

January 22, 1998

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## HOUSE BILL No. 1234

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DIGEST OF HB 1234 (Updated January 21, 1998 8:40 pm - DI 44)

**Citations Affected:** IC 22-4.

**Synopsis:** Unemployment compensation warrants. Provides that the clerk of the circuit court, when given a warrant for unpaid assessments against an employer from the commissioner of workforce development, shall record the warrant information in the clerk's office. Provides that five days after the clerk receives the warrant, the amount of the warrant becomes a lien upon all property of the employer. Provides that upon recording, the amount of a warrant for unpaid assessments from the commissioner of workforce development becomes a lien upon all property of the employer. Eliminates the requirement that a sheriff pay twenty dollars (\$20) when timely return of the warrant is not made by the sheriff. Removes the liability upon the sheriff's bond for failure of the sheriff to levy upon and sell property held by the employer.  
(Continued next page)

**Effective:** July 1, 1998.

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**Hasler, Frizzell, Liggett, Behning**

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January 13, 1998, read first time and referred to Committee on Labor and Employment.  
January 21, 1998, amended, reported — Do Pass.

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HB 1234—LS 7214/DI 96



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Digest Continued

Removes the authority of the sheriff to administer oaths related to the sheriff's duties in the execution of warrants for unpaid assessments.  
Makes conforming amendments.

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**HB 1234—LS 7214/DI 96**



January 22, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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## HOUSE BILL No. 1234

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 22-4-29-6, AS AMENDED BY P.L.21-1995,  
2 SECTION 113, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Unless an assessment is  
4 paid in full within seven (7) days after it becomes final, the  
5 commissioner or the commissioner's representative may file with the  
6 clerk of the circuit court of any county in the state a warrant in  
7 duplicate, directed to the sheriff of such county, commanding the  
8 sheriff to levy upon and sell the property, real and personal, tangible  
9 and intangible, of the employing unit against whom the assessment has  
10 been made, in sufficient quantity to satisfy the amount thereof, plus  
11 damages to the amount of ten percent (10%) of such assessment, which  
12 shall be in addition to the penalties prescribed in this article for  
13 delinquent payment, and in addition to the interest at the rate of one  
14 percent (1%) per month upon the unpaid contribution from the date it  
15 was due, to the date of payment of the warrant, and in addition to all

HB 1234—LS 7214/DI 96



1 costs incident to the recording and execution thereof. **The remedies by**  
 2 **garnishment and proceedings supplementary to execution as**  
 3 **provided by law shall be available to the board to effectuate the**  
 4 **purposes of this chapter. Within five (5) days after receipt of a**  
 5 **warrant under this section, the clerk shall:**

- 6 (1) retain the duplicate copy of the warrant;  
 7 (2) enter in the judgment record in the column for judgment  
 8 debtors the name of the employing unit stated in the warrant,  
 9 or if the employing unit is a partnership, the names of the  
 10 partners;  
 11 (3) enter the amount sought by the warrant;  
 12 (4) enter the date the warrant was received; and  
 13 (5) certify the original warrant and return it to the  
 14 department.

15 (b) Five (5) days after the clerk receives a warrant under  
 16 subsection (a), the amount sought in the warrant, the damages,  
 17 penalties, and interest described in subsection (a), become a lien  
 18 upon the title to and interest in the real and personal property of  
 19 the employing unit.

20 SECTION 2. IC 22-4-29-7, AS AMENDED BY P.L.21-1995,  
 21 SECTION 114, IS AMENDED TO READ AS FOLLOWS  
 22 [EFFECTIVE UPON PASSAGE]: Sec. 7. The clerk shall return the  
 23 original, certified copy of the warrant to the department together with  
 24 all recording information concerning the warrant. ~~When the clerk has~~  
 25 ~~received the warrant,~~ **Upon receipt of the warrant from the clerk,** the  
 26 department ~~may~~ **shall** issue the warrant to the sheriff of the county.

27 SECTION 3. IC 22-4-29-8, AS AMENDED BY P.L.21-1995,  
 28 SECTION 115, IS AMENDED TO READ AS FOLLOWS  
 29 [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) If the clerk fails to record  
 30 the warrant and issue the same to the department within five (5) days  
 31 after it has been received by the clerk as herein provided, the clerk  
 32 shall forfeit to the state for each such failure the sum of twenty dollars  
 33 (\$20), which shall be deposited in the unemployment insurance benefit  
 34 fund.

35 (b) Within one hundred twenty (120) days from the date of receipt  
 36 of the warrant (or immediately after service if the warrant is fully  
 37 satisfied or found to be wholly uncollectible) the sheriff shall return it  
 38 **to the department,** together with the money collected, less fees and  
 39 costs. ~~payable to the department; and make his return thereon.~~

40 (c) "Costs" as referred to in this subsection includes the fees of the  
 41 clerk and sheriff as are specifically provided for and costs of storage,  
 42 appraisal, publication, and other necessary and properly chargeable

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1 expenses incurred in the sale of property on execution. The costs herein  
2 specifically prescribed for the clerk and sheriff shall be as follows:

3 (1) Clerk's fee of three dollars (\$3) to be charged on the warrant  
4 and paid to the clerk for recording the warrant.

5 (2) Sheriff's fee of:

6 (A) six dollars (\$6) to be charged on the warrant and paid to  
7 the sheriff in every instance in which the warrant has been  
8 duly and properly served and the schedules and affidavits  
9 hereinafter provided for have been executed and signed; or

10 (B) ten dollars (\$10) for sale of property on execution or  
11 decree, including making a deed or certificate of sale, to be  
12 charged on the warrant.

13 SECTION 4. IC 22-4-29-10, AS AMENDED BY P.L.21-1995,  
14 SECTION 117, IS AMENDED TO READ AS FOLLOWS  
15 [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) The return by the sheriff  
16 to the department of the warrants shall be made monthly on or before  
17 the fifth day of the month. All money so returned to the department  
18 shall be receipted for by the department and its endorsement upon the  
19 check transmitted by the sheriff shall be conclusive evidence of such  
20 payment by the sheriff and no other receipt shall be necessary.

21 (b) If a warrant is not satisfied within the one hundred twenty (120)  
22 days specified in section 8 of this chapter, nothing herein shall operate  
23 to prevent the department from issuing subsequent warrants upon the  
24 identical amount of the unpaid assessment. Subsequent warrants shall  
25 not be recorded by the clerk, and no fees shall be chargeable by the  
26 clerk. Upon any subsequent warrant, the sheriff shall be entitled to a  
27 sum for mileage equal to that sum per mile paid to state officers and  
28 employees, with the rate changing each time the state government  
29 changes its rate per mile, but shall not be entitled to any other fee if the  
30 same has been paid the sheriff for services upon the original warrant,  
31 except that in case collection is made in part or in full with respect to  
32 any such subsequent warrant, the sheriff is entitled to the five percent  
33 (5%) or ten percent (10%) as provided in section 9(b) of this chapter.

34 (c) In every instance in which the sheriff shall return any warrant  
35 unsatisfied, the sheriff shall attach to the ~~sheriff's return an inventory~~  
36 ~~or schedule of all the property, real and personal, tangible and~~  
37 ~~intangible, of the employing unit, sworn to by the employing unit, and~~  
38 ~~describing the real estate by metes and bounds and the personal~~  
39 ~~property by separate items; specifically noting thereon all~~  
40 ~~encumbrances, or in lieu thereof a sworn statement by the employing~~  
41 ~~unit that it possesses no property whatever. warrant a summary of all~~  
42 **relative information regarding the attempts to collect the warrant**



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1 **and the reason the warrant is being returned unsatisfied.**

2 SECTION 5. IC 22-4-29-11 IS AMENDED TO READ AS  
 3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) If, within  
 4 the time prescribed in the warrant, the sheriff shall fail to file such  
 5 schedule or such statement of the employing unit or a statement sworn  
 6 to by the sheriff that the sheriff has made a demand upon the  
 7 employing unit to make such schedule or statement and that such  
 8 demand was refused, the sheriff shall forfeit to the state for each such  
 9 failure the sum of twenty dollars (\$20) which amount shall be  
 10 deposited in the unemployment insurance benefit fund. However, such  
 11 penalty shall not be imposed In the event the sheriff is unable to locate  
 12 said the employing unit after diligent search, ~~and files the sheriff shall~~  
 13 **file** with the department a statement sworn to by the said sheriff that a  
 14 diligent search has been made and the said employing unit cannot be  
 15 located within the sheriff's bailiwick. ~~It shall be the duty of the~~  
 16 **employing unit to make such verified inventory, schedule, or statement,**  
 17 **upon the demand of the sheriff, and it shall be unlawful for any**  
 18 **employing unit or officer thereof to refuse so to do:**

19 (b) Should any inventory or schedule disclose any property upon  
 20 which the sheriff might have made a levy and sale to satisfy, or  
 21 partially satisfy, any warrant, the failure of the sheriff to make such  
 22 levy and sale shall constitute misfeasance in office, and shall subject  
 23 the sheriff to liability upon the sheriff's official bond, to the state, in an  
 24 amount equal to the amount which might have been collected upon the  
 25 said warrant had such levy and sale been made. Such liability upon the  
 26 part of the sheriff shall constitute a debt due the state and may be  
 27 recovered in any suit instituted by the attorney general in the name of  
 28 the state for that purpose, which amount so recovered shall be treated  
 29 as though collected from the employing unit.

30 SECTION 6. IC 22-4-29-12 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The liability  
 32 for any contributions, interest, penalties, and damages imposed by this  
 33 chapter, or costs incidental to execution of warrants, shall not be  
 34 subject to any of the provisions of the exemption laws of the state of  
 35 Indiana for the relief of debtors.

36 (b) All sheriffs are authorized and empowered to administer all  
 37 oaths that may be found convenient and necessary to be administered  
 38 in the discharge of their official duties under the requirements of this  
 39 chapter, and all oaths so administered shall be without charge or  
 40 expense whatsoever.

41 SECTION 7. **An emergency is declared for this act.**



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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1234, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 3 with: "[EFFECTIVE UPON PASSAGE]".

Page 1, line 16, after "thereof." insert: "**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.**".

Page 2, line 2, after "enter" insert: "**in the judgment record in the column for judgment debtors**".

Page 2, line 3, delete ";" and insert: "**, or if the employing unit is a partnership, the names of the partners;**".

Page 2, line 4, delete "and".

Page 2, line 5, delete "." and insert "**; and**".

Page 2, between lines 5 and 6, begin a new line block indented and insert:

**"(5) certify the original warrant and return it to the department."**

Page 3, after line 2, begin a new paragraph and insert:

"SECTION 4. IC 22-4-29-10, AS AMENDED BY P.L.21-1995, SECTION 117, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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

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(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 sheriff's return an inventory or schedule of all the property, real and personal, tangible and intangible, of the employing unit, sworn to by the employing unit, and describing the real estate by metes and bounds and the personal property by separate items, specifically noting thereon all encumbrances, or in lieu thereof a sworn statement by the employing unit that it possesses no property whatever: **warrant a summary of all relative information regarding the attempts to collect the warrant and the reason the warrant is being returned unsatisfied.**

SECTION 5. IC 22-4-29-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) If, within the time prescribed in the warrant, the sheriff shall fail to file such schedule or such statement of the employing unit or a statement sworn to by the sheriff that the sheriff has made a demand upon the employing unit to make such schedule or statement and that such demand was refused, the sheriff shall forfeit to the state for each such failure the sum of twenty dollars (\$20) which amount shall be deposited in the unemployment insurance benefit fund: However, such penalty shall not be imposed In the event the sheriff is unable to locate said the employing unit after diligent search, **and files the sheriff shall file** with the department a statement sworn to by the said sheriff that a diligent search has been made and the said employing unit cannot be located within the sheriff's bailiwick. **It shall be the duty of the employing unit to make such verified inventory, schedule, or statement, upon the demand of the sheriff, and it shall be unlawful for any employing unit or officer thereof to refuse so to do:**

(b) Should any inventory or schedule disclose any property upon which the sheriff might have made a levy and sale to satisfy, or partially satisfy, any warrant, the failure of the sheriff to make such levy and sale shall constitute misfeasance in office, and shall subject the sheriff to liability upon the sheriff's official bond, to the state, in an amount equal to the amount which might have been collected upon the said warrant had such levy and sale been made. Such liability upon the part of the sheriff shall constitute a debt due the state and may be recovered in any suit instituted by the attorney general in the name of the state for that purpose, which amount so recovered shall be treated as though collected from the employing unit.

SECTION 6. IC 22-4-29-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The liability for any contributions, interest, penalties, and damages imposed by this



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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.

(b) All sheriffs are authorized and empowered to administer all oaths that may be found convenient and necessary to be administered in the discharge of their official duties under the requirements of this chapter, and all oaths so administered shall be without charge or expense whatsoever.

**SECTION 7. An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1234 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 12, nays 0.

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