

**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.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House 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"

1 means a written application for a determination of benefit eligibility,
 2 made by an individual in a form prescribed by the ~~board~~, **department**,
 3 to begin a second or subsequent series of claims in a benefit period, by
 4 which application the individual certifies to new unemployment
 5 resulting from a break in or loss of work which has occurred since the
 6 last claim was filed by such individual.

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

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

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

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

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

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

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

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

45 (e) Any employing unit for which service in employment as defined
 46 in IC 22-4-8-2(l) is performed. In determining whether an employing
 47 unit for which service other than agricultural labor is also performed is
 48 an employer under sections 1 or 2 of this chapter, the wages earned or
 49 the employment of an employee performing service in agricultural labor

1 after ~~December 31, 1977~~, may not be taken into account. If an
 2 employing unit is determined an employer of agricultural labor, the
 3 employing unit shall be determined an employer for the purposes of
 4 section 1 of this chapter.

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

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

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

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

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

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

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

49 ~~(B) such~~ **(2) The** service is performed outside the usual course of

1 the business for which the service is performed. ~~and~~

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

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

6 **(B)** is a sales agent who receives remuneration solely upon a
7 commission basis and who is the master of ~~his~~ **the individual's**
8 own time and effort.

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

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

12 (2) Services performed for remuneration for any employing unit by
13 an individual:

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

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

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

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

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

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

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

41 ~~(a)~~ **(1)** Except as provided in section 2(i) of this chapter, service
42 performed prior to January 1, 1978, in the employ of this state, any
43 other state, any town or city, or political subdivision, or any
44 instrumentality of any of them, other than service performed in the
45 employ of a municipally owned public utility as defined in this
46 article; or service performed in the employ of the United States of
47 America, or an instrumentality of the United States immune under
48 the Constitution of the United States from the contributions
49 imposed by this article, except that to the extent that the Congress

1 of the United States shall permit states to require any
 2 instrumentalities of the United States to make payments into an
 3 unemployment fund under a state unemployment compensation
 4 statute, all of the provisions of this article shall be applicable to
 5 such instrumentalities, in the same manner, to the same extent, and
 6 on the same terms as to all other employers, employing units,
 7 individuals, and services. However, if this state shall not be
 8 certified for any year by the Secretary of Labor under Section 3304
 9 of the Internal Revenue Code the payments required of such
 10 instrumentalities with respect to such year shall be refunded by the
 11 commissioner from the fund in the same manner and within the
 12 same period as is provided in IC 22-4-32-19 with respect to
 13 contribution erroneously paid or wrongfully assessed.

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

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

30 ~~(i)~~ **(A)** on a farm, in the employ of any person, in connection with
 31 cultivating the soil or in connection with raising or harvesting any
 32 agricultural or horticultural commodity, including the raising,
 33 shearing, feeding, caring for, training, and management of
 34 livestock, bees, poultry, and furbearing animals and wildlife;

35 ~~(ii)~~ **(B)** in the employ of the owner or tenant or other operator of
 36 a farm, in connection with the operation, management,
 37 conservation, improvement, or maintenance of such farm and its
 38 tools and equipment, or in salvaging timber or clearing land of
 39 brush and other debris left by a hurricane, if the major part of
 40 such service is performed on a farm;

41 ~~(iii)~~ **(C)** in connection with the production or harvesting of any
 42 commodity defined as an agricultural commodity in Section 15(g)
 43 of the Agricultural Marketing Act (**12 U.S.C. 1141j(g)**) as
 44 amended, or in connection with the operation or maintenance of
 45 ditches, canals, reservoirs, or waterways, not owned or operated
 46 for profit, used exclusively for supplying and storing water for
 47 farming purposes;

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

49 **(i)** the operator of a farm in handling, planting, drying, packing,

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

- 1 under clause ~~(i)~~ **(A)**) by such employing unit in the performance
 2 of such service during the preceding calendar quarter.
- 3 ~~(h)~~ **(9)** Service performed by an individual in any calendar quarter
 4 in the employ of any organization exempt from income tax under
 5 Section 501 of the Internal Revenue Code (except those services
 6 included in sections 2(i) and 2(j) of this chapter if the remuneration
 7 for such service is less than fifty dollars (\$50)).
- 8 ~~(i)~~ **(10)** Service performed in the employ of a hospital, if such
 9 service is performed by a patient of such hospital.
- 10 ~~(j)~~ **(11)** Service performed in the employ of a school, college, or
 11 university if such service is performed:
- 12 ~~(i)~~ **(A)** by a student who is enrolled and is regularly attending
 13 classes at such school, college, or university; or
- 14 ~~(ii)~~ **(B)** by the spouse of such a student, if such spouse is advised,
 15 at the time such spouse commences to perform such service, that:
- 16 ~~(A)~~ **(i)** the employment of such spouse to perform such service
 17 is provided under a program to provide financial assistance to
 18 such student by such school, college, or university; and
- 19 ~~(B)~~ **(ii)** such employment will not be covered by any program
 20 of unemployment insurance.
- 21 ~~(k)~~ **(12)** Service performed by an individual who is enrolled at a
 22 nonprofit or public educational institution which normally
 23 maintains a regular faculty and curriculum and normally has a
 24 regularly organized body of students in attendance at the place
 25 where its educational activities are carried on as a student in a
 26 full-time program, taken for credit at such institution, which
 27 combines academic instruction with work experience, if such
 28 service is an integral part of such program, and such institution has
 29 so certified to the employer, except that this ~~subsection~~ **subdivision**
 30 shall not apply to service performed in a program established for or
 31 on behalf of an employer or group of employers.
- 32 ~~(l)~~ **(13)** Service performed in the employ of a government foreign
 33 to the United States of America, including service as a consular or
 34 other officer or employee or a nondiplomatic representative.
- 35 ~~(m)~~ **(14)** Service performed in the employ of an instrumentality
 36 wholly owned by a government foreign to that of the United States
 37 of America, if the service is of a character similar to that performed
 38 in foreign countries by employees of the United States of America
 39 or of an instrumentality thereof, and if the board finds that the
 40 Secretary of State of the United States has certified to the Secretary
 41 of the Treasury of the United States that the government, foreign to
 42 the United States, with respect to whose instrumentality exemption
 43 is claimed, grants an equivalent exemption with respect to similar
 44 service performed in such country by employees of the United
 45 States and of instrumentalities thereof.
- 46 ~~(n)~~ **(15)** Service performed as a student nurse in the employ of a
 47 hospital or nurses' training school by an individual who is enrolled
 48 and is regularly attending classes in a nurses' training school
 49 chartered or approved pursuant to state law; and service performed

1 as an intern in the employ of a hospital by an individual who has
 2 completed a four (4) year course in a medical school chartered or
 3 approved pursuant to state law.

4 ~~(p)~~ **(16)** Service performed by an individual as an insurance
 5 producer or as an insurance solicitor, if all such service performed
 6 by such individual is performed for remuneration solely by way of
 7 commission.

8 ~~(p)~~~~(A)~~ **(17)** Service performed by an individual:

9 **(A)** under the age of eighteen (18) in the delivery or distribution
 10 of newspapers or shopping news, not including delivery or
 11 distribution to any point for subsequent delivery or distribution;

12 **or**

13 **(B)** ~~Services performed by an individual~~ in, and at the time of, the
 14 sale of newspapers or magazines to ultimate consumers, under an
 15 arrangement under which the newspapers or magazines are to be
 16 sold by ~~him~~ **the individual** at a fixed price, ~~his~~ **the individual's**
 17 compensation being based on the retention of the excess of such
 18 price over the amount at which the newspapers or magazines are
 19 charged to ~~him~~; **the individual**, whether or not ~~he~~ **the individual**
 20 is guaranteed a minimum amount of compensation for such
 21 service, or is entitled to be credited with the unsold newspapers
 22 or magazines turned back.

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

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

31 ~~(s)~~ **(20)** If the service performed during one-half (1/2) or more of
 32 any pay period by an individual for an employing unit constitutes
 33 employment, all the services of such individual for such period shall
 34 be deemed to be employment; but if the services performed during
 35 more than one-half (1/2) of any pay period by such an individual do
 36 not constitute employment, then none of the services of such
 37 individual for such period shall be deemed to be employment. As
 38 used in this subsection, "pay period" means a period of not more
 39 than thirty-one (31) consecutive days for which a payment of
 40 remuneration is ordinarily made to the individual by the employing
 41 unit. This subsection shall not be applicable with respect to services
 42 performed in a pay period by any such individual where any such
 43 service is excepted by ~~subsection (b)~~: **subdivision (2)**.

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

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

48 SECTION 8. IC 22-4-9-3, AS AMENDED BY P.L.98-2005,
 49 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

1 JULY 1, 2006]: Sec. 3. (a) This section is subject to the provisions of
2 IC 22-4-11.5.

3 (b) Any employer subject to this article as successor to an employer
4 pursuant to the provisions of IC 22-4-7-2(a) or IC 22-4-7-2(b) shall
5 cease to be an employer at the end of the year in which the acquisition
6 occurs only if the **board department** finds that within such calendar
7 year the employment experience of the predecessor prior to the date of
8 disposition combined with the employment experience of the successor
9 subsequent to the date of acquisition would not be sufficient to qualify
10 the successor employer as an employer under the provisions of
11 IC 22-4-7-1. No such successor employer may cease to be an employer
12 subject to this article at the end of the first year of the current period of
13 coverage of the predecessor employer. If all of the resources and
14 liabilities of the experience account of an employer are assumed by
15 another in accordance with the provisions of IC 22-4-10-6 or
16 IC 22-4-10-7, such employer's status as employer and under this article
17 is hereby terminated unless and until such employer subsequently
18 qualifies under the provisions of IC 22-4-7-1 or IC 22-4-7-2 or elects
19 to become an employer under sections 4 or 5 of this chapter.

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

25 SECTION 9. IC 22-4-9-4 IS AMENDED TO READ AS FOLLOWS
26 [EFFECTIVE JULY 1, 2006]: Sec. 4. Any employing unit not
27 otherwise subject to this article which files with the **board department**
28 its written election to become an employer subject to this article for not
29 less than two (2) calendar years shall, with the written approval of such
30 election by the **board, department**, become an employer subject to this
31 article to the same extent as all other employers as of the date stated in
32 such approval. ~~provided;~~ However, ~~that~~ the voluntary election of any
33 such employer shall become inoperative if such employing unit becomes
34 an employer by reason of IC 22-4-7-1.

35 SECTION 10. IC 22-4-10-1 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Contributions
37 shall accrue and become payable from each employer for each calendar
38 year in which it is subject to this article with respect to wages paid
39 during such calendar year. ~~except~~ Where the status of an employer is
40 changed by cessation or disposition of business or appointment of a
41 receiver, trustees, trustee in bankruptcy, or other fiduciary, contributions
42 shall immediately become due and payable on the basis of wages paid
43 or payable by such employer as of the date of the change of status. Such
44 contributions shall be paid to the department in such manner as the
45 ~~commissioner~~ **department** may prescribe, and shall not be deducted, in
46 whole or in part, from the remuneration of individuals in an employer's
47 employ. When contributions are determined in accordance with
48 Schedule A as provided in IC 22-4-11-3, the **board department** may
49 prescribe rules to require an estimated advance payment of

1 contributions in whole or in part, if in the judgment of the ~~board~~
 2 **department** such advance payments will avoid a debit balance in the
 3 fund during the calendar quarter to which the advance payment applies.
 4 An adjustment shall be made following the quarter in which an advance
 5 payment has been made to reflect the difference between the estimated
 6 contribution and the contribution actually payable. Advance payment of
 7 contributions shall not be required for more than one (1) calendar
 8 quarter in any calendar year.

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

13 ~~(2)~~ **(c)** Except as provided in subsection ~~(a)(4)~~; **(e)**, the election to
 14 become liable for "payments in lieu of contributions" must be filed with
 15 the department on a form prescribed by the ~~commissioner~~ **department**
 16 not later than thirty-one (31) days following the date upon which such
 17 entity qualifies as an employer under this article, and shall be for a
 18 period of not less than two (2) calendar years.

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

26 ~~(4)~~ **(e)** Any employer ~~which that~~ qualifies to elect to become liable
 27 for "payments in lieu of contributions" and has been paying
 28 contributions under this article, ~~for a period subsequent to January 1,~~
 29 ~~1972~~; may change to a reimbursable basis by filing with the department
 30 not later than thirty (30) days prior to the beginning of any taxable year
 31 a written notice of election to become liable for payments in lieu of
 32 contributions. Such election shall not be terminable by the organization
 33 for that and the next year.

34 ~~(b)(1)~~ **(f)** Employers making "payments in lieu of contributions"
 35 under ~~subsection (a)~~ **subsections (b) and (c)** shall make reimbursement
 36 payments monthly. At the end of each calendar month the department
 37 shall bill each such employer (or group of employers) for an amount
 38 equal to the full amount of regular benefits plus one-half (1/2) of the
 39 amount of extended benefits paid during such month that is attributable
 40 to services in the employ of such employers or group of employers.
 41 Governmental entities of this state and its political subdivisions electing
 42 to make "payments in lieu of contributions" shall be billed by the
 43 department at the end of each calendar month for an amount equal to the
 44 full amount of regular benefits plus the full amount of extended benefits
 45 paid during the month that is attributable to service in the employ of the
 46 governmental entities.

47 ~~(2)~~ **(g)** Payment of any bill rendered under ~~subdivision (1)~~ **subsection**
 48 **(f)** shall be made not later than thirty (30) days after such bill was
 49 mailed to the last known address of the employer or was otherwise

1 delivered to it, unless there has been an application for review and
 2 redetermination in accordance with subdivision ~~(4)~~: **filed under**
 3 **subsection (i)**.

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

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

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

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

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

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

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

48 SECTION 13. IC 22-4-10-6, AS AMENDED BY P.L.98-2005,
 49 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

1 JULY 1, 2006]: Sec. 6. (a) When:

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

9 the successor employer shall, in accordance with the rules prescribed by
10 the ~~board~~, **department**, assume the position of the predecessor with
11 respect to all the resources and liabilities of the predecessor's experience
12 account.

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

- 14 (1) an employing unit (whether or not an employing unit at the time
15 of the acquisition) becomes an employer under IC 22-4-7-2(b); or
16 (2) an employer acquires a distinct and segregable portion of the
17 organization, trade, or business within this state of another
18 employer;

19 the successor employer shall assume the position of the predecessor
20 employer with respect to the portion of the resources and liabilities of
21 the predecessor's experience account as pertains to the distinct and
22 segregable portion of the predecessor's organization, trade, or business
23 acquired by the successor. An application for the acquiring employer to
24 assume this portion of the resources and liabilities of the disposing
25 employer's experience account must be filed with the ~~commissioner~~
26 **department** on prescribed forms not later than ~~one hundred fifty (150)~~
27 **thirty (30)** days immediately following the disposition date or not later
28 than ten (10) days after the disposing and acquiring employers are
29 mailed or otherwise delivered final notice that the acquiring employer
30 is a successor employer, whichever is the earlier date. This portion of
31 the resources and liabilities of the disposing employer's experience
32 account shall be transferred in accordance with IC 22-4-11.5.

33 (c) Except as provided by IC 22-4-11.5, the successor employer, if an
34 employer prior to the acquisition, shall pay at the rate of contribution
35 originally assigned to it for the calendar year in which the acquisition
36 occurs, until the end of that year. If not an employer prior to the
37 acquisition, the successor employer shall pay the rate of two and
38 seven-tenths percent (2.7%) unless the successor employer assumes all
39 or part of the resources and liabilities of the predecessor employer's
40 experience account, in which event the successor employer shall pay at
41 the rate of contribution assigned to the predecessor employer for the
42 period starting with the first day of the calendar quarter in which the
43 acquisition occurs, until the end of that year. However, if a successor
44 employer, not an employer prior to the acquisition, simultaneously
45 acquires all or part of the experience balance of two (2) or more
46 employers, the successor employer shall pay at the highest rate
47 applicable to the experience accounts totally or partially acquired for the
48 period starting with the first day of the calendar quarter in which the
49 acquisition occurs, until the end of the year. If the successor employer

1 had any employment prior to the date of acquisition upon which
 2 contributions were owed under IC 22-4-9-1, the employer's rate of
 3 contribution from the first of the year to the first day of the calendar
 4 quarter in which the acquisition occurred would be two and seven-tenths
 5 percent (2.7%).

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

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

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

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

20 SECTION 15. IC 22-4-11-2, AS AMENDED BY P.L.98-2005,
 21 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2006]: Sec. 2. (a) Except as provided in IC 22-4-11.5, the
 23 ~~commissioner~~ **department** shall for each year determine the
 24 contribution rate applicable to each employer.

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

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

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

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

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

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

1 (1) within thirty-one (31) days following the computation date; or
 2 (2) within ten (10) days after the **commissioner department** has
 3 given the employer a written notice by registered mail to the
 4 employer's last known address of:

5 (A) the delinquency; or

6 (B) failure to file the reports;

7 whichever is the later date.

8 The board or the board's designee may waive the imposition of rates
 9 under this subsection if the board finds the employer's failure to meet
 10 the deadlines was for excusable cause. The **commissioner department**
 11 shall give written notice to the employer before this additional condition
 12 or requirement shall apply.

13 (d) However, if the employer is the state or a political subdivision of
 14 the state or any instrumentality of a state or a political subdivision, or
 15 any instrumentality which is wholly owned by the state and one (1) or
 16 more other states or political subdivisions, the employer may contribute
 17 at a rate of one percent (1%) until it has been subject to this article
 18 throughout the thirty-six (36) consecutive calendar months immediately
 19 preceding the computation date.

20 (e) On the computation date every employer who had taxable wages
 21 in the previous calendar year shall have the employer's experience
 22 account charged with the amount determined under the following
 23 formula:

24 STEP ONE: Divide:

25 (A) the employer's taxable wages for the preceding calendar year;
 26 by

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

28 STEP TWO: Multiply the quotient determined under STEP ONE
 29 by the total amount of benefits charged to the fund under section 1
 30 of this chapter.

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

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

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

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

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

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

3 ~~(2)~~ misrepresentation or

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

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

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

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

13 **(b)** The successor employer shall assume the experience ~~rating~~
14 **account balance** of the predecessor employer for the resources and
15 liabilities of the predecessor employer's experience account that are
16 attributable to the transfer.

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

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

26 ~~(d)~~ **(e)** Any written determination made by the department is
27 conclusive and binding on both the predecessor employer and the
28 successor employer unless one (1) **employer files** or both employers
29 file ~~with the department~~ a written protest **with the department** setting
30 forth ~~the grounds and all~~ reasons for the protest. A protest under this
31 section must be filed not later than ~~ten (10)~~ **fifteen (15)** days after the
32 date the department ~~mails~~ **sends** the initial determination to the
33 **employing units employers.** The protest shall be heard and determined
34 under this section and IC 22-4-32-1 through IC 22-4-32-15. ~~Both~~ The
35 predecessor employer, ~~and the~~ successor employer, ~~and the~~
36 **department** shall be parties to the hearing before the **liability**
37 administrative law judge and are entitled to receive copies of all
38 pleadings and the decision.

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

46 (1) may not assume the experience ~~rating~~ **account balance** of the
47 predecessor employer for the resources and liabilities of the
48 predecessor employer's experience account that are attributable to
49 the acquisition; and

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

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

- 7 (1) The cost of acquiring the trade or business.
8 (2) Whether the employing unit or other person continued the
9 business enterprise of the acquired trade or business.
10 (3) The length of time the employing unit or other person continued
11 the business enterprise of the acquired trade or business.
12 (4) Whether a substantial number of new employees were hired to
13 perform duties unrelated to the business enterprise that the trade or
14 business conducted before the trade or business was acquired.

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

19 **(c) Any written determination made by the department is**
20 **conclusive and binding on the employing unit or other person,**
21 **unless the employing unit or other person files a written protest**
22 **with the department setting forth all reasons for the protest. A**
23 **protest under this section must be filed not later than fifteen (15)**
24 **days after the date the department sends the initial determination**
25 **to the employing unit or other person. The protest shall be heard**
26 **and determined under this section and IC 22-4-32-1 through**
27 **IC 22-4-32-15. The department and the employing unit or other**
28 **person shall be parties to the hearing before the liability**
29 **administrative law judge and are entitled to receive copies of all**
30 **pleadings and the decision.**

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

- 34 (1) violates or attempts to violate:
35 (A) section 7 or 8 of this chapter; or
36 (B) any other provision of this article related to determining the
37 assumption or assignment of an employer's contribution rate; or
38 (2) advises another person in a way that results in a violation of:
39 (A) section 7 or 8 of this chapter; or
40 (B) any other provision of this article related to determining the
41 assumption or assignment of an employer's contribution rate;

42 ~~commits a Class C misdemeanor:~~ **is subject to a civil penalty under**
43 **this chapter.**

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

- 48 **(1) The highest employer contribution rate assignable under**
49 **this article for the year in which the violation occurred and the**

- 1 following three (3) years.
- 2 (2) An additional employer contribution rate of two percent
- 3 (2%) of the employer's taxable wages (as defined in
- 4 IC 22-4-4-2) for the year in which the violation occurred and
- 5 the following three (3) years, if:
- 6 (A) an employer is already paying the highest employer
- 7 contribution rate at the time of the violation; or
- 8 (B) the increase in the contribution rate described in
- 9 subdivision (1) is less than two percent (2%).
- 10 (c) If the department determines that a person who is not an
- 11 employer (as defined in IC 22-4-7) is subject to a civil penalty
- 12 under subsection (a)(2), the department shall assess a civil penalty
- 13 of not more than five thousand dollars (\$5,000).
- 14 (d) All civil penalties collected under this section shall be
- 15 deposited in the unemployment insurance benefit fund established
- 16 by IC 22-4-26-1.
- 17 (e) Any written determination made by the department is
- 18 conclusive and binding on the employing unit, employer, or person
- 19 unless the employing unit, employer, or person files a written
- 20 protest with the department setting forth all reasons for the
- 21 protest. A protest under this section must be filed not later than
- 22 fifteen (15) days after the date the department sends the initial
- 23 determination to the employing unit, employer, or person. The
- 24 protest shall be heard and determined under this section and
- 25 IC 22-4-32-1 through IC 22-4-32-15. The employing unit,
- 26 employer, or person, and the department shall be parties to the
- 27 hearing before the liability administrative law judge and are
- 28 entitled to receive copies of all pleadings and the decision.
- 29 SECTION 21. IC 22-4-11.5-10, AS AMENDED BY HEA
- 30 1040-2006, SECTION 344, IS AMENDED TO READ AS FOLLOWS
- 31 [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) In addition to any other
- 32 penalty imposed, a person who **knowingly, recklessly, or intentionally**
- 33 violates this chapter is subject to a civil penalty under this chapter.
- 34 (b) This subsection applies to a person who is an employer (as
- 35 defined in IC 22-4-7). If an administrative law judge determines that a
- 36 person is subject to a civil penalty under subsection (a), the
- 37 administrative law judge shall assign an employer contribution rate
- 38 equal to one (1) of the following as a civil penalty:
- 39 (1) The highest employer contribution rate assignable under this
- 40 article for:
- 41 (A) the year in which the violation occurred; and
- 42 (B) the following three (3) years:
- 43 (2) An employer contribution rate of two percent (2%) of the
- 44 employer's taxable wages (as defined in IC 22-4-4-2) for the year
- 45 in which the violation occurred and the following three (3) years; if:
- 46 (A) an employer is already paying the highest employer
- 47 contribution rate at the time of the violation; or
- 48 (B) the increase in the contribution rate described in subdivision
- 49 (1) is less than two percent (2%):

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

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

9 **commits a Class C misdemeanor.**

10 SECTION 22. IC 22-4-12-1 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. Benefits designated
 12 as unemployment ~~compensation~~ **insurance** benefits shall become
 13 payable from the fund to any individual who is or becomes unemployed
 14 and eligible for benefits under the terms of this article. All benefits shall
 15 be paid through ~~employment offices maintained and operated by this~~
 16 **state the department** or such other agencies as the ~~board~~ **department**
 17 by rule may designate at such times and in such manner as the ~~board~~
 18 **department** may prescribe. ~~provided, that the board~~ **The department**
 19 may ~~prescribe~~ **adopt** rules to provide for the payment of benefits due
 20 and payable on executed vouchers to persons since deceased; benefits
 21 so due and payable may be paid to the legal representative, dependents,
 22 or next of kin of the deceased as are found to be entitled thereto, which
 23 rules need not conform with the laws of the state governing decedent
 24 estates, and every such payment shall be deemed a valid payment to the
 25 same extent as if made to the legal representative of the deceased.

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

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

31 **(2) the unemployment insurance law of the United States;**
 32 **the department shall establish that an overpayment has occurred**
 33 **and establish the amount of the overpayment.**

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

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

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

40 **(2) fails, or causes another to fail, to disclose a material fact; and**
 41 **as a result thereof has received any amount as benefits to which the**
 42 **individual is not entitled under this article, shall be liable to repay such**
 43 **amount, with interest at the rate of one-half percent (0.5%) per**
 44 **month, to the commissioner department for the unemployment**
 45 **insurance benefit fund or to have such amount deducted from any**
 46 **benefits otherwise payable to the individual under this article, within the**
 47 **six (6) year period following the later of the date of the filing of the**
 48 **claim or statement that resulted in the payment of such benefits; if the**
 49 **existence of such misrepresentation or nondisclosure has become final**

1 by virtue of an unappealed determination of a deputy, or a decision of
 2 an administrative law judge, or the review board; or by a court of
 3 competent jurisdiction: **the department establishes that an**
 4 **overpayment has occurred or the date that the determination of an**
 5 **overpayment becomes final following the exhaustion of all appeals.**

6 ~~(b)~~ **(d)** Any individual who, for any reason other than
 7 misrepresentation or nondisclosure as specified in subsection ~~(a)~~, **(c)**,
 8 has received any amount as benefits to which the individual is not
 9 entitled under this article or because of the subsequent receipt of income
 10 deductible from benefits which is allocable to the week or weeks for
 11 which such benefits were paid becomes not entitled to such benefits
 12 under this article shall be liable to repay such amount to the
 13 ~~commissioner~~ **department** for the unemployment insurance benefit
 14 fund or to have such amount deducted from any benefits otherwise
 15 payable to the individual under this article, within the three (3) year
 16 period following ~~the later of the date of the filing of the claim or~~
 17 ~~statement that resulted in the payment of such benefits; if the existence~~
 18 ~~of such reason has become final by virtue of an unappealed~~
 19 ~~determination of a deputy or a decision of an administrative law judge;~~
 20 ~~or the review board; or by a court of competent jurisdiction: the~~
 21 **department establishes that the overpayment occurred or the date**
 22 **that the determination that an overpayment occurred becomes**
 23 **final following the exhaustion of all appeals.**

24 ~~(c)~~ **(e)** When benefits are paid to an individual who was eligible or
 25 qualified to receive such payments, but when such payments are made
 26 because of the failure of representatives or employees of the department
 27 to transmit or communicate to such individual notice of suitable work
 28 offered, through the department, to such individual by an employing
 29 unit, then and in such cases, the individual shall not be required to repay
 30 or refund amounts so received, but such payments shall be deemed to
 31 be benefits improperly paid.

32 ~~(d)~~ **(f)** Where it is finally determined by a deputy, an administrative
 33 law judge, the review board, or a court of competent jurisdiction that an
 34 individual has received benefits to which the individual is not entitled
 35 under this article, the ~~commissioner~~ **department** shall relieve the
 36 affected employer's experience account of any benefit charges directly
 37 resulting from such overpayment. However, an employer's experience
 38 account will not be relieved of the charges resulting from an
 39 overpayment of benefits which has been created by a retroactive
 40 payment by such employer directly or indirectly to the claimant for a
 41 period during which the claimant claimed and was paid benefits unless
 42 the employer reports such payment by the end of the calendar quarter
 43 following the calendar quarter in which the payment was made or unless
 44 and until the overpayment has been collected. Those employers electing
 45 to make payments in lieu of contributions shall not have their account
 46 relieved as the result of any overpayment unless and until such
 47 overpayment has been repaid to the unemployment insurance benefit
 48 fund.

49 ~~(e)~~ **(g)** Where any individual is liable to repay any amount to the

1 ~~commissioner~~ **department** for the unemployment insurance benefit
 2 fund for the restitution of benefits to which the individual is not entitled
 3 under this article, the amount due may be collectible without interest,
 4 **except as otherwise provided in subsection (c)**, by civil action in the
 5 name of the state of Indiana, on relation of the department, which
 6 remedy by civil action shall be in addition to all other existing remedies
 7 and to the methods for collection provided in this ~~section~~: **article**.

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

12 (1) the benefits were received by the individual without fault of the
 13 individual;

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

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

18 **(B) because of an error by the employer or the department;**
 19 and

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

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

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

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

29 **that would disqualify the individual for benefits, reduce the**
 30 **individual's benefits, or render the individual ineligible for benefits**
 31 **or extended benefits, the individual forfeits any wage credits**
 32 **earned or any benefits or extended benefits that might otherwise**
 33 **be payable to the individual for the period in which the failure to**
 34 **disclose or falsification occurs.**

35 **(b) In addition to amounts forfeited under subsection (a), an**
 36 **individual is subject to the following civil penalties for each**
 37 **instance in which the individual knowingly fails to disclose or**
 38 **falsifies any fact that if accurately reported to the department**
 39 **would disqualify the individual for benefits, reduce the individual's**
 40 **benefits, or render the individual ineligible for benefits or extended**
 41 **benefits:**

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

44 **(2) For the second instance, an amount equal to fifty percent**
 45 **(50%) of the benefit overpayment.**

46 **(3) For the third and each subsequent instance, an amount**
 47 **equal to one hundred percent (100%) of the benefit**
 48 **overpayment.**

49 **(c) The department's determination under this section constitutes**

1 **an initial determination under IC 22-4-17-2(e) and is subject to a**
 2 **hearing and review under IC 22-4-17-3 through IC 22-4-17-15.**

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

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

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

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

16 (b) Failure to comply with subsection (a) shall be excused by the
 17 commissioner or the commissioner's authorized representative upon a
 18 showing of good cause therefor. The ~~board~~ **department** shall by rule
 19 waive or alter the requirements of this section as to such types of cases
 20 or situations with respect to which the ~~commissioner~~ **department** finds
 21 that compliance with such requirements would be oppressive or would
 22 be inconsistent with the purposes of this article.

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

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

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

34 SECTION 26. IC 22-4-14-3 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) ~~This section does~~
 36 ~~not apply to~~ An individual who is receiving benefits as determined
 37 under IC 22-4-15-1(c)(8) **may restrict the individual's availability**
 38 **because of the individual's need to address the physical,**
 39 **psychological, or legal effects of being a victim of domestic or**
 40 **family violence (as defined in IC 31-9-2-42).**

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

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

44 (2) is available for work;

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

47 (4) participates in reemployment services, such as job search
 48 assistance services, if the individual has been determined to be
 49 likely to exhaust regular benefits and to need reemployment

1 services under a profiling system established by the ~~commissioner,~~
 2 **department**, unless the ~~commissioner~~ **department** determines
 3 that:

- 4 (A) the individual has completed the reemployment services; or
 5 (B) failure by the individual to participate in or complete the
 6 reemployment services is excused by the director under
 7 IC 22-4-14-2(b).

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

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

- 20 (1) that such individual is engaged by any unit, agency, or
 21 instrumentality of the United States, in charge of public works or
 22 assistance through public employment; or any unit, agency, or
 23 instrumentality of this state, or any political subdivision thereof, in
 24 charge of any public works or assistance through public
 25 employment;
 26 (2) that such individual is in full-time active military service of the
 27 United States, or is enrolled in civilian service as a conscientious
 28 objector to military service;
 29 (3) that such individual is suspended for misconduct in connection
 30 with the individual's work; or
 31 (4) that such individual is in attendance at a regularly established
 32 public or private school during the customary hours of the
 33 individual's occupation or is in any vacation period intervening
 34 between regular school terms during which the individual is a
 35 student. However, this subdivision does not apply to any individual
 36 who is attending a regularly established school, has been regularly
 37 employed and upon becoming unemployed makes an effort to
 38 secure full-time work and is available for suitable full-time work
 39 with the individual's last employer, or is available for any other
 40 full-time employment deemed suitable.

41 (d) Notwithstanding any other provisions in this section or
 42 IC 22-4-15-2, no otherwise eligible individual shall be denied benefits
 43 for any week because the individual is in training with the approval of
 44 the department, nor shall such individual be denied benefits with respect
 45 to any week in which the individual is in training with the approval of
 46 the department by reason of the application of the provisions of this
 47 section with respect to the availability for work or active search for
 48 work or by reason of the application of the provisions of IC 22-4-15-2
 49 relating to failure to apply for, or the refusal to accept, suitable work.

1 The ~~board~~ **department** shall by rule prescribe the conditions under
2 which approval of such training will be granted.

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

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

25 (b) Except when the result would be inconsistent with the other
26 provisions of this article, as provided in the rules of the ~~board;~~
27 **department**, the provisions of this article which apply to claims for, or
28 the payment of, regular benefits shall apply to claims for, and the
29 payment of, extended benefits.

30 (c) Whenever an extended benefit period is to become effective in this
31 state as a result of a state "on" indicator, or an extended benefit period
32 is to be terminated in this state as a result of a state "off" indicator, the
33 commissioner shall make an appropriate public announcement.

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

38 (e) Each employer shall display and maintain in places readily
39 accessible to all employees posters concerning its regulations and shall
40 make available to each such individual at the time the individual
41 becomes unemployed printed benefit rights information furnished by the
42 department.

43 SECTION 29. IC 22-4-17-2 IS AMENDED TO READ AS
44 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) When an
45 individual files an initial claim, the department shall promptly make a
46 determination of the individual's status as an insured worker in a form
47 prescribed by the ~~board;~~ **department**. A written notice of the
48 determination of insured status shall be furnished to the individual
49 promptly. Each such determination shall be based on and include a

1 written statement showing the amount of wages paid to the individual
2 for insured work by each employer during the individual's base period
3 and shall include a finding as to whether such wages meet the
4 requirements for the individual to be an insured worker, and, if so, the
5 week ending date of the first week of the individual's benefit period, the
6 individual's weekly benefit amount, and the maximum amount of
7 benefits that may be paid to the individual for weeks of unemployment
8 in the individual's benefit period. For the individual who is not insured,
9 the notice shall include the reason for the determination. Unless the
10 individual, within ten (10) days after such determination was mailed to
11 the individual's last known address, or otherwise delivered to the
12 individual, asks a hearing thereon before an administrative law judge,
13 such determination shall be final and benefits shall be paid or denied in
14 accordance therewith.

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

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

36 (d) In addition to the foregoing determination of insured status by the
37 department, the deputy shall, throughout the benefit period, determine
38 the claimant's eligibility with respect to each week for which the
39 claimant claims waiting period credit or benefit rights, the validity of
40 the claimant's claim therefor, and the cause for which the claimant left
41 the claimant's work, or may refer such claim to an administrative law
42 judge who shall make the initial determination with respect thereto in
43 accordance with the procedure in IC 22-4-17-3.

44 (e) In cases where the claimant's benefit eligibility or disqualification
45 is disputed, the department shall promptly notify the claimant and the
46 employer or employers directly involved or connected with the issue
47 raised as to the validity of such claim, the eligibility of the claimant for
48 waiting period credit or benefits, or the imposition of a disqualification
49 period or penalty, or the denial thereof, and of the cause for which the

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

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

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

39 (h) Notice to the employer and the claimant that the determination of
 40 the department is final if a hearing is not requested shall be prominently
 41 displayed on the notice of the determination which is sent to the
 42 employer and the claimant.

43 (i) If an allegation of the applicability of IC 22-4-15-1(c)(8) is made
 44 by the individual at the time of the claim for benefits, the department
 45 shall not notify the employer ~~that a claim for benefits has been made: of~~
 46 **the claimant's current address or physical location.**

47 SECTION 30. IC 22-4-17-4 IS AMENDED TO READ AS
 48 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. ~~(a)~~ The
 49 ~~commissioner~~ **department** shall ~~appoint~~ **employ** one (1) or more

1 administrative law judges to hear and decide disputed claims. ~~Such~~
 2 ~~administrative law judges shall be full-time salaried employees of the~~
 3 ~~department.~~ Administrative law judges ~~appointed~~ **employed** under this
 4 section are not subject to IC 4-21.5 or any other statute regulating
 5 administrative law judges, unless specifically provided.

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

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

37 (1) is not prepared to meet; and

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

41 SECTION 32. IC 22-4-17-7 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. In the discharge of
 43 the duties imposed by this article, any member of the board, **the**
 44 **department**, the review board, or an administrative law judge, or any
 45 duly authorized representative of any of them, shall have power to
 46 administer oaths and affirmations, take depositions, certify to official
 47 acts, and issue and serve subpoenas to compel the attendance of
 48 witnesses and the production of books, papers, correspondence,
 49 memoranda, and other records deemed necessary as evidence in

1 connection with the disputed claim or the administration of this article.

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

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

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

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

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

26 (A) ~~The claimant and the employer are located in Indiana:~~

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

30 (C) ~~The administrative law judge or the review board determines~~
 31 ~~that the distance between the location of the claimant and the~~
 32 ~~location of the employer is so great that a hearing held by~~
 33 ~~telephone is justified under the circumstances:~~

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

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

40 (4) (5) In the case of a hearing before the review board, the issue to
 41 be adjudicated does not require both parties to be present.

42 (5) (6) **In the case of a hearing before the review board,** the
 43 ~~unemployment insurance~~ review board has determined that a
 44 hearing by telephone is proper and just.

45 SECTION 35. IC 22-4-17-9 IS AMENDED TO READ AS
 46 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. No person shall be
 47 excused from attending and testifying or from producing books, papers,
 48 correspondence, memoranda, and other records before the board, **the**
 49 **department**, the review board, an administrative law judge, or the duly

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

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

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

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

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

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

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

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

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

48 (1) Four (4) members shall be appointed as representatives of labor
 49 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, which
14 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 commissioner**
30 **or the board**. The April meeting shall be known as the annual meeting.
31 Five (5) members of the board constitute a quorum for the transaction
32 of business. At its first meeting and at each annual meeting held
33 thereafter, the board shall organize by the election of a president and
34 vice president from its own number, each of whom, except those first
35 elected, shall serve for a term of one (1) year and until a successor is
36 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, if
48 any, to which any rule or regulation so issued or legal interpretation of
49 this article shall be with or without retroactive effect. Whenever the

1 board believes that a change in contribution or benefit rates will become
 2 necessary to protect the solvency of the **unemployment insurance**
 3 **benefit** fund, it shall promptly so inform the governor and the general
 4 assembly, and make recommendations with respect thereto.

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

10 (1) open to inspection; and

11 (2) subject to being copied;

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

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

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

34 (d) The ~~commissioner~~ **department** may release the following
 35 information:

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

37 (2) Employer specific information known as ES 202 data and data
 38 resulting from enhancements made through the business
 39 establishment list improvement project may be released to the
 40 Indiana economic development corporation only for the following
 41 purposes:

42 (A) The purpose of conducting a survey.

43 (B) The purpose of aiding the officers or employees of the
 44 Indiana economic development corporation in providing
 45 economic development assistance through program development,
 46 research, or other methods.

47 (C) Other purposes consistent with the goals of the Indiana
 48 economic development corporation and not inconsistent with
 49 those of the department.

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

6 (4) Information obtained from any person in the administration of
7 this article and the records of the department relating to the
8 unemployment tax or the payment of benefits for use by the
9 following governmental entities:

10 (A) department of state revenue; or

11 (B) state or local law enforcement agencies;

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

14 (e) The ~~commissioner~~ **department** may make information available
15 under subsection (d)(1), (d)(2), or (d)(3) only:

16 (1) if:

17 (A) data provided in summary form cannot be used to identify
18 information relating to a specific employer or specific employee;
19 or

20 (B) there is an agreement that the employer specific information
21 released to the Indiana economic development corporation or the
22 budget agency will be treated as confidential and will be released
23 only in summary form that cannot be used to identify information
24 relating to a specific employer or a specific employee; and

25 (2) after the cost of making the information available to the person
26 requesting the information is paid under IC 5-14-3.

27 (f) In addition to the confidentiality provisions of subsection (b), **the**
28 **fact that a claim has been made under IC 22-4-15-1(c)(8) and** any
29 information furnished by the claimant or an agent to the department to
30 verify a claim of domestic or family violence ~~is~~ **are** confidential. ~~This~~
31 **Information concerning the claimant's current address or physical**
32 **location** shall not be disclosed to the employer or any other person.
33 Disclosure is subject to the following **additional** restrictions:

34 (1) The claimant must be notified before any release of information.

35 (2) Any disclosure is subject to redaction of unnecessary identifying
36 information, including the claimant's address.

37 (g) An employee:

38 (1) of the department who recklessly violates subsection (a), (c),
39 (d), (e), or (f); or

40 (2) of any governmental entity listed in subsection (d)(4) ~~of this~~
41 ~~chapter~~ who recklessly violates subsection (d)(4); ~~of this chapter~~;
42 commits a Class B misdemeanor.

43 (h) An employee of the Indiana economic development corporation or
44 the budget agency who violates subsection (d) or (e) commits a Class
45 B misdemeanor.

46 **(i) An employer or agent of an employer that becomes aware that**
47 **a claim has been made under IC 22-4-15-1(c)(8) shall maintain that**
48 **information as confidential.**

49 SECTION 40. IC 22-4-19-7 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. In any case where an
2 employing unit, or any officer, member, or agent thereof or any other
3 person having possession of the records thereof, shall fail or refuse
4 upon demand by the board, **the department**, the review board, or an
5 administrative law judge, or the duly authorized representative of any
6 of them, to produce or permit the examination or copying of any book,
7 paper, account, record, or other data pertaining to payrolls or
8 employment or ownership of interests or stock in any employing unit,
9 or bearing upon the correctness of any contribution report or the skills
10 2016 training assessment under IC 22-4-10.5-3, or for the purpose of
11 making a report as required by this article where none has been made,
12 then and in that event the board, **the department**, the review board, or
13 the administrative law judge, or the duly authorized representative of
14 any of them, may by issuance of a subpoena require the attendance of
15 such employing unit, or any officer, member, or agent thereof or any
16 other person having possession of the records thereof, and take
17 testimony with respect to any such matter and may require any such
18 person to produce any books or records specified in such subpoena.

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

39 (b) Such petition shall set forth the facts and circumstances of the
40 demand for and refusal or failure to permit the examination or copying
41 of such records or the failure or refusal of such witness to testify in
42 answer to such subpoena or to produce the records so required by such
43 subpoena. Such court, upon the filing and docketing of such petition
44 shall thereupon promptly issue an order to the defendants named in said
45 petition, to produce forthwith in such court or at a place in such county
46 designated in such order, for the examination or copying by the board,
47 **the department**, the review board, an administrative law judge, or the
48 duly authorized representative of any of them, the records, books, or
49 documents so described and to testify concerning matters described in

1 such petition. Unless such defendants to such petition shall appear in
 2 said court upon a day specified in such order, which said day shall be
 3 not more than ten (10) days after the date of issuance of such order, and
 4 offer, under oath, good and sufficient reasons why such examination or
 5 copying should not be permitted, or why such subpoena should not be
 6 obeyed, such court shall thereupon deliver to the board, **the**
 7 **department**, the review board, **the** administrative law judge, or
 8 representative of any of them, for examination or copying, the records,
 9 books and documents so described in said petition and so produced in
 10 such court and shall order said defendants to appear in answer to the
 11 subpoena, and to testify concerning the subject matter of the inquiry.
 12 Any employing unit, or any officer, member, or agent thereof, or any
 13 other persons having possession of the records thereof who shall
 14 willfully disobey such order of the court after the same shall have been
 15 served upon him, shall be guilty of indirect contempt of such court from
 16 which such order shall have issued and may be adjudged in contempt of
 17 said court and punished therefor as provided by law.

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

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

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

1 SECTION 43. IC 22-4-22-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. In order that the
3 administration of this article and the unemployment ~~compensation~~
4 **insurance** laws of other states or jurisdictions or of the United States
5 of America will be promoted by cooperation between this state and such
6 other states or jurisdictions or the appropriate agencies of the United
7 States in exchanging services and making available facilities and
8 information, the board ~~is and the department are~~ authorized to make
9 such investigations, secure and transmit such information, make
10 available such services and facilities, and exercise such of the other
11 powers provided in this article with respect to the administration of this
12 article as it ~~deems~~ **deemed** necessary or appropriate to facilitate the
13 administration of any unemployment ~~compensation~~ **insurance** law and
14 in like manner to accept and utilize information, services, and facilities
15 made available to this state by the agency or jurisdiction charged with
16 the administration of any such other unemployment ~~compensation~~
17 **insurance** law.

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

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

34 SECTION 45. IC 22-4-23-1 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) The department
36 shall establish and maintain free public employment and training offices
37 in such number and in such places as may be necessary for the proper
38 administration of this article and for the purpose of performing such
39 duties as are within the purview of 29 U.S.C. 49 et seq. and 38 U.S.C.
40 2000 through 2014 and any amendments thereto. The provisions of 29
41 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014 are hereby declared
42 accepted by the state in conformity with the terms of 29 U.S.C. 49 et
43 seq. and 38 U.S.C. 2000 through 2014, and the state commits itself to
44 the observation of and compliance with the requirements of 29 U.S.C.
45 49 et seq. and 38 U.S.C. 2000 through 2014, and the department is
46 constituted the agency of the state for all purposes of 29 U.S.C. 49 et
47 seq. and 38 U.S.C. 2000 through 2014. All duties and powers conferred
48 upon any other department, agency, or officer of the state relating to the
49 establishment, maintenance, and operation of free public employment

1 offices shall be vested in the ~~board~~ **department**. The ~~board~~
 2 **department** being charged with the duty to cooperate with any official
 3 or agency of the United States having powers or duties under the
 4 provisions of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014,
 5 shall be and is authorized and empowered to do and perform all things
 6 necessary to secure to this state the benefits of 29 U.S.C. 49 et seq. and
 7 38 U.S.C. 2000 through 2014. The department may cooperate with or
 8 enter into agreements with the railroad retirement board with respect to
 9 the establishment, maintenance, and use of free employment service
 10 facilities.

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

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

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

22 **(1) a reduction of funding for;**

23 **(2) a centralization or decentralization of; or**

24 **(3) the implementation of a more efficient technology or service
 25 delivery method in connection with;**

26 **the programs and services provided under this article.**

27 SECTION 47. IC 22-4-26-2 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. The fund shall be
 29 administered exclusively for the purpose of this article, and money
 30 withdrawn therefrom, except for deposit in the unemployment insurance
 31 benefit fund and for refund, as provided in this article, and except for
 32 amounts credited to the account of this state pursuant to 42 U.S.C.
 33 1103, as amended, which shall be used exclusively as provided in
 34 section 5 of this chapter, shall be used solely for the payment of
 35 benefits. Payment of benefits and refunds shall be made in accordance
 36 with the rules prescribed by the ~~board~~ **department** consistent with the
 37 provisions of this article. Withdrawals from the fund except as provided
 38 in section 5 of this chapter shall not be subject to any provisions of law
 39 requiring specific appropriations or other formal release by state
 40 officers of money in their custody.

41 SECTION 48. IC 22-4-29-4 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. If the employing unit
 43 protests such assessment, upon written request it shall have an
 44 opportunity to be heard, and such hearing shall be conducted by a
 45 liability administrative law judge pursuant to the provisions of
 46 IC 22-4-32-1 through IC 22-4-32-15. After the hearing the liability
 47 administrative law judge shall immediately notify the employing unit in
 48 writing of the finding, and the assessment, if any, so made shall be final,
 49 in the absence of judicial review proceedings as provided in this article,

1 ~~fifteen (15)~~ **thirty (30)** days after such notice **of appeal** is issued.

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

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

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

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

44 **(c)** Each such receiver shall give bond and be sworn as provided for
 45 by law and shall have power under the control of the court to bring and
 46 defend actions, to take and keep possession of the property of the
 47 employer, to receive all funds and collect any debts due to the employer,
 48 in the receiver's name, and generally to do such acts respecting the
 49 property as the court shall authorize, and shall have all the powers

1 granted to, or shall be subject to all the duties of, receivers under the
2 laws of this state.

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

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

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

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

- 28 (1) the assessment of contributions, penalties, and interest;
- 29 (2) which accounts, if any, benefits paid, or finally ordered to be
30 paid, should be charged;
- 31 (3) successorships, and related matters arising therefrom, including
32 but not limited to:

33 (A) the transfer of accounts; ~~and~~

34 (B) the determination of rates of contribution; and

35 **(C) determinations under IC 22-4-11.5; and**

- 36 (4) claims for refunds of contributions, skills 2016 training
37 assessments, or adjustments thereon in connection with subsequent
38 contribution payments and skills 2016 training assessments;

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

42 SECTION 55. IC 22-4-32-3 IS AMENDED TO READ AS
43 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. The proceedings
44 before a liability administrative law judge shall be conducted in
45 accordance with such rules of practice and procedure as the ~~board~~
46 **department** may ~~prescribe~~ **adopt** under its rulemaking authority ~~as~~
47 ~~contained in IC 22-4-19-2, under IC 22-4-18-1.~~ Any person
48 representing any interested party in the prosecution or defense of any
49 proceedings before a liability administrative law judge must be admitted

1 to practice law in the courts of the state of Indiana, except that persons
 2 admitted to practice before the courts of other states may on special
 3 order be permitted to appear in any proceeding before the liability
 4 administrative law judge. ~~provided; however; that nothing in~~ This
 5 section shall ~~not~~ be ~~so~~ construed ~~as~~ to prohibit an interested party from
 6 electing to be heard in his own cause without counsel.

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

- 13 (1) the assessments of contributions, penalties, and interest;
- 14 (2) the transfer of charges from an employer's account;
- 15 (3) merit rate calculations;
- 16 (4) successorships;
- 17 (5) the denial of claims for refunds and adjustments; and
- 18 ~~(6) a protest arising from an initial determination of the director~~
 19 ~~relating to any matter listed in subdivisions (1) through (5):~~
- 20 **(6) a determination under IC 22-4-11.5.**

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

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

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

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

49 SECTION 60. IC 22-4-32-19, AS AMENDED BY P.L.202-2005,

1 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2006]: Sec. 19. **(a) The department may grant an
3 application for adjustment or refund, make an adjustment or
4 refund, or set off a refund as follows:**

5 **(1)** ~~(a)~~ **At any time within Not later than** four (4) years after the
6 date upon which any contributions, skills 2016 training assessments
7 under IC 22-4-10.5-3, or interest thereon were paid, an employing
8 unit which has paid such contributions, skills 2016 training
9 assessments, or interest thereon may make application for **an
10 adjustment or** a refund of such contributions, skills 2016 training
11 assessments, or an adjustment thereon in connection with
12 subsequent contribution payments or skills 2016 training
13 assessments. ~~The commissioner~~ **department** shall thereupon
14 determine whether or not such contribution or skills 2016 training
15 assessment, or interest or any portion thereof, was erroneously paid
16 or wrongfully assessed. ~~and notify the employing unit in writing of
17 its decision.~~

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

21 ~~(c)~~ **(2)** ~~The commissioner~~ **department** may grant such application
22 in whole or in part and may ~~allow the employing unit to~~ make an
23 adjustment, ~~thereof~~ without interest, in connection with subsequent
24 contribution payments or skills 2016 training assessments, ~~if such
25 adjustment cannot be made, the commissioner may~~ **or** refund such
26 amounts, without interest, from the fund. ~~For like cause and within
27 the same period,~~ Adjustments or refund may be made on the
28 commissioner's own initiative.

29 **(3)** Any adjustments or refunds of interest or penalties collected for
30 contributions due under IC 22-4-10-1 shall be charged to and paid
31 from the special employment and training services fund created by
32 IC 22-4-25. Any adjustments or refunds of interest or penalties
33 collected for skills 2016 training assessments due under
34 IC 22-4-10.5-3 shall be charged to and paid from the skills 2016
35 training fund established by IC 5-28-27-3.

36 **(4) The department may set off any refund available to an
37 employer under this section against any delinquent
38 contributions, payments in lieu of contributions, skills 2016
39 training assessments, and the interest and penalties, if any,
40 related to the delinquent payments and assessments.**

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

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

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

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

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

48 ~~(d)~~ **(c)** If any assessment has become final by virtue of a decision of
49 a liability administrative law judge with the result that no proceeding for

1 judicial review as provided in this article was instituted, no refund or
2 adjustment with respect to such assessment shall be made.

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

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

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

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

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

11 (4) claims for refunds and adjustments;

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

13 ~~(5)~~ **(6)** decisions; and

14 ~~(6)~~ **(7)** notices of intention to appeal or seek judicial review.

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

18 (d) The filing of a document with the ~~appellate unemployment~~
19 **insurance appeals** division or review board is complete on the earliest
20 of the following dates that apply to the filing:

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

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

27 (3) The date on which the document is deposited with a private
28 carrier, as shown by a receipt issued by the carrier, if the document
29 is sent to the ~~appellate unemployment insurance appeals~~
30 division or review board by a private carrier.

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

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

45 SECTION 64. IC 22-4-37-1 IS AMENDED TO READ AS
46 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. It is declared to be
47 the purpose of this article to secure to the state of Indiana and to
48 employers and employees therein all the rights and benefits which are
49 conferred under the provisions of 42 U.S.C. 501 through 504, 42

1 U.S.C. 1101 through 1109, 26 U.S.C. 3301 through 3311, and 29
 2 U.S.C. 49 et seq., and the amendments thereto. Whenever the ~~board~~
 3 **department** shall find it necessary, it shall have power to formulate
 4 rules after public hearing and opportunity to be heard whereof due
 5 notice is given as is provided in this article for the adoption of rules
 6 pursuant to ~~IC 22-4-19-2~~, **IC 4-22-2**, and with the approval of the
 7 governor of Indiana, to adopt such rules as shall effectuate the declared
 8 purposes of this article.

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

12 (1) the Congress of the United States amend, repeal, or authorize
 13 the implementation of a demonstration project under 29 U.S.C. 49
 14 et seq., 26 U.S.C. 3301 through 3311, 42 U.S.C. 301 et seq., or 26
 15 U.S.C. 3101 through 3504, or any statute or statutes supplemental
 16 to or in lieu thereof or any part or parts of said statutes, or should
 17 any or all of said statutes or any part or parts thereof be held
 18 invalid, to the end and with such effect that appropriations of funds
 19 by the said Congress and grants thereof to the state for the payment
 20 of costs of administration of the department ~~of workforce~~
 21 ~~development~~ are or no longer shall be available for such purposes;
 22 ~~or should~~

23 (2) the primary responsibility for the administration of 26 U.S.C.
 24 3301 through 26 U.S.C. 3311 be transferred to the state as a
 25 demonstration project authorized by Congress; or ~~should~~

26 (3) employers in Indiana subject to the payment of tax under 26
 27 U.S.C. 3301 through 3311 be granted full credit upon such tax for
 28 contributions or taxes paid to the department; ~~of workforce~~
 29 ~~development~~

30 then, beginning with the effective date of such change in liability for
 31 payment of such federal tax and for each year thereafter, the normal
 32 contribution rate under this article shall be established by the
 33 department ~~of workforce development~~ and may not exceed three and
 34 one-half percent (3.5%) per year of each employer's payroll subject to
 35 contribution. With respect to each employer having a rate of
 36 contribution for such year pursuant to terms of IC 22-4-11-2(b)(2)(A),
 37 IC 22-4-11-2(b)(2)(B), **IC 22-4-11-2(c)**, IC 22-4-11-3, ~~and~~
 38 IC 22-4-11-3.3, **and IC 22-4-11.5**, to the rate of contribution, as
 39 determined for such year in which such change occurs, shall be added
 40 not more than eight-tenths percent (0.8%) as prescribed by the
 41 department. ~~of workforce development.~~

42 (b) The amount of the excess of tax for which such employer is or
 43 may become liable by reason of this section over the amount which such
 44 employer would pay or become liable for except for the provisions of
 45 this section, together with any interest or earnings thereon, shall be paid
 46 and transferred into the employment and training services
 47 administration fund to be disbursed and paid out under the same
 48 conditions and for the same purposes as is other money provided to be
 49 paid into such fund. If the commissioner shall determine that as of

1 January 1 of any year there is an excess in said fund over the money and
2 funds required to be disbursed therefrom for the purposes thereof for
3 such year, then and in such cases an amount equal to such excess, as
4 determined by the commissioner, shall be transferred to and become
5 part of the unemployment insurance benefit fund, and such funds shall
6 be deemed to be and are hereby appropriated for the purposes set out in
7 this section.

8 SECTION 66. THE FOLLOWING ARE REPEALED [EFFECTIVE
9 JULY 1, 2006]: IC 22-4-16-1; IC 22-4-19-2; IC 22-4-19-3.

10 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