
HOUSE BILL No. 1098

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-18; IC 10-11-2-21.5; IC 22-1-1-22; IC 22-4-14-9; IC 22-5; IC 34-30-2-87.3.

Synopsis: Illegal immigrant matters. Requires the superintendent of the state police department to negotiate terms of a memorandum of understanding concerning a pilot project for the enforcement of federal immigration and customs laws. Prohibits an employer from knowingly employing, after June 30, 2010, an unauthorized alien. Authorizes the attorney general to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; and (2) notify United States Immigration and Customs Enforcement and the department of labor (department) under certain conditions. Authorizes the department to initiate administrative proceedings against an employer for knowingly employing an unauthorized alien. Requires employers to verify the employment eligibility of an employee through the federal employment verification pilot program. Prohibits the department from initiating an administrative proceeding against an employer that verifies the employment authorization of an employed individual through the pilot program. Establishes an affirmative defense if the employer complied in good faith with the federal employment verification requirements. Makes it a Class B misdemeanor to file a complaint, knowing the complaint is false or frivolous, with the attorney general. Prohibits a governmental body from enacting an ordinance, resolution, rule, or policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual. Prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor if the state agency or political subdivision knows that the

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Effective: July 1, 2009; July 1, 2010.

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January 8, 2009, read first time and referred to Committee on Interstate and International Cooperation.



Digest Continued

contractor employs or contracts with unauthorized aliens. Allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens. Requires the department of workforce development to verify the lawful presence of certain individuals to determine the individual's eligibility for unemployment benefits through the SAVE program.

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Introduced

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1098

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 5-2-18 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]:

4 **Chapter 18. Citizenship and Immigration Status Information**

5 **Sec. 1. As used in this chapter, "governmental body" has the**
6 **meaning set forth in IC 5-22-2-13.**

7 **Sec. 2. A governmental body may not enact an ordinance, a**
8 **resolution, a rule, or a policy that prohibits or in any way restricts**
9 **another governmental body, including a law enforcement officer**
10 **(as defined in IC 5-2-1-2), a state or local official, or a state or local**
11 **government employee, from taking the following actions with**
12 **regard to information concerning the citizenship or immigration**
13 **status, lawful or unlawful, of an individual:**

- 14 (1) **Communicating or cooperating with federal officials.**
15 (2) **Sending to or receiving information from the United States**



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Department of Homeland Security.

(3) Maintaining information.

(4) Exchanging information with another federal, state, or local government entity.

Sec. 3. If a governmental body violates this chapter, a person lawfully domiciled in Indiana may bring an action to compel the governmental body to comply with this chapter.

SECTION 2. IC 10-11-2-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 21.5. (a) The superintendent shall negotiate the terms of a memorandum of understanding between the state and the United States Department of Justice or the United States Department of Homeland Security concerning a pilot project for the enforcement of federal immigration and customs laws in Indiana.**

(b) The memorandum of understanding described in subsection (a) must be signed on behalf of the state by the superintendent and governor, unless otherwise required by the United States Department of Justice or the United States Department of Homeland Security.

(c) The superintendent shall designate appropriate police employees to be trained under the memorandum of understanding described in subsection (a).

(d) The department shall apply for federal funding, as available, for the costs associated with training police employees under the memorandum of understanding described in subsection (a).

(e) A police employee certified as trained in accordance with the memorandum of understanding described in subsection (a) may enforce federal immigration and customs laws while performing within the scope of the police employee's duties.

(f) The superintendent shall coordinate efforts, as needed, with the executive director of the department of homeland security to address issues of national security in implementing this section.

SECTION 3. IC 22-1-1-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 22. (a) The department of labor shall employ a sufficient number of administrative law judges to hear and decide cases initiated by the department of labor under IC 22-5-1.5.**

(b) An administrative law judge employed by the department of labor is subject to IC 4-21.5.

SECTION 4. IC 22-4-14-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9. (a) As used in this**

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1 **section, "SAVE program" means the Systematic Alien Verification**
2 **of Entitlements program operated by the United States**
3 **Department of Homeland Security or a successor program**
4 **designated by the United States Department of Homeland Security.**

5 (b) For weeks of unemployment occurring subsequent to December
6 31, 1977, benefits may not be paid on the basis of services performed
7 by an alien unless the alien is an individual who has been lawfully
8 admitted for permanent residence at the time the services are
9 performed, is lawfully present for purposes of performing the services,
10 or otherwise is permanently residing in the United States under color
11 of law at the time the services are performed (including an alien who
12 is lawfully present in the United States as a result of the application of
13 the provisions of Section 207, Section 208, or Section 212(d)(5) of the
14 Immigration and Nationality Act (8 U.S.C. 1157 through 1158).

15 (1) Any data or information required of individuals applying for
16 benefits to determine whether benefits are not payable to them
17 because of their alien status shall be uniformly required from all
18 applicants for benefits.

19 (2) In the case of an individual whose application for benefits
20 would otherwise be approved, no determination that benefits to
21 the individual are not payable because of his **the individual's**
22 alien status may be made except upon a preponderance of the
23 evidence.

24 (3) Any modifications to the provisions of Section 3304(a)(14) of
25 the Federal Unemployment Tax Act, as provided by P.L.94-566,
26 which specify other conditions or other effective date than stated
27 in this section for the denial of benefits based on services
28 performed by aliens and which are required to be implemented
29 under state law as a condition for full tax credit against the tax
30 imposed by the Federal Unemployment Tax Act, shall be
31 considered applicable under this section.

32 **(c) If an individual who applies for benefits is not a citizen or**
33 **national of the United States, the department shall verify the lawful**
34 **presence of the individual to determine the individual's eligibility**
35 **for benefits through the SAVE program. The department shall**
36 **implement this subsection in accordance with federal law.**

37 SECTION 5. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE
38 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2010]:

40 **Chapter 1.5. Employment of Unauthorized Aliens**

41 **Sec. 1. (a) This chapter applies only to an employee that an**
42 **employer hires after June 30, 2010.**

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(b) Except as provided in subsection (c), this chapter does not apply to the following:

- (1) A public utility (as defined in IC 8-1-2-1(a)) that is subject to regulation by the Indiana utility regulatory commission under IC 8-1-2.**
- (2) A hospital licensed under IC 16-21.**
- (3) A private psychiatric institution licensed under IC 12-25.**
- (4) A community mental health center identified in IC 12-29-2-1.**
- (5) A nonprofit corporation.**
- (6) A person who operates a business of transporting emergency patients by ambulance or using a nontransporting emergency medical services vehicle (as defined in IC 16-31-3-0.5).**
- (7) A corporation organized under IC 8-1-13.**
- (8) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.**
- (9) A municipally owned utility (as defined in IC 8-1-2-1(h)).**

(c) The entities listed in subsection (b) are subject to section 29 of this chapter.

Sec. 2. As used in this chapter, "agency" means any state or local administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, service, or other similar body of government created or established by law that issues a license for purposes of operating a business in Indiana.

Sec. 3. As used in this chapter, "department" refers to the department of labor.

Sec. 4. As used in this chapter, "employee" means an individual who:

- (1) performs services for an employer; and**
- (2) is an individual from whom the employer is required to withhold wages under IC 6-3-4-8 or is an employee described in IC 6-3-4-8(l).**

Sec. 5. (a) As used in this chapter, "employer" means a person that:

- (1) transacts business in Indiana;**
- (2) has a license issued by an agency; and**
- (3) employs one (1) or more individuals who perform employment services in Indiana.**

However, if the person for whom the employee performs or

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1 performed the services does not have control of the payment of the
2 wages for the services, the term "employer" means the person
3 having control of the payment of wages to the employee.

4 (b) The term includes the state, a political subdivision (as
5 defined in IC 3-5-2-38) of the state, and a self-employed person.

6 Sec. 6. As used in this chapter, "knowingly" has the meaning set
7 forth in IC 35-41-2-2.

8 Sec. 7. (a) As used in this chapter, "license" means any agency
9 permit, certificate, approval, registration, charter, or similar
10 authorization that is:

- 11 (1) required by law; and
- 12 (2) issued by an agency;

13 for purposes of operating a business in Indiana.

14 (b) The term does not include an occupational or a professional
15 license.

16 Sec. 8. As used in this chapter, "person" means an individual, a
17 corporation, a limited liability company, a partnership, or another
18 legal entity.

19 Sec. 9. As used in this chapter, "pilot program" means the
20 employment verification pilot program administered by the United
21 States Department of Homeland Security and the Social Security
22 Administration, or the successor of that program.

23 Sec. 10. As used in this chapter, "unauthorized alien" has the
24 meaning set forth in 8 U.S.C. 1324a(h)(3).

25 Sec. 11. An employer shall not knowingly employ an
26 unauthorized alien.

27 Sec. 12. (a) The attorney general may investigate a complaint
28 filed with the attorney general that an employer knowingly
29 employed an unauthorized alien in violation of section 11 of this
30 chapter.

31 (b) In investigating a complaint under subsection (a), the
32 attorney general shall verify the work authorization of the alleged
33 unauthorized alien with the federal government under 8 U.S.C.
34 1373(c).

35 (c) A complaint filed with the attorney general under subsection
36 (a) must be:

- 37 (1) in writing; and
- 38 (2) signed by the individual filing the complaint.

39 Sec. 13. A state, county, or local official or employee may not
40 attempt to make independently a final determination as to whether
41 an individual is authorized to work in the United States.

42 Sec. 14. (a) If, after an investigation, the attorney general

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1 determines that an employer has knowingly employed an
2 unauthorized alien, the attorney general shall notify the United
3 States Immigration and Customs Enforcement.

4 (b) If the attorney general determines that an employer has
5 knowingly employed an unauthorized alien and that any defenses
6 to knowingly employing an unauthorized alien established under
7 this chapter do not apply, the attorney general may notify the
8 department.

9 (c) The attorney general may not notify the department under
10 subsection (b) about an unauthorized alien unless the attorney
11 general determines that the defenses to knowingly employing an
12 unauthorized alien established under this chapter do not apply.

13 Sec. 15. (a) If the attorney general notifies the department under
14 section 14 of this chapter that an employer has knowingly
15 employed an unauthorized alien, the department may initiate an
16 administrative proceeding to determine if the employer has
17 violated section 11 of this chapter.

18 (b) An administrative hearing under this chapter shall be
19 conducted by an administrative law judge appointed by the
20 department under IC 22-1-1-22.

21 (c) IC 4-21.5 applies to an administrative proceeding under this
22 section.

23 (d) The department may initiate only one (1) administrative
24 proceeding against an employer relating to the employment of all
25 unauthorized aliens employed by the employer at the time the
26 department initiates the administrative proceeding.

27 (e) The department may initiate an additional administrative
28 proceeding against an employer under this section for a second or
29 subsequent violation of section 11 of this chapter only for violations
30 allegedly committed by the employer after the employer receives
31 notice that the department has initiated an initial administrative
32 proceeding against the employer under this section.

33 Sec. 16. If the department initiates an administrative proceeding
34 under section 15 of this chapter, an administrative law judge may
35 hold an administrative hearing and make a determination on an
36 expedited basis.

37 Sec. 17. (a) Except as provided in sections 19 and 20 of this
38 chapter, if an administrative law judge determines that an
39 employer knowingly employed an unauthorized alien in violation
40 of section 11 of this chapter, the following apply:

- 41 (1) The administrative law judge may do the following:
 - 42 (A) Order the employer to terminate the employment of all

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unauthorized aliens employed by the employer.

(B) Place the employer on probation for a three (3) year period. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.

(C) Order the employer to file a sworn affidavit signed by the employer with the department within three (3) business days after the order is issued under clause (A). The affidavit must include a statement that the employer:

- (i) has terminated the employment of all unauthorized aliens; and
- (ii) will not knowingly employ an unauthorized alien.

(2) The administrative law judge, after considering the relevant factors listed in subsection (b), may order an agency to suspend, for not more than ten (10) business days, a license described in section 18(a) of this chapter that is held by the employer.

(b) An administrative law judge may consider the following factors, if applicable, in deciding whether to order an agency to suspend an employer's license under subsection (a)(2):

- (1) The number of unauthorized aliens employed by the employer.
- (2) Any prior misconduct by the employer.
- (3) The degree of harm resulting from the violation.
- (4) The extent to which the employer made good faith efforts to comply with any applicable requirements under this chapter.
- (5) The duration of the violation.
- (6) The role of the directors, officers, or agents of the employer in the violation.
- (7) Any other factors the administrative law judge considers relevant.

Sec. 18. (a) This section applies to all licenses held by an employer:

- (1) that are necessary to operate the employer's business at the employer's business location where an unauthorized alien was employed by the employer; or
- (2) if a license is not necessary at the employer's business location described in subdivision (1), that are held by the employer for the employer's primary place of business.

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1 (b) If an employer fails to file a sworn affidavit required under
2 section 17(a)(1)(C) of this chapter with the department within
3 three (3) business days after the order requiring the filing of the
4 affidavit is issued, the administrative law judge may order the
5 appropriate agencies to suspend all licenses that are held by the
6 employer. All licenses suspended under this subsection may remain
7 suspended until the employer files a sworn affidavit described in
8 section 17(a)(1)(C) of this chapter with the department.

9 (c) If an employer subject to an order filed under subsection (b)
10 files a sworn affidavit required under section 17(a)(1)(C) of this
11 chapter, the administrative law judge may order the appropriate
12 agencies to reinstate the employer's suspended licenses.

13 Sec. 19. If:

14 (1) an administrative law judge determines that an employer
15 knowingly employed an unauthorized alien in a second
16 violation of section 11 of this chapter; and

17 (2) the violation referred to in subdivision (1) occurred not
18 later than five (5) years after the date of the initial violation;
19 the administrative law judge may order the appropriate agencies
20 to suspend, for not more than ten (10) business days, all licenses
21 described in section 18(a) of this chapter that are held by the
22 employer.

23 Sec. 20. (a) If:

24 (1) an administrative law judge determines that an employer
25 knowingly employed an unauthorized alien in a third violation
26 of section 11 of this chapter; and

27 (2) the violation referred to in subdivision (1) occurred not
28 later than five (5) years after the date of the initial violation;
29 the administrative law judge may order the appropriate agencies
30 to revoke for a period of time determined by the administrative law
31 judge or permanently revoke all licenses held by the employer that
32 are described in section 18(a) of this chapter.

33 (b) An employer may petition the governor to review an order
34 under IC 4-21.5-3-30 issued by an administrative law judge
35 revoking the employer's license or licenses.

36 Sec. 21. (a) An employer may, after the employer has exhausted
37 all administrative and judicial remedies, request the governor to
38 terminate or reduce the term of revocation of the employer's
39 license or licenses under an order issued by an administrative law
40 judge under section 20 of this chapter.

41 (b) The governor may terminate or reduce the term of
42 revocation of an employer's license or licenses under an order

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1 issued by an administrative law judge under section 20 of this
 2 chapter and require the appropriate agency to reinstate the
 3 employer's license.

4 **Sec. 22. (a) If an agency receives an order from an**
 5 **administrative law judge under section 17(a)(2), 18(b), or 19 of this**
 6 **chapter, the agency shall immediately suspend the license or**
 7 **licenses described in section 18(a) of this chapter that are held by**
 8 **the employer to which the order relates.**

9 **(b) If an agency receives an order from an administrative law**
 10 **judge under section 20 of this chapter, the agency shall**
 11 **immediately revoke the license or licenses described in section**
 12 **18(a) of this chapter that are held by the employer to which the**
 13 **order relates.**

14 **Sec. 23. An administrative law judge shall send copies of all**
 15 **orders issued under sections 17, 18, 19, and 20 of this chapter to the**
 16 **attorney general.**

17 **Sec. 24. (a) In determining whether an individual is an**
 18 **unauthorized alien for purposes of this chapter, an administrative**
 19 **law judge may consider only the federal government's verification**
 20 **or status information provided under 8 U.S.C. 1373(c).**

21 **(b) The federal government's verification or status information**
 22 **provided under 8 U.S.C. 1373(c) creates a rebuttable presumption**
 23 **of an individual's lawful status.**

24 **(c) An administrative law judge may:**

25 **(1) take notice of the federal government's verification or**
 26 **status information; and**

27 **(2) request the federal government to provide automated or**
 28 **testimonial verification under 8 U.S.C. 1373(c).**

29 **Sec. 25. The department may not initiate an administrative**
 30 **proceeding against an employer under section 15 of this chapter**
 31 **for knowingly employing an unauthorized alien if the employer**
 32 **verified the employment authorization of the employed individual**
 33 **through the pilot program.**

34 **Sec. 26. An employer may establish as an affirmative defense**
 35 **against an alleged violation under section 11 of this chapter that**
 36 **the employer complied in good faith with the requirements of 8**
 37 **U.S.C. 1324a(b).**

38 **Sec. 27. The attorney general shall:**

39 **(1) maintain copies of orders received under section 23 of this**
 40 **chapter;**

41 **(2) make the orders available on the attorney general's**
 42 **Internet web site; and**

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1 (3) establish and maintain a data base of the names and
2 addresses of the employers that have a violation under this
3 chapter.
4 **Sec. 28.** This chapter does not require an employer to take any
5 action that the employer believes in good faith would violate
6 federal law.
7 **Sec. 29.** After June 30, 2010, an employer shall verify the
8 employment eligibility of each employee of the employer through
9 the pilot program after hiring the employee.
10 **Sec. 30.** A person who files a complaint with the attorney
11 general under this chapter, knowing that the complaint is false or
12 frivolous, commits a Class B misdemeanor.
13 **Sec. 31.** The suspension or revocation of a license under this
14 chapter does not relieve an employer from an obligation to
15 withhold, collect, or pay income tax on wages paid by the employer
16 to an employee.
17 **Sec. 32.** This chapter shall be enforced without regard to race or
18 national origin.
19 SECTION 6. IC 22-5-1.7 IS ADDED TO THE INDIANA CODE
20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2009]:
22 **Chapter 1.7. Public Contract for Services; Unauthorized Aliens**
23 **Sec. 1.** As used in this chapter, "contractor" means a person
24 that has or is attempting to enter into a public contract for services
25 with a state agency or political subdivision.
26 **Sec. 2.** As used in this chapter, "person" means an individual, a
27 corporation, a limited liability company, a partnership, or another
28 legal entity.
29 **Sec. 3.** As used in this chapter, "political subdivision" has the
30 meaning set forth in IC 36-1-2-13. However, the term does not
31 include a hospital organized and operated under IC 16-22-2,
32 IC 16-22-8, or IC 16-23.
33 **Sec. 4.** As used in this chapter, "public contract for services"
34 means any type of agreement between a state agency or a political
35 subdivision and a contractor for the procurement of services.
36 **Sec. 5.** As used in this chapter, "state agency" has the meaning
37 set forth in IC 4-6-3-1.
38 **Sec. 6.** As used in this chapter, "subcontractor" means a person
39 that:
40 (1) is a party to a contract with a contractor; and
41 (2) provides services for work the contractor is performing
42 under a public contract for services.

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Sec. 7. As used in this chapter, "unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).

Sec. 8. A state agency or political subdivision may not enter into or renew a public contract for services with a contractor if the state agency or political subdivision knows that the contractor or a subcontractor of the contractor employs or contracts with an unauthorized alien.

Sec. 9. Before a state agency or political subdivision may enter into a public contract for services with a contractor, the contractor shall certify in a manner that does not violate federal law that the contractor, at the time of the certification, does not employ or contract with an unauthorized alien.

Sec. 10. (a) A contractor or a subcontractor may not knowingly employ or contract with an unauthorized alien.

(b) If a contractor or subcontractor violates this section, the state agency or political subdivision may file a complaint concerning the violation by the contractor or subcontractor with the attorney general under IC 22-5-1.5.

Sec. 11. If a contractor uses a subcontractor, the subcontractor shall certify to the contractor in a manner that does not violate federal law that the subcontractor, at the time of certification, does not employ or contract with an unauthorized alien.

Sec. 12. A contractor shall maintain on file a certification of a subcontractor under section 11 of this chapter throughout the duration of the term of a contract with the subcontractor.

Sec. 13. (a) If a contractor determines that a subcontractor is in violation of this chapter, the contractor may terminate a contract with the subcontractor for the violation.

(b) A contract terminated under subsection (a) for a violation of this chapter by a subcontractor may not be considered a breach of contract by the contractor or the subcontractor.

(c) A subcontractor may file an action with a circuit or superior court having jurisdiction in the county to challenge a termination of a contract under subsection (a) not later than twenty (20) days after the contractor terminates the contract with the subcontractor.

SECTION 7. IC 34-30-2-87.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 87.3. IC 22-5-1.5-25 (Concerning certain employers that employ unauthorized aliens).

SECTION 8. [EFFECTIVE JULY 1, 2010] The department of labor may initiate an administrative proceeding against an

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1 **employer under IC 22-5-1.5-15, as added by this act, only for a**
2 **violation of IC 22-5-1.5-11, as added by this act, that occurs after**
3 **June 30, 2010.**

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