

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WITHDRAWN	Noes _____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- 18 payment of benefits is confidential and may not be published or be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