

## **IC 22-8-1.1**

### **Chapter 1.1. Indiana Occupational Safety and Health Act (IOSHA)**

#### **IC 22-8-1.1-1**

##### **Definitions**

Sec. 1. As used in this chapter, unless otherwise provided:

"Board" means the board of safety review created by this chapter.

"Commission" means the occupational safety standards commission created by this chapter.

"Commissioner" means the commissioner of labor or the commissioner's duly designated representative.

"Department" means the department of labor.

"Employee" means a person permitted to work by an employer in employment.

"Employer" means any individual or type of organization, including the state and all its political subdivisions, that has in its employ one (1) or more individuals.

"INSafe" means the division of the department created by section 40 of this chapter.

"Safety order" refers to a notice issued to employers by the commissioner of labor for alleged violations of this chapter, including any health and safety standards.

"Standard" refers to both health and safety standards.

"Voluntary protection program" means a program offered by the United States Occupational Safety and Health Administration to employers subject to this chapter that exempts the employers from general scheduled inspections.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.1.)  
As amended by Acts 1977, P.L.263, SEC.1; P.L.37-1985, SEC.33;  
P.L.225-1995, SEC.1; P.L.32-2008, SEC.1.*

#### **IC 22-8-1.1-2**

##### **Employers; duties**

Sec. 2. Each employer shall establish and maintain conditions of work which are reasonably safe and healthful for employees, and free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.2.)*

#### **IC 22-8-1.1-3**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-3.1**

##### **Compliance with standards by employer; informing employees**

Sec. 3.1. Every employer shall comply with the occupational health and safety standards promulgated under this chapter, and

pursuant to any directions in such standards, keep his employees informed of their protections and obligations under the chapter, the hazards of the work place and suitable precautions, relevant symptoms and emergency treatment for such hazards.

*(Formerly: Acts 1973, P.L.241, SEC.3.)*

#### **IC 22-8-1.1-4**

##### **Safety devices or safeguards; removing or damaging; interference; compliance by employees with standards**

Sec. 4. No employee may remove, damage, carry off, or render inoperative any safety device or safeguard furnished or provided for use in any employment, or place of employment, or interfere with the use thereof by any other person. Each employee shall comply with the occupational health and safety standards promulgated under this chapter.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.4.)*

*As amended by Acts 1978, P.L.2, SEC.2230.*

#### **IC 22-8-1.1-5**

##### **Safety processes; interference with use; obedience to orders**

Sec. 5. No person may interfere with the use of any method or process adopted for the protection of any employee in his employment or place of employment, or of any other person lawfully within the place of employment, or fail to follow orders necessary to protect the life, health, and safety of employees and any other person lawfully within the place of employment.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.5.)*

*As amended by Acts 1978, P.L.2, SEC.2231.*

#### **IC 22-8-1.1-6**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-6.5**

##### **Religious objections to treatment**

Sec. 6.5. Nothing in this chapter or the standards adopted under this chapter shall be deemed to authorize or require medical examination, immunization, or treatment for those who object on religious grounds, except where such is necessary for the protection of the health and safety of others.

*(Formerly: Acts 1972, P.L.175, SEC.1.) As amended by P.L.144-1986, SEC.173.*

#### **IC 22-8-1.1-7**

##### **Occupational safety standards commission**

Sec. 7. An occupational safety standards commission is created within the department to promulgate, modify, or revoke safety and health standards in Indiana and to hear and determine applications for temporary and permanent variances from those standards.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.6.)  
As amended by P.L.37-1985, SEC.34.*

#### **IC 22-8-1.1-8**

##### **Commission; membership**

Sec. 8. Commission: Membership. The commission shall be composed of nine (9) members, all of whom shall be selected by the governor as follows: three (3) shall represent the management of principal industries in the state, one (1) of which shall represent agricultural industry: three (3) shall represent labor and three (3) shall represent the public all of whom shall be recognized as experienced in the field of occupational health and safety. The commissioner shall serve as secretary of the commission. No member of the commission having an economic interest in any application for a temporary or permanent variance, shall be allowed to participate in the decision.  
*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.7.)*

#### **IC 22-8-1.1-9**

##### **Commission; terms**

Sec. 9. Commission: Terms. Members of the commission shall serve terms of three (3) years and until their successors are appointed except that of the members first appointed, three (3) members representing management, labor and the public shall be appointed for three (3) years and three (3) members representing management, labor and the public for two (2) years and three (3) members representing management, labor and the public for one (1) year. Vacancies shall be filled by appointment for an unexpired term by the governor in the same manner as the original appointments.  
*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.8.)*

#### **IC 22-8-1.1-10**

##### **Commission; organization**

Sec. 10. The commission shall meet annually at the call of the commissioner and elect a chairman and such other officers as they deem appropriate.  
*(Formerly: Acts 1971, P.L.356, SEC.1.) As amended by P.L.144-1986, SEC.174.*

#### **IC 22-8-1.1-11**

##### **Commission; quorum**

Sec. 11. (Commission: Quorum) A majority of the commission constitutes a quorum for the transaction of business.  
*(Formerly: Acts 1971, P.L.356, SEC.1.)*

#### **IC 22-8-1.1-12**

##### **Commission; per diem; travel expenses**

Sec. 12. (a) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a member is also entitled to reimbursement

for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

(b) Each member of the commission who is a state employee is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

*(Formerly: Acts 1971, P.L.356, SEC.1.) As amended by P.L.34-1988, SEC.2.*

### **IC 22-8-1.1-13**

#### **Commission; meetings**

Sec. 13. The commission shall meet at the call of the commissioner or the chairman or upon the written request of any four (4) members. However, the commission shall meet at least one (1) time per year at the call of the commissioner to conduct the business that comes before the commission.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.9.) As amended by P.L.219-1995, SEC.1; P.L.113-2014, SEC.116.*

### **IC 22-8-1.1-13.1**

#### **Repealed**

*(Repealed by P.L.117-1994, SEC.3.)*

### **IC 22-8-1.1-14**

#### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

### **IC 22-8-1.1-15**

#### **Standards; incorporation by reference**

Sec. 15. (Standards: Incorporation by reference) The commission may adopt by reference any standards, code, manuals or portions thereof, published by any nationally recognized organizations or associations organized or conducted in whole or in part for the purpose of developing standards for the protection of the life, health or safety of employees.

*(Formerly: Acts 1971, P.L.356, SEC.1.)*

### **IC 22-8-1.1-15.1**

#### **Other standards**

Sec. 15.1. Any interested person, including representatives of employers and representatives of employees may propose a standard to the commission, or the commission may do so on its own motion. Such proposals shall be in writing. In the development or adoption of each standard proposed in this manner, the commission shall appoint and consult with an advisory committee. The advisory committee shall include equal number of persons qualified to present the

viewpoint of employers involved and of persons similarly qualified to present the viewpoint of the workers involved. All members of the advisory committee shall be experienced in the field to which the proposed standard will apply. The number of members of any advisory committee shall be at the discretion of the commission. Any standard developed shall not unduly burden interstate commerce. Any such standard must be adopted by the commission in accordance with IC 4-22-2. The said standard shall be published in a newspaper of general circulation published in Marion County, Indiana, at least ten (10) days prior to the filing of said standard with the publisher of the Indiana Register.

*(Formerly: Acts 1973, P.L.241, SEC.11.) As amended by P.L.123-2006, SEC.33.*

#### **IC 22-8-1.1-16**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-16.1**

##### **Emergency temporary standards**

Sec. 16.1. (a) The commission may adopt emergency temporary standards under IC 4-22-2-37.1. The emergency temporary standard shall be published in a newspaper of general circulation published in Marion County, Indiana, at least ten (10) days before the filing with the publisher of the Indiana Register. In the exercise of this power, the commission shall first expressly determine:

- (1) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and
- (2) that such emergency standard is necessary to protect employees from such danger.

(b) Temporary emergency standards shall be effective only until a permanent standard is adopted under IC 4-22-2, or for six (6) months from the date of publication, whichever period is shorter. The publication of an emergency temporary standard shall begin a proceeding in accordance with section 15 of this chapter.

*(Formerly: Acts 1973, P.L.241, SEC.12.) As amended by P.L.31-1985, SEC.47; P.L.1-1990, SEC.237; P.L.123-2006, SEC.34.*

#### **IC 22-8-1.1-16.2**

##### **Enforcement of standards; alternate standards; statement of enforceable standards**

Sec. 16.2. (a) A United States Occupational Safety and Health Administration (OSHA) standard lawfully adopted by OSHA under federal law may be enforced by the department without any further action by the commission.

(b) The commissioner or the commissioner's designee shall enforce the federal standards described in subsection (a) not earlier than sixty (60) days after the final standard by federal OSHA

becomes effective.

(c) The commission may adopt an alternate standard which it finds is at least as effective in providing safe and healthful employment as the federal standard under the procedures set forth in IC 22-8-1.1-15, IC 22-8-1.1-15.1, and IC 22-8-1.1-16.1.

(d) Notwithstanding IC 4-22-7-7(a), the commission shall publish a statement describing a standard enforceable under this section. The statement must make reference to the federal regulation. The statement must be published under IC 4-22-7-7(b).

*As added by P.L.117-1994, SEC.1.*

## **IC 22-8-1.1-17**

### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

## **IC 22-8-1.1-17.1**

### **Criteria for standards**

Sec. 17.1. (a) Any standard promulgated under this chapter shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such a standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with the hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary for the protection of employees. In addition where appropriate, any standard shall prescribe the type or frequency of medical examinations or other tests which shall be made available by the employer, at employer's cost, to employees exposed to hazards in order to most effectively determine whether the health of the employees is adversely affected by the exposure. Upon request, the results of examinations or tests shall be furnished to the department and shall remain confidential within the department. At the request of the employee, results shall be furnished to his physician.

(b) The commission, in promulgating standards dealing with toxic materials or harmful physical agents, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard dealt with by the standard for the period of his working life. Development of standards shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the

standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(c) The commission, in promulgating standards, shall adopt rules requiring employers to maintain accurate records of employee exposures to potentially toxic material or harmful physical agents which are required to be monitored or measured under the standards. These rules shall provide employees or their representatives with an opportunity to observe monitoring or measuring and to have access to the records thereof. These rules shall also make appropriate provisions for each employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Under these rules, each employer shall notify any employee who is being consistently exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an occupational safety and health standard and shall inform any employee who is being thus exposed of the corrective action being taken.

*(Formerly: Acts 1973, P.L.241, SEC.13.) As amended by P.L.37-1985, SEC.35.*

#### **IC 22-8-1.1-17.5**

##### **Enforcement; federal standards; conformity**

Sec. 17.5. The commissioner may not adopt or enforce any provision used to carry out the enforcement of this chapter that is more stringent than the corresponding federal provision enforced by the United States Department of Labor under the Occupational Safety and Health Act of 1970.

*As added by P.L.230-1983, SEC.1.*

#### **IC 22-8-1.1-17.7**

##### **Voluntary protection program implementation**

Sec. 17.7. The department shall implement a voluntary protection program not later than sixty (60) days after the program has been made available by the United States Occupational Safety and Health Administration.

*As added by P.L.225-1995, SEC.2.*

#### **IC 22-8-1.1-18**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-19**

##### **Standards; declaratory judgment**

Sec. 19. Standards: Declaratory Judgment. After promulgation of a safety standard by the commission, any question as to its applicability or legal validity may be adjudicated by an action for a declaratory judgment filed by an affected person or firm under IC 34-14-1 (or IC 34-4-10 before its repeal).

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.14.)*

*As amended by P.L.1-1998, SEC.127.*

#### **IC 22-8-1.1-19.1**

##### **Temporary variances**

Sec. 19.1. Temporary Variances. Any employer may apply to the commission for a temporary order granting a variance from a standard or any provision thereof promulgated under this chapter. Such temporary order shall be granted only if the employer establishes that he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date; that he is taking all available steps to safeguard his employees against the hazards covered by the standard; and that he has an effective program for coming into compliance with a standard as quickly as practicable. Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing. Said notice shall be given to the authorized representative of the employees and be posted at or near the location for which the variance is sought. No order for a temporary variance may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one (1) year, whichever is shorter, except that such an order may be renewed not more than twice, so long as the requirements of this paragraph are met and if an application for renewal is filed at least ninety (90) days prior to the expiration date of the order.

*(Formerly: Acts 1973, P.L.241, SEC.15.)*

#### **IC 22-8-1.1-20**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-20.1**

##### **Permanent variances; application; notice; rule or order; modification or revocation**

Sec. 20.1. Any affected employer may apply to the commission for a permanent variance from a standard promulgated under this chapter. Affected employees shall be given notice of each such application by posting it at or near the location for which the variance is sought, and an opportunity to participate in a hearing. The commission shall issue such rule or order if it determines, after a hearing, including an inspection, if appropriate, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by the employer will provide



employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, the commissioner of labor, or the commission on its own motion, in the manner prescribed for its issuance under this section at any time after six (6) months from its issuance, provided that the moving party gives thirty (30) days notice to the other parties, and a hearing is held at the request of any of the parties.

*(Formerly: Acts 1973, P.L.241, SEC.16.)*

#### **IC 22-8-1.1-21**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-21.1**

##### **Administrative services**

Sec. 21.1. The commissioner and the department shall provide such administrative services, including docketing, stenographic, and recordkeeping services, as the commission may require in discharging its function under this chapter.

*(Formerly: Acts 1973, P.L.241, SEC.17.) As amended by P.L.37-1985, SEC.36.*

#### **IC 22-8-1.1-22**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-22.1**

##### **Commissioner to administer; other agencies**

Sec. 22.1. Commissioner to Administer - Other Agencies. The commissioner and such representatives as he may designate shall administer and enforce the provisions of this chapter and the safety standards adopted by the commission. The commissioner may utilize other agencies of the state government and its political subdivisions in carrying out his functions under this chapter.

*(Formerly: Acts 1973, P.L.241, SEC.18.)*

#### **IC 22-8-1.1-23**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-23.1**

##### **Right of entry; exempt employers; exceptions**

Sec. 23.1. (a) Except as provided under section 51 of this chapter, the commissioner and his designated representatives, on their own

motion, or on receipt of a written and signed request for an inspection from an employee or his representative setting forth with reasonable particularity the grounds for inspection, may enter without delay and inspect at all reasonable times places of employment in order to enforce any provisions of this chapter, including occupational safety and health standards. Persons making inspections shall present appropriate credentials to the owner, operator, or agent in charge of the place of inspection.

(b) Notwithstanding the provisions of subsection (a), the commissioner and the commissioner's representatives do not have a right of entry for an inspection of the premises of an employer who:

- (1) is engaged in a farming operation that employs ten (10) or fewer employees and does not maintain a labor camp; or
- (2) qualifies for the small business exemption by:
  - (A) employing ten (10) or fewer employees; and
  - (B) being included within a category having an occupational injury lost work day case rate, at the most precise Standard Industrial Classification Code for which the data are published, less than the national average rate as the rates are most recently published by the Secretary of Labor, acting through the Bureau of Labor Statistics, in accordance with 29 U.S.C. 673.

(c) Notwithstanding the provisions of subsection (b), the premises of an employer qualified for exemption from inspection, other than an employer engaged in a farming operation described in subsection (b)(1), may be inspected to:

- (1) provide technical assistance, educational and training services, and conduct surveys and studies;
- (2) conduct an inspection or investigation in response to an employee complaint under section 24.1 of this chapter, issue a citation for violations found during the inspection, and assess a penalty for violations that are not corrected within a reasonable abatement period and for any willful violations found;
- (3) take any action authorized by this chapter with regard to imminent dangers;
- (4) take any action authorized by this chapter with respect to health hazards;
- (5) take any action authorized by this chapter with respect to a report of an employment accident that:
  - (A) is fatal to one (1) or more employees; or
  - (B) results in hospitalization of one (1) or more employees;and to take any action pursuant to any investigation authorized by this chapter; or
- (6) take any action authorized by this chapter with respect to complaints of discrimination against employees for exercising any legal right under this chapter.

*(Formerly: Acts 1973, P.L.241, SEC.19.) As amended by Acts 1977, P.L.263, SEC.2; P.L.221-1995, SEC.1; P.L.220-1995, SEC.1.*

#### **IC 22-8-1.1-24**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-24.1**

##### **Employee requests for inspection**

Sec. 24.1. (a) In the case of a written request for an inspection by an employee or a representative of an employee who believes that a violation of a safety or health standard exists that threatens physical harm or that an imminent danger exists, a copy shall be provided the employer at the time of inspection, except that, upon request of the complainant or by a decision by the commissioner:

(1) the name of the complainant and any identifying information; and

(2) the name and identifying information of individual employees referred to therein;

shall not appear in such copy or on any record published, released, or made available by the commissioner. The commissioner shall make the inspection, or shall reply in writing within twenty (20) days giving the reasons why the commissioner is not making the requested inspection. In the event a requested inspection is made, and no safety order issued, the commissioner shall reply in writing within twenty (20) days giving the reason for the decision.

(b) The employee or a representative of the employee, after receipt of the commissioner's reply under subsection (a), or upon the failure of the commissioner to reply, may request informal review of the request for an inspection made under subsection (a), or after inspection, upon the refusal to issue a safety order, by filing a written request for such informal review with the commissioner. Within twenty (20) days of receipt of the request, informal review shall commence with a final decision to be rendered within ten (10) days thereafter.

*(Formerly: Acts 1973, P.L.241, SEC.20.) As amended by P.L.76-2012, SEC.1.*

#### **IC 22-8-1.1-24.2**

##### **Advance notice**

Sec. 24.2. Without the approval of the commissioner or his duly authorized representative, no person may give advance notice of any inspection. A person who recklessly gives advance notice without such authority commits a Class B misdemeanor.

*(Formerly: Acts 1973, P.L.241, SEC.21.) As amended by Acts 1978, P.L.2, SEC.2232.*

#### **IC 22-8-1.1-24.3**

##### **Inspection by representatives**

Sec. 24.3. Subject to regulations issued by the commissioner, a representative of the employer and a representative of the employees shall be given the opportunity to accompany the inspector during the

physical inspection of the place of employment. Where there is no authorized employee representative, the inspector shall consult with a reasonable number of employees concerning matters of health and safety in the place of employment. The name and any identifying information of those employees interviewed are confidential for purposes of IC 5-14-3-4(a)(1).

*(Formerly: Acts 1973, P.L.241, SEC.22.) As amended by Acts 1977, P.L.263, SEC.3; P.L.76-2012, SEC.2.*

#### **IC 22-8-1.1-24.5**

##### **Written statement to employer following inspection; contents**

Sec. 24.5. (a) At the closing conference after the completion of an inspection, the inspector shall provide the employer or a representative of the employer with a written statement that clearly and concisely provides the following information:

- (1) The results of the inspection, including each hazard noted, if any.
- (2) The right of the employer to petition for review of a safety order, a penalty assessment, an amended safety order, and an amended penalty assessment.
- (3) An explanation of the procedure to follow in order to petition for review of a safety order, a penalty assessment, an amended safety order, and an amended penalty assessment, including when and where to file the petition and the required contents of the petition.
- (4) The commissioner's responsibility to affirm, amend, or dismiss the safety order and penalty assessment, if any, and to grant or deny the petition for review.
- (5) The informal review process.
- (6) The procedures before the board of safety review.
- (7) The right of the employer to seek judicial review.

(b) The written statement required under this section must be presented to the employer or the employer's representative at the closing conference after the completion of the inspection.

*As added by P.L.222-1995, SEC.1.*

#### **IC 22-8-1.1-24.7**

##### **Contents of safety audit inadmissible**

Sec. 24.7. (a) For purposes of this section, "safety audit" means a written consultation report related to health and safety standards that is:

- (1) prepared for an employer by:
    - (A) a third party; or
    - (B) an employee whose principal responsibilities include an employer's compliance with occupational safety and health standards; and
  - (2) not otherwise required by state or federal law.
- (b) For purposes of this section, "third party" does not include:
- (1) an employer's employee, other than an employee whose

principal responsibilities include an employer's compliance with occupational safety and health standards;

(2) a representative of an employer's employees; or

(3) any government agency.

(c) The contents of a safety audit are not admissible for purposes of this chapter if an employer has made a good faith and substantial effort to correct every hazard noted in the safety audit that is subject to enforcement under the federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq.

(d) This section does not apply to a criminal violation of this chapter.

*As added by P.L.223-1995, SEC.1.*

## **IC 22-8-1.1-25**

### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

## **IC 22-8-1.1-25.1**

### **Violations; safety order; service; limitation**

Sec. 25.1. (a) If, as a result of the inspection, the commissioner or his designated representative determines there is a violation of this chapter, or any standard promulgated under it, the commissioner shall issue a safety order. Such safety order shall:

(1) be in writing;

(2) describe with particularity the nature of the violation with reference to the provision of this chapter, or the standard alleged to have been violated; and

(3) fix a reasonable time for the abatement of the violation.

(b) Except as provided under section 51 of this chapter, either at the time the safety order is issued, or within five (5) working days thereafter, the commissioner shall notify the employer of the penalty, if any, being assessed.

(c) Notwithstanding IC 4-21.5-3-1, all safety orders and penalty assessments shall be served personally on or sent by registered or certified mail to the employer at the place where an alleged violation of this chapter or an alleged violation of a standard set by a rule adopted under this chapter exists, unless another address is provided to the commissioner or the commissioner's representative by the employer during an inspection. The commissioner or the commissioner's representative shall give notice of safety orders and penalty assessments under IC 4-21.5-3-6. No safety order may be issued after the expiration of six (6) months following the occurrence of any violation.

(d) The commissioner may prescribe procedures for the issuance of a notice of de minimis violations, in lieu of a safety order, which have no direct or immediate relationship to safety or health.

*(Formerly: Acts 1973, P.L.241, SEC.23.) As amended by P.L.34-1988, SEC.3; P.L.117-1994, SEC.2; P.L.220-1995, SEC.2.*

#### **IC 22-8-1.1-25.2**

##### **Posting of safety order**

Sec. 25.2. As prescribed by rules issued by the commissioner, the safety order shall be posted by the employer at or near the place of the alleged violation in such a manner that affected employees may become aware of it.

*(Formerly: Acts 1973, P.L.241, SEC.24.) As amended by P.L.34-1988, SEC.4.*

#### **IC 22-8-1.1-26**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-26.1**

##### **Failure to abate**

Sec. 26.1. Failure to Abate. If the commissioner determines after reinspection the employer has failed to correct a violation for which a safety order has been issued within the period permitted for its correction, the commissioner shall issue a notice of failure to correct violation and accompanying penalty for such failure.

*(Formerly: Acts 1973, P.L.241, SEC.25.) As amended by Acts 1977, P.L.263, SEC.4.*

#### **IC 22-8-1.1-27**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-27.1**

##### **Civil penalties**

Sec. 27.1. (a) The commissioner may assess the following civil penalties:

- (1) Any employer who has received a safety order for violation of any standard, rule, or order not of a serious nature may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each such violation.
- (2) Any employer who has received a safety order for a serious violation of any standard, rule, or order or this chapter may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each such violation.
- (3) Any employer who fails to correct a violation for which a safety order has been issued within the period permitted may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each day during which the failure or violation continues.
- (4) Any employer who fails to comply with the posting requirements in this chapter may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each violation.
- (5) Any employer who repeatedly violates any standard, rule, or order or this chapter may be assessed a civil penalty of up to seventy thousand dollars (\$70,000) for each violation.

(6) Any employer who knowingly violates any standard, rule, order, or this chapter shall be assessed a civil penalty of not less than five thousand dollars (\$5,000) for each violation and may be assessed a civil penalty of up to seventy thousand dollars (\$70,000) for each violation.

(b) For purposes of this section, a serious violation exists in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists or from one (1) or more practices, means, methods, operations, or processes which have been adopted or are in use in the place of employment, unless the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation.

*(Formerly: Acts 1973, P.L.241, SEC.26.) As amended by Acts 1978, P.L.2, SEC.2233; P.L.170-1991, SEC.25.*

#### **IC 22-8-1.1-27.2**

##### **Affirmative defenses**

Sec. 27.2. (a) An employer may establish an affirmative defense for a violation of any standard, rule, or order that is the result of employee misconduct.

(b) The employer has the burden of proving the affirmative defense in compliance with federal and state law.

(c) If an employer successfully establishes an affirmative defense under this section, the commissioner may not assess any penalty or fine against the employer for the violation.

*As added by P.L.224-1995, SEC.1.*

#### **IC 22-8-1.1-28**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-28.1**

##### **Contest of safety orders; petition for review**

Sec. 28.1. (a) Any employer receiving a safety order may, within fifteen (15) working days of such receipt, file a written petition for review under IC 4-21.5-3-7 of the order or any part thereof with the commissioner.

(b) If the employer wishes to petition for review of a penalty assessment, he must file a written petition for review under IC 4-21.5-3-7 with the commissioner within fifteen (15) working days of the receipt of the notice of penalty.

(c) An employer receiving a notice of failure to correct violation may, within fifteen (15) working days of such receipt, file a written petition for review of the notice with the commissioner.

(d) The petition for review shall contain a statement of the basis for the contest. Such petition for review shall be posted by the employer at or near the place of the alleged violation in such a manner that affected employees may become aware of it.

*(Formerly: Acts 1973, P.L.241, SEC.27.) As amended by P.L.34-1988, SEC.5.*

#### **IC 22-8-1.1-28.2**

##### **Employee or representative petition for review**

Sec. 28.2. Any employee or representative of the employee may, within fifteen (15) working days of employer receipt of the safety order, file a written petition for review under IC 4-21.5-3-7 on the ground that the time fixed for abatement of the violation is unreasonable.

*(Formerly: Acts 1973, P.L.241, SEC.28.) As amended by P.L.34-1988, SEC.6.*

#### **IC 22-8-1.1-28.3**

##### **Affirmation, amendment, or dismissal of safety order or penalty; petition for review**

Sec. 28.3. (a) When a petition for review is filed, the commissioner shall have five (5) working days in which to affirm, amend, or dismiss the safety order and penalty, if any, or the notice of failure to correct violation. Notice of his action shall be served on the employer and upon any employee, or representative of employees, who has filed a petition for review. The notice shall be posted at or near the place of the alleged violation in such a manner that affected employees may become aware of it.

(b) If the commissioner affirms the safety order and penalty, if any, or the notice of failure to correct violation, the commissioner shall also grant or deny the petition for review under the provisions of IC 4-21.5-3-7. If the commissioner amends the safety order and penalty, if any, or the notice of failure to correct violation, the petition for review shall be considered moot. The commissioner shall give notice of the amended order and penalty under IC 4-21.5-3-6.

(c) The employer and any employee or representatives of employees may file a written petition for review under IC 4-21.5-3-7 to such amended safety order and penalty, if any, or the notice of failure to correct violation. The written petition for review must be filed with the commissioner within fifteen (15) working days from the date of receipt of such amended safety order and penalty, if any, or the notice of failure to correct violation. The commissioner shall then grant or deny the petition for review under IC 4-21.5-3-7.

*(Formerly: Acts 1973, P.L.241, SEC.29.) As amended by P.L.34-1988, SEC.7.*

#### **IC 22-8-1.1-28.4**

##### **Informal review**

Sec. 28.4. The commissioner shall, by rule adopted under IC 4-22-2, establish procedures for informal review of any safety order, assessment of penalty, or notice of failure to correct violation.

*(Formerly: Acts 1973, P.L.241, SEC.30.) As amended by P.L.34-1988, SEC.8.*



**IC 22-8-1.1-28.5****Referral of disputes**

Sec. 28.5. If a petition for review is granted, the commissioner shall immediately certify the dispute to the board of safety review.  
*(Formerly: Acts 1973, P.L.241, SEC.31.) As amended by P.L.34-1988, SEC.9.*

**IC 22-8-1.1-29****Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

**IC 22-8-1.1-30****Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

**IC 22-8-1.1-30.1****Board of safety review**

Sec. 30.1. (a) A board of safety review is created within the department.

(b) The board shall conduct hearings on contests involving safety orders, penalties, and notices of failure to correct a violation issued under this chapter and may affirm, modify, or dismiss the action of the commissioner in respect to the violation, the penalty, and the abatement period. All enforcement action on a properly contested safety order shall be suspended until a final decision has been rendered by the board of safety review. If a petition for judicial review is filed under IC 4-21.5-5, the person seeking review may seek a stay under IC 4-21.5-5-9. If compliance with the safety order is a final decision, the full abatement period shall commence from the date of the issuance of the final decision of the board of safety review or of a court if a stay has been granted.

*(Formerly: Acts 1973, P.L.241, SEC.32.) As amended by P.L.37-1985, SEC.37; P.L.34-1988, SEC.10.*

**IC 22-8-1.1-31****Board; membership**

Sec. 31. Board: membership. The board shall consist of five (5) members, all of whom shall be residents of Indiana and shall be appointed by the governor as follows: two (2) of the members shall be drawn from backgrounds with labor organizations but not more than one (1) of them shall be from the same international union, and two (2) of the members shall be drawn from backgrounds with employers. The chairman of the board shall be the fifth member and shall be selected from the highest membership classification of the American Society of Safety Engineers.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.33.)*

**IC 22-8-1.1-32****Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-32.1**

##### **Board; terms**

Sec. 32.1. Board: Terms. Members of the board shall be appointed for terms of four (4) years, and until their successors are appointed and qualified. Of the members first appointed, the members appointed who are drawn from those who have backgrounds with management shall be appointed to terms so that in every other year the term of one (1) or the other of them ends; and the members who are drawn from those who have backgrounds with labor organizations shall be appointed so that every other year the term of one (1) or the other of them ends. The first chairman of the board shall have a four (4) year term. Vacancies shall be filled in the same manner as the original appointments, except that a vacancy occurring during the term of office shall be filled by appointment of the governor for the unexpired term.

*(Formerly: Acts 1973, P.L.241, SEC.34.)*

#### **IC 22-8-1.1-33**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-34**

##### **Board; quorum**

Sec. 34. (Board: Quorum) A majority of the board constitutes a quorum for the transaction of business.

*(Formerly: Acts 1971, P.L.356, SEC.1.)*

#### **IC 22-8-1.1-35**

##### **Board; per diem and expenses**

Sec. 35. (a) Each member of the board who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

(b) The board shall meet on the call of the chairman.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.35.)*

*As amended by P.L.34-1988, SEC.11.*

#### **IC 22-8-1.1-35.1**

##### **Inspection of premises; selection and compensation of administrative law judge**

Sec. 35.1. (a) The board in the discharge of its functions may inspect the premises involved in the dispute.

(b) The board shall select an administrative law judge under IC 4-21.5-3-9. However, if the board selects any individual who is

not a member of the board, that individual must be an attorney. Any attorney so appointed shall receive reasonable compensation as determined by the commissioner.

*(Formerly: Acts 1973, P.L.241, SEC.36.) As amended by P.L.34-1988, SEC.12; P.L.48-2009, SEC.2.*

#### **IC 22-8-1.1-35.2**

##### **Administrative services**

Sec. 35.2. The commissioner and the department shall provide such administrative services, including docketing, stenographic, and recordkeeping services, as the board may require in discharging its function under this chapter.

*(Formerly: Acts 1973, P.L.241, SEC.37.) As amended by P.L.37-1985, SEC.38.*

#### **IC 22-8-1.1-35.3**

##### **Hearing; notice; intervention**

Sec. 35.3. (a) When a dispute has been certified to the board by the commissioner pursuant to section 28.5 of this chapter, the board shall promptly schedule a hearing according to rules of procedure issued by the board, giving reasonable notice thereof to the employer and to the affected employee, or representative of employees.

(b) An employee or his authorized representative, even though he has not previously filed a petition for review, shall be permitted to intervene under IC 4-21.5-3-21 and participate as a party in said hearing, provided such intervention is timely and will not unduly delay the proceeding.

(c) Notwithstanding IC 4-21.5-5-2, an employee or authorized representative is entitled to file a petition for judicial review under IC 4-21.5-5 only concerning the time fixed for abatement of a violation.

(d) An employer may intervene under IC 4-21.5-3-21 in a proceeding initiated by a petition for review of an employee or representative of an employee.

*(Formerly: Acts 1973, P.L.241, SEC.38.) As amended by P.L.34-1988, SEC.13.*

#### **IC 22-8-1.1-35.4**

##### **Hearing procedure**

Sec. 35.4. Proceedings in any hearing shall be conducted in accordance with IC 4-21.5-3.

*(Formerly: Acts 1973, P.L.241, SEC.39.) As amended by P.L.7-1987, SEC.97.*

#### **IC 22-8-1.1-35.5**

##### **Judicial review**

Sec. 35.5. Judicial review of any final order of the board shall be under IC 4-21.5-5.

*(Formerly: Acts 1973, P.L.241, SEC.40.) As amended by P.L.7-1987,*

SEC.98.

**IC 22-8-1.1-35.6**

**Enforcement of safety orders; penalty assessment; failure to comply**

Sec. 35.6. (a) A safety order, penalty assessment, or notice of failure to correct violation which has become final, either through lack of any contest under section 28.1 of this chapter, or after final action by the board, or after judicial review, shall be enforced by the commissioner under this section or section 35.7 of this chapter. The remedies provided in this chapter are cumulative and are in addition to any other remedy available to the commissioner. The commissioner's decision to pursue one (1) of the remedies does not preclude the subsequent or corresponding use of one (1) or more of the other remedies available to the commissioner.

(b) If an employer fails to comply, the commissioner may refer the matter to the attorney general, who shall promptly institute proceedings under IC 4-21.5-6 to enforce the safety order, penalty assessment, or notice of failure to correct violation.

*(Formerly: Acts 1973, P.L.241, SEC.41.) As amended by P.L.34-1988, SEC.14; P.L.33-2009, SEC.1.*

**IC 22-8-1.1-35.7**

**Collection of penalty assessments; judgment liens**

Sec. 35.7. (a) If an employer fails to pay a penalty assessed under this chapter within ten (10) calendar days of the date that the assessment is final under section 35.6 of this chapter, the commissioner or the commissioner's representative may file with the circuit court clerk of any county in which the employer owns any interest in property, real or personal, tangible or intangible, a warrant for the amount of the assessment and interest, if applicable. The commissioner or the commissioner's representative may also send the warrant to the sheriff of any county in which the employer owns real or personal property and direct the sheriff to file the warrant with the circuit court clerk.

(b) When the circuit court clerk receives the warrant from the commissioner, the commissioner's representative, or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record listing the following:

- (1) The name of the employer stated in the warrant.
- (2) The amount of the warrant.
- (3) The date the warrant was filed with the clerk.

(c) When the entry is made, the total amount of the warrant becomes a judgment against the employer. The judgment creates a lien in favor of the state that attaches to all the employer's interest in any real or personal property in the county.

(d) At least thirty (30) calendar days before the date on which the commissioner intends to file a warrant as provided by subsection (a) in order to impose a lien on real or personal property, the

commissioner or the commissioner's representative must send a written notice:

(1) to the owner of the real or personal property that would be subject to the lien; or

(2) if the owner of record cannot be identified, to the tenant or other person having control of the real or personal property;

of the date on which the commissioner or the commissioner's representative intends to file the warrant in order to impose a lien on the real or personal property. The commissioner or the commissioner's representative shall provide the circuit court clerk of the county in which the real or personal property that would be subject to the lien is located with a copy of the written notice described in this subsection.

(e) A judgment obtained under subsection (c) is valid for ten (10) years from the date the judgment is filed.

(f) A judgment obtained under subsection (c) shall be released by the commissioner:

(1) after the judgment, including all accrued interest to the date of payment, has been fully satisfied; or

(2) if the commissioner determines that the assessment or the issuance of the warrant was in error.

(g) If the commissioner determines that the filing of a warrant was in error, the commissioner or the commissioner's representative shall mail a release of the judgment to the employer and the circuit court clerk of each county where the warrant was filed. The commissioner or the commissioner's representative shall mail the release as soon as possible but not later than seven (7) calendar days after:

(1) the determination by the commissioner that the filing of the warrant was in error; and

(2) the receipt of information by the commissioner or the commissioner's representative that the judgment has been recorded under subsection (b).

(h) A release issued under subsection (g) must state that the filing of the warrant was in error.

(i) After a warrant becomes a judgment under subsection (c), the commissioner may levy upon the property of the employer that is held by a financial institution (as defined in IC 5-13-4-10) by sending a claim to the financial institution. Upon receipt of a claim under this subsection, the financial institution shall surrender to the commissioner or the commissioner's representative the employer's property. If the amount or value of the employer's property exceeds the amount owed to the state by the employer, the financial institution shall surrender the employer's property in an amount equal to the amount owed. After receiving the commissioner's notice of levy, the financial institution is required to place a sixty (60) day hold or restriction on the withdrawal of funds the employer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.  
*As added by P.L.33-2009, SEC.2. Amended by P.L.1-2010, SEC.89.*

**IC 22-8-1.1-36**

**Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

**IC 22-8-1.1-36.1**

**Repealed**

*(Repealed by Acts 1978, P.L.2, SEC.2251.)*

**IC 22-8-1.1-37**

**Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

**IC 22-8-1.1-37.1**

**False statements, representations, or certifications**

Sec. 37.1. No person may make a false statement, representation, or certification in any application, record, report, plan, or other document required pursuant to this chapter.

*(Formerly: Acts 1973, P.L.241, SEC.43.) As amended by Acts 1978, P.L.2, SEC.2234.*

**IC 22-8-1.1-38**

**Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

**IC 22-8-1.1-38.1**

**Discrimination against employee filing complaint or testifying; complaint; remedy; notice of determination**

Sec. 38.1. (a) No person shall discharge or in any way discriminate against any employee because such employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(b) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty (30) calendar days after such violation occurs, file a complaint with the commissioner alleging such discrimination.

Upon receipt of such complaint, the commissioner shall cause such investigation to be made as he deems appropriate. If after such investigation, the commissioner determines that the provisions of this section have been violated, he, through the attorney general, shall, within one hundred twenty (120) days after receipt of said complaint, bring an action in the circuit courts of Indiana. The circuit courts of Indiana shall have jurisdiction to restrain violations of this section and order all appropriate relief, including rehiring, or reinstatement of the employee to his former position with back pay, after taking into account any interim earnings of the employee.

(c) Within ninety (90) days of the receipt of a complaint filed

under this section, the commissioner shall notify the complainant in writing of his determination under this section.

*(Formerly: Acts 1973, P.L.241, SEC.44.)*

#### **IC 22-8-1.1-39**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-39.1**

##### **Imminent danger in workplace; petition for relief; orders; informing employer and employees of danger; mandamus**

Sec. 39.1. (a) Whenever the commissioner is of the opinion that imminent danger exists in any workplace in this state, which condition can reasonably be expected to cause death or serious physical harm, the commissioner, through the attorney general, may petition the circuit court of the county in which such workplace is located for appropriate relief. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employers and employees of the danger and that he is recommending to the commissioner that relief be sought.

(c) If the commissioner arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the commissioner, in the circuit court of the county in which the imminent danger is alleged to exist or the employer has its principal office, for a writ of mandamus to compel the commissioner to seek such an order and for such further relief as may be appropriate.

*(Formerly: Acts 1973, P.L.241, SEC.45.)*

#### **IC 22-8-1.1-40**

##### **INSafe; program of occupational health and safety education and training**

Sec. 40. A division of the department to be known as INSafe is created to implement a program of occupational health and safety education and training.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.46.)*

*As amended by P.L.37-1985, SEC.39; P.L.32-2008, SEC.2.*

**IC 22-8-1.1-41****INSafe; duties**

Sec. 41. The duties of INSafe shall include, but not be limited to, the following:

- (1) Development of a statewide health and safety education and training program to acquaint employers, supervisors, employees, and union leaders with the most modern and effective techniques of accident investigation and prevention.
- (2) Development and promotion of the consultative educational approach as a desirable and effective long range solution to occupational health and safety problems.
- (3) Development of training programs for occupational health and safety personnel.
- (4) Planning, organizing, and attending occupational health and safety seminars, conferences, and meetings designed for management, supervisory personnel, employees, and union representatives.
- (5) Definition and establishment of necessary research projects.
- (6) Arrangement and procurement of necessary contractual services and training aids.
- (7) Planning, developing, organizing, attending, and presenting specific occupational health and safety programs for employer groups.
- (8) Conducting onsite consultations upon request from an employer. Onsite consultation shall be defined by INSafe by rule under IC 4-22-2.
- (9) Providing occupational health and safety pamphlets, booklets, brochures, and other appropriate health and safety media.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.47; Acts 1975, P.L.255, SEC.1.) As amended by P.L.37-1985, SEC.40; P.L.34-1988, SEC.15; P.L.32-2008, SEC.3.*

**IC 22-8-1.1-42****INSafe; staff**

Sec. 42. The director and staff of INSafe shall be selected and appointed by the commissioner under IC 4-15-2.2.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.48.) As amended by P.L.144-1986, SEC.176; P.L.32-2008, SEC.4; P.L.6-2012, SEC.159.*

**IC 22-8-1.1-43****INSafe; employer annual report**

Sec. 43. (a) To insure the availability of accurate, timely statistical data concerning occupational health and safety, all employers having one (1) or more employees simultaneously employed shall submit annual reports to INSafe (on a form and in a manner prescribed by the director) of all disabling work injuries.

(b) INSafe may exempt from the requirement of subsection (a)



those classes of employers for whose operations adequate records of safety experience are already available. INSafe may also exempt any employer when, in the judgment of the director, the submission of annual reports by the employer is not necessary to carry out the purposes of this chapter and would be an undue burden upon the employer because of size, the nature of its operation or other special circumstances.

*(Formerly: Acts 1971, P.L.356, SEC.1.) As amended by P.L.32-2008, SEC.5.*

#### **IC 22-8-1.1-43.1**

##### **Employer records and reports; death and disaster reporting**

Sec. 43.1. (a) The commissioner may adopt rules requiring all employers having eleven (11) or more employees employed to make and retain records of, and to make reports on, all work related deaths, injuries, and illnesses.

(b) Deaths and disasters shall be reported directly to the commissioner within eight (8) hours. "Disaster" is any incident which results in the hospitalization of three (3) or more persons.

*(Formerly: Acts 1973, P.L.241, SEC.49; Acts 1975, P.L.255, SEC.2.) As amended by P.L.28-1988, SEC.69; P.L.234-2003, SEC.1.*

#### **IC 22-8-1.1-44**

##### **Repealed**

*(Repealed by Acts 1973, P.L.241, SEC.57.)*

#### **IC 22-8-1.1-44.1**

##### **Repealed**

*(Repealed by Acts 1979, P.L.17, SEC.55.)*

#### **IC 22-8-1.1-45**

##### **Safety and health consultation service for employers; tax levy**

Sec. 45. If the balance in the special fund for safety and health consultation service on April 1 of each year is less than six hundred thousand dollars (\$600,000) an annual tax is imposed to finance the safety and health consultation service for employers under section 41 of this chapter.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1975, P.L.255, SEC.3.) As amended by Acts 1982, P.L.95, SEC.10; P.L.37-1985, SEC.41; P.L.34-1988, SEC.16.*

#### **IC 22-8-1.1-46**

##### **Tax; worker's compensation insurance carriers and self-insured employers**

Sec. 46. The tax is imposed upon:

- (1) each insurance carrier licensed to do worker's compensation business in the state; and
- (2) each self-insured employer.

*(Formerly: Acts 1971, P.L.356, SEC.1.) As amended by P.L.28-1988,*

SEC.70.

**IC 22-8-1.1-47**

**Tax; amount; loss for purpose of worker's compensation insurance rates**

Sec. 47. The annual tax shall be an amount equal to three-fourths of one percent (0.75%) of the total worker's compensation benefits paid in this state by the insurance carrier and self-insured employers as provided in section 46 of this chapter during the preceding calendar year, excluding medical payments. The tax shall constitute an element of loss for the purpose of establishing worker's compensation insurance rates.

*(Formerly: Acts 1971, P.L.356, SEC.1.) As amended by P.L.144-1986, SEC.177; P.L.28-1988, SEC.71.*

**IC 22-8-1.1-48**

**Use of tax revenues; appropriations; payment date**

Sec. 48. (a) The tax shall be paid directly to the director who shall deposit the revenues in a special fund to be used solely for safety and health consultation, education, and training services for employer groups and for onsite consultation service as provided in section 41 of this chapter. These revenues shall not be transferable to any other fund and shall not revert to the general fund at the end of any fiscal year.

(b) Tax revenues as provided for in section 47 of this chapter shall be made available to INSafe only by appropriation of the general assembly based upon the needs of INSafe as determined by the department and submitted in the form of a budget in the manner provided by law.

(c) The annual tax payment is due and payable on or before May 1 of each year in which the tax is imposed.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1975, P.L.255, SEC.4.) As amended by Acts 1982, P.L.95, SEC.11; P.L.37-1985, SEC.42; P.L.34-1988, SEC.17; P.L.32-2008, SEC.6; P.L.76-2012, SEC.3.*

**IC 22-8-1.1-48.1**

**Rules governing functions of chapter**

Sec. 48.1. The commissioner of labor, the occupational safety standards commission, the board of safety review, and INSafe shall have the power to make rules governing functions under this chapter, provided such rules shall not be inconsistent with this chapter or other applicable statutes.

*(Formerly: Acts 1973, P.L.241, SEC.51.) As amended by P.L.32-2008, SEC.7.*

**IC 22-8-1.1-48.2**

**Disposition of penalties**

Sec. 48.2. All penalties and fines which may be collected shall be paid into the state general fund.

*(Formerly: Acts 1973, P.L.241, SEC.52.)*

#### **IC 22-8-1.1-48.3**

##### **Construction of chapter with other laws**

Sec. 48.3. Nothing in this chapter shall be construed to supersede or in any manner affect any worker's compensation or occupational diseases law, or any other statutory rights, duties, or liabilities, or create any private right of action.

*(Formerly: Acts 1973, P.L.241, SEC.53.) As amended by P.L.28-1988, SEC.72.*

#### **IC 22-8-1.1-48.4**

##### **Confidentiality of trade secrets; violations**

Sec. 48.4. (a) All information reported to or otherwise obtained by the commissioner, the designated representatives of the commissioner, the department of labor, the occupational safety standards commission, the board of safety review, INSafe, and the agents and employees of any of them that contains or might reveal a trade secret, shall be considered confidential and shall be disclosed only to such other officers or employees concerned with the functions set forth in this chapter as may be necessary for them to discharge their duties under this chapter. In any proceeding, the commissioner, the commission, the board, or a court shall issue such orders as may be appropriate, including the impoundment of files, or portions of files, to protect the confidentiality of trade secrets.

(b) No person may violate the confidentiality of trade secrets.

*(Formerly: Acts 1973, P.L.241, SEC.54.) As amended by Acts 1978, P.L.2, SEC.2235; P.L.37-1985, SEC.43; P.L.32-2008, SEC.8.*

#### **IC 22-8-1.1-49**

##### **Violations**

Sec. 49. A person who knowingly violates this chapter commits a Class B misdemeanor, except as otherwise provided.

*(Formerly: Acts 1971, P.L.356, SEC.1; Acts 1973, P.L.241, SEC.55.) As amended by Acts 1978, P.L.2, SEC.2236.*

#### **IC 22-8-1.1-50**

##### **Title of chapter**

Sec. 50. This chapter shall be known as The Indiana Occupational Safety and Health Act (IOSHA).

*(Formerly: Acts 1974, P.L.1, SEC.10.)*

#### **IC 22-8-1.1-51**

##### **Restriction on assessment of penalty**

Sec. 51. (a) This section does not affect the ability or duty of the commissioner or the commissioner's designee to conduct investigations in the following circumstances:

- (1) An employee requests an inspection under section 24.1 of this chapter.

(2) The commissioner receives a report of a death under section 43.1 of this chapter.

(3) The commissioner receives a report of a disaster under section 43.1 of this chapter.

(b) If:

(1) INSafe conducts an onsite consultation for an employer; and

(2) the employer complied in good faith with an act of the abatement of the particular alleged violation recommended by INSafe;

the commissioner may not assess a penalty against the employer under section 25.1 of this chapter for an alleged violation of a condition or practice that INSafe specifically examined.

(c) Subsection (b) applies only on a first inspection by the commissioner following an onsite consultation with INSafe. This section does not relieve an employer of any obligation to stay in compliance with any safety or health standard or law which changes following an onsite consultation with INSafe.

*As added by P.L.220-1995, SEC.3. Amended by P.L.1-2009, SEC.128.*

#### **IC 22-8-1.1-52**

##### **Commissioner and employees not subject to subpoena except in certain circumstances**

Sec. 52. This section does not apply to a subpoena requesting only documents or other records. Neither the commissioner nor any employee or former employee of the department is subject to subpoena for purposes of inquiry into any occupational safety and health inspection, except in the following circumstances:

(1) An enforcement proceeding is brought under this chapter.

(2) An action is filed in which the department is a party.

(3) The commissioner consents in writing to waive the exemption provided by this section.

(4) A court finds that:

(A) the information sought is essential to the underlying case;

(B) there are no reasonable alternative means for acquiring the information; and

(C) a significant injustice would occur if the requested testimony was not available.

*As added by P.L.76-2012, SEC.4.*