

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 52 be amended to read as follows:

- 1 Page 63, after line 27, begin a new paragraph and insert:
- 2 "SECTION 19. IC 22-4-19-6, AS AMENDED BY P.L.235-1999,
- 3 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2000]: Sec. 6. (a) Each employing unit shall keep true and
- 5 accurate records containing information the department considers
- 6 necessary. These records are:
- 7 (1) open to inspection; and
- 8 (2) subject to being copied;
- 9 by an authorized representative of the department at any reasonable
- 10 time and as often as may be necessary. The commissioner, the review
- 11 board, or an administrative law judge may require from any employing
- 12 unit any verified or unverified report, with respect to persons employed
- 13 by it, which is considered necessary for the effective administration of
- 14 this article.
- 15 (b) Except as provided in subsection (d), information obtained or
- 16 obtained from any person in the administration of this article and the
- 17 records of the department relating to the unemployment tax or the
- 18 payment of benefits is confidential and may not be published or be
- 19 open to public inspection in any manner revealing the individual's or
- 20 the employing unit's identity, except:
- 21 (1) in obedience to an order of a court;
- 22 (2) **when authorized by the individual and the employing unit;**
- 23 or
- 24 (3) as provided in this section.

1 (c) A claimant at a hearing before an administrative law judge or the
 2 review board shall be supplied with information from the records
 3 referred to in this section to the extent necessary for the proper
 4 presentation of the subject matter of the appearance. The commissioner
 5 may make the information necessary for a proper presentation of a
 6 subject matter before an administrative law judge or the review board
 7 available to an agency of the United States or an Indiana state agency.

8 (d) The commissioner may release the following information:

9 (1) Summary statistical data may be released to the public.

10 (2) Employer specific information known as ES 202 data and data
 11 resulting from enhancements made through the business
 12 establishment list improvement project may be released to the
 13 department of commerce only for the following purposes:

14 (A) The purpose of conducting a survey.

15 (B) The purpose of aiding the officers or employees of the
 16 department of commerce in providing economic development
 17 assistance through program development, research, or other
 18 methods.

19 (C) Other purposes consistent with the goals of the department
 20 of commerce and not inconsistent with those of the
 21 department.

22 (3) Employer specific information known as ES 202 data and data
 23 resulting from enhancements made through the business
 24 establishment list improvement project may be released to the
 25 budget agency only for aiding the employees of the budget agency
 26 in forecasting tax revenues.

27 (4) Information obtained from any person in the administration of
 28 this article and the records of the department relating to the
 29 unemployment tax or the payment of benefits for use by the
 30 following governmental entities:

31 (A) department of state revenue; or

32 (B) state or local law enforcement agencies;

33 only if there is an agreement that the information will be kept
 34 confidential and used for legitimate governmental purposes.

35 (e) The commissioner may make information available under
 36 subsection (d)(1), (d)(2), or (d)(3) only:

37 (1) if:

38 (A) data provided in summary form cannot be used to identify
 39 information relating to a specific employer or specific
 40 employee; or

41 (B) there is an agreement that the employer specific
 42 information released to the department of commerce or budget
 43 agency will be treated as confidential and will be released only
 44 in summary form that cannot be used to identify information
 45 relating to a specific employer or a specific employee; and

46 (2) after the cost of making the information available to the

1 person requesting the information is paid under IC 5-14-3.

2 (f) An employee:

3 (1) of the department who recklessly violates subsection (a), (c),
4 (d), or (e); or

5 (2) of any governmental entity listed in subsection (d)(4) of this
6 chapter who recklessly violates subsection (d)(4) of this chapter;
7 commits a Class B misdemeanor.

8 (g) An employee of the department of commerce or the budget
9 agency who violates subsection (d) or (e) commits a Class B
10 misdemeanor.

11 SECTION 20. IC 22-4-29-3 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. The commissioner,
13 or the commissioner's duly authorized representative, shall immediately
14 notify the employing unit of the assessment in writing by mail, and,
15 **except as provided in section 4.5 of this chapter**, such assessment
16 shall be final unless the employing unit protests such assessment within
17 fifteen (15) days after the mailing of the notice.

18 SECTION 21. IC 22-4-29-4.5 IS ADDED TO THE INDIANA
19 CODE AS A NEW SECTION TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2000]: **Sec. 4.5. (a) Upon terms that are just,**
21 **by motion filed with the commissioner, the liability administrative**
22 **law judge may relieve an employing unit from a final assessment**
23 **under section 3 of this chapter for the following reasons:**

24 (1) Mistake.

25 (2) Surprise.

26 (3) Excusable neglect, including, but not limited to, the
27 employing unit showing to the satisfaction of the liability
28 administrative law judge that no return was filed because
29 there was no contribution liability for the period covered by
30 the final assessment.

31 (b) The motion must be filed not later than two (2) years after
32 the date of the mailing of the notice of assessment under section 3
33 of this chapter.

34 (c) The motion must contain:

35 (1) the grounds for an appeal under this section; and

36 (2) a defense to the assessment imposed in section 2 of this
37 chapter.

38 (d) Upon receipt of an appeal under this section, if a warrant
39 has been filed with the clerk of the circuit court under section 6 of
40 this chapter, the commissioner or the commissioner's
41 representative shall immediately notify the clerk of the circuit
42 court that an appeal has been filed.

43 (e) The filing of a motion stays the following:

44 (1) Issuance of a warrant by the commissioner or the
45 commissioner's representative under section 6 of this chapter.

46 (2) Action to be performed by the sheriff or clerk in response
47 to the demands of the warrant under section 6 of this chapter.

1 **(3) Placement of a lien upon the real and personal property of**
 2 **the employing unit under section 6 of this chapter.**

3 **(4) Issuance of the warrant to the sheriff of the county by the**
 4 **department under section 7 of this chapter.**

5 **(f) Costs due under section 8 of this chapter and amounts**
 6 **retained under section 9 of this chapter may not be returned to an**
 7 **employing unit that is relieved from assessment liability under this**
 8 **section.**

9 **(g) At the hearing, the employing unit seeking to set aside the**
 10 **final assessment must show:**

11 **(1) the grounds for relief set forth in subsection (a); and**

12 **(2) the defense to the assessment as required by section 4 of**
 13 **this chapter.**

14 **(h) Judicial relief of the decision of the liability administrative**
 15 **law judge may be sought under section 5 of this chapter.**

16 SECTION 22. IC 22-4-32-4 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 4. **Except as provided**
 18 **in IC 22-4-29-4.5**, an employing unit shall have fifteen (15) days
 19 within which to protest in writing initial determinations of the
 20 commissioner with respect to:

21 (1) the assessments of contributions, penalties, and interest;

22 (2) the transfer of charges from an employer's account;

23 (3) merit rate calculations;

24 (4) successorships;

25 (5) the denial of claims for refunds and adjustments; and

26 (6) a protest arising from an initial determination of the director
 27 relating to any matter listed in subdivisions (1) through (5).

28 The fifteen (15) day period shall commence with the day following the
 29 day upon which the initial determination or denial of claim for refund
 30 or adjustment is mailed to the employing unit.

31 SECTION 23. IC 22-4-32-20 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 20. The contributions,
 33 penalties, and interest due from any employer under the provisions of
 34 this article from the time they shall be due shall be a personal liability
 35 of the:

36 **(1) employer; and**

37 **(2) directors and officers of an employer;**

38 to and for the benefit of the fund and the employment and training
 39 services administration fund.

40 SECTION 24. IC 22-4-32-23 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 23. (a) As used in this
 42 section:

43 (1) "Dissolution" refers to dissolution of a corporation under
 44 IC 23-1-45 through IC 23-1-48.

45 (2) "Liquidation" means the operation or act of winding up a
 46 corporation's affairs, when normal business activities have ceased,

1 by settling its debts and realizing upon and distributing its assets.
 2 (3) "Withdrawal" refers to the withdrawal of a foreign corporation
 3 from Indiana under IC 23-1-50.

4 (b) The officers and directors of a corporation effecting dissolution,
 5 liquidation, or withdrawal shall do the following:

6 (1) File all necessary documents with the department in a timely
 7 manner as required by this article.

8 (2) Make all payments of contributions to the department in a
 9 timely manner as required by this article.

10 (3) File with the department a form of notification within thirty
 11 (30) days of the adoption of a resolution or plan. The form of
 12 notification shall be prescribed by the department and may
 13 require information concerning:

14 (A) the corporation's assets;

15 (B) the corporation's liabilities;

16 (C) details of the plan or resolution;

17 (D) the names and addresses of corporate officers, directors,
 18 and shareholders;

19 (E) a copy of the minutes of the shareholders' meeting at which
 20 the plan or resolution was formally adopted; and

21 (F) such other information as the board may require.

22 The commissioner may accept, in lieu of the department's form of
 23 notification, a copy of Form 966 that the corporation filed with
 24 the Internal Revenue Service.

25 (c) **Notwithstanding IC 23-1-35-1(e)**, unless a clearance is issued
 26 under subsection (g) for a period of one (1) year following the filing of
 27 the form of notification with the department; (e), the corporate officers
 28 and directors remain personally liable ~~subject to IC 23-1-35-1(e)~~; for
 29 any acts or omissions that result in the distribution of corporate assets
 30 in violation of the interests of the state. An officer or director held
 31 liable for an unlawful distribution under this subsection is entitled to
 32 contribution:

33 (1) from every other director who voted for or assented to the
 34 distribution; subject to IC 23-1-35-1(e); and

35 (2) from each shareholder for the amount the shareholder
 36 accepted.

37 (d) The corporation's officers' and directors' personal liability
 38 includes for all contributions, penalties, interest, and fees associated
 39 with the collection of the liability due the department. In addition to the
 40 penalties provided elsewhere in this article, a penalty of up to thirty
 41 percent (30%) of the unpaid contributions may be imposed on the
 42 corporate officers and directors for failure to take reasonable steps to
 43 set aside corporate assets to meet the liability due the department.

44 (e) If the department fails to begin a collection action against a
 45 corporate officer or director within one (1) year after the filing of a
 46 completed form of notification with the department; the personal

1 liability of the corporate officer or director expires. The filing of a
 2 substantially blank form of notification or a form containing
 3 misrepresentation of material facts does not constitute filing a form of
 4 notification for the purpose of determining the period of personal
 5 liability of the officers and directors of the corporation.

6 ~~(f)~~ (d) In addition to the remedies contained in this section, the
 7 department is entitled to pursue corporate assets that have been
 8 distributed to shareholders in violation of the interests of the state. The
 9 election to pursue one (1) remedy does not foreclose the state's option
 10 to pursue other legal remedies.

11 ~~(g)~~ (e) The department may issue a clearance to a corporation
 12 effecting dissolution, liquidation, or withdrawal if:

- 13 (1) the officers and directors of the corporation have met the
- 14 requirements of subsection (b); and
- 15 (2) request for the clearance is made in writing by the officers and
- 16 directors of the corporation within thirty (30) days after the filing
- 17 of the form of notification with the department.

18 ~~(h)~~ (f) The issuance of a clearance by the department under
 19 subsection ~~(g)~~ (e) releases the officers and directors from personal
 20 liability under this section.

21 SECTION 25. IC 23-1-46-3 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. (a) A corporation
 23 administratively dissolved under section 2 of this chapter may apply to
 24 the secretary of state for reinstatement. The application must:

- 25 (1) recite the name of the corporation and the effective date of its
- 26 administrative dissolution;
- 27 (2) state that the ground or grounds for dissolution either did not
- 28 exist or have been eliminated;
- 29 (3) state that the corporation's name satisfies the requirements of
- 30 IC 23-1-23-1; **and**
- 31 (4) contain a certificate from the department of state revenue
- 32 reciting that all taxes owed by the corporation have been paid;
- 33 **and**
- 34 **(5) contain a certificate from the department of workforce**
- 35 **development stating that all employer contributions owed by**
- 36 **the corporation under IC 22-4-10 have been paid.**

37 (b) If the secretary of state determines that the application contains
 38 the information required by subsection (a) and that the information is
 39 correct, the secretary of state shall cancel the certificate of dissolution
 40 and prepare a certificate of reinstatement that recites the determination
 41 and the effective date of reinstatement, file the original of the
 42 certificate, and serve a copy on the corporation under IC 23-1-24-4.

43 (c) When the reinstatement is effective, it relates back to and takes
 44 effect as of the effective date of the administrative dissolution and the
 45 corporation resumes carrying on its business as if the administrative
 46 dissolution had never occurred.

1 SECTION 26. IC 25-1-5-8 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 8. (a) The bureau and
 3 the boards may allow the department of state revenue **and the**
 4 **department of workforce development** access to the name of each
 5 person who:

6 (1) is licensed under this chapter; or

7 (2) has applied for a license under this chapter.

8 (b) If the department of state revenue notifies the bureau that a
 9 person is on the most recent tax warrant list, the bureau may not issue
 10 or renew the person's license until:

11 (1) the person provides to the bureau a statement from the
 12 department of state revenue that the person's delinquent tax
 13 liability has been satisfied; or

14 (2) the bureau receives a notice from the commissioner of the
 15 department of state revenue under IC 6-8.1-8-2(k).

16 (c) **If the department of workforce development notifies the**
 17 **bureau that a person has unpaid contribution liability, the bureau**
 18 **may not issue or renew the person's license until the person**
 19 **provides to the bureau a statement from the department of**
 20 **workforce development that the person's delinquent contribution**
 21 **liability has been satisfied.**

22 SECTION 27. IC 25-1-6-8 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 8. (a) The bureau and
 24 the boards may allow the department of state revenue **and the**
 25 **department of workforce development** access to the name of each
 26 person who:

27 (1) is licensed under this chapter; or

28 (2) has applied for a license under this chapter.

29 (b) If the department of state revenue notifies the bureau that a
 30 person is on the most recent tax warrant list, the bureau may not issue
 31 or renew the person's license until:

32 (1) the person provides to the bureau a statement from the
 33 department of revenue that the person's delinquent tax liability
 34 has been satisfied; or

35 (2) the bureau receives a notice from the commissioner of the
 36 department of state revenue under IC 6-8.1-8-2(k).

37 (c) **If the department of workforce development notifies the**
 38 **bureau that a person has unpaid contribution liability, the bureau**
 39 **may not issue or renew the person's license until the person**

40 **provides to the bureau a statement from the department of**
 41 **workforce development that the person's delinquent contribution**

- 1 **liability has been satisfied."**
(Reference is to ESB 52 as printed February 18, 2000.)

Representative Avery