

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 321**

Citations Affected: IC 22-4.

Synopsis: Unemployment insurance. Conference committee report for ESB 321. Transfers numerous rulemaking and administrative duties of the unemployment insurance board (board) to the department of workforce development (department). Reduces from 150 to 30 days the time within which a successor employer is required to file an application to assume a predecessor employer's experience account. Establishes civil penalties for an individual who fails to disclose or falsifies information to receive a benefit. Provides additional circumstances in which an administrative law judge or the review board may hold hearings by telephone. Provides that the department may not disclose to an employer the current address or location of a claimant who is the victim of family or domestic violence, and that an employer or its agent that is aware that a claim has been made shall keep that information confidential. Repeals and restates provisions concerning an individual's failure to disclose earnings and witness fees. Authorizes the department to allocate not more than \$2 million dollars annually from the special employment and training services fund to establish reemployment training accounts for dislocated department employees. Repeals language: (1) concerning board rules; and (2) requiring the board to print and distribute certain material. Makes technical corrections. Makes conforming amendments. **(This conference report removes provisions that permit an employer that employs fewer than 20 full-time employees to opt out of the skills 2016 training program, including payment of the program's assessments, and provides that an employer that opts out of the program is not eligible to receive a program grant.)**

Effective: Upon passage; July 1, 2006.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 321 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 22-4-2-17 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 17. **Except as**
- 4 **provided in IC 22-4-11.5,** "computation date" means June 30 of the
- 5 year preceding the effective date of new rates of contribution, except
- 6 that in the event, after having been legally terminated, an employer
- 7 again becomes subject to this article during the last six (6) months of a
- 8 calendar year and resumes ~~his~~ **the employer's** former position with
- 9 respect to the resources and liabilities of the experience account, then
- 10 and in such case ~~his~~ **the employer's** first "computation date" shall mean
- 11 December 31 of the fourth consecutive calendar year of such
- 12 subjectivity and thereafter "computation date" for such employer shall
- 13 mean June 30.
- 14 SECTION 2. IC 22-4-2-23 IS AMENDED TO READ AS
- 15 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 23. "Initial claim"
- 16 means a written application, in a form prescribed by the ~~board,~~
- 17 **department,** made by an individual for the determination of ~~his~~ **the**
- 18 **individual's** status as an insured worker.
- 19 SECTION 3. IC 22-4-2-24 IS AMENDED TO READ AS
- 20 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 24. "Additional claim"
- 21 means a written application for a determination of benefit eligibility,
- 22 made by an individual in a form prescribed by the ~~board,~~ **department,**

1 to begin a second or subsequent series of claims in a benefit period, by
 2 which application the individual certifies to new unemployment
 3 resulting from a break in or loss of work which has occurred since the
 4 last claim was filed by such individual.

5 SECTION 4. IC 22-4-2-39 IS ADDED TO THE INDIANA CODE
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2006]: **Sec. 39. As used in this article, "liability
 8 administrative law judge" means a person who is:**

9 **(1) employed as an administrative law judge under
 10 IC 22-4-17-4; and**

11 **(2) authorized to hear matters described in IC 22-4-32-1.**

12 SECTION 5. IC 22-4-7-2 IS AMENDED TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2006]: **Sec. 2. "Employer" also means the
 14 following:**

15 (a) Any employing unit whether or not an employing unit at the time
 16 of the acquisition which acquires the organization, trade, or business
 17 within this state of another which at the time of such acquisition is an
 18 employer subject to this article, and any employing unit whether or not
 19 an employing unit at the time of the acquisition which acquires
 20 substantially all the assets within this state of such an employer used in
 21 or in connection with the operation of such trade or business, if the
 22 acquisition of substantially all such assets of such trade or business
 23 results in or is used in the operation or continuance of an organization,
 24 trade, or business.

25 (b) Any employing unit (whether or not an employing unit at the time
 26 of acquisition) which acquires a distinct and segregable portion of the
 27 organization, trade, or business within this state of another employing
 28 unit which at the time of such acquisition is an employer subject to this
 29 article only if the employment experience of the disposing employing
 30 unit combined with the employment of its predecessor or predecessors
 31 would have qualified such employing unit under ~~IC 22-4-7-1~~ **section
 32 1 of this chapter** if the portion acquired had constituted its entire
 33 organization, trade, or business and the acquisition results in the
 34 operation or continuance of an organization, trade, or business.

35 (c) Any employing unit which, having become an employer under
 36 ~~IC 22-4-7-1, 22-4-7-2(a), 22-4-7-2(b), 22-4-7-2(d), 22-4-7-2(f), or~~
 37 ~~22-4-7-2(h)~~, **section 1, 2(a), 2(b), 2(d), 2(f), or 2(h) of this chapter**,
 38 has not ceased to be an employer by compliance with the provisions of
 39 IC 22-4-9-2 and IC 22-4-9-3.

40 (d) For the effective period of its election pursuant to IC 22-4-9-4 or
 41 **IC 22-4-9-5**, any other employing unit which has elected to become
 42 fully subject to this article.

43 (e) Any employing unit for which service in employment as defined
 44 in IC 22-4-8-2(l) is performed. In determining whether an employing
 45 unit for which service other than agricultural labor is also performed is
 46 an employer under sections 1 or 2 of this chapter, the wages earned or
 47 the employment of an employee performing service in agricultural labor
 48 ~~after December 31, 1977~~, may not be taken into account. If an
 49 employing unit is determined an employer of agricultural labor, the
 50 employing unit shall be determined an employer for the purposes of
 51 section 1 of this chapter.

1 (f) Any employing unit not an employer by reason of any other
 2 paragraph of ~~IC 22-4-7-2(a) through 22-4-7-2(e)~~ **section 2(a) through**
 3 **2(e) of this chapter** inclusive, for which within either the current or
 4 preceding calendar year services in employment are or were performed
 5 with respect to which such employing unit is liable for any federal tax
 6 against which credit may be taken for contributions required to be paid
 7 into a state unemployment ~~compensation~~ **insurance** fund; or which, as
 8 a condition for approval of this article for full tax credit against the tax
 9 imposed by the Federal Unemployment Tax Act, is required, pursuant
 10 to such Act, to be an "employer" under this article; however, an
 11 employing unit subject to contribution solely because of the terms of
 12 this subsection may file a written application to cover and insure ~~his the~~
 13 **employing unit's** employees under the unemployment ~~compensation~~
 14 **insurance** law of another jurisdiction. Upon approval of such
 15 application by the ~~board, department,~~ the employing unit shall not be
 16 deemed to be an employer and such service shall not be deemed
 17 employment under this article.

18 (g) Any employing unit for which service in employment, as defined
 19 in IC 22-4-8-2(i) ~~is performed after December 31, 1971 and subsequent~~
 20 ~~to December 31, 1977, any employing unit for which service in~~
 21 ~~employment is performed, as defined in or IC 22-4-8-2(i)(1), is~~
 22 **performed.**

23 (h) Any employing unit for which service in employment, as defined
 24 in IC 22-4-8-2(j), is performed. ~~after December 31, 1971.~~

25 (i) Any employing unit for which service in employment as defined
 26 in IC 22-4-8-2(m) is performed. In determining whether an employing
 27 unit for which service other than domestic service is also performed is
 28 an employer under sections 1 or 2 of this chapter, the wages earned or
 29 the employment of an employee performing domestic service ~~after~~
 30 ~~December 31, 1977,~~ may not be taken into account.

31 SECTION 6. IC 22-4-8-1 IS AMENDED TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) "Employment," subject to the
 33 other provisions of this section, means service, including service in
 34 interstate commerce performed for remuneration or under any contract
 35 of hire, written or oral, expressed or implied.

36 ~~(a)~~ **(b)** Services performed by an individual for remuneration shall be
 37 deemed to be employment subject to this article irrespective of whether
 38 the common-law relationship of master and servant exists, unless and
 39 until it is **all the following conditions are** shown to the satisfaction of
 40 the ~~board that (A) such department:~~

41 **(1) The** individual has been and will continue to be free from
 42 control and direction in connection with the performance of such
 43 service, both under ~~his the individual's~~ contract of service and in
 44 fact.

45 ~~(B) such~~ **(2) The** service is performed outside the usual course of
 46 the business for which the service is performed. ~~and~~

47 ~~(C) such~~ **(3) The** individual:

48 **(A)** is customarily engaged in an independently established trade,
 49 occupation, profession, or business of the same nature as that
 50 involved in the service performed; or

51 **(B)** is a sales agent who receives remuneration solely upon a

1 commission basis and who is the master of ~~his~~ **the individual's**
2 own time and effort.

3 ~~(b)~~ **Such (c) The term shall include: also includes the following:**

4 (1) Services performed for remuneration by an officer of a
5 corporation in ~~his~~ **the officer's** official corporate capacity.

6 (2) Services performed for remuneration for any employing unit by
7 an individual:

8 (A) as an agent-driver or commission-driver engaged in
9 distributing products, including but not limited to, meat,
10 vegetables, fruit, bakery, beverages, or laundry or dry-cleaning
11 services for ~~his~~ **the individual's** principal; **or**

12 (B) as a traveling or city salesman, other than as an agent-driver
13 or commission-driver, engaged upon a full-time basis in the
14 solicitation on behalf of, and the transmission to, ~~his~~ **the**
15 **individual's** principal (except for sideline sales activities on
16 behalf of some other person) of orders from wholesalers,
17 retailers, contractors, or operators of hotels, restaurants, or other
18 similar establishments for merchandise for resale or supplies for
19 use in their business operations.

20 ~~Provided, That (d)~~ For purposes of ~~subparagraph (b)(2)~~ **subsection**
21 **(c)(2)**, the term "employment" shall include services described in ~~(A)~~
22 **subsection (c)(2)(A)** and ~~(B)~~ **(c)(2)(B)** only if **all the following**
23 **conditions are met:**

24 i. **(1)** The contract of service contemplates that substantially all of
25 the services are to be performed personally by such individual.

26 ii. **(2)** The individual does not have a substantial investment in
27 facilities used in connection with the performance of the services
28 (other than in facilities for transportation). ~~and~~

29 iii. **(3)** The services are not in the nature of a single transaction that
30 is not part of a continuing relationship with the person for whom
31 the services are performed.

32 SECTION 7. IC 22-4-8-3 IS AMENDED TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2006]: Sec. 3. "Employment" shall not include
34 the following:

35 ~~(a)~~ **(1)** Except as provided in section 2(i) of this chapter, service
36 performed prior to January 1, 1978, in the employ of this state, any
37 other state, any town or city, or political subdivision, or any
38 instrumentality of any of them, other than service performed in the
39 employ of a municipally owned public utility as defined in this
40 article; or service performed in the employ of the United States of
41 America, or an instrumentality of the United States immune under
42 the Constitution of the United States from the contributions
43 imposed by this article, except that to the extent that the Congress
44 of the United States shall permit states to require any
45 instrumentalities of the United States to make payments into an
46 unemployment fund under a state unemployment compensation
47 statute, all of the provisions of this article shall be applicable to
48 such instrumentalities, in the same manner, to the same extent, and
49 on the same terms as to all other employers, employing units,
50 individuals, and services. However, if this state shall not be
51 certified for any year by the Secretary of Labor under Section 3304

1 of the Internal Revenue Code the payments required of such
 2 instrumentalities with respect to such year shall be refunded by the
 3 commissioner from the fund in the same manner and within the
 4 same period as is provided in IC 22-4-32-19 with respect to
 5 contribution erroneously paid or wrongfully assessed.

6 ~~(b)~~ **(2)** Service with respect to which unemployment compensation
 7 is payable under an unemployment compensation system
 8 established by an Act of Congress; however, the ~~board~~ **department**
 9 is authorized to enter into agreements with the proper agencies
 10 under such Act of Congress which agreements shall become
 11 effective ten (10) days after publication thereof, ~~in the manner~~
 12 ~~provided in IC 22-4-19-2 for rules of the board,~~ **in accordance**
 13 **with rules adopted by the department under IC 4-22-2**, to
 14 provide reciprocal treatment to individuals who have, after
 15 acquiring potential rights to benefits under this article, acquired
 16 rights to unemployment compensation under such Act of Congress,
 17 or who have, after having acquired potential rights to
 18 unemployment compensation under such Act of Congress, acquired
 19 rights to benefits under this article.

20 ~~(c)~~ **(3)** "Agricultural labor" as provided in section 2(l)(1) of this
 21 chapter shall include only services performed:

22 (i) ~~(A)~~ **(A)** on a farm, in the employ of any person, in connection
 23 with cultivating the soil or in connection with raising or
 24 harvesting any agricultural or horticultural commodity, including
 25 the raising, shearing, feeding, caring for, training, and
 26 management of livestock, bees, poultry, and furbearing animals
 27 and wildlife;

28 (ii) ~~(B)~~ **(B)** in the employ of the owner or tenant or other operator of
 29 a farm, in connection with the operation, management,
 30 conservation, improvement, or maintenance of such farm and its
 31 tools and equipment, or in salvaging timber or clearing land of
 32 brush and other debris left by a hurricane, if the major part of
 33 such service is performed on a farm;

34 (iii) ~~(C)~~ **(C)** in connection with the production or harvesting of any
 35 commodity defined as an agricultural commodity in Section
 36 15(g) of the Agricultural Marketing Act (**12 U.S.C. 1141j(g)**) as
 37 amended, or in connection with the operation or maintenance of
 38 ditches, canals, reservoirs, or waterways, not owned or operated
 39 for profit, used exclusively for supplying and storing water for
 40 farming purposes;

41 ~~(iv)(A)~~ **(D)** in the employ of:

42 (i) the operator of a farm in handling, planting, drying,
 43 packing, packaging, processing, freezing, grading, storing, or
 44 delivering to storage or to market or to a carrier for
 45 transportation to market, in its unmanufactured state, any
 46 agricultural or horticultural commodity; but only if such
 47 operator produced more than one-half (1/2) of the commodity
 48 with respect to which such service is performed; **or**

49 ~~(B)~~ **in the employ of (ii)** a group of operators of farms (or a
 50 cooperative organization of which such operators are
 51 members) in the performance of service described in

- 1 ~~subdivision (A), item (i)~~, but only if such operators produce
2 more than one-half (1/2) of the commodity with respect to
3 which such service is performed;
- 4 ~~(C)~~ **except** the provisions of ~~subdivisions (A) and (B) items (i)~~
5 **and (ii)** shall not be deemed to be applicable with respect to
6 service performed in connection with commercial canning or
7 commercial freezing or in connection with any agricultural or
8 horticultural commodity after its delivery to a terminal market for
9 distribution for consumption; or
- 10 ~~(v)~~ **(E)** on a farm operated for profit if such service is not in the
11 course of the employer's trade or business or is domestic service
12 in a private home of the employer.
- 13 **(4)** As used in ~~this subsection; subdivision (3)~~, "farm" includes
14 stock, dairy, poultry, fruit, furbearing animals, and truck farms,
15 nurseries, orchards, greenhouses, or other similar structures used
16 primarily for the raising of agricultural or horticultural
17 commodities.
- 18 ~~(d)~~ **(5)** Domestic service in a private home, local college club, or
19 local chapter of a college fraternity or sorority, except as provided
20 in section 2(m) of this chapter.
- 21 ~~(e)~~ **(6)** Service performed on or in connection with a vessel or
22 aircraft not an American vessel or American aircraft, if the
23 employee is employed on and in connection with such vessel or
24 aircraft when outside the United States.
- 25 ~~(f)~~ **(7)** Service performed by an individual in the employ of child
26 or spouse, and service performed by a child under the age of
27 twenty-one (21) in the employ of a parent.
- 28 ~~(g)~~ **(8)** Service not in the course of the employing unit's trade or
29 business performed in any calendar quarter by an individual, unless
30 the cash remuneration paid for such service is fifty dollars (\$50) or
31 more and such service is performed by an individual who is
32 regularly employed by such employing unit to perform such
33 service. For the purposes of this ~~subsection; subdivision~~, an
34 individual shall be deemed to be regularly employed to perform
35 service not in the course of an employing unit's trade or business
36 during a calendar quarter only if:
- 37 ~~(i)~~ **(A)** on each of some of twenty-four (24) days during such
38 quarter such individual performs such service for some portion
39 of the day; or
- 40 ~~(ii)~~ **(B)** such individual was regularly employed (as determined
41 under clause ~~(i)~~ **(A)**) by such employing unit in the performance
42 of such service during the preceding calendar quarter.
- 43 ~~(h)~~ **(9)** Service performed by an individual in any calendar quarter
44 in the employ of any organization exempt from income tax under
45 Section 501 of the Internal Revenue Code (except those services
46 included in sections 2(i) and 2(j) of this chapter if the remuneration
47 for such service is less than fifty dollars (\$50)).
- 48 ~~(i)~~ **(10)** Service performed in the employ of a hospital, if such
49 service is performed by a patient of such hospital.
- 50 ~~(j)~~ **(11)** Service performed in the employ of a school, college, or
51 university if such service is performed:

- 1 (i) **(A)** by a student who is enrolled and is regularly attending
 2 classes at such school, college, or university; or
 3 (ii) **(B)** by the spouse of such a student, if such spouse is advised,
 4 at the time such spouse commences to perform such service, that:
 5 ~~(A)~~ **(i)** the employment of such spouse to perform such service
 6 is provided under a program to provide financial assistance to
 7 such student by such school, college, or university; and
 8 ~~(B)~~ **(ii)** such employment will not be covered by any program
 9 of unemployment insurance.
- 10 ~~(k)~~ **(12)** Service performed by an individual who is enrolled at a
 11 nonprofit or public educational institution which normally
 12 maintains a regular faculty and curriculum and normally has a
 13 regularly organized body of students in attendance at the place
 14 where its educational activities are carried on as a student in a
 15 full-time program, taken for credit at such institution, which
 16 combines academic instruction with work experience, if such
 17 service is an integral part of such program, and such institution has
 18 so certified to the employer, except that this ~~subsection~~ **subdivision**
 19 shall not apply to service performed in a program established for or
 20 on behalf of an employer or group of employers.
- 21 ~~(l)~~ **(13)** Service performed in the employ of a government foreign
 22 to the United States of America, including service as a consular or
 23 other officer or employee or a nondiplomatic representative.
- 24 ~~(m)~~ **(14)** Service performed in the employ of an instrumentality
 25 wholly owned by a government foreign to that of the United States
 26 of America, if the service is of a character similar to that performed
 27 in foreign countries by employees of the United States of America
 28 or of an instrumentality thereof, and if the board finds that the
 29 Secretary of State of the United States has certified to the Secretary
 30 of the Treasury of the United States that the government, foreign
 31 to the United States, with respect to whose instrumentality
 32 exemption is claimed, grants an equivalent exemption with respect
 33 to similar service performed in such country by employees of the
 34 United States and of instrumentalities thereof.
- 35 ~~(n)~~ **(15)** Service performed as a student nurse in the employ of a
 36 hospital or nurses' training school by an individual who is enrolled
 37 and is regularly attending classes in a nurses' training school
 38 chartered or approved pursuant to state law; and service performed
 39 as an intern in the employ of a hospital by an individual who has
 40 completed a four (4) year course in a medical school chartered or
 41 approved pursuant to state law.
- 42 ~~(o)~~ **(16)** Service performed by an individual as an insurance
 43 producer or as an insurance solicitor, if all such service performed
 44 by such individual is performed for remuneration solely by way of
 45 commission.
- 46 ~~(p)~~~~(A)~~ **(17)** Service performed by an individual:
 47 **(A)** under the age of eighteen (18) in the delivery or distribution
 48 of newspapers or shopping news, not including delivery or
 49 distribution to any point for subsequent delivery or distribution;
 50 **or**
 51 ~~(B)~~ **(B)** ~~Services performed by an individual~~ in, and at the time of,

1 the sale of newspapers or magazines to ultimate consumers,
 2 under an arrangement under which the newspapers or magazines
 3 are to be sold by ~~him~~ **the individual** at a fixed price, ~~his~~ **the**
 4 **individual's** compensation being based on the retention of the
 5 excess of such price over the amount at which the newspapers or
 6 magazines are charged to ~~him~~; **the individual**, whether or not ~~he~~
 7 **the individual** is guaranteed a minimum amount of
 8 compensation for such service, or is entitled to be credited with
 9 the unsold newspapers or magazines turned back.

10 ~~(q)~~ **(18)** Service performed in the employ of an international
 11 organization.

12 ~~(r)~~ **(19)** Except as provided in IC 22-4-7-1, services covered by an
 13 election duly approved by the agency charged with the
 14 administration of any other state or federal unemployment
 15 compensation law in accordance with an arrangement pursuant to
 16 IC 22-4-22-1 through IC 22-4-22-5, during the effective period of
 17 such election.

18 ~~(s)~~ **(20)** If the service performed during one-half (1/2) or more of
 19 any pay period by an individual for an employing unit constitutes
 20 employment, all the services of such individual for such period
 21 shall be deemed to be employment; but if the services performed
 22 during more than one-half (1/2) of any pay period by such an
 23 individual do not constitute employment, then none of the services
 24 of such individual for such period shall be deemed to be
 25 employment. As used in this subsection, "pay period" means a
 26 period of not more than thirty-one (31) consecutive days for which
 27 a payment of remuneration is ordinarily made to the individual by
 28 the employing unit. This subsection shall not be applicable with
 29 respect to services performed in a pay period by any such
 30 individual where any such service is excepted by ~~subsection (b):~~
 31 **subdivision (2).**

32 ~~(t)~~ **(21)** Service performed by an inmate of a custodial or penal
 33 institution.

34 ~~(u)~~ **(22)** Service performed as a precinct election officer (as defined
 35 in IC 3-5-2-40.1).

36 SECTION 8. IC 22-4-9-3, AS AMENDED BY P.L.98-2005,
 37 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2006]: Sec. 3. (a) This section is subject to the provisions of
 39 IC 22-4-11.5.

40 (b) Any employer subject to this article as successor to an employer
 41 pursuant to the provisions of IC 22-4-7-2(a) or IC 22-4-7-2(b) shall
 42 cease to be an employer at the end of the year in which the acquisition
 43 occurs only if the **board department** finds that within such calendar
 44 year the employment experience of the predecessor prior to the date of
 45 disposition combined with the employment experience of the successor
 46 subsequent to the date of acquisition would not be sufficient to qualify
 47 the successor employer as an employer under the provisions of
 48 IC 22-4-7-1. No such successor employer may cease to be an employer
 49 subject to this article at the end of the first year of the current period of
 50 coverage of the predecessor employer. If all of the resources and
 51 liabilities of the experience account of an employer are assumed by

1 another in accordance with the provisions of IC 22-4-10-6 or
 2 IC 22-4-10-7, such employer's status as employer and under this article
 3 is hereby terminated unless and until such employer subsequently
 4 qualifies under the provisions of IC 22-4-7-1 or IC 22-4-7-2 or elects
 5 to become an employer under sections 4 or 5 of this chapter.

6 (c) If no application for termination, as herein provided, is filed by an
 7 employer and four (4) full calendar years have elapsed since any
 8 contributions have become payable from such employer, then and in
 9 such cases the **board department** may terminate such employer's
 10 experience account.

11 SECTION 9. IC 22-4-9-4 IS AMENDED TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2006]: Sec. 4. Any employing unit not
 13 otherwise subject to this article which files with the **board department**
 14 its written election to become an employer subject to this article for not
 15 less than two (2) calendar years shall, with the written approval of such
 16 election by the **board department**, become an employer subject to this
 17 article to the same extent as all other employers as of the date stated in
 18 such approval. ~~provided;~~ However, ~~that~~ the voluntary election of any
 19 such employer shall become inoperative if such employing unit
 20 becomes an employer by reason of IC 22-4-7-1.

21 SECTION 10. IC 22-4-10-1 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Contributions
 23 shall accrue and become payable from each employer for each calendar
 24 year in which it is subject to this article with respect to wages paid
 25 during such calendar year. ~~except~~ Where the status of an employer is
 26 changed by cessation or disposition of business or appointment of a
 27 receiver, trustees, trustee in bankruptcy, or other fiduciary,
 28 contributions shall immediately become due and payable on the basis
 29 of wages paid or payable by such employer as of the date of the change
 30 of status. Such contributions shall be paid to the department in such
 31 manner as the **commissioner department** may prescribe, and shall not
 32 be deducted, in whole or in part, from the remuneration of individuals
 33 in an employer's employ. When contributions are determined in
 34 accordance with Schedule A as provided in IC 22-4-11-3, the **board**
 35 **department** may prescribe rules to require an estimated advance
 36 payment of contributions in whole or in part, if in the judgment of the
 37 **board department** such advance payments will avoid a debit balance
 38 in the fund during the calendar quarter to which the advance payment
 39 applies. An adjustment shall be made following the quarter in which an
 40 advance payment has been made to reflect the difference between the
 41 estimated contribution and the contribution actually payable. Advance
 42 payment of contributions shall not be required for more than one (1)
 43 calendar quarter in any calendar year.

44 ~~(a)(1)~~ (b) Any employer which is, or becomes, subject to this article
 45 by reason of IC 22-4-7-2(g) or IC 22-4-7-2(h) shall pay contributions
 46 as provided under this article unless it elects to become liable for
 47 "payments in lieu of contributions" (as defined in IC 22-4-2-32).

48 ~~(2)~~ (c) Except as provided in subsection ~~(a)(4)~~; (e), the election to
 49 become liable for "payments in lieu of contributions" must be filed with
 50 the department on a form prescribed by the **commissioner department**
 51 not later than thirty-one (31) days following the date upon which such

1 entity qualifies as an employer under this article, and shall be for a
2 period of not less than two (2) calendar years.

3 ~~(3)~~ **(d)** Any employer ~~which that~~ makes an election in accordance
4 with ~~subdivisions (1) through (2)~~ **subsections (b) and (c)** will continue
5 to be liable for "payments in lieu of contributions" until it files with the
6 ~~commissioner~~ **department** a written notice terminating its election.
7 ~~This~~ **The notice filed by an employer to terminate its election** must
8 be filed not later than thirty (30) days prior to the beginning of the
9 taxable year for which such termination shall first be effective.

10 ~~(4)~~ **(e)** Any employer ~~which that~~ qualifies to elect to become liable
11 for "payments in lieu of contributions" and has been paying
12 contributions under this article, ~~for a period subsequent to January 1,~~
13 ~~1972,~~ may change to a reimbursable basis by filing with the department
14 not later than thirty (30) days prior to the beginning of any taxable year
15 a written notice of election to become liable for payments in lieu of
16 contributions. Such election shall not be terminable by the organization
17 for that and the next year.

18 ~~(b)(1)~~ **(f)** Employers making "payments in lieu of contributions"
19 under ~~subsection (a)~~ **subsections (b) and (c)** shall make reimbursement
20 payments monthly. At the end of each calendar month the department
21 shall bill each such employer (or group of employers) for an amount
22 equal to the full amount of regular benefits plus one-half (1/2) of the
23 amount of extended benefits paid during such month that is attributable
24 to services in the employ of such employers or group of employers.
25 Governmental entities of this state and its political subdivisions electing
26 to make "payments in lieu of contributions" shall be billed by the
27 department at the end of each calendar month for an amount equal to
28 the full amount of regular benefits plus the full amount of extended
29 benefits paid during the month that is attributable to service in the
30 employ of the governmental entities.

31 ~~(2)~~ **(g)** Payment of any bill rendered under ~~subdivision (1)~~ **subsection**
32 **(f)** shall be made not later than thirty (30) days after such bill was
33 mailed to the last known address of the employer or was otherwise
34 delivered to it, unless there has been an application for review and
35 redetermination ~~in accordance with subdivision (4)~~: **filed under**
36 **subsection (i)**.

37 ~~(3)~~ **(h)** Payments made by any employer under the provisions of ~~this~~
38 ~~subsection~~ **subsections (f) through (j)** shall not be deducted or
39 deductible, in whole or in part, from the remuneration of individuals in
40 the employ of the employer.

41 ~~(4)~~ **(i)** The amount due specified in any bill from the department shall
42 be conclusive on the employer unless, not later than fifteen (15) days
43 after the bill was mailed to its last known address or otherwise
44 delivered to it, the employer files an application for redetermination. If
45 the employer so files, the employer shall have an opportunity to be
46 heard, and such hearing shall be conducted by a liability administrative
47 law judge pursuant to IC 22-4-32-1 through IC 22-4-32-15. After the
48 hearing, the liability administrative law judge shall immediately notify
49 the employer in writing of the finding, and the bill, if any, so made shall
50 be final, in the absence of judicial review proceedings, fifteen (15) days
51 after such notice is issued.

1 ~~(5)~~ **(j)** Past due payments of amounts in lieu of contributions shall be
 2 subject to the same interest and penalties that, pursuant to IC 22-4-29,
 3 apply to past due contributions.

4 ~~(c)~~ **(k)** Two (2) or more employers that have elected to become liable
 5 for "payments in lieu of contributions" in accordance with ~~subsection~~
 6 ~~(a)~~ **subsections (b) and (c)** may file a joint application with the
 7 department for the establishment of a group account for the purpose of
 8 sharing the cost of benefits paid that are attributable to service in the
 9 employ of such employers. Such group account shall be established as
 10 provided in regulations prescribed by the commissioner.

11 SECTION 11. IC 22-4-10-3 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. Except as provided
 13 in ~~section 1(a)~~ **section 1(b) through 1(e)** of this chapter, each employer
 14 shall pay contributions equal to ~~the following percentage of wages: (a)~~
 15 ~~five and four-tenths six-tenths percent (5.4%); (5.6%) of wages,~~ except
 16 as otherwise provided in IC 22-4-11-2, IC 22-4-11-3, **IC 22-4-11.5**, and
 17 IC 22-4-37-3.

18 SECTION 12. IC 22-4-10-4 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. **(a)** Except as
 20 provided in ~~section 1(a)~~ **section 1(b) through 1(e)** of this chapter, the
 21 commissioner shall maintain within the fund a separate experience
 22 account for each employer and shall credit to such account all
 23 contributions paid by such employer on its behalf except as otherwise
 24 provided in this article.

25 **(b)** The commissioner shall also maintain a separate account for each
 26 employer electing to make payments in lieu of contributions as
 27 provided in ~~section 1(a)~~ **section 1(b) through 1(e)** of this chapter and
 28 shall charge to such account all benefits chargeable to such employer
 29 and credit to such account all reimbursements made by such employer.

30 SECTION 13. IC 22-4-10-6, AS AMENDED BY P.L.98-2005,
 31 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2006]: Sec. 6. (a) When:

- 33 (1) an employing unit (whether or not an employing unit at the time
- 34 of the acquisition) becomes an employer under IC 22-4-7-2(a);
- 35 (2) an employer acquires the organization, trade, or business, or
- 36 substantially all the assets of another employer; or
- 37 (3) an employer transfers all or a portion of the employer's trade or
- 38 business (including the employer's workforce) to another employer
- 39 as described in IC 22-4-11.5-7;

40 the successor employer shall, in accordance with the rules prescribed
 41 by the ~~board~~, **department**, assume the position of the predecessor with
 42 respect to all the resources and liabilities of the predecessor's
 43 experience account.

44 (b) Except as provided by IC 22-4-11.5, when:

- 45 (1) an employing unit (whether or not an employing unit at the time
- 46 of the acquisition) becomes an employer under IC 22-4-7-2(b); or
- 47 (2) an employer acquires a distinct and segregable portion of the
- 48 organization, trade, or business within this state of another
- 49 employer;

50 the successor employer shall assume the position of the predecessor
 51 employer with respect to the portion of the resources and liabilities of

1 the predecessor's experience account as pertains to the distinct and
 2 segregable portion of the predecessor's organization, trade, or business
 3 acquired by the successor. An application for the acquiring employer
 4 to assume this portion of the resources and liabilities of the disposing
 5 employer's experience account must be filed with the **commissioner**
 6 **department** on prescribed forms not later than ~~one hundred fifty (150)~~
 7 **thirty (30)** days immediately following the disposition date or not later
 8 than ten (10) days after the disposing and acquiring employers are
 9 mailed or otherwise delivered final notice that the acquiring employer
 10 is a successor employer, whichever is the earlier date. This portion of
 11 the resources and liabilities of the disposing employer's experience
 12 account shall be transferred in accordance with IC 22-4-11.5.

13 (c) Except as provided by IC 22-4-11.5, the successor employer, if an
 14 employer prior to the acquisition, shall pay at the rate of contribution
 15 originally assigned to it for the calendar year in which the acquisition
 16 occurs, until the end of that year. If not an employer prior to the
 17 acquisition, the successor employer shall pay the rate of two and
 18 seven-tenths percent (2.7%) unless the successor employer assumes all
 19 or part of the resources and liabilities of the predecessor employer's
 20 experience account, in which event the successor employer shall pay at
 21 the rate of contribution assigned to the predecessor employer for the
 22 period starting with the first day of the calendar quarter in which the
 23 acquisition occurs, until the end of that year. However, if a successor
 24 employer, not an employer prior to the acquisition, simultaneously
 25 acquires all or part of the experience balance of two (2) or more
 26 employers, the successor employer shall pay at the highest rate
 27 applicable to the experience accounts totally or partially acquired for
 28 the period starting with the first day of the calendar quarter in which the
 29 acquisition occurs, until the end of the year. If the successor employer
 30 had any employment prior to the date of acquisition upon which
 31 contributions were owed under IC 22-4-9-1, the employer's rate of
 32 contribution from the first of the year to the first day of the calendar
 33 quarter in which the acquisition occurred would be two and
 34 seven-tenths percent (2.7%).

35 SECTION 14. IC 22-4-10.5-8 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) **Subject to**
 37 **subsection (d)**, skills 2016 assessments unpaid on the date on which
 38 they are due and payable bear interest at the rate of one percent (1%)
 39 per month or fraction of a month from and after that date until payment
 40 plus accrued interest is received by the department.

41 (b) **Subject to subsection (d)**, a twenty-five dollar (\$25) penalty shall
 42 be assessed on any skills 2016 assessments that are unpaid on the date
 43 subsequent to the date on which they are due and payable.

44 (c) All penalty and interest collected on delinquent skills 2016
 45 assessments shall be deposited in the skills 2016 training fund
 46 established under ~~IC 22-4-24.5~~ **IC 5-28-27-3**.

47 **(d) The department may adopt fair and reasonable policies to**
 48 **waive the penalty and interest assessed under this section.**

49 SECTION 15. IC 22-4-11-2, AS AMENDED BY P.L.98-2005,
 50 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 51 JULY 1, 2006]: Sec. 2. (a) Except as provided in IC 22-4-11.5, the

1 ~~commissioner~~ **department** shall for each year determine the
2 contribution rate applicable to each employer.

3 (b) The balance shall include contributions with respect to the period
4 ending on the computation date and actually paid on or before July 31
5 immediately following the computation date and benefits actually paid
6 on or before the computation date and shall also include any voluntary
7 payments made in accordance with IC 22-4-10-5:

8 (1) for each calendar year, an employer's rate shall be determined
9 in accordance with the rate schedules in section 3 or 3.3 of this
10 chapter; and

11 (2) for each calendar year, an employer's rate shall be two and
12 seven-tenths percent (2.7%), except as otherwise provided in
13 IC 22-4-37-3, unless and until:

14 (A) the employer has been subject to this article throughout the
15 thirty-six (36) consecutive calendar months immediately
16 preceding the computation date; and

17 (B) there has been some annual payroll in each of the three (3)
18 twelve (12) month periods immediately preceding the
19 computation date.

20 (c) In addition to the conditions and requirements set forth and
21 provided in subsection (b)(2)(A) and (b)(2)(B), an employer's rate shall
22 not be less than five and ~~four-tenths~~ **six-tenths** percent (~~5.4%~~) (**5.6%**)
23 unless all required contribution and wage reports have been filed within
24 thirty-one (31) days following the computation date and all
25 contributions, penalties, and interest due and owing by the employer or
26 the employer's predecessors for periods prior to and including the
27 computation date have been paid:

28 (1) within thirty-one (31) days following the computation date; or

29 (2) within ten (10) days after the ~~commissioner~~ **department** has
30 given the employer a written notice by registered mail to the
31 employer's last known address of:

32 (A) the delinquency; or

33 (B) failure to file the reports;

34 whichever is the later date.

35 The board or the board's designee may waive the imposition of rates
36 under this subsection if the board finds the employer's failure to meet
37 the deadlines was for excusable cause. The ~~commissioner~~ **department**
38 shall give written notice to the employer before this additional
39 condition or requirement shall apply.

40 (d) However, if the employer is the state or a political subdivision of
41 the state or any instrumentality of a state or a political subdivision, or
42 any instrumentality which is wholly owned by the state and one (1) or
43 more other states or political subdivisions, the employer may contribute
44 at a rate of one percent (1%) until it has been subject to this article
45 throughout the thirty-six (36) consecutive calendar months immediately
46 preceding the computation date.

47 (e) On the computation date every employer who had taxable wages
48 in the previous calendar year shall have the employer's experience
49 account charged with the amount determined under the following
50 formula:

51 STEP ONE: Divide:

1 (A) the employer's taxable wages for the preceding calendar
2 year; by

3 (B) the total taxable wages for the preceding calendar year.

4 STEP TWO: Multiply the quotient determined under STEP ONE
5 by the total amount of benefits charged to the fund under section 1
6 of this chapter.

7 (f) One (1) percentage point of the rate imposed under subsection (c)
8 or the amount of the employer's payment that is attributable to the
9 increase in the contribution rate, whichever is less, shall be imposed as
10 a penalty that is due and shall be deposited upon collection into the
11 special employment and training services fund established under
12 IC 22-4-25-1. The remainder of the contributions paid by an employer
13 pursuant to the maximum rate shall be:

14 (1) considered a contribution for the purposes of this article; and

15 (2) deposited in the unemployment insurance benefit fund
16 established under IC 22-4-26.

17 SECTION 16. IC 22-4-11.5-2, AS ADDED BY P.L.98-2005,
18 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2006]: Sec. 2. As used in this chapter, "administrative law
20 judge" means a person ~~appointed~~ **employed** by the commissioner under
21 IC 22-4-17-4.

22 SECTION 17. IC 22-4-11.5-5, AS ADDED BY P.L.98-2005,
23 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2006]: Sec. 5. As used in this chapter, "violates or attempts to
25 violate" includes

26 ~~(1)~~ the intent to evade a **higher employer contribution rate in**
27 **connection with a transfer of a trade or business through**

28 ~~(2)~~ misrepresentation or

29 ~~(3)~~ willful nondisclosure **of information relevant to the transfer.**

30 SECTION 18. IC 22-4-11.5-7, AS ADDED BY P.L.98-2005,
31 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2006]: Sec. 7. (a) ~~If~~ **This section applies to a transfer of a**
33 **trade or business that meets the following requirements:**

34 (1) An employer transfers all or a portion of the employer's trade
35 or business to another employer. ~~and~~

36 (2) At the time of the transfer, the two (2) employers have
37 substantially common ownership, management, or control.

38 **(b)** The successor employer shall assume the experience ~~rating~~
39 **account balance** of the predecessor employer for the resources and
40 liabilities of the predecessor employer's experience account that are
41 attributable to the transfer.

42 ~~(b)~~ **(c)** The contribution rates of both employers shall be recalculated,
43 and **the recalculated rate** made effective on the **effective date that of**
44 the transfer described in subsection (a). ~~is effective~~

45 ~~(c)~~ **(d)** The ~~experience account balance and the~~ payroll of the
46 predecessor employer on the **effective** date of the transfer, and the
47 benefits chargeable to the predecessor employer's original experience
48 account after the **effective** date of the transfer, must be divided between
49 the predecessor employer and the successor employer in accordance
50 with rules adopted by the department under IC 4-22-2.

51 ~~(d)~~ **(e)** Any written determination made by the department is

1 conclusive and binding on both the predecessor employer and the
 2 successor employer unless one (1) **employer files** or both employers
 3 file ~~with the department~~ a written protest **with the department** setting
 4 forth ~~the grounds and all~~ reasons for the protest. A protest under this
 5 section must be filed not later than ~~ten (10)~~ **fifteen (15)** days after the
 6 date the department ~~mails~~ **sends** the initial determination to the
 7 **employing units employers**. The protest shall be heard and determined
 8 under this section and IC 22-4-32-1 through IC 22-4-32-15. ~~Both~~ The
 9 predecessor employer, **and the** successor employer, **and the**
 10 **department** shall be parties to the hearing before the **liability**
 11 administrative law judge and are entitled to receive copies of all
 12 pleadings and the decision.

13 SECTION 19. IC 22-4-11.5-8, AS ADDED BY P.L.98-2005,
 14 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2006]: Sec. 8. (a) If the department determines that an
 16 employing unit or other person that is not an employer under IC 22-4-7
 17 at the time of the acquisition has acquired an employer's trade or
 18 business solely **or primarily** for the purpose of obtaining a lower
 19 employer contribution rate, the employing unit or other person:

20 (1) may not assume the experience ~~rating~~ **account balance** of the
 21 predecessor employer for the resources and liabilities of the
 22 predecessor employer's experience account that are attributable to
 23 the acquisition; and

24 (2) shall pay the applicable contribution rate as determined under
 25 this ~~chapter:~~ **article.**

26 (b) In determining whether an employing unit or other person
 27 acquired a trade or business solely **or primarily** for the purpose of
 28 obtaining a lower employer contribution rate under subsection (a), the
 29 ~~commissioner~~ **department** shall consider the following **factors**:

30 (1) The cost of acquiring the trade or business.

31 (2) Whether the employing unit or other person continued the
 32 business enterprise of the acquired trade or business.

33 (3) The length of time the employing unit or other person continued
 34 the business enterprise of the acquired trade or business.

35 (4) Whether a substantial number of new employees were hired to
 36 perform duties unrelated to the business enterprise that the trade or
 37 business conducted before the trade or business was acquired.

38 ~~(c) If the commissioner makes an initial determination that a violation~~
 39 ~~of this chapter has occurred, the commissioner shall promptly refer the~~
 40 ~~matter to an administrative law judge for a hearing and decision under~~
 41 ~~this article:~~

42 (c) **Any written determination made by the department is**
 43 **conclusive and binding on the employing unit or other person,**
 44 **unless the employing unit or other person files a written protest**
 45 **with the department setting forth all reasons for the protest. A**
 46 **protest under this section must be filed not later than fifteen (15)**
 47 **days after the date the department sends the initial determination**
 48 **to the employing unit or other person. The protest shall be heard**
 49 **and determined under this section and IC 22-4-32-1 through**
 50 **IC 22-4-32-15. The department and the employing unit or other**
 51 **person shall be parties to the hearing before the liability**

1 **administrative law judge and are entitled to receive copies of all**
 2 **pleadings and the decision.**

3 SECTION 20. IC 22-4-11.5-9, AS ADDED BY P.L.98-2005,
 4 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2006]: Sec. 9. (a) A person who knowingly or recklessly:

6 (1) violates or attempts to violate:

7 (A) section 7 or 8 of this chapter; or

8 (B) any other provision of this article related to determining the
 9 assumption or assignment of an employer's contribution rate; or

10 (2) advises another person in a way that results in a violation of:

11 (A) section 7 or 8 of this chapter; or

12 (B) any other provision of this article related to determining the
 13 assumption or assignment of an employer's contribution rate;

14 ~~commits a Class C misdemeanor.~~ **is subject to a civil penalty under**
 15 **this chapter.**

16 (b) **If the department determines that an employer (as defined**
 17 **under IC 22-4-7) is subject to a civil penalty under subsection**
 18 **(a)(1), the department shall assign an employer contribution rate**
 19 **equal to one (1) of the following as a civil penalty:**

20 (1) **The highest employer contribution rate assignable under**
 21 **this article for the year in which the violation occurred and the**
 22 **following three (3) years.**

23 (2) **An additional employer contribution rate of two percent**
 24 **(2%) of the employer's taxable wages (as defined in**
 25 **IC 22-4-4-2) for the year in which the violation occurred and**
 26 **the following three (3) years, if:**

27 (A) **an employer is already paying the highest employer**
 28 **contribution rate at the time of the violation; or**

29 (B) **the increase in the contribution rate described in**
 30 **subdivision (1) is less than two percent (2%).**

31 (c) **If the department determines that a person who is not an**
 32 **employer (as defined in IC 22-4-7) is subject to a civil penalty**
 33 **under subsection (a)(2), the department shall assess a civil penalty**
 34 **of not more than five thousand dollars (\$5,000).**

35 (d) **All civil penalties collected under this section shall be**
 36 **deposited in the unemployment insurance benefit fund established**
 37 **by IC 22-4-26-1.**

38 (e) **Any written determination made by the department is**
 39 **conclusive and binding on the employing unit, employer, or person**
 40 **unless the employing unit, employer, or person files a written**
 41 **protest with the department setting forth all reasons for the protest.**
 42 **A protest under this section must be filed not later than fifteen (15)**
 43 **days after the date the department sends the initial determination**
 44 **to the employing unit, employer, or person. The protest shall be**
 45 **heard and determined under this section and IC 22-4-32-1 through**
 46 **IC 22-4-32-15. The employing unit, employer, or person, and the**
 47 **department shall be parties to the hearing before the liability**
 48 **administrative law judge and are entitled to receive copies of all**
 49 **pleadings and the decision.**

50 SECTION 21. IC 22-4-11.5-10, AS AMENDED BY HEA
 51 1040-2006, SECTION 344, IS AMENDED TO READ AS FOLLOWS

1 [EFFECTIVE UPON PASSAGE]: Sec. 10. ~~(a)~~ In addition to any other
 2 penalty imposed, a person who **knowingly, recklessly, or intentionally**
 3 violates this chapter is subject to a civil penalty under this chapter.

4 (b) This subsection applies to a person who is an employer (as
 5 defined in IC 22-4-7). If an administrative law judge determines that a
 6 person is subject to a civil penalty under subsection (a), the
 7 administrative law judge shall assign an employer contribution rate
 8 equal to one (1) of the following as a civil penalty:

9 (1) The highest employer contribution rate assignable under this
 10 article for:

11 (A) the year in which the violation occurred; and

12 (B) the following three (3) years:

13 (2) An employer contribution rate of two percent (2%) of the
 14 employer's taxable wages (as defined in IC 22-4-4-2) for the year
 15 in which the violation occurred and the following three (3) years;
 16 if:

17 (A) an employer is already paying the highest employer
 18 contribution rate at the time of the violation; or

19 (B) the increase in the contribution rate described in subdivision
 20 (1) is less than two percent (2%):

21 (c) This subsection applies to a person who is not an employer (as
 22 defined in IC 22-4-7). If an administrative law judge determines that a
 23 person is subject to a civil penalty under subsection (a), the
 24 administrative law judge shall assess a civil penalty of not more than
 25 five thousand dollars (\$5,000):

26 (d) All civil penalties collected under this section shall be deposited
 27 in the unemployment insurance benefit fund established by
 28 IC 22-4-26-1:

29 **commits a Class C misdemeanor.**

30 SECTION 22. IC 22-4-12-1 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. Benefits designated
 32 as unemployment ~~compensation~~ **insurance** benefits shall become
 33 payable from the fund to any individual who is or becomes unemployed
 34 and eligible for benefits under the terms of this article. All benefits shall
 35 be paid through ~~employment offices maintained and operated by this~~
 36 **state the department** or such other agencies as the ~~board~~ **department**
 37 by rule may designate at such times and in such manner as the ~~board~~
 38 **department** may prescribe. ~~provided, that the board~~ **The department**
 39 may ~~prescribe~~ **adopt** rules to provide for the payment of benefits due
 40 and payable on executed vouchers to persons since deceased; benefits
 41 so due and payable may be paid to the legal representative, dependents,
 42 or next of kin of the deceased as are found to be entitled thereto, which
 43 rules need not conform with the laws of the state governing decedent
 44 estates, and every such payment shall be deemed a valid payment to the
 45 same extent as if made to the legal representative of the deceased.

46 SECTION 23. IC 22-4-13-1 IS AMENDED TO READ AS
 47 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **(a) Whenever an**
 48 **individual receives benefits or extended benefits to which the**
 49 **individual is not entitled under:**

50 **(1) this article; or**

51 **(2) the unemployment insurance law of the United States;**

1 **the department shall establish that an overpayment has occurred**
 2 **and establish the amount of the overpayment.**

3 **(b) An individual described in subsection (a) is liable to repay the**
 4 **established amount of the overpayment.**

5 ~~(a)~~ **(c) Any individual who knowingly:**

6 **(1) makes, or causes to be made by another, a false statement or**
 7 **representation of a material fact knowing it to be false; or**
 8 **knowingly**

9 **(2) fails, or causes another to fail, to disclose a material fact; and**
 10 **as a result thereof has received any amount as benefits to which the**
 11 **individual is not entitled under this article, shall be liable to repay such**
 12 **amount, with interest at the rate of one-half percent (0.5%) per**
 13 **month, to the commissioner department for the unemployment**
 14 **insurance benefit fund or to have such amount deducted from any**
 15 **benefits otherwise payable to the individual under this article, within**
 16 **the six (6) year period following the later of the date of the filing of the**
 17 **claim or statement that resulted in the payment of such benefits; if the**
 18 **existence of such misrepresentation or nondisclosure has become final**
 19 **by virtue of an unappealed determination of a deputy; or a decision of**
 20 **an administrative law judge; or the review board; or by a court of**
 21 **competent jurisdiction: the department establishes that an**
 22 **overpayment has occurred or the date that the determination of an**
 23 **overpayment becomes final following the exhaustion of all appeals.**

24 ~~(b)~~ **(d) Any individual who, for any reason other than**
 25 **misrepresentation or nondisclosure as specified in subsection (a), (c),**
 26 **has received any amount as benefits to which the individual is not**
 27 **entitled under this article or because of the subsequent receipt of**
 28 **income deductible from benefits which is allocable to the week or**
 29 **weeks for which such benefits were paid becomes not entitled to such**
 30 **benefits under this article shall be liable to repay such amount to the**
 31 **commissioner department for the unemployment insurance benefit**
 32 **fund or to have such amount deducted from any benefits otherwise**
 33 **payable to the individual under this article, within the three (3) year**
 34 **period following the later of the date of the filing of the claim or**
 35 **statement that resulted in the payment of such benefits; if the existence**
 36 **of such reason has become final by virtue of an unappealed**
 37 **determination of a deputy or a decision of an administrative law judge;**
 38 **or the review board; or by a court of competent jurisdiction: the**
 39 **department establishes that the overpayment occurred or the date**
 40 **that the determination that an overpayment occurred becomes**
 41 **final following the exhaustion of all appeals.**

42 ~~(c)~~ **(e) When benefits are paid to an individual who was eligible or**
 43 **qualified to receive such payments, but when such payments are made**
 44 **because of the failure of representatives or employees of the department**
 45 **to transmit or communicate to such individual notice of suitable work**
 46 **offered, through the department, to such individual by an employing**
 47 **unit, then and in such cases, the individual shall not be required to**
 48 **repay or refund amounts so received, but such payments shall be**
 49 **deemed to be benefits improperly paid.**

50 ~~(d)~~ **(f) Where it is finally determined by a deputy, an administrative**
 51 **law judge, the review board, or a court of competent jurisdiction that an**

1 individual has received benefits to which the individual is not entitled
 2 under this article, the ~~commissioner~~ **department** shall relieve the
 3 affected employer's experience account of any benefit charges directly
 4 resulting from such overpayment. However, an employer's experience
 5 account will not be relieved of the charges resulting from an
 6 overpayment of benefits which has been created by a retroactive
 7 payment by such employer directly or indirectly to the claimant for a
 8 period during which the claimant claimed and was paid benefits unless
 9 the employer reports such payment by the end of the calendar quarter
 10 following the calendar quarter in which the payment was made or
 11 unless and until the overpayment has been collected. Those employers
 12 electing to make payments in lieu of contributions shall not have their
 13 account relieved as the result of any overpayment unless and until such
 14 overpayment has been repaid to the unemployment insurance benefit
 15 fund.

16 ~~(e)~~ **(g)** Where any individual is liable to repay any amount to the
 17 ~~commissioner~~ **department** for the unemployment insurance benefit
 18 fund for the restitution of benefits to which the individual is not entitled
 19 under this article, the amount due may be collectible without interest,
 20 **except as otherwise provided in subsection (c)**, by civil action in the
 21 name of the state of Indiana, on relation of the department, which
 22 remedy by civil action shall be in addition to all other existing remedies
 23 and to the methods for collection provided in this ~~section~~ **article**.

24 ~~(f)~~ **(h)** Liability for repayment of benefits paid to an individual (other
 25 than an individual employed by an employer electing to make payments
 26 in lieu of contributions) for any week may be waived upon the request
 27 of the individual if:

28 (1) the benefits were received by the individual without fault of the
 29 individual;

30 (2) the benefits were the result of payments made:

31 **(A)** during the pendency of an appeal before an administrative
 32 law judge or the review board under IC 22-4-17 under which the
 33 individual is determined to be ineligible for benefits; **or**

34 **(B) because of an error by the employer or the department;**
 35 and

36 (3) repayment would cause economic hardship **to the individual**.

37 SECTION 24. IC 22-4-13-1.1 IS ADDED TO THE INDIANA
 38 CODE AS A NEW SECTION TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2006]: **Sec. 1.1. (a) Notwithstanding any**
 40 **other provisions of this article, if an individual knowingly:**

41 **(1) fails to disclose amounts earned during any week in the**
 42 **individual's waiting period, benefit period, or extended benefit**
 43 **period; or**

44 **(2) fails to disclose or has falsified any fact;**

45 **that would disqualify the individual for benefits, reduce the**
 46 **individual's benefits, or render the individual ineligible for benefits**
 47 **or extended benefits, the individual forfeits any wage credits**
 48 **earned or any benefits or extended benefits that might otherwise be**
 49 **payable to the individual for the period in which the failure to**
 50 **disclose or falsification occurs.**

51 **(b) In addition to amounts forfeited under subsection (a), an**

1 individual is subject to the following civil penalties for each
 2 instance in which the individual knowingly fails to disclose or
 3 falsifies any fact that if accurately reported to the department
 4 would disqualify the individual for benefits, reduce the individual's
 5 benefits, or render the individual ineligible for benefits or extended
 6 benefits:

7 (1) For the first instance, an amount equal to twenty-five
 8 percent (25%) of the benefit overpayment.

9 (2) For the second instance, an amount equal to fifty percent
 10 (50%) of the benefit overpayment.

11 (3) For the third and each subsequent instance, an amount
 12 equal to one hundred percent (100%) of the benefit
 13 overpayment.

14 (c) The department's determination under this section constitutes
 15 an initial determination under IC 22-4-17-2(e) and is subject to a
 16 hearing and review under IC 22-4-17-3 through IC 22-4-17-15.

17 (d) Interest and civil penalties collected under this chapter shall
 18 be deposited in the special employment and training services fund
 19 established under IC 22-4-25-1.

20 SECTION 25. IC 22-4-14-2 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) An unemployed
 22 individual is eligible to receive benefits with respect to any week only
 23 if the individual has:

24 (1) registered for work at an employment office or branch thereof
 25 or other agency designated by the commissioner within the time
 26 limits that the ~~board~~ **department** by rule adopts; and

27 (2) subsequently reported with the frequency and in the manner,
 28 either in person or in writing, that the ~~board~~ **department** by rule
 29 adopts.

30 (b) Failure to comply with subsection (a) shall be excused by the
 31 commissioner or the commissioner's authorized representative upon a
 32 showing of good cause therefor. The ~~board~~ **department** shall by rule
 33 waive or alter the requirements of this section as to such types of cases
 34 or situations with respect to which the ~~commissioner~~ **department** finds
 35 that compliance with such requirements would be oppressive or would
 36 be inconsistent with the purposes of this article.

37 (c) The department shall provide job counseling or training to an
 38 individual who remains unemployed for at least four (4) weeks. The
 39 manner and duration of the counseling shall be determined by the
 40 ~~board~~ **department**.

41 (d) ~~The board may by rule prescribe procedures for the issuance of~~
 42 ~~unemployment compensation warrants from the local office.~~

43 (d) **An individual who is receiving benefits as determined under**
 44 **IC 22-4-15-1(c)(8) is entitled to complete the reporting, counseling,**
 45 **or training that must be conducted in person at a one stop center**
 46 **selected by the individual. The department shall advise an eligible**
 47 **individual that this option is available.**

48 SECTION 26. IC 22-4-14-3 IS AMENDED TO READ AS
 49 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) ~~This section does~~
 50 ~~not apply to~~ An individual who is receiving benefits as determined
 51 under IC 22-4-15-1(c)(8) **may restrict the individual's availability**

1 **because of the individual's need to address the physical,**
 2 **psychological, or legal effects of being a victim of domestic or**
 3 **family violence (as defined in IC 31-9-2-42).**

4 (b) An unemployed individual shall be eligible to receive benefits
 5 with respect to any week only if the individual:

6 (1) is physically and mentally able to work;

7 (2) is available for work;

8 (3) is found by the department to be making an effort to secure
 9 full-time work; and

10 (4) participates in reemployment services, such as job search
 11 assistance services, if the individual has been determined to be
 12 likely to exhaust regular benefits and to need reemployment
 13 services under a profiling system established by the ~~commissioner~~;
 14 **department**, unless the ~~commissioner~~ **department** determines
 15 that:

16 (A) the individual has completed the reemployment services; or

17 (B) failure by the individual to participate in or complete the
 18 reemployment services is excused by the director under
 19 IC 22-4-14-2(b).

20 The term "effort to secure full-time work" shall be defined by the board
 21 through rule which shall take into consideration whether such
 22 individual has a reasonable assurance of reemployment and, if so, the
 23 length of the prospective period of unemployment. However, if an
 24 otherwise eligible individual is unable to work or unavailable for work
 25 on any normal work day of the week the individual shall be eligible to
 26 receive benefits with respect to such week reduced by one-third (1/3)
 27 of the individual's weekly benefit amount for each day of such inability
 28 to work or unavailability for work.

29 (c) For the purpose of this article, unavailability for work of an
 30 individual exists in, but is not limited to, any case in which, with
 31 respect to any week, it is found:

32 (1) that such individual is engaged by any unit, agency, or
 33 instrumentality of the United States, in charge of public works or
 34 assistance through public employment; or any unit, agency, or
 35 instrumentality of this state, or any political subdivision thereof, in
 36 charge of any public works or assistance through public
 37 employment;

38 (2) that such individual is in full-time active military service of the
 39 United States, or is enrolled in civilian service as a conscientious
 40 objector to military service;

41 (3) that such individual is suspended for misconduct in connection
 42 with the individual's work; or

43 (4) that such individual is in attendance at a regularly established
 44 public or private school during the customary hours of the
 45 individual's occupation or is in any vacation period intervening
 46 between regular school terms during which the individual is a
 47 student. However, this subdivision does not apply to any individual
 48 who is attending a regularly established school, has been regularly
 49 employed and upon becoming unemployed makes an effort to
 50 secure full-time work and is available for suitable full-time work
 51 with the individual's last employer, or is available for any other

1 full-time employment deemed suitable.

2 (d) Notwithstanding any other provisions in this section or
 3 IC 22-4-15-2, no otherwise eligible individual shall be denied benefits
 4 for any week because the individual is in training with the approval of
 5 the department, nor shall such individual be denied benefits with
 6 respect to any week in which the individual is in training with the
 7 approval of the department by reason of the application of the
 8 provisions of this section with respect to the availability for work or
 9 active search for work or by reason of the application of the provisions
 10 of IC 22-4-15-2 relating to failure to apply for, or the refusal to accept,
 11 suitable work. The ~~board~~ **department** shall by rule prescribe the
 12 conditions under which approval of such training will be granted.

13 SECTION 27. IC 22-4-15-8 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. Notwithstanding any
 15 other provisions of this article, benefits otherwise payable for any week
 16 under this article shall not be denied or reduced on account of any
 17 payment or payments the claimant receives, has received, will receive,
 18 or accrues right to receive with respect to or based upon such week
 19 under a private unemployment benefit plan financed in whole or part by
 20 ~~his~~ **the claimant's** employer or former employer. No claim for
 21 repayment of benefits and no deduction from benefits otherwise
 22 payable under this article shall be made under ~~IC 22-4-13-1(b)~~
 23 **IC 22-4-13-1(d)** and IC 22-4-13-1(e) because of payments which have
 24 been or will be made under such private unemployment benefit plans.

25 SECTION 28. IC 22-4-17-1 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Claims for
 27 benefits shall be made in accordance with ~~such regulations as the board~~
 28 ~~may prescribe; however,~~ **rules adopted by the department**. The ~~board~~
 29 **department** shall ~~prescribe~~ **adopt** reasonable procedures consistent
 30 with the provisions of this article for the expediting of the taking of
 31 claims of individuals for benefits in instances of mass layoffs by
 32 employers, the purpose of which shall be to minimize the amount of
 33 time required for such individuals to file claims upon becoming
 34 unemployed as the result of such mass layoffs.

35 (b) Except when the result would be inconsistent with the other
 36 provisions of this article, as provided in the rules of the ~~board~~
 37 **department**, the provisions of this article which apply to claims for, or
 38 the payment of, regular benefits shall apply to claims for, and the
 39 payment of, extended benefits.

40 (c) Whenever an extended benefit period is to become effective in
 41 this state as a result of a state "on" indicator, or an extended benefit
 42 period is to be terminated in this state as a result of a state "off"
 43 indicator, the commissioner shall make an appropriate public
 44 announcement.

45 (d) Computations required by the provisions of IC 22-4-2-34(e) shall
 46 be made by the ~~commissioner~~ **department** in accordance with
 47 regulations prescribed by the United States ~~Secretary~~ **Department** of
 48 Labor.

49 (e) Each employer shall display and maintain in places readily
 50 accessible to all employees posters concerning its regulations and shall
 51 make available to each such individual at the time the individual

1 becomes unemployed printed benefit rights information furnished by
2 the department.

3 SECTION 29. IC 22-4-17-2 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) When an
5 individual files an initial claim, the department shall promptly make a
6 determination of the individual's status as an insured worker in a form
7 prescribed by the ~~board~~: **department**. A written notice of the
8 determination of insured status shall be furnished to the individual
9 promptly. Each such determination shall be based on and include a
10 written statement showing the amount of wages paid to the individual
11 for insured work by each employer during the individual's base period
12 and shall include a finding as to whether such wages meet the
13 requirements for the individual to be an insured worker, and, if so, the
14 week ending date of the first week of the individual's benefit period, the
15 individual's weekly benefit amount, and the maximum amount of
16 benefits that may be paid to the individual for weeks of unemployment
17 in the individual's benefit period. For the individual who is not insured,
18 the notice shall include the reason for the determination. Unless the
19 individual, within ten (10) days after such determination was mailed to
20 the individual's last known address, or otherwise delivered to the
21 individual, asks a hearing thereon before an administrative law judge,
22 such determination shall be final and benefits shall be paid or denied in
23 accordance therewith.

24 (b) ~~Except as provided in subsection (i);~~ The department shall
25 promptly furnish each employer in the base period whose experience
26 or reimbursable account is potentially chargeable with benefits to be
27 paid to such individual with a notice in writing of the employer's
28 benefit liability. Such notice shall contain the date, the name and Social
29 Security account number of the individual, the ending date of the
30 individual's base period, and the week ending date of the first week of
31 the individual's benefit period. Such notice shall further contain
32 information as to the proportion of benefits chargeable to the
33 employer's experience or reimbursable account in ratio to the earnings
34 of such individual from such employer. Unless the employer, within ten
35 (10) days after such notice of benefit liability was mailed to the
36 employer's last known address, or otherwise delivered to the employer,
37 asks a hearing thereon before an administrative law judge, such
38 determination shall be final and benefits paid shall be charged in
39 accordance therewith.

40 (c) An employing unit, including an employer, having knowledge of
41 any facts which may affect an individual's eligibility or right to waiting
42 period credits or benefits, shall notify the department of such facts
43 within ten (10) days after the mailing of notice that a former employee
44 has filed an initial or additional claim for benefits on a form prescribed
45 by the ~~board~~: **department**.

46 (d) In addition to the foregoing determination of insured status by the
47 department, the deputy shall, throughout the benefit period, determine
48 the claimant's eligibility with respect to each week for which the
49 claimant claims waiting period credit or benefit rights, the validity of
50 the claimant's claim therefor, and the cause for which the claimant left
51 the claimant's work, or may refer such claim to an administrative law

1 judge who shall make the initial determination with respect thereto in
2 accordance with the procedure in IC 22-4-17-3.

3 (e) In cases where the claimant's benefit eligibility or disqualification
4 is disputed, the department shall promptly notify the claimant and the
5 employer or employers directly involved or connected with the issue
6 raised as to the validity of such claim, the eligibility of the claimant for
7 waiting period credit or benefits, or the imposition of a disqualification
8 period or penalty, or the denial thereof, and of the cause for which the
9 claimant left the claimant's work, of such determination and the reasons
10 thereof. Except as otherwise hereinafter provided in this subsection
11 regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the
12 claimant or such employer, within ten (10) days after such notification
13 was mailed to the claimant's or the employer's last known address, or
14 otherwise delivered to the claimant or the employer, asks a hearing
15 before an administrative law judge thereon, such decision shall be final
16 and benefits shall be paid or denied in accordance therewith. With
17 respect to notice of disputed administrative determination or decision
18 mailed or otherwise delivered to the claimant or employer either of
19 whom is located in Alaska, Hawaii, or Puerto Rico, unless such
20 claimant or employer, within fifteen (15) days after such notification
21 was mailed to the claimant's or employer's last known address or
22 otherwise delivered to the claimant or employer, asks a hearing before
23 an administrative law judge thereon, such decision shall be final and
24 benefits shall be paid or denied in accordance therewith. If such hearing
25 is desired, the request therefor shall be filed with the ~~commissioner~~
26 **department** in writing within the prescribed periods as above set forth
27 in this subsection and shall be in such form as the ~~board~~ **department**
28 may prescribe. In the event a hearing is requested by an employer or the
29 department after it has been administratively determined that benefits
30 should be allowed to a claimant, entitled benefits shall continue to be
31 paid to said claimant unless said administrative determination has been
32 reversed by a due process hearing. Benefits with respect to any week
33 not in dispute shall be paid promptly regardless of any appeal.

34 (f) A person may not participate on behalf of the department in any
35 case in which the person is an interested party.

36 (g) Solely on the ground of obvious administrative error appearing on
37 the face of an original determination, and within the benefit year of the
38 affected claims, the commissioner, or a representative authorized by the
39 commissioner to act in the commissioner's behalf, may reconsider and
40 direct the deputy to revise the original determination so as to correct the
41 obvious error appearing therein. Time for filing an appeal and
42 requesting a hearing before an administrative law judge regarding the
43 determinations handed down pursuant to this subsection shall begin on
44 the date following the date of revision of the original determination and
45 shall be filed with the commissioner in writing within the prescribed
46 periods as above set forth in subsection (c).

47 (h) Notice to the employer and the claimant that the determination of
48 the department is final if a hearing is not requested shall be prominently
49 displayed on the notice of the determination which is sent to the
50 employer and the claimant.

51 (i) If an allegation of the applicability of IC 22-4-15-1(c)(8) is made

1 by the individual at the time of the claim for benefits, the department
 2 shall not notify the employer ~~that a claim for benefits has been made~~
 3 **of the claimant's current address or physical location.**

4 SECTION 30. IC 22-4-17-4 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. ~~(a)~~ The
 6 **commissioner department** shall **appoint employ** one (1) or more
 7 administrative law judges to hear and decide disputed claims. ~~Such~~
 8 ~~administrative law judges shall be full-time salaried employees of the~~
 9 ~~department.~~ Administrative law judges **appointed employed** under this
 10 section are not subject to IC 4-21.5 or any other statute regulating
 11 administrative law judges, unless specifically provided.

12 ~~(b) The unemployment insurance board may authorize employment~~
 13 ~~of part time administrative law judges for limited periods.~~

14 SECTION 31. IC 22-4-17-6 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. The manner in
 16 which disputed claims shall be presented and the conduct of hearings
 17 and appeals shall be in accordance with rules adopted by the ~~board~~
 18 **department** for determining the rights of the parties, whether or not the
 19 rules conform to common law or statutory rules of evidence and other
 20 technical rules of procedure. A full and complete record shall be kept
 21 of all proceedings in connection with a disputed claim. The testimony
 22 at any hearing upon a disputed claim need not be transcribed unless the
 23 disputed claim is further appealed. Each party to a hearing before an
 24 administrative law judge held under section 3 of this chapter shall be
 25 mailed a notice of the hearing at least ten (10) days before the date of
 26 the hearing specifying the place and time of the hearing and identifying
 27 the issues to be decided. If a hearing so scheduled has not commenced
 28 within at least sixty (60) minutes of the time for which it was
 29 scheduled, then a party involved in the hearing may request a
 30 continuance of the hearing. ~~A request for a continuance shall be~~
 31 ~~submitted to the administrative law judge scheduled to conduct the~~
 32 ~~hearing if the administrative law judge is available to receive the~~
 33 ~~request, or otherwise may be submitted to the local office in which or~~
 34 ~~nearest to which the hearing is scheduled to be held.~~ Upon submission
 35 of a request for continuance of a hearing under circumstances provided
 36 in this section, the continuance shall be granted unless the party
 37 requesting the continuance was responsible for the delay in the
 38 commencement of the hearing as originally scheduled. In the latter
 39 instance, the continuance shall be discretionary with the administrative
 40 law judge. Testimony or other evidence introduced by a party at a
 41 hearing before an administrative law judge or the review board that
 42 another party to the hearing:

43 (1) is not prepared to meet; and

44 (2) by ordinary prudence could not be expected to have anticipated;
 45 shall be good cause for continuance of the hearing and upon motion
 46 such continuance shall be granted.

47 SECTION 32. IC 22-4-17-7 IS AMENDED TO READ AS
 48 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. In the discharge of
 49 the duties imposed by this article, any member of the board, **the**
 50 **department**, the review board, or an administrative law judge, or any
 51 duly authorized representative of any of them, shall have power to

1 administer oaths and affirmations, take depositions, certify to official
 2 acts, and issue and serve subpoenas to compel the attendance of
 3 witnesses and the production of books, papers, correspondence,
 4 memoranda, and other records deemed necessary as evidence in
 5 connection with the disputed claim or the administration of this article.

6 SECTION 33. IC 22-4-17-8 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. In case of
 8 contumacy by, or refusal to obey a subpoena issued to, any person **in**
 9 **the administration of this article**, any court of this state within the
 10 jurisdiction of which the inquiry is carried on or within the jurisdiction
 11 of which said person guilty of contumacy or refusal to obey is found or
 12 resides or transacts business, upon application by the board, **the**
 13 **department**, or the review board or a duly authorized representative of
 14 ~~either~~, **any of these**, shall have jurisdiction to issue to such person an
 15 order requiring such person to appear before the board, **the**
 16 **department**, the review board, an administrative law judge, or the duly
 17 authorized representative of any of these, there to produce evidence if
 18 so ordered, or there to give testimony touching the matter in question
 19 or under investigation. Any failure to obey such order of the court may
 20 be punished by said court as a contempt thereof.

21 SECTION 34. IC 22-4-17-8.5 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8.5. **(a) As used in this**
 23 **section, "interested party" has the meaning set forth in 646**
 24 **IAC 3-12-1.**

25 **(b)** An administrative law judge ~~and~~ **or** the review board may hold a
 26 hearing under this chapter by telephone if any of the following
 27 conditions exist:

28 (1) The claimant or the employer is not located in Indiana.

29 (2) ~~All of the following conditions exist:~~

30 ~~(A) The claimant and the employer are located in Indiana.~~

31 ~~(B) The claimant or the employer~~ **An interested party** requests
 32 without **an** objection **being filed as provided in 646**
 33 **IAC 3-12-21** that the hearing be held by telephone.

34 ~~(C) The administrative law judge or the review board determines~~
 35 ~~that the distance between the location of the claimant and the~~
 36 ~~location of the employer is so great that a hearing held by~~
 37 ~~telephone is justified under the circumstances.~~

38 ~~(3) A~~ **An interested party** cannot appear in person because of an
 39 illness or injury to the party.

40 **(4) In the case of a hearing before an administrative law judge,**
 41 **the administrative law judge determines without any interested**
 42 **party filing an objection as provided in 646 IAC 3-12-21 that a**
 43 **hearing by telephone is proper and just.**

44 ~~(4)~~ **(5)** In the case of a hearing before the review board, the issue
 45 to be adjudicated does not require both parties to be present.

46 ~~(5)~~ **(6) In the case of a hearing before the review board, the**
 47 ~~unemployment insurance~~ review board has determined that a
 48 hearing by telephone is proper and just.

49 SECTION 35. IC 22-4-17-9 IS AMENDED TO READ AS
 50 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. No person shall be
 51 excused from attending and testifying or from producing books, papers,

1 correspondence, memoranda, and other records before the board, **the**
 2 **department**, the review board, an administrative law judge, or the duly
 3 authorized representative of any of them in obedience to the subpoena
 4 of any of them in any cause or proceeding before any of them on the
 5 ground that the testimony or evidence, documentary or otherwise,
 6 required of ~~him~~ **the person** may tend to incriminate ~~him~~ **the person** or
 7 subject ~~him~~ **the person** to a penalty or forfeiture, but no individual shall
 8 be prosecuted or subjected to any penalty or forfeiture for or on account
 9 of any transaction, matter, or thing concerning which ~~he~~ **the person** is
 10 compelled after having claimed ~~his~~ **the** privilege against
 11 self-incrimination to testify or produce evidence, documentary or
 12 otherwise, except that such individual so testifying shall not be exempt
 13 from prosecution and punishment for perjury committed in so
 14 testifying. Any testimony or evidence submitted in due course before
 15 the board, **the department**, the review board, an administrative law
 16 judge, or any duly authorized representative of any of them shall be
 17 deemed a communication presumptively privileged with respect to any
 18 civil action except actions to enforce the provisions of this article.

19 SECTION 36. IC 22-4-17-14 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14. (a) This section
 21 applies to notices given under sections 2, 3, 11, and 12 of this chapter.
 22 This section does not apply to rules adopted by the board **or the**
 23 **department**, unless specifically provided.

24 (b) As used in this section, "notices" includes mailings of notices,
 25 determinations, decisions, orders, motions, or the filing of any
 26 document with the appellate division or review board.

27 (c) If a notice is served through the United States mail, three (3) days
 28 must be added to a period that commences upon service of that notice.

29 (d) The filing of a document with the appellate division or review
 30 board is complete on the earliest of the following dates that apply to the
 31 filing:

32 (1) The date on which the document is delivered to the appellate
 33 division or review board.

34 (2) The date of the postmark on the envelope containing the
 35 document if the document is mailed to the appellate division or
 36 review board by the United States Postal Service.

37 (3) The date on which the document is deposited with a private
 38 carrier, as shown by a receipt issued by the carrier, if the document
 39 is sent to the appellate division or review board by a private carrier.

40 SECTION 37. IC 22-4-18-2 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) The Indiana
 42 unemployment insurance board is created. The board is responsible for
 43 **the oversight of** the unemployment insurance program. The board shall
 44 report annually to the governor on the status of unemployment
 45 insurance together with recommendations for maintaining the solvency
 46 of the unemployment insurance benefit fund. The department staff shall
 47 provide support to the board. The unemployment insurance board shall
 48 consist of nine (9) members, who shall be appointed by the governor,
 49 as follows:

50 (1) Four (4) members shall be appointed as representatives of labor
 51 and its interests.

1 (2) One (1) member shall be appointed as a representative of the
2 state and its interest and of the public at large.

3 (3) Two (2) members shall be appointed as representatives of the
4 large employers of the state.

5 (4) Two (2) members shall be appointed as representatives of the
6 independent merchants and small employers of the state.

7 All appointments shall be made for terms of four (4) years. All
8 appointments to full terms or to fill vacancies shall be made so that all
9 terms end on March 31.

10 (b) Every Indiana unemployment insurance board member so
11 appointed shall serve until a successor shall have been appointed and
12 qualified. Before entering upon the discharge of official duties, each
13 member of the board shall take and subscribe to an oath of office,
14 which shall be filed in the office of the secretary of state. Any vacancy
15 occurring in the membership of the board for any cause shall be filled
16 by appointment by the governor for the unexpired term. The governor
17 may, at any time, remove any member of the board for misconduct,
18 incapacity, or neglect of duty. Each member of the board shall be
19 entitled to receive as compensation for the member's services the sum
20 of one hundred dollars (\$100) per month for each and every month
21 which ~~he~~ **the member** devotes to the actual performance of the
22 member's duties, as prescribed in this article, but the total amount of
23 such compensation shall not exceed the sum of twelve hundred dollars
24 (\$1,200) per year. In addition to the compensation hereinbefore
25 prescribed, each member of the board shall be entitled to receive the
26 amount of traveling and other necessary expenses actually incurred
27 while engaged in the performance of official duties.

28 (c) The board ~~shall~~ **may** hold one (1) regular meeting each month and
29 such called meetings as may be deemed necessary **by the**
30 **commissioner or the board**. The April meeting shall be known as the
31 annual meeting. Five (5) members of the board constitute a quorum for
32 the transaction of business. At its first meeting and at each annual
33 meeting held thereafter, the board shall organize by the election of a
34 president and vice president from its own number, each of whom,
35 except those first elected, shall serve for a term of one (1) year and until
36 a successor is elected.

37 SECTION 38. IC 22-4-19-1 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. ~~It shall be the duty~~
39 ~~of The board to administer the provisions of this article and; in addition~~
40 ~~to all other powers conferred on the board;~~ it shall have the power and
41 authority to adopt, amend, or rescind such rules and regulations to
42 employ such persons, make such expenditures, require such reports,
43 make such investigations and take such other action as it may deem
44 necessary or suitable for the proper administration of this article. All
45 rules and regulations issued under the provisions of this article shall be
46 effective upon publication in the manner hereinafter provided and shall
47 have the force and effect of law. The board may prescribe the extent,
48 if any, to which any rule or regulation so issued or legal interpretation
49 of this article shall be with or without retroactive effect. Whenever the
50 board believes that a change in contribution or benefit rates will
51 become necessary to protect the solvency of the **unemployment**

1 **insurance benefit** fund, it shall promptly so inform the governor and
2 the general assembly, and make recommendations with respect thereto.

3 SECTION 39. IC 22-4-19-6, AS AMENDED BY P.L.4-2005,
4 SECTION 131, IS AMENDED TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) Each employing unit shall
6 keep true and accurate records containing information the department
7 considers necessary. These records are:

- 8 (1) open to inspection; and
- 9 (2) subject to being copied;

10 by an authorized representative of the department at any reasonable
11 time and as often as may be necessary. The ~~commissioner,~~
12 **department**, the review board, or an administrative law judge may
13 require from any employing unit any verified or unverified report, with
14 respect to persons employed by it, which is considered necessary for
15 the effective administration of this article.

16 (b) Except as provided in subsections (d) and (f), information
17 obtained or obtained from any person in the administration of this
18 article and the records of the department relating to the unemployment
19 tax, the skills 2016 assessment under IC 22-4-10.5-3, or the payment of
20 benefits is confidential and may not be published or be open to public
21 inspection in any manner revealing the individual's or the employing
22 unit's identity, except in obedience to an order of a court or as provided
23 in this section.

24 (c) A claimant at a hearing before an administrative law judge or the
25 review board shall be supplied with information from the records
26 referred to in this section to the extent necessary for the proper
27 presentation of the subject matter of the appearance. The ~~commissioner~~
28 **department** may make the information necessary for a proper
29 presentation of a subject matter before an administrative law judge or
30 the review board available to an agency of the United States or an
31 Indiana state agency.

32 (d) The ~~commissioner~~ **department** may release the following
33 information:

- 34 (1) Summary statistical data may be released to the public.
- 35 (2) Employer specific information known as ES 202 data and data
36 resulting from enhancements made through the business
37 establishment list improvement project may be released to the
38 Indiana economic development corporation only for the following
39 purposes:
 - 40 (A) The purpose of conducting a survey.
 - 41 (B) The purpose of aiding the officers or employees of the
42 Indiana economic development corporation in providing
43 economic development assistance through program development,
44 research, or other methods.
 - 45 (C) Other purposes consistent with the goals of the Indiana
46 economic development corporation and not inconsistent with
47 those of the department.

- 48 (3) Employer specific information known as ES 202 data and data
49 resulting from enhancements made through the business
50 establishment list improvement project may be released to the
51 budget agency only for aiding the employees of the budget agency

- 1 in forecasting tax revenues.
- 2 (4) Information obtained from any person in the administration of
- 3 this article and the records of the department relating to the
- 4 unemployment tax or the payment of benefits for use by the
- 5 following governmental entities:
- 6 (A) department of state revenue; or
- 7 (B) state or local law enforcement agencies;
- 8 only if there is an agreement that the information will be kept
- 9 confidential and used for legitimate governmental purposes.
- 10 (e) The ~~commissioner~~ **department** may make information available
- 11 under subsection (d)(1), (d)(2), or (d)(3) only:
- 12 (1) if:
- 13 (A) data provided in summary form cannot be used to identify
- 14 information relating to a specific employer or specific employee;
- 15 or
- 16 (B) there is an agreement that the employer specific information
- 17 released to the Indiana economic development corporation or the
- 18 budget agency will be treated as confidential and will be released
- 19 only in summary form that cannot be used to identify information
- 20 relating to a specific employer or a specific employee; and
- 21 (2) after the cost of making the information available to the person
- 22 requesting the information is paid under IC 5-14-3.
- 23 (f) In addition to the confidentiality provisions of subsection (b), **the**
- 24 **fact that a claim has been made under IC 22-4-15-1(c)(8) and** any
- 25 information furnished by the claimant or an agent to the department to
- 26 verify a claim of domestic or family violence ~~is~~ **are** confidential. ~~This~~
- 27 **Information concerning the claimant's current address or physical**
- 28 **location** shall not be disclosed to the employer or any other person.
- 29 Disclosure is subject to the following **additional** restrictions:
- 30 (1) The claimant must be notified before any release of
- 31 information.
- 32 (2) Any disclosure is subject to redaction of unnecessary
- 33 identifying information, including the claimant's address.
- 34 (g) An employee:
- 35 (1) of the department who recklessly violates subsection (a), (c),
- 36 (d), (e), or (f); or
- 37 (2) of any governmental entity listed in subsection (d)(4) ~~of this~~
- 38 ~~chapter~~ who recklessly violates subsection (d)(4); ~~of this chapter;~~
- 39 commits a Class B misdemeanor.
- 40 (h) An employee of the Indiana economic development corporation
- 41 or the budget agency who violates subsection (d) or (e) commits a Class
- 42 B misdemeanor.
- 43 (i) **An employer or agent of an employer that becomes aware that**
- 44 **a claim has been made under IC 22-4-15-1(c)(8) shall maintain that**
- 45 **information as confidential.**
- 46 SECTION 40. IC 22-4-19-7 IS AMENDED TO READ AS
- 47 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. In any case where
- 48 an employing unit, or any officer, member, or agent thereof or any
- 49 other person having possession of the records thereof, shall fail or
- 50 refuse upon demand by the board, **the department**, the review board,
- 51 or an administrative law judge, or the duly authorized representative of

1 any of them, to produce or permit the examination or copying of any
2 book, paper, account, record, or other data pertaining to payrolls or
3 employment or ownership of interests or stock in any employing unit,
4 or bearing upon the correctness of any contribution report or the skills
5 2016 training assessment under IC 22-4-10.5-3, or for the purpose of
6 making a report as required by this article where none has been made,
7 then and in that event the board, **the department**, the review board, or
8 the administrative law judge, or the duly authorized representative of
9 any of them, may by issuance of a subpoena require the attendance of
10 such employing unit, or any officer, member, or agent thereof or any
11 other person having possession of the records thereof, and take
12 testimony with respect to any such matter and may require any such
13 person to produce any books or records specified in such subpoena.

14 SECTION 41. IC 22-4-19-8 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) The board, **the**
16 **department**, the review board, or the administrative law judge, or the
17 duly authorized representative of any of them, at any such hearing shall
18 have power to administer oaths to any such person or persons. When
19 any person called as a witness by such subpoena, duly signed, and
20 served upon ~~him~~ **the witness** by any duly authorized person or by the
21 sheriff of the county of which such person is a resident, or wherein is
22 located the principal office of such employing unit or wherein such
23 records are located or kept, shall fail to obey such subpoena to appear
24 before the board, **the department**, the review board, or the
25 administrative law judge, or the authorized representative of any of
26 them, or shall refuse to testify or to answer any questions, or to produce
27 any book, record, paper, or other data when notified and demanded so
28 to do, such failure or refusal shall be reported to the attorney general for
29 the state of Indiana who shall thereupon institute proceedings by the
30 filing of a petition in the name of the state of Indiana on the relation of
31 the board, in the circuit court or superior or other court of competent
32 jurisdiction of the county where such witness resides, or wherein such
33 records are located or kept, to compel obedience of and by such
34 witness.

35 (b) Such petition shall set forth the facts and circumstances of the
36 demand for and refusal or failure to permit the examination or copying
37 of such records or the failure or refusal of such witness to testify in
38 answer to such subpoena or to produce the records so required by such
39 subpoena. Such court, upon the filing and docketing of such petition
40 shall thereupon promptly issue an order to the defendants named in said
41 petition, to produce forthwith in such court or at a place in such county
42 designated in such order, for the examination or copying by the board,
43 **the department**, the review board, an administrative law judge, or the
44 duly authorized representative of any of them, the records, books, or
45 documents so described and to testify concerning matters described in
46 such petition. Unless such defendants to such petition shall appear in
47 said court upon a day specified in such order, which said day shall be
48 not more than ten (10) days after the date of issuance of such order, and
49 offer, under oath, good and sufficient reasons why such examination or
50 copying should not be permitted, or why such subpoena should not be
51 obeyed, such court shall thereupon deliver to the board, **the**

1 **department**, the review board, **the** administrative law judge, or
 2 representative of any of them, for examination or copying, the records,
 3 books and documents so described in said petition and so produced in
 4 such court and shall order said defendants to appear in answer to the
 5 subpoena, and to testify concerning the subject matter of the inquiry.
 6 Any employing unit, or any officer, member, or agent thereof, or any
 7 other persons having possession of the records thereof who shall
 8 willfully disobey such order of the court after the same shall have been
 9 served upon him, shall be guilty of indirect contempt of such court from
 10 which such order shall have issued and may be adjudged in contempt
 11 of said court and punished therefor as provided by law.

12 SECTION 42. IC 22-4-22-3 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. The commissioner
 14 is authorized to enter into reciprocal agreements with the proper
 15 agencies under the laws of other states or jurisdictions or of the United
 16 States, which agreements shall become effective after filing with the
 17 secretary of state pursuant to ~~IC 22-4-19-2~~, **in accordance with rules**
 18 **adopted by the department under IC 4-22-2**, by the terms of which
 19 agreements:

20 (1) potential rights to benefits accumulated under the
 21 unemployment compensation laws of one (1) or more states or
 22 jurisdictions or of the United States, or both, may constitute the
 23 basis for the payment of benefits through a single appropriate
 24 agency under terms which the commissioner finds will be fair and
 25 reasonable to all affected interests and which will not result in any
 26 substantial loss to the fund; and

27 (2) wages or services in employment subject to an unemployment
 28 compensation law of another state or of the United States shall be
 29 deemed to be wages in employment for employers for the purpose
 30 of determining an individual's rights to unemployment
 31 compensation benefits under this article, and wages in employment
 32 for employers as defined in this article shall be deemed to be wages
 33 or services on the basis of which unemployment compensation
 34 under the law of another state or of the United States is payable,
 35 but no such arrangement shall be entered into unless it contains
 36 provisions for reimbursements to the unemployment insurance
 37 benefit fund for such of the unemployment compensation benefits
 38 paid under this part upon the basis of such wages or services, and
 39 provisions for reimbursements from the unemployment insurance
 40 benefit fund for such of the compensation paid under such other
 41 law upon the basis of wages for employment as defined in this
 42 article as the commissioner finds will be fair and reasonable to all
 43 affected interests.

44 SECTION 43. IC 22-4-22-5 IS AMENDED TO READ AS
 45 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. In order that the
 46 administration of this article and the unemployment ~~compensation~~
 47 **insurance** laws of other states or jurisdictions or of the United States
 48 of America will be promoted by cooperation between this state and
 49 such other states or jurisdictions or the appropriate agencies of the
 50 United States in exchanging services and making available facilities
 51 and information, the board **is and the department are** authorized to

1 make such investigations, secure and transmit such information, make
 2 available such services and facilities, and exercise such of the other
 3 powers provided in this article with respect to the administration of this
 4 article as ~~it deems~~ **deemed** necessary or appropriate to facilitate the
 5 administration of any unemployment ~~compensation insurance~~ law and
 6 in like manner to accept and utilize information, services, and facilities
 7 made available to this state by the agency or jurisdiction charged with
 8 the administration of any such other unemployment ~~compensation~~
 9 **insurance** law.

10 SECTION 44. IC 22-4-22-6 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) On request of an
 12 agency which administers an employment security law of another state
 13 or of a foreign government, and which has found in accordance with the
 14 provisions of such law that a claimant is liable to repay benefits
 15 received under such law by reason of having knowingly made a false
 16 statement or misrepresentation of a material fact, or who has knowingly
 17 failed to disclose a material fact, with respect to a claim taken in this
 18 state as an agent for such agency, the ~~board~~ **department** may collect
 19 from such claimant for the liable state the amount of such benefits to be
 20 refunded to such agency.

21 (b) In any case in which under this subsection a claimant is liable to
 22 repay any amount to the agency of another state, or of a foreign
 23 government, such amounts may be collected without interest by civil
 24 action in the name of the ~~board~~ **department** acting as agent for such
 25 agency.

26 SECTION 45. IC 22-4-23-1 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) The department
 28 shall establish and maintain free public employment and training offices
 29 in such number and in such places as may be necessary for the proper
 30 administration of this article and for the purpose of performing such
 31 duties as are within the purview of 29 U.S.C. 49 et seq. and 38 U.S.C.
 32 2000 through 2014 and any amendments thereto. The provisions of 29
 33 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014 are hereby declared
 34 accepted by the state in conformity with the terms of 29 U.S.C. 49 et
 35 seq. and 38 U.S.C. 2000 through 2014, and the state commits itself to
 36 the observation of and compliance with the requirements of 29 U.S.C.
 37 49 et seq. and 38 U.S.C. 2000 through 2014, and the department is
 38 constituted the agency of the state for all purposes of 29 U.S.C. 49 et
 39 seq. and 38 U.S.C. 2000 through 2014. All duties and powers conferred
 40 upon any other department, agency, or officer of the state relating to the
 41 establishment, maintenance, and operation of free public employment
 42 offices shall be vested in the ~~board~~ **department**. The ~~board~~
 43 **department** being charged with the duty to cooperate with any official
 44 or agency of the United States having powers or duties under the
 45 provisions of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014,
 46 shall be and is authorized and empowered to do and perform all things
 47 necessary to secure to this state the benefits of 29 U.S.C. 49 et seq. and
 48 38 U.S.C. 2000 through 2014. The department may cooperate with or
 49 enter into agreements with the railroad retirement board with respect to
 50 the establishment, maintenance, and use of free employment service
 51 facilities.

1 (b) The department may do all acts and things necessary or proper to
2 carry out the powers expressly granted under this article.

3 SECTION 46. IC 22-4-25-2 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2006]: Sec. 2. (a) As used in this section, "fund" refers to
6 the special employment and training services fund created under
7 section 1 of this chapter.

8 (b) The commissioner may allocate an amount not to exceed two
9 million dollars (\$2,000,000) annually from the fund to establish
10 reemployment training accounts to provide training and
11 reemployment services to department employees dislocated by:

12 (1) a reduction of funding for;

13 (2) a centralization or decentralization of; or

14 (3) the implementation of a more efficient technology or service
15 delivery method in connection with;

16 the programs and services provided under this article.

17 SECTION 47. IC 22-4-26-2 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. The fund shall be
19 administered exclusively for the purpose of this article, and money
20 withdrawn therefrom, except for deposit in the unemployment
21 insurance benefit fund and for refund, as provided in this article, and
22 except for amounts credited to the account of this state pursuant to 42
23 U.S.C. 1103, as amended, which shall be used exclusively as provided
24 in section 5 of this chapter, shall be used solely for the payment of
25 benefits. Payment of benefits and refunds shall be made in accordance
26 with the rules prescribed by the ~~board~~ **department** consistent with the
27 provisions of this article. Withdrawals from the fund except as provided
28 in section 5 of this chapter shall not be subject to any provisions of law
29 requiring specific appropriations or other formal release by state
30 officers of money in their custody.

31 SECTION 48. IC 22-4-29-4 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. If the employing unit
33 protests such assessment, upon written request it shall have an
34 opportunity to be heard, and such hearing shall be conducted by a
35 liability administrative law judge pursuant to the provisions of
36 IC 22-4-32-1 through IC 22-4-32-15. After the hearing the liability
37 administrative law judge shall immediately notify the employing unit
38 in writing of the finding, and the assessment, if any, so made shall be
39 final, in the absence of judicial review proceedings as provided in this
40 article, ~~fifteen (15)~~ **thirty (30)** days after such notice **of appeal** is
41 issued.

42 SECTION 49. IC 22-4-29-5 IS AMENDED TO READ AS
43 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. The finality of such
44 decision of the liability administrative law judge may be stayed for a
45 period of thirty (30) days from the date of service of notice on the ~~board~~
46 ~~of intention to seek a judicial review~~ **department of the appeal** of said
47 decision as provided in this article. ~~provided~~ Such notice is **must be**
48 served within ~~fifteen (15)~~ **thirty (30)** days after notice of the decision
49 of the liability administrative law judge is issued. If judicial review
50 proceedings are not instituted within the time provided for in this
51 article, the finality of said decision shall not be further stayed.

1 SECTION 50. IC 22-4-30-1 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. Any employer
 3 against whom contributions shall be assessed as provided in this article
 4 shall be restrained and enjoined upon the order of the ~~board~~
 5 **department** by proper proceedings instituted in the name of the state
 6 of Indiana, brought by the attorney general for the state of Indiana
 7 ~~and/or or~~ any prosecuting attorney at the request of the ~~board~~
 8 **department**, from engaging ~~and/or or~~ continuing in business in this
 9 state until the contributions, interest, penalties, and damages shall have
 10 been paid and until such employer shall have complied with the
 11 provisions of this article; and such attorneys shall prosecute violations
 12 of criminal provisions of this article upon request of the ~~board~~.
 13 **department.**

14 SECTION 51. IC 22-4-31-1 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **(a)** If any
 16 contributions, interest, penalties, or damages assessed under this article,
 17 or any portion thereof, be not paid within one hundred twenty (120)
 18 days after the same is found to be due, a receiver may be appointed by
 19 the circuit or superior court of the county in which such employer
 20 resides or in which ~~he the employer~~ is doing business or in which ~~its~~
 21 **the employer's** resident agent is located in a proceeding requesting
 22 such appointment instituted against the said employer in the name of
 23 the state of Indiana, brought by the attorney general for the state of
 24 Indiana at the request of the ~~board~~. **department.**

25 **(b)** The court shall appoint a receiver when it finds that the employer
 26 has not paid the contributions or amounts due imposed by this article
 27 within one hundred twenty (120) days after the same is found to be due,
 28 and that contributions, interest, penalties, or damages, or any portion
 29 thereof, is unpaid and delinquent. Such cause for the appointment of a
 30 receiver shall be in addition to all other causes or grounds provided by
 31 law for the appointment of receivers and shall be in addition to all other
 32 methods for the enforcement of this article.

33 **(c)** Each such receiver shall give bond and be sworn as provided for
 34 by law and shall have power under the control of the court to bring and
 35 defend actions, to take and keep possession of the property of the
 36 employer, to receive all funds and collect any debts due to the
 37 employer, in the receiver's name, and generally to do such acts
 38 respecting the property as the court shall authorize, and shall have all
 39 the powers granted to, or shall be subject to all the duties of, receivers
 40 under the laws of this state.

41 SECTION 52. IC 22-4-31-6 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. **(a)** If, after due
 43 notice, any employing unit defaults in the payment of any contributions
 44 or other money payments required by this article, the amount due may
 45 be collected by civil action in the name of the state of Indiana on the
 46 relation of the ~~commissioner~~. **department.** Such civil action is not to
 47 be considered as the exclusive method for collection of the
 48 contributions or money payments but is in addition to the method
 49 provided in IC 22-4-29-2 through IC 22-4-29-12 and is to be brought
 50 only in such cases as the ~~board~~ **department** may deem advisable in the
 51 interest of necessity and convenience.

1 (b) Unless the employing unit prevails in a civil action brought under
2 this chapter, the court may award costs, including reasonable attorney's
3 fees, incurred by the state in bringing the action.

4 SECTION 53. IC 22-4-31-7 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. It is expressly
6 provided that the foregoing remedies shall be cumulative and shall be
7 in addition to all other existing remedies, and that no action taken by
8 the ~~board~~ **department** or its duly authorized representative, the
9 attorney general for the state of Indiana, or any other officer shall be
10 construed to be an election on the part of the state or any of its officers
11 to pursue any remedy to the exclusion of any other remedy.

12 SECTION 54. IC 22-4-32-1 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **A liability**
14 **administrative law judge shall hear** all matters pertaining to:

- 15 (1) the assessment of contributions, penalties, and interest;
- 16 (2) which accounts, if any, benefits paid, or finally ordered to be
17 paid, should be charged;
- 18 (3) successorships, and related matters arising therefrom, including
19 but not limited to:
 - 20 (A) the transfer of accounts; ~~and~~
 - 21 (B) the determination of rates of contribution; and
 - 22 **(C) determinations under IC 22-4-11.5; and**
 - 23 (4) claims for refunds of contributions, skills 2016 training
24 assessments, or adjustments thereon in connection with subsequent
25 contribution payments and skills 2016 training assessments;

26 ~~shall be heard by a liability administrative law judge upon proper~~
27 ~~application for such hearing; for which an employing unit has timely~~
28 ~~filed a protest under section 4 of this chapter.~~

29 SECTION 55. IC 22-4-32-3 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. The proceedings
31 before a liability administrative law judge shall be conducted in
32 accordance with such rules of practice and procedure as the ~~board~~
33 **department** may ~~prescribe~~ **adopt** under its rulemaking authority ~~as~~
34 ~~contained in IC 22-4-19-2; under IC 22-4-18-1.~~ Any person
35 representing any interested party in the prosecution or defense of any
36 proceedings before a liability administrative law judge must be
37 admitted to practice law in the courts of the state of Indiana, except that
38 persons admitted to practice before the courts of other states may on
39 special order be permitted to appear in any proceeding before the
40 liability administrative law judge. ~~provided; however; that nothing in~~
41 This section shall **not** be ~~so~~ construed ~~as~~ to prohibit an interested party
42 from electing to be heard in his own cause without counsel.

43 SECTION 56. IC 22-4-32-4 IS AMENDED TO READ AS
44 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. An employing unit
45 shall have fifteen (15) **calendar days, beginning on the date an initial**
46 **determination is mailed to the employing unit,** within which to
47 protest in writing ~~an initial determinations determination~~ of the
48 ~~commissioner~~ **department** with respect to:

- 49 (1) the assessments of contributions, penalties, and interest;
- 50 (2) the transfer of charges from an employer's account;
- 51 (3) merit rate calculations;

- 1 (4) successorships;
 2 (5) the denial of claims for refunds and adjustments; and
 3 (6) a protest arising from an initial determination of the director
 4 relating to any matter listed in subdivisions (1) through (5):

5 **(6) a determination under IC 22-4-11.5.**

6 The fifteen (15) day period shall commence with the day following the
 7 day upon which the initial determination or denial of claim for refund
 8 or adjustment is mailed to the employing unit:

9 SECTION 57. IC 22-4-32-7 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. After the hearing the
 11 liability administrative law judge shall as soon as practicable notify the
 12 interested parties in writing of the finding and decision of the liability
 13 administrative law judge, which shall become final ~~fifteen (15)~~ **thirty**
 14 **(30)** days thereafter in the absence of ~~judicial review proceedings~~ **the**
 15 **filing of a notice of appeal** as provided in this chapter.

16 SECTION 58. IC 22-4-32-8 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. A notice of ~~intention~~
 18 ~~to institute judicial review proceedings~~ **appeal** shall be a ~~prerequisite~~
 19 ~~to such action~~; shall be served on the adverse party at any time before
 20 ~~said the~~ decision of the liability administrative law judge becomes final,
 21 and shall stay the finality of ~~said the~~ decision for a ~~period of~~ thirty (30)
 22 days from the service of such notice. ~~and~~ If such appeal is perfected,
 23 further proceedings shall be stayed pending the final determination of
 24 said appeal. ~~provided; further; that~~ If an appeal from ~~such the~~ decision
 25 of the liability administrative law judge is not perfected within the time
 26 provided for by this article, no action or proceeding shall be further
 27 stayed.

28 SECTION 59. IC 22-4-32-11 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. The ~~board;~~
 30 **department**, by rule, may require the appellant to deposit with the
 31 department an amount sufficient to pay the actual costs of preparing the
 32 transcript of the record of the proceedings before the liability
 33 administrative law judge before preparing the same.

34 SECTION 60. IC 22-4-32-19, AS AMENDED BY P.L.202-2005,
 35 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2006]: Sec. 19. **(a) The department may grant an**
 37 **application for adjustment or refund, make an adjustment or**
 38 **refund, or set off a refund as follows:**

39 **(1) (a) At any time within Not later than** four (4) years after the
 40 date upon which any contributions, skills 2016 training assessments
 41 under IC 22-4-10.5-3, or interest thereon were paid, an employing
 42 unit which has paid such contributions, skills 2016 training
 43 assessments, or interest thereon may make application for **an**
 44 **adjustment or** a refund of such contributions, skills 2016 training
 45 assessments, or an adjustment thereon in connection with
 46 subsequent contribution payments or skills 2016 training
 47 assessments. The ~~commissioner~~ **department** shall thereupon
 48 determine whether or not such contribution or skills 2016 training
 49 assessment, or interest or any portion thereof, was erroneously paid
 50 or wrongfully assessed. ~~and notify the employing unit in writing of~~
 51 ~~its decision.~~

1 (b) Such decision shall constitute the initial determination referred to
 2 in section 4 of this chapter and shall be subject to hearing and review
 3 as provided in sections 1 through 15 of this chapter.

4 ~~(c)~~ **(2)** The commissioner ~~department~~ may grant such application
 5 in whole or in part and may allow the employing unit to make an
 6 adjustment, ~~thereof~~ without interest, in connection with subsequent
 7 contribution payments or skills 2016 training assessments, ~~if such~~
 8 ~~adjustment cannot be made, the commissioner may or~~ refund such
 9 amounts, without interest, from the fund. ~~For like cause and within~~
 10 ~~the same period,~~ Adjustments or refund may be made on the
 11 commissioner's own initiative.

12 **(3)** Any adjustments or refunds of interest or penalties collected for
 13 contributions due under IC 22-4-10-1 shall be charged to and paid
 14 from the special employment and training services fund created by
 15 IC 22-4-25. Any adjustments or refunds of interest or penalties
 16 collected for skills 2016 training assessments due under
 17 IC 22-4-10.5-3 shall be charged to and paid from the skills 2016
 18 training fund established by IC 5-28-27-3.

19 **(4)** The department may set off any refund available to an
 20 employer under this section against any delinquent
 21 contributions, payments in lieu of contributions, skills 2016
 22 training assessments, and the interest and penalties, if any,
 23 related to the delinquent payments and assessments.

24 **(b) Any decision by the department to:**

25 **(1) grant an application for adjustment or refund;**

26 **(2) make an adjustment or refund on its own initiative; or**

27 **(3) set off a refund;**

28 **constitutes the initial determination referred to in section 4 of this**
 29 **chapter and is subject to hearing and review as provided in sections**
 30 **1 through 15 of this chapter.**

31 ~~(d)~~ **(c)** If any assessment has become final by virtue of a decision of
 32 a liability administrative law judge with the result that no proceeding
 33 for judicial review as provided in this article was instituted, no refund
 34 or adjustment with respect to such assessment shall be made.

35 SECTION 61. IC 22-4-32-24 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 24. (a) This section
 37 applies to notices given under sections 4, 7, 8, and 9 of this chapter.

38 (b) As used in this section, "notices" includes mailings pertaining to:

39 (1) the assessment of contributions, skills 2016 training
 40 assessments under IC 22-4-10.5-3, penalties, and interest;

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

42 (3) successorships and related matters arising from successorships;

43 (4) claims for refunds and adjustments;

44 **(5) violations under IC 22-4-11.5;**

45 ~~(5)~~ **(6)** decisions; and

46 ~~(6)~~ **(7)** notices of intention to appeal or seek judicial review.

47 (c) If a notice under this chapter is served through the United States
 48 Postal Service, three (3) days must be added to a period that
 49 commences upon service of that notice.

50 (d) The filing of a document with the ~~appellate unemployment~~
 51 **insurance appeals** division or review board is complete on the earliest

1 of the following dates that apply to the filing:

2 (1) The date on which the document is delivered to the ~~appellate~~
3 **unemployment insurance appeals** division or review board.

4 (2) The date of the postmark on the envelope containing the
5 document if the document is mailed to the ~~appellate~~
6 **unemployment insurance appeals** division or review board by the
7 United States Postal Service.

8 (3) The date on which the document is deposited with a private
9 carrier, as shown by a receipt issued by the carrier, if the document
10 is sent to the ~~appellate~~ **unemployment insurance appeals** division
11 or review board by a private carrier.

12 SECTION 62. IC 22-4-34-5 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. A person who
14 knowingly fails to attend and testify or to answer any lawful inquiry or
15 to produce books, papers, correspondence, memoranda, and other
16 records, in obedience to a subpoena of the board, **the department**, the
17 review board, an administrative law judge, or any duly authorized
18 representative of any of them, commits a Class C misdemeanor. Each
19 day a violation continues constitutes a separate offense.

20 SECTION 63. IC 22-4-35-2 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. All criminal actions
22 for violations of this article shall be prosecuted by the prosecuting
23 attorney of any county, or with the assistance of the attorney general **or**
24 **a United States attorney**, if requested by the commissioner, in which
25 the employer has a place of business or the alleged violator resides.

26 SECTION 64. IC 22-4-37-1 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. It is declared to be
28 the purpose of this article to secure to the state of Indiana and to
29 employers and employees therein all the rights and benefits which are
30 conferred under the provisions of 42 U.S.C. 501 through 504, 42 U.S.C.
31 1101 through 1109, 26 U.S.C. 3301 through 3311, and 29 U.S.C. 49 et
32 seq., and the amendments thereto. Whenever the ~~board~~ **department**
33 shall find it necessary, it shall have power to formulate rules after
34 public hearing and opportunity to be heard whereof due notice is given
35 as is provided in this article for the adoption of rules pursuant to
36 ~~IC 22-4-19-2~~, **IC 4-22-2**, and with the approval of the governor of
37 Indiana, to adopt such rules as shall effectuate the declared purposes of
38 this article.

39 SECTION 65. IC 22-4-37-3, AS AMENDED BY P.L.214-2005,
40 SECTION 65, IS AMENDED TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) Should:

42 **(1)** the Congress of the United States amend, repeal, or authorize
43 the implementation of a demonstration project under 29 U.S.C. 49
44 et seq., 26 U.S.C. 3301 through 3311, 42 U.S.C. 301 et seq., or 26
45 U.S.C. 3101 through 3504, or any statute or statutes supplemental
46 to or in lieu thereof or any part or parts of said statutes, or should
47 any or all of said statutes or any part or parts thereof be held
48 invalid, to the end and with such effect that appropriations of funds
49 by the said Congress and grants thereof to the state for the payment
50 of costs of administration of the department ~~of workforce~~
51 **development** are or no longer shall be available for such purposes;

1 ~~or should~~
2 **(2)** the primary responsibility for the administration of 26 U.S.C.
3 3301 through 26 U.S.C. 3311 be transferred to the state as a
4 demonstration project authorized by Congress; or ~~should~~
5 **(3)** employers in Indiana subject to the payment of tax under 26
6 U.S.C. 3301 through 3311 be granted full credit upon such tax for
7 contributions or taxes paid to the department; ~~of workforce~~
8 ~~development~~
9 then, beginning with the effective date of such change in liability for
10 payment of such federal tax and for each year thereafter, the normal
11 contribution rate under this article shall be established by the
12 department ~~of workforce development~~ and may not exceed three and
13 one-half percent (3.5%) per year of each employer's payroll subject to
14 contribution. With respect to each employer having a rate of
15 contribution for such year pursuant to terms of IC 22-4-11-2(b)(2)(A),
16 IC 22-4-11-2(b)(2)(B), **IC 22-4-11-2(c)**, IC 22-4-11-3, ~~and~~
17 IC 22-4-11-3.3, **and IC 22-4-11.5**, to the rate of contribution, as
18 determined for such year in which such change occurs, shall be added
19 not more than eight-tenths percent (0.8%) as prescribed by the
20 department. ~~of workforce development~~.
21 (b) The amount of the excess of tax for which such employer is or
22 may become liable by reason of this section over the amount which
23 such employer would pay or become liable for except for the provisions
24 of this section, together with any interest or earnings thereon, shall be
25 paid and transferred into the employment and training services
26 administration fund to be disbursed and paid out under the same
27 conditions and for the same purposes as is other money provided to be
28 paid into such fund. If the commissioner shall determine that as of
29 January 1 of any year there is an excess in said fund over the money
30 and funds required to be disbursed therefrom for the purposes thereof
31 for such year, then and in such cases an amount equal to such excess,
32 as determined by the commissioner, shall be transferred to and become
33 part of the unemployment insurance benefit fund, and such funds shall
34 be deemed to be and are hereby appropriated for the purposes set out
35 in this section.
36 SECTION 66. THE FOLLOWING ARE REPEALED [EFFECTIVE
37 JULY 1, 2006]: IC 22-4-16-1; IC 22-4-19-2; IC 22-4-19-3.
38 SECTION 67. **An emergency is declared for this act.**
 (Reference is to ESB 321 as reprinted March 1, 2006.)

Conference Committee Report
on
Engrossed Senate Bill 321

Signed by:

Senator Kruse
Chairperson

Representative Torr

Senator Craycraft

Representative Stilwell

Senate Conferees

House Conferees