

# SENATE BILL No. 309

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-12-18; IC 6-8.1-3-21.3; IC 22-1-1-23; IC 22-2-15-7; IC 22-3; IC 22-4-19-16.

**Synopsis:** Employee 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 certain information to the interim study committee on employment and labor for the immediately preceding state fiscal year before November 1 of each year for three years, beginning November 1, 2020. Provides that the worker's compensation board of Indiana may impose monetary fines on an employer for failure to procure worker's compensation coverage for its employees, if required to do so under the law. Increases certain civil penalties assessed by the worker's compensation board of Indiana. 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 enter into a memorandum of understanding concerning issues relating to the investigation and enforcement of employee misclassification laws. Establishes the employee misclassification investigation and enforcement fund.

**Effective:** July 1, 2020.

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## Niezgodski

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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. 309

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 4-12-18 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2020]:

4 **Chapter 18. Employee Misclassification Investigation and**  
5 **Enforcement Fund**

6 **Sec. 1. As used in this chapter, "fund" refers to the employee**  
7 **misclassification investigation and enforcement fund established by**  
8 **section 2 of this chapter.**

9 **Sec. 2. (a) The employee misclassification investigation and**  
10 **enforcement fund is established for the purpose of funding the**  
11 **investigation and enforcement of employee misclassification laws.**

12 **(b) The budget agency shall administer the fund. The fund**  
13 **consists of amounts transferred to the fund from the state**  
14 **department of labor, the department of state revenue, the worker's**  
15 **compensation board of Indiana, and the department of workforce**  
16 **development according to the memorandum of understanding**  
17 **entered into under IC 22-2-15-7.**



1 (c) The expenses of administering the fund shall be paid from  
2 money in the fund.

3 (d) The treasurer of state shall invest the money in the fund not  
4 currently needed to meet the obligations of the fund in the same  
5 manner as other public funds may be invested. Interest that  
6 accrues from these investments shall be deposited in the fund.

7 (e) Money in the fund at the end of a state fiscal year does not  
8 revert to the state general fund, but remains in the fund to be used  
9 exclusively for the purpose set forth in this section.

10 SECTION 2. IC 6-8.1-3-21.3 IS ADDED TO THE INDIANA  
11 CODE AS A NEW SECTION TO READ AS FOLLOWS  
12 [EFFECTIVE JULY 1, 2020]: Sec. 21.3. (a) The department shall  
13 report before November 1 of each year to the interim study  
14 committee on employment and labor (established by IC 2-5-1.3-4)  
15 for the immediately preceding state fiscal year:

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

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

22 (3) an estimate of the revenue not collected by the state that  
23 the department attributes to the improperly classified  
24 workers;

25 (4) the amount of additional taxes collected as a result of  
26 newly discovered employee misclassification; and

27 (5) the number of worker's compensation exemption  
28 certificate clearances validated by the department.

29 (b) The information required by subsection (a)(1) through (a)(5)  
30 must be in the form of aggregate statistics. The report must not  
31 include information that can be used to identify specific employers  
32 or workers.

33 (c) This section expires December 31, 2022.

34 SECTION 3. IC 22-1-1-23 IS ADDED TO THE INDIANA CODE  
35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
36 1, 2020]: Sec. 23. (a) The department of labor shall report before  
37 November 1 of each year to the interim study committee on  
38 employment and labor (established by IC 2-5-1.3-4) for the  
39 immediately preceding state fiscal year the number of tips received  
40 alleging employee misclassification.

41 (b) The information required by subsection (a) must be in the  
42 form of aggregate statistics. The report must not include



1 information that can be used to identify specific employers or  
2 workers.

3 (c) This section expires December 31, 2022.

4 SECTION 4. IC 22-2-15-7 IS ADDED TO THE INDIANA CODE  
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
6 1, 2020]: Sec. 7. (a) By January 1, 2021, the department, the  
7 department of state revenue, the worker's compensation board of  
8 Indiana, and the department of workforce development shall  
9 develop and enter into a written memorandum of understanding  
10 concerning the investigation and enforcement of employee  
11 misclassification laws. The memorandum of understanding shall  
12 set forth:

- 13 (1) the expectations for each agency;
- 14 (2) specific performance metrics for each agency;
- 15 (3) confidentiality requirements or barriers to be addressed;
- 16 (4) how information will be shared between agencies;
- 17 (5) the percentage of each agency budget to be transferred to  
18 the employee misclassification investigation and enforcement  
19 fund established by IC 4-12-18-2;
- 20 (6) the requirements for regular meetings and updates  
21 between the agencies;
- 22 (7) the signatories for each agency; and
- 23 (8) any additional provisions that will enhance the ability of  
24 each agency to ensure employer compliance with applicable  
25 classification laws.

26 (b) Each agency described in subsection (a) shall transfer to the  
27 fund established by IC 4-12-18-2, from the amount appropriated  
28 to the agency, the amount specified in the memorandum of  
29 understanding entered into under this section.

30 SECTION 5. IC 22-3-1-6 IS ADDED TO THE INDIANA CODE  
31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
32 1, 2020]: Sec. 6. (a) The worker's compensation board shall report  
33 before November 1 of each year to the interim study committee on  
34 employment and labor (established by IC 2-5-1.3-4) for the  
35 immediately preceding state fiscal year:

- 36 (1) the total number of tips received alleging employee  
37 misclassification;
- 38 (2) the total number of employers that are found to have  
39 worker's compensation insurance after the worker's  
40 compensation board conducts an initial investigation;
- 41 (3) the amount of the penalties and interest assessed against  
42 the employers described in subdivision (1) by the worker's



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

3            **(4) the total number of worker's compensation exemption**  
 4            **certificate clearances validated by the board.**

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, 2022.**

10          SECTION 6. IC 22-3-4-15, AS AMENDED BY P.L.204-2018,  
 11          SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12          JULY 1, 2020]: Sec. 15. (a) In addition to any other remedy available  
 13          to the board under this article or at law, the board may, after notice and  
 14          a hearing, assess a civil penalty under this section for any of the  
 15          following:

16            (1) Failure to timely pay compensation under an approved  
 17            settlement agreement as required by IC 22-3-2-15(d).

18            (2) Failure to post a notice required by IC 22-3-2-22.

19            (3) Failure to comply with **IC 22-3-2-5**, IC 22-3-3-7, or  
 20            IC 22-3-7-16.

21            (4) Failure to timely pay compensation for permanent partial  
 22            impairment as required by IC 22-3-3-10.5(c).

23            (5) Failure to timely pay a compensation award as required by  
 24            IC 22-3-3-24(a).

25            (6) Failure to file an injury record with the board as required by  
 26            section 13 of this chapter or to file a report of a disablement by  
 27            occupational disease as required by IC 22-3-7-37.

28            (b) For the first violation of an offense listed in subsection (a), the  
 29            board may assess a civil penalty not to exceed ~~fifty one hundred~~  
 30            ~~dollars (\$50): (\$100).~~

31            (c) For the second unrelated violation of the same offense listed in  
 32            subsection (a), the board may assess a civil penalty not to exceed ~~one~~  
 33            ~~hundred fifty three hundred~~ **dollars (\$150): (\$300).**

34            (d) For the third or subsequent unrelated violation of the same  
 35            offense listed in subsection (a), the board may assess a civil penalty not  
 36            to exceed ~~three five hundred~~ **dollars (\$300): (\$500).**

37            (e) Civil penalties collected under this section shall be deposited in  
 38            the worker's compensation supplemental administrative fund  
 39            established by IC 22-3-5-6.

40          SECTION 7. IC 22-4-19-16 IS ADDED TO THE INDIANA CODE  
 41          AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 42          1, 2020]: **Sec. 16. (a) The department shall report before November**



- 1 **1 of each year to the interim study committee on employment and**  
2 **labor (established by IC 2-5-1.3-4) for the immediately preceding**  
3 **state fiscal year:**
- 4 **(1) the number of employers that the department determined**  
5 **during the immediately preceding state fiscal year improperly**  
6 **classified at least one (1) worker as an independent**  
7 **contractor;**
- 8 **(2) the total number of improperly classified workers**  
9 **employed by the employers described in subdivision (1);**
- 10 **(3) an estimate of the additional costs to the state that the**  
11 **department attributes to the improperly classified workers;**  
12 **and**
- 13 **(4) the amount of the penalties and interest assessed against**  
14 **the employers described in subdivision (1) by the department,**  
15 **and the amount of the penalties and interest assessed that has**  
16 **been collected.**
- 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, 2022.**

