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# HOUSE BILL No. 1167

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-1-8-1; IC 22-4-32; IC 23-1; IC 25-1-5-8; IC 25-1-6-8.

**Synopsis:** Uncollected workforce development contributions. Provides that the directors and officers of an employer have personal liability for unemployment taxes owed by the employer. Provides that in a corporate dissolution, without clearance from the department of workforce development, the officers and directors of a corporation are personally liable for amounts owed by the corporation to the department of workforce development if the corporation has insufficient assets to pay the amounts owed to the department. Requires a corporation seeking reinstatement after an administration dissolution to submit certification to the secretary of state stating that all employer contributions owed by the corporation under the worker's compensation statute are paid. Provides that the department of workforce development may allow the department of state revenue and the secretary of state access to the name of each corporate officer and director, and Social Security number of each corporate officer and director, for collection purposes toward the unpaid liability. Prohibits the health professions bureau and Indiana professional licensing agency from issuing a license to a person who has unpaid liability with the department of workforce development.

**Effective:** Upon passage; July 1, 2001.

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## Liggett, Thompson

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January 9, 2001, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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First Regular Session 112th General Assembly (2001)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

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## HOUSE BILL No. 1167



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 4-1-8-1 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) No individual may be  
3 compelled by any state agency, board, commission, department,  
4 bureau, or other entity of state government (referred to as "state  
5 agency" in this chapter) to provide the individual's Social Security  
6 number to the state agency against the individual's will, absent federal  
7 requirements to the contrary. However, the provisions of this chapter  
8 do not apply to the following:  
9 (1) Department of state revenue.  
10 (2) Department of workforce development.  
11 (3) The programs administered by:  
12 (A) the division of family and children;  
13 (B) the division of mental health;  
14 (C) the division of disability, aging, and rehabilitative services;  
15 and  
16 (D) the office of Medicaid policy and planning;  
17 of the office of the secretary of family and social services.



- 1 (4) Auditor of state.  
 2 (5) State personnel department.  
 3 (6) Secretary of state, with respect to:  
 4 (A) the registration of broker-dealers, agents, and investment  
 5 advisors; and  
 6 (B) **the initial directors named in the articles of**  
 7 **incorporation.**  
 8 (7) The legislative ethics commission, with respect to the  
 9 registration of lobbyists.  
 10 (8) Indiana department of administration, with respect to bidders  
 11 on contracts.  
 12 (9) Indiana department of transportation, with respect to bidders  
 13 on contracts.  
 14 (10) Health professions bureau.  
 15 (11) Indiana professional licensing agency.  
 16 (12) Indiana department of insurance, with respect to licensing of  
 17 insurance agents.  
 18 (13) A pension fund administered by the board of trustees of the  
 19 public employees' retirement fund.  
 20 (14) The Indiana state teachers' retirement fund.  
 21 (15) The state police benefit system.  
 22 (b) The bureau of motor vehicles may, notwithstanding this chapter,  
 23 require the following:  
 24 (1) That an individual include the individual's Social Security  
 25 number in an application for an official certificate of title for any  
 26 vehicle required to be titled under IC 9-17.  
 27 (2) That an individual include the individual's Social Security  
 28 number on an application for registration.  
 29 (3) That a corporation, limited liability company, firm,  
 30 partnership, or other business entity include its federal tax  
 31 identification number on an application for registration.  
 32 (c) The Indiana department of administration, the Indiana  
 33 department of transportation, the health professions bureau, and the  
 34 Indiana professional licensing agency may require an employer to  
 35 provide its federal employer identification number.  
 36 (d) The department of correction may require a committed offender  
 37 to provide the offender's Social Security number for purposes of  
 38 matching data with the Social Security Administration to determine  
 39 benefit eligibility.  
 40 (e) The Indiana gaming commission may, notwithstanding this  
 41 chapter, require the following:  
 42 (1) That an individual include the individual's Social Security

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1 number in any application for a riverboat owner's license,  
2 supplier's license, or occupational license.

3 (2) That a sole proprietorship, a partnership, an association, a  
4 fiduciary, a corporation, a limited liability company, or any other  
5 business entity include its federal tax identification number on an  
6 application for a riverboat owner's license or supplier's license.

7 SECTION 2. IC 22-4-32-20 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 20. The contributions,  
9 penalties, and interest due from any employer under the provisions of  
10 this article from the time they shall be due shall be a personal liability  
11 of the:

12 (1) employer; **and**

13 (2) **directors and officers of an employer;**

14 to and for the benefit of the fund and the employment and training  
15 services administration fund.

16 SECTION 3. IC 22-4-32-23 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 23. (a) As used in this  
18 section:

19 (1) "Dissolution" refers to dissolution of a corporation under  
20 IC 23-1-45 through IC 23-1-48.

21 (2) "Liquidation" means the operation or act of winding up a  
22 corporation's affairs, when normal business activities have ceased,  
23 by settling its debts and realizing upon and distributing its assets.

24 (3) "Withdrawal" refers to the withdrawal of a foreign corporation  
25 from Indiana under IC 23-1-50.

26 (b) The officers and directors of a corporation effecting dissolution,  
27 liquidation, or withdrawal shall do the following:

28 (1) File all necessary documents with the department in a timely  
29 manner as required by this article.

30 (2) Make all payments of contributions to the department in a  
31 timely manner as required by this article.

32 (3) File with the department a form of notification within thirty  
33 (30) days of the adoption of a resolution or plan. The form of  
34 notification shall be prescribed by the department and may  
35 require information concerning:

36 (A) the corporation's assets;

37 (B) the corporation's liabilities;

38 (C) details of the plan or resolution;

39 (D) the names and addresses of corporate officers, directors,  
40 and shareholders;

41 (E) a copy of the minutes of the shareholders' meeting at which  
42 the plan or resolution was formally adopted; and

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1 (F) such other information as the board may require.

2 The commissioner may accept, in lieu of the department's form of  
3 notification, a copy of Form 966 that the corporation filed with  
4 the Internal Revenue Service.

5 (c) **Notwithstanding IC 23-1-35-1(e)**, unless a clearance is issued  
6 under subsection (g) for a period of one (1) year following the filing of  
7 the form of notification with the department; (f), the corporate officers  
8 and directors remain personally liable subject to IC 23-1-35-1(e); for  
9 any acts or omissions that result in the distribution of corporate assets  
10 in violation of the interests of the state. An officer or director held  
11 liable for an unlawful distribution under this subsection is entitled to  
12 contribution:

13 (1) from every other director who voted for or assented to the  
14 distribution; subject to IC 23-1-35-1(e); and

15 (2) from each shareholder for the amount the shareholder  
16 accepted:

17 (d) The corporation's officers' and directors' personal liability  
18 includes for all contributions, penalties, interest, and fees associated  
19 with the collection of the liability due the department. In addition to the  
20 penalties provided elsewhere in this article, a penalty of up to thirty  
21 percent (30%) of the unpaid contributions may be imposed on the  
22 corporate officers and directors for failure to take reasonable steps to  
23 set aside corporate assets to meet the liability due the department.

24 (e) If the department fails to begin a collection action against a  
25 corporate officer or director within one (1) year after the filing of a  
26 completed form of notification with the department; the personal  
27 liability of the corporate officer or director expires. The filing of a  
28 substantially blank form of notification or a form containing  
29 misrepresentation of material facts does not constitute filing a form of  
30 notification for the purpose of determining the period of personal  
31 liability of the officers and directors of the corporation:

32 (f) (d) In addition to the remedies contained in this section, the  
33 department is entitled to pursue corporate assets that have been  
34 distributed to shareholders in violation of the interests of the state. The  
35 election to pursue one (1) remedy does not foreclose the state's option  
36 to pursue other legal remedies.

37 (e) **The department may allow the department of state revenue**  
38 **and the secretary of state access to the name of each corporate**  
39 **officer and director, and Social Security number of each corporate**  
40 **officer and director, if known by the department. The department**  
41 **of state revenue shall apply any excess of tax deducted as set forth**  
42 **in IC 6-3-4-8(h) from a corporate officer or director toward an**

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1 **unpaid liability due under subsection (c). The secretary of state**  
 2 **shall refuse to file articles of incorporation for a new corporation**  
 3 **under IC 23-1-18-6 if a corporate officer or director with an**  
 4 **unpaid liability in subsection (c) is shown as an initial director of**  
 5 **the new corporation, as set forth in IC 23-1-21-2(b)(1).**

6 ~~(g)~~ **(f)** The department may issue a clearance to a corporation  
 7 effecting dissolution, liquidation, or withdrawal if:

8 (1) the officers and directors of the corporation have met the  
 9 requirements of subsection (b); and

10 (2) request for the clearance is made in writing by the officers and  
 11 directors of the corporation within thirty (30) days after the filing  
 12 of the form of notification with the department.

13 ~~(h)~~ **(g)** The issuance of a clearance by the department under  
 14 subsection ~~(g)~~ **(f)** releases the officers and directors from personal  
 15 liability under this section.

16 SECTION 4. IC 23-1-21-2 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The articles of  
 18 incorporation must set forth:

19 (1) a corporate name for the corporation that satisfies the  
 20 requirements of IC 23-1-23-1;

21 (2) the number of shares the corporation is authorized to issue;

22 (3) the street address of the corporation's initial registered office  
 23 in Indiana and the name of its initial registered agent at that  
 24 office; and

25 (4) the name and address of each incorporator.

26 (b) The articles of incorporation may set forth:

27 (1) the names and addresses of the individuals who are to serve as  
 28 the initial directors, **and shall set forth the Social Security**  
 29 **number of the individuals who are to serve as the initial**  
 30 **directors if such are listed;**

31 (2) provisions not inconsistent with law regarding:

32 (A) the purpose or purposes for which the corporation is  
 33 organized;

34 (B) managing the business and regulating the affairs of the  
 35 corporation;

36 (C) defining, limiting, and regulating the powers of the  
 37 corporation, its board of directors, and shareholders;

38 (D) a par value for authorized shares or classes of shares; and

39 (E) the imposition of personal liability on shareholders for the  
 40 debts of the corporation to a specified extent and upon  
 41 specified conditions; and

42 (3) any provision that under this article is required or permitted to

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1 be set forth in the bylaws.

2 (c) The articles of incorporation need not set forth any of the  
3 corporate powers enumerated in this article.

4 SECTION 5. IC 23-1-46-3 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) A corporation  
6 administratively dissolved under section 2 of this chapter may apply to  
7 the secretary of state for reinstatement. The application must:

8 (1) recite the name of the corporation and the effective date of its  
9 administrative dissolution;

10 (2) state that the ground or grounds for dissolution either did not  
11 exist or have been eliminated;

12 (3) state that the corporation's name satisfies the requirements of  
13 IC 23-1-23-1; **and**

14 (4) contain a certificate from the department of state revenue  
15 reciting that all taxes owed by the corporation have been paid;  
16 **and**

17 **(5) contain a certificate from the department of workforce**  
18 **development stating that all employer contributions owed by**  
19 **the corporation under IC 22-4-10 have been paid.**

20 (b) If the secretary of state determines that the application contains  
21 the information required by subsection (a) and that the information is  
22 correct, the secretary of state shall cancel the certificate of dissolution  
23 and prepare a certificate of reinstatement that recites the determination  
24 and the effective date of reinstatement, file the original of the  
25 certificate, and serve a copy on the corporation under IC 23-1-24-4.

26 (c) When the reinstatement is effective, it relates back to and takes  
27 effect as of the effective date of the administrative dissolution and the  
28 corporation resumes carrying on its business as if the administrative  
29 dissolution had never occurred.

30 SECTION 6. IC 25-1-5-8 IS AMENDED TO READ AS FOLLOWS  
31 [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) The bureau and the boards  
32 may allow the department of state revenue **and the department of**  
33 **workforce development** access to the name of each person who:

34 (1) is licensed under this chapter; or

35 (2) has applied for a license under this chapter.

36 (b) If the department of state revenue notifies the bureau that a  
37 person is on the most recent tax warrant list, the bureau may not issue  
38 or renew the person's license until:

39 (1) the person provides to the bureau a statement from the  
40 department of state revenue that the person's delinquent tax  
41 liability has been satisfied; or

42 (2) the bureau receives a notice from the commissioner of the

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1 department of state revenue under IC 6-8.1-8-2(k).

2 **(c) If the department of workforce development notifies the**  
 3 **bureau that a person has unpaid contribution liability, the bureau**  
 4 **may not issue or renew the person's license until the person**  
 5 **provides to the bureau a statement from the department of**  
 6 **workforce development that the person's delinquent contribution**  
 7 **liability has been satisfied.**

8 SECTION 7. IC 25-1-6-8 IS AMENDED TO READ AS FOLLOWS  
 9 [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) The bureau and the boards  
 10 may allow the department of state revenue **and the department of**  
 11 **workforce development** access to the name of each person who:

- 12 (1) is licensed under this chapter; or  
 13 (2) has applied for a license under this chapter.

14 (b) If the department of state revenue notifies the bureau that a  
 15 person is on the most recent tax warrant list, the bureau may not issue  
 16 or renew the person's license until:

- 17 (1) the person provides to the bureau a statement from the  
 18 department of revenue that the person's delinquent tax liability  
 19 has been satisfied; or  
 20 (2) the bureau receives a notice from the commissioner of the  
 21 department of state revenue under IC 6-8.1-8-2(k).

22 **(c) If the department of workforce development notifies the**  
 23 **bureau that a person has unpaid contribution liability, the bureau**  
 24 **may not issue or renew the person's license until the person**  
 25 **provides to the bureau a statement from the department of**  
 26 **workforce development that the person's delinquent contribution**  
 27 **liability has been satisfied.**

28 SECTION 8. [EFFECTIVE UPON PASSAGE] (a)  
 29 Notwithstanding IC 22-4-32-23, as amended by this act, the  
 30 department of state revenue shall carry out the duties imposed  
 31 upon it under IC 6-3-4-8(h) under interim written guidelines  
 32 approved by the commissioner of the department of state revenue.

33 (b) This SECTION expires on the earlier of the following:

- 34 (1) The date rules are adopted under IC 6-3-4-8(h).  
 35 (2) December 31, 2001.

36 SECTION 9. An emergency is declared for this act.

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