March 12, 2019

ENGROSSED
SENATE BILL No. 512

DIGEST OF SB 512 (Updated March 12, 2019 3:01 pm - DI 128)

Citations Affected: IC 22-2.

Synopsis: Exemption from overtime pay. Provides that the requirement to pay an employee who works more than 40 hours in a work week at least 150% of the employee's regular rate for the overtime hours does not apply to an employee of an air carrier to the extent that the hours worked by the employee during a work week in excess of 40 hours are not required by the air carrier but are arranged through a voluntary agreement between employees to trade or reassign their scheduled work hours. Removes outdated language. Relocates language concerning the tip credit. Makes conforming amendments.

Effective: Upon passage.

Niezgodski, Boots, Ford J.D., Doriot, Walker, Perfect, Kruse, Spartz, Rogers

(HOUSE SPONSORS — BACON, MORRIS, BECK, DEAL)

January 14, 2019, read first time and referred to Committee on Pensions and Labor.
February 7, 2019, reported favorably — Do Pass.
February 11, 2019, read second time, ordered engrossed. Engrossed.
February 12, 2019, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 5, 2019, read first time and referred to Committee on Employment, Labor and Pensions.
March 12, 2019, amended, reported — Do Pass.

March 12, 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.

ENGROSSED
SENATE BILL No. 512

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:

SECTION 1. IC 22-2-2-4, AS AMENDED BY P.L.165-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. ~~(a) Every employer employing four (4) or more employees during a work week shall:~~

~~(1) in any work week beginning on or after July 1, 1968, in which the employer is subject to the provisions of this chapter, pay each of the employer's employees wages of not less than one dollar and twenty-five cents ($1.25) per hour;~~

~~(2) in any work week beginning on or after July 1, 1977, in which the employer is subject to this chapter, pay each of the employer's employees wages of not less than one dollar and fifty cents ($1.50) per hour;~~

~~(3) in any work week beginning on or after January 1, 1978, in which the employer is subject to this chapter, pay each of the employer's employees wages of not less than one dollar and seventy-five cents ($1.75) per hour; and~~

~~(4) in any work week beginning on or after January 1, 1979, in~~

~~which the employer is subject to this chapter, pay each of the employer's employees wages of not less than two dollars ($2) per hour.~~

~~(b) Except as provided in subsection (c), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on and after July 1, 1990, and before October 1, 1998, wages of not less than three dollars and thirty-five cents ($3.35) per hour.~~

~~(c) An employer subject to subsection (b) is permitted to apply a "tip credit" in determining the amount of cash wage paid to tipped employees. In determining the wage an employer is required to pay a tipped employee, the amount paid the employee by the employee's employer shall be an amount equal to:~~

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

~~(2) an additional amount on account of the tips received by the employee, which amount is equal to the difference between the wage specified in subdivision (1) and the wage in effect under subsections (b), (f), (g), and (h).~~

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

~~(d)~~ **(a)** No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which employees are employed, between employees on the basis of sex by paying to employees in such establishment a rate less than the rate at which the employer pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to:

(1) a seniority system;

(2) a merit system;

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

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

~~(e)~~ **(b)** An employer who is paying a wage rate differential in violation of subsection ~~(d)~~ **(a)** shall not, in order to comply with

subsection ~~(d),~~ **(a),** reduce the wage rate of any employee, and no labor organization, or its agents, representing employees of an employer having employees subject to subsection ~~(d)~~ **(a)** shall cause or attempt to cause such an employer to discriminate against an employee in violation of subsection ~~(d).~~ **(a).**

~~(f) Except as provided in subsection (c), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after October 1, 1998, and before March 1, 1999, wages of not less than four dollars and twenty-five cents ($4.25) per hour.~~

~~(g) Except as provided in subsections (c) and (j), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after March 1, 1999, and before July 1, 2007, wages of not less than five dollars and fifteen cents ($5.15) an hour.~~

~~(h)~~ **(c)** Except as provided in subsections ~~(c)~~ **(d)** and ~~(j),~~ **(f),** every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after June 30, 2007, wages of not less than the minimum wage payable under the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).

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

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

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

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

~~(i)~~ **(e)** This section does not apply if an employee:

(1) provides companionship services to the aged and infirm (as defined in 29 CFR 552.6); and

(2) is employed by an employer or agency other than the family or household using the companionship services, as provided in 29 CFR 552.109 (a).

~~(j)~~ **(f)** This subsection applies only to an employee who has not attained the age of twenty (20) years. Instead of the rates prescribed by subsections (c) ~~(f), (g),~~ and ~~(h),~~ **(d),** an employer may pay an employee of the employer, during the first ninety (90) consecutive calendar days after the employee is initially employed by the employer, a wage which is not less than

~~(1) four dollars and twenty-five cents ($4.25) per hour, effective March 1, 1999; and~~

~~(2)~~ the amount payable under the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), during the first ninety (90) consecutive calendar days after initial employment to an employee who has not attained twenty (20) years of age. ~~effective July 1, 2007.~~

However, no employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in this subsection.

~~(k)~~ **(g)** Except as otherwise provided in this section, no employer shall employ any employee for a work week longer than forty (40) hours unless the employee receives compensation for employment in excess of ~~the~~ **forty (40)** hours ~~above specified~~ at a rate not less than one and one-half (1.5) times the regular rate at which the employee is employed.

~~(l)~~ **(h)** For purposes of this section the following apply:

(1) "Overtime compensation" means the compensation required by subsection ~~(k).~~ **(g).**

(2) "Compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable work week or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(3) "Regular rate" means the rate at which an employee is employed is considered to include all remuneration for employment paid to, or on behalf of, the employee, but is not considered to include the following:

(A) Sums paid as gifts, payments in the nature of gifts made at

Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency.

(B) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of the employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as compensation for the employee's hours of employment.

(C) Sums paid in recognition of services performed during a given period if:

(i) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect the payments regularly;

(ii) the payments are made pursuant to a bona fide profit sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the administrator set forth in appropriately issued regulations, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or

(iii) the payments are talent fees paid to performers, including announcers, on radio and television programs.

(D) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees.

(E) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or work week because those hours are hours worked in excess of eight (8) in a day or in excess of the maximum work week applicable to the employee under subsection ~~(k)~~ **(g)** or in excess of the employee's normal working hours or regular working hours, as the case may be.

(F) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the work week, where the premium rate is not less than one and one-half

(1.5) times the rate established in good faith for like work performed in nonovertime hours on other days.

(G) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight (8) hours) or work week (not exceeding the maximum work week applicable to the employee under subsection ~~(k))~~ **(g))** where the premium rate is not less than one and one-half (1.5) times the rate established in good faith by the contract or agreement for like work performed during the workday or work week.

~~(m)~~ **(i)** No employer shall be considered to have violated subsection ~~(k)~~ **(g)** by employing any employee for a work week in excess of that specified in subsection ~~(k)~~ **(g)** without paying the compensation for overtime employment prescribed therein if the employee is so employed:

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand forty (1,040) hours during any period of twenty-six (26) consecutive weeks; or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two (52) consecutive weeks the employee shall be employed not more than two thousand two hundred forty (2,240) hours and shall be guaranteed not less than one thousand eight hundred forty (1,840) hours (or not less than forty-six (46) weeks at the normal number of hours worked per week, but not less than thirty (30) hours per week) and not more than two thousand eighty (2,080) hours of employment for which the employee shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum work week applicable to the employee under subsection ~~(k)~~ **(g)** or two thousand eighty (2,080) in that period at rates not less than one and one-half (1.5) times the regular rate at which the employee is employed.

~~(n)~~ **(j)** No employer shall be considered to have violated subsection

~~(k)~~ **(g)** by employing any employee for a work week in excess of the maximum work week applicable to the employee under subsection ~~(k)~~ **(g)** if the employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of the employee necessitate irregular hours of work, and the contract or agreement includes the following:

(1) Specifies a regular rate of pay of not less than the minimum hourly rate provided in subsections (c), ~~(h)~~, **(d),** and ~~(j)~~ **(f),** (whichever is applicable) and compensation at not less than one and one-half (1.5) times that rate for all hours worked in excess of the maximum work week.

(2) Provides a weekly guaranty of pay for not more than sixty (60) hours based on the rates so specified.

~~(o)~~ **(k)** No employer shall be considered to have violated subsection ~~(k)~~ **(g)** by employing any employee for a work week in excess of the maximum work week applicable to the employee under that subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by the employee in the work week in excess of the maximum work week applicable to the employee under that subsection:

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

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

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

and if the employee's average hourly earnings for the work week exclusive of payments described in this section are not less than the minimum hourly rate required by applicable law, and extra overtime compensation is properly computed and paid on other forms of

additional pay required to be included in computing the regular rate.

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

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

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

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

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be considered commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

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

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

~~(t)~~ **(p)** In the case of an employee of an employer engaged in the business of operating a street, a suburban or interurban electric railway, or a local trolley or motorbus carrier (regardless of whether or not the railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection ~~(k)~~ **(g)** applies, there shall

be excluded the hours the employee was employed in charter activities by the employer if both of the following apply:

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

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

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

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

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

(3) does not include job specific training.

~~(v)~~ **(r)** Subsection ~~(k)~~ **(g)** does not apply to an employee of a motion picture theater.

~~(w)~~ **(s)** Subsection ~~(k)~~ **(g)** does not apply to an employee of a seasonal amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center that is exempt under the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 213).

(t) Subsection (g) does not apply to an employee of an air carrier subject to Title II of the federal Railway Labor Act (45 U.S.C. 181 et seq.) to the extent that the hours worked by the employee during a work week in excess of forty (40) hours are not required by the air carrier but are arranged through a voluntary agreement between employees to trade or reassign their scheduled work hours.

SECTION 2. **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. 512, 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 512 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 10, Nays 0

COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred Senate Bill 512, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, delete "JULY 1, 2019]:" and insert "UPON PASSAGE]:".

Page 9, after line 32, begin a new paragraph and insert:

"SECTION 2. **An emergency is declared for this act.**".

and when so amended that said bill do pass.

(Reference is to SB 512 as printed February 8, 2019.)

VANNATTER

Committee Vote: yeas 12, nays 0.