or requiring certain employee benefits. Allows for local units to maintain a higher minimum wage rate than the state's minimum wage. After December 31, 2021, increases the minimum wage paid to certain employees from \$7.25 per hour to \$10 per hour, then annually increases the minimum wage in \$1 increments to \$15 per hour through January 1, 2027.

Effective: July 1, 2021.

Melton

January 11, 2021, read first time and referred to Committee on Pensions and Labor.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 334

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 22-2-2-3, AS AMENDED BY P.L.7-2019,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 3. As used in this chapter:
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, **except as**
13 **provided in section 14 of this chapter**, it shall not include any
14 employer who is subject to the minimum wage provisions of the federal
15 Fair Labor Standards Act of 1938, as amended (29 U.S.C. 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,



1 written or oral, express or implied by an employer in any occupation,
2 but shall not include any of the following:

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

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

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

10 (d) Persons employed on a commission basis.

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

12 (f) Members of any religious order performing any service for that
13 order, any ordained, commissioned, or licensed minister, priest,
14 rabbi, sexton, or Christian Science reader, and volunteers
15 performing services for any religious or charitable organization.

16 (g) Persons performing services as student nurses in the employ
17 of a hospital or nurses training school while enrolled and
18 regularly attending classes in a nurses training school chartered
19 or approved under law, or students performing services in the
20 employ of persons licensed as both funeral directors and
21 embalmers as a part of their requirements for apprenticeship to
22 secure an embalmer's license or a funeral director's license from
23 the state, or during their attendance at any schools required by law
24 for securing an embalmer's or funeral director's license.

25 (h) Persons who have completed a four (4) year course in a
26 medical school approved by law when employed as interns or
27 resident physicians by any accredited hospital.

28 (i) Students performing services for any school, college, or
29 university in which they are enrolled and are regularly attending
30 classes.

31 (j) Persons with physical or mental disabilities performing
32 services for nonprofit organizations organized primarily for the
33 purpose of providing employment for persons with disabilities or
34 for assisting in their therapy and rehabilitation.

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

38 (l) Persons performing services for any camping, recreational, or
39 guidance facilities operated by a charitable, religious, or
40 educational nonprofit organization.

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



- 1 (1) on a farm, in connection with cultivating the soil, or in
 2 connection with raising or harvesting any agricultural or
 3 horticultural commodity, including the raising, shearing,
 4 feeding, caring for, training, and management of livestock,
 5 bees, poultry, and furbearing animals and wildlife;
 6 (2) in the employ of the owner or tenant or other operator of a
 7 farm, in connection with the operation, management,
 8 conservation, improvement, or maintenance of the farm and its
 9 tools and equipment if the major part of the service is
 10 performed on a farm;
 11 (3) in connection with:
 12 (A) the production or harvesting of maple sugar or maple
 13 syrup or any commodity defined as an agricultural
 14 commodity in the Agricultural Marketing Act, as amended
 15 (12 U.S.C. 1141j);
 16 (B) the raising or harvesting of mushrooms;
 17 (C) the hatching of poultry; or
 18 (D) the operation or maintenance of ditches, canals,
 19 reservoirs, or waterways used exclusively for supplying and
 20 storing water for farming purposes; and
 21 (4) in handling, planting, drying, packing, packaging,
 22 processing, freezing, grading, storing, or delivering to storage,
 23 to market, or to a carrier for transportation to market, any
 24 agricultural or horticultural commodity, but only if service is
 25 performed as an incident to ordinary farming operation or, in
 26 the case of fruits and vegetables, as an incident to the
 27 preparation of fruits and vegetables for market. However, this
 28 exception shall not apply to services performed in connection
 29 with any agricultural or horticultural commodity after its
 30 delivery to a terminal market or processor for preparation or
 31 distribution for consumption.
- 32 As used in this subdivision, "farm" includes stock, dairy, poultry,
 33 fruit, furbearing animals, and truck farms, nurseries, orchards, or
 34 greenhouses or other similar structures used primarily for the
 35 raising of agricultural or horticultural commodities.
- 36 (n) Those persons employed in executive, administrative, or
 37 professional occupations who have the authority to employ or
 38 discharge and who earn one hundred fifty dollars (\$150) or more
 39 a week, and outside salesmen.
- 40 (o) Any person not employed for more than four (4) weeks in any
 41 four (4) consecutive three (3) month periods.
- 42 (p) Any employee with respect to whom the Interstate Commerce



1 Commission has power to establish qualifications and maximum
 2 hours of service under the federal Motor Carrier Act of 1935 (49
 3 U.S.C. 304(3)) or any employee of a carrier subject to IC 8-2.1.

4 (q) A person engaged in services as a direct seller. The term shall
 5 include only services performed:

6 (1) by a person that is in the trade or business of:

7 (A) selling, or soliciting the sale of, consumer products or
 8 services to any buyer on a buy-sell basis,
 9 deposit-commission basis, or similar basis, in any place
 10 other than in a permanent retail establishment; or

11 (B) selling, or soliciting the sale of, consumer products or
 12 services in any place other than in a permanent retail
 13 establishment;

14 (2) when substantially all the remuneration, whether or not
 15 paid in cash, for the performance of the services is directly
 16 related to sales or other output, including the performance of
 17 services, rather than the number of hours worked; and

18 (3) when the services performed by the person are performed
 19 pursuant to a written contract and the contract provides that
 20 the person who performs the services will not be treated as an
 21 employee for tax purposes under the contract.

22 SECTION 2. IC 22-2-2-4, AS AMENDED BY P.L.147-2020,
 23 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2021]: Sec. 4. (a) No employer having employees subject to
 25 any provisions of this section shall discriminate, within any
 26 establishment in which employees are employed, between employees
 27 on the basis of sex by paying to employees in such establishment a rate
 28 less than the rate at which the employer pays wages to employees of the
 29 opposite sex in such establishment for equal work on jobs the
 30 performance of which requires equal skill, effort, and responsibility,
 31 and which are performed under similar working conditions, except
 32 where such payment is made pursuant to:

33 (1) a seniority system;

34 (2) a merit system;

35 (3) a system which measures earnings by quantity or quality of
 36 production; or

37 (4) a differential based on any other factor other than sex.

38 (b) An employer who is paying a wage rate differential in violation
 39 of subsection (a) shall not, in order to comply with subsection (a),
 40 reduce the wage rate of any employee, and no labor organization, or its
 41 agents, representing employees of an employer having employees
 42 subject to subsection (a) shall cause or attempt to cause such an



1 employer to discriminate against an employee in violation of
2 subsection (a).

3 (c) Except as provided in subsection ~~(d)~~; **(e)**, every employer
4 employing at least two (2) employees during a work week shall, in any
5 work week in which the employer is subject to this chapter, pay each
6 of the employees in any work week beginning on or after June 30,
7 2007, **and before January 1, 2022**, wages of not less than the
8 minimum wage payable under the federal Fair Labor Standards Act of
9 1938, as amended (29 U.S.C. 201 et seq.).

10 **(d) Except as provided in subsection (e), every employer**
11 **employing at least two (2) employees during a work week shall, in**
12 **any work week in which the employer is subject to this chapter,**
13 **pay each of the employees the following in any work week:**

14 **(1) Beginning on or after January 1, 2022, and before January**
15 **1, 2023, wages of not less than ten dollars (\$10) an hour.**

16 **(2) Beginning on or after January 1, 2023, and before January**
17 **1, 2024, wages of not less than eleven dollars (\$11) an hour.**

18 **(3) Beginning on or after January 1, 2024, and before January**
19 **1, 2025, wages of not less than twelve dollars (\$12) an hour.**

20 **(4) Beginning on or after January 1, 2025, and before January**
21 **1, 2026, wages of not less than thirteen dollars (\$13) an hour.**

22 **(5) Beginning on or after January 1, 2026, and before January**
23 **1, 2027, wages of not less than fourteen dollars (\$14) an hour.**

24 **(6) Beginning on or after January 1, 2027, wages of not less**
25 **than fifteen dollars (\$15) an hour.**

26 ~~(d)~~ **(e)** An employer subject to subsection (c) is permitted to apply
27 a tip credit in determining the amount of cash wage paid to tipped
28 employees. In determining the wage an employer is required to pay a
29 tipped employee, the amount paid the employee by the employee's
30 employer must be an amount equal to:

31 (1) the cash wage paid the employee, which for purposes of the
32 determination may be not less than the cash wage required to be
33 paid to employees covered under the federal Fair Labor Standards
34 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,
35 1996, which amount is two dollars and thirteen cents (\$2.13) an
36 hour; and

37 (2) an additional amount on account of the tips received by the
38 employee, which amount is equal to the difference between the
39 wage specified in subdivision (1) and the wage in effect under
40 subsection (c).

41 An employer is responsible for supporting the amount of tip credit
42 taken through reported tips by the employees.



- 1 ~~(e)~~ **(f)** This section does not apply if an employee:
- 2 (1) provides companionship services to the aged and infirm (as
- 3 defined in 29 CFR 552.6); and
- 4 (2) is employed by an employer or agency other than the family
- 5 or household using the companionship services, as provided in 29
- 6 CFR 552.109 (a).
- 7 ~~(f)~~ **(g)** Except as otherwise provided in this section, no employer
- 8 shall employ any employee for a work week longer than forty (40)
- 9 hours unless the employee receives compensation for employment in
- 10 excess of forty (40) hours at a rate not less than one and one-half (1.5)
- 11 times the regular rate at which the employee is employed.
- 12 ~~(g)~~ **(h)** For purposes of this section the following apply:
- 13 (1) "Overtime compensation" means the compensation required
- 14 by subsection ~~(f)~~: **(g)**.
- 15 (2) "Compensatory time" and "compensatory time off" mean
- 16 hours during which an employee is not working, which are not
- 17 counted as hours worked during the applicable work week or
- 18 other work period for purposes of overtime compensation, and for
- 19 which the employee is compensated at the employee's regular
- 20 rate.
- 21 (3) "Regular rate" means the rate at which an employee is
- 22 employed is considered to include all remuneration for
- 23 employment paid to, or on behalf of, the employee, but is not
- 24 considered to include the following:
- 25 (A) Sums paid as gifts, payments in the nature of gifts made at
- 26 Christmas time or on other special occasions, as a reward for
- 27 service, the amounts of which are not measured by or
- 28 dependent on hours worked, production, or efficiency.
- 29 (B) Payments made for occasional periods when no work is
- 30 performed due to vacation, holiday, illness, failure of the
- 31 employer to provide sufficient work, or other similar cause,
- 32 reasonable payments for traveling expenses, or other expenses,
- 33 incurred by an employee in the furtherance of the employer's
- 34 interests and properly reimbursable by the employer, and other
- 35 similar payments to an employee which are not made as
- 36 compensation for the employee's hours of employment.
- 37 (C) Sums paid in recognition of services performed during a
- 38 given period if:
- 39 (i) both the fact that payment is to be made and the amount
- 40 of the payment are determined at the sole discretion of the
- 41 employer at or near the end of the period and not pursuant
- 42 to any prior contract, agreement, or promise causing the



- 1 employee to expect the payments regularly;
- 2 (ii) the payments are made pursuant to a bona fide profit
- 3 sharing plan or trust or bona fide thrift or savings plan,
- 4 meeting the requirements of the administrator set forth in
- 5 appropriately issued regulations, having due regard among
- 6 other relevant factors, to the extent to which the amounts
- 7 paid to the employee are determined without regard to hours
- 8 of work, production, or efficiency; or
- 9 (iii) the payments are talent fees paid to performers,
- 10 including announcers, on radio and television programs.
- 11 (D) Contributions irrevocably made by an employer to a
- 12 trustee or third person pursuant to a bona fide plan for
- 13 providing old age, retirement, life, accident, or health
- 14 insurance or similar benefits for employees.
- 15 (E) Extra compensation provided by a premium rate paid for
- 16 certain hours worked by the employee in any day or work
- 17 week because those hours are hours worked in excess of eight
- 18 (8) in a day or in excess of the maximum work week
- 19 applicable to the employee under subsection ~~(f)~~ (g) or in
- 20 excess of the employee's normal working hours or regular
- 21 working hours, as the case may be.
- 22 (F) Extra compensation provided by a premium rate paid for
- 23 work by the employee on Saturdays, Sundays, holidays, or
- 24 regular days of rest, or on the sixth or seventh day of the work
- 25 week, where the premium rate is not less than one and one-half
- 26 (1.5) times the rate established in good faith for like work
- 27 performed in nonovertime hours on other days.
- 28 (G) Extra compensation provided by a premium rate paid to
- 29 the employee, in pursuance of an applicable employment
- 30 contract or collective bargaining agreement, for work outside
- 31 of the hours established in good faith by the contract or
- 32 agreement as the basic, normal, or regular workday (not
- 33 exceeding eight (8) hours) or work week (not exceeding the
- 34 maximum work week applicable to the employee under
- 35 subsection ~~(f)~~ (g) where the premium rate is not less than one
- 36 and one-half (1.5) times the rate established in good faith by
- 37 the contract or agreement for like work performed during the
- 38 workday or work week.
- 39 ~~(h)~~ (i) No employer shall be considered to have violated subsection
- 40 ~~(f)~~ (g) by employing any employee for a work week in excess of that
- 41 specified in subsection ~~(f)~~ (g) without paying the compensation for
- 42 overtime employment prescribed therein if the employee is so



- 1 employed:
- 2 (1) in pursuance of an agreement, made as a result of collective
- 3 bargaining by representatives of employees certified as bona fide
- 4 by the National Labor Relations Board, which provides that no
- 5 employee shall be employed more than one thousand forty (1,040)
- 6 hours during any period of twenty-six (26) consecutive weeks; or
- 7 (2) in pursuance of an agreement, made as a result of collective
- 8 bargaining by representatives of employees certified as bona fide
- 9 by the National Labor Relations Board, which provides that
- 10 during a specified period of fifty-two (52) consecutive weeks the
- 11 employee shall be employed not more than two thousand two
- 12 hundred forty (2,240) hours and shall be guaranteed not less than
- 13 one thousand eight hundred forty (1,840) hours (or not less than
- 14 forty-six (46) weeks at the normal number of hours worked per
- 15 week, but not less than thirty (30) hours per week) and not more
- 16 than two thousand eighty (2,080) hours of employment for which
- 17 the employee shall receive compensation for all hours guaranteed
- 18 or worked at rates not less than those applicable under the
- 19 agreement to the work performed and for all hours in excess of
- 20 the guaranty which are also in excess of the maximum work week
- 21 applicable to the employee under subsection ~~(f)~~ (g) or two
- 22 thousand eighty (2,080) in that period at rates not less than one
- 23 and one-half (1.5) times the regular rate at which the employee is
- 24 employed.
- 25 ~~(f)~~ (j) No employer shall be considered to have violated subsection
- 26 ~~(f)~~ (g) by employing any employee for a work week in excess of the
- 27 maximum work week applicable to the employee under subsection ~~(f)~~
- 28 (g) if the employee is employed pursuant to a bona fide individual
- 29 contract, or pursuant to an agreement made as a result of collective
- 30 bargaining by representatives of employees, if the duties of the
- 31 employee necessitate irregular hours of work, and the contract or
- 32 agreement includes the following:
- 33 (1) Specifies a regular rate of pay of not less than the minimum
- 34 hourly rate provided in subsections ~~(c)~~ and ~~(d)~~ (c), (d), and (e),
- 35 (whichever is applicable) and compensation at not less than one
- 36 and one-half (1.5) times that rate for all hours worked in excess
- 37 of the maximum work week.
- 38 (2) Provides a weekly guaranty of pay for not more than sixty (60)
- 39 hours based on the rates so specified.
- 40 ~~(f)~~ (k) No employer shall be considered to have violated subsection
- 41 ~~(f)~~ (g) by employing any employee for a work week in excess of the
- 42 maximum work week applicable to the employee under that subsection



1 if, pursuant to an agreement or understanding arrived at between the
 2 employer and the employee before performance of the work, the
 3 amount paid to the employee for the number of hours worked by the
 4 employee in the work week in excess of the maximum work week
 5 applicable to the employee under that subsection:

6 (1) in the case of an employee employed at piece rates, is
 7 computed at piece rates not less than one and one-half (1.5) times
 8 the bona fide piece rates applicable to the same work when
 9 performed during nonovertime hours;

10 (2) in the case of an employee performing two (2) or more kinds
 11 of work for which different hourly or piece rates have been
 12 established, is computed at rates not less than one and one-half
 13 (1.5) times those bona fide rates applicable to the same work
 14 when performed during nonovertime hours; or

15 (3) is computed at a rate not less than one and one-half (1.5) times
 16 the rate established by the agreement or understanding as the
 17 basic rate to be used in computing overtime compensation
 18 thereunder, provided that the rate so established shall be
 19 substantially equivalent to the average hourly earnings of the
 20 employee, exclusive of overtime premiums, in the particular work
 21 over a representative period of time;

22 and if the employee's average hourly earnings for the work week
 23 exclusive of payments described in this section are not less than the
 24 minimum hourly rate required by applicable law, and extra overtime
 25 compensation is properly computed and paid on other forms of
 26 additional pay required to be included in computing the regular rate.

27 ~~(k)~~ **(l)** Extra compensation paid as described in this section shall be
 28 creditable toward overtime compensation payable pursuant to this
 29 section.

30 ~~(h)~~ **(m)** No employer shall be considered to have violated subsection
 31 ~~(f)~~ **(g)** by employing any employee of a retail or service establishment
 32 for a work week in excess of the applicable work week specified
 33 therein, if:

34 (1) the regular rate of pay of the employee is in excess of one and
 35 one-half (1.5) times the minimum hourly rate applicable to the
 36 employee under section 2 of this chapter; and

37 (2) more than half of the employee's compensation for a
 38 representative period (not less than one (1) month) represents
 39 commissions on goods or services.

40 In determining the proportion of compensation representing
 41 commissions, all earnings resulting from the application of a bona fide
 42 commission rate shall be considered commissions on goods or services



1 without regard to whether the computed commissions exceed the draw
2 or guarantee.

3 ~~(m)~~ **(n)** No employer engaged in the operation of a hospital or an
4 establishment which is an institution primarily engaged in the care of
5 the sick, the aged, or individuals with a mental illness or defect who
6 reside on the premises shall be considered to have violated subsection
7 ~~(f)~~ **(g)** if, pursuant to an agreement or understanding arrived at between
8 the employer and the employee before performance of the work, a work
9 period of fourteen (14) consecutive days is accepted in lieu of the work
10 week of seven (7) consecutive days for purposes of overtime
11 computation and if, for the employee's employment in excess of eight
12 (8) hours in any workday and in excess of eighty (80) hours in that
13 fourteen (14) day period, the employee receives compensation at a rate
14 not less than one and one-half (1.5) times the regular rate at which the
15 employee is employed.

16 ~~(n)~~ **(o)** No employer shall employ any employee in domestic service
17 in one (1) or more households for a work week longer than forty (40)
18 hours unless the employee receives compensation for that employment
19 in accordance with subsection ~~(f)~~: **(g)**.

20 ~~(o)~~ **(p)** In the case of an employee of an employer engaged in the
21 business of operating a street, a suburban or interurban electric railway,
22 or a local trolley or motorbus carrier (regardless of whether or not the
23 railway or carrier is public or private or operated for profit or not for
24 profit), in determining the hours of employment of such an employee
25 to which the rate prescribed by subsection ~~(f)~~ **(g)** applies, there shall be
26 excluded the hours the employee was employed in charter activities by
27 the employer if both of the following apply:

28 (1) The employee's employment in the charter activities was
29 pursuant to an agreement or understanding with the employer
30 arrived at before engaging in that employment.

31 (2) If employment in the charter activities is not part of the
32 employee's regular employment.

33 ~~(p)~~ **(q)** Any employer may employ any employee for a period or
34 periods of not more than ten (10) hours in the aggregate in any work
35 week in excess of the maximum work week specified in subsection ~~(f)~~
36 **(g)** without paying the compensation for overtime employment
37 prescribed in subsection ~~(f)~~; **(g)**, if during that period or periods the
38 employee is receiving remedial education that:

39 (1) is provided to employees who lack a high school diploma or
40 educational attainment at the eighth grade level;

41 (2) is designed to provide reading and other basic skills at an
42 eighth grade level or below; and



1 (3) does not include job specific training.
 2 ~~(r)~~ **(r)** Subsection ~~(f)~~ **(g)** does not apply to an employee of a motion
 3 picture theater.
 4 ~~(s)~~ **(s)** Subsection ~~(f)~~ **(g)** does not apply to an employee of a seasonal
 5 amusement or recreational establishment, an organized camp, or a
 6 religious or nonprofit educational conference center that is exempt
 7 under the federal Fair Labor Standards Act of 1938, as amended (29
 8 U.S.C. 213).
 9 ~~(t)~~ **(t)** Subsection ~~(f)~~ **(g)** does not apply to an employee of an air
 10 carrier subject to Title II of the federal Railway Labor Act (45 U.S.C.
 11 181 et seq.) to the extent that the hours worked by the employee during
 12 a work week in excess of forty (40) hours are not required by the air
 13 carrier but are arranged through a voluntary agreement between
 14 employees to trade or reassign their scheduled work hours.
 15 SECTION 3. IC 22-2-2-14 IS ADDED TO THE INDIANA CODE
 16 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2021]: **Sec. 14. (a) This section applies to an employer that is**
 18 **subject to the minimum wage provisions of the federal Fair Labor**
 19 **Standards Act of 1938, as amended (29 U.S.C. 201-209).**
 20 **(b) If the minimum hourly wage required under section 4 of this**
 21 **chapter is higher than the minimum wage provisions of the federal**
 22 **Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209),**
 23 **an employer shall pay the minimum hourly wage required under**
 24 **section 4 of this chapter.**
 25 SECTION 4. IC 22-2-16 IS REPEALED [EFFECTIVE JULY 1,
 26 2021]. (Employee Benefits).

