

## IC 22-4

### ARTICLE 4. UNEMPLOYMENT COMPENSATION SYSTEM

#### IC 22-4-1

##### Chapter 1. Declaration of Public Policy

#### IC 22-4-1-1

##### Police power

Sec. 1. As a guide to the interpretation and application of this article, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is declared hereby to be a serious menace to the health, morale, and welfare of the people of this state and to the maintenance of public order within this state. Protection against this great hazard of our economic life can be provided in some measure by the required and systematic accumulation of funds during periods of employment to provide benefits to the unemployed during periods of unemployment and by encouragement of desirable stable employment. The enactment of this article to provide for payment of benefits to persons unemployed through no fault of their own, to encourage stabilization in employment, and to provide for integrated employment and training services in support of state economic development programs, and to provide maximum job training and employment opportunities for the unemployed, underemployed, the economically disadvantaged, dislocated workers, and others with substantial barriers to employment, is, therefore, essential to public welfare; and the same is declared to be a proper exercise of the police powers of the state. To further this public policy, the state, through its department of workforce development, will maintain close coordination among all federal, state, and local agencies whose mission affects the employment or employability of the unemployed and underemployed.

*(Formerly: Acts 1947, c.208, s.101.) As amended by P.L.144-1986, SEC.86; P.L.18-1987, SEC.16; P.L.21-1995, SEC.61.*

#### IC 22-4-1-2

##### **Unemployment application considered request for benefits from unemployment insurance benefit trust fund; commissioner responsible for proper payment of unemployment benefits; no burden of proof for entitlement to unemployment benefits; no presumption of entitlement or nonentitlement to unemployment benefits**

Sec. 2. (a) Unemployment benefits are paid from state funds and are not considered paid from any special insurance plan or by an employer. An application for unemployment benefits is not considered a claim against an employer, but is considered a request for unemployment benefits from the unemployment insurance benefit trust fund.

(b) The commissioner is responsible for the proper payment of

unemployment benefits without regard to the level of interest or participation in any determination or appeal by an applicant or an employer.

(c) An applicant's entitlement to unemployment benefits is determined based on the information that is available without regard to a burden of proof. An agreement between an applicant and an employer is not binding on the commissioner in determining an applicant's entitlement to unemployment benefits.

(d) There is no presumption of entitlement or nonentitlement to unemployment benefits. There is no equitable or common law allowance for or denial of unemployment benefits.

*As added by P.L.121-2014, SEC.5.*

## **IC 22-4-2**

### **Chapter 2. Definitions**

#### **IC 22-4-2-1**

##### **Benefits**

Sec. 1. As used in this article, unless the context clearly requires otherwise, "benefits" means the money payments payable to an eligible individual as provided in this article with respect to his unemployment.

*(Formerly: Acts 1947, c.208, s.201.) As amended by P.L.144-1986, SEC.87.*

#### **IC 22-4-2-2**

##### **Partial benefits**

Sec. 2. "Partial benefits" means the weekly benefit amounts of any eligible individual who is partially and/or part-totally unemployed, less the deductible income as hereinafter defined.

*(Formerly: Acts 1947, c.208, s.202; Acts 1953, c.177, s.1; Acts 1957, c.299, s.15.)*

#### **IC 22-4-2-3**

##### **Board**

Sec. 3. "Board" means the unemployment insurance board established by this article.

*(Formerly: Acts 1947, c.208, s.203.) As amended by P.L.144-1986, SEC.88; P.L.18-1987, SEC.17.*

#### **IC 22-4-2-3.5**

##### **Commissioner**

Sec. 3.5. "Commissioner" refers to the commissioner of workforce development.

*As added by P.L.21-1995, SEC.62.*

#### **IC 22-4-2-4**

##### **Contributions**

Sec. 4. "Contributions" means the money payments to the unemployment insurance benefit fund required and provided by the terms of this article.

*(Formerly: Acts 1947, c.208, s.204.) As amended by P.L.144-1986, SEC.89; P.L.18-1987, SEC.18.*

#### **IC 22-4-2-5**

##### **Repealed**

*(Repealed by P.L.21-1995, SEC.149.)*

#### **IC 22-4-2-6**

##### **State**

Sec. 6. "State" means and includes the several states of the United States of America, the District of Columbia of the United States of America, the Commonwealth of Puerto Rico, the Virgin Islands and

the Dominion of Canada.  
*(Formerly: Acts 1947, c.208, s.206; Acts 1965, c.190, s.1; Acts 1967, c.310, s.1.) As amended by Acts 1977, P.L.262, SEC.1.*

#### **IC 22-4-2-7**

##### **Employment office**

Sec. 7. "Employment office" means a free public employment office or branch thereof, maintained and operated by this state, any other state or jurisdiction, or by any agency or instrumentality of the United States of America, or where the context allows, maintained by any state as a part of a state-controlled system of public employment offices.

*(Formerly: Acts 1947, c.208, s.207.)*

#### **IC 22-4-2-8**

##### **Employment and training services administration fund**

Sec. 8. "Employment and training services administration fund" means the fund established by IC 22-4-24 from which administrative expenses under this article shall be paid, other than those to be paid from the special employment and training services fund, as provided in IC 22-4-25.

*(Formerly: Acts 1947, c.208, s.208.) As amended by P.L.144-1986, SEC.90; P.L.18-1987, SEC.20.*

#### **IC 22-4-2-9**

##### **Fund**

Sec. 9. "Fund" means the unemployment insurance benefit fund established by IC 22-4-26-1, in which all contributions required, all payments in lieu of contributions, and all money received from the federal government as reimbursements pursuant to section 204 of the Federal-State Extended Compensation Act of 1970, 26 U.S.C. 3304n, shall be deposited and from which all benefits provided under this article shall be paid.

*(Formerly: Acts 1947, c.208, s.209; Acts 1971, P.L.355, SEC.1; Acts 1973, P.L.239, SEC.1.) As amended by P.L.18-1987, SEC.21; P.L.1-2007, SEC.160.*

#### **IC 22-4-2-10**

##### **Special employment and training services fund**

Sec. 10. "Special employment and training services fund" means the special administrative fund created under IC 22-4-25.

*(Formerly: Acts 1947, c.208, s.210.) As amended by P.L.144-1986, SEC.91; P.L.18-1987, SEC.22.*

#### **IC 22-4-2-11**

##### **Department**

Sec. 11. "Department" means the department of workforce development.

*(Formerly: Acts 1947, c.208, s.211.) As amended by P.L.18-1987, SEC.23; P.L.21-1995, SEC.63.*

#### **IC 22-4-2-12**

##### **Base period**

Sec. 12. "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit period: Provided, however, That for a claim computed in accordance with IC 1971, 22-4-22, the base period shall be the base period as outlined in the paying state's law.

*(Formerly: Acts 1947, c.208, s.212; Acts 1971, P.L.355, SEC.2.)*

#### **IC 22-4-2-12.5**

##### **Base period; persons receiving worker's compensation 52 weeks or less**

Sec. 12.5. Notwithstanding section 12 of this chapter, for an individual who during the "base period" as defined in that section has received worker's compensation benefits under IC 22-3-3 for a period of fifty-two (52) weeks or less, and as a result has not earned sufficient wage credits to meet the requirements of IC 22-4-14-5, "base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the last day that the individual was able to work, as a result of the individual's injury.

*As added by P.L.226-1983, SEC.1. Amended by P.L.28-1988, SEC.68.*

#### **IC 22-4-2-13**

##### **Calendar quarter**

Sec. 13. "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, september 30, or December 31: Provided, That for due dates of state unemployment returns in each instance of quarterly return, the date shall be the last day of the month following the end of the quarter.

*(Formerly: Acts 1947, c.208, s.213; Acts 1965, c.202, s.1.)*

#### **IC 22-4-2-14**

##### **Week**

Sec. 14. Except as provided in IC 22-4-5-3, "week" means a calendar week.

*(Formerly: Acts 1947, c.208, s.214.) As amended by P.L.241-1987, SEC.1.*

#### **IC 22-4-2-15**

##### **Weekly benefit amount**

Sec. 15. "Weekly benefit amount" means the amount of benefits an eligible individual would be entitled to receive for a particular week of total unemployment.

*(Formerly: Acts 1947, c.208, s.215.)*

#### **IC 22-4-2-16**

##### **Annual payroll**

Sec. 16. "Annual payroll" means the total amount of wages for employment paid by an employer during the twelve (12) consecutive

calendar month period ending on the computation date of any calendar year, including wages paid by any other employer whose account has been assumed by such employer in accordance with the provisions of IC 22-4-10-6 or IC 22-4-10-7.

*(Formerly: Acts 1947, c.208, s.216; Acts 1957, c.299, s.1.) As amended by P.L.144-1986, SEC.92.*

#### **IC 22-4-2-17**

##### **Computation date**

Sec. 17. Except as provided in IC 22-4-11.5, "computation date" means June 30 of the year preceding the effective date of new rates of contribution, except that in the event, after having been legally terminated, an employer again becomes subject to this article during the last six (6) months of a calendar year and resumes the employer's former position with respect to the resources and liabilities of the experience account, then and in such case the employer's first "computation date" shall mean December 31 of the fourth consecutive calendar year of such subjectivity and thereafter "computation date" for such employer shall mean June 30.

*(Formerly: Acts 1947, c.208, s.217; Acts 1957, c.299, s.2.) As amended by P.L.144-1986, SEC.93; P.L.80-1990, SEC.9; P.L.202-1993, SEC.1; P.L.108-2006, SEC.1.*

#### **IC 22-4-2-17.5**

##### **Determination date**

Sec. 17.5. "Determination date" means September 30 of each year. *As added by P.L.202-1993, SEC.2.*

#### **IC 22-4-2-18**

##### **Balance**

Sec. 18. "Balance" means the amount standing to the credit or debit of the experience account as of the computation date.

*(Formerly: Acts 1947, c.208, s.218; Acts 1953, c.177, s.2.)*

#### **IC 22-4-2-19**

##### **Agency**

Sec. 19. "Agency" means any officer, board, commission, or other authority designated by an unemployment insurance law in force in any state or in Canada to administer the unemployment insurance fund for which provision is made by such unemployment insurance law.

*(Formerly: Acts 1947, c.208, s.219.)*

#### **IC 22-4-2-20**

##### **Jurisdiction**

Sec. 20. "Jurisdiction" means any state or Canada.

*(Formerly: Acts 1947, c.208, s.220.)*

#### **IC 22-4-2-21**

##### **Benefit period**

Sec. 21. "Benefit period" with respect to any individual means the fifty-two-consecutive-week period beginning with the first week as of which an insured worker first files an initial claim for determination of his insured status, and thereafter the fifty-two-consecutive-week period beginning with the first week as of which the individual next files an initial claim after the termination of his last preceding benefit period.

*(Formerly: Acts 1947, c.208, s.221; Acts 1951, c.295, s.1; Acts 1953, c.177, s.3.) As amended by Acts 1977, P.L.2, SEC.74.*

#### **IC 22-4-2-22**

##### **Valid claim**

Sec. 22. "Valid claim" means a claim filed by an individual who has established qualifying wage credits and who is totally, partially, or part-totally unemployed; Provided, no individual in a benefit period may file a valid claim for a waiting period or benefit period rights with respect to any period subsequent to the expiration of such benefit period.

*(Formerly: Acts 1947, c.208, s.222; Acts 1953, c.177, s.4.)*

#### **IC 22-4-2-23**

##### **Initial claim**

Sec. 23. "Initial claim" means a written application, in a form prescribed by the department, made by an individual for the determination of the individual's status as an insured worker.

*(Formerly: Acts 1947, c.208, s.223; Acts 1953, c.177, s.5.) As amended by P.L.108-2006, SEC.2.*

#### **IC 22-4-2-24**

##### **Additional claim**

Sec. 24. "Additional claim" means a written application for a determination of benefit eligibility, made by an individual in a form prescribed by the department, to begin a second or subsequent series of claims in a benefit period, by which application the individual certifies to new unemployment resulting from a break in or loss of work which has occurred since the last claim was filed by such individual.

*(Formerly: Acts 1947, c.208, s.224; Acts 1953, c.177, s.6.) As amended by P.L.108-2006, SEC.3.*

#### **IC 22-4-2-25**

##### **Insured worker**

Sec. 25. "Insured worker" means an individual who, with respect to a base period, meets the qualifying wage requirements of IC 22-4-14-5.

*(Formerly: Acts 1947, c.208, s.225; Acts 1953, c.177, s.7.) As amended by P.L.144-1986, SEC.94.*

#### **IC 22-4-2-26**

##### **Insured work**

Sec. 26. "Insured work" means employment in the service of an employer.

*(Formerly: Acts 1947, c.208, s.226; Acts 1953, c.177, s.8.)*

**IC 22-4-2-27**

**Repealed**

*(Repealed by P.L.20-1986, SEC.16.)*

**IC 22-4-2-28**

**Repealed**

*(Repealed by P.L.20-1986, SEC.16.)*

**IC 22-4-2-29**

**Insured unemployment**

Sec. 29. "Insured unemployment" means unemployment during a given week for which waiting period credit or benefits are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

*(Formerly: Acts 1947, c.208, s.229; Acts 1967, c.310, s.4.)*

**IC 22-4-2-30**

**Hospital**

Sec. 30. For all purposes of this article, the term "hospital" means:

- (1) an institution defined in IC 16-18-2-179(b) and licensed by the state department of health; or
- (2) a state institution (as defined in IC 12-7-2-184).

*(Formerly: Acts 1971, P.L.355, SEC.3.) As amended by P.L.2-1992, SEC.742; P.L.2-1993, SEC.131.*

**IC 22-4-2-31**

**Eligible postsecondary educational institution**

Sec. 31. (a) "Eligible postsecondary educational institution" for the purposes of this article, means an educational institution that:

- (1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;
- (2) is legally authorized in this state to provide a program of education beyond high school;
- (3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and
- (4) is a public or other nonprofit institution.

(b) Notwithstanding subsection (a), the term includes all colleges and universities in Indiana.

*(Formerly: Acts 1971, P.L.355, SEC.4.) As amended by P.L.2-2007,*

SEC.289.

#### **IC 22-4-2-32**

##### **Payment in lieu of contributions**

Sec. 32. "Payment in lieu of contributions" means the required reimbursements by employers of benefits paid attributable to services performed for such employers which are liable to make these payments as provided in IC 22-4-10-1. These payments shall equal the full amount of regular benefits and the part of benefits not reimbursed by the federal government under the Federal-State Extended Unemployment Compensation Act of 1970 paid that are attributable to services in the employ of such liable employers.

*(Formerly: Acts 1971, P.L.355, SEC.5.) As amended by P.L.175-2009, SEC.2.*

#### **IC 22-4-2-33**

##### **New work**

Sec. 33. The term "new work" wherever used in this article including IC 1971, 22-4-15-2 means (a) work offered to an individual by an employer with whom he has never had a contract of employment; (b) work offered to an individual by his last employer or any other employer with whom he does not have a contract of employment at the time the offer is made; and (c) work offered to an individual by his present employer of (i) different duties from those he has agreed to perform in his existing contract of employment or (ii) different terms or conditions of employment from those in his existing contract.

*(Formerly: Acts 1971, P.L.355, SEC.6.)*

#### **IC 22-4-2-34**

##### **Extended benefit period; "on" and "off" indicators; additional definitions**

Sec. 34. (a) With respect to benefits for weeks of unemployment beginning after August 13, 1981, "extended benefit period" means a period which begins with the third week after a week for which there is a state "on" indicator and ends with the later of the following:

(1) The third week after the first week for which there is a state "off" indicator.

(2) The thirteenth consecutive week of such period.

(b) However, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(c) There is a state "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(1) equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period

ending in each of the preceding two (2) calendar years; and  
(2) equaled or exceeded five percent (5%).

However, the determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if it did not contain subdivision (1) if the insured unemployment rate is at least six percent (6%). Any week for which there would otherwise be a state "on" indicator shall continue to be such a week and may not be determined to be a week for which there is a state "off" indicator.

(d) In addition to the test for a state "on" indicator under subsection (c), there is a state "on" indicator for this state for a week if:

(1) the average rate of total unemployment in Indiana, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three (3) months for which data for all states are published before the close of the week, equals or exceeds six and five-tenths percent (6.5%); and

(2) the average rate of total unemployment in Indiana, seasonally adjusted, as determined by the United States Secretary of Labor, for the three (3) month period referred to in subdivision (1) equals or exceeds one hundred ten percent (110%) of the average for either or both of the corresponding three (3) month periods ending in the two (2) preceding calendar years.

There is a state "off" indicator for a week if either of the requirements in subdivisions (1) and (2) are not satisfied. However, any week for which there would otherwise be a state "on" indicator under this section continues to be subject to the "on" indicator and shall not be considered a week for which there is a state "off" indicator. This subsection expires on the later of December 5, 2009, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed Workers and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

(e) There is a state "off" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the requirements of subsection (c) have not been met.

(f) With respect to benefits for weeks of unemployment beginning after August 13, 1981, "rate of insured unemployment," for purposes of subsection (c), means the percentage derived by dividing:

(1) the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent 13 consecutive week period (as determined by the board on the basis of this state's reports to the United States Secretary of Labor); by

(2) the average monthly employment covered under this article

for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such 13-week period.

(g) "Regular benefits" means benefits payable to an individual under this article or under the law of any other state (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. 8501 through 8525) other than extended benefits. "Additional benefits" means benefits other than extended benefits and which are totally financed by a state payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law. If extended compensation is payable to an individual by this state and additional compensation is payable to the individual for the same week by any state, the individual may elect which of the two (2) types of compensation to claim.

(h) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. 8501 through 8525) payable to an individual under the provisions of this article for weeks of unemployment in the individual's "eligibility period". Pursuant to Section 3304 of the Internal Revenue Code extended benefits are not payable to interstate claimants filing claims in an agent state which is not in an extended benefit period, against the liable state of Indiana when the state of Indiana is in an extended benefit period. This prohibition does not apply to the first two (2) weeks claimed that would, but for this prohibition, otherwise be payable. However, only one (1) such two (2) week period will be granted on an extended claim. Notwithstanding any other provisions of this chapter, with respect to benefits for weeks of unemployment beginning after October 31, 1981, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this clause, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero (0)) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(i) "Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit period which begin in an extended benefit period and, if the individual's benefit period ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period. For any weeks of unemployment beginning after February 17, 2009, and before January 1, 2012, an individual's eligibility period (as described in Section 203(c) of the Federal-State Unemployment Compensation Act of 1970) is, for purposes of any determination of eligibility for extended compensation under state law, considered to include any week that begins:

(1) after the date as of which the individual exhausts all rights to emergency unemployment compensation; and

(2) during an extended benefit period that began on or before the date described in subdivision (1).

(j) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(1) has received, prior to such week, all of the regular benefits including dependent's allowances that were available to the individual under this article or under the law of any other state (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. 8501 through 8525) in the individual's current benefit period that includes such week. However, for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to the individual although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit period or although a nonmonetary decision denying benefits is pending, the individual may subsequently be determined to be entitled to added regular benefits;

(2) may be entitled to regular benefits with respect to future weeks of unemployment but such benefits are not payable with respect to such week of unemployment by reason of seasonal limitations in any state unemployment insurance law; or

(3) having had the individual's benefit period expire prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit period that would include such week;

and has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Act of 1974, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual is considered an exhaustee.

(k) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under Section 3304 of the Internal Revenue Code.

(l) With respect to compensation for weeks of unemployment beginning after March 1, 2011, and ending on the later of December 10, 2011, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5), in addition to the tests for a state "on" indicator under subsections (c) and (d), there is a state "on" indicator for a week if:

(1) the average rate of insured unemployment for the period consisting of the week and the immediately preceding twelve

(12) weeks equals or exceeds five percent (5%); and  
(2) the average rate of insured unemployment for the period consisting of the week and the immediately preceding twelve (12) weeks equals or exceeds one hundred twenty percent (120%) of the average rates of insured unemployment for the corresponding thirteen (13) week period ending in each of the preceding three (3) calendar years.

(m) There is a state "off" indicator for a week based on the rate of insured unemployment only if the rate of insured unemployment for the period consisting of the week and the immediately preceding twelve (12) weeks does not result in an "on" indicator under subsection (c)(1).

(n) With respect to compensation for weeks of unemployment beginning after March 1, 2011, and ending on the later of December 10, 2011, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5), in addition to the tests for a state "on" indicator under subsections (c), (d), and (l) there is a state "on" indicator for a week if:

(1) the average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three (3) months for which data for all states are published before the close of the week equals or exceeds six and one-half percent (6.5%); and

(2) the average rate of total unemployment in Indiana (seasonally adjusted), as determined by the United States Secretary of Labor, for the three (3) month period referred to in subdivision (1) equals or exceeds one hundred ten percent (110%) of the average for any or all of the corresponding three (3) month periods ending in the three (3) preceding calendar years.

(o) There is a state "off" indicator for a week based on the rate of total unemployment only if the rate of total unemployment for the period consisting of the most recent three (3) months for which data for all states are published before the close of the week does not result in an "on" indicator under subsection (d)(1).

*(Formerly: Acts 1971, P.L.355, SEC.7; Acts 1973, P.L.239, SEC.2.)  
As amended by Acts 1977, P.L.262, SEC.4; Acts 1981, P.L.209, SEC.3; Acts 1982, P.L.95, SEC.2; P.L.2-1987, SEC.27; P.L.18-1987, SEC.24; P.L.21-1995, SEC.64; P.L.175-2009, SEC.3; P.L.12-2011, SEC.1.*

## **IC 22-4-2-35**

### **Credit reserve ratio**

Sec. 35. An employer's credit reserve ratio is determined on the basis of the relationship that the credit balance shown by his experience account as of the computation date bears to the wages

paid by the employer or his predecessors for the employment during the thirty-six (36) months immediately preceding the computation date.

*As added by Acts 1977, P.L.262, SEC.5.*

#### **IC 22-4-2-36**

##### **Debit reserve ratio**

Sec. 36. An employer's debit reserve ratio is determined on the basis of the relationship that the debit balance shown by his experience account as of the computation date bears to the wages paid by the employer or his predecessors for employment during the thirty-six (36) months immediately preceding the computation date.

*As added by Acts 1977, P.L.262, SEC.6.*

#### **IC 22-4-2-37**

##### **School**

Sec. 37. For the purposes of IC 22-4-8-2(j)(3)(C), "school" means an educational institution that is accredited and approved by the Indiana state board of education and is an academic school system, whereby a student may progressively advance, starting with the first grade through the twelfth grade. This includes all accredited public and parochial schools which are primary, secondary, or preparatory schools. "School" does not include:

- (1) a kindergarten, not a part of the public or parochial school system;
- (2) a day care center;
- (3) an organization furnishing psychiatric care and treatment;
- (4) an organization furnishing training or rehabilitation for individuals with mental retardation or a physical disability, which organization is not a part of the public or parochial school system; or
- (5) an organization offering preschool training, not a part of the public or parochial school system.

*As added by Acts 1977, P.L.262, SEC.7. Amended by P.L.20-1984, SEC.195; P.L.99-1988, SEC.23; P.L.23-1993, SEC.128; P.L.99-2007, SEC.186.*

#### **IC 22-4-2-38**

##### **Review board**

Sec. 38. As used in this article, "review board" means the unemployment insurance review board.

*As added by P.L.18-1987, SEC.25.*

#### **IC 22-4-2-39**

##### **Liability administrative law judge**

Sec. 39. As used in this article, "liability administrative law judge" means a person who is:

- (1) employed as an administrative law judge under IC 22-4-17-4; and
- (2) authorized to hear matters described in IC 22-4-32-1.

*As added by P.L.108-2006, SEC.4.*

**IC 22-4-2-40**

**Repealed**

*(Repealed by P.L.121-2014, SEC.6.)*

### **IC 22-4-3**

#### **Chapter 3. Unemployment Defined**

##### **IC 22-4-3-1**

###### **"Totally unemployed" defined**

Sec. 1. An individual shall be deemed "totally unemployed" in any week with respect to which no remuneration was payable to him for personal services.

*(Formerly: Acts 1947, c.208, s.301; Acts 1953, c.177, s.9.)*

##### **IC 22-4-3-2**

###### **"Partially unemployed" defined**

Sec. 2. An individual is "partially unemployed" when, because of lack of available work, he is working less than his normal customary full-time hours for his regular employer and his remuneration is less than his weekly benefit amount in any calendar week, but no individual shall be deemed totally, part-totally, or partially unemployed in any week which he is regularly and customarily employed full-time on a straight commission basis.

*(Formerly: Acts 1947, c.208, s.302.)*

##### **IC 22-4-3-3**

###### **Exceptions; on call or as needed employment**

Sec. 3. An individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which the individual:

(1) is regularly and customarily employed on an on-call or as needed basis; and

(2) has:

(A) remuneration for personal services payable to the individual; or

(B) work available from the individual's on-call or as needed employer.

*As added by P.L.2-2011, SEC.1.*

##### **IC 22-4-3-4**

###### **Exception; vacation period with remuneration**

Sec. 4. An individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which the department finds that the individual:

(1) is on a vacation week; and

(2) is receiving, or has received, remuneration from the employer for that week.

*As added by P.L.2-2011, SEC.2. Amended by P.L.6-2012, SEC.151; P.L.121-2014, SEC.7.*

##### **IC 22-4-3-5**

###### **Exception; vacation period without remuneration by agreement or policy**

Sec. 5. (a) Subject to subsection (b), an individual is not totally

unemployed, part-totally unemployed, or partially unemployed for any week in which the department finds the individual:

- (1) is on a vacation week; and
- (2) has not received remuneration from the employer for that week, because of:
  - (A) a written contract between the employer and the employees; or
  - (B) the employer's regular vacation policy and practice.

(b) Subsection (a) applies only if the department finds that the individual has a reasonable assurance that the individual will have employment available with the employer after the vacation period ends.

*As added by P.L.2-2011, SEC.3. Amended by P.L.6-2012, SEC.152; P.L.121-2014, SEC.8.*

#### **IC 22-4-4**

### **Chapter 4. Remuneration, Wages, Wage Credits, and Previously Uncovered Services Defined**

#### **IC 22-4-4-1**

##### **Definitions; remuneration**

Sec. 1. "Remuneration" whenever used in this article, unless the context clearly denotes otherwise, means all compensation for personal services, including but not limited to commissions, bonuses, dismissal pay, vacation pay, sick pay (subject to the provisions of section 2(b)(2) of this chapter) payments in lieu of compensation for services, and cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash may be estimated and determined in accordance with rules prescribed by the board. Such term shall not, however, include the value of meals, lodging, books, tuition, or educational facilities furnished to a student while such student is attending an established school, college, university, hospital, or training course for services performed within the regular school term or school year, including the customary vacation days or periods falling within such school term or school year.

*(Formerly: Acts 1947, c.208, s.401; Acts 1955, c.317, s.1; Acts 1969, c.300, s.1.) As amended by P.L.144-1986, SEC.95.*

#### **IC 22-4-4-2**

##### **Definitions; wages**

Sec. 2. (a) Except as otherwise provided in this section, "wages" means all remuneration as defined in section 1 of this chapter paid to an individual by an employer, remuneration received as tips or gratuities in accordance with Sections 3301 and 3102 et seq. of the Internal Revenue Code, and includes all remuneration considered as wages under Sections 3301 and 3102 et seq. of the Internal Revenue Code. However, the term shall not include any amounts paid as compensation for services specifically excluded by IC 22-4-8-3 or IC 22-4-8-3.5 from the definition of employment as defined in IC 22-4-8-1 and IC 22-4-8-2. The term shall include, but not be limited to, any payments made by an employer to an employee or former employee, under order of the National Labor Relations Board, or a successor thereto, or agency named to perform the duties thereof, as additional pay, back pay, or for loss of employment, or any such payments made in accordance with an agreement made and entered into by an employer, a union, and the National Labor Relations Board.

(b) The term "wages" shall not include the following:

(1) That part of remuneration which, after remuneration equal to:

(A) seven thousand dollars (\$7,000), has been paid in a calendar year to an individual by an employer or the employer's predecessor with respect to employment during any calendar year that begins after December 31, 1982, and

before January 1, 2011; or

(B) nine thousand five hundred dollars (\$9,500), has been paid in a calendar year to an individual by an employer or the employer's predecessor for employment during a calendar year that begins after December 31, 2010;

unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision, the term "employment" shall include service constituting employment under any employment security law of any state or of the federal government. However, nothing in this subdivision shall be taken as an approval or disapproval of any related federal legislation.

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment) made to, or on behalf of, an individual or any of the individual's dependents under a plan or system established by an employer which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical or hospitalization expenses in connection with sickness or accident disability; or

(D) death.

(3) The amount of any payment made by an employer to an individual performing service for it (including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment) on account of retirement.

(4) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability made by an employer to, or on behalf of, an individual performing services for it and after the expiration of six (6) calendar months following the last calendar month in which the individual performed services for such employer.

(5) The amount of any payment made by an employer to, or on behalf of, an individual performing services for it or to the individual's beneficiary:

(A) from or to a trust exempt from tax under Section 401(a) of the Internal Revenue Code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payments, meets the requirements of Section 401(a)(3), 401(a)(4), 401(a)(5), and 401(a)(6) of the Internal Revenue

Code.

(6) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business.

(7) The amount of any payment (other than vacation or sick pay) made to an individual after the month in which the individual attains the age of sixty-five (65) if the individual did not perform services for the employer in the period for which such payment is made.

(8) The payment by an employer (without deduction from the remuneration of the employee) of the tax imposed upon an employee under Sections 3101 et seq. of the Internal Revenue Code (Federal Insurance Contributions Act).

*(Formerly: Acts 1947, c.208, s.402; Acts 1951, c.295, s.2; Acts 1957, c.299, s.12; Acts 1967, c.310, s.5; Acts 1971, P.L.355, SEC.8.) As amended by Acts 1977, P.L.262, SEC.8; P.L.227-1983, SEC.1; P.L.20-1986, SEC.2; P.L.2-1987, SEC.28; P.L.21-1995, SEC.65; P.L.98-2005, SEC.1; P.L.175-2009, SEC.4; P.L.110-2010, SEC.23.*

### **IC 22-4-4-3**

#### **Definitions; wage credits**

Sec. 3. (a) For calendar quarters beginning on and after July 1, 1997, and before July 1, 1998, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand four hundred dollars (\$5,400) and may not include payments specified in section 2(b) of this chapter.

(b) For calendar quarters beginning on and after July 1, 1998, and before July 1, 1999, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand six hundred dollars (\$5,600) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(c) For calendar quarters beginning on and after July 1, 1999, and before July 1, 2000, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand eight hundred dollars (\$5,800) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(d) For calendar quarters beginning on and after July 1, 2000, and before July 1, 2001, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not

exceed six thousand seven hundred dollars (\$6,700) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(e) For calendar quarters beginning on and after July 1, 2001, and before July 1, 2002, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed seven thousand three hundred dollars (\$7,300) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(f) For calendar quarters beginning on and after July 1, 2002, and before July 1, 2003, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed seven thousand nine hundred dollars (\$7,900) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(g) For calendar quarters beginning on and after July 1, 2003, and before July 1, 2004, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed eight thousand two hundred sixteen dollars (\$8,216) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(h) For calendar quarters beginning on and after July 1, 2004, and before July 1, 2005, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed eight thousand seven hundred thirty-three dollars (\$8,733) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(i) For calendar quarters beginning on and after July 1, 2005, and before July 1, 2012, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed nine thousand two hundred fifty dollars (\$9,250) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(j) For calendar quarters beginning on and after July 1, 2012, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

*(Formerly: Acts 1947, c.208, s.403; Acts 1957, c.294, s.1; Acts 1959, c.97, s.1; Acts 1965, c.190, s.2; Acts 1967, c.310, s.6; Acts 1971, P.L.355, SEC.9; Acts 1973, P.L.240, SEC.2; Acts 1974, P.L.110, SEC.2.) As amended by Acts 1976, P.L.114, SEC.1; Acts 1977, P.L.262, SEC.9; Acts 1980, P.L.158, SEC.1; P.L.34-1985, SEC.3; P.L.171-1991, SEC.1; P.L.21-1995, SEC.66; P.L.259-1997(ss), SEC.1; P.L.30-2000, SEC.1; P.L.273-2003, SEC.1; P.L.2-2011, SEC.4.*

#### **IC 22-4-4-4**

##### **Previously uncovered services**

Sec. 4. With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work includes wages paid for previously uncovered services. For the purposes of this section, the term "previously uncovered services" means services:

- (1) which are not employment as defined in IC 22-4-8-1 and are not services covered pursuant to IC 22-4-9-5 at any time during the one (1) year period ending December 31, 1975; and
- (2)(A) which are agricultural labor as defined in IC 22-4-8-2(l) or domestic service as defined in IC 22-4-8-2(m); or
- (B) which are services performed by an employee of this state or a political subdivision of this state, as provided in IC 22-4-8-2(i), or by an employee of a not-for-profit educational institution which is not an eligible postsecondary educational institution, as provided in IC 22-4-8-2(j), except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of the services.

*As added by Acts 1977, P.L.262, SEC.10. Amended by P.L.2-2007, SEC.290.*

## **IC 22-4-5**

### **Chapter 5. Deductible Income Defined**

#### **IC 22-4-5-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.138-2008 apply to initial claims for unemployment filed for weeks that begin after March 14, 2008.

*As added by P.L.220-2011, SEC.363.*

#### **IC 22-4-5-1**

##### **Definition**

Sec. 1. (a) "Deductible income" wherever used in this article, means income deductible from the weekly benefit amount of an individual in any week, and shall include, but shall not be limited to, any of the following:

- (1) Remuneration for services from employing units, whether or not such remuneration is subject to contribution under this article, except as provided in subsection (c).
- (2) Dismissal pay.
- (3) Vacation pay.
- (4) Pay for idle time.
- (5) Holiday pay.
- (6) Sick pay.
- (7) Traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual.
- (8) Net earnings from self-employment.
- (9) Payments in lieu of compensation for services.
- (10) Awards by the national labor relations board of additional pay, back pay, or for loss of employment, or any such payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board.
- (11) Payments made to an individual by an employing unit pursuant to the terms of the Fair Labor Standards Act (Federal Wage and Hour Law, 29 U.S.C. 201 et seq.).
- (12) This subdivision applies to initial claims for unemployment filed for a week that begins after March 14, 2008, and before October 1, 2011. For a week in which a payment is actually received by an individual, payments made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure.
- (13) This subdivision applies to initial claims for unemployment filed for a week that begins after March 14, 2008, and before October 1, 2011. Except as provided in subsection (c)(2), the part of a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure if that part is attributable to a week and the week:
  - (A) occurs after an individual receives the payment; and
  - (B) was used under the terms of a written agreement to

compute the payment.

(b) Deductible income shall not include the first three dollars (\$3), or twenty percent (20%) of the claimant's weekly benefit amount rounded to the next lowest dollar, whichever is the larger, of remuneration paid or payable to an individual with respect to any week by other than the individual's base period employer or employers.

(c) For the purpose of deductible income only, remuneration for services from employing units does not include:

(1) bonuses, gifts, or prizes awarded to an employee by an employing unit; or

(2) for initial claims for unemployment filed for a week that begins after March 14, 2008, and before October 1, 2011, compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure, without regard to how the compensation is characterized by the contract or agreement.

(d) Deductible income does not include a supplemental unemployment insurance benefit made under a valid negotiated contract or agreement.

(e) Deductible income does not include any payments made to an individual by a court system under a summons for jury service.

*(Formerly: Acts 1947, c.208, s.501; Acts 1953, c.177, s.10; Acts 1957, c.299, s.16; Acts 1967, c.310, s.7.) As amended by P.L.227-1983, SEC.2; P.L.20-1986, SEC.3; P.L.138-2008, SEC.2; P.L.110-2010, SEC.24; P.L.2-2011, SEC.5.*

## **IC 22-4-5-2**

### **Specific items deductible**

Sec. 2. (a) Payments in lieu of a vacation awarded to an employee by an employing unit shall be considered as deductible income in and with respect to the week in which the vacation occurs.

(b) The payment of accrued vacation pay, dismissal pay, or severance pay to an individual separated from employment by an employing unit shall be allocated to the period of time for which such payment is made immediately following the date of separation, and an individual receiving such payments shall not be deemed unemployed with respect to a week during which such allocated deductible income equals or exceeds the weekly benefit amount of the individual's claim.

(c) Pay for:

(1) idle time;

(2) sick pay;

(3) traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual;

(4) earnings from self-employment;

(5) awards by the National Labor Relations Board of additional pay, back pay, or for loss of employment;

(6) payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board; or

(7) payments to an employee by an employing unit made pursuant to the terms and provisions of the Fair Labor Standards Act;

shall be deemed to constitute deductible income with respect to the week or weeks for which such payments are made. However, if payments made under subsection (c)(5) or (c)(6) are not, by the terms of the order or agreement under which the payments are made, allocated to any designated week or weeks, then, and in such cases, such payments shall be considered as deductible income in and with respect to the week in which the same is actually paid.

(d) Holiday pay shall be deemed to constitute deductible income with respect to the week in which the holiday occurs.

(e) Payment of vacation pay shall be deemed deductible income with respect to the week or weeks falling within such vacation period for which vacation payment is made.

*(Formerly: Acts 1947, c.208, s.502; Acts 1953, c.177, s.11; Acts 1967, c.310, s.8; Acts 1971, P.L.355, SEC.10.) As amended by Acts 1981, P.L.209, SEC.4; P.L.20-1986, SEC.4; P.L.121-2014, SEC.9.*

### **IC 22-4-5-3**

#### **Work week specified in contract; conditions for use**

Sec. 3. (a) This section applies for purposes of deductible income only.

(b) If:

(1) an employee and an employing unit have agreed in a labor contract, that is negotiated on or before May 10, 1987, and any renewals thereafter of such contract, to establish a work week that is a different term of seven (7) days than the calendar week;

(2) the employing unit has filed a written notice with the division on a form prescribed by the division stating that a work week other than the calendar week has been established under the labor contract between the employing unit and its employees; and

(3) the notice has been filed with the division before an employee working on the contractual work week files a claim for unemployment compensation benefits;

the work week specified in the contract may be used for purposes of this chapter.

*As added by P.L.241-1987, SEC.2.*

## **IC 22-4-6**

### **Chapter 6. Employing Units Defined**

#### **IC 22-4-6-1**

##### **Definition**

Sec. 1. (a) "Employing unit" means any individual or type of organization, including any partnership, limited liability partnership, association, trust, joint venture, estate, limited liability company, joint stock company, insurance company, corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor to any of the foregoing, or the legal representative of a deceased person, which at any time has had one (1) or more individuals performing services for it within this state for remuneration or under any contract of hire, written or oral, expressed or implied. Where any such individual performing services hires a helper to assist in performing such services, each such helper shall be deemed to be performing services for such employing unit for all purposes of this article, whether such helper was hired or paid directly by the employing unit or by the individual, provided the employing unit has actual or constructive knowledge of the services.

(b) All such individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all purposes of this article.

*(Formerly: Acts 1947, c.208, s.601.) As amended by P.L.144-1986, SEC.96; P.L.175-2009, SEC.5.*

#### **IC 22-4-6-2**

##### **Contributions; determination; remuneration other than money**

Sec. 2. For the purpose of determining the liability of an employing unit for the payment of contributions and the number of individuals performing services for remuneration, or under any contract of hire, there shall be included all individuals attending an established school, college, university, hospital or training course, who, in lieu of remuneration for such services, receive either meals, lodging, books, tuition or other educational facilities.

*(Formerly: Acts 1947, c.208, s.602.)*

#### **IC 22-4-6-3**

##### **Concurrent employment by related corporations**

Sec. 3. (a) If two (2) or more related entities, including partnerships, limited liability partnerships, associations, trusts, joint ventures, estates, joint stock companies, limited liability companies, insurance companies, or corporations, or a combination of these entities, concurrently employ the same individual and compensate that individual through a common paymaster that is one (1) of the entities, those entities shall be considered to be one (1) employing unit.

(b) For purposes of this section, entities shall be considered related entities if they satisfy any one (1) of the following tests at any

time during the calendar quarter:

(1) The corporations are members of a "controlled group of corporations", as defined in Section 1563 of the Internal Revenue Code (generally parent-subsidiary or brother-sister controlled groups), or would be members if Section 1563(a)(4) and 1563(b) of the Internal Revenue Code did not apply and if the phrase "more than fifty percent (50%)" were substituted for the phrase "at least eighty percent (80%)" wherever it appears in Section 1563(a) of the Internal Revenue Code.

(2) In the case of an entity that does not issue stock, either fifty percent (50%) or more of the members of one (1) entity's board of directors (or other governing body) are members of the other entity's board of directors (or other governing body), or the holders of fifty percent (50%) or more of the voting power to select these members are concurrently the holders of fifty percent (50%) or more of that power with respect to the other entity.

(3) Fifty percent (50%) or more of one (1) entity's officers are concurrently officers of the other entity.

(4) Thirty percent (30%) or more of one (1) entity's employees are concurrently employees of the other entity.

(5) The entities are part of an affiliated group, as defined in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%).

Entities shall be considered related entities for an entire calendar quarter if they satisfy the requirements of this subsection at any time during the calendar quarter.

(c) For purposes of this section, "concurrent employment" means the contemporaneous existence of an employment relationship between an individual and two (2) or more entities.

*As added by P.L.128-1984, SEC.1. Amended by P.L.2-1987, SEC.29; P.L.175-2009, SEC.6.*

## **IC 22-4-6.5**

### **Chapter 6.5. Professional Employer Organizations**

#### **IC 22-4-6.5-1**

##### **"Client"**

Sec. 1. As used in this chapter, "client" has the meaning set forth in IC 27-16-2-3.

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-2**

##### **"Client level reporting method"**

Sec. 2. As used in this chapter, "client level reporting method" has the meaning set forth in section 11(a) of this chapter.

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-3**

##### **"Covered employee"**

Sec. 3. As used in this chapter, "covered employee" has the meaning set forth in IC 27-16-2-8.

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-4**

##### **"Professional employer agreement"**

Sec. 4. As used in this chapter, "professional employer agreement" has the meaning set forth in IC 27-16-2-12.

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-5**

##### **"Professional employer organization"**

Sec. 5. As used in this chapter, "professional employer organization" or "PEO" has the meaning set forth in IC 27-16-2-13.

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-6**

##### **"PEO level reporting method"**

Sec. 6. As used in this chapter, "PEO level reporting method" has the meaning set forth in section 9(a) of this chapter.

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-7**

##### **Covered employee of PEO is PEO employee for purposes of unemployment compensation insurance**

Sec. 7. (a) For purposes of this article, a covered employee of a PEO is an employee of the PEO.

(b) A PEO is responsible for the payment of contributions, surcharges, penalties, and interest assessed under this article on wages paid by the PEO to the PEO's covered employees during the term of the professional employer agreement.

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-8**

##### **PEO reporting methods; limitations**

Sec. 8. (a) A PEO shall use the client level reporting method to report and pay all required contributions to the unemployment compensation fund as required by IC 22-4-10, unless the PEO elects the PEO level reporting method under section 9 of this chapter.

(b) A PEO that initially elects the PEO level reporting method under section 9 of this chapter may subsequently elect the client level reporting method under section 11 of this chapter.

(c) A PEO using the client level reporting method may not change its reporting method.

(d) Except as provided by IC 22-4-32-21(d), a PEO and its related entities shall use the same reporting method for all clients.

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-9**

##### **PEO election of PEO level reporting method**

Sec. 9. (a) A PEO may elect the PEO level reporting method, which uses the state employer account number and contribution rate of the PEO to report and pay all required contributions to the unemployment compensation fund as required by IC 22-4-10.

(b) A PEO shall make the election required by subsection (a) not later than the following:

(1) December 1, 2013, if the PEO is doing business in Indiana on July 1, 2013.

(2) The first date the PEO is liable to make contributions under this article for at least one (1) covered employee, if the PEO begins doing business in Indiana after July 1, 2013.

(c) The election required by subsection (a) must be made in writing on forms prescribed by the department.

(d) A PEO that does not make an election under this section shall use the client level reporting method.

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-10**

##### **PEO use of PEO level reporting method**

Sec. 10. (a) The following apply to a PEO that elects to use the PEO level reporting method:

(1) The PEO shall file all quarterly contribution and wage reports in accordance with IC 22-4-10-1.

(2) Whenever the PEO enters into a professional employer agreement with a client, the PEO:

(A) shall notify the department not later than fifteen (15) days after the end of the quarter in which the professional employer agreement became effective; and

(B) is subject to IC 22-4-10-6 and IC 22-4-11.5, beginning on the effective date of the professional employer agreement.

(3) The PEO shall notify the department in writing on forms prescribed by the department not later than fifteen (15) days

after the date of the following:

(A) The PEO and a client terminate a professional employer agreement.

(B) The PEO elects the client level reporting method under section 11 of this chapter.

After receiving a notice under this subdivision, the department shall make any changes required by IC 22-4-10-6 and IC 22-4-11.5.

(b) Except as provided by IC 22-4-32-21(d), a PEO that elects to use the PEO level reporting method is liable for all contributions, interest, penalties, and surcharges until the effective date of an election under section 11 of this chapter by the PEO to change to the client level reporting method.

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-11**

##### **PEO election of client level reporting method**

Sec. 11. (a) A PEO using the PEO level reporting method may elect the client level reporting method, which uses the state employer account number and contribution rate of the client to report and pay all required contributions to the unemployment compensation fund as required by IC 22-4-10.

(b) A PEO shall make an election under subsection (a) not later than December 1 of the calendar year before the calendar year in which the election is effective.

(c) An election under subsection (a) must be made in writing on forms prescribed by the department.

(d) An election under subsection (a) is effective on January 1 of the calendar year immediately following the year in which the department receives the notice described in subsection (c).

*As added by P.L.33-2013, SEC.1.*

#### **IC 22-4-6.5-12**

##### **PEO use of client level reporting method**

Sec. 12. The following apply to a PEO that elects to use the client level reporting method:

(1) Whenever the PEO enters into a professional employer agreement with a client, the PEO shall notify the department not later than fifteen (15) days after the end of the quarter in which the professional employer agreement became effective.

(2) If a client is an employing unit on the date the professional employer agreement becomes effective, the client retains its experience balance, liabilities, and wage credits, and IC 22-4-10-6 does not apply to the client.

(3) If a client is not an employing unit on the date the professional employer agreement becomes effective, the client immediately qualifies for an employer experience account under IC 22-4-7-2(f) and is subject to IC 22-4-11-2(b)(2) for purposes of establishing an initial contribution rate.

(4) A client is associated with the PEO's employer experience

account by means of the PEO's primary federal employer identification number (FEIN) for purposes of liability under this article and federal certification.

(5) Upon the termination of a professional employer agreement between the PEO and a client:

(A) the client retains the experience balance, liabilities, and wage credits for the client's employing unit account;

(B) the client's federal employer identification number (FEIN) becomes the primary FEIN on the employing unit's account; and

(C) the PEO's FEIN is not associated with the client's employing unit account after the date:

(i) all outstanding reports are submitted; and

(ii) all outstanding liabilities are paid in full.

*As added by P.L.33-2013, SEC.1.*

### **IC 22-4-6.5-13**

#### **Client transfers between PEOs; client use of payments in lieu of contributions**

Sec. 13. (a) A client that transfers between PEOs is not subject to IC 22-4-10-6 and IC 22-4-11.5 whenever:

(1) the PEOs are not commonly owned, managed, or controlled; and

(2) both PEOs have elected to use the PEO level reporting method.

(b) The client of a PEO that has elected to use the client level reporting method may elect to become liable for payments in lieu of contributions (as defined in IC 22-4-2-32) whenever:

(1) the client is otherwise eligible to make the election; and

(2) the requirements of IC 22-4-10-1 are met.

*As added by P.L.33-2013, SEC.1.*

## IC 22-4-7

### Chapter 7. Employers Defined

#### IC 22-4-7-1

##### Definition

Sec. 1. (a) Before January 1, 2015, "employer" means:

(1) any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty (20) different weeks, whether or not such weeks are or were consecutive within either the current or the preceding year, has or had in employment, and/or has incurred liability for wages payable to, one (1) or more individuals (irrespective of whether the same individual or individuals are or were employed in each such day); or

(2) any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars (\$1,500) or more, except as provided in section 2(e), 2(h), and 2(i) of this chapter.

(b) After December 31, 2014, "employer" means either of the following:

(1) An employing unit that has incurred liability for wages payable to one (1) or more individuals.

(2) An employing unit that in any calendar quarter during the current or preceding calendar year paid for service in employment wages of one dollar (\$1) or more, except as provided in section 2(e), 2(h), and 2(i) of this chapter.

(c) For the purpose of this definition, if any week includes both December 31, and January 1, the days up to January 1 shall be deemed one (1) calendar week and the days beginning January 1 another such week.

(d) For purposes of this section, "employment" shall include services which would constitute employment but for the fact that such services are deemed to be performed entirely within another state pursuant to an election under an arrangement entered into by the board (pursuant to IC 22-4-22) and an agency charged with the administration of any other state or federal unemployment compensation law.

*(Formerly: Acts 1947, c.208, s.701; Acts 1955, c.317, s.2; Acts 1967, c.310, s.9; Acts 1971, P.L.355, SEC.11.) As amended by Acts 1977, P.L.262, SEC.11; P.L.121-2014, SEC.10.*

#### IC 22-4-7-2

##### "Employer" further defined

Sec. 2. "Employer" also means the following:

(a) Any employing unit whether or not an employing unit at the time of the acquisition which acquires the organization, trade, or business within this state of another which at the time of such acquisition is an employer subject to this article, and any employing unit whether or not an employing unit at the time of the acquisition

which acquires substantially all the assets within this state of such an employer used in or in connection with the operation of such trade or business, if the acquisition of substantially all such assets of such trade or business results in or is used in the operation or continuance of an organization, trade, or business.

(b) Any employing unit (whether or not an employing unit at the time of acquisition) which acquires a distinct and segregable portion of the organization, trade, or business within this state of another employing unit which at the time of such acquisition is an employer subject to this article only if the employment experience of the disposing employing unit combined with the employment of its predecessor or predecessors would have qualified such employing unit under section 1 of this chapter if the portion acquired had constituted its entire organization, trade, or business and the acquisition results in the operation or continuance of an organization, trade, or business.

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

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

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

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

(g) Any employing unit for which service in employment, as defined in IC 22-4-8-2(i) or IC 22-4-8-2(i)(1), is performed.

(h) Any employing unit for which service in employment, as defined in IC 22-4-8-2(j), is performed.

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

*(Formerly: Acts 1947, c.208, s.702; Acts 1951, c.295, s.3; Acts 1967, c.310, s.10; Acts 1971, P.L.355, SEC.12.) As amended by Acts 1977, P.L.262, SEC.12; P.L.108-2006, SEC.5.*

### **IC 22-4-7-3**

#### **"Seasonal employer"; "seasonal determination"**

Sec. 3. (a) As used in this article, "seasonal employer" means an employer that, because of climatic conditions or the seasonal nature of a product or service, customarily operates all or a portion of its business only during a regularly recurring period or periods of less than twenty-six (26) weeks for all seasonal periods during a calendar year. An employer may be a seasonal employer with respect to a portion of its business only if that portion, under the usual and customary practice in the industry, is identifiable as a functionally distinct operation.

(b) As used in this article, "seasonal determination" means a decision made by the department after application on prescribed forms as to the seasonal nature of the employer, the normal seasonal period or periods of the employer, and the seasonal operation of the employer covered by such determination.

*As added by P.L.228-1983, SEC.1. Amended by P.L.18-1987, SEC.26.*

## IC 22-4-8

### Chapter 8. Employment Defined

#### IC 22-4-8-1

##### Definition

Sec. 1. (a) "Employment," subject to the other provisions of this section, means service, including service in interstate commerce performed for remuneration or under any contract of hire, written or oral, expressed or implied.

(b) Services performed by an individual for remuneration shall be deemed to be employment subject to this article irrespective of whether the common-law relationship of master and servant exists, unless and until all the following conditions are shown to the satisfaction of the department:

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

(2) The service is performed outside the usual course of the business for which the service is performed.

(3) The individual:

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

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

(c) The term also includes the following:

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

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

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

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

(d) For purposes of subsection (c)(2), the term "employment" shall include services described in subsection (c)(2)(A) and (c)(2)(B) only if all the following conditions are met:

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

(2) The individual does not have a substantial investment in

facilities used in connection with the performance of the services (other than in facilities for transportation).

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

*(Formerly: Acts 1947, c.208, s.801; Acts 1971, P.L.355, SEC.13.) As amended by P.L.108-2006, SEC.6.*

## **IC 22-4-8-2**

### **Services included**

Sec. 2. The term "employment" shall include:

(a) An individual's entire service performed within or both within and without Indiana if the service is localized in Indiana.

(b) An individual's entire service performed within or both within and without Indiana if the service is not localized in any state, but some of the service is performed in Indiana and:

(1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled is in Indiana;

(2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in Indiana; or

(3) such service is not covered under the unemployment compensation law of any other state or Canada, and the place from which the service is directed or controlled is in Indiana.

(c) Services not covered under subsections (a) and (b) and performed entirely without Indiana, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the United States, shall be deemed to be employment subject to this article if the department approves the election of the individual performing such services and the employing unit for which such services are performed, that the entire services of such individual shall be deemed to be employment subject to this article.

(d) Services covered by an election duly approved by the department, in accordance with an agreement pursuant to IC 22-4-22-1 through IC 22-4-22-5, shall be deemed to be employment during the effective period of such election.

(e) Service shall be deemed to be localized within a state if:

(1) the service is performed entirely within such state; or

(2) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, such as is temporary or transitory in nature or consists of isolated transactions.

(f) Periods of vacation with pay or leave with pay, other than military leave granted or given to an individual by an employer.

(g) Notwithstanding any other provisions of this article, the term employment shall also include all services performed by an officer or member of the crew of an American vessel or American aircraft,

on or in connection with such vessel or such aircraft, provided that the operating office, from which the operations of such vessel operating on navigable waters within or the operations of such aircraft within, or the operation of such vessel or aircraft within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within this state.

(h) Services performed for an employer which is subject to contribution solely by reason of liability for any federal tax against which credit may be taken for contributions paid into a state unemployment compensation fund.

(i) The following:

(1) Service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or eligible postsecondary educational institution located in Indiana.

(2) Service performed after December 31, 1977, by an individual in the employ of this state or a political subdivision of the state or any instrumentality of the state or a political subdivision, or any instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions, if the service is excluded from "employment" as defined in Section 3306(c)(7) of the Federal Unemployment Tax Act (26 U.S.C. 3306(c)(7)). However, service performed after December 31, 1977, as the following is excluded:

(A) An elected official.

(B) A member of a legislative body or of the judiciary of a state or political subdivision.

(C) A member of the state national guard or air national guard.

(D) An employee serving on a temporary basis in the case of fire, snow, storm, earthquake, flood, or similar emergency.

(E) An individual in a position which, under the laws of the state, is designated as:

(i) a major nontenured policymaking or advisory position; or

(ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week.

(3) Service performed after March 31, 1981, by an individual whose service is part of an unemployment work relief or work training program assisted or financed in whole by any federal agency or an agency of this state or a political subdivision of this state, by an individual receiving such work relief or work training is excluded.

(j) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met:

(1) The service is excluded from "employment" as defined in

the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act (26 U.S.C. 3306(c)(8)).

(2) The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(3) For the purposes of subdivisions (1) and (2), the term "employment" does not apply to service performed as follows:

(A) In the employ of:

- (i) a church or convention or association of churches; or
- (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(B) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(C) Before January 1, 1978, in the employ of a school which is not an eligible postsecondary educational institution.

(D) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work.

(E) As part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

(k) The service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subsection (a), (b), or (e) or the parallel provisions of another state's law), if the following apply:

(1) The employer's principal place of business in the United States is located in this state.

(2) The employer has no place of business in the United States, but the employer is:

(A) an individual who is a resident of this state;

(B) a corporation which is organized under the laws of this state;

(C) a partnership, limited liability partnership, or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any

one (1) other state; or

(D) an association, a joint venture, an estate, a limited liability company, a joint stock company, or an insurance company (referred to as an "entity" in this clause), and either:

- (i) the entity is organized under the laws of this state; or
- (ii) the number of owners, members, or beneficiaries who are residents of this state is greater than the number who are residents of any one (1) other state.

(3) None of the criteria of subdivisions (1) and (2) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(4) An "American employer," for purposes of this subsection, means:

- (A) an individual who is a resident of the United States;
- (B) a partnership or limited liability partnership, if two-thirds (2/3) or more of the partners are residents of the United States;
- (C) a trust, if all of the trustees are residents of the United States; or
- (D) a corporation, an association, a joint venture, an estate, a limited liability company, a joint stock company, or an insurance company organized or established under the laws of the United States or of any state.

(l) The term "employment" also includes the following:

(1) Service performed after December 31, 1977, by an individual in agricultural labor (as defined in section 3(c) of this chapter) when the service is performed for an employing unit which:

- (A) during any calendar quarter in either the current or preceding calendar year paid cash remuneration of twenty thousand dollars (\$20,000) or more to individuals employed in agricultural labor; or
- (B) for some portion of a day in each of twenty (20) different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same time.

(2) For the purposes of this subsection, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

- (A) if the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(B) if the individual is not an employee of another person within the meaning of section 1 of this chapter.

(3) For the purposes of subdivision (1), in the case of an individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subdivision (2):

(A) the other person and not the crew leader shall be treated as the employer of the individual; and

(B) the other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader (either on the individual's own behalf or on behalf of the other person) for the service in agricultural labor performed for the other person.

(4) For the purposes of this subsection, the term "crew leader" means an individual who:

(A) furnishes individuals to perform service in agricultural labor for any other person;

(B) pays (either on the individual's own behalf or on behalf of the other person) the agricultural laborers furnished by the individual for the service in agricultural labor performed by them; and

(C) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person.

(m) The term "employment" includes domestic service after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars (\$1,000) or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in the domestic service in any calendar quarter.

*(Formerly: Acts 1947, c.208, s.802; Acts 1971, P.L.355, SEC.14.) As amended by Acts 1977, P.L.262, SEC.13; Acts 1978, P.L.122, SEC.1; Acts 1979, P.L.229, SEC.1; Acts 1981, P.L.209, SEC.5; P.L.18-1987, SEC.27; P.L.2-2007, SEC.291; P.L.3-2008, SEC.158; P.L.175-2009, SEC.7.*

### **IC 22-4-8-3**

#### **Services not included; determination of status**

Sec. 3. "Employment" shall not include the following:

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

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

(2) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; however, the department is authorized to enter into agreements with the proper agencies under such Act of Congress which agreements shall become effective ten (10) days after publication thereof, in accordance with rules adopted by the department under IC 4-22-2, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this article, acquired rights to unemployment compensation under such Act of Congress, or who have, after having acquired potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this article.

(3) "Agricultural labor" as provided in section 2(1)(1) of this chapter shall include only services performed:

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

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

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

(D) in the employ of:

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

packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (1/2) of the commodity with respect to which such service is performed; or

(ii) a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in item (i), but only if such operators produce more than one-half (1/2) of the commodity with respect to which such service is performed;

except the provisions of items (i) and (ii) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(E) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(4) As used in subdivision (3), "farm" includes stock, dairy, poultry, fruit, furbearing animals, and truck farms, nurseries, orchards, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.

(5) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in section 2(m) of this chapter.

(6) Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

(7) Service performed by an individual in the employ of child or spouse, and service performed by a child under the age of twenty-one (21) in the employ of a parent.

(8) Service not in the course of the employing unit's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for such service is fifty dollars (\$50) or more and such service is performed by an individual who is regularly employed by such employing unit to perform such service. For the purposes of this subdivision, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if:

(A) on each of some of twenty-four (24) days during such quarter such individual performs such service for some portion of the day; or

(B) such individual was regularly employed (as determined under clause (A)) by such employing unit in the performance

of such service during the preceding calendar quarter.

(9) Service performed by an individual in any calendar quarter in the employ of any organization exempt from income tax under Section 501 of the Internal Revenue Code (except those services included in sections 2(i) and 2(j) of this chapter if the remuneration for such service is less than fifty dollars (\$50)).

(10) Service performed in the employ of a hospital, if such service is performed by a patient of such hospital.

(11) Service performed in the employ of a school or eligible postsecondary educational institution if the service is performed:

(A) by a student who is enrolled and is regularly attending classes at the school or eligible postsecondary educational institution; or

(B) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that:

(i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by the school or eligible postsecondary educational institution; and

(ii) such employment will not be covered by any program of unemployment insurance.

(12) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(13) Service performed in the employ of a government foreign to the United States of America, including service as a consular or other officer or employee or a nondiplomatic representative.

(14) Service performed in the employ of an instrumentality wholly owned by a government foreign to that of the United States of America, if the service is of a character similar to that performed in foreign countries by employees of the United States of America or of an instrumentality thereof, and if the board finds that the Secretary of State of the United States has certified to the Secretary of the Treasury of the United States that the government, foreign to the United States, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in such country by employees of the United States and of instrumentalities thereof.

(15) Service performed as a student nurse in the employ of a

hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four (4) year course in a medical school chartered or approved pursuant to state law.

(16) Service performed by an individual as an insurance producer or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

(17) Service performed by an individual:

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

(B) in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, the individual's compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to the individual, whether or not the individual is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back.

(18) Service performed in the employ of an international organization.

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

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

(21) Service performed by an inmate of a custodial or penal institution.

(22) Service performed as a precinct election officer (as defined

in IC 3-5-2-40.1).  
(Formerly: Acts 1947, c.208, s.803; Acts 1951, c.295, s.4; Acts 1957, c.299, s.13; Acts 1959, c.305, s.1; Acts 1967, c.310, s.11; Acts 1971, P.L.355, SEC.15.) As amended by Acts 1977, P.L.262, SEC.14; P.L.227-1983, SEC.3; P.L.2-1987, SEC.30; P.L.18-1987, SEC.28; P.L.3-1995, SEC.147; P.L.21-1995, SEC.67; P.L.2-1996, SEC.267; P.L.1-2003, SEC.70; P.L.178-2003, SEC.10; P.L.108-2006, SEC.7; P.L.2-2007, SEC.292.

#### **IC 22-4-8-3.5**

##### **Services not included; owner-operator of motor vehicle**

Sec. 3.5. As used in this article, "employment" does not include an owner-operator that provides a motor vehicle and the services of a driver to a motor carrier under a written contract that is subject to IC 8-2.1-24-22, 45 IAC 16-1-13, or 49 CFR 376.

*As added by P.L.98-2005, SEC.2.*

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

##### **"Seasonal employment"; "seasonal worker"**

Sec. 4. (a) As used in this article, "seasonal employment" means services performed for a seasonal employer during the seasonal period in the employer's seasonal operations, after the effective date of a seasonal determination with respect to the seasonal employer.

(b) As used in this article, "seasonal worker" means an individual who:

(1) has been employed by a seasonal employer in seasonal employment during a regularly recurring period or periods of less than twenty-six (26) weeks in a calendar year for all seasonal periods, as determined by the department;

(2) has been hired for a specific temporary seasonal period as determined by the department; and

(3) has been notified in writing at the time hired, or immediately following the seasonal determination by the department, whichever is later:

(A) that the individual is performing services in seasonal employment for a seasonal employer; and

(B) that the individual's employment is limited to the beginning and ending dates of the employer's seasonal period as determined by the department.

*As added by P.L.228-1983, SEC.2. Amended by P.L.18-1987, SEC.29.*

## **IC 22-4-9**

### **Chapter 9. Period, Election, and Termination of Employer's Coverage**

#### **IC 22-4-9-1**

##### **Duration of period**

Sec. 1. Any employing unit which is or becomes an employer subject to this article within any calendar year shall be subject to this article during the whole of such calendar year, except as is otherwise provided in section 3 of this chapter.

*(Formerly: Acts 1947, c.208, s.901; Acts 1951, c.295, s.5.) As amended by P.L.144-1986, SEC.97.*

#### **IC 22-4-9-2**

##### **Application for termination of coverage**

Sec. 2. Except as otherwise provided in sections 4 and 5 of this chapter, IC 22-4-7-2(f), and IC 22-4-11.5, an employing unit shall cease to be an employer subject to this article only as of January 1 of any calendar year, if it files with the commissioner, prior to January 31 of such year, a written application for termination of coverage, and the commissioner finds that the employment experience of the employer within the preceding calendar year was not sufficient to qualify an employing unit as an employer under IC 22-4-7-1 and IC 22-4-7-2.

*(Formerly: Acts 1947, c.208, s.902; Acts 1951, c.295, s.6.) As amended by Acts 1977, P.L.262, SEC.15; P.L.18-1987, SEC.30; P.L.21-1995, SEC.68; P.L.98-2005, SEC.3.*

#### **IC 22-4-9-3**

##### **Successor employers; period of coverage**

Sec. 3. (a) This section is subject to the provisions of IC 22-4-6.5 and IC 22-4-11.5.

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

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

*(Formerly: Acts 1947, c.208, s.903; Acts 1951, c.295, s.7; Acts 1957, c.299, s.14; Acts 1971, P.L.355, SEC.16.) As amended by P.L.98-2005, SEC.4; P.L.108-2006, SEC.8; P.L.33-2013, SEC.2.*

#### **IC 22-4-9-4**

##### **Election of coverage for two years**

Sec. 4. Any employing unit not otherwise subject to this article which files with the department its written election to become an employer subject to this article for not less than two (2) calendar years shall, with the written approval of such election by the department, become an employer subject to this article to the same extent as all other employers as of the date stated in such approval. However, the voluntary election of any such employer shall become inoperative if such employing unit becomes an employer by reason of IC 22-4-7-1.

*(Formerly: Acts 1947, c.208, s.904.) As amended by P.L.144-1986, SEC.98; P.L.108-2006, SEC.9.*

#### **IC 22-4-9-5**

##### **Services specifically excluded; election of coverage for two years**

Sec. 5. An employing unit for which services, as specifically excluded by IC 22-4-8-3 or IC 22-4-8-3.5, are performed, may file with the commissioner its written election to consider all such services for such employing unit in one (1) or more distinct establishments, as employment for all purposes of this article for not less than two (2) calendar years. Upon written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this article as of the date stated in such approval and shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years only if prior to January 31 it has filed with the commissioner a written notice to that effect.

*(Formerly: Acts 1947, c.208, s.905; Acts 1971, P.L.355, SEC.17.) As amended by Acts 1977, P.L.262, SEC.16; P.L.18-1987, SEC.31; P.L.21-1995, SEC.69; P.L.98-2005, SEC.5.*

#### **IC 22-4-9-6**

##### **Rights of employees; claims; informational material; display**

Sec. 6. Every employer subject to this article or who has ceased to be subject to this article pursuant to section 2 of this chapter shall post and maintain printed notices thereof on its premises of such design, in such numbers, and at such places as the board may determine to be necessary to give such notice to persons in its service and may furnish for such purposes. Such employer shall also cause to be distributed to employees any booklets, pamphlets, leaflets, or

other literature or materials supplied and furnished to such employer by the department and which contain instructions to employees on the filing of claims or which relate to the rights of employees under this article and are deemed by the board to promote the proper and efficient administration of this article.

*(Formerly: Acts 1947, c.208, s.906; Acts 1955, c.317, s.3.) As amended by P.L.144-1986, SEC.99; P.L.18-1987, SEC.32.*

## **IC 22-4-10**

### **Chapter 10. Employer Contributions**

#### **IC 22-4-10-1**

##### **Payments; time; amounts instead of contributions; election; interest and penalties; joint applications**

Sec. 1. (a) Contributions shall accrue and become payable from each employer for each calendar year in which it is subject to this article with respect to wages paid during such calendar year. Where the status of an employer is changed by cessation or disposition of business or appointment of a receiver, trustees, trustee in bankruptcy, or other fiduciary, contributions shall immediately become due and payable on the basis of wages paid or payable by such employer as of the date of the change of status. Such contributions shall be paid to the department in such manner as the department may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in an employer's employ. When contributions are determined in accordance with Schedule A as provided in IC 22-4-11-3, the department may prescribe rules to require an estimated advance payment of contributions in whole or in part, if in the judgment of the department such advance payments will avoid a debit balance in the fund during the calendar quarter to which the advance payment applies. An adjustment shall be made following the quarter in which an advance payment has been made to reflect the difference between the estimated contribution and the contribution actually payable. Advance payment of contributions shall not be required for more than one (1) calendar quarter in any calendar year.

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

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

(d) Any employer that makes an election in accordance with subsections (b) and (c) will continue to be liable for "payments in lieu of contributions" until it files with the department a written notice terminating its election. The notice filed by an employer to terminate its election must be filed not later than thirty (30) days prior to the beginning of the taxable year for which such termination shall first be effective.

(e) Any employer that qualifies to elect to become liable for "payments in lieu of contributions" and has been paying contributions under this article, may change to a reimbursable basis by filing with the department not later than thirty (30) days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election

shall not be terminable by the organization for that and the next year.

(f) Employers making "payments in lieu of contributions" under subsections (b) and (c) shall make reimbursement payments monthly. At the end of each calendar month the department shall bill each such employer (or group of employers) for an amount equal to the full amount of regular benefits plus the part of benefits not reimbursed by the federal government under the Federal-State Extended Unemployment Compensation Act of 1970 paid during such month that is attributable to services in the employ of such employers or group of employers. Governmental entities of this state and its political subdivisions electing to make "payments in lieu of contributions" shall be billed by the department at the end of each calendar month for an amount equal to the full amount of regular benefits plus the part of benefits not reimbursed by the federal government under the Federal-State Extended Unemployment Compensation Act of 1970 paid during the month that is attributable to service in the employ of the governmental entities.

(g) Payment of any bill rendered under subsection (f) shall be made not later than thirty (30) days after such bill was mailed to the last known address of the employer or was otherwise delivered to it, unless there has been an application for review and redetermination filed under subsection (i).

(h) Payments made by any employer under the provisions of subsections (f) through (j) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the employer.

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

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

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

*(Formerly: Acts 1947, c.208, s.1001; Acts 1955, c.317, s.4; Acts 1971, P.L.355, SEC.18.) As amended by Acts 1977, P.L.262, SEC.17;*

*Acts 1981, P.L.209, SEC.6; P.L.18-1987, SEC.33; P.L.135-1990, SEC.1; P.L.21-1995, SEC.70; P.L.235-1999, SEC.9; P.L.108-2006, SEC.10; P.L.175-2009, SEC.8.*

#### **IC 22-4-10-2**

##### **Fractional part of cent**

Sec. 2. In the payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent (1/2 cent) or more, in which case it shall be increased to one cent (1 cent).  
*(Formerly: Acts 1947, c.208, s.1002.)*

#### **IC 22-4-10-3**

##### **Rates**

Sec. 3. (a) This subsection applies before January 1, 2011. Except as provided in section 1(b) through 1(e) of this chapter, each employer shall pay contributions equal to five and six-tenths percent (5.6%) of wages, except as otherwise provided in IC 22-4-11-2, IC 22-4-11-3, IC 22-4-11.5, and IC 22-4-37-3.

(b) This subsection applies after December 31, 2010. Except as provided in section 1(b) through 1(e) of this chapter and IC 22-4-37-3, each employer shall pay contributions equal to the amount determined or estimated by the department under section 6 of this chapter, IC 22-4-11-2, IC 22-4-11-3.5, and IC 22-4-11.5.  
*(Formerly: Acts 1947, c.208, s.1003; Acts 1971, P.L.355, SEC.19.) As amended by P.L.225-1985, SEC.1; P.L.108-2006, SEC.11; P.L.175-2009, SEC.9; P.L.110-2010, SEC.25; P.L.2-2011, SEC.6.*

#### **IC 22-4-10-4**

##### **Experience accounts; separate accounts**

Sec. 4. (a) Except as provided in section 1(b) through 1(e) of this chapter, the commissioner shall maintain within the fund a separate experience account for each employer and shall credit to such account all contributions paid by such employer on its behalf except as otherwise provided in this article.

(b) The commissioner shall also maintain a separate account for each employer electing to make payments in lieu of contributions as provided in section 1(b) through 1(e) of this chapter and shall charge to such account all benefits chargeable to such employer and credit to such account all reimbursements made by such employer.  
*(Formerly: Acts 1947, c.208, s.1004; Acts 1951, c.307, s.1; Acts 1965, c.190, s.3; Acts 1971, P.L.355, SEC.20.) As amended by P.L.18-1987, SEC.34; P.L.21-1995, SEC.71; P.L.108-2006, SEC.12.*

#### **IC 22-4-10-4.5**

##### **Employer surcharge; interest payment on state advances from federal unemployment account**

Sec. 4.5. (a) This section applies to a calendar year that begins after December 31, 2010, to an employer:

(1) that is subject to this article for wages paid during the calendar year;

(2) whose contribution rate for the calendar year was determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3; and

(3) that:

(A) has been subject to this article during the preceding thirty-six (36) consecutive calendar months; and

(B) has had a payroll in each of the three (3) preceding twelve (12) month periods;

if, during the calendar year, the state is required to pay interest on the advances made to the state from the federal unemployment account in the federal unemployment trust fund under 42 U.S.C. 1321.

(b) In addition to the contributions determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3 for calendar year 2011, each employer shall pay an unemployment insurance surcharge that is equal to thirteen percent (13%) of the employer's contribution determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3 for the calendar year.

(c) For a calendar year that begins after December 31, 2011, in which employers are required to pay the unemployment insurance surcharge described in subsection (b), the department shall determine, not later than January 31, the surcharge percentage for that year based on factors that include:

(1) the interest rate charged the state for the year determined under 42 U.S.C. 1322(b); and

(2) the state's outstanding loan balance to the federal unemployment account on January 1 of the year.

(d) The unemployment insurance surcharge described in subsection (b) is payable to the department quarterly at the same time as employer contributions are paid under section 1 of this chapter. Failure to pay the unemployment insurance surcharge as specified in this section is considered a delinquency under IC 22-4-11-2.

(e) The department:

(1) may use amounts received under this section to pay interest on the advances made to the state from the federal unemployment account in the federal unemployment trust fund under 42 U.S.C. 1321; and

(2) shall deposit any amounts received under this section and not used for the purposes described in subdivision (1) in the unemployment insurance benefit fund established under IC 22-4-26.

(f) Amounts paid under this section and used as provided in subsection (e)(1) do not affect and may not be charged to the experience account of any employer. Amounts paid under this section and used as provided in subsection (e)(2) must be credited to each employer's experience account in proportion to the amount the employer paid under this section during the preceding four (4) calendar quarters.

*As added by P.L.2-2011, SEC.7.*

#### **IC 22-4-10-4.6**

**Unemployment insurance solvency fund; establishment; investment; interest; nonreverting**

Sec. 4.6. (a) The unemployment insurance solvency fund is established for the purpose of paying interest on the advances made to the state from the federal unemployment account in the federal unemployment trust fund under 42 U.S.C. 1321. The fund shall be administered by the department.

(b) Money received by the department from the unemployment insurance surcharge that the department elects to use for the purposes described in section 4.5(e)(1) of this chapter shall be deposited in the fund for the purposes of the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited at least quarterly in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

*As added by P.L.2-2011, SEC.8.*

**IC 22-4-10-5**

**Voluntary payments**

Sec. 5. Any employer may make voluntary payments in addition to the contributions required under this article, and the same shall be credited to its experience account. Such voluntary contributions shall not be used in the computation of reduced rates unless such contributions are paid prior to the expiration of one hundred twenty (120) days after the beginning of the year for which such rates are effective. Such payments shall be included in the experience account as of the computation date only if they are made within thirty (30) days following the date upon which the department mails notice that such payments may be made with respect to a calendar year. Such voluntary payments when accepted from an employer will not be refunded in whole or in part.

*(Formerly: Acts 1947, c.208, s.1006; Acts 1951, c.295, s.8.) As amended by P.L.144-1986, SEC.100; P.L.18-1987, SEC.35.*

**IC 22-4-10-5.5**

**Repealed**

*(Repealed by P.L.110-2010, SEC.38.)*

**IC 22-4-10-6**

**Successor employers**

Sec. 6. (a) Except as provided by IC 22-4-6.5, when:

- (1) an employing unit (whether or not an employing unit at the time of the acquisition) becomes an employer under IC 22-4-7-2(a);
- (2) an employer acquires the organization, trade, or business, or substantially all the assets of another employer; or
- (3) an employer transfers all or a portion of the employer's trade

or business (including the employer's workforce) to another employer as described in IC 22-4-11.5-7;

the successor employer shall, in accordance with the rules prescribed by the department, assume the position of the predecessor with respect to all the resources and liabilities of the predecessor's experience account.

(b) Except as provided by IC 22-4-6.5 or IC 22-4-11.5, when:

(1) an employing unit (whether or not an employing unit at the time of the acquisition) becomes an employer under IC 22-4-7-2(b); or

(2) an employer acquires a distinct and segregable portion of the organization, trade, or business within this state of another employer;

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

(c) Except as provided by IC 22-4-6.5 or IC 22-4-11.5, the successor employer, if an employer prior to the acquisition, shall pay at the rate of contribution originally assigned to it for the calendar year in which the acquisition occurs, until the end of that year. If not an employer prior to the acquisition, the successor employer shall pay the rate determined under IC 22-4-11-2(b)(2), unless the successor employer assumes all or part of the resources and liabilities of the predecessor employer's experience account, in which event the successor employer shall pay at the rate of contribution assigned to the predecessor employer for the period starting with the first day of the calendar quarter in which the acquisition occurs, until the end of that year. However, if a successor employer, not an employer prior to the acquisition, simultaneously acquires all or part of the experience balance of two (2) or more employers, the successor employer shall pay at the highest rate applicable to the experience accounts totally or partially acquired for the period starting with the first day of the calendar quarter in which the acquisition occurs, until the end of the year. If the successor employer had any employment prior to the date of acquisition upon which contributions were owed under IC 22-4-9-1, the employer's rate of contribution from the first of the year to the first day of the calendar quarter in which the acquisition occurred would be determined under IC 22-4-11-2(b)(2).  
*(Formerly: Acts 1947, c.208, s.1007; Acts 1951, c.295, s.9; Acts*

*1955, c.317, s.5; Acts 1967, c.310, s.12; Acts 1969, c.300, s.2; Acts 1971, P.L.355, SEC.21; Acts 1975, P.L.252, SEC.1.) As amended by P.L.20-1986, SEC.5; P.L.18-1987, SEC.36; P.L.21-1995, SEC.72; P.L.98-2005, SEC.6; P.L.108-2006, SEC.13; P.L.33-2013, SEC.3.*

**IC 22-4-10-7**

**Successor employers; experience account; benefits; discrepancy in experience accounts**

Sec. 7. (a) Except as provided by IC 22-4-6.5 or IC 22-4-11.5, when an employing unit (whether or not an employing unit prior thereto) assumes all of the resources and liabilities of the experience account of a predecessor employer, as provided in section 6 of this chapter, amounts paid by such predecessor employer shall be deemed to have been so paid by such successor employer. The experience of such predecessor with respect to unemployment risk, including but not limited to past payrolls and contributions, shall be credited to the account of such successor.

(b) The payments of benefits to an individual shall not in any case be denied or withheld because the experience account of an employer does not reflect a balance and total of contributions paid to be in excess of benefits charged to such experience account.

*(Formerly: Acts 1947, c.208, s.1008; Acts 1951, c.295, s.10; Acts 1971, P.L.355, SEC.22.) As amended by P.L.98-2005, SEC.7; P.L.33-2013, SEC.4.*

**IC 22-4-10.5**

**Repealed**

*(Repealed by P.L.175-2009, SEC.48.)*

## **IC 22-4-11**

### **Chapter 11. Employer Experience Accounts**

#### **IC 22-4-11-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.172-1991 apply to individuals who file a disaster unemployment claim or a state unemployment insurance claim after June 1, 1990, and before June 2, 1991, or during a period to be determined by the general assembly.

*As added by P.L.220-2011, SEC.364.*

#### **IC 22-4-11-1**

##### **Experience account; charging**

Sec. 1. (a) For the purpose of charging employers' experience or reimbursable accounts with regular benefits paid subsequent to July 3, 1971, to any eligible individual but except as provided in IC 22-4-22 and subsection (f), such benefits paid shall be charged proportionately against the experience or reimbursable accounts of the individual's employers in the individual's base period (on the basis of total wage credits established in such base period) against whose accounts the maximum charges specified in this section shall not have been previously made. Such charges shall be made in the inverse chronological order in which the wage credits of such individuals were established. However, when an individual's claim has been computed for the purpose of determining the individual's regular benefit rights, maximum regular benefit amount, and the proportion of such maximum amount to be charged to the experience or reimbursable accounts of respective chargeable employers in the base period, the experience or reimbursable account of any employer charged with regular benefits paid shall not be credited or reccredited with any portion of such maximum amount because of any portion of such individual's wage credits remaining uncharged at the expiration of the individual's benefit period. The maximum so charged against the account of any employer shall not exceed twenty-eight percent (28%) of the total wage credits of such individual with each such employer with which wage credits were established during such individual's base period. Benefits paid under provisions of IC 22-4-22-3 in excess of the amount that the claimant would have been monetarily eligible for under other provisions of this article shall be paid from the fund and not charged to the experience account of any employer. This exception shall not apply to those employers electing to make payments in lieu of contributions who shall be charged for the full amount of regular benefit payments and the part of benefits not reimbursed by the federal government under the Federal-State Extended Unemployment Compensation Act of 1970 that are attributable to service in their employ. Irrespective of the twenty-eight percent (28%) maximum limitation provided for in this section, the part of benefits not reimbursed by the federal government under the Federal-State Extended Unemployment

Compensation Act of 1970 paid to an eligible individual based on service with a governmental entity of this state or its political subdivisions shall be charged to the experience or reimbursable accounts of the employers, and the part of benefits not reimbursed by the federal government under the Federal-State Extended Unemployment Compensation Act of 1970 paid to an eligible individual shall be charged to the experience or reimbursable accounts of the individual's employers in the individual's base period, other than governmental entities of this state or its political subdivisions, in the same proportion and sequence as are provided in this section for regular benefits paid. Additional benefits paid under IC 22-4-12-4(c) and benefits paid under IC 22-4-15-1(c)(8) shall:

- (1) be paid from the fund; and
- (2) not be charged to the experience account or the reimbursable account of any employer.

(b) If the aggregate of wages paid to an individual by two (2) or more employers during the same calendar quarter exceeds the maximum wage credits (as defined in IC 22-4-4-3) then the experience or reimbursable account of each such employer shall be charged in the ratio which the amount of wage credits from such employer bears to the total amount of wage credits during the base period.

(c) When wage records show that an individual has been employed by two (2) or more employers during the same calendar quarter of the base period but do not indicate both that such employment was consecutive and the order of sequence thereof, then and in such cases it shall be deemed that the employer with whom the individual established a plurality of wage credits in such calendar quarter is the most recent employer in such quarter and its experience or reimbursable account shall be first charged with benefits paid to such individual. The experience or reimbursable account of the employer with whom the next highest amount of wage credits were established shall be charged secondly and the experience or reimbursable accounts of other employers during such quarters, if any, shall likewise be charged in order according to plurality of wage credits established by such individual.

(d) Except as provided in subsection (f) or section 1.5 of this chapter, if an individual:

- (1) voluntarily leaves an employer without good cause in connection with the work; or
- (2) is discharged from an employer for just cause;

wage credits earned with the employer from whom the employee has separated under these conditions shall be used to compute the claimant's eligibility for benefits, but charges based on such wage credits shall be paid from the fund and not charged to the experience account of any employer. However, this exception shall not apply to those employers who elect to make payments in lieu of contributions, who shall be charged for all benefit payments which are attributable to service in their employ.

(e) Any nonprofit organization which elects to make payments in

lieu of contributions into the unemployment compensation fund as provided in this article is not liable to make the payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in IC 22-4-4-4, nor is the experience account of any other employer liable for charges for benefits paid the individual to the extent that the unemployment compensation fund is reimbursed for these benefits pursuant to Section 121 of P.L.94-566. Payments which otherwise would have been chargeable to the reimbursable or contributing employers shall be charged to the fund.

(f) If an individual:

- (1) earns wages during the individual's base period through employment with two (2) or more employers concurrently;
- (2) is separated from work by one (1) of the employers for reasons that would not result in disqualification under IC 22-4-15-1; and
- (3) continues to work for one (1) or more of the other employers after the end of the base period and continues to work during the applicable benefit year on substantially the same basis as during the base period;

wage credits earned with the base period employers shall be used to compute the claimant's eligibility for benefits, but charges based on the wage credits from the employer who continues to employ the individual shall be charged to the experience or reimbursable account of the separating employer.

(g) Subsection (f) does not affect the eligibility of a claimant who otherwise qualifies for benefits nor the computation of benefits.

(h) Unemployment benefits paid shall not be charged to the experience account of a base period employer when the claimant's unemployment from the employer was a direct result of the condemnation of property by a municipal corporation (as defined in IC 36-1-2-10), the state, or the federal government, a fire, a flood, or an act of nature, when at least fifty percent (50%) of the employer's employees, including the claimant, became unemployed as a result. This exception does not apply when the unemployment was an intentional result of the employer or a person acting on behalf of the employer.

*(Formerly: Acts 1947, c.208, s.1101; Acts 1965, c.190, s.4; Acts 1967, c.310, s.13; Acts 1971, P.L.355, SEC.23; Acts 1973, P.L.239, SEC.3.) As amended by Acts 1976, P.L.114, SEC.2; Acts 1977, P.L.262, SEC.18; P.L.227-1983, SEC.4; P.L.80-1990, SEC.10; P.L.172-1991, SEC.1; P.L.202-1993, SEC.3; P.L.290-2001, SEC.2; P.L.189-2003, SEC.1; P.L.175-2009, SEC.11; P.L.154-2013, SEC.1.*

#### **IC 22-4-11-1.5**

##### **Experience account not relieved of erroneous payments if employer establishes pattern of failure to respond to department information requests**

Sec. 1.5. (a) As used in this section, "erroneous payment" means a payment that would not have been made but for the failure by an

employer or a person acting on behalf of the employer with respect to a claim for unemployment benefits to which the payment relates.

(b) As used in this section, "pattern of failure" means a repeated and documented failure by an employer or a person acting on behalf of an employer to respond to requests for information made by the department, taking into consideration the number of failures in relation to the total number of requests received by the employer or the person acting on behalf of an employer.

(c) The experience account of an employer may not be relieved of charges for a benefit overpayment from the state's unemployment insurance benefit fund established by IC 22-4-26-1, if the department determines that:

- (1) the erroneous payment was made because the employer or a person acting on behalf of the employer was at fault in failing to respond in a timely or adequate manner to the department's written request for information relating to the claim for unemployment benefits; and
- (2) the employer or a person acting on behalf of the employer has established a pattern of failure to respond in a timely or adequate manner to department requests described in subdivision (1).

*As added by P.L.154-2013, SEC.2.*

#### **IC 22-4-11-2**

##### **Experience account; debit balance; rate of contributions; construction industry rate; deposits**

Sec. 2. (a) Except as provided in IC 22-4-10-6 and IC 22-4-11.5, the department shall for each year determine the contribution rate applicable to each employer.

(b) The balance shall include contributions with respect to the period ending on the computation date and actually paid on or before July 31 immediately following the computation date and benefits actually paid on or before the computation date and shall also include any voluntary payments made in accordance with IC 22-4-10-5 or IC 22-4-10-5.5 (repealed):

- (1) for each calendar year, an employer's rate shall be determined in accordance with the rate schedules in section 3.3 or 3.5 of this chapter; and
- (2) for each calendar year, an employer's rate shall be two and five-tenths percent (2.5%), except as otherwise provided in subsection (g) or IC 22-4-37-3, unless:
  - (A) the employer has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date;
  - (B) there has been some annual payroll in each of the three
  - (3) twelve (12) month periods immediately preceding the computation date; and
  - (C) the employer has properly filed all required contribution and wage reports, and all contributions, penalties, and interest due and owing by the employer or the employer's

predecessors have been paid.

(c) In addition to the conditions and requirements set forth and provided in subsection (b)(2)(A), (b)(2)(B), and (b)(2)(C), an employer's rate is equal to the sum of the employer's contribution rate determined or estimated by the department under this article plus two percent (2%) unless all required contributions and wage reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessor for periods before and including the computation date have been paid:

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

or

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

(A) the delinquency; or

(B) failure to file the reports;

whichever is the later date. The board or the board's designee may waive the imposition of rates under this subsection if the board finds the employer's failure to meet the deadlines was for excusable cause. The department shall give written notice to the employer before this additional condition or requirement shall apply. An employer's rate under this subsection may not exceed twelve percent (12%).

(d) However, if the employer is the state or a political subdivision of the state or any instrumentality of a state or a political subdivision, or any instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions, the employer may contribute at a rate of one and six-tenths percent (1.6%) until it has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date.

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

STEP ONE: Divide:

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

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

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

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

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

and

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

(g) Except as otherwise provided in IC 22-4-37-3, this subsection, instead of subsection (b)(2), applies to an employer in the construction industry. As used in the subsection, "construction industry" means business establishments whose proper primary classification in the current edition of the North American Industry Classification System Manual - United States, published by the National Technical Information Service of the United States Department of Commerce is 23 (construction). For each calendar year beginning after December 31, 2013, an employer's rate shall be equal to the lesser of four percent (4%) or the average of the contribution rates paid by all employers in the construction industry subject to this article during the twelve (12) months preceding the computation date, unless:

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

(2) there has been some annual payroll in each of the three (3) twelve (12) month periods immediately preceding the computation date; and

(3) the employer has properly filed all required contribution and wage reports, and all contributions, penalties, and interest due and owing by the employer or the employer's predecessors have been paid.

*(Formerly: Acts 1947, c.208, s.1102; Acts 1953, c.177, s.12; Acts 1955, c.317, s.6; Acts 1965, c.190, s.5; Acts 1967, c.310, s.14; Acts 1971, P.L.355, SEC.24.) As amended by Acts 1977, P.L.262, SEC.19; P.L.227-1983, SEC.5; P.L.225-1985, SEC.2; P.L.34-1985, SEC.4; P.L.20-1986, SEC.6; P.L.18-1987, SEC.37; P.L.80-1990, SEC.11; P.L.1-1992, SEC.107; P.L.105-1994, SEC.2; P.L.21-1995, SEC.73; P.L.179-1999, SEC.1; P.L.98-2005, SEC.8; P.L.108-2006, SEC.15; P.L.175-2009, SEC.12; P.L.110-2010, SEC.26; P.L.1-2010, SEC.86; P.L.2-2011, SEC.9; P.L.42-2011, SEC.39; P.L.6-2012, SEC.153; P.L.154-2013, SEC.3.*

### **IC 22-4-11-3**

#### **Rate schedules for contributions; determination**

Sec. 3. (a) The applicable schedule of rates for calendar years before January 1, 2011, shall be determined by the ratio resulting when the balance in the fund as of the determination date is divided by the total payroll of all subject employers for the immediately preceding calendar year. Schedule A, B, C, or D, appearing on the line opposite the fund ratio in the schedule below, shall be applicable in determining and assigning each employer's contribution rate for the calendar year immediately following the determination date. For the purposes of this subsection, "total payroll" means total remuneration reported by all contributing employers as required by this article and does not include the total payroll of any employer who elected to become liable for payments in lieu of contributions

(as defined in IC 22-4-2-32). For the purposes of this subsection, "subject employers" means those employers who are subject to contribution.

FUND RATIO SCHEDULE

When the Fund Ratio Is:

As Much As	But Less Than	Applicable Schedule
	1.0%	A
1.0%	1.5%	B
1.5%	2.25%	C
2.25%		D

(b) Except as provided in subsection (c), the applicable schedule of rates for calendar years after December 31, 2010, shall be determined by the ratio resulting when the balance in the fund as of the determination date is divided by the total payroll of all subject employers for the immediately preceding calendar year. Schedules A through I appearing on the line opposite the fund ratio in the schedule below are applicable in determining and assigning each employer's contribution rate for the calendar year immediately following the determination date. For purposes of this subsection, "total payroll" means total remuneration reported by all contributing employers as required by this article and does not include the total payroll of any employer who elected to become liable for payments in lieu of contributions (as defined in IC 22-4-2-32). For purposes of this subsection, "subject employers" means those employers who are subject to contribution.

FUND RATIO SCHEDULE

When the Fund Ratio Is:

As Much As	But Less Than	Applicable Schedule
	0.2%	A
0.2%	0.4%	B
0.4%	0.6%	C
0.6%	0.8%	D
0.8%	1.0%	E
1.0%	1.2%	F
1.2%	1.4%	G
1.4%	1.6%	H
1.6%		I

(c) For calendar years 2011 through 2020, Schedule E applies in determining and assigning each employer's contribution rate.

(d) Any adjustment in the amount charged to any employer's experience account made subsequent to the assignment of rates of contributions for any calendar year shall not operate to alter the amount charged to the experience accounts of any other base-period employers.

*(Formerly: Acts 1947, c.208, s.1103; Acts 1955, c.317, s.7; Acts 1965, c.190, s.6; Acts 1967, c.310, s.15; Acts 1971, P.L.355, SEC.25.) As amended by Acts 1977, P.L.262, SEC.20; Acts 1982, P.L.136, SEC.1; P.L.225-1985, SEC.3; P.L.171-1991, SEC.2;*

*P.L.1-1992, SEC.108; P.L.202-1993, SEC.4; P.L.1-1994, SEC.112; P.L.21-1995, SEC.76; P.L.259-1997(ss), SEC.2; P.L.30-2000, SEC.2; P.L.273-2003, SEC.3; P.L.175-2009, SEC.13; P.L.110-2010, SEC.27; P.L.1-2010, SEC.87; P.L.2-2011, SEC.10; P.L.42-2011, SEC.40; P.L.6-2012, SEC.154.*

**IC 22-4-11-3.1**

**Repealed**

*(Repealed by P.L.1-2001, SEC.51.)*

**IC 22-4-11-3.2**

**Repealed**

*(Repealed by P.L.273-2003, SEC.8.)*

**IC 22-4-11-3.3**

**Contribution rates before 2011**

Sec. 3.3. (a) For calendar years after 2001 and before 2011, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible therefore according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, or E on the line opposite the employer's credit reserve ratio as set forth in the rate schedule below:

**RATE SCHEDULE FOR ACCOUNTS  
WITH CREDIT BALANCES**

When the Credit Reserve Ratio Is:

As Much	But Less Than	Rate Schedules (%)				
		A	B	C	D	E
3.00		1.10	0.10	0.10	0.10	0.15
2.80	3.00	1.30	0.30	0.10	0.10	0.15
2.60	2.80	1.50	0.50	0.10	0.10	0.15
2.40	2.60	1.70	0.70	0.30	0.10	0.20
2.20	2.40	1.90	0.90	0.50	0.10	0.20
2.00	2.20	2.10	1.10	0.70	0.30	0.40
1.80	2.00	2.30	1.30	0.90	0.50	0.60
1.60	1.80	2.50	1.50	1.10	0.70	0.80
1.40	1.60	2.70	1.70	1.30	0.90	1.00
1.20	1.40	2.90	1.90	1.50	1.10	1.20
1.00	1.20	3.10	2.10	1.70	1.30	1.40
0.80	1.00	3.30	2.30	1.90	1.50	1.60
0.60	0.80	3.50	2.50	2.10	1.70	1.80
0.40	0.60	3.70	2.70	2.30	1.90	2.00
0.20	0.40	3.90	2.90	2.50	2.10	2.20
0.00	0.20	4.10	3.10	2.70	2.30	2.40

(b) For calendar years after 2001 and before 2011, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each

calendar year, to employers whose accounts have a debit balance and who are eligible therefore according to each employer's debit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, or E on the line opposite the employer's debit reserve ratio as set forth in the rate schedule below:

**RATE SCHEDULE FOR ACCOUNTS  
WITH DEBIT BALANCES**

When the Debit Reserve Ratio Is:

As Much As	But Less Than	Rate Schedules (%)				
		A	B	C	D	E
	1.50	4.40	4.30	4.20	4.10	5.40
1.50	3.00	4.70	4.60	4.50	4.40	5.40
3.00	4.50	5.00	4.90	4.70	4.70	5.40
4.50	6.00	5.30	5.20	5.10	5.00	5.40
6.00		5.60	5.50	5.40	5.40	5.40

*As added by P.L.290-2001, SEC.4. Amended by P.L.1-2002, SEC.89; P.L.273-2003, SEC.4; P.L.175-2009, SEC.14; P.L.110-2010, SEC.28.*

**IC 22-4-11-3.5**

**Contribution rates after 2010**

Sec. 3.5. (a) For calendar years after 2010, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are therefore eligible according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A through I on the line opposite the employer's credit reserve ratio as set forth in the rate schedule below:

**RATE SCHEDULE FOR ACCOUNTS  
WITH CREDIT BALANCES**

When the Credit Reserve Ratio Is:

As Much As	But Less Than	Rate Schedules (%)				
		A	B	C	D	E
3.00		0.75	0.70	0.70	0.60	0.50
2.80	3.00	1.00	0.90	0.90	0.80	0.70
2.60	2.80	1.30	1.20	1.10	1.00	0.90
2.40	2.60	1.60	1.50	1.40	1.30	1.20
2.20	2.40	1.90	1.80	1.70	1.50	1.40
2.00	2.20	2.20	2.00	1.90	1.80	1.60
1.80	2.00	2.50	2.30	2.20	2.00	1.80
1.60	1.80	2.80	2.60	2.40	2.20	2.00
1.40	1.60	3.10	2.90	2.70	2.50	2.30
1.20	1.40	3.40	3.20	3.00	2.70	2.50
1.00	1.20	3.70	3.40	3.20	3.00	2.70
0.80	1.00	4.00	3.70	3.50	3.20	2.90
0.60	0.80	4.30	4.00	3.70	3.40	3.10

0.40	0.60	4.60	4.30	4.00	3.70	3.40
0.20	0.40	4.90	4.60	4.30	3.90	3.60
0.00	0.20	5.20	4.80	4.50	4.20	3.80

RATE SCHEDULE FOR ACCOUNTS  
WITH CREDIT BALANCES

When the Credit Reserve Ratio Is:

As	But	Rate Schedules			
Much	Less	(%)			
As	Than	F	G	H	I
3.00		0.40	0.40	0.30	0.00
2.80	3.00	0.60	0.50	0.40	0.00
2.60	2.80	0.80	0.70	0.60	0.10
2.40	2.60	1.10	1.00	0.90	0.10
2.20	2.40	1.30	1.20	1.00	0.10
2.00	2.20	1.40	1.20	1.00	0.10
1.80	2.00	1.60	1.40	1.20	0.10
1.60	1.80	1.80	1.60	1.40	0.20
1.40	1.60	2.10	1.90	1.70	0.20
1.20	1.40	2.20	2.00	1.70	0.20
1.00	1.20	2.40	2.10	1.80	0.20
0.80	1.00	2.60	2.30	2.00	0.20
0.60	0.80	2.80	2.50	2.20	0.20
0.40	0.60	3.10	2.80	2.40	0.30
0.20	0.40	3.20	2.80	2.40	0.30
0.00	0.20	3.40	3.00	2.60	0.30

(b) For calendar years after 2010, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a debit balance and who are therefore eligible according to each employer's debit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A through I on the line opposite the employer's debit reserve ratio as set forth in the rate schedule below:

RATE SCHEDULE FOR ACCOUNTS  
WITH DEBIT BALANCES

When the Debit Reserve Ratio Is:

As	But	Rate Schedules				
Much	Less	(%)				
As	Than	A	B	C	D	E
0.00	1.50	6.75	6.30	5.90	5.40	4.90
1.50	3.00	7.00	6.50	6.10	5.60	5.10
3.00	4.50	7.25	6.70	6.30	5.80	5.30
4.50	6.00	7.50	7.00	6.50	6.00	5.50
6.00	8.00	7.75	7.20	6.70	6.20	5.70
8.00	10.00	8.25	7.70	7.20	6.60	6.00
10.00	12.00	8.75	8.10	7.60	7.00	6.40
12.00	14.00	9.25	8.60	8.00	7.40	6.80
14.00	16.00	9.75	9.10	8.50	7.80	7.10
16.00		10.20	9.50	8.90	8.20	7.40

RATE SCHEDULE FOR ACCOUNTS

WITH DEBIT BALANCES

When the Debit Reserve Ratio Is:

As Much	But Less	Rate Schedules (%)			
As	Than	F	G	H	I
0.00	1.50	4.40	3.90	3.40	0.40
1.50	3.00	4.60	4.10	3.60	0.40
3.00	4.50	4.80	4.30	3.80	0.40
4.50	6.00	4.90	4.40	3.80	0.40
6.00	8.00	5.10	4.50	3.90	0.40
8.00	10.00	5.40	4.80	4.20	0.50
10.00	12.00	5.80	5.20	4.50	0.50
12.00	14.00	6.10	5.40	4.70	0.50
14.00	16.00	6.40	5.70	5.00	0.50
16.00		6.70	6.00	5.40	5.40

*As added by P.L.175-2009, SEC.15. Amended by P.L.110-2010, SEC.29.*

**IC 22-4-11-4**

**Payroll report; inadequate report; correction; contributions**

Sec. 4. (a) If the commissioner finds that any employer has failed to file any payroll report or has filed a report which the commissioner finds incorrect or insufficient, the commissioner shall make an estimate of the information required from the employer on the basis of the best evidence reasonably available to the commissioner at the time and notify the employer thereof by mail addressed to the employer's last known address. Except as provided in subsection (b), unless the employer files the report or a corrected or sufficient report, as the case may be, within fifteen (15) days after the mailing of the notice, the commissioner shall compute the employer's rate of contribution on the basis of the estimates, and the rate determined in this manner shall be subject to increase or decrease on the basis of subsequently ascertained and verified information. The estimated amount of contribution is considered prima facie correct.

(b) The commissioner may adjust the amount of contribution estimated in this manner on the basis of information ascertained after the expiration of the notice period if the employer or other interested party:

- (1) makes an affirmative showing of all facts alleged as a reasonable cause for the failure to timely file any payroll report; and
- (2) submits accurate and reliable payroll reports.

*(Formerly: Acts 1947, c.208, s.1104.) As amended by P.L.20-1986, SEC.7; P.L.18-1987, SEC.38; P.L.21-1995, SEC.74; P.L.18-2001, SEC.1; P.L.290-2001, SEC.5; P.L.1-2002, SEC.90; P.L.154-2013, SEC.4.*

## **IC 22-4-11.5**

### **Chapter 11.5. Assignment of Employer Contribution Rates and Transfers of Employer Experience Accounts**

#### **IC 22-4-11.5-1**

##### **Applicability**

Sec. 1. Notwithstanding any other provision of this article, this chapter applies to the assignment of contribution rates and transfers of employer experience accounts after December 31, 2005.

*As added by P.L.98-2005, SEC.9.*

#### **IC 22-4-11.5-2**

##### **"Administrative law judge"**

Sec. 2. As used in this chapter, "administrative law judge" means a person employed by the commissioner under IC 22-4-17-4.

*As added by P.L.98-2005, SEC.9. Amended by P.L.108-2006, SEC.16.*

#### **IC 22-4-11.5-3**

##### **"Person"**

Sec. 3. As used in this chapter, "person" has the meaning set forth in section 7701(a)(1) of the Internal Revenue Code.

*As added by P.L.98-2005, SEC.9.*

#### **IC 22-4-11.5-4**

##### **"Trade or business"**

Sec. 4. As used in this chapter, "trade or business" includes an employer's workforce.

*As added by P.L.98-2005, SEC.9.*

#### **IC 22-4-11.5-5**

##### **"Violates or attempts to violate"**

Sec. 5. As used in this chapter, "violates or attempts to violate" includes the intent to evade a higher employer contribution rate in connection with a transfer of a trade or business through misrepresentation or willful nondisclosure of information relevant to the transfer.

*As added by P.L.98-2005, SEC.9. Amended by P.L.108-2006, SEC.17.*

#### **IC 22-4-11.5-6**

##### **"Knowingly"; "recklessly"**

Sec. 6. As used in this chapter:

(1) "knowingly" has the meaning set forth in IC 35-41-2-2(b);  
and

(2) "recklessly" has the meaning set forth in IC 35-41-2-2(c).

*As added by P.L.98-2005, SEC.9.*

#### **IC 22-4-11.5-7**

##### **Transferring all or part of trade or business; successor employers**

**with substantially common ownership, management, or control**

Sec. 7. (a) This section applies to a transfer of a trade or business that meets the following requirements:

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

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

(b) The successor employer shall assume the experience account balance of the predecessor employer for the resources and liabilities of the predecessor employer's experience account that are attributable to the transfer.

(c) The contribution rates of both employers shall be recalculated, and the recalculated rate made effective on the effective date of the transfer described in subsection (a).

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

(e) Any written determination made by the department is conclusive and binding on both the predecessor employer and the successor employer unless one (1) employer files or both employers file a written protest with the department setting forth all reasons for the protest. A protest under this section must be filed not later than fifteen (15) days after the date the department sends the initial determination to the employers. The protest shall be heard and determined under this section and IC 22-4-32-1 through IC 22-4-32-15. The predecessor employer, the successor employer, and the department shall be parties to the hearing before the liability administrative law judge and are entitled to receive copies of all pleadings and the decision.

*As added by P.L.98-2005, SEC.9. Amended by P.L.108-2006, SEC.18.*

**IC 22-4-11.5-8**

**Transfers solely to obtain lower employer contribution rate**

Sec. 8. (a) If the department determines that an employing unit or other person that is not an employer under IC 22-4-7 at the time of the acquisition has acquired an employer's trade or business solely or primarily for the purpose of obtaining a lower employer contribution rate, the employing unit or other person:

(1) may not assume the experience account balance of the predecessor employer for the resources and liabilities of the predecessor employer's experience account that are attributable to the acquisition; and

(2) shall pay the applicable contribution rate as determined under this article.

(b) In determining whether an employing unit or other person acquired a trade or business solely or primarily for the purpose of

obtaining a lower employer contribution rate under subsection (a), the department shall consider the following factors:

- (1) The cost of acquiring the trade or business.
- (2) Whether the employing unit or other person continued the business enterprise of the acquired trade or business, including whether the predecessor employer is no longer performing the same trade or business and the trade or business is performed by the employing unit to whom the workforce is transferred. An employing unit is considered to continue the business enterprise if any one (1) of the following applies:

- (A) The predecessor employer and the employing unit are corporations that are members of a "controlled group of corporations", as defined in Section 1563 of the Internal Revenue Code (generally parent-subsubsidiary or brother-sister controlled groups), or would be members if Section 1563(a)(4) and 1563(b) of the Internal Revenue Code did not apply and if the phrase "more than fifty percent (50%)" were substituted for the phrase "at least eighty percent (80%)" wherever it appears in Section 1563(a) of the Internal Revenue Code.

- (B) The predecessor employer and the employing unit are entities that are part of an affiliated group, as defined in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%).

- (C) A predecessor employer and an employing unit are entities that do not issue stock, either fifty percent (50%) or more of the members of one (1) entity's board of directors (or other governing body) are members of the other entity's board of directors (or other governing body), or the holders of fifty percent (50%) or more of the voting power to select these members are concurrently the holders of fifty percent (50%) or more of that power with respect to the other entity.

- (D) Fifty percent (50%) or more of one (1) entity's officers are concurrently officers of the other entity.

- (E) Thirty percent (30%) or more of one (1) entity's employees are concurrently employees of the other entity.

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

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

- (5) Whether the predecessor employer and the employing unit are united by factors of control, operation, or use.

- (6) Whether a new employing unit is being created solely to obtain a lower contribution rate.

- (c) Any written determination made by the department is

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

*As added by P.L.98-2005, SEC.9. Amended by P.L.108-2006, SEC.19; P.L.175-2009, SEC.16.*

### **IC 22-4-11.5-9**

#### **Violation of chapter; civil penalties**

Sec. 9. (a) A person who knowingly or recklessly:

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

is subject to a civil penalty under this chapter.

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

- (1) The highest employer contribution rate assignable under this article for the year in which the violation occurred and the following three (3) years.
- (2) An additional employer contribution rate of two percent (2%) of the employer's taxable wages (as defined in IC 22-4-4-2) for the year in which the violation occurred and the following three (3) years, if:
  - (A) an employer is already paying the highest employer contribution rate at the time of the violation; or
  - (B) the increase in the contribution rate described in subdivision (1) is less than two percent (2%).

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

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

(e) Any written determination made by the department is

conclusive and binding on the employing unit, employer, or person unless the employing unit, employer, or person files a written protest with the department setting forth all reasons for the protest. A protest under this section must be filed not later than fifteen (15) days after the date the department sends the initial determination to the employing unit, employer, or person. The protest shall be heard and determined under this section and IC 22-4-32-1 through IC 22-4-32-15. The employing unit, employer, or person, and the department shall be parties to the hearing before the liability administrative law judge and are entitled to receive copies of all pleadings and the decision.

*As added by P.L.98-2005, SEC.9. Amended by P.L.108-2006, SEC.20.*

#### **IC 22-4-11.5-10**

##### **Violation of chapter; Class C misdemeanor**

Sec. 10. In addition to any other penalty imposed, a person who knowingly, recklessly, or intentionally violates this chapter commits a Class C misdemeanor.

*As added by P.L.98-2005, SEC.9. Amended by P.L.1-2006, SEC.342; P.L.108-2006, SEC.21.*

#### **IC 22-4-11.5-11**

##### **Commissioner procedures to identify violators; applicability of federal Department of Labor regulations**

Sec. 11. (a) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this chapter.

(b) The interpretation and application of this chapter must meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

*As added by P.L.98-2005, SEC.9.*

## **IC 22-4-12**

### **Chapter 12. Benefits Schedule**

#### **IC 22-4-12-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The amendments made to section 4 of this chapter by P.L.172-1991 apply to individuals who file a disaster unemployment claim or a state unemployment insurance claim after June 1, 1990, and before June 2, 1991, or during a period to be determined by the general assembly.

*As added by P.L.220-2011, SEC.365.*

#### **IC 22-4-12-1**

##### **Eligibility; payment; death**

Sec. 1. Benefits designated as unemployment insurance benefits shall become payable from the fund to any individual who is or becomes unemployed and eligible for benefits under the terms of this article. All benefits shall be paid through the department or such other agencies as the department by rule may designate at such times and in such manner as the department may prescribe. The department may adopt rules to provide for the payment of benefits due and payable on executed vouchers to persons since deceased; benefits so due and payable may be paid to the legal representative, dependents, or next of kin of the deceased as are found to be entitled thereto, which rules need not conform with the laws of the state governing decedent estates, and every such payment shall be deemed a valid payment to the same extent as if made to the legal representative of the deceased.

*(Formerly: Acts 1947, c.208, s.1201.) As amended by P.L.144-1986, SEC.101; P.L.108-2006, SEC.22.*

#### **IC 22-4-12-2**

##### **Rates; prior weekly wage computation**

Sec. 2. (a) With respect to initial claims filed for any week beginning on and after July 1, 1997, and before July 1, 2012, each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week, if properly claimed, benefits at the rate of:

- (1) five percent (5%) of the first two thousand dollars (\$2,000) of the individual's wage credits in the calendar quarter during the individual's base period in which the wage credits were highest; and
- (2) four percent (4%) of the individual's remaining wage credits in the calendar quarter during the individual's base period in which the wage credits were highest.

(b) With respect to initial claims filed for any week beginning on and after July 1, 2012, each eligible individual who is totally unemployed (as defined in IC 22-4-3-1) in any week in the individual's benefit period shall be paid for the week, if properly claimed, an amount equal to forty-seven percent (47%) of the

individual's prior average weekly wage, rounded (if not already a multiple of one dollar (\$1)) to the next lower dollar. However, the maximum weekly benefit amount may not exceed three hundred ninety dollars (\$390).

(c) For purposes of this section, "prior average weekly wage" means the result of:

(1) the individual's total wage credits during the individual's base period; divided by

(2) fifty-two (52).

*(Formerly: Acts 1947, c.208, s.1202; Acts 1951, c.307, s.2; Acts 1955, c.274, s.1; Acts 1957, c.294, s.2; Acts 1959, c.97, s.2; Acts 1965, c.190, s.7; Acts 1967, c.310, s.16; Acts 1971, P.L.355, SEC.26; Acts 1973, P.L.240, SEC.1; Acts 1974, P.L.110, SEC.1.) As amended by Acts 1976, P.L.114, SEC.3; Acts 1977, P.L.262, SEC.21; Acts 1980, P.L.158, SEC.2; P.L.129-1984, SEC.1; P.L.34-1985, SEC.5; P.L.18-1987, SEC.39; P.L.171-1991, SEC.3; P.L.1-1992, SEC.109; P.L.23-1993, SEC.129; P.L.202-1993, SEC.5; P.L.1-1994, SEC.113; P.L.21-1995, SEC.75; P.L.166-1996, SEC.1; P.L.259-1997(ss), SEC.4; P.L.235-1999, SEC.10; P.L.2-2011, SEC.11.*

#### **IC 22-4-12-2.1**

##### **Repealed**

*(Repealed by P.L.175-2009, SEC.48.)*

#### **IC 22-4-12-3**

##### **Amount; inability to work; unavailable for work**

Sec. 3. The weekly benefit amount of any otherwise eligible individual shall be reduced by one-third (1/3) thereof, computed to the next lower multiple of one dollar (\$1.00), for each normal work day during which such individual is unable to work or is unavailable for work.

*(Formerly: Acts 1947, c.208, s.1203.) As amended by P.L.227-1983, SEC.6.*

#### **IC 22-4-12-4**

##### **Computation; maximum amount**

Sec. 4. (a) Benefits shall be computed upon the basis of wage credits of an individual in the individual's base period. Wage credits shall be reported by the employer and credited to the individual in the manner prescribed by the board. With respect to initial claims filed for any week beginning on and after July 7, 1991, the maximum total amount of benefits payable to any eligible individual during any benefit period shall not exceed twenty-six (26) times the individual's weekly benefit, or twenty-eight percent (28%) of the individual's wage credits with respect to the individual's base period, whichever is less. If such maximum total amount of benefits is not a multiple of one dollar (\$1), it shall be computed to the next lower multiple of one dollar (\$1).

(b) Except as provided in subsection (d), the total extended benefit amount payable to any eligible individual with respect to the

individual's applicable benefit period shall be fifty percent (50%) of the total amount of regular benefits (including dependents' allowances) which were payable to the individual under this article in the applicable benefit year, or thirteen (13) times the weekly benefit amount (including dependents' allowances) which was payable to the individual under this article for a week of total unemployment in the applicable benefit year, whichever is the lesser amount.

(c) This subsection applies to individuals who file a disaster unemployment claim or a state unemployment insurance claim after June 1, 1990, and before June 2, 1991, or during another time specified in another state statute. An individual is entitled to thirteen (13) weeks of additional benefits, as originally determined, if:

- (1) the individual has established:
  - (A) a disaster unemployment claim under the Stafford Disaster Relief and Emergency Assistance Act; or
  - (B) a state unemployment insurance claim as a direct result of a major disaster;
- (2) all regular benefits and all disaster unemployment assistance benefits:
  - (A) have been exhausted by the individual; or
  - (B) are no longer payable to the individual due to the expiration of the disaster assistance period; and
- (3) the individual remains unemployed as a direct result of the disaster.

(d) For purposes of this subsection, "high unemployment period" means a period during which an extended benefit period would be in effect if IC 22-4-2-34(d)(1) were applied by substituting "eight percent (8%)" for "six and five-tenths percent (6.5%)". Effective with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year is equal to the least of the following amounts:

- (1) Eighty percent (80%) of the total amount of regular benefits that were payable to the eligible individual under this article in the applicable benefit year.
- (2) Twenty (20) times the weekly benefit amount that was payable to the eligible individual under this article for a week of total unemployment in the applicable benefit year.
- (3) Forty-six (46) times the weekly benefit amount that was payable to the eligible individual under this article for a week of total unemployment in the applicable benefit year, reduced by the regular unemployment compensation benefits paid (or deemed paid) during the benefit year.

This subsection expires on the later of December 5, 2009, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed Workers and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

(e) For purposes of this subsection, "high unemployment period" means a period during which an extended benefit period would be in effect if IC 22-4-2-34(n)(1) were applied by substituting "eight percent (8%)" for "six and one-half percent (6.5%)". Effective with respect to weeks of unemployment beginning after March 1, 2011, and ending on the later of December 10, 2011, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5), in a high unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year is equal to the lesser of the following amounts:

(1) Eighty percent (80%) of the total amount of regular benefits that were payable to the eligible individual under this article in the applicable benefit year.

(2) Twenty (20) times the weekly benefit amount that was payable to the eligible individual under this article for a week of total unemployment in the applicable benefit year.

*(Formerly: Acts 1947, c.208, s.1204; Acts 1959, c.97, s.3; Acts 1967, c.310, s.17; Acts 1971, P.L.355, SEC.27.) As amended by P.L.171-1991, SEC.4; P.L.172-1991, SEC.2; P.L.1-1992, SEC.110; P.L.175-2009, SEC.17; P.L.12-2011, SEC.3.*

#### **IC 22-4-12-5**

##### **Part-time worker**

Sec. 5. (a) As used in this section, the term "part-time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full-time hours prevailing in the establishment in which he is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

(b) The board may prescribe rules applicable to part-time workers for determining their weekly benefit amount and the wage credits required to qualify such individuals for benefits. Such rules shall, with respect to such individuals, supersede any inconsistent provisions of this article, but, so far as practicable, shall secure results reasonably equivalent to those provided in the analogous provisions of this article.

*(Formerly: Acts 1947, c.208, s.1205.) As amended by P.L.144-1986, SEC.102.*

## IC 22-4-13

### Chapter 13. Improper Payments

#### IC 22-4-13-1

##### **Overpayment; fraud; mistake; collection**

Sec. 1. (a) Whenever an individual receives benefits or extended benefits to which the individual is not entitled under:

(1) this article; or

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

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

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

(c) Any individual who knowingly:

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

(2) fails, or causes another to fail, to disclose a material fact; and

as a result thereof has received any amount as benefits to which the individual is not entitled under this article, shall be liable to repay such amount, with interest at the rate of one-half percent (0.5%) per month, to the department for the unemployment insurance benefit fund or to have such amount deducted from any benefits otherwise payable to the individual under this article, within the six (6) year period following the later of the date the department establishes that an overpayment has occurred or the date that the determination of an overpayment becomes final following the exhaustion of all appeals.

(d) Any individual who, for any reason other than misrepresentation or nondisclosure as specified in subsection (c), has received any amount as benefits to which the individual is not entitled under this article or because of the subsequent receipt of income deductible from benefits which is allocable to the week or weeks for which such benefits were paid becomes not entitled to such benefits under this article shall be liable to repay such amount to the department for the unemployment insurance benefit fund or to have such amount deducted from any benefits otherwise payable to the individual under this article, within the three (3) year period following the later of the date the department establishes that the overpayment occurred or the date that the determination that an overpayment occurred becomes final following the exhaustion of all appeals.

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

(f) Where it is finally determined by a deputy, an administrative

law judge, the review board, or a court of competent jurisdiction that an individual has received benefits to which the individual is not entitled under this article, the department shall relieve the affected employer's experience account of any benefit charges directly resulting from such overpayment. However, an employer's experience account will not be relieved of the charges resulting from an overpayment of benefits which has been created by a retroactive payment by such employer directly or indirectly to the claimant for a period during which the claimant claimed and was paid benefits unless the employer reports such payment by the end of the calendar quarter following the calendar quarter in which the payment was made or unless and until the overpayment has been collected. Those employers electing to make payments in lieu of contributions shall not have their account relieved as the result of any overpayment unless and until such overpayment has been repaid to the unemployment insurance benefit fund.

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

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

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

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

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

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

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

*(Formerly: Acts 1947, c.208, s.1301; Acts 1953, c.177, s.13; Acts 1957, c.129, s.1; Acts 1971, P.L.355, SEC.28; Acts 1973, P.L.239, SEC.4.) As amended by Acts 1979, P.L.229, SEC.2; P.L.228-1983, SEC.3; P.L.18-1987, SEC.40; P.L.135-1990, SEC.2; P.L.21-1995, SEC.77; P.L.290-2001, SEC.6; P.L.108-2006, SEC.23.*

### **IC 22-4-13-1.1**

#### **Forfeiture of benefits or wage credits; civil penalties**

Sec. 1.1. (a) Notwithstanding any other provisions of this article, if an individual knowingly:

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

period; or

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

that would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended benefits, the individual forfeits any wage credits earned or any benefits or extended benefits that might otherwise be payable to the individual for any week in which the failure to disclose or falsification caused benefits to be paid improperly.

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

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

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

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

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

(d) Interest and civil penalties collected under this chapter shall be deposited as follows:

(1) Fifteen percent (15%) of the amount collected shall be deposited in the unemployment insurance benefit fund established under IC 22-4-26-1.

(2) The remainder of the amount collected shall be deposited in the special employment and training services fund established under IC 22-4-25-1.

*As added by P.L.108-2006, SEC.24. Amended by P.L.175-2009, SEC.18; P.L.154-2013, SEC.5; P.L.121-2014, SEC.11.*

#### **IC 22-4-13-2**

##### **Repealed**

*(Repealed by P.L.129-1984, SEC.4.)*

#### **IC 22-4-13-3**

##### **Overpayments due to retroactive labor awards; offset and remission**

Sec. 3. If an overpayment of benefits is created by a retroactive payment by the employer for:

(1) awards by the National Labor Relations Board of additional pay, backpay, or for loss of employment;

(2) any payments made under an agreement entered into by an employer, either a union or an employee, and the National Labor Relations Board; or

(3) payments to an employee by an employing unit made pursuant to the terms and provisions of the Fair Labor

Standards Act;  
and the employer offsets all or part of the overpaid benefits against  
the award, the employer shall remit the amount offset to the division.  
*As added by P.L.20-1986, SEC.8.*

#### **IC 22-4-13-4**

##### **Repayment of overpayment amounts**

Sec. 4. (a) This section applies to an individual:

- (1) for whom the department has established an overpayment by  
a final written determination under section 1(a) or 1(b) of this  
chapter; and
- (2) whose overpayment amount that is due and payable equals  
or exceeds:
  - (A) the individual's weekly benefit amount; multiplied by
  - (B) four (4).

(b) Notwithstanding any other law and subject to subsection (c),  
an individual is entitled to repay the established amount of an  
overpayment over a period:

- (1) beginning on the date the determination of the amount of the  
overpayment is final; and
- (2) ending on a date not later than the date occurring thirty-six  
(36) months after the date specified in subdivision (1).

(c) An individual to whom this section applies may repay an  
overpayment over time as provided in subsection (b) not more than  
once during the individual's lifetime.

*As added by P.L.172-2011, SEC.128.*

## **IC 22-4-14**

### **Chapter 14. Eligibility for Benefits**

#### **IC 22-4-14-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.138-2008 apply to initial claims for unemployment filed for weeks that begin after March 14, 2008.

*As added by P.L.220-2011, SEC.366.*

#### **IC 22-4-14-1**

##### **Claims; inverse seniority layoffs; other layoffs and plant closures**

Sec. 1. (a) Except as provided in IC 22-4-5-1 or subsection (b) or (c), an unemployed individual shall be eligible to receive benefits with respect to any week only if the individual has made a claim for benefits in accordance with IC 22-4-17.

(b) A person who:

- (1) accepts a layoff under an inverse seniority clause of a validly negotiated contract; and
- (2) otherwise meets the eligibility requirements established by this article;

is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person.

(c) This subsection applies to initial claims for unemployment filed for a week that begins after March 14, 2008, and before October 1, 2011. This subsection does not apply to a person who elects to retire in connection with a layoff or plant closure and receive pension, retirement, or annuity payments. Except as provided in IC 22-4-5-1, a person who:

- (1) accepts an offer of payment or other compensation offered by an employer to avert or lessen the effect of a layoff or plant closure; and
- (2) otherwise meets the eligibility requirements established by this article;

is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person.

*(Formerly: Acts 1947, c.208, s.1401; Acts 1971, P.L.355, SEC.29.)  
As amended by P.L.138-2008, SEC.3; P.L.2-2011, SEC.12.*

#### **IC 22-4-14-2**

##### **Employment offices; registration; reporting; issuance of warrants; job counseling and training**

Sec. 2. (a) An unemployed individual is eligible to receive benefits with respect to any week only if the individual has:

- (1) registered for work at an employment office or branch thereof or other agency designated by the commissioner within the time limits that the department by rule adopts; and
- (2) subsequently reported with the frequency and in the manner,

either in person or in writing, that the department by rule adopts.

(b) Failure to comply with subsection (a) shall be excused by the commissioner or the commissioner's authorized representative upon a showing of good cause therefor. The department shall waive or alter the requirements of this section as to such types of cases or situations that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this article.

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

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

(e) The department may waive the requirements of subsection (a) for a week only when one (1) of the following applies to an individual for that week:

(1) The individual is attending training or retraining approved by the department.

(2) The individual is a job-attached worker with a specific recall date that is not more than sixty (60) days after the individual's separation date.

(3) The individual is using:

(A) a hiring service;

(B) a referral service; or

(C) another job placement service as determined by the department.

(4) Any other situation exists for which the department considers requiring compliance by the individual with this section to be inconsistent with the purposes of this article.

*(Formerly: Acts 1947, c.208, s.1402; Acts 1953, c.177, s.14; Acts 1969, c.300, s.3.) As amended by P.L.144-1986, SEC.103; P.L.18-1987, SEC.41; P.L.80-1990, SEC.12; P.L.1-1991, SEC.149; P.L.21-1995, SEC.78; P.L.108-2006, SEC.25; P.L.175-2009, SEC.19.*

### **IC 22-4-14-3**

#### **Ability to work; available for work; military service; approved training; reemployment services and reemployment and eligibility assessments**

Sec. 3. (a) An individual who is receiving benefits as determined under IC 22-4-15-1(c)(8) may restrict the individual's availability because of the individual's need to address the physical, psychological, or legal effects of being a victim of domestic or family violence (as defined in IC 31-9-2-42).

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

- (1) is physically and mentally able to work;
- (2) is available for work;
- (3) is found by the department to be making an effort to secure full-time work; and
- (4) participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services under a profiling system established by the department, and reemployment and eligibility assessment activities when directed by the department, unless the department determines that:

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

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

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

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

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

(e) Notwithstanding subsection (b), (c), or (d), or IC 22-4-15-2, an otherwise eligible individual shall not be denied benefits for any week or determined not able, available, and actively seeking work, because the individual is responding to a summons for jury service. The individual shall:

- (1) obtain from the court proof of the individual's jury service; and
- (2) provide to the department, in the manner the department prescribes by rule, proof of the individual's jury service.

(f) For purposes of this section, reemployment services and reemployment and eligibility assessment activities provided to an individual:

- (1) must include:
  - (A) orientation to the services available through a one stop center (as defined by IC 22-4.5-2-6);
  - (B) provision of labor market and career information;
  - (C) assessment of the individual's workforce and other job related skills; and
  - (D) a review of the individual's work search efforts; and
- (2) may include:
  - (A) comprehensive and specialized assessments;
  - (B) individual and group career counseling;
  - (C) training services;
  - (D) additional services to assist the individual in becoming reemployed;
  - (E) job search counseling; and
  - (F) development and review of the individual's reemployment plan that includes the individual's participation in job search activities and appropriate workshops.

(g) The department may require an individual participating in reemployment and eligibility assessment activities described in this section to provide proof of identity.

*(Formerly: Acts 1947, c.208, s.1403; Acts 1951, c.307, s.3; Acts 1955, c.317, s.8; Acts 1967, c.310, s.18; Acts 1971, P.L.355, SEC.30; Acts 1975, P.L.253, SEC.1.) As amended by Acts 1976, P.L.114, SEC.4; Acts 1980, P.L.158, SEC.3; P.L.227-1983, SEC.7; P.L.18-1987, SEC.42; P.L.21-1995, SEC.79; P.L.189-2003, SEC.2;*

*P.L.108-2006, SEC.26; P.L.175-2009, SEC.20; P.L.110-2010, SEC.30; P.L.154-2013, SEC.6.*

#### **IC 22-4-14-4**

##### **Waiting period**

Sec. 4. As a condition precedent to the payment of benefits to an individual with respect to any week such individual shall be required to serve a waiting period of one (1) week in which he has been totally, partially or part-totally unemployed and with respect to which he has received no benefits, but during which he was eligible for benefits in all other respects and was not otherwise ineligible for benefits under any provisions of this article. Such waiting period shall be a week in the individual's benefit period and during such week such individual shall be physically and mentally able to work and available for work. No individual in a benefit period may file for waiting period or benefit period rights with respect to any subsequent period. Provided, however, That no waiting period shall be required as a prerequisite for drawing extended benefits.

*(Formerly: Acts 1947, c.208, s.1404; Acts 1971, P.L.355, SEC.31.)*

#### **IC 22-4-14-5**

##### **Wage credits**

Sec. 5. (a) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after July 1, 1995, but before January 1, 2010:

(1) the individual must have established, after the last day of the individual's last base period, if any, wage credits (as defined in IC 22-4-4-3 and within the meaning of IC 22-4-22-3) equal to at least one and one-quarter (1.25) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than one thousand six hundred fifty dollars (\$1,650) and an aggregate in the four (4) calendar quarters of the individual's base period of not less than two thousand seven hundred fifty dollars (\$2,750).

(b) As a further condition precedent to the payment of benefits to an individual with respect to a benefit year established on and after July 1, 1995, an insured worker may not receive benefits in a benefit year unless after the beginning of the immediately preceding benefit year during which the individual received benefits, the individual performed insured work and earned wages in employment under IC 22-4-8 in an amount not less than the individual's weekly benefit amount established for the individual in the preceding benefit year in each of eight (8) weeks.

(c) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after January 1, 2010:

(1) the individual must have established, after the last day of the

individual's last base period, if any, wage credits (as defined in IC 22-4-4-3 and within the meaning of wages under IC 22-4-22-3) equal to at least one and five-tenths (1.5) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than two thousand five hundred dollars (\$2,500) and a total amount in the four (4) calendar quarters of the individual's base period of not less than four thousand two hundred dollars (\$4,200).

*(Formerly: Acts 1947, c.208, s.1405; Acts 1965, c.190, s.8; Acts 1971, P.L.355, SEC.32; Acts 1974, P.L.110, SEC.3.) As amended by Acts 1980, P.L.158, SEC.4; P.L.34-1985, SEC.6; P.L.171-1991, SEC.5; P.L.21-1995, SEC.80; P.L.166-1996, SEC.2; P.L.175-2009, SEC.21.*

#### **IC 22-4-14-6**

##### **Extended benefits; eligibility; effect of disqualification**

Sec. 6. (a) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period only if the commissioner finds that with respect to such week:

(1) the individual is an "exhaustee" (as defined in IC 22-4-2-34(j)); and

(2) the individual has satisfied the requirements of this article for the receipt of regular benefits that are applicable to extended benefits, including not being subject to a disqualification for the receipt of benefits.

(b) If an individual has been disqualified from receiving extended benefits for failure to actively engage in seeking work under IC 22-4-15-2(c), the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks. For purposes of this subsection, an individual shall be treated as actively engaged in seeking work during any week if:

(1) the individual has engaged in a systematic and sustained effort to obtain work during the week; and

(2) the individual provides tangible evidence to the department of workforce development that the individual has engaged in an effort to obtain work during the week.

(c) For claims for extended benefits established after September 25, 1982, notwithstanding any other provision of this article, an individual shall be eligible to receive extended benefits only if the individual's insured wages in the base period with respect to which the individual exhausted all rights to regular compensation were equal to or exceeded one and one-half (1 1/2) times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest.

*(Formerly: Acts 1971, P.L.355, SEC.33.) As amended by Acts 1981, P.L.209, SEC.7; Acts 1982, P.L.95, SEC.3; P.L.18-1987, SEC.43; P.L.21-1995, SEC.81; P.L.175-2009, SEC.22.*

**IC 22-4-14-7**

**Institutions of higher education and other educational institutions; service providers to or on behalf of educational institutions**

Sec. 7. (a) Benefits based on service in employment defined in IC 22-4-8-2(i) and IC 22-4-8-2(j) shall be payable in the same amount, on the terms, and subject to the same conditions as compensation payable on the basis of other service subject to this article, unless otherwise specifically provided, subject to the following exceptions:

(1) With respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, benefits may not be paid based on the service for any week of unemployment commencing during the period between two (2) successive academic years, or terms, or during the period between two (2) regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs the services in the first of the academic years or terms and if there is a reasonable assurance that the individual will perform services in an instructional, research, or principal administrative capacity for any educational institution in the second of the academic years or terms.

(2) With respect to services performed in any capacity (other than those listed in subdivision (1) of this section) for an educational institution, benefits may not be paid based on the service of an individual for any week which commences during a period between two (2) successive academic years or terms if the individual performs the service in the first of the academic years or terms and there is reasonable assurance that the individual will perform the service in the second of the academic years or terms. However, with respect to weeks of unemployment beginning on or after January 1, 1984, if compensation is denied to any individual under this subdivision and the individual was not offered an opportunity to perform such services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subdivision.

(3) With respect to any services described in subdivision (1) or (2), compensation payable for these services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if there is reasonable assurance that the individual will perform the services in the period immediately following the vacation

period or holiday recess.

(4) With respect to any services described in subdivisions (1) and (2), benefits shall not be payable on the basis of services in any such capacities as specified in subdivisions (1), (2), and (3), to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subdivision, the term "educational service agency" means a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

(5) For services to which 26 U.S.C. 3309(a)(1) applies, if the services are provided to or on behalf of an educational institution, compensation payable based on the services may be denied as specified in subdivisions (1), (2), (3), and (4).

(b) For purposes of this section, benefits may not be denied during the period between academic years or terms to any individual having wage credits earned with other than an educational institution if the wage credits qualify the individual under section 5 of this chapter and the individual is otherwise eligible. In these cases, the claim shall be computed based on the wage credits earned with employers other than educational institutions reported for the individual during the base period, in accordance with IC 22-4-12-2 and IC 22-4-12-4. Benefits paid based on the computation shall be only for weeks of unemployment occurring between academic years or terms. For any weeks of unemployment claims other than between academic years or terms, the claims of these individuals shall be recomputed to include all base period wages.

*(Formerly: Acts 1971, P.L.355, SEC.34.) As amended by Acts 1977, P.L.262, SEC.22; Acts 1978, P.L.122, SEC.2; Acts 1979, P.L.229, SEC.3; P.L.227-1983, SEC.8; P.L.129-1984, SEC.2; P.L.2-2011, SEC.13.*

#### **IC 22-4-14-8**

##### **Sports; period between seasons**

Sec. 8. For weeks of unemployment occurring subsequent to December 31, 1977, benefits may not be paid to any individual on the basis of any service substantially all of which consists of participating in sports or athletic events or training or preparing to participate in these events for any week which commences during the period between two (2) successive sport seasons or similar periods, if the individual performed the services in the first of the seasons or similar periods and there is a reasonable assurance that the individual will perform the services in the second of the seasons or similar periods.

Benefits may not be denied, however, for any week which commences during the period between two (2) successive sport seasons or similar periods if the individual has performed services in employment other than participating in sports or athletic events or training or preparing to participate in these events with wage credits

earned in the other employment during his base period in sufficient amount to qualify under IC 22-4-14-5 and the individual is otherwise eligible. In these cases, the claim shall be computed based on the wage credits earned with employers other than those employing the individual in sports or athletic events reported for the individual during his base period and in accordance with IC 22-4-12-2 and IC 22-4-12-4. Benefits paid based on this computation shall be only for weeks of unemployment occurring between sport seasons or similar periods. For any weeks of unemployment claimed other than between sports seasons or similar periods, the claims of these individuals shall be recomputed to include all base period wages.

*As added by Acts 1977, P.L.262, SEC.23.*

### **IC 22-4-14-9**

#### **Aliens**

Sec. 9. (a) As used in this section, "SAVE program" refers to the Systematic Alien Verification for Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.

(b) For weeks of unemployment occurring subsequent to December 31, 1977, benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services are performed, is lawfully present for purposes of performing the services, or otherwise is permanently residing in the United States under color of law at the time the services are performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 207, Section 208, or Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1157 through 1158)).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of the individual's alien status may be made except upon a preponderance of the evidence.

(3) Any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act, as provided by P.L.94-566, which specify other conditions or other effective date than stated in this section for the denial of benefits based on services performed by aliens and which are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be considered applicable under this section.

(c) If an individual who applies for benefits is not a citizen or national of the United States, the department shall verify the status

of the individual as a qualified alien (as defined in 8 U.S.C. 1641) through the SAVE program to determine the individual's eligibility for benefits. The department shall implement this subsection in accordance with federal law.

*As added by Acts 1977, P.L.262, SEC.24. Amended by P.L.135-1990, SEC.3; P.L.171-2011, SEC.14.*

#### **IC 22-4-14-10**

##### **Repealed**

*(Repealed by Acts 1982, P.L.137, SEC.1.)*

#### **IC 22-4-14-11**

##### **Seasonal employment; benefit claims; application for seasonal determination; appeal**

Sec. 11. (a) For weeks of unemployment occurring after October 1, 1983, benefits may be paid to an individual on the basis of service performed in seasonal employment (as defined in IC 22-4-8-4) only if the claim is filed within the operating period of the seasonal employment. If the claim is filed outside the operating period of the seasonal employment, benefits may be paid on the basis of nonseasonal wages only.

(b) An employer shall file an application for a seasonal determination (as defined by IC 22-4-7-3) with the department of workforce development. A seasonal determination shall be made by the department within ninety (90) days after the filing of such an application. Until a seasonal determination by the department has been made in accordance with this section, no employer or worker may be considered seasonal.

(c) Any interested party may file an appeal regarding a seasonal determination within fifteen (15) calendar days after the determination by the department and obtain review of the determination in accordance with IC 22-4-32.

(d) Whenever an employer is determined to be a seasonal employer, the following provisions apply:

(1) The seasonal determination becomes effective the first day of the calendar quarter commencing after the date of the seasonal determination.

(2) The seasonal determination does not affect any benefit rights of seasonal workers with respect to employment before the effective date of the seasonal determination.

(e) If a seasonal employer, after the date of its seasonal determination, operates its business or its seasonal operation during a period or periods of twenty-six (26) weeks or more in a calendar year, the employer shall be determined by the department to have lost its seasonal status with respect to that business or operation effective at the end of the then current calendar quarter. The redetermination shall be reported in writing to the employer. Any interested party may file an appeal within fifteen (15) calendar days after the redetermination by the department and obtain review of the redetermination in accordance with IC 22-4-32.

(f) Seasonal employers shall keep account of wages paid to seasonal workers within the seasonal period as determined by the department and shall report these wages on a special seasonal quarterly report form provided by the department.

(g) The board shall adopt rules applicable to seasonal employers for determining their normal seasonal period or periods.

*As added by P.L.228-1983, SEC.4. Amended by P.L.18-1987, SEC.44; P.L.21-1995, SEC.82.*

## IC 22-4-15

### Chapter 15. Disqualification for Benefits

#### IC 22-4-15-1

##### Grounds for disqualification; modifications

Sec. 1. (a) Regarding an individual's most recent separation from employment before filing an initial or additional claim for benefits, an individual who voluntarily left the employment without good cause in connection with the work or was discharged from the employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until:

- (1) the individual has earned remuneration in employment in at least eight (8) weeks; and
- (2) the remuneration earned equals or exceeds the product of the weekly benefit amount multiplied by eight (8).

If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by an amount determined as follows:

- (1) For the first separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

- (A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by
- (B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

- (2) For the second separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

- (A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by
- (B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

- (3) For the third and any subsequent separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

- (A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by
- (B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as

determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

(A) the employment was outside the individual's labor market;

(B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and

(C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

(8) An individual shall not be subject to disqualification if the individual voluntarily left employment or was discharged due to circumstances directly caused by domestic or family violence (as defined in IC 31-9-2-42). An individual who may be entitled to benefits based on this modification may apply to the office of the attorney general under IC 5-26.5 to have an address designated by the office of the attorney general to serve as the individual's address for purposes of this article.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

(1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;

(2) knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance;

(3) if an employer does not have a rule regarding attendance, an individual's unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;

(4) damaging the employer's property through willful negligence;

(5) refusing to obey instructions;

(6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;

(7) conduct endangering safety of self or coworkers;

(8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction; or

(9) any breach of duty in connection with work which is

reasonably owed an employer by an employee.

(e) To verify that domestic or family violence has occurred, an individual who applies for benefits under subsection (c)(8) shall provide one (1) of the following:

- (1) A report of a law enforcement agency (as defined in IC 10-13-3-10).
- (2) A protection order issued under IC 34-26-5.
- (3) A foreign protection order (as defined in IC 34-6-2-48.5).
- (4) An affidavit from a domestic violence service provider verifying services provided to the individual by the domestic violence service provider.

*(Formerly: Acts 1947, c.208, s.1501; Acts 1957, c.261, s.1; Acts 1965, c.190, s.9; Acts 1967, c.310, s.19; Acts 1971, P.L.355, SEC.35; Acts 1972, P.L.174, SEC.1; Acts 1974, P.L.110, SEC.4.) As amended by Acts 1977, P.L.262, SEC.25; Acts 1980, P.L.158, SEC.5; Acts 1982, P.L.95, SEC.4; P.L.20-1986, SEC.9; P.L.80-1990, SEC.13; P.L.21-1995, SEC.83; P.L.166-1996, SEC.3; P.L.290-2001, SEC.7; P.L.189-2003, SEC.3; P.L.97-2004, SEC.82; P.L.175-2009, SEC.23; P.L.121-2014, SEC.12.*

#### **IC 22-4-15-2**

##### **Availability and acceptance of work; exceptions; application to extended benefit rights**

Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for waiting period or benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

- (1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;
- (2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment unit; or
- (3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks.

(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by an amount determined as follows:

(1) For the first failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(e) In determining whether or not any such work is suitable for an individual, the department shall consider:

(1) the degree of risk involved to such individual's health, safety, and morals;

(2) the individual's physical fitness and prior training and experience;

(3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and

(4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the

distance involved. During the fifth through the eighth consecutive week of claiming benefits, work is not considered unsuitable solely because the work pays not less than ninety percent (90%) of the individual's prior weekly wage. After eight (8) consecutive weeks of claiming benefits, work is not considered unsuitable solely because the work pays not less than eighty percent (80%) of the individual's prior weekly wage. However, work is not considered suitable under this section if the work pays less than Indiana's minimum wage as determined under IC 22-2-2. For an individual who is subject to section 1(c)(8) of this chapter, the determination of suitable work for the individual must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic or family violence.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
- (2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
- (3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.
- (4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:
  - (A) the individual's average weekly benefit amount for the individual's benefit year; plus
  - (B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.
- (2) If the position was not offered to the individual in writing or

was not listed with the department of workforce development.

(3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.

(4) If the position pays wages less than the higher of:

(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the Fair Labor Standards Act of 1938), without regard to any exemption; or

(B) the state minimum wage (IC 22-2-2).

(i) The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection (g)) to which subsection (h) would not apply.

(j) An individual is considered to have refused an offer of suitable work under subsection (a) if an offer of work is withdrawn by an employer after an individual:

(1) tests positive for drugs after a drug test given on behalf of the prospective employer as a condition of an offer of employment; or

(2) refuses, without good cause, to submit to a drug test required by the prospective employer as a condition of an offer of employment.

(k) The department's records concerning the results of a drug test described in subsection (j) may not be admitted against a defendant in a criminal proceeding.

*(Formerly: Acts 1947, c.208, s.1502; Acts 1953, c.177, s.15; Acts 1957, c.261, s.2; Acts 1971, P.L.355, SEC.36; Acts 1974, P.L.110, SEC.5.) As amended by Acts 1977, P.L.262, SEC.26; Acts 1980, P.L.158, SEC.6; Acts 1981, P.L.209, SEC.8; Acts 1982, P.L.95, SEC.5; P.L.20-1986, SEC.10; P.L.2-1987, SEC.31; P.L.18-1987, SEC.45; P.L.21-1995, SEC.84; P.L.290-2001, SEC.8; P.L.189-2003, SEC.4; P.L.97-2004, SEC.83; P.L.175-2009, SEC.24; P.L.12-2011, SEC.4; P.L.121-2014, SEC.13.*

### **IC 22-4-15-3**

#### **Labor disputes; financing; sympathy strikes**

Sec. 3. (a) An individual shall be ineligible for waiting period or benefit rights for any week with respect to which his total or partial or part-total unemployment is due to a labor dispute at the factory, establishment, or other premises at which he was last employed.

(b) This section shall not apply to an individual if he has terminated his employment, or his employment has been terminated, with the employer involved in the labor dispute; or if the labor dispute which caused his unemployment has terminated and any period necessary to resume normal activities at his place of employment has elapsed; or if all of the following conditions exist: He is not participating in or financing or directly interested in the labor dispute which caused his unemployment: and he does not belong to a grade or class of workers of which, immediately before the commencement of his unemployment, there were members employed at the same premises as he, any of whom are participating

in or financing or directly interested in the dispute; and he has not voluntarily stopped working, other than at the direction of his employer, in sympathy with employees in some other establishment or factory in which a labor dispute is in progress.

(c) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(d) Upon request of any claimant or employer involved in an issue arising under this section, the deputy shall, and in any other case the deputy may, refer claims of individuals with respect to whom there is an issue of the application of this section to an administrative law judge who shall make the initial determination with respect thereto, in accordance with the procedure in IC 22-4-17-3.

(e) Notwithstanding any other provisions of this article, an individual shall not be ineligible for waiting period or benefit rights under this section solely by reason of his failure or refusal to apply for or to accept recall to work or reemployment with an employer during the continuance of a labor dispute at the factory, establishment, or other premises of the employer, if the individual's last separation from the employer occurred prior to the start of the labor dispute and was permanent or for an indefinite period.

*(Formerly: Acts 1947, c.208, s.1504; Acts 1953, c.177, s.16; Acts 1971, P.L.355, SEC.37; Acts 1974, P.L.110, SEC.6.) As amended by Acts 1980, P.L.158, SEC.7; P.L.135-1990, SEC.4.*

#### **IC 22-4-15-4**

##### **Retirement; annuities; Social Security**

Sec. 4. (a) An individual shall be ineligible for waiting period or benefit rights for any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding the individual's weekly benefit amount in the form of:

(1) deductible income as defined and applied in IC 22-4-5-1 and IC 22-4-5-2; or

(2) any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all of the money. The following apply to a disqualification under this subdivision:

(A) The disqualification shall apply only if some or all of the benefits otherwise payable:

(i) are chargeable to the experience or reimbursable account of such employer; or

(ii) would have been chargeable except for the application of this chapter.

(B) Notwithstanding clause (A), the disqualification does not apply to a distribution from a pension, retirement, or annuity plan of an employer when an individual uses the distribution to satisfy a severe financial hardship resulting from an unforeseeable emergency that is the result of events beyond

the individual's control.

(C) Federal old age, survivors, and disability insurance benefits are not considered payments under a plan of an employer whereby the employer maintains the plan or contributes a portion or all of the money to the extent required by federal law.

(b) If the payments described in subsection (a) are less than an individual's weekly benefit amount an otherwise eligible individual shall not be ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

(c) This section does not preclude an individual from delaying a claim to pension, retirement, or annuity payments until the individual has received the benefits to which the individual would otherwise be eligible under this chapter. Weekly benefits received before the date the individual elects to retire shall not be reduced by any pension, retirement, or annuity payments received on or after the date the individual elects to retire.

*(Formerly: Acts 1947, c.208, s.1505; Acts 1953, c.177, s.17; Acts 1967, c.310, s.20; Acts 1971, P.L.355, SEC.38.) As amended by Acts 1981, P.L.209, SEC.9; P.L.3-1998, SEC.1; P.L.290-2001, SEC.9; P.L.2-2011, SEC.14.*

#### **IC 22-4-15-5**

##### **Receiving benefits from another state; federal employees' benefits**

Sec. 5. Except as provided in IC 1971, 22-4-22, an individual shall be ineligible for waiting period or benefit rights: For any week with respect to which or a part of which he receives, is receiving, has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States: Provided, That this disqualification shall not apply if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such employment benefits, including benefits to federal civilian employees and ex-servicemen pursuant to 5 U.S.C. Chapter 85.

*(Formerly: Acts 1947, c.208, s.1506; Acts 1953, c.177, s.18; Acts 1955, c.317, s.9; Acts 1971, P.L.355, SEC.39.)*

#### **IC 22-4-15-6**

##### **Repealed**

*(Repealed by P.L.1-1991, SEC.150.)*

#### **IC 22-4-15-6.1**

##### **Gross misconduct**

Sec. 6.1. (a) Notwithstanding any other provisions of this article, all of the individual's wage credits established prior to the day upon which the individual was discharged for gross misconduct in connection with work are canceled.

(b) As used in this section, "gross misconduct" means any of the following committed in connection with work, as determined by the department by a preponderance of the evidence:

- (1) A felony.
- (2) A Class A misdemeanor.
- (3) Working, or reporting for work, in a state of intoxication caused by the individual's use of alcohol or a controlled substance (as defined in IC 35-48-1-9).
- (4) Battery on another individual while on the employer's property or during working hours.
- (5) Theft or embezzlement.
- (6) Fraud.

(c) If evidence is presented that an action or requirement of the employer may have caused the conduct that is the basis for the employee's discharge, the conduct is not gross misconduct under this section.

(d) Lawful conduct not otherwise prohibited by an employer is not gross misconduct under this section.

*As added by P.L.1-1991, SEC.151. Amended by P.L.175-2009, SEC.25; P.L.121-2014, SEC.14.*

#### **IC 22-4-15-7**

##### **Repealed**

*(Repealed by Acts 1971, P.L.355, SEC.47.)*

#### **IC 22-4-15-8**

##### **Private unemployment benefit plans**

Sec. 8. Notwithstanding any other provisions of this article, benefits otherwise payable for any week under this article shall not be denied or reduced on account of any payment or payments the claimant receives, has received, will receive, or accrues right to receive with respect to or based upon such week under a private unemployment benefit plan financed in whole or part by the claimant's employer or former employer. No claim for repayment of benefits and no deduction from benefits otherwise payable under this article shall be made under IC 22-4-13-1(d) and IC 22-4-13-1(e) because of payments which have been or will be made under such private unemployment benefit plans. However, a payment of private unemployment benefits that is conditional upon the signing of a release of employment related claims against the claimant's employer is severance pay and is deductible income as prescribed by IC 22-4-5-2.

*(Formerly: Acts 1947, c.208, s.1509; Acts 1957, c.129, s.2; Acts 1959, c.241, s.1.) As amended by P.L.144-1986, SEC.104; P.L.108-2006, SEC.27; P.L.121-2014, SEC.15.*

**IC 22-4-16**

**Chapter 16. Failure to Disclose Earnings**

**IC 22-4-16-1**

**Repealed**

*(Repealed by P.L.108-2006, SEC.66.)*

## IC 22-4-17

### Chapter 17. Claims for Benefits

#### IC 22-4-17-1

##### **Rules; mass layoffs; extended benefits; posting**

Sec. 1. (a) Claims for benefits shall be made in accordance with rules adopted by the department. The department shall adopt reasonable procedures consistent with the provisions of this article for the expediting of the taking of claims of individuals for benefits in instances of mass layoffs by employers, the purpose of which shall be to minimize the amount of time required for such individuals to file claims upon becoming unemployed as the result of such mass layoffs.

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

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

(d) Computations required by the provisions of IC 22-4-2-34(f) shall be made by the department in accordance with regulations prescribed by the United States Department of Labor.

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

*(Formerly: Acts 1947, c.208, s.1801; Acts 1957, c.147, s.1; Acts 1971, P.L.355, SEC.41.) As amended by Acts 1982, P.L.95, SEC.6; P.L.18-1987, SEC.46; P.L.21-1995, SEC.85; P.L.108-2006, SEC.28; P.L.175-2009, SEC.26.*

#### IC 22-4-17-2

##### **Filing; determination of status; disputed claims; hearings**

Sec. 2. (a) When an individual files an initial claim, the department shall promptly make a determination of the individual's status as an insured worker in a form prescribed by the department. A written notice of the determination of insured status shall be furnished to the individual promptly. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured worker, and, if so, the week ending date of the first week of the individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the

individual for weeks of unemployment in the individual's benefit period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within ten (10) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) The department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. The notice shall contain the date, the name and Social Security account number of the individual, the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit period. The notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. Unless the employer within ten (10) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

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

(d) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims waiting period credit or benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant left the claimant's work, or may refer such claim to an administrative law judge who shall make the initial determination with respect thereto in accordance with the procedure in section 3 of this chapter.

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

(f) Except as otherwise hereinafter provided in this section regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant or such employer, within ten (10) days after the notification required by subsection (e), was mailed to the claimant's

or the employer's last known address or otherwise delivered to the claimant or the employer, asks for a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith.

(g) For a notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless the claimant or employer, within fifteen (15) days after the notification required by subsection (e), was mailed to the claimant's or employer's last known address or otherwise delivered to the claimant or employer, asks for a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith.

(h) If a claimant or an employer requests a hearing under subsection (f) or (g), the request therefor shall be filed with the department in writing within the prescribed periods as above set forth in this section and shall be in such form as the department may prescribe. In the event a hearing is requested by an employer or the department after it has been administratively determined that benefits should be allowed to a claimant, entitled benefits shall continue to be paid to said claimant unless said administrative determination has been reversed by a due process hearing. Benefits with respect to any week not in dispute shall be paid promptly regardless of any appeal.

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

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

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

(l) If an allegation of the applicability of IC 22-4-15-1(c)(8) is made by the individual at the time of the claim for benefits, the department shall not notify the employer of the claimant's current address or physical location.

*(Formerly: Acts 1947, c.208, s.1802; Acts 1953, c.177, s.22; Acts 1955, c.317, s.10; Acts 1965, c.190, s.11; Acts 1969, c.300, s.5; Acts 1971, P.L.355, SEC.42; Acts 1972, P.L.174, SEC.2.) As amended by Acts 1977, P.L.262, SEC.27; P.L.18-1987, SEC.47; P.L.135-1990, SEC.6; P.L.1-1991, SEC.152; P.L.21-1995, SEC.86; P.L.290-2001,*

*SEC.10; P.L.189-2003, SEC.5; P.L.273-2003, SEC.5; P.L.97-2004, SEC.84; P.L.108-2006, SEC.29; P.L.175-2009, SEC.27; P.L.110-2010, SEC.31; P.L.1-2010, SEC.88; P.L.42-2011, SEC.41; P.L.154-2013, SEC.7.*

#### **IC 22-4-17-2.5**

##### **Filing; income taxes**

Sec. 2.5. (a) When an individual files an initial claim, the individual shall be advised of the following:

- (1) Unemployment compensation is subject to federal, state, and local income taxes.
- (2) Requirements exist concerning estimated tax payments.
- (3) The individual may elect to have income taxes withheld from the individual's payment of unemployment compensation. If an election is made, the department shall withhold federal income tax at the applicable rate provided in the Internal Revenue Code.
- (4) After December 31, 2011, the individual may elect to have state adjusted gross income tax imposed under IC 6-3 and local taxes imposed under IC 6-3.5 deducted and withheld from the individual's payment of unemployment compensation. If an election is made, the department shall withhold state adjusted gross income tax imposed under IC 6-3 and local taxes imposed under IC 6-3.5 at the applicable rate prescribed in withholding instructions issued by the department of state revenue.
- (5) An individual is allowed to change an election made under this section.

(b) Money withheld from unemployment compensation under this section shall remain in the unemployment fund until transferred to the federal taxing authority or the state (as appropriate) for payment of income taxes.

(c) The commissioner shall follow all procedures of the United States Department of Labor, the Internal Revenue Service, and the department of state revenue concerning the withholding of income taxes.

(d) Money shall be deducted and withheld in accordance with the priorities established in regulations developed by the commissioner. *As added by P.L.166-1996, SEC.4. Amended by P.L.3-2008, SEC.159; P.L.2-2011, SEC.15.*

#### **IC 22-4-17-3**

##### **Administrative appeal; disputed claims**

Sec. 3. (a) Unless such request for hearing is withdrawn, an administrative law judge, after providing the notice required under section 6 of this chapter and affording the parties a reasonable opportunity for fair hearing, shall affirm, modify, or reverse the findings of fact and decision of the deputy.

(b) The parties shall be duly notified of the decision made under subsection (a) and the reasons therefor, which shall be deemed to be the final decision of the review board, unless within fifteen (15) days

after the date of notification or mailing of such decision, an appeal is taken by the commissioner or by any party adversely affected by such decision to the review board.

*(Formerly: Acts 1947, c.208, s.1803; Acts 1957, c.299, s.4.) As amended by P.L.18-1987, SEC.48; P.L.135-1990, SEC.7; P.L.21-1995, SEC.87; P.L.175-2009, SEC.28.*

#### **IC 22-4-17-4**

##### **Administrative law judges; training; discipline; disputed claims; hearings**

Sec. 4. (a) The department shall employ one (1) or more administrative law judges to hear and decide disputed claims. Administrative law judges employed under this section are not subject to IC 4-21.5 or any other statute regulating administrative law judges, unless specifically provided.

(b) The department shall provide at least annually to all administrative law judges, review board members, and other individuals who adjudicate claims training concerning:

- (1) unemployment compensation law;
- (2) rules for the conduct of hearings and appeals; and
- (3) rules of conduct for administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process.

(c) The department regularly shall monitor the hearings and decisions of its administrative law judges, review board members, and other individuals who adjudicate claims to ensure that the hearings and decisions strictly comply with the law and the rules described in subsection (b).

(d) An individual who does not strictly comply with the law and the rules described in subsection (b), including the rules of conduct for administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process, is subject to disciplinary action by the department, up to and including suspension from or termination of employment.

*(Formerly: Acts 1947, c.208, s.1804.) As amended by P.L.18-1987, SEC.49; P.L.135-1990, SEC.8; P.L.21-1995, SEC.88; P.L.290-2001, SEC.11; P.L.108-2006, SEC.30; P.L.175-2009, SEC.29.*

#### **IC 22-4-17-5**

##### **Review board; appointments; hearings**

Sec. 5. (a) The governor shall appoint a review board composed of three (3) members, not more than two (2) of whom shall be members of the same political party, with salaries to be fixed by the governor. The review board shall consist of the chairman and the two (2) members who shall serve for terms of three (3) years. At least one (1) member must be admitted to the practice of law in Indiana.

(b) Any claim pending before an administrative law judge, and all proceedings therein, may be transferred to and determined by the review board upon its own motion, at any time before the

administrative law judge announces a decision. Any claim pending before either an administrative law judge or the review board may be transferred to the board for determination at the direction of the board. If the review board considers it advisable to procure additional evidence, it may direct the taking of additional evidence within a time period it shall fix. An employer that is a party to a claim transferred to the review board or the board under this subsection is entitled to receive notice in accordance with section 6 of this chapter of the transfer or any other action to be taken under this section before a determination is made or other action concerning the claim is taken.

(c) Any proceeding so removed to the review board shall be heard by a quorum of the review board in accordance with the requirements of section 3 of this chapter. The review board shall notify the parties to any claim of its decision, together with its reasons for the decision.

(d) Members of the review board, when acting as administrative law judges, are subject to section 15 of this chapter.

(e) The review board may on the board's own motion affirm, modify, set aside, remand, or reverse the findings, conclusions, or orders of an administrative law judge on the basis of any of the following:

(1) Evidence previously submitted to the administrative law judge.

(2) The record of the proceeding after the taking of additional evidence as directed by the review board.

(3) A procedural error by the administrative law judge.

*(Formerly: Acts 1947, c.208, s.1805; Acts 1965, c.190, s.12.) As amended by P.L.34-1985, SEC.7; P.L.135-1990, SEC.9; P.L.173-1991, SEC.1; P.L.175-2009, SEC.30.*

#### **IC 22-4-17-6**

##### **Disputed claims; conduct of hearings and appeals**

Sec. 6. (a) The manner in which disputed claims shall be presented and the conduct of hearings and appeals, including the conduct of administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process, shall be in accordance with rules adopted by the department for determining the rights of the parties, whether or not the rules conform to common law or statutory rules of evidence and other technical rules of procedure.

(b) A full and complete record shall be kept of all proceedings in connection with a disputed claim. The testimony at any hearing upon a disputed claim need not be transcribed unless the disputed claim is further appealed.

(c) Each party to a hearing before an administrative law judge held under section 3 of this chapter shall be mailed a notice of the hearing at least ten (10) days before the date of the hearing specifying the date, place, and time of the hearing, identifying the issues to be decided, and providing complete information about the rules of evidence and standards of proof that the administrative law

judge will use to determine the validity of the claim.

(d) If a hearing so scheduled has not commenced within at least sixty (60) minutes of the time for which it was scheduled, then a party involved in the hearing may request a continuance of the hearing. Upon submission of a request for continuance of a hearing under circumstances provided in this section, the continuance shall be granted unless the party requesting the continuance was responsible for the delay in the commencement of the hearing as originally scheduled. In the latter instance, the continuance shall be discretionary with the administrative law judge. Testimony or other evidence introduced by a party at a hearing before an administrative law judge or the review board that another party to the hearing:

(1) is not prepared to meet; and

(2) by ordinary prudence could not be expected to have anticipated;

shall be good cause for continuance of the hearing and upon motion such continuance shall be granted.

*(Formerly: Acts 1947, c.208, s.1806; Acts 1963, c.208, s.1.) As amended by P.L.144-1986, SEC.105; P.L.219-1989, SEC.1; P.L.135-1990, SEC.10; P.L.108-2006, SEC.31; P.L.175-2009, SEC.31.*

#### **IC 22-4-17-7**

##### **Disputed claims; hearings; subpoenas; production of books and papers**

Sec. 7. In the discharge of the duties imposed by this article, any member of the board, the department, the review board, or an administrative law judge, or any duly authorized representative of any of them, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue and serve subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the disputed claim or the administration of this article.

*(Formerly: Acts 1947, c.208, s.1807.) As amended by P.L.144-1986, SEC.106; P.L.135-1990, SEC.11; P.L.108-2006, SEC.32.*

#### **IC 22-4-17-8**

##### **Disputed claims; subpoenas; contempt**

Sec. 8. In case of contumacy by, or refusal to obey a subpoena issued to, any person in the administration of this article, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the board, the department, or the review board or a duly authorized representative of any of these, shall have jurisdiction to issue to such person an order requiring such person to appear before the board, the department, the review board, an administrative law judge, or the duly authorized representative of any of these, there to produce evidence if so ordered, or there to give testimony touching

the matter in question or under investigation. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

*(Formerly: Acts 1947, c.208, s.1808.) As amended by P.L.135-1990, SEC.12; P.L.108-2006, SEC.33.*

#### **IC 22-4-17-8.5**

##### **Disputed claims; hearing by telephone**

Sec. 8.5. (a) As used in this section, "interested party" has the meaning set forth in 646 IAC 3-12-1.

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

- (1) The claimant or the employer is not located in Indiana.
- (2) An interested party requests without an objection being filed as provided in 646 IAC 3-12-21 that the hearing be held by telephone.
- (3) An interested party cannot appear in person because of an illness or injury to the party.
- (4) In the case of a hearing before an administrative law judge, the administrative law judge determines without any interested party filing an objection as provided in 646 IAC 3-12-21 that a hearing by telephone is proper and just.
- (5) In the case of a hearing before the review board, the issue to be adjudicated does not require both parties to be present.
- (6) In the case of a hearing before the review board, the review board has determined that a hearing by telephone is proper and just.

*As added by P.L.173-1991, SEC.2. Amended by P.L.108-2006, SEC.34.*

#### **IC 22-4-17-9**

##### **Disputed claims; self-incrimination; privileges and immunities**

Sec. 9. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the board, the department, the review board, an administrative law judge, or the duly authorized representative of any of them in obedience to the subpoena of any of them in any cause or proceeding before any of them on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled after having claimed the privilege against self-incrimination to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. Any testimony or evidence submitted in due course before the board, the department, the review board, an administrative law judge, or any duly authorized

representative of any of them shall be deemed a communication presumptively privileged with respect to any civil action except actions to enforce the provisions of this article.

*(Formerly: Acts 1947, c.208, s.1809.) As amended by P.L.144-1986, SEC.107; P.L.135-1990, SEC.13; P.L.108-2006, SEC.35.*

#### **IC 22-4-17-10**

##### **Repealed**

*(Repealed by P.L.175-2009, SEC.48.)*

#### **IC 22-4-17-11**

##### **Disputed claims; appeal; notice; stay of proceedings**

Sec. 11. (a) Any decision of the review board, in the absence of appeal as provided in this section, shall become final thirty (30) days after the date the decision is mailed to the interested parties. The review board shall mail with the decision a notice informing the interested parties of their right to appeal the decision to the court of appeals of Indiana. The notice shall inform the parties that they have thirty (30) days from the date of mailing within which to file a notice of intention to appeal, and that in order to perfect the appeal they must request the preparation of a transcript in accordance with section 12 of this chapter.

(b) If the commissioner or any party adversely affected by the decision files with the review board a notice of an intention to appeal the decision, that action shall stay all further proceedings under or by virtue of the review board decision for a period of thirty (30) days from the date of the filing of the notice, and, if the appeal is perfected, further proceedings shall be further stayed pending the final determination of the appeal. However, if an appeal from the decision of the review board is not perfected within the time provided for by this chapter, no action or proceeding shall be further stayed.

*(Formerly: Acts 1947, c.208, s.1811; Acts 1957, c.299, s.5.) As amended by P.L.34-1985, SEC.8; P.L.21-1995, SEC.89; P.L.121-2014, SEC.16.*

#### **IC 22-4-17-12**

##### **Disputed claims; appeal; errors of law; parties; transcript; expenses; assignment; disposition; findings of fact or conclusions**

Sec. 12. (a) Any decision of the review board shall be conclusive and binding as to all questions of fact. Either party to the dispute or the commissioner may, within thirty (30) days after notice of intention to appeal as provided in this section, appeal the decision to the court of appeals of Indiana for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.

(b) In every appeal the review board shall be made a party appellee, and the review board shall, at the written request of the appellant and after payment of the uniform average fee required in subsection (c) is made, prepare a transcript of all the proceedings had before the administrative law judge and review board, which shall

contain a transcript of all the testimony, together with all objections and rulings thereon, documents and papers introduced into evidence or offered as evidence, and all rulings as to their admission into evidence. The transcript shall be certified by the chairman of the review board and shall constitute the record upon appeal.

(c) All expenses incurred in the preparation of the transcript shall be charged to the appellant. The fee for a transcript shall be the actual cost of preparation that may include the cost of materials, reproduction, postage, handling, and hours of service rendered by the preparer. The commissioner shall establish a uniform average fee to be paid by the appellant before the transcript is prepared. After the transcript is completed, the actual cost shall be determined and the appellant shall either pay the amount remaining above the uniform average fee or be refunded the amount the uniform average fee exceeds the actual cost of preparation. The commissioner shall establish the procedure by which transcript fees are determined and paid.

(d) Notwithstanding subsections (b) and (c), the appellant may request that a transcript of all proceedings had before the administrative law judge and review board be prepared at no cost to the appellant by filing with the review board, under oath and in writing, a statement:

- (1) declaring that the appellant is unable to pay for the preparation of the transcript because of the appellant's poverty;
- (2) setting forth the facts that render the appellant unable to pay for the preparation of the transcript; and
- (3) declaring that the appellant is entitled to redress on appeal.

Upon finding that the appellant is unable to pay for the preparation of the transcript because of the appellant's poverty, the review board shall prepare a transcript at no cost to the appellant.

(e) The review board may, upon its own motion, or at the request of either party upon a showing of sufficient reason, extend the limit within which the appeal shall be taken, not to exceed fifteen (15) days. In every case in which an extension is granted, the extension shall appear in the record of the proceeding filed in the court of appeals.

(f) The appellant shall attach to the transcript an assignment of errors. An assignment of errors that the decision of the review board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts. In any appeal under this section, no bond shall be required for entering the appeal.

(g) All appeals shall be considered as submitted upon the date filed in the court of appeals, shall be advanced upon the docket of the court, and shall be determined without delay in the order of priority. Upon the final determination of the appeal, the review board shall enter an order in accordance with the determination, and the decision shall be final. The court of appeals may in any appeal remand the proceeding to the review board for the taking of additional evidence, setting time limits therefor, and ordering the additional evidence to

be certified by the review board to the court of appeals to be used in the determination of the cause.

(h) Any finding of fact, judgment, conclusion, or final order made by a person with the authority to make findings of fact or law in an action or proceeding under this article is not conclusive or binding and shall not be used as evidence in a separate or subsequent action or proceeding between an individual and the individual's present or prior employer in an action or proceeding brought before an arbitrator, a court, or a judge of this state or the United States regardless of whether the prior action was between the same or related parties or involved the same facts.

*(Formerly: Acts 1947, c.208, s.1812; Acts 1957, c.299, s.6.) As amended by P.L.34-1985, SEC.9; P.L.20-1986, SEC.11; P.L.18-1987, SEC.50; P.L.135-1990, SEC.14; P.L.21-1995, SEC.90.*

### **IC 22-4-17-13**

#### **Disputed claims; certifying questions of law; priorities**

Sec. 13. The review board, on its own motion, may certify questions of law to the supreme court or the court of appeals for a decision and determination. All such certified questions of law shall be considered submitted upon the date filed in the supreme court or the court of appeals and shall be advanced upon the docket of the court to be determined without delay in the order of priority.

*(Formerly: Acts 1947, c.208, s.1813.) As amended by P.L.3-1989, SEC.134.*

### **IC 22-4-17-14**

#### **Notices**

Sec. 14. (a) This section applies to notices given under sections 2, 3, 11, and 12 of this chapter. This section does not apply to rules adopted by the board or the department, unless specifically provided.

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

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

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

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

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

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

*As added by P.L.135-1990, SEC.15. Amended by P.L.173-1991,*

*SEC.3; P.L.108-2006, SEC.36.*

**IC 22-4-17-15**

**Impartial administrative law judge**

Sec. 15. (a) An administrative law judge may not preside over or otherwise participate in the hearing or disposition of an appeal in which the judge's impartiality might reasonably be questioned, including instances where the judge:

(1) has:

(A) personal bias or prejudice concerning a party; or

(B) personal knowledge of disputed evidentiary facts concerning the appeal;

(2) has served as a lawyer in the matter in controversy; or

(3) knows that the judge has any direct or indirect financial or other interest in the subject matter of an appeal or in a party to the appeal.

(b) Disqualification of an administrative law judge shall be in accordance with the rules adopted by the Indiana unemployment insurance board.

(c) This subsection does not apply to the disposition of ex parte matters specifically authorized by statute or rule. An administrative law judge may not communicate, directly or indirectly, regarding any substantive issue in the appeal while the appeal is pending, with any party to the appeal, or with any individual who has a direct or indirect interest in the outcome of the appeal, without notice and opportunity for all parties to participate in the communication.

*As added by P.L.135-1990, SEC.16.*

## **IC 22-4-18**

### **Chapter 18. Department of Workforce Development; Indiana Unemployment Insurance Board**

#### **IC 22-4-18-1**

##### **Creation of department; powers and duties**

Sec. 1. (a) There is created a department under IC 22-4.1-2-1 which shall be known as the department of workforce development.

(b) The department of workforce development may:

(1) Administer the unemployment insurance program, the Wagner-Peyser program, the Workforce Investment Act, a free public labor exchange, and related federal and state employment and training programs as directed by the governor.

(2) Formulate and implement an employment and training plan as required by the Workforce Investment Act (29 U.S.C. 2801 et seq.), including reauthorizations of the Act, and the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

(3) Coordinate activities with all state agencies and departments that either provide employment and training related services or operate appropriate resources or facilities, to maximize Indiana's efforts to provide employment opportunities for economically disadvantaged individuals, dislocated workers, and others with substantial barriers to employment.

(4) Apply for, receive, disburse, allocate, and account for all funds, grants, gifts, and contributions of money, property, labor, and other things of value from public and private sources, including grants from agencies and instrumentalities of the state and the federal government.

(5) Enter into agreements with the United States government that may be required as a condition of obtaining federal funds related to activities of the department.

(6) Enter into contracts or agreements and cooperate with local governmental units or corporations, including profit or nonprofit corporations, or combinations of units and corporations to carry out the duties of the department imposed by this chapter, including contracts for the establishment and administration of employment and training offices and the delegation of the department's administrative, monitoring, and program responsibilities and duties set forth in this article.

(7) Perform other services and activities that are specified in contracts for payments or reimbursement of the costs made with the Secretary of Labor, any federal, state, or local public agency or administrative entity, or a private for-profit or nonprofit organization under the Workforce Investment Act (29 U.S.C. 2801 et seq.), including reauthorizations of the Act.

(8) Enter into contracts or agreements and cooperate with entities that provide career and technical education to carry out the duties imposed by this chapter.

(c) The payment of unemployment insurance benefits must be made in accordance with 26 U.S.C. 3304.

(d) The department of workforce development may do all acts and things necessary or proper to carry out the powers expressly granted under this article, including the adoption of rules under IC 4-22-2.

(e) The department of workforce development may not charge any claimant for benefits for providing services under this article, except as provided in IC 22-4-17-12.

(f) The department of workforce development shall distribute federal funds made available for employment training in accordance with:

(1) 29 U.S.C. 2801 et seq., including reauthorizations of the Act, and other applicable federal laws; and

(2) the plan prepared by the department under subsection (g)(1).

(g) In addition to the duties prescribed in subsections (a) through (f), the department of workforce development shall do the following:

(1) Implement the postsecondary career and technical education programming plan prepared by the council under IC 22-4.1-19-4.

(2) Upon request of the budget director, prepare a legislative budget request for state and federal funds for employment training. The budget director shall determine the period to be covered by the budget request.

(3) Make or cause to be made studies of the needs for various types of programs that are related to employment training and authorized under the Workforce Investment Act, including reauthorizations of the Act.

(4) Distribute state funds made available for employment training that have been appropriated by the general assembly in accordance with the general assembly appropriation.

(5) Establish, implement, and maintain a training program in the nature and dynamics of domestic and family violence for training of all employees of the department who interact with a claimant for benefits to determine whether the claim of the individual for unemployment benefits is valid and to determine that employment separations stemming from domestic or family violence are reliably screened, identified, and adjudicated and that victims of domestic or family violence are able to take advantage of the full range of job services provided by the department. The training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including using the staff of shelters for battered women in the presentation of the training. The initial training shall consist of instruction of not less than six (6) hours. Refresher training shall be required annually and shall consist of instruction of not less than three (3) hours.

*(Formerly: Acts 1947, c.208, s.1901.) As amended by P.L.18-1987, SEC.51; P.L.220-1989, SEC.1; P.L.21-1995, SEC.91; P.L.290-2001, SEC.12; P.L.189-2003, SEC.6; P.L.1-2005, SEC.184; P.L.161-2006, SEC.5; P.L.234-2007, SEC.141; P.L.7-2011, SEC.17.*

#### **IC 22-4-18-1.5**

## **Repealed**

*(Repealed by P.L.38-1993, SEC.61.)*

### **IC 22-4-18-2**

#### **Unemployment insurance board; duties; membership; term of office; compensation; traveling expenses; meetings**

Sec. 2. (a) The Indiana unemployment insurance board is created. The board is responsible for the oversight of the unemployment insurance program. The board shall report annually to the governor on the status of unemployment insurance together with recommendations for maintaining the solvency of the unemployment insurance benefit fund. The department staff shall provide support to the board. The unemployment insurance board shall consist of nine (9) members, who shall be appointed by the governor, as follows:

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

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

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

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

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

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

(c) The board may hold one (1) regular meeting each month and such called meetings as may be deemed necessary by the commissioner or the board. The April meeting shall be known as the annual meeting. Five (5) members of the board constitute a quorum for the transaction of business. At its first meeting and at each annual meeting held thereafter, the board shall organize by the election of a president and vice president from its own number, each of whom,

except those first elected, shall serve for a term of one (1) year and until a successor is elected.

*(Formerly: Acts 1947, c.208, s.1902; Acts 1971, P.L.355, SEC.43.)  
As amended by P.L.18-1987, SEC.53; P.L.21-1995, SEC.92;  
P.L.108-2006, SEC.37.*

### **IC 22-4-18-3**

#### **Repealed**

*(Repealed by P.L.105-1994, SEC.6.)*

### **IC 22-4-18-4**

#### **Administration of programs**

Sec. 4. The department of workforce development established under IC 22-4.1-2-1 shall administer job training and placement services and unemployment insurance.

*(Formerly: Acts 1947, c.208, s.1904; Acts 1955, c.317, s.11.) As amended by P.L.144-1986, SEC.109; P.L.18-1987, SEC.55; P.L.21-1995, SEC.93; P.L.290-2001, SEC.13; P.L.175-2009, SEC.32.*

### **IC 22-4-18-4.2**

#### **Requirement that administrative law judges be licensed attorneys**

Sec. 4.2. Each administrative law judge employed or used by the department of workforce development must be an attorney who is licensed to practice law in Indiana.

*As added by P.L.110-2010, SEC.32.*

### **IC 22-4-18-4.5**

#### **Annual report of claims involving domestic or family violence**

Sec. 4.5. (a) Before March 1 of each year, the department shall determine the number of claims filed, the number of individuals entitled to receive unemployment benefits under this article, and the amount of benefits charged to the fund for those individuals who qualified for benefits due to:

- (1) discharge; or
- (2) leaving employment;

for circumstances resulting from domestic or family violence.

(b) The department shall submit its determination from the prior calendar year to the legislative council before June 30 of each year.

*As added by P.L.189-2003, SEC.7.*

### **IC 22-4-18-5**

#### **Repealed**

*(Repealed by P.L.2-1995, SEC.140.)*

### **IC 22-4-18-6**

#### **Workforce skills, strengths, and weaknesses; uniform assessment system**

Sec. 6. (a) The department shall develop a uniform system for assessing workforce skills, strengths, and weaknesses in individuals.

- (b) The uniform assessment system shall be used at the following:
- (1) One stop centers under IC 22-4-42, if established.
  - (2) Career and technical education (as defined in IC 20-20-38-1) programs at the secondary level.

*As added by P.L.19-1992, SEC.51. Amended by P.L.5-1995, SEC.36; P.L.21-1995, SEC.95; P.L.1-2005, SEC.185; P.L.127-2005, SEC.28; P.L.161-2006, SEC.6; P.L.234-2007, SEC.142; P.L.6-2012, SEC.155.*

#### **IC 22-4-18-7**

##### **Training projects**

Sec. 7. (a) The department annually shall prepare a written report of its training activities and the training activities of the various workforce investment boards during the immediately preceding state fiscal year. The department's annual report for a particular state fiscal year must include information for each training project for which either the department or a workforce development board provided any funding during that state fiscal year. At a minimum, the following information must be provided for such a training project:

- (1) A description of the training project, including the name and address of the training provider.
- (2) The amount of funding that either the department or a workforce investment board provided for the project and an indication of which entity provided the funding.
- (3) The number of trainees who participated in the project.
- (4) Demographic information about the trainees, including the age of each trainee, the education attainment level of each trainee, and for those training projects that have specific gender requirements, the gender of each trainee.
- (5) The results of the project, including skills developed by trainees, any license or certification associated with the training project, the extent to which trainees have been able to secure employment or obtain better employment, and descriptions of the specific jobs which trainees have been able to secure or to which trainees have been able to advance.

(b) With respect to trainees that have been able to secure employment or obtain better employment, the department of workforce development shall compile data on the retention rates of those trainees in the jobs which the trainees secured or to which they advanced. The department shall include information concerning those retention rates in each of its annual reports.

(c) On or before October 1 of each state fiscal year, each workforce investment board shall provide the department with a written report of its training activities for the immediately preceding state fiscal year. The workforce development board shall prepare the report in the manner prescribed by the department. However, at a minimum, the workforce development board shall include in its report the information required by subsection (a) for each training project for which the workforce development board provided any funding during the state fiscal year covered by the report. In addition,

the workforce development board shall include in each report retention rate information as set forth in subsection (b).

(d) The department shall provide a copy of its annual report for a particular state fiscal year to the:

- (1) governor;
- (2) legislative council; and
- (3) unemployment insurance board;

on or before December 1 of the immediately preceding state fiscal year. An annual report provided under this subsection to the legislative council must be in an electronic format under IC 5-14-6. *As added by P.L.179-1999, SEC.2. Amended by P.L.28-2004, SEC.159.*

**IC 22-4-18-8**

**Repealed**

*(Repealed by P.L.100-2012, SEC.58.)*

## **IC 22-4-18.1**

### **Chapter 18.1. State Workforce Innovation Council**

#### **IC 22-4-18.1-1**

##### **"Applicable federal program" defined**

Sec. 1. As used in this chapter, "applicable federal program" refers to the federal human resource programs for which the council has authority to make recommendations as listed in section 4 of this chapter.

*As added by P.L.38-1993, SEC.58.*

#### **IC 22-4-18.1-2**

##### **"Council" defined**

Sec. 2. As used in this chapter, "council" refers to the state workforce innovation council established by section 3 of this chapter.

*As added by P.L.38-1993, SEC.58. Amended by P.L.161-2006, SEC.7.*

#### **IC 22-4-18.1-3**

##### **Council; establishment; purpose and duties**

Sec. 3. The state workforce innovation council is established under the applicable federal programs to do the following:

- (1) Review the services and use of funds and resources under applicable federal programs and advise the governor on methods of coordinating the services and use of funds and resources consistent with the laws and regulations governing the particular applicable federal programs.
- (2) Advise the governor on:
  - (A) the development and implementation of state and local standards and measures; and
  - (B) the coordination of the standards and measures; concerning the applicable federal programs.
- (3) Perform the duties as set forth in federal law of the particular advisory bodies for applicable federal programs described in section 4 of this chapter.
- (4) Identify the workforce needs in Indiana and recommend to the governor goals to meet the investment needs.
- (5) Recommend to the governor goals for the development and coordination of the human resource system in Indiana.
- (6) Prepare and recommend to the governor a strategic plan to accomplish the goals developed under subdivisions (4) and (5).
- (7) Monitor the implementation of and evaluate the effectiveness of the strategic plan described in subdivision (6).
- (8) Advise the governor on the coordination of federal, state, and local education and training programs and on the allocation of state and federal funds in Indiana to promote effective services, service delivery, and innovative programs.
- (9) Administer the minority training grant program established by section 11 of this chapter.
- (10) Administer the back home in Indiana program established

by section 12 of this chapter.

(11) Any other function assigned to the council by the governor with regard to the study and evaluation of Indiana's workforce development delivery system.

(12) Administer postsecondary proprietary educational institution accreditation under IC 22-4.1-21.

*As added by P.L.38-1993, SEC.58. Amended by P.L.96-2004, SEC.19; P.L.161-2006, SEC.8; P.L.107-2012, SEC.59.*

#### **IC 22-4-18.1-4**

##### **Council; designated as state advisory body under specified federal laws; administration of programs**

Sec. 4. (a) The council shall serve as the state advisory body required under the following federal laws:

(1) The Workforce Investment Act of 1998 under 29 U.S.C. 2801 et seq., including reauthorizations of the Act.

(2) The Wagner-Peyser Act under 29 U.S.C. 49 et seq.

(3) The Carl D. Perkins Vocational and Applied Technology Act under 20 U.S.C. 2301 et seq.

(4) The Adult Education and Family Literacy Act under 20 U.S.C. 9201 et seq.

(b) In addition, the council may be designated to serve as the state advisory body required under any of the following federal laws upon approval of the particular state agency directed to administer the particular federal law:

(1) The National and Community Service Act of 1990 under 42 U.S.C. 12501 et seq.

(2) Part A of Title IV of the Social Security Act under 42 U.S.C. 601 et seq.

(3) The employment and training programs established under the Food Stamp Act of 1977 under 7 U.S.C. 2011 et seq.

(c) The council shall administer the minority training grant program established by section 11 of this chapter and the back home in Indiana program established by section 12 of this chapter.

*As added by P.L.38-1993, SEC.58. Amended by P.L.96-2004, SEC.20; P.L.161-2006, SEC.9.*

#### **IC 22-4-18.1-5**

##### **Council membership**

Sec. 5. (a) Subject to subsections (b) and (c), the membership of the state workforce innovation council established under section 3 of this chapter consists of the representatives required by the Workforce Investment Act (29 U.S.C. 2801 et seq.), including reauthorizations of the Act, and must represent the diverse regions of Indiana.

(b) The state superintendent of public instruction or the superintendent's designee serves as a member of the state workforce innovation council.

(c) An individual designated by the governor who has been nominated by a recognized adult education organization serves as a member of the state workforce innovation council.

*As added by P.L.38-1993, SEC.58. Amended by P.L.179-1999, SEC.3; P.L.161-2006, SEC.10; P.L.7-2011, SEC.18.*

#### **IC 22-4-18.1-6**

##### **Council; members; term of office; vacancies**

Sec. 6. (a) The governor shall appoint members to the council for two (2) year terms. The terms must be staggered so that the terms of half of the members expire each year.

(b) The governor shall promptly make an appointment to fill any vacancy on the council, but only for the duration of the unexpired term.

*As added by P.L.38-1993, SEC.58. Amended by P.L.161-2006, SEC.11.*

#### **IC 22-4-18.1-6.5**

##### **Repealed**

*(Repealed by P.L.134-2012, SEC.27.)*

#### **IC 22-4-18.1-7**

##### **Employment of professional, technical, and clerical personnel; contracting for services; financial oversight**

Sec. 7. (a) Except as provided in subsection (b) and subject to the approval of the commissioner of the department of workforce development, the state personnel department, and the budget agency, the council may employ professional, technical, and clerical personnel necessary to carry out the duties imposed by this chapter using the following:

- (1) Funds available under applicable federal and state programs.
- (2) Appropriations by the general assembly for this purpose.
- (3) Funds in the state technology advancement and retention account established by IC 4-12-12-1.
- (4) Other funds (other than federal funds) available to the council for this purpose.

(b) Subject to the approval of the commissioner of the department of workforce development and the budget agency, the council may contract for services necessary to implement this chapter.

(c) The council is subject to:

- (1) the allotment system administered by the budget agency; and
- (2) financial oversight by the office of management and budget.

*As added by P.L.38-1993, SEC.58. Amended by P.L.21-1995, SEC.96; P.L.96-2004, SEC.21; P.L.161-2006, SEC.13.*

#### **IC 22-4-18.1-8**

##### **Council members; per diem and reimbursement of expenses**

Sec. 8. (a) Any member of the council who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a member is also entitled to reimbursement for traveling expenses under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the

state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Any member of the council who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Any member of the council who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to members of the general assembly serving on interim study committees established by the legislative council.

*As added by P.L.38-1993, SEC.58.*

#### **IC 22-4-18.1-9**

##### **Bylaws and rules; advisory committees**

Sec. 9. The council shall adopt bylaws and rules governing the council's organization and operation, including bylaws and rules governing the establishment of advisory committees considered necessary by the council, scheduling of council meetings, and other activities necessary to implement this chapter.

*As added by P.L.38-1993, SEC.58.*

#### **IC 22-4-18.1-10**

##### **Certification to federal official of establishment and membership of council**

Sec. 10. The state shall certify to:

- (1) the United States Secretary of Labor the establishment and membership of the council at least ninety (90) days before the beginning of each period of two (2) program years for which a job training plan is submitted under this chapter; and
- (2) any other appropriate United States Secretary charged with administering a particular applicable federal program the establishment and membership of the council.

*As added by P.L.38-1993, SEC.58.*

#### **IC 22-4-18.1-11**

##### **Grants for minority training programs**

Sec. 11. (a) For purposes of this section, "minority student" means a student who is a member of at least one (1) of the following groups:

- (1) Blacks.
- (2) American Indians.
- (3) Hispanics.
- (4) Asian Americans.
- (5) Other similar racial groups.

(b) The council shall develop a program to provide grants from the state technology advancement and retention account established by IC 4-12-12-1 for minority training programs for minority students. The grants must be used as follows:

(1) Thirty-five percent (35%) for programs designed to enhance training in technology advancement for minority students.

(2) Sixty-five percent (65%) for generalized training programs for minority students.

(c) The council shall adopt policies under which recipients may apply for and receive the grants.

(d) Grants issued under this section are subject to approval by the budget agency.

*As added by P.L.96-2004, SEC.22.*

#### **IC 22-4-18.1-12**

##### **Back home in Indiana program; grants**

Sec. 12. (a) The council shall develop a program to provide for grants from the state technology advancement and retention account established by IC 4-12-12-1 or contracts to develop a back home in Indiana program. The program must provide a system to track students who have graduated from private and public colleges and universities in Indiana. The program must include a means of periodically contacting these graduates to inform them of job opportunities in Indiana.

(b) The council shall work with the colleges and universities in Indiana to develop the tracking system.

(c) Grants issued under this section are subject to approval by the budget agency.

*As added by P.L.96-2004, SEC.23.*

**IC 22-4-18.3**

**Repealed**

*(Repealed by P.L.202-2005, SEC.8.)*

## **IC 22-4-19**

### **Chapter 19. Administration of Department of Workforce Development**

#### **IC 22-4-19-1**

##### **Rules and regulations; investigations; change of rates**

Sec. 1. The board shall have the power and authority to adopt, amend, or rescind such rules and regulations to employ such persons, make such expenditures, require such reports, make such investigations and take such other action as it may deem necessary or suitable for the proper administration of this article. All rules and regulations issued under the provisions of this article shall be effective upon publication in the manner hereinafter provided and shall have the force and effect of law. The board may prescribe the extent, if any, to which any rule or regulation so issued or legal interpretation of this article shall be with or without retroactive effect. Whenever the board believes that a change in contribution or benefit rates will become necessary to protect the solvency of the unemployment insurance benefit fund, it shall promptly so inform the governor and the general assembly, and make recommendations with respect thereto.

*(Formerly: Acts 1947, c.208, s.2001.) As amended by Acts 1978, P.L.6, SEC.32; P.L.108-2006, SEC.38.*

#### **IC 22-4-19-2**

##### **Repealed**

*(Repealed by P.L.108-2006, SEC.66.)*

#### **IC 22-4-19-3**

##### **Repealed**

*(Repealed by P.L.108-2006, SEC.66.)*

#### **IC 22-4-19-4**

##### **Professional employees; compensation; bond**

Sec. 4. Subject to the further provisions of this article, the board is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. All positions shall be filled by persons selected and appointed as provided in this section. The board may authorize any such person so appointed to do any act or acts which would lawfully be done by the board and may, in its discretion, require suitable bond from any person charged with the custody of any money or securities.

*(Formerly: Acts 1947, c.208, s.2004.) As amended by P.L.144-1986, SEC.111.*

#### **IC 22-4-19-5**

##### **Training; public works; use of unemployed**

Sec. 5. The board, through its appropriate activities, shall take all appropriate steps to reduce and prevent unemployment; to encourage

and assist in the adoption of practical methods of career and technical training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipal corporations, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the state in every way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

*(Formerly: Acts 1947, c.208, s.2005.) As amended by P.L.234-2007, SEC.143.*

#### **IC 22-4-19-6**

##### **Records; inspection; reports; confidentiality; violations; processing fee**

Sec. 6. (a) Each employing unit shall keep true and accurate records containing information the department considers necessary. These records are:

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

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

(b) Except as provided in subsections (d) and (f), information obtained or obtained from any person in the administration of this article and the records of the department relating to the unemployment tax or the payment of benefits is confidential and may not be published or be open to public inspection in any manner revealing the individual's or the employing unit's identity, except in obedience to an order of a court or as provided in this section.

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

(d) The department may release the following information:

- (1) Summary statistical data may be released to the public.
- (2) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the Indiana economic development corporation only for the following purposes:

- (A) The purpose of conducting a survey.
- (B) The purpose of aiding the officers or employees of the

Indiana economic development corporation in providing economic development assistance through program development, research, or other methods.

(C) Other purposes consistent with the goals of the Indiana economic development corporation and not inconsistent with those of the department, including the purposes of IC 5-28-6-7.

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

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

(A) department of state revenue; or

(B) state or local law enforcement agencies;

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

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

(1) if:

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

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

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

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

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

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

(g) An employee:

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

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

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

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

(j) The department may charge a reasonable processing fee not to exceed two dollars (\$2) for each record that provides information about an individual's last known employer released in compliance with a court order under subsection (b).

*(Formerly: Acts 1947, c.208, s.2006.) As amended by Acts 1978, P.L.2, SEC.2217; P.L.17-1984, SEC.6; P.L.18-1987, SEC.57; P.L.135-1990, SEC.17; P.L.110-1992, SEC.1; P.L.21-1995, SEC.97; P.L.235-1999, SEC.11; P.L.290-2001, SEC.15; P.L.189-2003, SEC.8; P.L.4-2005, SEC.131; P.L.108-2006, SEC.39; P.L.175-2009, SEC.33; P.L.182-2009(ss), SEC.367; P.L.110-2010, SEC.33.*

#### **IC 22-4-19-6.5**

##### **Information available through enhanced electronic access system**

Sec. 6.5. (a) The department may make available through the enhanced electronic access system established by the office of technology established by IC 4-13.1-2-1 secure electronic access for creditors to employer provided information on the amount of wages paid by an employer to an employee.

(b) The enhanced electronic access system established by the office of technology may enter into a contract with one (1) or more private entities to allow private entities to provide secure electronic access to employer provided information held by the department on the amount of wages paid by an employer to an employee.

(c) A creditor may obtain wage report information from a private entity if the creditor first obtains written consent from the employee whose information the creditor seeks to obtain. A creditor that has entered into a contract with the enhanced electronic access system must retain a written consent received under this section for at least three (3) years or for the length of the loan if the loan is for less than three (3) years.

(d) Written consent from the employee must include the following:

(1) A statement that the written consent is the authorization for the creditor to obtain information on the employee's employment and wage history.

(2) A statement that the information is obtained solely for the purpose of reviewing a specific application for credit.

(3) Notification that state agency files containing employment and wage history will be accessed to provide the information.

(4) A listing of all parties that will receive the information obtained.

(e) Information under this section may only be released to a creditor for the purpose of satisfying the standard underwriting requirements of the creditor or a client of the creditor for one (1) credit transaction per employee written consent.

(f) The costs of implementing and administering the release of information must be paid by the private entity or entities that contract with the enhanced electronic access system established by the office of technology.

(g) For employee information under this section, a private entity that enters a contract with the enhanced electronic access system established by the office of technology for release of employee information must comply with:

- (1) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);
- (2) all state and federal privacy laws; and
- (3) the rules regarding the release of information adopted by the United States Department of Labor.

(h) A private entity that has entered into a contract with the enhanced electronic access system under subsection (b) must maintain a consent verification system that audits at least five percent (5%) of daily transactions and must maintain a file of audit procedures and results.

(i) A person who violates this section commits a Class A infraction.

*As added by P.L.226-1999, SEC.1. Amended by P.L.177-2005, SEC.43.*

#### **IC 22-4-19-7**

##### **Records; examination**

Sec. 7. In any case where an employing unit, or any officer, member, or agent thereof or any other person having possession of the records thereof, shall fail or refuse upon demand by the board, the department, the review board, or an administrative law judge, or the duly authorized representative of any of them, to produce or permit the examination or copying of any book, paper, account, record, or other data pertaining to payrolls or employment or ownership of interests or stock in any employing unit, or bearing upon the correctness of any contribution report, or for the purpose of making a report as required by this article where none has been made, then and in that event the board, the department, the review board, or the administrative law judge, or the duly authorized representative of any of them, may by issuance of a subpoena require the attendance of such employing unit, or any officer, member, or agent thereof or any other person having possession of the records thereof, and take testimony with respect to any such matter and may require any such person to produce any books or records specified in such subpoena.

*(Formerly: Acts 1947, c.208, s.2007.) As amended by P.L.144-1986, SEC.112; P.L.135-1990, SEC.18; P.L.290-2001, SEC.16; P.L.108-2006, SEC.40; P.L.175-2009, SEC.34.*

**IC 22-4-19-8****Records; subpoenas; enforcement**

Sec. 8. (a) The board, the department, the review board, or the administrative law judge, or the duly authorized representative of any of them, at any such hearing shall have power to administer oaths to any such person or persons. When any person called as a witness by such subpoena, duly signed, and served upon the witness by any duly authorized person or by the sheriff of the county of which such person is a resident, or wherein is located the principal office of such employing unit or wherein such records are located or kept, shall fail to obey such subpoena to appear before the board, the department, the review board, or the administrative law judge, or the authorized representative of any of them, or shall refuse to testify or to answer any questions, or to produce any book, record, paper, or other data when notified and demanded so to do, such failure or refusal shall be reported to the attorney general for the state of Indiana who shall thereupon institute proceedings by the filing of a petition in the name of the state of Indiana on the relation of the board, in the circuit court or superior or other court of competent jurisdiction of the county where such witness resides, or wherein such records are located or kept, to compel obedience of and by such witness.

(b) Such petition shall set forth the facts and circumstances of the demand for and refusal or failure to permit the examination or copying of such records or the failure or refusal of such witness to testify in answer to such subpoena or to produce the records so required by such subpoena. Such court, upon the filing and docketing of such petition shall thereupon promptly issue an order to the defendants named in said petition, to produce forthwith in such court or at a place in such county designated in such order, for the examination or copying by the board, the department, the review board, an administrative law judge, or the duly authorized representative of any of them, the records, books, or documents so described and to testify concerning matters described in such petition. Unless such defendants to such petition shall appear in said court upon a day specified in such order, which said day shall be not more than ten (10) days after the date of issuance of such order, and offer, under oath, good and sufficient reasons why such examination or copying should not be permitted, or why such subpoena should not be obeyed, such court shall thereupon deliver to the board, the department, the review board, the administrative law judge, or representative of any of them, for examination or copying, the records, books and documents so described in said petition and so produced in such court and shall order said defendants to appear in answer to the subpoena, and to testify concerning the subject matter of the inquiry. Any employing unit, or any officer, member, or agent thereof, or any other persons having possession of the records thereof who shall willfully disobey such order of the court after the same shall have been served upon him, shall be guilty of indirect contempt of such court from which such order shall have issued and may be adjudged in contempt of said court and punished therefor as provided

by law.

*(Formerly: Acts 1947, c.208, s.2008.) As amended by P.L.135-1990, SEC.19; P.L.108-2006, SEC.41.*

#### **IC 22-4-19-9**

##### **Payroll reports; preparation**

Sec. 9. If any employing unit fails to make any payroll report required by this article, the commissioner shall give written notice by mail to the employing unit to make and file the report within ten (10) days from the date of the notice. If the employing unit, by its proper members, officers, or agents, fails or refuses to make and file the report within such time, the report shall be made by the department from the best information available, and the amount of contribution due shall be computed thereon and the report shall be prima facie correct for the purposes of this article.

*(Formerly: Acts 1947, c.208, s.2009; Acts 1951, c.295, s.11.) As amended by P.L.20-1986, SEC.13; P.L.18-1987, SEC.58; P.L.21-1995, SEC.98; P.L.290-2001, SEC.17; P.L.42-2011, SEC.42.*

#### **IC 22-4-19-10**

##### **Reports; failure to file; penalties**

Sec. 10. Any employing unit which negligently or wilfully fails to submit any report of information required for the proper administration of this article demanded by the commissioner within ten (10) days after request for the same is sent to the employing unit by registered mail shall be assessed a penalty of twenty-five dollars (\$25).

*(Formerly: Acts 1947, c.208, s.2010; Acts 1971, P.L.355, SEC.44.) As amended by P.L.21-1995, SEC.99.*

#### **IC 22-4-19-11**

##### **Records; destruction**

Sec. 11. The commissioner may destroy or otherwise dispose of under IC 5-15-5.1-14 such reports or records as have been properly recorded or summarized in the records of the department.

*(Formerly: Acts 1947, c.208, s.2011.) As amended by P.L.144-1986, SEC.113; P.L.18-1987, SEC.59; P.L.121-1995, SEC.3; P.L.21-1995, SEC.100.*

#### **IC 22-4-19-12**

##### **Records; foreign states and foreign countries; criminal actions**

Sec. 12. Records, with any necessary authentication thereof, required in the prosecution of any criminal action brought by another state or foreign government for misrepresentation or failure to disclose a material fact to obtain benefits under the law of this state, shall be made available to the agency administering the employment security law of any such state or foreign government for the purpose of such prosecution.

*(Formerly: Acts 1947, c.208, s.2012; Acts 1951, c.295, s.11 1/2.)*

**IC 22-4-19-13****Benefits; charges to experience accounts; change of rates; notice**

Sec. 13. (a) Where an employer makes an offer of employment directly to a claimant, promptly giving written notice to the department of such offer, or when any such employer makes such offer of employment in writing through the department, the commissioner, the deputy, or an authorized representative of the state or the United States employment service, which offer shall specify such claimant by name, and when such claimant thereafter fails to register subsequent to the receipt of such offer of employment by the department, the commissioner, the deputy, or an authorized representative of the state or the United States employment service, then a notice in writing shall promptly be mailed to such employer of such claimant's said failure to return and to register. If such claimant thereafter, in the claimant's benefit period, again registers or renews and continues the claimant's claim for benefits, such employer shall promptly be mailed notice of such fact in order that the employer may have an opportunity to renew and remake an offer of employment to such claimant.

(b) Upon the filing by an individual of an additional claim for benefits, a notice in writing or a carbon copy of such additional claim shall be mailed promptly to the base period employer or employers and to the employing unit including an employer from whose employ the individual claims to have been last separated.

(c) Upon the filing by an individual of an initial claim for benefits, a notice in writing or a carbon copy of such initial claim shall be mailed promptly to the employing unit including an employer from whose employ the individual claims to have been last separated. The computation of the benefit rights of such individual shall be made as promptly as possible and, if such claim is deemed valid, then a notice of benefit liability shall be mailed to each employer whose experience account is potentially chargeable with benefits to be paid to such individual. Such notice shall contain the date, the name and social security number of the individual, the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit year. Such notice shall further contain information as to the proportion of benefits chargeable to the employer's experience account in ratio to the earnings of such individual from such employer and shall advise such employer of the employer's right to protest such claim and the payment of any benefits thereon and of the place and time within which protest must be made and the form and contents thereof.

(d) Whenever a determination is made with respect to the validity of any claim for benefits, or the eligibility of any claimant for benefits, which involves the cancellation of wage credits or benefit rights, the imposition of any disqualification, period of ineligibility or penalty, or the denial thereof, a notice in writing shall promptly be mailed to such claimant and to each employer directly involved or connected with the issue raised as to the validity of such claim, the eligibility of such claimant for benefits, or the imposition of a

disqualification period of ineligibility or penalty, or the denial thereof. Such employer or such claimant may protest any such determination within such time limits and in such manner as provided in IC 22-4-17-2 and upon said protest shall be entitled to a hearing as provided in IC 22-4-17-2 and IC 22-4-17-3.

(e) Every employer shall be mailed a monthly report of benefit charges which shall contain an itemized statement showing the names of individuals to whom benefits were paid and charged to the experience account of such employer, the weeks with respect to which each such individual received benefits, the amount thereof, and the total amount of benefits charged to such employer's said account during the period covered by such report.

(f) Following the computation of rates of contribution for employers for each calendar year, each employer shall be mailed not later than ninety (90) days after the effective date of such rates a notice in writing setting out the employer's rate of contribution for such year, computed by the department as of the preceding June 30, together with sufficient information for such employer to determine and compute the amount of a voluntary payment required from such employer in order to qualify for and obtain a lower rate of contribution for such year and also advising such employer of the length of time within which or last date upon which said voluntary payment will be received or can be made.

*(Formerly: Acts 1947, c.208, s.2013; Acts 1951, c.307, s.4; Acts 1953, c.177, s.24; Acts 1957, c.261, s.4; Acts 1967, c.310, s.21.) As amended by P.L.144-1986, SEC.114; P.L.11-1987, SEC.25; P.L.18-1987, SEC.60; P.L.21-1995, SEC.101.*

#### **IC 22-4-19-14**

##### **Federal laws; invalidity or stay; suspension of article**

Sec. 14. If the board determines that Public Law 94-566 or the federal laws it amends have been adjudged unconstitutional or invalid in its application to, or have been stayed pendente lite as to, a state or a political subdivision or an instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions and its employees by any court of competent jurisdiction, the board shall suspend the enforcement of this article with respect to these employers and employees to the extent of the adjudged unconstitutionality or inapplicability or of the stay.

*As added by Acts 1977, P.L.262, SEC.28.*

## **IC 22-4-20**

### **Chapter 20. Uncollectible Claims Against Employers for Contributions**

#### **IC 22-4-20-1**

##### **Cancellation; records**

Sec. 1. (a) Whenever the commissioner shall consider any account or claim for contributions against an employer, and any penalty or interest due thereon, or any part thereof, to be uncollectible, written notification containing appropriate information shall be furnished to the attorney general by the commissioner setting forth the reasons therefor and the extent to which collection proceedings have been taken. The attorney general may review such notice and may undertake additional investigation as to the facts relating thereto, and shall thereupon certify to the commissioner an opinion as to the collectibility of such account or claim. If the attorney general consents to the cancellation of such claim for delinquent contributions, and any interest or penalty due thereon, the board may then cancel all or any part of such claim.

(b) In addition to the procedure for cancellation of claims for delinquent contributions set out in subsection (a), the board may cancel all or any part of a claim for delinquent contributions against an employer if all of the following conditions are met:

- (1) The employer's account has been delinquent for at least seven (7) years.
- (2) The commissioner has determined that the account is uncollectible and has recommended that the board cancel the claim for delinquent contributions.

(c) When any such claim or any part thereof is cancelled by the board, there shall be placed in the files and records of the department, in the appropriate place for the same, a statement of the amount of contributions, any interest or penalty due thereon, and the action of the board taken with relation thereto, together with the reasons therefor.

*(Formerly: Acts 1947, c.208, s.2101; Acts 1957, c.299, s.7.) As amended by P.L.18-1987, SEC.61; P.L.80-1990, SEC.15; P.L.21-1995, SEC.102; P.L.290-2001, SEC.18; P.L.175-2009, SEC.35.*

## **IC 22-4-21**

### **Chapter 21. Intergovernmental Cooperation**

#### **IC 22-4-21-1**

##### **Reports**

Sec. 1. In the administration of this article the board shall cooperate to the fullest extent consistent with the provisions of this article with the federal Department of Labor, shall make such reports in such form and containing such information as the federal Department of Labor may from time to time require and shall comply with such provisions as the federal Department of Labor may from time to time find necessary to insure the correctness and verification of such reports, and shall comply with the regulations prescribed by the Secretary of Labor governing the expenditures of such sums as may be allotted and paid to the state of Indiana under 42 U.S.C. 501 through 504 or any other federal statute for the purpose of assisting in the administration of this article.

*(Formerly: Acts 1947, c.208, s.2201; Acts 1951, c.295, s.12.) As amended by P.L.144-1986, SEC.115.*

#### **IC 22-4-21-2**

##### **Public works or assistance; administration; reports**

Sec. 2. Upon request therefor the board shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this article.

*(Formerly: Acts 1947, c.208, s.2202.) As amended by P.L.144-1986, SEC.116.*

#### **IC 22-4-21-3**

##### **Availability of records to railroad retirement board**

Sec. 3. The commissioner may make the records of the department relating to the administration of this article available to the railroad retirement board created by 45 U.S.C. 228j, or any amendments thereto, and may furnish the railroad retirement board, at the expense of such railroad retirement board, such copies thereof as the railroad retirement board deems necessary for its purposes.

*(Formerly: Acts 1947, c.208, s.2203.) As amended by P.L.144-1986, SEC.117; P.L.18-1987, SEC.62; P.L.21-1995, SEC.103.*

#### **IC 22-4-21-4**

##### **Foreign states; cooperation**

Sec. 4. The board may afford reasonable cooperation with every agency of the United States of America, or with any state charged with the administration of any unemployment compensation law.

*(Formerly: Acts 1947, c.208, s.2204.)*

## **IC 22-4-22**

### **Chapter 22. Administration of Intergovernmental Cooperation**

#### **IC 22-4-22-1**

##### **Benefits; payments**

Sec. 1. The board shall enter into arrangements with the appropriate agencies of other states or jurisdictions or the United States of America whereby individuals performing services in this and other states or jurisdictions for a single employing unit under circumstances not specifically provided for in IC 1971, 22-4-8-2(b) of this article, or under similar provisions in the unemployment compensation laws of such other states or jurisdictions, shall be deemed to be employment performed entirely within this state or within one (1) of such other states or jurisdictions, and whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or jurisdictions, or under such a law of the United States of America, or both, may constitute the basis for the payment of benefits through a single appropriate agency under the terms which the board finds will be fair and reasonable to all affected interests and will not result in substantial loss to the Fund.

*(Formerly: Acts 1947, c.208, s.2301; Acts 1971, P.L.355, SEC.45.)*

#### **IC 22-4-22-2**

##### **Contributions; payments**

Sec. 2. The board is authorized to enter into reciprocal arrangements with the appropriate agencies of other states or jurisdictions or the United States of America, adjusting the collection and payment of contributions by employers with respect to employment not localized within this state.

*(Formerly: Acts 1947, c.208, s.2302.)*

#### **IC 22-4-22-3**

##### **Secretary of state; filing agreement**

Sec. 3. The commissioner is authorized to enter into reciprocal agreements with the proper agencies under the laws of other states or jurisdictions or of the United States, which agreements shall become effective after filing with the secretary of state in accordance with rules adopted by the department under IC 4-22-2, by the terms of which agreements:

- (1) potential rights to benefits accumulated under the unemployment compensation laws of one (1) or more states or jurisdictions or of the United States, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commissioner finds will be fair and reasonable to all affected interests and which will not result in any substantial loss to the fund; and
- (2) wages or services in employment subject to an unemployment compensation law of another state or of the

United States shall be deemed to be wages in employment for employers for the purpose of determining an individual's rights to unemployment compensation benefits under this article, and wages in employment for employers as defined in this article shall be deemed to be wages or services on the basis of which unemployment compensation under the law of another state or of the United States is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the unemployment insurance benefit fund for such of the unemployment compensation benefits paid under this part upon the basis of such wages or services, and provisions for reimbursements from the unemployment insurance benefit fund for such of the compensation paid under such other law upon the basis of wages for employment as defined in this article as the commissioner finds will be fair and reasonable to all affected interests.

*(Formerly: Acts 1947, c.208, s.2303; Acts 1953, c.177, s.25; Acts 1965, c.190, s.14.) As amended by P.L.144-1986, SEC.118; P.L.18-1987, SEC.63; P.L.21-1995, SEC.104; P.L.108-2006, SEC.42.*

#### **IC 22-4-22-4**

##### **Agencies; acting as agent for other jurisdictions**

Sec. 4. The board is authorized to enter into reciprocal agreements with the agencies of other states or jurisdictions administering unemployment compensation laws whereby the board and such other agencies or jurisdictions may act as agents for each other for the purpose of accepting contributions on each other's behalf. Such contributions upon remittance to the state or jurisdiction on whose behalf such contributions were received, shall be deemed contributions required and paid into the unemployment compensation fund of such state or jurisdiction as of the date received by the agent, state or jurisdiction.

*(Formerly: Acts 1947, c.208, s.2304.)*

#### **IC 22-4-22-5**

##### **Investigations; reports**

Sec. 5. In order that the administration of this article and the unemployment insurance laws of other states or jurisdictions or of the United States of America will be promoted by cooperation between this state and such other states or jurisdictions or the appropriate agencies of the United States in exchanging services and making available facilities and information, the board and the department are authorized to make such investigations, secure and transmit such information, make available such services and facilities, and exercise such of the other powers provided in this article with respect to the administration of this article as deemed necessary or appropriate to facilitate the administration of any unemployment insurance law and in like manner to accept and utilize information, services, and facilities made available to this state by

the agency or jurisdiction charged with the administration of any such other unemployment insurance law.

*(Formerly: Acts 1947, c.208, s.2305.) As amended by P.L.144-1986, SEC.119; P.L.108-2006, SEC.43.*

#### **IC 22-4-22-6**

##### **Fraud; repayments; collection**

Sec. 6. (a) On request of an agency which administers an employment security law of another state or of a foreign government, and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law by reason of having knowingly made a false statement or misrepresentation of a material fact, or who has knowingly failed to disclose a material fact, with respect to a claim taken in this state as an agent for such agency, the department may collect from such claimant for the liable state the amount of such benefits to be refunded to such agency.

(b) In any case in which under this subsection a claimant is liable to repay any amount to the agency of another state, or of a foreign government, such amounts may be collected without interest by civil action in the name of the department acting as agent for such agency.  
*(Formerly: Acts 1947, c.208, s.2306; Acts 1951, c.295, s.12 1/2.) As amended by P.L.108-2006, SEC.44.*

## **IC 22-4-23**

### **Chapter 23. Employment Referral Service**

#### **IC 22-4-23-1**

##### **Establishment; United States; cooperation**

Sec. 1. (a) The department shall establish and maintain free public employment and training offices in such number and in such places as may be necessary for the proper administration of this article and for the purpose of performing such duties as are within the purview of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014 and any amendments thereto. The provisions of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014 are hereby declared accepted by the state in conformity with the terms of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014, and the state commits itself to the observation of and compliance with the requirements of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014, and the department is constituted the agency of the state for all purposes of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014. All duties and powers conferred upon any other department, agency, or officer of the state relating to the establishment, maintenance, and operation of free public employment offices shall be vested in the department. The department being charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014, shall be and is authorized and empowered to do and perform all things necessary to secure to this state the benefits of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014. The department may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities.

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

*(Formerly: Acts 1947, c.208, s.2401; Acts 1951, c.295, s.13; Acts 1953, c.177, s.26.) As amended by P.L.144-1986, SEC.120; P.L.18-1987, SEC.64; P.L.108-2006, SEC.45.*

#### **IC 22-4-23-2**

##### **Agreements; United States; political subdivisions; nonprofit corporations; appropriations**

Sec. 2. (a) All money received by this state under the said acts of Congress shall be paid into the employment and training services administration fund, and said money is hereby made available to the department to be expended as provided by this section and by said acts of Congress. For the purpose of establishing and maintaining free public employment and training offices, the department is authorized to enter into agreements with the railroad retirement board or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state or with any private, nonprofit organization, and as a part of any such agreement the department

may accept money, services, or quarters as a contribution to the employment and training services administration fund.

(b) The general assembly shall appropriate and make available to the department annually an amount sufficient to ensure the state's receiving its full share of funds under the acts of Congress in this section referred to. Such money shall be deposited in the employment and training services administration fund.

*(Formerly: Acts 1947, c.208, s.2402.) As amended by P.L.18-1987, SEC.65.*

**IC 22-4-23-3**

**Repealed**

*(Repealed by P.L.18-1987, SEC.112.)*

**IC 22-4-24**

**Chapter 24. Employment and Training Services  
Administration Fund**

**IC 22-4-24-1**

**Creation; appropriations**

Sec. 1. (a) There is created in the state treasury a special fund to be known as the employment and training services administration fund. All money which is deposited or paid into this fund is hereby appropriated and made available to the department. All money in this fund shall be expended for the purpose and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this article and for no other purpose whatsoever. The fund shall consist of all money appropriated by this state and all money received from the United States, any agency thereof, or from any other source for such defined purposes. Money received from the railroad retirement board as compensation for services or facilities supplied to said board shall be paid into this fund on the same basis as expenditures are made for such services or facilities from such fund. All money in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund shall not lapse at any time but shall be continuously available to the department for expenditure consistent with this article.

(b) Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to IC 22-4-26-5 shall remain part of the unemployment insurance benefit fund and shall be used only in accordance with the conditions specified in IC 22-4-26-5.

*(Formerly: Acts 1947, c.208, s.2501; Acts 1951, c.295, s.15; Acts 1957, c.299, s.17.) As amended by P.L.144-1986, SEC.121; P.L.18-1987, SEC.66.*

**IC 22-4-24.5**

**Chapter 24.5. Skills 2016 Training Fund**

**IC 22-4-24.5-1**

**Repealed**

*(Repealed by P.L.202-2005, SEC.8.)*

## **IC 22-4-25**

### **Chapter 25. Special Employment and Training Services Fund (Unemployment Trust Fund)**

#### **IC 22-4-25-1**

##### **Creation; use of funds**

Sec. 1. (a) There is created in the state treasury a special fund to be known as the special employment and training services fund. All interest on delinquent contributions and penalties collected under this article, together with any voluntary contributions tendered as a contribution to this fund, shall be paid into this fund. The money shall not be expended or available for expenditure in any manner which would permit their substitution for (or a corresponding reduction in) federal funds which would in the absence of said money be available to finance expenditures for the administration of this article, but nothing in this section shall prevent said money from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The money in this fund shall be used by the board for the payment of refunds of interest on delinquent contributions and penalties so collected, for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds received for or in the employment and training services administration fund, on and after July 1, 1945. Such money shall be available either to satisfy the obligations incurred by the board directly, or by transfer by the board of the required amount from the special employment and training services fund to the employment and training services administration fund. The board shall order the transfer of such funds or the payment of any such obligation or expenditure and such funds shall be paid by the treasurer of state on requisition drawn by the board directing the auditor of state to issue the auditor's warrant therefor. Any such warrant shall be drawn by the state auditor based upon vouchers certified by the board or the commissioner. The money in this fund is hereby specifically made available to replace within a reasonable time any money received by this state pursuant to 42 U.S.C. 502, as amended, which, because of any action or contingency, has been lost or has been expended for purposes other than or in amounts in excess of those approved by the bureau of employment security. The money in this fund shall be continuously available to the board for expenditures in accordance with the provisions of this section and for the prevention, detection, and recovery of delinquent contributions, penalties, and improper benefit payments, and shall not lapse at any time or be transferred to any other fund, except as provided in this article. Nothing in this section shall be construed to limit, alter, or amend the liability of the state assumed and created by IC 22-4-28, or to change the procedure prescribed in IC 22-4-28 for the satisfaction of such liability, except to the extent that such liability may be satisfied by and out of the

funds of such special employment and training services fund created by this section.

(b) Whenever the balance in the special employment and training services fund exceeds eight million five hundred thousand dollars (\$8,500,000), the board shall order payment of the amount that exceeds eight million five hundred thousand dollars (\$8,500,000) into the unemployment insurance benefit fund.

(c) Subject to the approval of the board, and the availability of funds, on July 1 each year the commissioner shall release:

(1) one million dollars (\$1,000,000) to the state educational institution established under IC 21-25-2-1 for training provided to participants in apprenticeship programs approved by the United States Department of Labor, Bureau of Apprenticeship and Training;

(2) four million dollars (\$4,000,000) to the state educational institution instituted and incorporated under IC 21-22-2-1 for training provided to participants in joint labor and management apprenticeship programs approved by the United States Department of Labor, Bureau of Apprenticeship and Training;

(3) two hundred fifty thousand dollars (\$250,000) for journeyman upgrade training to each of the state educational institutions described in subdivisions (1) and (2);

(4) four hundred thousand dollars (\$400,000) annually for training and counseling assistance:

(A) provided by Hometown Plans under 41 CFR 60-4.5; and

(B) approved by the United States Department of Labor, Bureau of Apprenticeship and Training;

to individuals who have been unemployed for at least four (4) weeks or whose annual income is less than twenty thousand dollars (\$20,000); and

(5) three hundred thousand dollars (\$300,000) annually for training and counseling assistance provided by the state institution established under IC 21-25-2-1 to individuals who have been unemployed for at least four (4) weeks or whose annual income is less than twenty thousand dollars (\$20,000) for the purpose of enabling those individuals to apply for admission to apprenticeship programs offered by providers approved by the United States Department of Labor, Bureau of Apprenticeship and Training.

(d) The funds released under subsection (c)(4) through (c)(5):

(1) shall be considered part of the amount allocated under section 2.5 of this chapter; and

(2) do not limit the amount that an entity may receive under section 2.5 of this chapter.

(e) Each state educational institution described in subsection (c) is entitled to keep ten percent (10%) of the funds released under subsection (c) for the payment of costs of administering the funds. On each June 30 following the release of the funds, any funds released under subsection (c) not used by the state educational institutions under subsection (c) shall be returned to the special

employment and training services fund.

*(Formerly: Acts 1947, c.208, s.2601; Acts 1955, c.317, s.12; Acts 1963, c.373, s.1; Acts 1967, c.310, s.22.) As amended by P.L.144-1986, SEC.122; P.L.18-1987, SEC.67; P.L.105-1994, SEC.3; P.L.21-1995, SEC.105; P.L.163-1997, SEC.1; P.L.52-1998, SEC.1; P.L.179-1999, SEC.4; P.L.290-2001, SEC.20; P.L.273-2003, SEC.7; P.L.202-2005, SEC.5; P.L.47-2006, SEC.46; P.L.2-2007, SEC.293; P.L.138-2008, SEC.4; P.L.175-2009, SEC.36; P.L.182-2009(ss), SEC.368; P.L.121-2014, SEC.17.*

#### **IC 22-4-25-2**

##### **Reemployment training accounts for department employees**

Sec. 2. (a) As used in this section, "fund" refers to the special employment and training services fund created under section 1 of this chapter.

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

- (1) a reduction of funding for;
- (2) a centralization or decentralization of; or
- (3) the implementation of a more efficient technology or service delivery method in connection with;

the programs and services provided under this article.

*As added by P.L.108-2006, SEC.46.*

#### **IC 22-4-25-2.5**

##### **Expired**

*(Expired 12-31-2012 by P.L.47-2006, SEC.47.)*

## **IC 22-4-26**

### **Chapter 26. Unemployment Insurance Benefit Fund**

#### **IC 22-4-26-1**

##### **Establishment; source of funds**

Sec. 1. There is established a special fund to be known as the unemployment insurance benefit fund which shall be administered separate and apart from all public money or funds of the state. This fund shall consist of:

- (1) all contributions, all payments in lieu of contributions, all money received from the federal government as reimbursements pursuant to section 204 of the Federal-State Extended Compensation Act of 1970, and all money paid into and received by it as provided in this article;
- (2) any property or securities and the earnings thereof acquired through the use of money belonging to the fund;
- (3) all other money received for the fund from any other source;
- (4) all money credited to this state's account in the unemployment trust fund pursuant to 42 U.S.C. 1103, as amended; and
- (5) interest earned from all money in the fund.

Subject to the provisions of this article, the board is vested with full power, authority, and jurisdiction over the fund, including all money and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated in this article which are necessary or convenient in the administration thereof consistent with the provisions of this article and the Depository Act. The money in this fund shall be used only for the payment of unemployment compensation benefits.

*(Formerly: Acts 1947, c.208, s.2701; Acts 1957, c.299, s.8; Acts 1973, P.L.239, SEC.5.) As amended by P.L.18-1987, SEC.68.*

#### **IC 22-4-26-2**

##### **Administration of fund**

Sec. 2. The fund shall be administered exclusively for the purpose of this article, and money withdrawn therefrom, except for deposit in the unemployment insurance benefit fund and for refund, as provided in this article, and except for amounts credited to the account of this state pursuant to 42 U.S.C. 1103, as amended, which shall be used exclusively as provided in section 5 of this chapter, shall be used solely for the payment of benefits. Payment of benefits and refunds shall be made in accordance with the rules prescribed by the department consistent with the provisions of this article. Withdrawals from the fund except as provided in section 5 of this chapter shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

*(Formerly: Acts 1947, c.208, s.2702; Acts 1957, c.299, s.9.) As amended by P.L.144-1986, SEC.123; P.L.18-1987, SEC.69; P.L.108-2006, SEC.47.*

### **IC 22-4-26-3**

#### **Treasurer of fund; depositories; investments**

Sec. 3. The treasurer of state shall be ex officio treasurer and custodian of the fund and shall administer the fund in accordance with the provisions of this article and the directions of the commissioner and shall pay all warrants drawn upon it in accordance with such rules as the board may prescribe. All contributions provided for in this article shall be paid to and collected by the department. All contributions and other money payable to the fund as provided in this article upon receipt thereof by the department shall be paid to and deposited with the treasurer of state to the credit of the unemployment insurance benefit fund. The commissioner shall immediately order the auditor of state to issue the auditor's warrant on the treasurer of state immediately to forward such money and deposit it, together with any money earned thereby while in the treasurer's custody and any other money received by the treasurer for the payment of benefits from any source other than the unemployment trust fund, with the Secretary of the Treasury of the United States of America to the credit of the unemployment trust fund. All money belonging to the unemployment insurance benefit fund and not otherwise deposited, invested, or paid over pursuant to the provisions of this article may be deposited by the treasurer of state under the direction of the commissioner in any banks or public depositories in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of money in the unemployment insurance benefit fund, any other provisions of law to the contrary notwithstanding. The treasurer of state shall, if required by the Social Security Administration, give a separate bond conditioned upon the faithful performance of the treasurer's duties as custodian of the fund in an amount and with such sureties as shall be fixed and approved by the governor. Premiums for the said bond shall be paid as provided in IC 22-4-24.

*(Formerly: Acts 1947, c.208, s.2703.) As amended by P.L.144-1986, SEC.124; P.L.18-1987, SEC.70; P.L.21-1995, SEC.106.*

### **IC 22-4-26-4**

#### **Federal aid; requisition; disposition of balance**

Sec. 4. The commissioner, through the treasurer of state acting as its fiscal agent, shall requisition from time to time from the unemployment trust fund such amounts not exceeding the amount standing to its account therein as it deems necessary for the payment of benefits for a reasonable future period and for refunds, but for no other purpose. Upon receipt thereof, the treasurer of state shall deposit such money in the unemployment insurance benefit fund in a special benefit account, and upon order of the commissioner, the auditor of state or the auditor's duly authorized agent shall issue the auditor's warrants for the payment of benefits and refunds by the treasurer of state. Any balance of money so requisitioned which remains unclaimed or unpaid in the special benefit account of the unemployment insurance benefit fund after the expiration of the

period for which such sums are requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or in the discretion of the commissioner shall be redeposited with the Secretary of the Treasury of the United States to the credit of the unemployment trust fund as provided in section 3 of this chapter.

*(Formerly: Acts 1947, c.208, s.2704.) As amended by P.L.144-1986, SEC.125; P.L.18-1987, SEC.71; P.L.21-1995, SEC.107.*

#### **IC 22-4-26-5**

#### **Use of money from federal unemployment trust fund; appropriations**

Sec. 5. (a) Money credited to the account of this state in the unemployment trust fund by the Secretary of the Treasury of the United States pursuant to 42 U.S.C. 1103, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this article and public employment offices pursuant to a specific appropriation by the general assembly, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation statute which:

(1) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(2) except as provided in subsection (i), limits the period within which such money may be obligated to a period ending not more than two (2) years after the date of the enactment of the appropriation statute; and

(3) limits the total amount which may be obligated during a twelve (12) month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which:

(A) the aggregate of the amounts credited to the account of this state pursuant to 42 U.S.C. 1103, as amended, during such twelve (12) month period and the twenty-four (24) preceding twelve (12) month periods; exceeds

(B) the aggregate of the amounts obligated by this state pursuant to this section and amounts paid out for benefits and charged against the amounts credited to the account of this state during such twenty-five (25) twelve (12) month periods.

(b) For the purposes of this section, amounts obligated by this state during any such twelve (12) month period shall be charged against equivalent amounts which were first credited and which have not previously been so charged, except that no amount obligated for administration of this article and public employment offices during any such twelve (12) month period may be charged against any amount credited during such twelve (12) month period earlier than the fourteenth preceding such twelve (12) month period.

(c) Amounts credited to the account of this state pursuant to 42 U.S.C. 1103, as amended, may not be obligated except for the payment of cash benefits to individuals with respect to their

unemployment and for the payment of expenses incurred for the administration of this article and public employment offices pursuant to this section.

(d) Money appropriated as provided in this section for the payment of expenses incurred for the administration of this article and public employment offices pursuant to this section shall be requisitioned as needed for payment of obligations incurred under such appropriation and upon requisition shall be deposited in the employment and training services administration fund but, until expended, shall remain a part of the unemployment insurance benefit fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated, or if it remains unexpended at the end of the period specified by the statute appropriating such money, it shall be withdrawn and returned to the Secretary of the Treasury of the United States for credit to this state's account in the unemployment trust fund.

(e) There is appropriated out of the funds made available to Indiana under Section 903 of the Social Security Act, as amended by Section 209 of the Temporary Extended Unemployment Compensation Act of 2002 (which is Title II of the federal Jobs Creation and Worker Assistance Act of 2002, Pub.L107-147), seventy-two million two hundred thousand dollars (\$72,200,000) to the department of workforce development. Unencumbered money at the end of a state fiscal year does not revert to the state general fund.

(f) Money appropriated under subsection (e) is subject to the requirements of IC 22-4-37-1.

(g) Money appropriated under subsection (e) may be used only for the following purposes:

- (1) The administration of the Unemployment Insurance (UI) program and the Wagner Peyser public employment office program.
- (2) Acquiring land and erecting buildings for the use of the department of workforce development.
- (3) Improvements, facilities, paving, landscaping, and equipment repair and maintenance that may be required by the department of workforce development.

(h) In accordance with the requirements of subsection (g), the department of workforce development may allocate up to the following amounts from the amount described in subsection (e) for the following purposes:

- (1) Thirty-nine million two hundred thousand dollars (\$39,200,000) to be used for the modernization of the Unemployment Insurance (UI) system beginning July 1, 2003, and ending June 30, 2013.
- (2) For:
  - (A) the state fiscal year beginning after June 30, 2003, and ending before July 1, 2004, five million dollars (\$5,000,000);

(B) the state fiscal year beginning after June 30, 2004, and ending before July 1, 2005, five million dollars (\$5,000,000);  
(C) the state fiscal year beginning after June 30, 2005, and ending before July 1, 2006, five million dollars (\$5,000,000);  
(D) the state fiscal year beginning after June 30, 2006, and ending before July 1, 2007, five million dollars (\$5,000,000);  
(E) the state fiscal year beginning after June 30, 2007, and ending before July 1, 2008, five million dollars (\$5,000,000); and  
(F) state fiscal years beginning after June 30, 2008, and ending before July 1, 2012, the unused part of any amount allocated in any year for any purpose under this subsection; for the JOBS proposal to meet the workforce needs of Indiana employers in high wage, high skill, high demand occupations.

(3) For:

(A) the state fiscal year beginning after June 30, 2003, and ending before July 1, 2004, four million dollars (\$4,000,000); and

(B) the state fiscal year beginning after June 30, 2004, and ending before July 1, 2005, four million dollars (\$4,000,000);

to be used by the workforce investment boards in the administration of Indiana's public employment offices.

(i) The amount appropriated under subsection (e) for the payment of expenses incurred in the administration of this article and public employment is not required to be obligated within the two (2) year period described in subsection (a)(2).

*(Formerly: Acts 1947, c.208, s.2705; Acts 1957, c.299, s.10; Acts 1965, c.190, s.15; Acts 1969, c.300, s.6; Acts 1973, P.L.239, SEC.6.) As amended by P.L.144-1986, SEC.126; P.L.18-1987, SEC.72; P.L.21-1995, SEC.108; P.L.224-2003, SEC.120; P.L.234-2007, SEC.68; P.L.3-2008, SEC.160; P.L.205-2013, SEC.337.*

**IC 22-4-27**

**Chapter 27. Management of Funds Upon Discontinuance of Unemployment Trust Fund**

**IC 22-4-27-1**

**Investments; disposal of securities**

Sec. 1. The provisions of IC 22-4-26-1, IC 22-4-26-2, IC 22-4-26-3, and IC 22-4-26-4, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by the state for benefit purposes, together with the state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist or such separate book account is no longer maintained, all money, properties, or securities therein belonging to the unemployment insurance benefit fund of this state shall be transferred to the treasurer of the unemployment insurance benefit fund who shall hold, invest, transfer, sell, deposit, and release such money, properties, or securities in a manner approved by the department in accordance with the provisions of this article. The money shall be invested in the following readily marketable classes of securities:

- (1) Bonds or other interest bearing obligations of the United States.
- (2) Any bonds guaranteed as to principal and interest by the United States government.

The treasurer of state shall dispose of securities or other properties belonging to the unemployment insurance benefit fund under the direction of the commissioner.

*(Formerly: Acts 1947, c.208, s.2801.) As amended by P.L.144-1986, SEC.127; P.L.18-1987, SEC.73; P.L.21-1995, SEC.109.*

**IC 22-4-28**

**Chapter 28. Lost or Illegally Expended Federal Grants**

**IC 22-4-28-1**

**Appropriations**

Sec. 1. If any money received after June 30, 1941, from the Social Security Administration under 42 U.S.C. 501 through 504, or any unencumbered balances in the employment and training services administration fund as of June 30, 1941, or any money granted after June 30, 1941 to this state under 29 U.S.C. 49 et seq. or any money made available by this state or its political subdivisions and matched by such money granted to this state under 29 U.S.C. 49 et seq. is found by the Secretary of Labor because of any action or contingency to have been lost or been expended for purposes other than or in amounts in excess of those found necessary by the Secretary of Labor for the proper administration of this article, it is the policy of this state that upon receipt of notice of such a finding by the Secretary of Labor the board shall promptly report the amount required for such replacement to the governor, and the governor shall at the earliest opportunity submit to the general assembly a request for the appropriation of such amount. This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, under 49 U.S.C. 501 through 504.

*(Formerly: Acts 1947, c.208, s.2901; Acts 1951, c.295, s.16.) As amended by P.L.144-1986, SEC.128; P.L.18-1987, SEC.74.*

## **IC 22-4-29**

### **Chapter 29. Collection of Contributions, Interest, and Penalties**

#### **IC 22-4-29-1**

##### **Delinquent contributions; interest and penalties**

Sec. 1. (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one percent (1%) per month or fraction thereof from and after such date until payment, plus accrued interest, is received by the department. The board may prescribe fair and reasonable regulations pursuant to which such interest shall not accrue.

(b) If the failure to pay any part or all of the delinquent contributions is due to negligence or intentional disregard of authorized rules, regulations, or notices, but without intent to defraud, there shall be added, as a penalty, ten percent (10%) of the total amount of contributions unpaid, which penalty shall become due and payable upon notice and demand by the commissioner.

(c) If the commissioner finds that the failure to pay any part or all of delinquent contributions is due to fraud with intent to evade the payment of contributions, there shall be added, as a penalty, fifty percent (50%) of the total amount of delinquent contributions, which penalty shall become due and payable upon notice and demand by the commissioner.

(d) Interest and penalties collected pursuant to this section shall be paid into the special employment and training services fund.

*(Formerly: Acts 1947, c.208, s.3001.) As amended by P.L.228-1983, SEC.5; P.L.18-1987, SEC.75; P.L.21-1995, SEC.110.*

#### **IC 22-4-29-2**

##### **Assessments; limitation**

Sec. 2. In addition to all other powers granted to the commissioner by this article, the commissioner or the commissioner's authorized representatives shall have the power to make assessments against any employing unit which fails to pay contributions, interest, or penalties as required by this article, or for additional contributions due and unpaid, which assessment is considered prima facie correct. Such assessments shall consist of contributions and any interest or penalties which may be due by reason of section 1 of this chapter. Such assessment must be made not later than four (4) calendar years subsequent to the date that said contributions, interest, or penalties would have become due, except that this limitation shall not apply to any contributions, interest, or penalties which should have been paid with respect to any incorrect report filed with the department which report was known or should have been known to be incorrect by the employing unit.

*(Formerly: Acts 1947, c.208, s.3002.) As amended by P.L.144-1986, SEC.129; P.L.18-1987, SEC.76; P.L.21-1995, SEC.111; P.L.290-2001, SEC.21; P.L.175-2009, SEC.37.*

### **IC 22-4-29-3**

#### **Assessments; notice**

Sec. 3. The commissioner, or the commissioner's duly authorized representative, shall immediately notify the employing unit of the assessment in writing by mail, and such assessment shall be final unless the employing unit protests such assessment within fifteen (15) days after the mailing of the notice.

*(Formerly: Acts 1947, c.208, s.3003.) As amended by P.L.20-1986, SEC.14; P.L.18-1987, SEC.77; P.L.21-1995, SEC.112.*

### **IC 22-4-29-4**

#### **Assessments; protest; hearings**

Sec. 4. If the employing unit protests such assessment, upon written request it shall have an opportunity to be heard, and such hearing shall be conducted by a liability administrative law judge pursuant to the provisions of IC 22-4-32-1 through IC 22-4-32-15. After the hearing the liability administrative law judge shall immediately notify the employing unit in writing of the finding, and the assessment, if any, so made shall be final, in the absence of judicial review proceedings as provided in this article, thirty (30) days after such notice of appeal is issued.

*(Formerly: Acts 1947, c.208, s.3004; Acts 1951, c.295, s.17.) As amended by P.L.144-1986, SEC.130; P.L.18-1987, SEC.78; P.L.135-1990, SEC.20; P.L.108-2006, SEC.48.*

### **IC 22-4-29-5**

#### **Assessments; judicial review; stay of proceedings**

Sec. 5. The finality of such decision of the liability administrative law judge may be stayed for a period of thirty (30) days from the date of service of notice on the department of the appeal of said decision as provided in this article. Such notice must be served within thirty (30) days after notice of the decision of the liability administrative law judge is issued. If judicial review proceedings are not instituted within the time provided for in this article, the finality of said decision shall not be further stayed.

*(Formerly: Acts 1947, c.208, s.3005.) As amended by P.L.144-1986, SEC.131; P.L.135-1990, SEC.21; P.L.108-2006, SEC.49.*

### **IC 22-4-29-6**

#### **Assessments; nonpayment; warrants; levy; garnishment; lien**

Sec. 6. (a) Unless an assessment is paid in full within seven (7) days after it becomes final, the commissioner or the commissioner's representative may file with the clerk of the circuit court of any county in the state a warrant in duplicate, directed to the sheriff of such county, commanding the sheriff to levy upon and sell the property, real and personal, tangible and intangible, of the employing unit against whom the assessment has been made, in sufficient quantity to satisfy the amount thereof, plus damages to the amount of ten percent (10%) of such assessment, which shall be in addition to the penalties prescribed in this article for delinquent payment, and

in addition to the interest at the rate of one percent (1%) per month upon the unpaid contribution from the date it was due, to the date of payment of the warrant, and in addition to all costs incident to the recording and execution thereof. The remedies by garnishment and proceedings supplementary to execution as provided by law shall be available to the board to effectuate the purposes of this chapter. Within five (5) days after receipt of a warrant under this section, the clerk shall:

- (1) retain the duplicate copy of the warrant;
- (2) enter in the judgment record in the column for judgment debtors the name of the employing unit stated in the warrant, or if the employing unit is a partnership, the names of the partners;
- (3) enter the amount sought by the warrant;
- (4) enter the date the warrant was received; and
- (5) certify the original warrant and return it to the department.

(b) Five (5) days after the clerk receives a warrant under subsection (a), the amount sought in the warrant, the damages to an amount of ten percent (10%) of the assessment as provided in subsection (a), penalties, and interest described in subsection (a), become a lien upon the title to and interest in the real and personal property of the employing unit.

*(Formerly: Acts 1947, c.208, s.3006.) As amended by P.L.20-1986, SEC.15; P.L.18-1987, SEC.79; P.L.21-1995, SEC.113; P.L.52-1998, SEC.2.*

#### **IC 22-4-29-7**

##### **Assessments; issuance of warrant to sheriff**

Sec. 7. The clerk shall return the original, certified copy of the warrant to the department together with all recording information concerning the warrant. Upon receipt of the warrant from the clerk, the department shall issue the warrant to the sheriff of the county.

*(Formerly: Acts 1947, c.208, s.3007.) As amended by P.L.21-1995, SEC.114; P.L.52-1998, SEC.3.*

#### **IC 22-4-29-8**

##### **Assessments; warrants; return; fees and costs**

Sec. 8. (a) If the clerk fails to record the warrant and issue the same to the department within five (5) days after it has been received by the clerk as herein provided, the clerk shall forfeit to the state for each such failure the sum of twenty dollars (\$20), which shall be deposited in the unemployment insurance benefit fund.

(b) Within one hundred twenty (120) days from the date of receipt of the warrant (or immediately after service if the warrant is fully satisfied or found to be wholly uncollectible) the sheriff shall return it to the department, together with the money collected, less fees and costs.

(c) "Costs" as referred to in this subsection includes the fees of the clerk and sheriff as are specifically provided for and costs of storage, appraisal, publication, and other necessary and properly chargeable expenses incurred in the sale of property on execution.

The costs herein specifically prescribed for the clerk and sheriff shall be as follows:

(1) Clerk's fee of three dollars (\$3) to be charged on the warrant and paid to the clerk for recording the warrant.

(2) Sheriff's fee of:

(A) six dollars (\$6) to be charged on the warrant and paid to the sheriff in every instance in which the warrant has been duly and properly served and the schedules and affidavits hereinafter provided for have been executed and signed; or  
(B) ten dollars (\$10) for sale of property on execution or decree, including making a deed or certificate of sale, to be charged on the warrant.

*(Formerly: Acts 1947, c.208, s.3008; Acts 1951, c.295, s.18; Acts 1969, c.300, s.7.) As amended by P.L.18-1987, SEC.80; P.L.21-1995, SEC.115; P.L.52-1998, SEC.4.*

#### **IC 22-4-29-9**

##### **Assessments; fees and costs; collection; disposition**

Sec. 9. (a) The fees and charges provided in section 8 of this chapter for the clerk and sheriff shall be the property of the clerk and sheriff, and, excepting additional payments to the sheriff provided for in this section, shall be the only fees and charges payable for their services relating to the warrants herein and shall be in lieu of all fees and charges provided for in other statutes for services relating to recording and serving of warrants and levying of executions, whether such other statutes relate to clerks, sheriffs, governmental units, or subdivisions thereof. Such costs shall be charged against the employing unit and collected from it by the sheriff.

(b) In case the amount collected is sufficient to satisfy the entire amount of the warrant and all costs thereon, the sheriff shall retain an amount equal to ten percent (10%) of the assessment in addition to the fees provided in section 8 of this chapter. If such amount is not collected in full, the sheriff shall retain an amount equal to five percent (5%) of the amount collected.

(c) However, in instances wherein the sheriff makes no collection upon a warrant and it has been returned to the department as uncollectible and the warrant is thereafter paid voluntarily in whole or in part by the employing unit to the clerk or to the department, the sheriff shall not be entitled to either of the payments mentioned in subsection (b), and the damages assessed in the warrant shall be deposited in the unemployment insurance benefit fund.

*(Formerly: Acts 1947, c.208, s.3009.) As amended by P.L.18-1987, SEC.81; P.L.21-1995, SEC.116.*

#### **IC 22-4-29-10**

##### **Assessments; return; subsequent warrants; fees; attempts to collect**

Sec. 10. (a) The return by the sheriff to the department of the warrants shall be made monthly on or before the fifth day of the month. All money so returned to the department shall be receipted for by the department and its endorsement upon the check

transmitted by the sheriff shall be conclusive evidence of such payment by the sheriff and no other receipt shall be necessary.

(b) If a warrant is not satisfied within the one hundred twenty (120) days specified in section 8 of this chapter, nothing herein shall operate to prevent the department from issuing subsequent warrants upon the identical amount of the unpaid assessment. Subsequent warrants shall not be recorded by the clerk, and no fees shall be chargeable by the clerk. Upon any subsequent warrant, the sheriff shall be entitled to a sum for mileage equal to that sum per mile paid to state officers and employees, with the rate changing each time the state government changes its rate per mile, but shall not be entitled to any other fee if the same has been paid the sheriff for services upon the original warrant, except that in case collection is made in part or in full with respect to any such subsequent warrant, the sheriff is entitled to the five percent (5%) or ten percent (10%) as provided in section 9(b) of this chapter.

(c) In every instance in which the sheriff shall return any warrant unsatisfied, the sheriff shall attach to the warrant a summary of all relative information regarding the attempts to collect the warrant and the reason the warrant is being returned unsatisfied.

*(Formerly: Acts 1947, c.208, s.3010; Acts 1975, P.L.15, SEC.30.) As amended by P.L.18-1987, SEC.82; P.L.21-1995, SEC.117; P.L.52-1998, SEC.5.*

#### **IC 22-4-29-11**

##### **Assessments; failure to locate employing unit**

Sec. 11. In the event the sheriff is unable to locate the employing unit after diligent search, the sheriff shall file with the department a statement sworn to by the sheriff that a diligent search has been made and the employing unit cannot be located within the sheriff's bailiwick.

*(Formerly: Acts 1947, c.208, s.3011.) As amended by Acts 1978, P.L.2, SEC.2218; P.L.18-1987, SEC.83; P.L.52-1998, SEC.6.*

#### **IC 22-4-29-12**

##### **Applicability of exemption laws for relief of debtors**

Sec. 12. The liability for any contributions, interest, penalties, and damages imposed by this chapter, or costs incidental to execution of warrants, shall not be subject to any of the provisions of the exemption laws of the state of Indiana for the relief of debtors.

*(Formerly: Acts 1947, c.208, s.3012.) As amended by P.L.131-1983, SEC.5; P.L.52-1998, SEC.7; P.L.290-2001, SEC.22; P.L.42-2011, SEC.43.*

#### **IC 22-4-29-13**

##### **Notices**

Sec. 13. (a) This section applies to notices given under sections 3, 4, and 5 of this chapter.

(b) As used in this section, "notices" includes mailings of assessments, notice of intention to seek judicial review, and warrants.

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

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

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

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

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

*As added by P.L.135-1990, SEC.22.*

#### **IC 22-4-29-14**

#### **Data match system for collection of final assessments; financial institutions**

Sec. 14. (a) The department may operate a data match system with each financial institution doing business in Indiana.

(b) If the department operates a data match system, each financial institution doing business in Indiana shall provide information to the department on all employers:

(1) that hold one (1) or more accounts with the financial institution; and

(2) that are subject to a warrant issued by the commissioner for failure to pay a final assessment for contributions, interest, penalties, and any associated collection costs.

(c) To provide the information required under subsection (b), a financial institution shall do one (1) of the following:

(1) Identify employers by comparing records maintained by the financial institution with records provided by the department by:

(A) name; and

(B) either:

(i) Social Security number; or

(ii) federal tax identification number.

(2) Comply with IC 31-25-4-31(c)(2). The child support bureau established by IC 31-25-3-1 shall regularly make reports submitted under IC 31-25-4-31(c)(2) accessible to the department or its agents for use only in the collection of unpaid final assessments described in subsection (b)(2).

(d) The information required under subsection (b) must:

(1) be provided on a quarterly basis; and

(2) include:

(A) the name;

(B) the address of record; and

(C) either:

- (i) the Social Security number; or
- (ii) the federal tax identification number;

of the employers identified under subsection (b).

(e) When the department determines that the information required under subsection (d)(2) is identical for an employer that holds an account with a financial institution and an employer that is subject to a warrant issued by the commissioner for failure to pay a final assessment for contributions, interest, penalties, and any associated collection costs, the department or its agents shall provide a notice of the match to the financial institution if action is to be initiated to issue a warrant to levy upon or encumber the account.

(f) This section does not preclude a financial institution from exercising its right to:

- (1) charge back or recoup a deposit to an account; or
- (2) set off from an account held by the financial institution in which the employer has an interest any debts owed to the financial institution that existed before:
  - (A) the department's warrant; and
  - (B) notification to the financial institution of the department's warrant.

(g) A financial institution ordered to block or encumber an account under this section is entitled to collect its normally scheduled account activity fees to maintain the account during the period the account is blocked or encumbered.

(h) All information provided by a financial institution under this section is confidential and is available only to the department or its agents for use only in the collection of unpaid final assessments described in subsection (b)(2).

(i) A financial institution providing information required under this section is not liable for:

- (1) disclosing the required information to the department or the child support bureau established by IC 31-25-3-1;
- (2) blocking or surrendering an individual's assets in response to a levy imposed under this section by:
  - (A) the department; or
  - (B) a person or an entity acting on behalf of the department;or
- (3) any other action taken in good faith to comply with this section.

(j) A person or an entity that is acting on behalf of the department is not liable for any action taken under this section in good faith to collect unpaid final assessments described in subsection (b)(2) unless:

- (1) the action is contrary to the department's direction to the person or entity; or
- (2) for information provided under this section, the person or entity acts with:
  - (A) deliberate ignorance of the truth or falsity of the information; or
  - (B) reckless disregard for the truth or falsity of the

information.

(k) The department or its agents shall pay a financial institution performing the data match under this section a reasonable fee, as determined by the department, of at least five dollars (\$5) for each warrant issued to the financial institution.

(l) This section does not prevent the department or its agents from encumbering an employer's account with a financial institution by any other remedy available under the law.

(m) An:

(1) officer or employee of the department; or

(2) officer or employee of a person or entity that is acting on behalf of the department;

who knowingly or intentionally discloses for a purpose other than the collection of unpaid final assessments described in subsection (b)(2) information provided by a financial institution that is confidential under this section commits a Class A misdemeanor.

*As added by P.L.138-2008, SEC.5.*

**IC 22-4-30**

**Chapter 30. Procedures for Collection of Funds Due**

**IC 22-4-30-1**

**Delinquent contributions; continuing in business**

Sec. 1. Any employer against whom contributions shall be assessed as provided in this article shall be restrained and enjoined upon the order of the department by proper proceedings instituted in the name of the state of Indiana, brought by the attorney general for the state of Indiana or any prosecuting attorney at the request of the department, from engaging or continuing in business in this state until the contributions, interest, penalties, and damages shall have been paid and until such employer shall have complied with the provisions of this article; and such attorneys shall prosecute violations of criminal provisions of this article upon request of the department.

*(Formerly: Acts 1947, c.208, s.3101.) As amended by P.L.144-1986, SEC.132; P.L.108-2006, SEC.50.*

## **IC 22-4-31**

### **Chapter 31. Additional Remedies for Collection of Delinquent Contributions; Jeopardy Assessments**

#### **IC 22-4-31-1**

##### **Powers and duties**

Sec. 1. (a) If any contributions, interest, penalties, or damages assessed under this article, or any portion thereof, be not paid within one hundred twenty (120) days after the same is found to be due, a receiver may be appointed by the circuit or superior court of the county in which such employer resides or in which the employer is doing business or in which the employer's resident agent is located in a proceeding requesting such appointment instituted against the said employer in the name of the state of Indiana, brought by the attorney general for the state of Indiana at the request of the department.

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

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

*(Formerly: Acts 1947, c.208, s.3201.) As amended by P.L.144-1986, SEC.133; P.L.108-2006, SEC.51.*

#### **IC 22-4-31-2**

##### **Appeal; bond; suspension of power**

Sec. 2. In all proceedings instituted after April 1, 1947, under the provisions of section 1 of this chapter in which a receiver may be appointed or refused, the party aggrieved may, within ten (10) days thereafter, appeal from the decision of the court to the supreme court without awaiting the final determination of such proceedings. In cases where a receiver has been appointed, upon the appellant filing an appeal bond with sufficient surety in such sum as may have been required of such receiver conditioned upon the due prosecution of such appeal and the payment of all costs or damages that may accrue to any officer or person by reason thereof, the authority of such receiver shall be suspended until the final determination of such appeal.

*(Formerly: Acts 1947, c.208, s.3202.) As amended by P.L.144-1986, SEC.134.*

#### **IC 22-4-31-3**

##### **Injunction; collection of contributions**

Sec. 3. No injunction to restrain or delay the collection of any contributions or other amounts claimed to be due under the provisions of this article shall be issued by any court.

*(Formerly: Acts 1947, c.208, s.3203.) As amended by P.L.144-1986, SEC.135; P.L.290-2001, SEC.23; P.L.175-2009, SEC.38.*

#### **IC 22-4-31-4**

##### **Jeopardy assessments; delinquent contributions; liens**

Sec. 4. If the department finds that the collection of any contributions will be jeopardized by delaying, it shall enter such finding of record and thereupon, whether or not such contributions are due, immediately assess such contributions with interest and notify the employer thereof and simultaneously demand payment of the amount due in writing. If such payment is not made on demand, the commissioner shall immediately issue a warrant to the sheriff of any county in the state commanding the sheriff to immediately levy upon and sell sufficient of the employer's property found within the sheriff's bailiwick to satisfy said warrant. The sheriff shall file the warrant in the office of the clerk of the circuit court within twenty-four (24) hours after the sheriff has levied upon the property of the employer, and the lien of the department shall begin with the date upon which the warrant comes into the possession of the sheriff. The lien shall have the same effect as any other lien created by this article.

*(Formerly: Acts 1947, c.208, s.3204.) As amended by P.L.144-1986, SEC.136; P.L.18-1987, SEC.84; P.L.21-1995, SEC.118.*

#### **IC 22-4-31-5**

##### **Jeopardy assessments; delinquent contributions; stay pending hearing**

Sec. 5. The collection of the whole or any part of the amount of such assessment may be stayed for not exceeding sixty (60) days, by filing with the board a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties as the board considers necessary, conditioned upon payment of the amount which may finally be found to be due after notice and opportunity to be heard as herein provided.

*(Formerly: Acts 1947, c.208, s.3205.)*

#### **IC 22-4-31-6**

##### **Actions and proceedings; delinquent contributions; costs**

Sec. 6. (a) If, after due notice, any employing unit defaults in the payment of any contributions or other money payments required by this article, the amount due may be collected by civil action in the name of the state of Indiana on the relation of the department. Such

civil action is not to be considered as the exclusive method for collection of the contributions or money payments but is in addition to the method provided in IC 22-4-29-2 through IC 22-4-29-14 and is to be brought only in such cases as the department may deem advisable in the interest of necessity and convenience.

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

*(Formerly: Acts 1947, c.208, s.3206.) As amended by P.L.144-1986, SEC.137; P.L.18-1987, SEC.85; P.L.21-1995, SEC.119; P.L.290-2001, SEC.24; P.L.108-2006, SEC.52; P.L.138-2008, SEC.6.*

#### **IC 22-4-31-7**

##### **Remedies; cumulative remedies**

Sec. 7. It is expressly provided that the foregoing remedies shall be cumulative and shall be in addition to all other existing remedies, and that no action taken by the department or its duly authorized representative, the attorney general for the state of Indiana, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

*(Formerly: Acts 1947, c.208, s.3207.) As amended by P.L.108-2006, SEC.53.*

#### **IC 22-4-31-8**

##### **Repealed**

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

## **IC 22-4-32**

### **Chapter 32. Employer Liability, Rights, and Remedies**

#### **IC 22-4-32-1**

##### **Disputes; hearings**

Sec. 1. A liability administrative law judge shall hear all matters pertaining to:

- (1) the assessment of contributions, penalties, and interest;
- (2) which accounts, if any, benefits paid, or finally ordered to be paid, should be charged;
- (3) successorships, and related matters arising therefrom, including but not limited to:
  - (A) the transfer of accounts;
  - (B) the determination of rates of contribution; and
  - (C) determinations under IC 22-4-11.5; and
- (4) claims for refunds of contributions or adjustments thereon in connection with subsequent contribution payments;

for which an employing unit has timely filed a protest under section 4 of this chapter.

*(Formerly: Acts 1947, c.208, s.3301.) As amended by P.L.135-1990, SEC.23; P.L.290-2001, SEC.25; P.L.108-2006, SEC.54; P.L.42-2011, SEC.44.*

#### **IC 22-4-32-2**

##### **Disputes; subpoenas; interlocutory orders**

Sec. 2. In addition to all other powers conferred upon the liability administrative law judge in accordance with this article and the rules issued pursuant to this article, the liability administrative law judge shall have the power to:

- (1) administer oaths and affirmations;
- (2) issue such subpoenas as are provided for by IC 22-4-17-7;
- (3) rule upon offers of proof and receive relevant oral or documentary evidence;
- (4) take or cause depositions to be taken whenever the ends of justice would be served thereby;
- (5) regulate the course of a hearing and the conduct of the parties;
- (6) hold informal prehearing conferences for the settlement or simplification of the issues by consent of the parties;
- (7) examine or cause to have examined by order such parts of the books and records of the parties to a proceeding as relate to the questions in dispute;
- (8) dispose of procedural motions, requests for adjustment;
- (9) continue any hearing upon his own motion, or upon application of any interested party for good cause shown; and
- (10) make such interlocutory and final orders as are necessary for the resolving or determination of the issues arising in the cause.

*(Formerly: Acts 1947, c.208, s.3302.) As amended by P.L.144-1986, SEC.138; P.L.135-1990, SEC.24.*

### **IC 22-4-32-3**

#### **Disputes; rules of practice and procedure; qualifications of person representing employer**

Sec. 3. The proceedings before a liability administrative law judge shall be conducted in accordance with such rules of practice and procedure as the department may adopt under its rulemaking authority under IC 22-4-18-1. Any person representing any interested party in the prosecution or defense of any proceedings before a liability administrative law judge must be admitted to practice law in the courts of the state of Indiana, except that persons admitted to practice before the courts of other states may on special order be permitted to appear in any proceeding before the liability administrative law judge. This section shall not be construed to prohibit an interested party from electing to be heard in his own cause without counsel.

*(Formerly: Acts 1947, c.208, s.3303.) As amended by P.L.144-1986, SEC.139; P.L.135-1990, SEC.25; P.L.108-2006, SEC.55.*

### **IC 22-4-32-4**

#### **Disputes; protest; time limit**

Sec. 4. An employing unit shall have fifteen (15) calendar days, beginning on the date an initial determination is mailed to the employing unit, within which to protest in writing an initial determination of the department with respect to:

- (1) the assessments of contributions, penalties, and interest;
- (2) the transfer of charges from an employer's account;
- (3) merit rate calculations;
- (4) successorships;
- (5) the denial of claims for refunds and adjustments; and
- (6) a determination under IC 22-4-11.5.

*(Formerly: Acts 1947, c.208, s.3304.) As amended by P.L.18-1987, SEC.86; P.L.21-1995, SEC.120; P.L.108-2006, SEC.56.*

### **IC 22-4-32-5**

#### **Disputes; protest; hearing**

Sec. 5. Upon receipt of such protest in writing, the commissioner promptly shall refer the written protest to the liability administrative law judge who shall set a date for a hearing before the liability administrative law judge and notify the interested parties thereof by registered mail. Unless such written protest is withdrawn, the liability administrative law judge, after affording the parties a reasonable opportunity for a fair hearing, shall make findings and conclusions, and, on the basis thereof, affirm, modify, or reverse the initial determination of the board.

*(Formerly: Acts 1947, c.208, s.3305.) As amended by P.L.18-1987, SEC.87; P.L.135-1990, SEC.26; P.L.21-1995, SEC.121.*

### **IC 22-4-32-6**

#### **Disputes; parties**

Sec. 6. Any interested party to the dispute shall mean and include

the protesting employing unit, the commissioner, and any person appearing to the liability administrative law judge to be necessary or indispensable to the determination of the issues involved in the hearing.

*(Formerly: Acts 1947, c.208, s.3306; Acts 1957, c.299, s.11.) As amended by P.L.18-1987, SEC.88; P.L.135-1990, SEC.27; P.L.21-1995, SEC.122.*

#### **IC 22-4-32-7**

##### **Disputes; finding and decision; notice of appeal**

Sec. 7. After the hearing the liability administrative law judge shall as soon as practicable notify the interested parties in writing of the finding and decision of the liability administrative law judge, which shall become final thirty (30) days thereafter in the absence of the filing of a notice of appeal as provided in this chapter.

*(Formerly: Acts 1947, c.208, s.3307.) As amended by P.L.18-1987, SEC.89; P.L.135-1990, SEC.28; P.L.108-2006, SEC.57.*

#### **IC 22-4-32-8**

##### **Disputes; appeals; notice**

Sec. 8. A notice of appeal shall be served on the adverse party at any time before the decision of the liability administrative law judge becomes final, and shall stay the finality of the decision for thirty (30) days from the service of such notice. If such appeal is perfected, further proceedings shall be stayed pending the final determination of said appeal. If an appeal from the decision of the liability administrative law judge is not perfected within the time provided for by this article, no action or proceeding shall be further stayed.

*(Formerly: Acts 1947, c.208, s.3308; Acts 1951, c.295, s.19.) As amended by P.L.144-1986, SEC.140; P.L.135-1990, SEC.29; P.L.108-2006, SEC.58.*

#### **IC 22-4-32-9**

##### **Disputes; appeals; use of evidence in separate or subsequent actions**

Sec. 9. (a) Any decision of the liability administrative law judge shall be conclusive and binding as to all questions of fact. An interested party to the dispute may, within thirty (30) days after notice of intention to appeal as herein provided, appeal the decision to the supreme court or the court of appeals solely for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.

(b) Any finding of fact, judgment, conclusion, or final order made by a person with the authority to make findings of fact or law in an action or proceeding under this article is not conclusive or binding and shall not be used as evidence in a separate or subsequent action or proceeding between an individual and the individual's present or prior employer in an action or proceeding brought before an arbitrator, a court, or a judge of this state or the United States regardless of whether the prior action was between the same or

related parties or involved the same facts.  
*(Formerly: Acts 1947, c.208, s.3309; Acts 1951, c.295, s.20.) As amended by P.L.3-1989, SEC.135; P.L.135-1990, SEC.30; P.L.21-1995, SEC.123.*

#### **IC 22-4-32-10**

##### **Disputes; hearings; transcript of record**

Sec. 10. A full and complete record shall be kept of all proceedings had before the liability administrative law judge, and all testimony shall be retained in a suitable media such as an audio recording or a transcription by a court reporter. The liability administrative law judge shall, at the timely written request of the appellant, have a transcript prepared of all the proceedings had before the liability administrative law judge, which shall contain a transcript of all the testimony, together with all objections and rulings thereon, documents and papers introduced as evidence or offered as evidence, and all rulings as to their admission into evidence, which said transcript shall be certified by the liability administrative law judge and shall constitute the record on appeal.  
*(Formerly: Acts 1947, c.208, s.3310; Acts 1951, c.295, s.21.) As amended by P.L.135-1990, SEC.31; P.L.105-1994, SEC.4.*

#### **IC 22-4-32-11**

##### **Disputes; appeals; deposit**

Sec. 11. The department, by rule, may require the appellant to deposit with the department an amount sufficient to pay the actual costs of preparing the transcript of the record of the proceedings before the liability administrative law judge before preparing the same.  
*(Formerly: Acts 1947, c.208, s.3311; Acts 1951, c.295, s.22.) As amended by P.L.18-1987, SEC.90; P.L.135-1990, SEC.32; P.L.108-2006, SEC.59.*

#### **IC 22-4-32-12**

##### **Disputes; assignment of errors**

Sec. 12. The appellant shall attach to said transcript an assignment of errors. An assignment of errors that the decision of the liability administrative law judge is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the decision, and the sufficiency of the evidence to sustain the finding of facts.  
*(Formerly: Acts 1947, c.208, s.3312; Acts 1951, c.295, s.23.) As amended by P.L.135-1990, SEC.33.*

#### **IC 22-4-32-13**

##### **Disputes; appeals; priorities**

Sec. 13. All appeals shall be submitted upon the date filed in the supreme court or the court of appeals, shall be advanced upon the docket of the court, and shall be determined without delay in the order of priority. The supreme court or the court of appeals may in any such appeal remand the proceedings to the liability

administrative law judge for the taking of additional evidence, setting time limits therefor, and ordering such additional evidence to be certified by the liability administrative law judge to the remanding court to be used in the determination of the cause.

*(Formerly: Acts 1947, c.208, s.3313; Acts 1951, c.295, s.24.) As amended by P.L.3-1989, SEC.136; P.L.135-1990, SEC.34.*

#### **IC 22-4-32-14**

##### **Repealed**

*(Repealed by Acts 1972, P.L.8, SEC.9.)*

#### **IC 22-4-32-15**

##### **Assessment of contribution; appeal; security for cost**

Sec. 15. No judicial review proceeding shall be entertained by the court with respect to the assessment of any contributions, interest or penalties, unless the court finds that the payment of such assessment is secured by bond, deposit or otherwise as the court may approve. The bond shall be in such an amount necessary to insure the payment of the assessment stayed, and court costs, if any, which may be incurred in this action.

*(Formerly: Acts 1947, c.208, s.3315; Acts 1955, c.317, s.13.)*

#### **IC 22-4-32-16**

##### **Insolvency proceedings; delinquent contributions; priorities**

Sec. 16. In the event of any distribution of any employer's assets pursuant to an order of any court under the laws of this state including but not necessarily limited to any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except claims for remuneration.

*(Formerly: Acts 1947, c.208, s.3318.) As amended by P.L.290-2001, SEC.26; P.L.175-2009, SEC.39.*

#### **IC 22-4-32-17**

##### **Fiduciaries; final report; notice of payment of contribution**

Sec. 17. No final report or act of any executor, administrator, receiver, other fiduciary, or other officer engaged in administering the assets of any employer subject to the payment of contributions under this article and acting under the authority and supervision of any court shall be allowed or approved by the court unless such report or account shows and the court finds that all contributions, interest, and penalties imposed by this article have been paid pursuant to this section, and that all contributions which may become due under this article are secured by bond or deposit.

*(Formerly: Acts 1947, c.208, s.3319.) As amended by P.L.144-1986, SEC.141; P.L.290-2001, SEC.27; P.L.175-2009, SEC.40.*

#### **IC 22-4-32-18**

##### **Dissolution of companies; payment of contributions; certificate**

Sec. 18. To the end that the purposes of this article may be

effectively enforced and administered, it is the declared intention of the general assembly that in all cases of legal distributions and dissolutions the commissioner shall have actual notice before any fiduciary administering the affairs of an employer subject to the payment of contributions under this article may file the fiduciary's final report with the court under whose authority and supervision such fiduciary acts. From and after April 1, 1947, no such final report shall be filed unless a copy thereof has been served upon the commissioner by mailing a copy thereof by registered mail to the commissioner at the commissioner's office in Indianapolis at least ten (10) days prior to the filing of the same with the court. Such final report shall contain a statement that a copy thereof was served in the manner provided in this section upon the commissioner, and before such final report may be approved by the court there shall be filed in said cause a certificate from the commissioner that this section has been fully complied with in the administration of the affairs of said employer. In the event that the commissioner shall not have been served with a copy of the final report as provided in this section and the fiduciary or other officer of the court administering the affairs of any such employer shall have been discharged and the fiduciary's or other officer's final report approved, the commissioner may at any time within one (1) year from the date upon which such final report was approved file a petition with the court alleging that there was not full compliance with this section and the court, upon being satisfied that the commissioner was not fully advised of the proceedings relative to the filing and approval of the final report as provided in this section, shall set aside its approval of said final report with the result that the proceedings shall be reinstated as though no final report had been filed in the first instance and shall proceed from that point in the manner provided by law and not inconsistent with the provisions of this section.

*(Formerly: Acts 1947, c.208, s.3320.) As amended by P.L.144-1986, SEC.142; P.L.18-1987, SEC.91; P.L.21-1995, SEC.124; P.L.290-2001, SEC.28; P.L.42-2011, SEC.45.*

#### **IC 22-4-32-19**

##### **Adjustments or refunds; application; time limit**

Sec. 19. (a) The department may grant an application for adjustment or refund, make an adjustment or refund, or set off a refund as follows:

- (1) Not later than four (4) years after the date upon which any contributions or interest thereon were paid, an employing unit which has paid such contributions or interest thereon may make application for an adjustment or a refund of such contributions or an adjustment thereon in connection with subsequent contribution payments. The department shall thereupon determine whether or not such contribution or interest or any portion thereof, was erroneously paid or wrongfully assessed.
- (2) The department may grant such application in whole or in part and may make an adjustment, without interest, in

connection with subsequent contribution payments or refund such amounts, without interest, from the fund. Adjustments or refund may be made on the commissioner's own initiative.

(3) Any adjustments or refunds of interest or penalties collected for contributions due under IC 22-4-10-1 shall be charged to and paid from the special employment and training services fund created by IC 22-4-25.

(4) The department may set off any refund available to an employer under this section against any delinquent contributions, payments in lieu of contributions, and the interest and penalties, if any, related to the delinquent payments and assessments.

(b) Any decision by the department to:

- (1) grant an application for adjustment or refund;
- (2) make an adjustment or refund on its own initiative; or
- (3) set off a refund;

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

(c) If any assessment has become final by virtue of a decision of a liability administrative law judge with the result that no proceeding for judicial review as provided in this article was instituted, no refund or adjustment with respect to such assessment shall be made. *(Formerly: Acts 1947, c.208, s.3321; Acts 1967, c.310, s.23.) As amended by P.L.144-1986, SEC.143; P.L.18-1987, SEC.92; P.L.135-1990, SEC.35; P.L.21-1995, SEC.125; P.L.290-2001, SEC.29; P.L.202-2005, SEC.6; P.L.108-2006, SEC.60; P.L.175-2009, SEC.41.*

#### **IC 22-4-32-20**

##### **Contributions; penalties; personal liability of employer**

Sec. 20. The contributions, penalties, and interest due from any employer under the provisions of this article from the time they shall be due shall be a personal liability of the employer to and for the benefit of the fund and the employment and training services administration fund.

*(Formerly: Acts 1947, c.208, s.3322.) As amended by P.L.144-1986, SEC.144; P.L.18-1987, SEC.93; P.L.290-2001, SEC.30; P.L.175-2009, SEC.42.*

#### **IC 22-4-32-21**

##### **Successor employer; notice of purchase; account clearance statements; liability for contributions; liens**

Sec. 21. (a) Any individual, group of individuals, or other legal entity, whether or not an employing unit which acquires all or part of the organization, trade, or business within this state of an employer or which acquires all or part of the assets of such organization, trade or business, shall notify the commissioner in writing by registered mail not later than five (5) days prior to the acquisition.

(b) Unless such notice is given, the commissioner shall have the

right to proceed against either the predecessor or successor, in personam or in rem, for the collection of contributions and interest due or accrued and unpaid by the predecessor, as of the date of such acquisition, and the amount of such liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other liens. However, the lien shall not be valid as against one who acquires from the successor any interest in the property or assets in good faith, for value and without notice of the lien.

(c) On written request after the acquisition is completed, the commissioner shall furnish the successor with a written statement of the amount of contributions and interest due or accrued and unpaid by the predecessor as of the date of such acquisition, and the liability of the successor and the amount of the lien shall in no event exceed the reasonable value of the property or assets acquired by the successor from the predecessor or the amount disclosed by such statement, whichever is the lesser.

(d) An acquirer described in subsection (a) or a professional employer organization under IC 22-4-6.5 may file a request for clearance in the manner prescribed by the department at least five (5) business days before an acquisition or transfer. After filing a request, the acquirer or professional employer organization is entitled to receive a statement indicating whether an account being acquired or transferred is in good standing with the department as of the date of the transfer. If the statement shows that the account that is being acquired or transferred is in good standing with the department at the time of the transfer, and the department later discovers an outstanding liability associated with the acquired or transferred account, the department:

(1) may not assess a delinquent employer rate modification under IC 22-4-11-2 based on the account for which a statement was made under this subsection; and

(2) in the case of a PEO, shall administratively separate the acquired or transferred client account from the PEO until the liability is recovered.

(e) The remedies prescribed by this section are in addition to all other existing remedies against the predecessor or successor.

*(Formerly: Acts 1947, c.208, s.3323; Acts 1951, c.295, s.24 1/2.) As amended by P.L.18-1987, SEC.94; P.L.5-1988, SEC.114; P.L.21-1995, SEC.126; P.L.33-2013, SEC.5.*

#### **IC 22-4-32-22**

##### **Repealed**

*(Repealed by P.L.107-1987, SEC.50.)*

#### **IC 22-4-32-23**

##### **Dissolution, liquidation, or withdrawal of corporation; notification; clearance**

Sec. 23. (a) As used in this section:

(1) "Dissolution" refers to dissolution of a corporation under IC 23-1-45 through IC 23-1-48 or dissolution under Indiana law

of an association, a joint venture, an estate, a partnership, a limited liability partnership, a limited liability company, a joint stock company, or an insurance company (referred to as a "noncorporate entity" in this section).

(2) "Liquidation" means the operation or act of winding up a corporation's or entity's affairs, when normal business activities have ceased, by settling its debts and realizing upon and distributing its assets.

(3) "Withdrawal" refers to the withdrawal of a foreign corporation from Indiana under IC 23-1-50.

(b) The officers and directors of a corporation effecting dissolution, liquidation, or withdrawal or the appropriate individuals of a noncorporate entity shall do the following:

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

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

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

(A) the corporation's or noncorporate entity's assets;

(B) the corporation's or noncorporate entity's liabilities;

(C) details of the plan or resolution;

(D) the names and addresses of corporate officers, directors, and shareholders or the noncorporate entity's owners, members, or trustees;

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

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

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

(c) Unless a clearance is issued under subsection (g), for a period of one (1) year following the filing of the form of notification with the department, the corporate officers and directors of a corporation and the chief executive of a noncorporate entity remain personally liable, subject to IC 23-1-35-1(e), for any acts or omissions that result in the distribution of corporate or noncorporate entity assets in violation of the interests of the state. An officer or director of a corporation or a chief executive of a noncorporate entity held liable for an unlawful distribution under this subsection is entitled to contribution:

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

(2) from each shareholder, owner, member, or trustee for the amount the shareholder, owner, member, or trustee accepted.

(d) The corporation's officers' and directors' and the noncorporate entity's chief executive's personal liability includes all contributions,

penalties, interest, and fees associated with the collection of the liability due the department. In addition to the penalties provided elsewhere in this article, a penalty of up to thirty percent (30%) of the unpaid contributions may be imposed on the corporate officers and directors and the noncorporate entity's chief executive for failure to take reasonable steps to set aside corporate assets to meet the liability due the department.

(e) If the department fails to begin a collection action against a corporate officer or director or a noncorporate entity's chief executive within one (1) year after the filing of a completed form of notification with the department, the personal liability of the corporate officer or director or noncorporate entity's chief executive expires. The filing of a substantially blank form of notification or a form containing misrepresentation of material facts does not constitute filing a form of notification for the purpose of determining the period of personal liability of the officers and directors of the corporation or the chief executive of the noncorporate entity.

(f) In addition to the remedies contained in this section, the department is entitled to pursue corporate assets that have been distributed to shareholders or noncorporate entity assets that have been distributed to owners, members, or beneficiaries, in violation of the interests of the state. The election to pursue one (1) remedy does not foreclose the state's option to pursue other legal remedies.

(g) The department may issue a clearance to a corporation or noncorporate entity effecting dissolution, liquidation, or withdrawal if:

(1) the:

(A) officers and directors of the corporation have; or

(B) chief executive of the noncorporate entity has;

met the requirements of subsection (b); and

(2) request for the clearance is made in writing by the officers and directors of the corporation or chief executive of the noncorporate entity within thirty (30) days after the filing of the form of notification with the department.

(h) The issuance of a clearance by the department under subsection (g) releases the officers and directors of a corporation and the chief executive of a noncorporate entity from personal liability under this section.

*As added by P.L.107-1987, SEC.2. Amended by P.L.21-1995, SEC.127; P.L.290-2001, SEC.31; P.L.1-2002, SEC.93; P.L.175-2009, SEC.43; P.L.42-2011, SEC.46.*

## **IC 22-4-32-24**

### **Notices**

Sec. 24. (a) This section applies to notices given under sections 4, 7, 8, and 9 of this chapter.

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

(1) the assessment of contributions, penalties, and interest;

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

- (3) successorships and related matters arising from successorships;
- (4) claims for refunds and adjustments;
- (5) violations under IC 22-4-11.5;
- (6) decisions; and
- (7) notices of intention to appeal or seek judicial review.

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

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

- (1) The date on which the document is delivered to the unemployment insurance appeals division or review board.
- (2) The date of the postmark on the envelope containing the document if the document is mailed to the unemployment insurance appeals division or review board by the United States Postal Service.
- (3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the unemployment insurance appeals division or review board by a private carrier.

*As added by P.L.135-1990, SEC.36. Amended by P.L.290-2001, SEC.32; P.L.108-2006, SEC.61; P.L.175-2009, SEC.44.*

## **IC 22-4-33**

### **Chapter 33. Protection of Rights and Benefits**

#### **IC 22-4-33-1**

##### **Waiver, release, or commutation of rights; payment of employer's contributions**

Sec. 1. Except as provided in IC 22-4-39, any agreement by an individual to waive, release or commute the individual's rights to benefits or any other rights under this article is void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this article from the employer is void. No employer may make or require or accept any deduction from the remuneration of individuals in the employer's employ to finance the employer's contributions required from the employer, or require or accept any waiver by any individual in the employer's employ of any right under this article.

*(Formerly: Acts 1947, c.208, s.3401.) As amended by Acts 1978, P.L.2, SEC.2219; Acts 1982, P.L.95, SEC.7; P.L.290-2001, SEC.33; P.L.175-2009, SEC.45.*

#### **IC 22-4-33-2**

##### **Benefits; fees for claiming benefits; attorney's fees**

Sec. 2. (a) Except for fees charged under IC 22-4-17-12, no individual claiming benefits may be charged fees of any kind in a proceeding by the board, the review board, an administrative law judge, or the representative of any of them or by any court or any officer thereof.

(b) An individual claiming benefits in a proceeding before the board, the review board, an administrative law judge, or a court may be represented by counsel or other authorized agent, but no counsel or agent may charge or receive for his service more than an amount approved by the board or review board.

*(Formerly: Acts 1947, c.208, s.3402.) As amended by Acts 1978, P.L.2, SEC.2220; P.L.34-1985, SEC.10; P.L.135-1990, SEC.37.*

#### **IC 22-4-33-3**

##### **Assignment or pledge of rights to benefits; levy; execution; exemptions**

Sec. 3. Except as provided in IC 22-4-39, any assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this article shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt until such benefits are actually received by the recipient. Any waiver of any exemption provided for in this section shall be void.

*(Formerly: Acts 1947, c.208, s.3403.) As amended by Acts 1982, P.L.95, SEC.8.*

## **IC 22-4-34**

### **Chapter 34. Penalties**

#### **IC 22-4-34-1**

##### **Repealed**

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

#### **IC 22-4-34-2**

##### **False statements or representations; failure to disclose; violation of contributions, payments, reports, or records**

Sec. 2. An employing unit or other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject to this article or to avoid or reduce any contribution or other payment required from an employing unit under this article, or under the employment security law of any other state, or of the federal government or of a foreign government, or who knowingly fails to make any such contributions or other payment or to keep or furnish any reports required under this article or to produce or permit the inspection or copying of records as required under this article, commits a Class C misdemeanor. Each day of a failure constitutes a separate offense.

*(Formerly: Acts 1947, c.208, s.3502; Acts 1951, c.295, s.26.) As amended by Acts 1978, P.L.2, SEC.2221.*

#### **IC 22-4-34-3**

##### **Waiver of rights; encouragement or inducement**

Sec. 3. It is a Class C misdemeanor for an employing unit or other person to recklessly encourage or induce any individual to waive or forego any accrued or potential benefit rights under this article.

*(Formerly: Acts 1947, c.208, s.3503.) As amended by Acts 1978, P.L.2, SEC.2222.*

#### **IC 22-4-34-4**

##### **Violations**

Sec. 4. A person who knowingly violates this article commits a Class C misdemeanor, except as otherwise provided. Each day a violation continues constitutes a separate offense.

*(Formerly: Acts 1947, c.208, s.3504.) As amended by Acts 1978, P.L.2, SEC.2223.*

#### **IC 22-4-34-5**

##### **Subpoenas; disobedience**

Sec. 5. A person who knowingly fails to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, in obedience to a subpoena of the board, the department, the review board, an administrative law judge, or any duly authorized representative of any of them, commits a Class C misdemeanor. Each day a violation

continues constitutes a separate offense.  
*(Formerly: Acts 1947, c.208, s.3505.) As amended by Acts 1978,  
P.L.2, SEC.2224; P.L.135-1990, SEC.38; P.L.108-2006, SEC.62.*

## **IC 22-4-35**

### **Chapter 35. Representation of State in Legal Actions**

#### **IC 22-4-35-1**

##### **Civil actions; attorneys representing state**

Sec. 1. In any civil action to enforce the provisions of this article, the department, commissioner, state workforce innovation council, unemployment insurance board, unemployment insurance review board, and the state may be represented by any qualified attorney who is a regular salaried employee of the department and is designated by it for this purpose or, at the director's request, by the attorney general of the state. In case the governor designates special counsel to defend, on behalf of the state, the validity of this article, the expenses and compensation of such special counsel and of any experts employed by the commissioner in connection with such proceedings may be charged to the employment and training services administration fund.

*(Formerly: Acts 1947, c.208, s.3601.) As amended by P.L.144-1986, SEC.145; P.L.18-1987, SEC.95; P.L.38-1993, SEC.59; P.L.21-1995, SEC.128; P.L.161-2006, SEC.14.*

#### **IC 22-4-35-2**

##### **Criminal actions; prosecution**

Sec. 2. All criminal actions for violations of this article shall be prosecuted by the prosecuting attorney of any county, or with the assistance of the attorney general or a United States attorney, if requested by the commissioner, in which the employer has a place of business or the alleged violator resides.

*(Formerly: Acts 1947, c.208, s.3602.) As amended by Acts 1978, P.L.2, SEC.2225; P.L.18-1987, SEC.96; P.L.21-1995, SEC.129; P.L.108-2006, SEC.63.*

## **IC 22-4-36**

### **Chapter 36. Miscellaneous Provisions**

#### **IC 22-4-36-1**

##### **Benefits; payment**

Sec. 1. Benefits shall be deemed to be due and payable under this article only to the extent provided in this article and to the extent that money is available therefor to the credit of the unemployment insurance benefit fund, and neither the state nor the department shall be liable for any amount in excess of such sums.

*(Formerly: Acts 1947, c.208, s.3701.) As amended by P.L.144-1986, SEC.146; P.L.18-1987, SEC.97.*

#### **IC 22-4-36-2**

##### **Vested right; privileges and immunities; legislative prerogative**

Sec. 2. The general assembly reserves the right to amend or repeal all or any part of this article at any time, and there shall be no vested private rights of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this article or by acts done pursuant thereto shall exist subject to the power of the general assembly to amend or repeal this article at any time.

*(Formerly: Acts 1947, c.208, s.3702.) As amended by P.L.144-1986, SEC.147.*

#### **IC 22-4-36-3**

##### **Federal aid; use of funds; lease of quarters**

Sec. 3. All money received from the United States government and paid into the state treasury, as provided in this article, is appropriated and shall be expended by the commissioner for the respective purposes for which such money was allocated and paid to the state. The department is authorized to rent or lease such rooms or quarters as may be necessary, from time to time, to accommodate the department and its several activities.

*(Formerly: Acts 1947, c.208, s.3703.) As amended by P.L.144-1986, SEC.148; P.L.18-1987, SEC.98; P.L.21-1995, SEC.130.*

#### **IC 22-4-36-4**

##### **Severability of act**

Sec. 4. The provisions of this article are severable in the manner provided by IC 1-1-1-8(b).

*(Formerly: Acts 1947, c.208, s.3704.) As amended by P.L.144-1986, SEC.149.*

#### **IC 22-4-36-5**

##### **Destruction of central office; records and equipment; carrying on business**

Sec. 5. In the event of the destruction of the central office of the department and the records and equipment contained therein, the commissioner shall at the direction of the governor institute such policies or procedures without regard to any particular provision or

provisions of this article as will in the commissioner's judgment be possible to perform and best suited to carry out the general intent and purposes of this article during the emergency created by the destruction of said central office.

*(Formerly: Acts 1947, c.208, s.3705; Acts 1955, c.317, s.14.) As amended by P.L.144-1986, SEC.150; P.L.18-1987, SEC.99; P.L.21-1995, SEC.131.*

## **IC 22-4-37**

### **Chapter 37. Relationship of Federal Law to State Law**

#### **IC 22-4-37-1**

##### **Purpose; securing benefits; rules**

Sec. 1. It is declared to be the purpose of this article to secure to the state of Indiana and to employers and employees therein all the rights and benefits which are conferred under the provisions of 42 U.S.C. 501 through 504, 42 U.S.C. 1101 through 1109, 26 U.S.C. 3301 through 3311, and 29 U.S.C. 49 et seq., and the amendments thereto. Whenever the department shall find it necessary, it shall have power to formulate rules after public hearing and opportunity to be heard whereof due notice is given as is provided in this article for the adoption of rules pursuant to IC 4-22-2, and with the approval of the governor of Indiana, to adopt such rules as shall effectuate the declared purposes of this article.

*(Formerly: Acts 1947, c.208, s.3801; Acts 1971, P.L.355, SEC.46.)  
As amended by P.L.144-1986, SEC.151; P.L.108-2006, SEC.64.*

#### **IC 22-4-37-2**

##### **Amendment or repeals; contributions and benefits; suspension of payment**

Sec. 2. (a) If at any time the governor of Indiana shall find that the tax imposed by 42 U.S.C. 1101 through 1109, as amended, has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States with the result that no portion of the contributions required by this article may be credited against such tax, or if this article is declared inoperative by the supreme court of Indiana, the governor of Indiana shall publicly so proclaim, and upon the date of such proclamation the provisions of this article requiring the payment of contributions and benefits shall be suspended for a period ending not later than the last day of the next following regular or special session of the general assembly of the state of Indiana. The board shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit and shall direct the treasurer of state of Indiana to deposit such moneys, together with any other moneys in the fund, as a special fund in any banks or public depositories in this state in which general funds of the state may be deposited.

(b) Unless prior to the expiration of such period, the general assembly of the state of Indiana has made provision for an employment security law in this state and has directed that the funds so deposited shall be used for the payment of benefits in this state, the provisions of this article shall cease to be operative, and the board shall, under rules prescribed by it, refund without interest to each person by whom contributions have been paid its pro rata share of the total contributions paid under this article.

*(Formerly: Acts 1947, c.208, s.3802.) As amended by P.L.144-1986, SEC.152.*

### **IC 22-4-37-3**

#### **Invalidity of federal acts; contribution rate**

Sec. 3. (a) Should:

- (1) the Congress of the United States amend, repeal, or authorize the implementation of a demonstration project under 29 U.S.C. 49 et seq., 26 U.S.C. 3301 through 3311, 42 U.S.C. 301 et seq., or 26 U.S.C. 3101 through 3504, or any statute or statutes supplemental to or in lieu thereof or any part or parts of said statutes, or should any or all of said statutes or any part or parts thereof be held invalid, to the end and with such effect that appropriations of funds by the said Congress and grants thereof to the state for the payment of costs of administration of the department are or no longer shall be available for such purposes;
- (2) the primary responsibility for the administration of 26 U.S.C. 3301 through 26 U.S.C. 3311 be transferred to the state as a demonstration project authorized by Congress; or
- (3) employers in Indiana subject to the payment of tax under 26 U.S.C. 3301 through 3311 be granted full credit upon such tax for contributions or taxes paid to the department;

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

(b) The amount of the excess of tax for which such employer is or may become liable by reason of this section over the amount which such employer would pay or become liable for except for the provisions of this section, together with any interest or earnings thereon, shall be paid and transferred into the employment and training services administration fund to be disbursed and paid out under the same conditions and for the same purposes as is other money provided to be paid into such fund. If the commissioner shall determine that as of January 1 of any year there is an excess in said fund over the money and funds required to be disbursed therefrom for the purposes thereof for such year, then and in such cases an amount equal to such excess, as determined by the commissioner, shall be transferred to and become part of the unemployment insurance benefit fund, and such funds shall be deemed to be and are hereby appropriated for the purposes set out in this section.

*(Formerly: Acts 1947, c.208, s.3803; Acts 1967, c.310, s.25.) As amended by P.L.144-1986, SEC.153; P.L.18-1987, SEC.100; P.L.21-1995, SEC.132; P.L.214-2005, SEC.65; P.L.108-2006, SEC.65; P.L.175-2009, SEC.46.*

**IC 22-4-38**

**Chapter 38. Captions, Short Title, and Saving Provisions**

**IC 22-4-38-1**

**Interpretation of article; captions**

Sec. 1. No caption of any section, subsection, or part of Acts 1947, c.208 shall in any way affect the interpretation of this article or any part thereof.

*(Formerly: Acts 1947, c.208, s.3901.) As amended by P.L.144-1986, SEC.154.*

**IC 22-4-38-2**

**Short title**

Sec. 2. This article shall be known as and may be cited as the Indiana Employment and Training Services Act.

*(Formerly: Acts 1947, c.208, s.3902.) As amended by P.L.144-1986, SEC.155; P.L.18-1987, SEC.101.*

**IC 22-4-38-3**

**Repealed**

*(Repealed by P.L.34-1985, SEC.11.)*

## **IC 22-4-39**

### **Chapter 39. Deduction of Child Support Obligations**

#### **IC 22-4-39-1**

##### **Definitions**

Sec. 1. As used in this chapter:

(1) "Child support obligations" includes only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Title IV-D of the Social Security Act.

(2) "Legal process" means a writ, an order, a summons, or other process in the nature of garnishment that is issued by:

(A) a court with jurisdiction in a state, territory, or possession of the United States;

(B) a court with jurisdiction in a foreign country with which the United States has entered into an agreement that requires the United States to honor the process; or

(C) an authorized official acting under an order of a court with jurisdiction or under state or local law.

(3) "State or local child support enforcement agency" means any agency of any state or a political subdivision of the state operating pursuant to a plan described in subdivision (1).

(4) "Unemployment compensation" means any compensation payable under this article (including amounts payable by the department pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment).

*As added by Acts 1982, P.L.95, SEC.9. Amended by P.L.18-1987, SEC.102; P.L.235-1999, SEC.12.*

#### **IC 22-4-39-2**

##### **Disclosure of obligations; notification of child support enforcement agency**

Sec. 2. An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether the individual owes child support obligations as defined in section 1 of this chapter. If the individual discloses that the individual owes child support obligations and is determined to be eligible for unemployment compensation, the department shall notify the state or local child support enforcement agency enforcing that obligation that the individual has been determined to be eligible for unemployment compensation.

*As added by Acts 1982, P.L.95, SEC.9. Amended by P.L.18-1987, SEC.103.*

#### **IC 22-4-39-3**

##### **Deductions; amount**

Sec. 3. The department shall deduct and withhold from any unemployment compensation payable to an individual that owes

child support obligations:

- (1) the amount specified by the individual to the department to be deducted and withheld under this section, if neither subdivision (2) nor (3) is applicable;
- (2) the amount (if any) determined pursuant to an agreement submitted to the department under Section 454(20)(B)(1) of the Social Security Act by the state or local child support enforcement agency, unless subdivision (3) is applicable; or
- (3) any amount otherwise required to be so deducted and withheld from the unemployment compensation pursuant to legal process properly served upon the department.

*As added by Acts 1982, P.L.95, SEC.9. Amended by P.L.18-1987, SEC.104; P.L.235-1999, SEC.13.*

#### **IC 22-4-39-4**

##### **Deductions; payment to child support enforcement agency**

Sec. 4. (a) Any amount deducted and withheld under section 3 of this chapter shall be paid by the department to the appropriate state or local child support enforcement agency.

(b) Any amount deducted and withheld under section 3 of this chapter shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state or local child support enforcement agency as a payment on the individual's child support obligations.

*As added by Acts 1982, P.L.95, SEC.9. Amended by P.L.18-1987, SEC.105.*

#### **IC 22-4-39-5**

##### **Application of chapter**

Sec. 5. This chapter applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this chapter which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

*As added by Acts 1982, P.L.95, SEC.9. Amended by P.L.18-1987, SEC.106.*

## **IC 22-4-39.5**

### **Chapter 39.5. Reimbursements by Employers of Unauthorized Aliens**

#### **IC 22-4-39.5-1**

##### **"E-Verify program"**

Sec. 1. As used in this chapter, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

*As added by P.L.171-2011, SEC.15.*

#### **IC 22-4-39.5-2**

##### **"Knowingly employ an unauthorized alien"**

Sec. 2. As used in this chapter, "knowingly employ an unauthorized alien" has the meaning prescribed in 8 U.S.C. 1324a as in effect on July 1, 2011. This term shall be interpreted consistently with 8 U.S.C. 1324a and any applicable federal rules or regulations.

*As added by P.L.171-2011, SEC.15.*

#### **IC 22-4-39.5-3**

##### **Civil action to obtain reimbursement from employer that knowingly employed an unauthorized alien; filing; federal government verification; awards; deposit**

Sec. 3. (a) The department may file a civil action to obtain reimbursement of amounts paid by the department as unemployment insurance benefits from an employer that has knowingly employed an unauthorized alien.

(b) The action must be filed in the county in which the employer employed the unauthorized alien.

(c) In determining whether an individual is an unauthorized alien for purposes of this chapter, a court may consider only the federal government's verification or status information under 8 U.S.C. 1373(c).

(d) After holding a hearing and making a finding that the employer knowingly employed an unauthorized alien, the court shall award the following to the department:

(1) The reimbursement of unemployment insurance benefits paid by the department computed using the salary of the position held by the unauthorized alien during the period the unauthorized alien was employed by the employer.

(2) Reasonable costs and attorney's fees.

(e) The department shall deposit the reimbursement awarded under subsection (d)(1) in the unemployment insurance benefit fund

established by IC 22-4-26-1.  
*As added by P.L.171-2011, SEC.15.*

#### **IC 22-4-39.5-4**

##### **Prohibited from filing an action**

Sec. 4. (a) The department may not file an action under section 3 of this chapter against an employer that has knowingly employed an unauthorized alien if the alien was employed by the employer before July 1, 2011.

(b) The department may not file an action under section 3 of this chapter against an employer who used the E-Verify program to verify the employment eligibility of an individual who is determined to be an unauthorized alien.

*As added by P.L.171-2011, SEC.15.*

#### **IC 22-4-39.5-5**

##### **Department powers**

Sec. 5. The department has the power to:

- (1) administer oaths and affirmations;
- (2) take depositions; and
- (3) issue and serve subpoenas that compel:
  - (A) the attendance of witnesses; and
  - (B) the production of books, papers, correspondence, memoranda, and other records;

as necessary for the department to administer this chapter.

*As added by P.L.171-2011, SEC.15.*

**IC 22-4-40**

**Repealed**

*(Repealed by P.L.161-2006, SEC.33.)*

## **IC 22-4-41**

### **Chapter 41. Indiana Jobs Training Program**

#### **IC 22-4-41-1**

##### **Purpose**

Sec. 1. The purpose of this chapter is to create the Indiana jobs training program to provide job training and related services to dislocated workers.

*As added by P.L.18-1987, SEC.111.*

#### **IC 22-4-41-2**

##### **"Dislocated workers" defined**

Sec. 2. As used in this chapter, "dislocated workers" means workers who:

- (1) have been terminated or laid off or who have received a notice of termination or layoff from employment, are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation;
- (2) have been terminated, or who have received a notice of termination of employment, as a result of any permanent closure of a plant or facility;
- (3) are long term unemployed individuals and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individuals reside, including any older individuals who may have substantial barriers to employment by reason of age;
- (4) were self-employed (including farmers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters; or
- (5) are in danger of becoming dislocated due to a permanent closure of a plant or facility or a significant reduction in the workforce.

*As added by P.L.18-1987, SEC.111. Amended by P.L.21-1995, SEC.133.*

#### **IC 22-4-41-3**

##### **Repealed**

*(Repealed by P.L.161-2006, SEC.33.)*

#### **IC 22-4-41-4**

##### **Appropriations**

Sec. 4. Any appropriations made by the general assembly under this chapter shall be used for the provision of training and services for dislocated workers and may be used as matching funds for any future applicable federal program administered by the department.

*As added by P.L.18-1987, SEC.111. Amended by P.L.161-2006, SEC.15.*

#### **IC 22-4-41-5**

**Administration; approval for grant or program**

Sec. 5. The department shall administer this chapter. Each grant or program requires the approval of the governor and the state budget agency.

*As added by P.L.18-1987, SEC.111.*

**IC 22-4-41-6**

**Rules**

Sec. 6. The department may adopt rules under IC 4-22-2 to implement this chapter.

*As added by P.L.18-1987, SEC.111.*

**IC 22-4-41-7**

**Money appropriated to department to remain for expenditure consistent with chapter**

Sec. 7. All money appropriated to the department under this chapter does not revert to the state general fund at the close of any fiscal year, but remains available to the department for expenditure consistent with this chapter.

*As added by P.L.18-1987, SEC.111.*

## **IC 22-4-42**

### **Chapter 42. Workforce Development Centers**

#### **IC 22-4-42-1**

##### **Establishing one stop centers**

Sec. 1. The department may establish at least one (1) one stop center within each workforce service area.

*As added by P.L.19-1992, SEC.52. Amended by P.L.21-1995, SEC.134; P.L.161-2006, SEC.16.*

#### **IC 22-4-42-2**

##### **Duties**

Sec. 2. If established, each one stop center shall do the following:

- (1) Provide the uniform assessment developed by the department under IC 22-4-18-6 of an individual's strengths and weaknesses with regard to workforce and other skills and offer job counseling that is relevant to the assessment results.
- (2) Provide information concerning training, retraining, employment, and career opportunities.
- (3) Assist employers in analyzing the correlation between a particular job opening and the training required to perform at that job.

*As added by P.L.19-1992, SEC.52. Amended by P.L.38-1993, SEC.60; P.L.21-1995, SEC.135; P.L.340-1995, SEC.104; P.L.2-1996, SEC.268; P.L.161-2006, SEC.17.*

#### **IC 22-4-42-3**

##### **Repealed**

*(Repealed by P.L.161-2006, SEC.33.)*

#### **IC 22-4-42-4**

##### **Repealed**

*(Repealed by P.L.161-2006, SEC.33.)*

## **IC 22-4-43**

### **Chapter 43. Hoosier Workers First Training Program**

#### **IC 22-4-43-1**

##### **"Fund"**

Sec. 1. As used in this chapter, "fund" refers to the Hoosier workers first training fund established by section 5 of this chapter.  
*As added by P.L.175-2009, SEC.47.*

#### **IC 22-4-43-2**

##### **Program established; purposes**

Sec. 2. The Hoosier workers first training program is established for the following purposes:

- (1) To improve manufacturing productivity levels in Indiana.
- (2) To enable firms to become competitive by making workers more productive through training.
- (3) To create a competitive economy by creating and retaining jobs.
- (4) To encourage the increased training necessary because of an aging workforce.
- (5) To avoid potential payment of unemployment compensation by providing workers with enhanced job skills.

*As added by P.L.175-2009, SEC.47.*

#### **IC 22-4-43-3**

##### **Program administration**

Sec. 3. The department shall administer the Hoosier workers first training program.

*As added by P.L.175-2009, SEC.47.*

#### **IC 22-4-43-4**

##### **Annual report**

Sec. 4. For each state fiscal year, the department shall prepare an annual report on the use of the fund as a part of the report required by IC 22-4-18-7.

*As added by P.L.175-2009, SEC.47.*

#### **IC 22-4-43-5**

##### **Fund established; purposes; worker training grants; administration; investments**

Sec. 5. (a) The Hoosier workers first training fund is established to do the following:

- (1) Administer the costs of the Hoosier workers first training program established by section 2 of this chapter.
- (2) Undertake any program or activity that furthers the purposes of this chapter.

(b) The money in the fund shall be allocated to employers or consortiums for worker training grants that enable workers who reside in Indiana to obtain recognizable credentials or certifications and transferable employment skills that improve employer

competitiveness.

(c) Special consideration shall be given to Ivy Tech Community College (as defined in IC 21-7-13-22) to be the provider of the training funded under this chapter whenever the state educational institution:

(1) meets the identified training needs of an employer or a consortium with an existing credentialing or certification program; and

(2) is the most cost effective provider.

(d) For the worker training grants described in subsection (b), the department shall do the following:

(1) Provide grant applications to interested employers and consortiums.

(2) Accept completed applications for the grants.

(3) Obtain all information necessary or appropriate to determine whether an applicant qualifies for a grant, including information concerning:

(A) the applicant;

(B) the training to be offered;

(C) the training provider; and

(D) the workers to be trained.

(4) Allocate the money in the fund in accordance with subsections (b) and (c).

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(f) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(g) The fund consists of the following:

(1) Appropriations from the general assembly.

(2) Earnings acquired through the use of money belonging to the fund.

(3) Money deposited in the fund from any other source.

(h) Any balance in the fund does not lapse but is available continuously to the department for expenditures for the program established by this chapter.

*As added by P.L.175-2009, SEC.47.*